



# Southwest Ranches Town Council

**REGULAR MEETING**  
Agenda of May 24, 2018

Southwest Ranches Council Chambers  
**7:00 PM Thursday**

13400 Griffin Road  
Southwest Ranches, FL 33330

<b><u>Mayor</u></b> Doug McKay	<b><u>Town Council</u></b> Steve Breitkreuz Gary Jablonski	<b><u>Town Administrator</u></b> Andrew D. Berns	<b><u>Town Attorney</u></b> Keith M. Poliakoff, J.D.
<b><u>Vice Mayor</u></b> Freddy Fisikelli	Denise Schroeder	<b><u>Town Financial Administrator</u></b> Martin Sherwood, CPA CGFO	<b><u>Assistant Town Administrator/Town Clerk</u></b> Russell C. Muniz, MMC

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (954) 434-0008 for assistance no later than four days prior to the meeting.

- 1. Call to Order/Roll Call**
- 2. Pledge of Allegiance**
- 3. Proclamation - Code Enforcement Officers' Appreciation Week - June 4 - 8, 2018**
- 4. Public Comment**
  - All Speakers are limited to 3 minutes.
  - Public Comment will last for 30 minutes.
  - All comments must be on non-agenda items.
  - All Speakers must fill out a request card prior to speaking.
  - All Speakers must state first name, last name, and mailing address.
  - Speakers will be called in the order the request cards were received.
  - Request cards will only be received until the first five minutes of public comment have concluded.
- 5. Board Reports**
- 6. Council Member Comments**
- 7. Legal Comments**
- 8. Administration Comments**

## **Ordinance - 2nd Reading**

- 9. AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHWEST RANCHES BY AMENDING ARTICLE III, CHAPTER 22, OF THE CODE, ENTITLED CABLE TELEVISION; AMENDING SECTION 22-88 OF THE CODE BY PROVIDING THAT A CERTIFICATEHOLDER AS DEFINED IN SECTION 610.103(1)(4), FLORIDA STATUTES, SHALL COMPLY WITH THE TOWN OF SOUTHWEST RANCHES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE, ARTICLE II, CHAPTER 22, SECTIONS 22.18-22.31 OF**

THE TOWN CODE, FOR PLACING OR MAINTAINING A CABLE SYSTEM OR FACILITIES IN THE TOWN PUBLIC RIGHTS-OF-WAY; REPEALING AND REPLACING ARTICLE II, CHAPTER 22, SECTIONS 22.19 – 22.31, ENTITLED “PLACEMENT OF FACILITIES IN RIGHTS-OF-WAY,” WITH NEW SECTIONS 22.18-22.27 AND CREATING THE TOWN OF SOUTHWEST RANCHES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR A PERFORMANCE BOND; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND TAXES; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR REPEAL OF ZONING IN PROGRESS; AND PROVIDING AN EFFECTIVE DATE. {Tabled from the May 10, 2018 Meeting}

### **Resolutions**

10. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING THE 2018 AMENDMENTS TO THE TWO (2) INTERLOCAL AGREEMENTS WITH BROWARD COUNTY PROVIDING FOR THE DIVISION AND DISTRIBUTION OF THE PROCEEDS OF THE BROWARD COUNTY FIFTH-CENT LOCAL OPTION GAS TAX, AND THE ADDITIONAL THIRD-CENT LOCAL OPTION GAS TAX; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE SAID AGREEMENTS; AND PROVIDING AN EFFECTIVE DATE.

11. **Approval of Minutes**

a. **April 26, 2018 Regular Meeting**

12. **Adjournment**

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

**PROCLAMATION**

**CODE ENFORCEMENT OFFICERS' APPRECIATION WEEK  
June 4 – 8, 2018**

**WHEREAS**, Code Enforcement Officers provide for the safety, health and welfare of the citizens in this community through the enforcement of building, zoning, housing, animal control, fire safety, environmental and other codes and ordinances; and

**WHEREAS**, Code Enforcement Officers are often not credited for the jobs that they do in saving lives and improving neighborhoods; and

**WHEREAS**, every day, assisted by support and program staff, they attempt to provide quality customer service to the public for the betterment of the community; and

**WHEREAS**, too many times their efforts go unnoticed, even after code compliance has been accomplished due to their efforts and expertise; and

