

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 62, TITLED "STREETS AND SIDEWALKS" BY ADDING ARTICLE VIII. TITLED "COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS OF WAY" TO THE KEY WEST CODE OF ORDINANCES; ADDING SECTIONS 62-401 THROUGH 62-421; PROVIDING FINDINGS & INTENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION OF COMMUNICATION SERVICE PROVIDERS; PROVIDING FOR NOTICE OF TRANSFER, SALE OR ASSIGNMENT OF ASSETS; PROVIDING RULES, REGULATIONS AND GENERAL CONDITIONS TO PLACEMENT OF COMMUNICATIONS SYSTEMS AND FACILITIES IN THE PUBLIC RIGHT OF WAY (ROW); PROVIDING FOR DUTY TO NOTIFY CITY OF RESELLERS; PROVIDING WIRELESS FACILITIES RULES AND CONDITIONS; PROVIDING FOR REVOCATION OF SUSPENSION OF PERMANENT ROW PERMITS; PROVIDING FOR INVOLUNTARY TERMINATION OF REGISTRATION; PROVIDING FOR APPEALS; PROVIDING FOR FEES APPLICABLE TO THOSE NOT SUBJECT TO COMMUNICATIONS SERVICES TAX; PROVIDING FOR EXISTING COMMUNICATIONS FACILITIES; PROVIDING FOR INSURANCE; PROVIDING FOR INDEMNIFICATION; PROVIDING FOR CONSTRUCTION BOND; PROVIDING FOR PERFORMANCE BOND; PROVIDING FOR SECURITY FUND; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR ABANDONMENT OF A COMMUNICATIONS FACILITY; PROVIDING FOR RESERVATION OF RIGHTS AND REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission finds that it is necessary to regulate the placement of telecommunications equipment and facilities in the public right-of-way to preserve the historic appearance of certain areas of Key West, and to protect the health, safety and welfare of the citizens of Key West; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST,  
FLORIDA:

Section 1. That Chapter 62, Article VIII is hereby added to  
the Key West Code of Ordinances as follows\*:

**Chapter 62 - STREETS AND SIDEWALKS**

**ARTICLE VIII. -- COMMUNICATIONS FACILITIES IN  
PUBLIC RIGHTS-OF-WAY**

**Sec. 62-401. - Short Title.**

This Article shall be known, and may be cited, as the "Key  
West Communications Facilities in Public Rights-of-Way Ordinance."

**Sec. 62-402. - Findings, Intent and Scope.**

(a) The City of Key West hereby makes and declares the  
following findings and declares its legislative intent as follows:

(1) The Public Rights-of-Way within the City of Key West are  
a unique and physically limited resource and important amenity  
that are critical to the travel and transport of persons and  
property in the City.

(2) The demand for telecommunications services has grown  
exponentially in recent years, requiring the continual upgrading  
of telecommunications equipment and services to satisfy such  
demand.

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\*(Coding: Deleted language is ~~double struck through~~ at second  
reading.)

(3) The placement of telecommunications equipment and facilities in the public rights-of-way to satisfy the demand for telecommunications services raises important issues with respect to the City's responsibility to manage its public rights-of-way.

(4) The Public Rights-of-Way must be managed and controlled in a manner that enhances the health, safety and general welfare of the City and its citizens.

(5) The use and occupancy of the Public Rights-of-Way by providers of communications services must be subject to regulation to ensure minimal inconvenience to the public, coordinate users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of an optimal number of providers of cable, telecommunications, and other services in the public interest.

(6) Section 166.041, Florida Statutes, provides for procedures for adoption of an ordinance which is a regulation of general and permanent nature and enforceable as local law.

(7) Section 337.401, Florida Statutes, provides that because federal and state law require the nondiscriminatory treatment of providers of telecommunications services and because of the desire to promote competition among providers of communications services, it is the intent of the Florida Legislature that municipalities and counties treat providers of communications services in a nondiscriminatory and competitively

neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way.

(8) The City finds that, to promote the public health, safety and general welfare, it is necessary to (i) provide for the placement or maintenance of Communications Facilities in the Public Rights-of-Way within the City limits, (ii) adopt and administer reasonable rules, regulations and general conditions not inconsistent with applicable state and federal law, (iii) manage the placement and maintenance of Communications Facilities in the Public Rights-of-Way by all Communications Services Providers, (iv) minimize disruption to the Public Rights-of-Way, and (v) require the restoration of the Public Rights-of-Way to original condition.

(9) The City's intent is that these rules and regulations must be generally applicable to all providers of communications services and, notwithstanding any other law, may not require a provider of communications services to apply for or enter into an individual license, franchise, or other agreement with the City as a condition of placing or maintaining communications facilities in its roads or rights-of-way.

(10) It is also the City's intent to exercise the City's retained authority to regulate and manage the City's roads and rights-of-way in exercising its police power over Communications

Services Providers' placement and maintenance of facilities in the public rights-of-way in a nondiscriminatory and competitively neutral manner.

(b) This Article shall apply to any public or private entity who seeks to construct, place, install, maintain or operate a Communications System or Facilities, as such terms are defined herein, in the Public Rights-of-Way, unless otherwise exempt by operation of applicable state or federal law. This Article shall equally apply to a City owned or controlled Communications System, except to the extent such Facilities are utilized on an internal, non-commercial basis by the City or any of its agencies, departments or bureaus.

**Sec. 62-403. - Definitions.**

(a) For purposes of this Article, the following terms, phrases, words and their derivations shall have the meanings ascribed herein. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The words "shall," "will" and "must" are mandatory, and "may" is permissive. Words not otherwise defined herein shall have the meaning ascribed thereto under Chapters 202 or 337, Florida Statutes, as amended, or where none is ascribed shall be construed to mean the common and ordinary meaning.

(1) *Abandonment* means 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 the Public Rights-of-Way.

(2) *Affiliate* means each person, directly or indirectly, controlling, controlled by, or under common control with a Communications Services Provider that is Registered with the City; provided that Affiliate shall in no event mean any limited partner, member, or shareholder holding an interest of less than 15 percent in such Communications Services Provider.

(3) *Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing Wireless Services or other Communications Services.

(4) *Applicable Codes* means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this subsection. The term includes objective design standards adopted by ordinance which may require that a new utility pole replacing an existing utility pole be of substantially similar

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

(5) *Applicant* means a person who submits an Application and is a Wireless Provider.

(6) *Application* means a request submitted by an Applicant to the City for a permit to collocate Small Wireless Facilities.

(7) *As-Built Surveys* means the final and complete drawings in hard copy signed and sealed by a Professional Surveyor and Mapper (as defined in §472.005, Florida Statutes) and the final and complete electronic overview map (in autocad, microstation, mapinfo or ESRI format) presented in computer input medium such as cd-rom, dvd or zip100/250. As-Built Surveys, in both the drawings and the electronic overview map, must show the present state of a Communications Services Provider's Facilities in the Public Rights-of-Way, including, but not limited to, the horizontal and vertical location of Facilities located at least every 100 feet

and at any alignment change. Horizontal locations on all points of Facilities shall be from street centerline, or section or quarter section lines or corners. Vertical locations on all points of Facilities shall consist of elevations in either City datum or United States Geological Survey datum.

(8) *Cable Service* means the one-way transmission to subscribers of video programming or any other programming service; and subscriber interaction, if any, that is required for the selection or use of such video programming or other programming service.

(9) *Cable Service Provider* means a person that provides cable service over a cable system.

(10) *Cable System* means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, but such term does not include: a facility that serves only to retransmit the television signals of one or more television broadcast stations; a facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way; a facility that serves subscribers without using any public right-of-way; a facility of a common carrier that is subject, in whole or in part,



to the provisions of Title II of the Federal Communications Act of 1934, except such facility shall be considered a cable system other than for purposes of 47 U.S.C. Section 541(c) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; any facilities of any electric utility used solely for operating its electric utility systems; or an open video system that complies with 47 U.S. C. Section 573.

(11) *Chapter or Article* means the Key West Communications Right-of-Way Utilization Ordinance, codified as Chapter 62, Article VIII of the City Code pursuant to that Ordinance enacted by City Commission effective on May 1, 2018, as may be amended or supplemented from time to time.

(12) *City* means the City of Key West, Florida, a municipal corporation organized and existing under the laws of the State of Florida.

(13) *City Code* means the municipal code of ordinances of the City of Key West, Florida.

(14) *City Commission* means the governing body for the City.

(15) *City Utility Pole* means a utility pole owned by the City in the right-of-way.

(16) *Collocate or Collocation* means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support

structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way, nor does it include interconnection of Communications Facilities or the sale or purchase of capacity (whether bundled or unbundled).

(17) *Communications Facility, Facility or Facilities* means any portion of a Communications System located in the Public Rights-of-Way.

(18) *Communications Services* means the definition ascribed thereto in Section 202.11(1), Florida Statutes, as may be amended, and also includes but is not limited to Wireless Services as defined herein.

(19) *Communications Services Provider* means (i) any Person, municipality or county providing Communications Services through the use and operation of a Communications System or Communications Facilities installed, placed and maintained in the Public Rights-of-Way, regardless of whether such System or Facilities are owned or leased by such Person, municipality or county and regardless of whether such Person, municipality or county has registered with the Florida Department of Revenue as a provider of Communications Services in Florida pursuant to Chapter 202, Florida Statutes and (ii) any Person, municipality or county who constructs, installs, places, maintains or operates Communications Facilities in the Public Rights-of-Way but who does not provide Communications

Services, including for example a company that places "dark fiber" or conduit in the Public Rights-of-Way and leases or otherwise provides those facilities to another company that does provide Communications Services.

(20) *Communications System* or *System* means any permanent or temporary plant, equipment and property placed or maintained in the Public Rights-of-Way that is occupied or used, or is capable of being occupied or used, by a Communications Services Provider for the purpose of producing, conveying, routing, transmitting, receiving, amplifying, distributing, providing or offering Communications Services including, but not limited to cables, wires, lines, conduits, fiber optics, antennae, radios and any associated poles, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, and other plant, equipment and pathway.