**WHEREAS**, Code Enforcement Officers are dedicated, well trained, and highly responsible individuals who take their jobs seriously and are proud of their department and the local government within which they serve; and

**WHEREAS**, the Florida Association of Code Enforcement (F.A.C.E.) has declared the first week of June be set aside by local government to honor and recognize their Code Enforcement Officers;

**NOW THEREFORE**, through the authority vested in me by the Town Council of Southwest Ranches, Florida, I do hereby proclaim the week of June 4 - 8, 2018 as:

**CODE ENFORCEMENT OFFICERS' APPRECIATION WEEK**

in Southwest Ranches, Florida, in accordance with the statewide observance of the same and encourage citizens of Southwest Ranches to join this Town Council in expressing appreciation for the dedication and outstanding service provided by the individuals who serve as our Code Enforcement Officers.

**IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Town of Southwest Ranches be affixed this 24<sup>th</sup> day of May, 2018.**

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**DOUG MCKAY, MAYOR**

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**Town of Southwest Ranches**  
**13400 Griffin Road**  
**Southwest Ranches, FL 33330-2628**

**(954) 434-0008 Town Hall**  
**(954) 434-1490 Fax**

**Town Council**  
**Doug McKay, Mayor**  
**Steve Breitkreuz, Vice Mayor**  
**Freddy Fisikelli, Council Member**  
**Gary Jablonski, Council Member**  
**Denise Schroeder, Council Member**

**Andrew D. Berns, Town Administrator**  
**Keith M. Poliakoff, JD, Town Attorney**  
**Russell Muniz, Assistant Town Administrator/Town Clerk**  
**Martin D. Sherwood, CPA, CGMA, CGFO, Town Financial Administrator**

## **COUNCIL MEMORANDUM**

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Keith Poliakoff, Town Attorney  
**DATE:** 5/24/2018  
**SUBJECT:** Telecommunications Ordinance

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### **Recommendation**

Town Council consideration for a motion to approve the ordinance.

### **Strategic Priorities**

A. Sound Governance

### **Background**

In 2017, the Florida Legislature enacted and the Governor approved the Advanced Wireless Infrastructure Deployment Act, codified in Subsection 337.401(7), Florida Statutes (“the Act”). The Act creates new requirements and allowances for local governments relating to the installation of utility poles in the public rights-of-way to collocate small wireless facilities, and the placement and maintenance of small wireless facilities and micro wireless facilities in the public rights-of-way.

The Act provides that a local government may adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, objective design standards requiring a new utility pole intended to support the collocation of small wireless facilities that replace an existing facility to be of substantially similar design, material, and color, and reasonable spacing requirements concerning the location of ground-mounted equipment.

The Act also provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipal liability, and municipal warranties provided such provisions are reasonable and nondiscriminatory.

The Town of Southwest Ranches staff periodically reviews Town Ordinances and makes recommendations to the Town Commission to revise its Ordinances. Staff has determined it is the Town's intent to implement the Act.

The Town enacted Resolution 2017-055 on August 10, 2017 to impose a moratorium to allow Town staff to undertake a study of the appropriate regulatory requirements for wireless service facilities and personal wireless service facilities as defined in Section 365.172 F.S. and 47 U.S.C 3332 ( C)(7(C )(ii) within the Towns rights-of-way.

Staff has determined amending the Telecommunications Ordinance will promote and protect the general health, safety and welfare of the residents of the Town of Southwest Ranches by regulating the siting of communications facilities and utility poles within the public rights-of-way. This Ordinance accommodates the growing needs and demand for communications services.

This Ordinance seeks to address expressly new communications facilities and technologies, while also protecting, preserving, and maintaining the public safety and aesthetic characters of areas where such public rights-of-way exist. It is the Town's intent to exercise its authority over the placement and maintenance of communications facilities in its rights-of-way to the full extent consistent with applicable state and federal law. It is the Town's further intent to treat each such communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority.

This Ordinance has been reviewed by the Comprehensive Plan Advisory Board and was unanimously approved by the Board on April 19, 2018. Staff has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the Town's plans.

### **Fiscal Impact/Analysis**

The Town elected to increase the Communications Services Tax rate in lieu of collecting permit fees from providers of communications services.

### **Staff Contact:**

Keith Poliakoff, Town Attorney

### **ATTACHMENTS:**

Description	Upload Date	Type
Telecomm Ordinance - TA Approved	4/20/2018	Ordinance

**SOUTHWEST RANCHES, FLORIDA**  
**Broward County, Florida**

**ORDINANCE 2018-\_\_**

**AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHWEST RANCHES BY AMENDING ARTICLE III, CHAPTER 22, OF THE CODE, ENTITLED CABLE TELEVISION; AMENDING SECTION 22-88 OF THE CODE BY PROVIDING THAT A CERTIFICATEHOLDER AS DEFINED IN SECTION 610.103(1)(4), FLORIDA STATUTES, SHALL COMPLY WITH THE TOWN OF SOUTHWEST RANCHES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE, ARTICLE II, CHAPTER 22, SECTIONS 22.18-22.31 OF THE TOWN CODE, FOR PLACING OR MAINTAINING A CABLE SYSTEM OR FACILITIES IN THE TOWN PUBLIC RIGHTS-OF-WAY; REPEALING AND REPLACING ARTICLE II, CHAPTER 22, SECTIONS 22.19 – 22.31, ENTITLED “PLACEMENT OF FACILITIES IN RIGHTS-OF-WAY,” WITH NEW SECTIONS 22.18-22.27 AND CREATING THE TOWN OF SOUTHWEST RANCHES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR A PERFORMANCE BOND; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND TAXES; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR REPEAL OF ZONING IN PROGRESS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Town of Southwest Ranches (“Town”) staff periodically reviews Town Ordinances and makes recommendations to the Town Council to revise its Ordinances; and

**WHEREAS**, the Town Council of the Town of Southwest Ranches has determined that the following amendments promote and protect the general health, safety and welfare of the residents of the Town of Southwest Ranches by regulating the siting of communications facilities and utility poles within the public rights-of-way; and,

**WHEREAS**, this Ordinance accommodates the growing needs and demand for communications services; and,

**WHEREAS**, this Ordinance seeks to address expressly new communications facilities and technologies, while also protecting, preserving, and maintaining the public safety and aesthetic characters of areas where such public rights-of-way exist; and,

**WHEREAS**, Section 337.401, Florida Statutes, addresses *inter alia*, the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way; and,

**WHEREAS**, rules and regulations imposed by a local government relating to communications service providers that desire to place or maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and,

**WHEREAS**, Section 337.401(3)(g), Florida Statutes, provides that a local government may not use its authority over the placement of facilities in its rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a provider of communications services; and,

**WHEREAS**, Chapter 610, Florida Statutes, addresses the provision of cable and video service in Florida, and provides in Section 610.102, that the Florida Department of State is the franchising authority for a state-issued franchise for the provision of cable or video service and that a municipality or county may not grant a new franchise for the provision of cable or video service within its jurisdiction; and

**WHEREAS**, Section 610.114(2), Florida Statutes, provides: “Notwithstanding any other provision of law, a municipality ... may require the issuance of a permit in accordance with and subject to s. 337.401 to a certificateholder that is placing and maintaining facilities in or on a public right-of-way in the municipality or county. In accordance with s. 337.402, the permit may require the permitholder to be responsible, at the permitholder’s expense, for any damage resulting from the issuance of such permit and for restoring the public right-of-way to its original condition before installation of such facilities. The terms of the permit shall be consistent with construction permits issued to other providers of communications services placing or maintaining communications facilities in a public right-of-way;” and

**WHEREAS**, in 2017, the Florida Legislature enacted and the Governor approved the Advanced Wireless Infrastructure Deployment Act, codified in Subsection 337.401(7), *Florida Statutes* (“the Act”); and

**WHEREAS**, the Act creates new requirements and allowances for local governments relating to the installation of utility poles in the public rights-of-way to collocate small wireless

facilities, and the placement and maintenance of small wireless facilities and micro wireless facilities in the public rights-of-way; and

**WHEREAS**, the Act provides that a local government may adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, objective design standards requiring a new utility pole intended to support the collocation of small wireless facilities that replace an existing facility to be of substantially similar design, material, and color, and reasonable spacing requirements concerning the location of ground-mounted equipment; and

**WHEREAS**, the Act also provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipal liability, and municipal warranties provided such provisions are reasonable and nondiscriminatory; and