(21) *Dealer* means any Person, municipality or county providing Communications Services to an end user in Key West through the use and operation of Communications Facilities installed, placed and maintained in the Public Rights-of-Way, whether owned or leased, and who has registered with the Florida Department of Revenue as a provider of Communications Services pursuant to Chapter 202, Florida Statutes. This definition of "Dealer" is intended to include any "Reseller."

(22) *Department* means the Florida Department of State.

(23) *Communication Facility Permanent Right of Way (ROW) Permit* means the right-of-way utilization permit required under this City Code prior to commencement of any placement or maintenance of Facilities in the Public Rights-of-Way.

(24) *Excavation* or other similar formulation of that term means the cutting, trenching or other disturbance to the Public Rights-of-Way intended to change the grade or level of land or which causes any cavity, gap, depression, penetration or hole in the surface of the Public Rights-of-Way.

(25) *FCC* means the Federal Communications Commission.

(26) *Franchise* means an initial authorization or renewal of an authorization, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, to construct and operate a cable system or video service provider network facilities in the public right-of-way.

(27) *Franchise Authority* means any governmental entity empowered by federal, state, or local law to grant a franchise.

(28) *Government* means the United States of America, the State of Florida, counties, municipalities, and any of their respective agencies, departments or bureaus.

(29) *In the Public Rights-of-Way* means in, along, on, over, under, across or through the Public Rights-of-Way.

(30) *Micro Wireless Facility* means a Small Wireless Facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

(31) *Pass-Through Facilities* means the Facilities for a Communication System that merely pass through the City from one point to another point and from which no revenues are directly attributable to subscribers or other carriers within the City.

(32) *Pass-through Provider* means any Person, municipality or county that places or maintains a Communications System or Communications Facilities in the Public Rights-of-Way but who does not provide Communications Services, including for example a company that places "dark fiber" or conduit in the Public Rights-of-Way and leases or otherwise provides those facilities to another company that does provide Communications Services to an end user. This definition of "Pass-through Provider" is intended to include any Person that places or maintains "Pass-Through Facilities" in the Public Rights-of-Way, but does not provide Communications Services to an end user within the corporate limits of the City.

(33) *Person* means any individual, firm, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, association, corporation, company, organization or legal entity of any kind, including any Affiliate, successor, assignee, transferee or personal representative thereof, and all other groups or

combinations, and shall include the City to the extent that the City acts as a Communications Services Provider.

(34) *Placement or maintenance or placing or maintaining* or other similar formulation of that term means the named actions interpreted broadly to encompass, among other things, erection, construction, reconstruction, installation, inspection, maintenance, placement, replacement, extension, expansion, repair, removal, operation, occupation, location, relocation, grading, undergrounding, trenching or excavation. Any Communications Services Provider that owns, leases or otherwise controls the use of a Communications System or Facility in the Public Rights-of-Way, including the physical control to maintain and repair, is "placing or maintaining" a Communications System or Facility. A Person providing service only through buying wholesale and then reselling 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.

(35) *Public Rights-of-Way* means land in which the City owns the fee title or has an easement devoted to or required for use as a transportation facility, as that term is defined in § 334.03(21), Florida Statutes. "Public Rights-of-Way" shall not include (a) county, state or federal rights-of-way, (b) property owned by any

Person other than the City, (c) service entrances or driveways leading from the road or street onto adjoining property or (d) except as described above, any real or personal property of the City, such as, but not limited to, City parks, buildings, fixtures, conduits, water lines, sewer lines, facilities or other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way.

(36) *Public Service Commission* or *PSC* means the agency for the State of Florida charged with the powers and duties conferred upon it by Chapter 364, Florida Statutes.

(37) *Record Drawings* means a final and complete drawing accurately depicting the improvements as constructed. Record Drawings are not required to be signed and sealed by a Professional Surveyor and Mapper.

(38) *Registration* or *Register* other similar formulation of that term means the process described in Section 62-404 herein whereby a Communications Services Provider provides certain information to the City.

(39) *Reseller* means any Person providing Communications Services within the City over a Communications System, or portion thereof, for which a separate charge is made, where that Person does not place or maintain, nor own or control, any of the underlying Facilities in the Public Rights-of-Way used for transmission. Instead such Person purchases the Service, usually

at wholesale, from a Communications Services Provider and then resells it at retail or such Person uses the Public Rights-of-Way by either interconnecting with the Facilities of a Communications Services Provider utilizing the Public Rights-of-Way or by leasing excess capacity from a facility-based Communications Services Provider.

(40) *Small Wireless Facility* means a wireless facility that meets the following qualifications: (a) each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and (b) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

(41) *Utility Pole* means a pole or similar structure used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar



function. The term includes the vertical support structure for traffic lights, but does not include any horizontal structures upon which are attached signal lights or other traffic control devices and does not include any pole or similar structure 15 feet in height or less unless the City grants a waiver for the pole.

(42) *Video Programming* means programming provided by, or generally considered comparable to programming provided by, a television broadcast station as set forth in 47 U.S.C. s. 522(20).

(43) *Video Service* means video programming services, including cable services, provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. s.332(d), video programming provided as part of and via a service that enables end users to access content, information, electronic mail, or other services offered over the public Internet.

(44) *Video Service Provider* means an entity providing video service.

(45) *Wireless Facilities* means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of

technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include (a) the structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated, or (b) wireline backhaul facilities, or (c) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(46) *Wireless Infrastructure Provider* means a person who has been certificated to provide telecommunications service in the state, and who builds or installs wireless communication transmission equipment, Wireless Facilities, or Wireless Support Structures, but is not a Wireless Services Provider.

(47) *Wireless Provider* means a wireless infrastructure provider or a Wireless Services Provider.

(48) *Wireless Services* means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using Wireless Facilities.

(49) *Wireless Services Provider* means a person who provides Wireless Services.

(50) *Wireless Support Structure* means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or

capable of supporting wireless facilities. The term does not include a Utility Pole.

**Sec. 62-404. - Registration.**

Every Communications Services Provider that desires to place or maintain a Communications System or any Communications Facilities in the Public Rights-of-Way, including any Pass-Through Facilities, shall first Register with the City in accordance with this Section 62-404. Subject to the provisions prescribed in this Article, a Communications Services Provider that has properly Registered may apply for Permanent Right of Way (ROW) Permits to place or maintain a Communications System or Facilities in the Public Rights-of-Way.

(a) Every Communications Services Provider that desires to place or maintain Communications Facilities in the Public Rights-of-Way, including any Pass-Through Facilities, shall Register with the City Engineer's Office and shall submit the following information and documentation:

(1) the name of the applicant under which it will transact business in the City and, if different, in the State of Florida; and

(2) the address and telephone number of the applicant's principal place of business in the State of Florida and any branch office located in the City or, if none, the name, address and

telephone number of the applicant's national headquarters and its Registered Agent in Florida; and

(3) the name, address and telephone number of the applicant's primary contact person and the person to contact in case of an emergency; and

(4) the type of Communications Services that the applicant intends to provide within the corporate limits of the City (if more than one, state all that apply), or, if none, state that the applicant is a Pass-through Provider or is intending only to place and maintain Pass-Through Facilities, as the case may be; and

(5) for Registrations submitted on or after October 1, 2018, a copy of both the applicant's resale certificate and certificate of registration issued by the Florida Department of Revenue to engage in the business of providing communications services in the State of Florida; and

(6) a copy of the applicant's certificate of authorization, public convenience and necessity or other similar certification issued by the Florida Public Service Commission; and

(7) the number of the applicant's certificate of authorization or license to provide Communications Services issued by the Florida Public Service Commission, the Department, the FCC, or other Federal authority, if any; and

(8) for an applicant that is a Pass-through Provider, in lieu of paragraphs (5), (6) and (7) above, the applicant shall

provide a certified copy of the certificate or license issued by the Florida Department of State, or other appropriate state agency or department, authorizing the company to do business in the State of Florida; and

(9) evidence of the applicant's insurance coverage as required under this Article.

(b) The City shall review the information submitted by the applicant. Such review shall be by the City Engineer or his or her designee. If it is found that the applicant complied with the requirements in subsection (a) 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 applicant is not in compliance, the City shall notify the applicant in writing of the non-effectiveness and denial of Registration and the reasons therefor. The City shall so reply to an applicant within thirty (30) days after receipt of the Registration and required information from the applicant. Non-effectiveness and denial of Registration shall not preclude an applicant from reapplying or filing subsequent applications for Registration under the provisions of this Section.

(c) An effective Registration does not, and shall not be construed to, convey equitable or legal title in the Public Rights-of-Way to any Communications Services Provider. Registration under this Ordinance governs only the placement or maintenance of a

Communications System or Communications Facilities in the 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 part of a Communications System. Registration does not excuse a Communications Services Provider from obtaining appropriate access or pole attachment agreements before locating its Facilities on those facilities or property belonging to the City or another Person. Registration does not excuse a Communications Services Provider from complying with all other applicable City ordinances, codes or regulations, including the rules, regulations and general conditions set forth in this Article.

(d) A Communications Services Provider may cancel a Registration upon written notice to the City stating that it will no longer place or maintain a Communications System or any Communications Facilities in the Public Rights-of-Way and will no longer have a need to apply for Permanent Right of Way (ROW) Permits to perform construction or other work in the Public Rights-of-Way. A Communications Services Provider cannot cancel a Registration if it intends to continue placing or maintaining a Communications System or any Communications Facilities in the Public Rights-of-Way.

(e) Registration, in and of itself, does not establish a right to place or maintain or a priority for the placement or maintenance

of a Communications System or any Facility in the Public Rights-of-Way, but shall establish for the Communications Services Provider a right to apply for a Permanent Right of Way (ROW) Permit from 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. Registration does not excuse or exempt a Communications Services Provider from having to obtain an Occupational License from the City in accordance with the City Code.

(f) A Communications Services Provider shall renew its Registration with the City by April 1 of even-numbered years in accordance with the Registration requirements in this Article, except that any Communications Services Provider that initially Registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew its Registration until the next even numbered year. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (1), a Communications Services Provider shall provide updated information to the City. If no information in the then-existing Registration has changed, the renewal may state that no information has changed. Failure to renew a Registration may result in the City restricting the issuance of additional Permanent Right of Way

(ROW) Permits until the Communications Services Provider has complied with the Registration requirements of this Article.

(g) In accordance with applicable City ordinances, codes or regulations, a Permanent Right of Way (ROW) Permit is required for a Communications Services Provider to place or maintain a Communications Facility in the Public Rights-of-Way. An effective Registration shall be a condition of obtaining such a permit. Notwithstanding an effective Registration, all permitting requirements shall apply, including the requirement to pay for any such permits unless otherwise provided by resolution or ordinance of the City. A permit may be obtained by or on behalf of the Communications Services Provider having an effective Registration if all permitting requirements of the City and other provisions of this Article are met.

(h) A Reseller, which by definition does not place or maintain Communications Facilities in the Public Rights-of-Way, is not required to Register with the City.

**Sec. 62-405. - Notice of Transfer, Sale or  
Assignment of Assets.**

If a Communications Services Provider transfers, sells or assigns its System or any Facilities located in the Public Rights-of-Way incident to a transfer, sale or assignment of the Communications Services Provider's assets, the transferee, buyer



or assignee shall be obligated to comply with the provisions set forth in this Article. Written notice of any such transfer, sale or assignment shall be provided by the Communications Services Provider to the City within thirty (30) days after the effective date of such transfer, sale or assignment. If the transferee, buyer or assignee is not currently registered with the City, then the transferee, buyer or assignee must register as provided in Section 62-404 within sixty (60) days of the effective date of such transfer, sale or assignment. If any applications for Permanent Right of Way (ROW) Permits are pending under the Communications Services Provider's name as of the date the City receives written notice of the transfer, sale or assignment, then the City shall consider the transferee, buyer or assignee as the new applicant unless otherwise notified by the Communications Services Provider.

**Sec. 62-406. - Rules, Regulations and General Conditions to Placement of Communications Systems and Facilities in the Public Right-of-Way.**

As a condition of allowing the placement or maintenance of a Communications System or any Communications Facility in the Public Rights-of-Way, and under additional authority granted pursuant to Chapter 337, Florida Statutes, the City hereby imposes the following rules, regulations and general conditions. Unless otherwise provided in this Chapter 62, Article VIII, these rules,

regulations and general conditions shall apply to all Communications Services Providers, including those that are Pass-through Providers irrespective of whether they place and maintain only conduit, dark fiber or Pass-Through Facilities.

(a) *Rules on Utilization of the Public Rights-of-Way.*

(1) *Compliance with Laws.* A Communications Services Provider shall at all times be in full compliance with and abide by all applicable Federal, State and local laws, codes and regulations in placing or maintaining a Communications System and Facilities in the Public Rights-of-Way.

(2) *Due Care.* A Communications Services Provider 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.

(3) *Permits.* A Communications Services Provider shall not commence to place or maintain a Communications Facility in Public Rights-of-Way until all applicable permits have been issued by the City and other appropriate authorities, except in the case of an emergency. The term "emergency" shall mean a condition that affects the public's health, safety or general welfare, which includes an unplanned out-of-service condition of a pre-existing service. The Communications Services Provider shall provide prompt notice to the City of the placement or maintenance of a Communications Facility in the Public Rights-of-Way in the event

of an emergency and shall, after-the-fact, be required to submit plans and Record Drawings and As-Built Surveys, if required by the City Engineer, showing the placement or relocation of a Communications Facility undertaken in connection with the emergency.

(4) *Application for Permanent Right of Way (ROW) Permit.* Prior to the issuance of a Permanent Right of Way (ROW) Permit to allow the placement or maintenance of a Communications System or Facility in the Public Rights-of-Way, the City has the right to first review and consider and the Communications Services Provider shall provide all of the following:

a. The expected dates and times when the Facility will be installed and the estimated time needed for construction and placement of the proposed Facility;

b. The location of the proposed Facility, the Public Rights-of-Way affected and a description of the Facility, including the type of Facility (e.g. conduit, fiber, twisted pair, etc.), the number of fibers or other cable being installed, and the approximate size of the Facility (e.g. length, height, width and diameter); and

c. Plans, drawings, photographs, and schematics (including cross section layout) prepared by a qualified engineer or technician showing where the Facility is proposed to be located

in the Public Rights-of-Way and showing any known Communications Facilities or utility facilities in such Public Rights-of-Way.

(5) *Revised Plans.* If the plans or drawings submitted showing the proposed location for installation of the Facility in the Public Rights-of-Way require revision for any reason prior to commencing construction, the Communications Services Provider shall promptly submit revised plans and drawings to the City Engineer.

(6) *Power to Restrict Area.* 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 the Public Rights-of Way and deny the issuance of a Permanent Right of Way (ROW) Permit.

(7) *Limited Purpose of Permanent Right of Way (ROW) Permit.* A Permanent Right of Way (ROW) Permit issued by the City constitutes authorization to undertake only certain activities in Public Rights-of-Way in accordance with this Article, and does not create any property right or other vested interest, or grant authority to impinge upon the rights of others who may have an interest in the Public Rights-of-Way. Permanent Right of Way (ROW) Permits shall be granted only for specific routes or locations in the Public Rights-of-Way and for such term as described in the permit. The City's issuance of a Permanent Right of Way (ROW)

Permit shall not be construed as a warranty that the placement of any Communications Facility is in compliance with applicable codes, regulations or laws.

(8) *Responsibility for Contractors.* Every Communications Services Provider that is Registered with the City shall be liable for the actions of contractor(s) hired by them to perform the placement or maintenance of Facilities in the Public Rights-of-Way and shall be responsible for making sure that such contractor meets and complies fully with the rules, regulations and general conditions set forth in this Article.

(b) *Regulations on the Placement or Maintenance of Communications Facilities.*

(1) *Provision and Form of Record Drawings and As-Built Surveys.* Within forty-five (45) days after completion of any placement or maintenance of a Communications Facility in the Public Rights-of-Way, the Communications Services Provider shall provide the City with Record Drawings showing the final location of such Facility in the Public Rights-of-Way. Upon request by the City Engineer, the Communications Services Provider shall also provide the City with As-Built Surveys within forty-five (45) days after completion of any placement or maintenance of a Communications Facility in the Public Rights-of-Way. The Record Drawings and As-Built Surveys shall be provided to the City at no cost.

(2) *Production and Filing of As-Builts.* Every Communications Services Provider that is Registered with the City shall produce and keep on file at its principal place of business an accurate and complete set of As-Builts of all Facilities placed and maintained in the Public Rights-of-Way. The location and identification of Facilities and the production of As-Builts shall be at the sole expense of the Communications Services Provider. Within thirty (30) days of any written request by the City Engineer, the Communications Services Provider must provide to the City, at no cost, copies of complete sets of As-Builts for the indicated Public Rights-of-Way. The failure of the Communications Services Provider to produce, keep on file, or provide to the City As-Builts as required under this Article is sufficient grounds for the City to deny the issuance of Permanent Right of Way (ROW) Permits in the future.

(3) *Removal of Facilities Placed Without Permit.* Any Communications Facilities placed in the Public Rights-of-Way by the Communications Services Provider without first having obtained the required Permanent Right of Way (ROW) Permits shall be removed within thirty (30) days of written notice by the City to remove the same and in default of compliance with such notice, such Facilities may be removed by order of the City Engineer and the cost of removal shall be borne and paid by the Communications Services Provider upon demand.

(4) *Underground.* The placement or maintenance of all Communications Facilities shall be underground unless otherwise approved in writing by the City Engineer. Communications Facilities shall be placed between the property line and the curb line of all streets and avenues and shall not be within the roadway or the roadway recovery area unless specifically approved in writing by the City Engineer. All Communications Facilities shall have consistent alignment parallel with the edge of pavement, a thirty-six inch (36") depth of cover for and shall have two feet (2') of horizontal clearance from other underground utilities and their appurtenances. Where approved by the City Engineer, Facilities to be placed in the street shall be laid according to the permanent grade of the street and at a depth below the surface of the permanent grade as each is determined by the City Engineer.

(5) *Above-Ground Approval.* The placement or maintenance of Facilities above-ground, including new Utility Poles and aerial wires, is subject to written approval by the City Engineer. Attachment to any Utility Pole or other above-ground structure must be pursuant to a valid and effective pole attachment agreement or similar instrument. Location on any Utility Pole or other above-ground structure shall not be considered a vested interest of the Communications Services Provider or Wireless Infrastructure Provider and such Utility Poles or structures, if owned by the Communications Services Provider or Wireless Infrastructure

Provider, shall be removed or modified by the Communications Services Provider or Wireless Infrastructure Provider at its own expense whenever the City or other governmental authority determines that the public convenience would be enhanced thereby. The Communications Services Provider or Wireless Infrastructure Provider shall, at such time as the electric utility facilities or other Communications Facilities are placed underground or are required by the City to be placed underground, concurrently place its Communications Facilities underground without cost to the City.

(6) *New Utility Poles or Above-Ground Structures.* The placing of any new Utility Pole or other above-ground structure to support Communications Facilities is subject to the approval of the City Engineer and shall be done under the supervision of the City Engineer or his designee. No such Utility Pole or other above-ground structure shall be placed in any gutter or drainage area and must be behind the curb to avoid damage to any sidewalk. In areas of the City where either electric utility wires or other Communications Facilities are above ground and such facilities are moved, either voluntarily or at the direction of the City, to a new Utility Pole or other above-ground structure, the Communications Services Provider or Wireless Infrastructure Provider shall likewise move all its above-ground Facilities on such Utility Poles or structures to such new Utility Pole or



structure within thirty (30) days after receipt of written notice from either the City or the owner of the new Utility Pole or structure, without cost to the City. New Utility Poles installed by Wireless Infrastructure Providers shall also be subject to and may avail themselves of the requirements and process set forth in § 62-408(b)(4) hereof.