**WHEREAS**, it is the Town's intent to implement the Act; and

**WHEREAS**, it is the Town's intent to exercise its authority over the placement and maintenance of communications facilities in its rights-of-way to the full extent consistent with applicable state and federal law; and,

**WHEREAS**, it is the Town's further intent to treat each such communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority; and,

**WHEREAS**, the Town's rights-of-way are essential for the travel of persons and the transport of goods throughout the Town and are a unique and physically limited resource requiring proper management by the Town in order to ensure public safety, maximize efficiency, minimize costs to Town taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and,

**WHEREAS**, the Town elected to increase the Communications Services Tax rate in lieu of collecting permit fees from providers of communications services; and,

**WHEREAS**, a duly noticed public hearing as required by law was held by the Town Council of the Town of Southwest Ranches, at which public hearing all residents and interested persons were given an opportunity to be heard.

**WHEREAS**, the Town Council has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the Town's plans.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA THAT:**

**SECTION 1.** The foregoing WHEREAS clauses are ratified and incorporated as the legislative intent of this Ordinance.

**SECTION 2.** That Article III, Chapter 22, of the Code of Ordinances of the Town of Southwest Ranches, entitled Cable Television, is hereby amended as follows<sup>1</sup>:

**Section 22-52. - Name and scope.**

This article shall be known as the Town of Southwest Ranches Cable Television Ordinance. It shall be applicable to all cable television franchises issued, extended, or renewed on or after the passage of the ordinance from which this article is derived. Notwithstanding any provision of this article, a cable television franchise issued pursuant to this article shall only grant a franchisee the limited authority to offer cable services and shall not grant a franchisee the authority to provide telecommunications services. The provisions of this Article III, Chapter 22 of the Code of the Town of Southwest Ranches, shall not apply to the extent inconsistent with Chapter 610, Florida Statutes, which provides in Section 610.102, F.S., that the Florida Department of State is the franchising authority for a state-issued franchise for the provision of cable or video service and that a municipality may not grant a new franchise for the provision of cable or video service within its jurisdiction. The provisions of Chapter 610, Florida Statutes, shall apply to the provision of cable service or video service in the Town.

~~Section 22-76. – Permanent-Performance and payment bond~~

~~The franchisee and the licensee shall, within thirty (30) days of the effective date of an initial franchise or license granted under this article or within thirty (30) days of the granting of the transfer or a renewal of a franchise or license existing prior to this article, furnish to the town a performance and payment bond or an irrevocable letter of credit issued by a state bank or a federally insured lending institution in the amount as currently established or as hereafter adopted by resolution of the town council from time to time. The performance and payment bond or letter of credit shall be used to guarantee the compliance with performance requirements and payment of all sums which may become due to the town under this article. The performance and payment bond or letter of credit shall be maintained in the full amount specified herein throughout the term of the franchise or license and for one (1) year after the franchise or license expires or is terminated, without reduction or allowances for any amounts which are withdrawn or paid pursuant to this article. A certificateholder as defined in Section 610.103(1)(4), Florida Statutes, shall comply with the Town’s requirements for a performance bond as may be required pursuant to Section 22.23 of the Town Code, as it may be amended.~~

~~Section 22-88. - Work in the right-of-way.~~

A certificateholder as defined in Section 610.103(1)(4), Florida Statutes, shall comply with the Town of Southwest Ranches Communications Rights-of-Way Ordinance, Article II, Chapter 22, Sections 22.18-22.31 of the Town Code as it may be amended, for placing or maintaining a cable system or facilities in the Town public rights-of-way, including but not limited to, the

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<sup>1</sup> Language to be deleted is indicated with a strikethrough and language to be added is underlined.

requirements to have an effective registration pursuant to Section 22.20 and to obtain a permit pursuant to Section 22.21.