(7) *Placement and Maintenance Standards.* The placement or maintenance of Communications Facilities in the Public Rights-of-Way shall be performed in accordance with standards and requirements of the following, as is applicable and as each is in force at the time of the respective placement or maintenance of a Communications System or Facility:

a. the Florida Department of Transportation Utilities Accommodation Guide;

b. the State of Florida Manual of Uniform Minimum Standards for Design Construction and Maintenance for Streets and Highways;

c. the Trench Safety Act (Chapter 553, Florida Statutes);

d. the Underground Facility Damage Prevention and Safety Act (Chapter 556, Florida Statutes);

e. the National Electrical Code or the ANSI National Electrical Safety Code; and

f. the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States.

(8) *Sunshine State One-Call*. Every Communications Services Provider shall utilize, and if permissible, maintain membership in the utility notification one call system administered by Sunshine State One-Call of Florida, Inc.

(9) *Safety and Minimal Interference*. All placement and maintenance of Communication Facilities in the Public Rights-of-Way shall be subject to the City Code and other regulations of the City pertaining thereto, and shall be performed with the least possible interference with the use and appearance of the Public Rights-of-Way and the rights and reasonable convenience of the property owners who abut or adjoin the Public Rights-of-Way and in compliance with the rules and regulations of the Florida Department of Transportation. The Communications Services Provider shall at all times employ reasonable care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injury or be a nuisance to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. All placement and maintenance shall be done in such a manner as to minimize to the greatest extent any

interference with the usual travel on such Public Rights-of-Way. The use of trenchless technology (i.e., micro tunneling and horizontal directional drilling techniques) for the installation of Communications 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 and whenever feasible.

(10) *Correction of Harmful Conditions.* If, at any time, the City or other authority of competent jurisdiction reasonably determines that any Communications Facility is, or has caused a condition that is, harmful to the health, safety or general welfare of any Person, then the Communications Services Provider shall, at its own expense, promptly correct or eliminate all such Facilities and conditions. In an emergency, as determined by the City Engineer, when the Communications Services Provider is not immediately available or is unable to provide the necessary immediate repairs to any Communications Facility that is damaged or malfunctioning, or has caused a sunken area or other condition and, in the City Engineer's sole discretion, is deemed a threat to public safety, then the City, when apprised of such an emergency, shall have the right to remove, make repairs to or eliminate same with the total cost being charged to and paid for by the Communications Services Provider upon demand.

(11) *Remedy of Hazardous Conditions.* If, at any time, a condition exists that the City or other authority of competent jurisdiction reasonably determines is an emergency that is potentially hazardous or life threatening to any person or is a threat to the health or safety of the general public, and to remedy such condition the City or other authority of competent jurisdiction reasonably determines that a Communications Services Provider must temporarily relocate or temporarily shut off service or transmissions through a specific Facility, then the City, as an appropriate exercise of its police powers, may order the Communications Services Provider to immediately perform such temporary relocation or shut off until the condition has been remedied, and to do so at its own expense and without liability to or recourse against the City. In such an emergency, when the Communications Services Provider is not immediately available or is unable to provide the necessary immediate relocation or shut off of the specific Communications Facility, then the City shall have the right to perform, or cause to be performed, such temporary relocation or shut off until the condition has been remedied with the total cost being charged to and paid for by the Communications Services Provider upon demand.

(12) *Interference with Other Facilities.* A Communications Services Provider shall not, in violation of any applicable laws or regulatory standards, design, place or maintain

its Communications Facilities in a manner that will interfere with the signals or facilities of any municipal or county police, fire or rescue department, the facilities of any public utility, or the Communications Facilities of another Communications Service Provider, including any cable service provider.

(13) *Relocation or Removal of Facilities.* Except in cases of emergency, a Communications Services Provider, at its own expense, shall:

a. Upon thirty (30) days written notice, relocate or remove, as specified in said notice, its Communications Facility in the event the City finds that the particular Facility is unreasonably interfering in some way with the convenient, safe or continuous use, or the maintenance, improvement, extension or expansion of any Public Rights-of-Way. The City shall provide the Communications Services Provider with a notice and order as provided for in Section 337.404 of the Florida Statutes, or any subsequently enacted law of the State of Florida, in the event it charges the Communications Services Provider for the cost and expense of relocating or removing such Facility pursuant to this paragraph.

b. Within a reasonable period of time from the date of written notice from the City, but not more than one hundred twenty (120) days thereafter, relocate or remove, as specified in said notice, its Communications Facility in the event the City

Engineer determines it necessary for the construction, completion, repair, relocation or maintenance of a City project, because the particular Communications Facility is interfering with or adversely affecting the proper operation of street light poles, traffic signals, or any communications system belonging to the City or an agency thereof or because the particular Communications Facility is interfering with the signals or facilities of the Key West Police Department, Key West Fire Rescue, or any municipal public utility. In the event the City issues any such written notice to the Communications Services Provider pursuant to this paragraph, and the Communications Services Provider fails to cause the aforementioned relocation or removal as required herein, the City shall be entitled to relocate or remove such Facilities without further notice to the Communications Services Provider and the total cost and expense shall be charged to the Communications Services Provider.

(14) *Temporary Raising or Lowering of Facilities.* A Communications Services Provider, upon request of any Person holding a validly issued building or moving permit from the City to temporarily encroach on or perform moving operations in or across the Public Rights-of-Way, shall temporarily raise or lower its Communications Facilities to accommodate such temporary encroachment or move. The expense of such temporary raising or lowering of Facilities shall be paid by the Person requesting the

same, and the Communications Services Provider shall have the authority to require such payment in advance. The Communications Services Provider shall be given not less than twenty (20) days advance written notice from such Person to arrange for the temporary relocation, which notice must detail the time and location of the permitted activity, and not less than twenty-four (24) hours advance notice from the permit holder advising of the actual operation. The City is not subject to, nor shall it be liable for, any such expense or notice requirement for the moving of houses or structures performed by the City or its contractors.

(15) *Coordination.* In an effort to minimize the adverse impact on the Public Rights-of-Way and other municipal improvements, a Communications Services Provider may be required by the City Engineer to coordinate the placement or maintenance of its Facilities with any work, construction, installation in or repairs of the subject Public Rights-of-Way or other Facilities therein that is occurring or is scheduled to occur within a reasonable time from application for a Permanent Right of Way (ROW) Permit as determined by the City Engineer. Every Communications Services Provider shall make space in its trench and/or conduit within the Public Rights-of-Way available to other providers consistent with the federal requirements of 47 U.S.C. 224. Every Communications Services Provider shall utilize existing conduits, pathways and other Facilities whenever possible, and shall not

place or maintain any new, different, or additional poles, conduits, pathways or other Facilities, whether in the Public Rights-of-Way or on privately-owned property, until written approval is obtained from the City or other appropriate governmental authority, and, where applicable, from the private property owner.

(16) *Collocation and Joint Use.* A Communications Services Provider, in an effort to minimize the adverse impact on the useful life of the Public Rights-of-Way, shall, whenever possible, enter into joint use agreements with the City and other parties who have Registered with, or who are expressly authorized by, the City to use its Public Rights-of-Way; provided that the terms of such agreements are satisfactory to the Communications Services Provider. Nothing herein contained shall mandate that the Communications Services Provider enter into joint use agreements with parties other than the City or an agency of the City. However, prior to placement of any new or additional underground conduit in the Public Rights-of-Way, a Communications Services Provider is required to certify in writing to the City Engineer that it has made appropriate inquiry to all existing utilities and other entities possessing a right to occupy the Public Rights-of-Way as to the availability of existing or planned conduit that the particular Communications Services Provider could reasonably utilize to meet its needs, and that no such conduit is available



or planned at a reasonable cost by any other entity on the time schedule reasonably needed. The Communications Services Provider shall not be permitted to perform any placement or maintenance of Facilities in those segments of the Public Rights-of-Way where there exists vacant or available conduit, dark fiber or surplus fiber owned by the City, an agency of the City or another governmental body which is or, through a reasonable amount of effort and expense, can be made compatible with the Communications Services Provider's System or network. Under such circumstances the Communications Services Provider shall have the opportunity to enter into a use agreement or lease arrangement with the City or an agency of the City at or below reasonable and prevailing market rates for such conduit or fiber or, where owned by another governmental body, shall, in good faith, first exhaust all means of obtaining use of such conduit or fiber before applying for a Permanent Right of Way (ROW) Permit from the City.

(17) *Maintenance-of-Traffic.* In the event that placement or maintenance of Communications Facilities conducted by the Communications Services Provider requires streets or traffic lanes to be closed or obstructed, the Communications Services Provider must, pursuant to the requirements of existing or subsequently enacted City ordinances, obtain all necessary permits from City, and shall obtain approval of its maintenance-of-traffic plan from the City Engineer.

(18) *Restoration of the Public Rights-of-Way.* After completion of any placement or maintenance of a Communications Facility in the Public Rights-of-Way or each phase thereof, the Communications Services Provider shall, at its own expense and in a manner reasonably acceptable to the City, restore without delay the Public Rights-of-Way so disturbed to its original condition immediately prior to the placement or maintenance work. If the Communications Services Provider fails to make such restoration within thirty (30) days following the completion of such placement or maintenance, the City may perform such restoration and charge the costs of the restoration to the Communications Services Provider in accordance with Section 337.402, Florida Statutes, as it may be amended. The Communications Services Provider shall, to the satisfaction of the City Engineer, maintain and correct any restorations made pursuant hereto for a period of twelve (12) months following the date of its completion. Failure to comply with this subsection shall be deemed sufficient grounds for denial of any future Permanent Right of Way (ROW) Permits for the placement or maintenance of Communications Facilities.