~~(a) All materials, installations, and construction in any right-of-way or easement under the town's jurisdiction shall be in accordance with the minimum standards.~~

~~(b) A franchisee or licensee must obtain any required permits before causing any damage or disturbance to public rights-of-way, easements or thoroughfares as a result of its construction or operations and must restore to its former condition such property in a manner approved by the town. If such restoration is not satisfactorily performed within a reasonable time, the town, after prior notice to a franchisee or licensee, may cause the repairs to be made at the expense of the franchisee or licensee. All additional or reoccurring repairs required as a result of the unsatisfactory work may also be made at the expense of a franchisee or licensee.~~

~~(c) A franchisee or licensee granted permission to install and operate cable television systems in the town shall provide at least seven (7) days prior notice to the residents of an area that construction crews will be installing or providing planned maintenance to the cable in the area by mail or through the placement of notices on the front doorknobs of the residents in the area, with such notices providing the name and telephone number of a franchisee or licensee.~~

~~(d) All vehicles utilized by a franchisee or licensee in the construction of the cable system shall be clearly marked providing the name and telephone number of a franchisee or licensee, and, if applicable, an occupational license. All personnel employed by a franchisee or licensee in the construction of the system shall possess identification providing the employee's name and name and telephone number of a franchisee or licensee.~~

~~(e) A franchisee or licensee must use Sunshine State One-Call of Florida, Inc., prior to any excavation and give notification of planned excavation or demolition activities. Only certified contractors may be utilized for the construction.~~

~~(f) All new pedestals, amplifiers and power supplies installed or worked on by a franchisee or licensee shall be marked with the name of a franchisee or licensee. A franchisee or licensee will make all reasonable efforts to ensure that all existing pedestals, amplifiers and power supplies shall be marked during the normal course of business.~~

~~(g) All underground crossings of paved roadways shall be made by the bore and jack method, if possible.~~

~~(h) A franchisee or licensee installing and operating a cable television system in the town rights-of-way, except in the event of an emergency, shall provide at least seven (7) days (or such shorter period as the town may approve) prior notice to the residents of the affected area, as determined by the town, when construction crews will be performing construction or maintenance that will block a travel lane used by residents of the affected right-of-way for more than two (2) hours. Such notification shall be by mail or through the placement of notices on the front doorknobs of the residences in the affected areas, with such notices providing the name and telephone number of a franchisee or licensee.~~

**Section 22-100. - Service to public buildings.**

The Town reserves its rights pursuant to Section 610.112, Florida Statutes, with respect to requesting service for public schools K-12, public libraries, and local governmental buildings.

~~(a) Within a reasonable amount of time, but at least within ninety (90) days following the request, a franchisee shall be required to provide basic and expanded basic services, with converter or other necessary equipment to the first outlet within each town building, without installation or monthly charge; provided that such buildings are passed by and within five hundred (500) feet of a franchisee's existing distribution system and are owned by the town or occupied by a governmental entity for predominantly educational or governmental use. Such services shall be provided by means of a single drop extending to the facility. Such single drop may be internally extended by the governmental entity without cost to, or responsibility of a franchisee, subject to the condition that all such internal distribution shall meet all FCC requirements relative to signal leakage. At the request of the town, a franchisee shall extend its distribution system or install the additional service outlets in such facilities and shall charge only its time and material costs for such installations and monthly service charges for additional outlets as applicable.~~

~~(b) A franchisee shall provide basic and expanded basic services to all public schools and other elementary, secondary and college level institution within the town at no charge for the installation or monthly charges, and the franchisee may not include this expense as an external cost to be passed on to subscribers. A franchisee shall provide each cable connected school materials for teachers that explain the educational applications of the franchisee's services and programming.~~

~~(c) A franchisee shall provide basic service and service tiers to all social service facilities at no charge for the installation or monthly charges and the operator may not include this expense as an external cost to be passed on to the consumer. Such service facilities shall include, but not be limited to, the public safety building and the equestrian park. A franchisee shall provide all social service facility personnel with materials that explain related applications of the franchisee's services and programming.~~

~~(d) Where basic and expanded basic services already are provided to the buildings set forth in subsections (a) through (c) of this section, a subsequent franchisee shall provide the town with a capital grant in an amount which represents what it would cost to fulfill the obligations of subsections (a) through (c) of this section. Such capital cost shall not be passed through to subscribers.~~

**Section. 22-101. - Public, noncommercial, educational, and government access channels and support.**

The Town reserves its rights pursuant to Section 610.109, Florida Statutes, with respect to requesting public, educational and governmental access channels.

~~(a) Unless otherwise provided in a franchise agreement, a franchisee shall provide and maintain at least one (1) specially designated noncommercial, educational and government access channel for use by the town. The availability to individual town agencies of the government access channel for town produced programs shall be determined on a first come, nondiscriminatory basis. Meetings of the town council shall be given priority over other town-produced programs on the government access channel or channels, unless otherwise~~

~~specifically authorized by prior written approval of the town manager. Unless otherwise provided in a franchise agreement, all town council meetings shall be cablecast in real-time by a franchisee throughout the town.~~

~~(b) Public service announcements, a town produced live or taped program, including, but not limited to, meetings of the town council and any noncommercial, educational, and government programming, will take precedence over franchisee's programming when a request is made to air these items by the town manager. Such programming shall include an unlimited number of town produced programs per month, with cablecasting of each program at least twice weekly, during viewing hours of 8:00 a.m. to 10:00 p.m., on Monday through Sunday. Town produced programs, which are comprised of meetings of the town council, shall also be cablecast live in their entirety and shall be re-cablecast at least five (5) times before the next town meeting. On or prior to the effective date of a franchise or license, a franchisee or licensee shall provide written notification to the town staff of the required recording format and appropriate lead time needed to cablecast town produced programming. Proof of such airing of a town produced program may be required, and shall be provided by a franchisee or licensee, upon request by the town manager subject to federal preemption. The terms of this subsection may be altered in a franchise agreement.~~

~~(c) At those time segments during which no signals are required to be transmitted over the specially designated noncommercial, educational, and government access channels, a franchisee may utilize such channel for any purpose consistent with the provisions of this article.~~

~~(d) A franchisee will endeavor to provide that the signal of each channel required in the basic service tier shall be received at designated places on the subscriber's channel selector as prescribed by the town manager.~~

~~(e) A franchisee shall designate a specific cable channel location as determined by the town administrator for the use of the noncommercial educational government access channel by January 1, 2004, or earlier if possible. If a franchisee's or licensee's cable programming service offers at least one hundred (100) analog or digital channels and if the town administrator or his designee so directs a franchisee in writing, a franchisee shall provide and maintain, without charge, a second specially designated government access channel for the town's use and programming.~~

~~(f) A franchisee shall provide such equipment, facilities and technical support as the town council may determine is useful for the production and cable casting of programming on the educational and government access channel.~~

**SECTION 2.** That Article II, Chapter 22, Sections 22.18-22.31 of the Code of Ordinances of the Town of Southwest Ranches is hereby repealed in its entirety and replaced as follows:

## **22.18 COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY.**

This article shall be known and may be cited as the "Town of Southwest Ranches Communications Rights-of-Way Ordinance."

**(a) Intent and purpose; Applicability; Authority to Implement.**

It is the intent of the Town to promote the public health, safety and general welfare by: providing for the placement and maintenance of communications facilities in the public rights-of-way within the Town; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including the United States and Florida Constitutions, F.S. § 337.401, as it may be amended, the Town's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996, the Spectrum Act, FCC regulations, and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement and maintenance of communications facilities in the public rights-of-way by all communications services providers after the effective date of this section; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the Town shall be governed by and shall comply with all applicable federal and state laws.

**(b) Applicability.**

1. Persons seeking to place or maintain communications facilities on private property or other property to which the Town, Broward County, Broward County School Board, Central Broward Water Control District, South Broward Drainage District, State of Florida, or federal government has a fee simple or leasehold interest in real property, not within and exclusive of the public rights-of-way, located within the jurisdictional boundaries of the Town shall comply with the applicable provisions of Article 40 of the Land Development Code, to the extent it applies, unless such property is addressed expressly in this Ordinance. This Ordinance is not applicable to communication facilities outside the public rights-of-way. Pursuant to this Ordinance, a person may be authorized to place or to maintain small wireless facilities, micro wireless facilities, or utility poles for collocation of small wireless facilities in the public rights-of-way. Wireless support structures, telecommunications towers and other wireless facilities, including but not limited to an antenna that is not part of a small wireless facility or micro wireless facility, shall not be allowed to be placed or maintained in the public rights-of-way, to the extent not inconsistent with applicable law. This Ordinance shall not apply to wireless facilities owned by the Town, a person, or electric cooperative, to the extent such facilities are utilized on an internal, non-commercial basis.
2. This Ordinance implements the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), F.S. In the event the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), is repealed, amended, or overturned by a court of competent jurisdiction, or preempted by applicable federal law, in whole or in part, provisions of this Ordinance may no longer apply, in which case pending and future

applications for small wireless facilities or utility poles intended to support the collocation of small wireless facilities in the public rights-of-way, will be governed by applicable law. In addition, permits issued pursuant to this Ordinance may be suspended or revoked, and facilities installed pursuant to permits issued pursuant to this Ordinance or without permits as authorized by this Ordinance may be required to be removed at the facility owner's expense, to the extent consistent with applicable law.