(19) *Disruption or Destruction of Other Facilities or Property.* A Communications Services Provider shall not knowingly place or maintain any Facility in a manner that shall in any way disrupt, displace, damage or destroy any sewer line, gas line, water main, pipe, conduit, wires, fiber-optics or other

Facilities, or property belonging to the City or any other Person lawfully occupying the Public Rights-of-Way, without first obtaining the consent of the City. The Communications Services Provider shall bear all responsibility and costs for any such conduct where City consent has not been obtained and shall pay such costs upon demand.

(20) *Preservation of Public Rights-of-Way for Planned Public Projects.* 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 communications facilities and pending applications to place and maintain facilities in that area of the Public Rights-of-Way, the sufficiency of space to accommodate City announced 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 Public Rights-of-Way.

(c) *General Conditions on the Utilization of the Public Rights-of-Way and the Placement or Maintenance of Communications Facilities.*

(1) *City Not Liable.* Except for acts of willful misconduct or gross negligence and to the extent permitted by applicable law,

neither the City nor its officials, boards, commissions, consultants, agents, employees or independent contractors shall have any liability to the Communications Services Provider for any claims for any damages, costs, expenses or losses resulting from the City's breakage, removal, alteration or relocation of any Facilities of any Communications Services Provider which arose out of or in connection with any emergency or disaster situation or was, in the sole discretion of the City Engineer, deemed necessary to facilitate any public works project, public improvement, alteration of a City structure, change in the grade or line of any Public Rights-of-Way, or the elimination, abandonment or closure of any Public Rights-of-Way or was found by City Commission to be in the best interest of the health, safety or general welfare of the public; nor shall any charge be made by the Communications Services Provider against the City for any damages, costs, expenses or losses related thereto.

(2) *No Exemption from Permits.* Nothing in this Article shall exempt any Communications Services Provider from obtaining Permanent Right of Way (ROW) Permits for work done within the Public Rights-of-Way.

(3) *Subject to Police Powers.* The rights of the Communications Services Provider shall be subject to all lawful exercise of police power by the City, and to such other reasonable regulation of the Public Rights-of-Way as the City shall hereafter

by resolution or ordinance provide in the interest of the health, safety and general welfare of the public. Any inconsistency or ambiguity between the provisions of this Chapter 62, Article VIII and any lawful exercise of the City's police power shall be resolved in favor of the latter.

(4) *City Inspection.* The City shall have the right to make such inspections of a Communications System or Facilities placed or maintained in the Public Rights-of-Way as it finds necessary to ensure compliance with this Article. This Article shall not be construed to create or hold the City responsible or liable for any damage to persons or property by reason of any inspection by the City of the placement or maintenance of a Communications System or Facility as authorized herein or failure by the City to so inspect.

(5) *Access to Manholes.* The City, in the proper exercise of its municipal powers and duties with respect to the Public Rights-of-way, shall have access at any time to all hand holes and manholes in the City belonging to a Communications Services Provider. Before accessing any manhole, the City will make a reasonable good faith effort to provide the Communications Services Provider prior notice to afford an opportunity to have trained personnel present, unless determined by the City to be an emergency situation.

(6) *Compatibility, Capacity and Interference Issues.* To properly manage and control the use of the Public Rights-of-Way,

and to protect the health, safety and general welfare of the public, the City, in its legislative and regulatory role, shall be the final authority on permitting a Communications System or Facility to be placed in the Public Rights-of-Way and shall exercise such authority in a non-discriminatory manner. It shall be in the sole discretion of the City Attorney whether an easement is compatible with or allows for its use by a Communications System or Facility. It shall be in the sole discretion of the City Engineer, based on the nature, design, size, configuration or proposed location of any Communications System or Facility, whether there is sufficient capacity in a particular section of the Public Rights-of-Way or whether such System or Facility will interfere with the Facilities or equipment of any municipality, county, public utility, cable operator, or other Communications Service Provider.

(7) *No Warranty of Fitness or Suitability.* The City makes no express or implied warranties or representations regarding the fitness, suitability, or availability of the Public Rights-of-Way for any Communications System or Facility or its right to authorize the placement or maintenance of any Communications System or Facility in the Public Rights-of-Way. Any performance of work, costs incurred or services rendered by a Communications Services Provider shall be at such Provider's sole risk. Nothing in this Article shall affect the City's authority to acquire or add Public

Rights-of-Way, or to vacate or abandon Public Rights-of-Way as provided for in the City Code or applicable law. The City makes no express or implied warranties or representations regarding the availability of any acquired, added, vacated or abandoned Public Rights-of-Way for a Communications System or Facility.

(8) *Annexations.* Upon the annexation of any territory to the City of Key West, the provisions of this Article and the rules, regulations and general conditions contained herein shall extend to the territories so annexed; and all Facilities placed, maintained, owned or operated by any Communications Services Provider extending into or already located in the Public Rights-of-Way of the territory so annexed, shall thereafter be subject to all terms hereof, as the same may be amended from time to time.

**Sec. 62-407. - Duty to Notify City of Resellers;**

**Conditional Use of Public Rights-of-Way.**

Within thirty (30) days of any Registered Communications Services Provider using its Facilities to carry the Communication Services of any Reseller, such Communications Services Provider shall notify the City of the name and address of such Reseller. A Reseller's lease, interconnection or other use of Facilities belonging to a Communications Services Provider duly Registered in accordance with Section 62-404 and properly permitted to place or maintain its Facilities in the Public Rights-of-Way, does not, and

shall not, afford such Reseller any right, claim or cause of action to impede the lawful exercise of the City's rights or police powers, including, but not limited to, requiring the Registered Communications Services Provider to remove such Facilities from the Public Rights-of-Way.

**Sec. 62-408. - Wireless Facilities.**

(a) *Generally.* The placement of telecommunication towers and antennae anywhere in the corporate limits of the City shall in all cases be subject to the City's zoning and land use regulations, including those set forth in Section 122 and Section 102 of the City Code. Where placement of a wireless antenna in the Public Rights-of-Way has been approved by the City and to the extent not inconsistent with any City zoning and land use regulations, a wireless antenna attached to a permitted and legally maintained vertical structure in the Public Rights-of-Way, such as a light pole or utility pole, shall, unless otherwise agreed to by the City in writing:

(1) not extend more than 10 feet above the highest point of the vertical structure;

(2) not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law;



(3) comply with any applicable Federal Communications Commission Emissions Standards;

(4) comply with any applicable local building codes in terms of design, construction and installation; and

(5) not contain any commercial advertising thereon.

(b) *Small Wireless Facilities in Public Rights-of Way.* The City hereby adopts the following rules that will apply to the Collocation of Small Wireless Facilities in Public Rights-of-Way for all Applications filed on or after July 1, 2018:

(1) *General Conditions.* Applicants seeking permission to Collocate or install Small Wireless Facilities within Public Rights-of-Way shall comply with the registration, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, City liability, and City warranties provisions contained in this Chapter 62, Article VIII; provided, however, that the review timeframes and denial criteria of this Subsection 62-408(b) shall control.

(2) *Filing, Review, and Processing of Applications.* The City shall accept Applications for permits and shall process and issue permits for the Collocation of Small Wireless Facilities in Public Rights-Of-Way subject to the following requirements:

a. The Applicant shall as a part of its Application provide information necessary to demonstrate the

applicant's compliance with the applicable provisions of Chapter 62, Article VIII for the placement of Small Wireless Facilities in the locations identified in the Application, and shall bear the burden of demonstrating compliance therewith.

b. Within 14 days after the date of filing the Application, the City may request that the proposed location of a Small Wireless Facility be moved to another location in the right-of-way and placed on an alternative City Utility Pole or support structure or may place a new Utility Pole. The City and the Applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the Applicant, the Applicant must notify the City of such acceptance and the Application shall be deemed granted for any new location for which there is agreement and all other locations in the Application. If an agreement is not reached, the Applicant must notify the City of such nonagreement and the City must grant or deny the original Application within 90 days after the date the Application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

c. The City hereby limits the height of a Small Wireless Facility to 10 feet above the Utility Pole or structure upon which the Small Wireless Facility is to be collocated. Unless waived by the City, the height for a new Utility Pole is limited to the tallest existing Utility Pole as of May 1, 2018, located in the same Public Right-Of-Way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Utility Pole within 500 feet, the City shall limit the height of the Utility Pole to 50 feet.

d. Within 14 days after receiving an Application, the City must determine and notify the Applicant by electronic mail as to whether the Application is complete. If an Application is deemed incomplete, the City must specifically identify the missing information. An Application is deemed complete if the City fails to provide notification to the Applicant within 14 days.

e. The City shall process all Applications on a nondiscriminatory basis. If the City fails to approve or deny a complete application within 60 days after receipt of the Application, the Application is deemed approved. If the City does not use the 30-day negotiation period provided herein, the parties may mutually agree to extend the 60-day Application review period. The City shall grant or deny the Application at the end of the extended period.

f. A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the City.

g. The City shall notify the Applicant of approval or denial by electronic mail. The City shall approve a complete Application unless it does not meet the applicable provisions of this Chapter 62, Article VIII.

h. If the Application is denied, the City shall specify in writing the basis for denial, including the specific code provisions on which the denial is based, and shall send the documentation to the Applicant by electronic mail on the day the City denies the Application.

i. The Applicant may cure the deficiencies identified by the City and resubmit the Application within 30 days after notice of the denial is sent to the Applicant. Failure by the Applicant to timely resubmit the Application shall result in a final denial of the Application. The City shall approve or deny a timely filed revised Application within 30 days after receipt or the Application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

j. An Applicant seeking to Collocate Small Wireless Facilities within the City's boundaries may, at the Applicant's discretion, file a consolidated application with the City and receive a single permit for the Collocation of up to 30 Small

Wireless Facilities. If the Application includes multiple Small Wireless Facilities, the City may separately address Small Wireless Facility Collocations for which incomplete information has been received or which are denied.

k. The City may deny a proposed Collocation of a Small Wireless Facility in The Public Rights-of-Way if the proposed Collocation:

1. Materially interferes with the safe operation of traffic control equipment.

2. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

3. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

4. Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

5. Fails to comply with applicable codes and the applicable provisions of this Chapter 62, Article VIII.

1. Notwithstanding anything to the contrary contained herein, the City may reserve space on City Utility Poles for future public safety uses. If replacement of a City utility pole is necessary to accommodate the collocation of the Small

Wireless Facility and the future public safety use, the pole replacement is subject to the make-ready provisions of this ordinance and the replaced pole shall accommodate the future public safety use.

m. A structure granted a permit and installed pursuant to this subsection 62-408(b) shall comply with chapter 333, Florida Statutes, and federal regulations pertaining to airport airspace protections.

n. The City does not require approval or fees for (i) routine maintenance, (ii) replacement of existing Wireless Facilities with substantially similar Wireless Facilities, or (iii) installation, placement, maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Utility Poles in compliances with applicable codes by or for a Communications Services Provider authorized to occupy the Public Rights of-Way and who is remitting taxes under Chapter 202, Florida Statutes.