3. To the extent any provision of this Ordinance conflicts with the Code of Ordinances or Land Development Code of the Town of Southwest Ranches, this Ordinance shall control.
4. Reservation of rights.
  - a. The Town reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.
  - b. This Ordinance shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this Ordinance, and shall apply to all existing communications facilities placed in the public rights-of-way prior to the effective date of this Ordinance, to the full extent permitted by state and federal law. An existing registrant pursuant to the Town Code shall comply with this Ordinance by the earlier of the following: ninety (90) days from the effective date of this Ordinance, the renewal of a registration as required herein, or prior to submitting an application for a permit.

- (c) Authority to implement Ordinance. The Town Administrator is authorized to adopt, to modify, and to repeal rules and regulations to carry out the intent and purposes of this Ordinance.

**22.19 Definitions.** For the purposes of this Section, the following terms, phrases, words and derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory, and “may” is permissive. Words not otherwise defined in this Section or in any permit that may be granted pursuant to this Section shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. 151 *et seq.*, as amended (collectively the “Communications Act”), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, as defined in the Town Code, and if not defined in the Town Code, shall be construed to mean the common and ordinary meaning.

**ABANDONMENT OR ABANDONED.** The cessation of all uses of a communications facility for a period of one hundred eighty (180) or more consecutive days provided this term shall not include the cessation of all use of a communications facility within a physical structure where the

physical structure continues to be used for some purpose or use accessory to the communications facility. By way of example, cessation of all use of a cable within a conduit, where the conduit continues to be used for some purpose or use accessory to the communications facility, shall not be *Abandonment* of a communications facility. A wireless infrastructure provider's failure to have a wireless service provider provide service through a small wireless facility collocated on a utility pole within nine (9) months after the application is approved in accordance with Section 337.401(7)(j), F.S., shall constitute abandonment. The terms Abandonment or Abandoned are not intended to include a dropped line from a potential or existing customer in the event the communications services provider, communications facility provider, or pass-through provider reasonably anticipates future use of the dropped line.

***ABUT.*** When used in conjunction with a lot or parcel of land or public right-of-way, means a lot or parcel of land or public right-of-way that shares all or a part of a common lot line or boundary line with another lot or parcel of land or public right-of-way.

***ADJACENT PROPERTIES OR PROPERTIES ADJACENT.*** (i) Those lots or parcels of land that abut another lot or parcel of land or public right-of-way that is contiguous to a communications facility site or proposed site and (ii) the lots or parcels of land or public right-of-way that would be contiguous to lots or parcels or public rights-of-way but for an intervening local or collector roadway.

***ANTENNA.*** Communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

***APPLICABLE CODES.*** 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, including expressly the Florida Building Code, National Electrical Code, National Electrical Safety Code, 2010 Florida Department of Transportation Utility Accommodation Manual, 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, as may be amended. and Town codes or ordinances adopted to implement Section 337.401(7), Florida Statutes, including but not limited to this Ordinance. The term includes objective design standards adopted by Town ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by Town ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived by the Town 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.

***APPLICANT.*** A wireless provider who submits an application for a permit to locate a communications facility or utility pole within the public rights-of-way or any person who submits an application for a permit or request pursuant to this Ordinance.

**APPLICATION.** A request submitted by an applicant to the Town for a permit to collocate small wireless facilities or for any request pursuant to this Ordinance.

**AS-BUILT PLANS.** A set of final and complete drawings in a format as specified by the Town submitted upon completion of a project, signed and sealed by professional surveyor or mapper as defined in Section 472.005, F.S., that reflect all changes made during the construction process, and show the exact dimensions, geometry and location of all elements of the work completed under the permit.

**AUTHORITY.** The Town to the extent it has jurisdiction and control of the rights-of-way of any public road. The term does not include the Department of Transportation rights-of-way under the jurisdiction and control of the department, which are excluded from this Section.