(3) *Collocation of Small Wireless Facilities on City Utility Poles.* Collocation of small wireless facilities on City utility poles is subject to the following requirements:

a. The City shall not enter into an exclusive arrangement with any Person for the right to attach equipment to City Utility Poles.

b. The rates and fees for Collocations on City Utility Poles must be nondiscriminatory, regardless of the services provided by the collocating person.

c. The City hereby levies, establishes, and sets an annual rate that shall be paid by all those Applicants who file an Application to Collocate Small Wireless Facilities on City Utility Poles in the amount of \$150 per pole per year. The initial payment shall be made as a condition of the granting of the permit, with remaining annual payments to be made in all subsequent years on the anniversary date of the issuance of the permit.

d. Agreements between the City and Wireless Providers that are in effect on May 1, 2018, and that relate to the Collocation of Small Wireless Facilities in the right-of-way, including the Collocation of Small Wireless Facilities on City Utility Poles, remain in effect, subject to applicable termination provisions. The Wireless Provider may accept the rates, fees, and terms established under this subsection for Small Wireless Facilities and Utility Poles that are the subject of an application submitted after the rates, fees, and terms become effective.

e. For a City Utility Pole that supports an aerial facility used to provide Communications Services or Electric Service by another, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or

controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

f. For a City utility pole that does not support an aerial facility used to provide communications services or electric service by another, the City shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested Collocation, including necessary pole replacement, within 60 days after receipt of a complete Application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the Applicant. Alternatively, the City may require the Applicant seeking to collocate a Small Wireless Facility to provide a make-ready estimate at the Applicant's expense for the work necessary to support the Small Wireless Facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a Utility Pole that is substantially similar in color and composition. The City may not condition or restrict the manner in which the Applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction



restoration standards for work in the right-of-way. The replaced or altered Utility Pole shall remain the property of the City.

g. The City may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to Communications Services Providers other than Wireless Services Providers for similar work and may not include any consultant fee or expense.

(4) *Placement of Utility Poles by Wireless Infrastructure Providers In the Public Rights-of-Way In Support of Collocation of Small Wireless Facilities.* A Wireless Infrastructure Provider may apply to the City to place Utility Poles in The Public Rights-of-Way to support the Collocation of Small Wireless Facilities. The Application must include an attestation that Small Wireless Facilities will be collocated on the Utility Pole or structure and will be used by a Wireless Services Provider to provide service within 9 months after the date the Application is approved by the City. The City shall accept and process the Application in accordance with (i) the applicable timeframes contained in Subsection 62-408(b)(2), and (ii) any applicable codes and other

local codes governing the placement of Utility Poles in The Public Rights-of-Way, including but not limited to the provisions of §62-406, and applicable historic preservation provisions and requirements set forth in Chapter 102 of the City Code, as amended from time to time.

(5) *Application and Enforcement of Historic Preservation Zoning Regulations.* Consistent with preservation of local zoning authority under 47 U.S.C. s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), and the National Historic Preservation Act of 1966, as amended, this Subsection 62-408(b) is subject to the provisions of Chapter 102, City Code, Historic Preservation.

(6) *Prohibited Collocations, Attachments, Installations, and Services Not Authorized by Subsection 62-408(b).* This subsection 62-408(b) does not authorize, and the City hereby prohibits, the following:

a. This Subsection 62-408(b) does not authorize a Person to Collocate or attach Wireless Facilities, including any Antenna, Micro Wireless Facility, or Small Wireless Facility, on a privately owned Utility Pole, a Utility Pole owned by an electric cooperative or a municipal electric utility, a privately owned Wireless Support

Structure, or other private property without the consent of the property owner.

b. The approval of the installation, placement, maintenance, or operation of a Small Wireless Facility pursuant to this Subsection 62-408(b) does not authorize the provision of any voice, data, or Video Services or the installation, placement, maintenance, or operation of any Communications Facilities other than Small Wireless Facilities in The Public Right-of-Way.

c. This Subsection 62-408(b) does not affect provisions relating to Pass-Through Providers contained in this Ordinance and contained in Section 337.401(6), Florida Statutes.

d. This Subsection 62-408(b) does not apply to the installation, placement, maintenance, or replacement of Micro Wireless Facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground facilities, any such Collocation or construction shall be only as provided by the City's underground utilities ordinance.

e. This Subsection 62-408(b) does not authorize a Person to Collocate Small Wireless Facilities or Micro Wireless Facilities

on a City Utility Pole or erect a Wireless Support Structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association. This paragraph does not apply to the installation, placement, maintenance, or replacement of Micro Wireless Facilities on any existing and duly authorized aerial communications facilities.

**Sec. 62-409. - Revocation or Suspension of Permanent  
Right of Way (ROW) Permits.**

Subject to Section 62-411, the City may revoke any Permanent Right of Way (ROW) Permit currently issued to a Communications Services Provider for work in the Public Rights-of-Way or suspend the issuance of Permanent Right of Way (ROW) Permits in the future to a Communications Services Provider for, in addition to any other circumstances provided for in this Article, one or more of the following reasons:

(a) a violation of permit conditions, including conditions set forth in the permit, this Chapter 62, Article VIII, and other applicable codes or regulations governing the placement or maintenance of Communications Facilities in the Public Rights-of-Way;

(b) a misrepresentation or fraud made or committed on the part of the Communications Services Provider in the Registration

process or in the application for a Permanent Right of Way (ROW) Permit;

(c) the failure to properly renew the Registration or the ineffectiveness of Registration; or

(d) the failure to relocate or remove Communications Facilities as may be required by the City pursuant to this Chapter 62, Article VIII.

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

**Sec. 62-410. - Involuntary Termination of Registration.**

(a) The City may terminate a Registration if:

(1) a Federal or State authority suspends, denies, or revokes a Communications Services Provider's certification or license to provide Communications Services;

(2) the Communications Services Provider'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 Communications Services Provider fails to remedy the danger promptly after receipt of written notice;

(3) the Communications Services Provider ceases to use all of its Communications Facilities in the Public Rights-of-Way and has not complied with Section 62-421 herein; or

(4) the Communications Services Provider fails to comply with any of the rules, regulations or general conditions set forth in Section 62-406 herein.

(b) Prior to termination of a Registration, the Communications Services Provider shall be notified by the City Engineer with a written notice setting forth all matters pertinent to the proposed termination, including which of (1) through (4) above is applicable as the reason therefore. The Communications Services Provider shall have thirty (30) days after receipt of such notice within which to eliminate the reason or within which to present a plan, satisfactory to the City Engineer, to accomplish the same. If not eliminated or if the plan presented is rejected, the City Engineer shall provide written notice of such rejection to the Communications Services Provider and a final determination to terminate Registration. A final determination to terminate Registration may be appealed in accordance with the procedures set forth in Section 62-411.

(c) In the event of termination, following any appeal period, the Communications Services Provider formerly Registered shall:

(1) notify the City of the assumption or anticipated assumption by another registrant of ownership of the Communications Services

Provider's Facilities in Public Rights-of-Way or (2) provide the City with an acceptable plan for disposition of its Communications Facilities in the Public Rights-of-Way. If a Communications Services Provider fails to comply with this subsection (c), which determination of non-compliance is subject to appeal as provided in Section 62-411, the City may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the Facilities where another Person has not assumed the ownership or physical control of the Facilities or requiring the Communications Services Provider within 90 days of the termination, or such longer period as may be mutually agreed to between the City and the Communications Services Provider, to remove some or all of the Communications Facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to their original condition prior to such removal.

(d) In any event, a Communications Services Provider whose Registration has been terminated shall take such steps as are necessary to render safe every portion of the Communications Facilities remaining in the Public Rights-of-Way.

(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 Communications Services Provider or another Person who owns or exercises physical control over the Communications

Facilities holds a valid certification or license with the governing Federal or State agency, if required for provision of such service, and who is Registered with the City, if required.

(f) The City's right to terminate a Registration shall be 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 the right to terminate Registration will affect or preclude any other right the City may have.

**Sec. 62-411. - Appeals.**

Final determinations by appropriate City staff denying an initial Registration; denying an application for renewal of a Registration; terminating a Registration; or denying, revoking or suspending any Permanent Right of Way (ROW) Permit are subject to appeal. A notice of appeal of such decision may be filed with the City's Manager within thirty (30) days of the date of the final, written decision to be appealed. The City Manager shall have thirty (30) days from the date the appeal is filed to review the matter and render a written decision to uphold or reverse the final decision made by staff. If the City Manager upholds the final decision of staff, the appellant may file a notice of appeal with the City Clerk within thirty (30) days of the date of the written decision of the Chief Administrative Officer. The City Clerk shall set the matter for hearing before the City Commission at any



regular meeting of City Commission scheduled within forty-five (45) days of the date that the notice of appeal is filed with the City Clerk, unless waived by the Communications Services Provider. A ruling may be made at the hearing or at the next regularly scheduled City Commission meeting and the Communications Services Provider shall be notified of the decision in writing within thirty (30) days thereof. Where a notice of appeal to the City Manager or the City Clerk is not timely filed as provided herein, such right to appeal shall be waived. Upon correction by the Communications Services Provider of the circumstances that gave rise to a suspension or denial of a Permanent Right of Way (ROW) Permit, the suspension or denial shall be lifted (the same does not apply to the revocation of a Permanent Right of Way (ROW) Permit).

**Sec. 62-412. - Fees Applicable to Those Not Subject to  
Communications Services Tax.**

While the Florida Legislature has prohibited municipalities from requiring providers of communications services who have registered with the Florida Department of Revenue from having to enter into franchise agreements or license arrangements as a condition to placing or maintaining Communications Facilities in the Public Rights-of-Way, the City expressly reserves the right to require the payment of consideration or regulatory fees by Persons using or occupying the Public Rights-of-Way in other capacities.

The City reserves the right to require such payments based on the type of user and to the extent as follows:

(a) *Dealer.* A Communications Services Provider who meets the definition of Dealer as set forth in this Chapter 62, Article VIII and who has Registered in accordance with Section 62-404 is not required to enter into a franchise agreement or license arrangement with the City as a condition to placing or maintaining Communications Facilities in the Public Rights-of-Way, nor is a Dealer required to make payment of any franchise fees, license fees or other user fees to the City as consideration for the use or occupancy of the Public Rights-of-Way for the provision of Communication Services.

(b) *Pass-through Provider and Pass-Through Facilities.* A Communications Services Provider who meets the definition of Pass-through Provider as set forth in this Chapter 62, Article VIII and who is not subject to the City of Key West's Local Communications Services Tax imposed pursuant to Sections 202.19 and 202.20, Florida Statutes shall pay the city the maximum annual amount allowed under Section 337.401(6)(b), Florida Statutes, as amended. For purposes of calculating payments hereunder, each separate pole or tower installed or maintained by a Pass-through Provider for purposes of supporting Antennas for 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 permit fee in the amount of five hundred dollars (\$500.00) per linear mile, or portion thereof, up to the maximum amount allowed under Section 337.401(6)(b), Florida Statutes, whichever is higher. The annual amount referred to above shall be due and payable on October 1 of every year beginning on October 1, 2018. Fees not paid within ten (10) 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 acknowledgment 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 Public Rights-of-Way.

(c) *Other Persons.* All other Persons, except Government, are required to pay the City, as consideration for the use or occupancy of the Public Rights-of-Way for the placement or maintenance of Communications Facilities, an amount based on and in accordance with Section 62-412(b) of the City Code.

(d) *Government.* A Government is not required to pay the City consideration for the use or occupancy of the Public Rights-of-Way for the placement or maintenance of Communications Facilities, unless such Facilities are being used by such Government or a Communications Services Provider, including Resellers, to offer or

provide Communication Services other than for such Government's internal non-commercial use, in which event the Government, where not subject to the City of Key West's Local Communications Services Tax imposed pursuant to Sections 202.19 and 202.20, Florida Statutes is required to pay the City, as consideration for the use or occupancy of the Public Rights-of-Way by or through its Facilities placed therein after October 1, 2017, an amount based on and in accordance with Section 62-412(b) of the City Code or such other amount or rate of compensation as mutually agreed to in writing by the Government and the City.

**Sec. 62-413. - Existing Communications Facility.**

A Communications Services Provider with a Facility in the Public Rights-of-Way as of the effective date of this Chapter 62, Article VIII has until October 1, 2018 to comply with the provisions of this Article, including, but not limited to, Registration, or be in violation thereof.

**Sec. 62-414. - Insurance.**

(a) At all times during the use or occupancy of the Public Rights-of-Way, including any time during placement or maintenance of Communications Facilities, the Communications Services Provider shall obtain, pay all premiums for, and maintain satisfactory to the City the types of insurance policies and coverage limits described in this Section 62-414. Nothing contained in this Article

shall limit a Communications Services Provider's liability to the City to the limits of insurance certified or carried.

(1) Commercial general liability insurance valid in the State of Florida, including contractual liability and products completed operations liability coverage on an occurrence basis, which policy limit shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit, for bodily injury, personal injury or death, or property damage and in an amount not less than Two Million Dollars (\$2,000,000) policy aggregate for each personal injury liability, broad form property damage (without XCU exclusions), contractual liability and products-completed operations liability.

(2) Business automobile liability insurance valid in the State of Florida which policy limit shall be in an amount not less than One Million Dollars (\$1,000,000) combined single limit, including bodily injury and property damage covering owned, leased, hired and non-owner vehicles.

(3) Workers' Compensation valid in the State of Florida which policy limit shall be in an amount not less than the Statutory limit for Workers' Compensation.

(4) Employer's liability insurance valid in the State of Florida which policy limit shall be in an amount not less than One Million Dollars (\$1,000,000) each accident for employer's liability.

(b) All insurance providers used shall be admitted and duly authorized to do business in the State of Florida and shall have assigned by A. M. Best Company a minimum Financial Strength Rating of "A-" and a minimum Financial Size Category of "IX" (i.e., a size of \$250,000,000 to \$500,000,000 based on capital, surplus, and conditional reserve funds). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable. All liability policies shall name the City, its City Commission members, officers, and employees as additional insureds with respect to any covered liability arising out of the placement or maintenance of Communications Facilities in the Public Rights-of-Way or other activities under this Article. Each Communications Services Provider shall furnish annually to the City certificates showing proof of all required insurance coverage. All liability coverage must be in occurrence form and in accordance with the limits specified. Claims made policies are not acceptable. No insurance policy shall be canceled, nor shall the occurrence or aggregate limits set forth herein be reduced, until the City has received at least thirty (30) days' advance written notice by registered, certified or regular mail or facsimile of any cancellation, intent not to renew or reduction in policy coverage. Each Communications Services Provider shall be responsible for notifying the City of such cancellation, intent not to renew or reduction in coverage. All Certificate(s) of Insurance, including

all endorsements and riders, evidencing insurance coverage shall be submitted to the City within thirty (30) days after the date of registration with the City in order for a Communications Services Provider to obtain Permanent Right of Way (ROW) Permits required for construction in the Public Rights-of-Way. Each Communications Services Provider shall, in the event of any such notice described above, obtain, pay all premiums for, and file with the City, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the City or the Communications Services Provider of such notice.

(c) The Certificate(s) of Insurance forms must be properly executed by the authorized representative of the insurance provider. Each Communications Services Provider shall file and maintain with the City on an annual basis the required Certificate(s) of Insurance. The Certificate(s) of Insurance must indicate the following:

(1) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; that the policy coverage "pertains the requirements of Section 62-414 of the Key West Communications Right-of-Way Utilization Ordinance;" policy expiration date; and specific coverage amounts; and

(2) any applicable deductibles or self-insured retentions;  
and

(3) that the City, its Commission members, officers and employees are additional insureds; and

(4) that the City shall receive thirty (30) days' advance written notice of cancellation, intent not to renew or reduction in coverage; and

(5) that the commercial general liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

(d) Under extraordinary circumstances a Communications Services Provider may satisfy the insurance requirements of this Article by providing documentation of self-insurance that, in the sole discretion of the Director of Human Resources and Risk Management, demonstrates incontrovertibly the adequacy to defend and cover claims of any nature that might arise from the placement and maintenance of Facilities in the Public Rights-of-Way. The Communications Services Provider must be authorized as a self-insurer by the Department of Insurance under the laws of the State of Florida.

**Sec. 62-415. - Indemnification.**



(a) Except with respect to the willful misconduct, negligence or gross negligence of the City, a Communications Services Provider, by act of Registering with the City as such, shall be obligated, at its sole cost and expense, to defend, indemnify and hold harmless the City, its officials, commissioners, agents and employees from and against any and all claims, suits, causes of action, proceedings, liabilities and judgments for damages or equitable relief, and costs and expenses arising out of or in connection with the placement or maintenance of its Communications Facilities in the Public Rights-of-Way by the Communications Services Provider or its agent or hired contractor. This indemnification provision shall include, but not be limited to, such damages and penalties arising out of claims (1) by any Person whatsoever on account of (i) bodily injury to a person or persons, (ii) death of a person or persons or (iii) property damage, where any of the foregoing is occasioned by the operations of the Communications Services Provider, or alleged to have been so caused or occurred or (2) involving the Communications Services Provider's violation of any easement or private property rights.

(b) Nothing in this Section shall prohibit the City from participating in the defense of any litigation by its own counsel if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict.

(c) Indemnified costs and expenses shall include, but not be limited to, all out-of-pocket expenses and reasonable attorneys' fees in defending against any such claim, suit or proceeding, and shall also include the reasonable value of any services rendered by the City Attorney or his assistants or any consultants, agents and employees of the City. The City will attempt to notify the Communications Services Provider, in writing, within a reasonable time of the City's receiving notice of any issue it determines may require indemnification.

(d) Nothing contained in this subsection shall be construed or interpreted: (1) as denying the City, the Communications Services Provider or any Person any remedy or defense available to them under the laws of the State of Florida; or (2) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, as it may be amended.

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

**Sec. 62-416. - Construction Bond.**

(a) Prior to issuance of any Permanent Right of Way (ROW) Permit where the type of work allowed under the permit will require restoration of the Public Rights-of-Way, the Communications Services Provider or the contractor performing such work on its behalf shall obtain, pay for and file with the City a construction

bond. The construction bond shall serve to guarantee the timeliness and quality of the construction and restoration work and to secure, and enable the City to recover, all costs related to the restoration of the Public Rights-of-Way in the event the Communications Services Provider or its contractor fails to make such restoration to the City's satisfaction or causes damage to the Public Rights-of-Way during construction. The construction bond must name the City as Obligee and be in the face amount of Fifteen Thousand Dollars (\$15,000) conditioned upon the full and faithful completion of construction and restoration of the Public Rights-of-Way to its original condition. Six (6) months following completion and inspection of the restoration of the Public Rights-of-Way satisfactory to the City Engineer, the Communications Services Provider or its contractor, as the case may be, may reduce the face amount of the construction bond to Five Thousand Dollars (\$5,000) and, thereafter, may allow the bond to lapse in accordance with its terms. However, for any subsequent work in the Public Rights-of-Way, the Communications Services Provider or its contractor will be required to replenish any existing construction bond or provide a new construction bond in the face amount of Fifteen Thousand Dollars (\$15,000). The construction bond shall be in a form acceptable to the City Attorney and must be issued by a surety having a rating reasonably acceptable to the City Engineer

and authorized by the Florida Department of Insurance to issue surety bonds in this State.

(b) The construction bond must be issued as non-cancelable and be for a term of not less than twelve (12) months. In the event the term of any construction bond expires, or is reasonably expected to expire, prior to the completion of construction, restoration and City inspection, the Communications Services Provider, or the contractor acting on its behalf, shall immediately obtain, pay for, and file with the City a replacement bond.

(c) The City's requirement of a construction bond is not in lieu of any additional bonds that may be required under this Article or through the permitting process. The City's right to recover under the construction bond shall be 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 or preclude any other right the City may have.

**Sec. 62-417. - Performance Bond.**

(a) Before any Communications Services Provider is permitted to begin the placement or maintenance of an initial build, any substantial rebuild, upgrade or extension of its Communications System, or when construction plans show that there would be at least one thousand (1,000) feet of open trenching in the Public

Rights-of-Way at any given time, the Communications Services Provider is required to obtain, pay for, and file with the City a performance bond. The performance bond must name the City as Obligee and be in the face amount of Two Hundred Fifty Thousand Dollars (\$250,000) conditioned upon the full and faithful compliance by the Communications Services Provider with all requirements, duties and obligations imposed by the provisions of the Key West Communications Right-of-Way Utilization Ordinance during, and through completion of, the placement or maintenance project. The performance bond shall be in a form acceptable to the City Attorney and must be issued by a surety having a rating reasonably acceptable to the City Engineer and authorized by the Florida Department of Insurance to issue performance bonds in this State.

(b) The performance bond must be issued as non-cancelable and be for a term consistent with the reasonably expected duration of the particular placement or maintenance project (including restoration and City inspection), but in no event less than eighteen (18) months. In the event the term of any performance bond expires, or is reasonably expected to expire, prior to the completion of such placement or maintenance project, including restoration and City inspection, the Communications Services Provider shall immediately obtain, pay for, and file with the City a replacement bond.

(c) The City's requirement of a performance bond is not in lieu of any additional bonds that may be required under this Article or through the permitting process. The City's right to recover under the performance bond shall be 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 performance bond will affect or preclude any other right the City may have. Any proceeds recovered under the performance bond may be used to reimburse the City for such additional expenses as may be incurred by the City as a result of the Communications Services Provider's failure to comply with the responsibilities imposed by this Article, including, but not limited to, attorney's fees and costs of any action or proceeding, and the cost of removal or abandonment of any property.

~~Sec. 61-418. Security Fund.~~

~~Every Communications Services Provider shall make a Twenty-Five Thousand Dollar (\$25,000) cash deposit, or shall file with the city an irrevocable letter of credit or acceptable equivalent in the same amount, which shall serve, and be referred to, as the "Security Fund." The Security Fund shall be conditioned upon the full and faithful compliance with and performance by the Communications Services Provider of all requirements, duties and obligations imposed by the provisions of the Key West~~

~~Communications Right of Way Utilization Ordinance at all times. The letter of credit shall be in a form and issued by an institution acceptable to the City's Chief Financial Officer. Should the city draw upon the Security Fund, it shall promptly notify the Communications Services Provider, and the Communications Services Provider shall promptly restore the cash deposit or letter of credit to the full amount. The Security Fund shall be maintained until the later of (a) the effective date of transfer, sale or assignment by the Communications Services Provider of all its Facilities in The Public Rights of Way, (b) twelve (12) months after the removal or abandonment by the Communications Services Provider of all of its Facilities in the Public Rights of Way or (c) six (6) months after the termination of Registration, including any appeals undertaken pursuant to Section 62-411 herein. Upon the later of these events the cash deposit will be returned without interest or the letter of credit may be cancelled. In the event a Communications Services Provider fails to perform any requirement, duty or obligation imposed upon it by the provisions of this Article, there shall be recoverable, jointly and severally from 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 in Public Rights of Way, plus a reasonable~~

~~allowance for attorneys' fees, up to the full amount of the Security Fund.~~

Sec. 62-419. - Enforcement Remedies.

(a) No provision of this Article shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provisions of this Article, the Registration provisions, or any rule, regulation or general condition provided for hereunder, whether administratively, judicially or both. Neither the existence of other remedies identified in this Article nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover fines, penalties or monetary damages (except where liquidated damages are otherwise prescribed) for such violation by the Communications Services Provider. The remedies available to the City shall be cumulative and in addition to any other remedies provided by law or equity. The laws of the State of Florida shall govern with respect to any proceeding in law or equity pertaining to the enforcement of this Article or any cause of action arising out of or in connection herewith.

(b) A Communications Services Provider's failure to comply with provisions of this Article shall constitute a City Code violation and shall subject the Communications Service Provider to the code compliance provisions and procedures as provided in



Chapter 2, City Code, and may be punishable as provided in Section 162.22, Florida Statutes, as it may be amended.

(c) In any proceeding before the City Commission where there exists an issue with respect to a Communications Services Provider's performance of its obligations pursuant to this Article, the Communications Services Provider shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this Ordinance. The City may find a Communications Services Provider that does not demonstrate compliance with the terms and conditions of this Article in default and apply any appropriate remedy or remedies as authorized by this Ordinance. In determining which remedy is appropriate, the City Commission shall take into consideration the nature of the violation, the Person bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City Commission determines are appropriate to the public interest.

(d) The City Engineer, or his/her designee, shall be responsible for administration and enforcement of this Article, and is authorized to give any notice required herein or by law.

(e) 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.

**Sec. 62-420. - Abandonment of a Communications Facility.**

(a) Upon Abandonment of any Facility owned by a Communications Services Provider in the Public Rights-of-Way, the Communications Services Provider shall notify the City within sixty (60) days.

(b) The City may direct the Communications Services Provider, by written notice, to remove all or any portion of such Abandoned Communications Facility at the Communications Services Provider's sole expense if the City determines that the Abandoned Communications Facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such Communications Facility: (1) compromises safety at any time for any Public Rights-of-Way user; (2) compromises the safety of other Persons performing placement or maintenance of Communications Facilities in the Public Rights-of-Way; (3) prevents another Person from locating other facilities in the area of the Public Rights-of-Way where the Abandoned Communications Facility is located when other alternative locations are not reasonably available; or (4) creates a maintenance condition that is disruptive to the use of the Public Rights-of-Way. In the event of (2), the City may require the third Person to coordinate with the Communications Services Provider that owns the existing Communications Facility for joint removal and placement, where agreed to by the Communications Services Provider.

(c) If the Communications Services Provider fails to remove all or any portion of an Abandoned Communications Facility as directed by the City within the time period specified in the written notice, which time period must be reasonable under the circumstances, the City may perform such removal and charge the cost of the removal against the Communications Services Provider.

(d) In the event that the City does not direct the removal of the Abandoned Communications Facility, the Communications Services Provider, by its notice of Abandonment to the City, shall be deemed to consent to the alteration or removal of all or any portion of such abandoned Facility by the City or other Person, provided that the cost of the alteration or removal is not borne by the Communications Services Provider.

**Sec. 62-421. - Reservation of Rights.**

The City hereby expressly reserves all of the following rights:

(a) To exercise its municipal 'home rule powers, now or hereafter, to the fullest extent allowed by law with regard to the access, use and regulation of the Public Rights-of-Way.

(b) To amend this Chapter and Article as it shall find necessary in the lawful exercise of its municipal authority.

(c) To adopt or enact by resolution or ordinance, in addition to the provisions contained herein and in any existing applicable

ordinances, such additional reasonable regulations as City Commission finds necessary in the exercise of the City's police powers.

(d) To exercise the power of eminent domain, consistent with applicable federal and state law, to acquire property that may include that property owned or leased by a Communications Services Provider.

(e) As and when deemed necessary by City Commission to be in the interest of the City or its residents, to abandon portions of the Public Rights-of-Way within the proper exercise of its municipal authority and without notice to or the consent of any Communications Services Provider. The City shall not be responsible for any costs, damages, loss or other expense to the Communications Services Provider as a result of the City's abandonment of any Public Rights-of-Way.

(f) To place and maintain, and franchise or 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 the Public Rights-of-Way occupied by any Communications Services Provider.

(g) Without limitation, the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of

any Public Rights-of-Way within the City limits and within said limits as the same may from time to time be altered.

(h) To require a Reseller to Register in accordance with Section 62-404 to the extent such Reseller wants the right to place or maintain Facilities in the Public Rights-of-Way. Any Person using or leasing Facilities owned by a Registered Communications Services Provider is not, therefore, entitled to any rights to place or maintain Communications Facilities in the Public Rights-of-Way, unless such Person themselves Registers with the City.

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held  
this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Read and passed on final reading at a regular meeting held  
this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Authenticated by the presiding officer and Clerk of the  
Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Filed with the Clerk \_\_\_\_\_, 2018.

Mayor Craig Cates	_____
Vice Mayor Clayton Lopez	_____
Commissioner Sam Kaufman	_____
Commissioner Richard Payne	_____
Commissioner Margaret Romero	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____

\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

\_\_\_\_\_  
CHERYL SMITH, CITY CLERK