**AUTHORITY UTILITY POLE.** A utility pole owned by the Town in the public right-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within:

- (a) A retirement community that:
  - (i) Is deed restricted as housing for older persons as defined in Section 760.29(4)(b), Florida Statutes.
  - (ii) Has more than 5,000 residents; and
  - (iii) Has underground utilities for electric transmission or distribution.

**BELOW-GRADE COMMUNICATIONS FACILITY.** A communications facility, including manholes or access points, that are entirely contained below grade within the public rights-of-way.

**CLEAR ZONE.** The roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, recoverable slope, non-recoverable slope, clear runout area, or combination thereof. The width of the clear zone is dependent upon the traffic volumes and speeds, and on the roadside geometry.

**COLLOCATION OR COLLOCATE.** 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.

**COMMUNICATIONS FACILITY or FACILITY or SYSTEM.** Any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, wireless facilities, wireless support structure, wireline backhaul facilities, small wireless facilities, micro wireless facility, and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the

Town and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services. A utility pole intended for collocation of a small wireless facility shall be considered a facility or for purposes of this Section to the extent not inconsistent with a valid franchise agreement with the Town or applicable law.

**COMMUNICATIONS SERVICES.** The transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, including wireless services, regardless of the protocol used for such transmission or conveyance, and shall also include cable service and video service as defined in F.S. §§610.103(1) and (11).

**COMMUNICATIONS SERVICES PROVIDER.** Any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way, or a wireless infrastructure provider.

**COMMUNICATIONS SERVICES TAX.** The local communications services tax authorized to be levied and collected by counties and municipalities upon communication service providers for communications services, pursuant to Section 202.19, F.S. as amended.

**CONSOLIDATED PERMIT APPLICATION.** A single permit application that would otherwise require individual permit applications for the collocation of between two (2) and thirty (30) small wireless facilities to existing structures within the public rights-of-way.

**FCC.** The Federal Communications Commission.

**FLORIDA BUILDING CODE.** The Florida Building Code promulgated under Chapter 553, Florida Statutes and includes the applicable amendments thereto as both may be amended from time to time.

**FLORIDA GREENBOOK.** The latest edition of the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance of Streets and Highways.

**FORCE MAJEURE EVENT.** A cause or event not within a person's control that shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within a person's control, and thus not constituting a force majeure event for purposes of this Ordinance, shall include, without limitation, the financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of person's directors, officers, employees, contractors or agents.

**GRAFFITI.** Any inscriptions, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any communications facility whether or not authorized by the registrant of the communications facility. A wrap shall not be considered graffiti.

**HISTORIC PROPERTY.** Any prehistoric or historic district, site, building, object or other real or personal property, of historical, architectural or archaeological value. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, engineering works, treasure troves, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, or culture of the Town.

**HOMEOWNERS' ASSOCIATION.** An incorporated association whose members consist of owners of single family homes or condominium units that manage or control property owned by the association.

**IN PUBLIC RIGHTS-OF-WAY** or **IN THE PUBLIC RIGHTS-OF-WAY.** In, on, over, under or across the public rights-of-way.

**LOT.** A designated parcel of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed, or built upon as a unit.

**MICRO WIRELESS FACILITY.** 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.

**ORDINANCE OR SECTION.** This Ordinance or Section.

**PARCEL.** Any piece of real property that has a single parcel identification number assigned to it by the Broward County Property Appraiser.

**PASS-THROUGH PROVIDER.** Any person who places or maintains a communications facility in the public rights-of-way and who does not remit taxes imposed by the Town pursuant to Chapter 202, F.S., as amended. A pass-through provider can also be a wireless infrastructure provider as defined herein, and/or an owner of a communications facility pursuant to this Section.

**PERMIT.** The public right-of-way permit that must be obtained before a person may construct in the public right-of-way and shall include, but not be limited to, right-of-way engineering and construction permits issued by the Town.

**PERSON.** Shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, but shall not include the Town.

**PLACE OR MAINTAIN** or **PLACEMENT OR MAINTENANCE** or **PLACING OR MAINTAINING.** To erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is **PLACING OR MAINTAINING** the facilities. To the extent required by

applicable law, a party providing service only through resale or only through use of a third party's unbundled network elements is not **PLACING OR MAINTAINING** the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way is not **PLACING OR MAINTAINING** facilities in the public rights-of-way.

**PSC.** The Florida Public Service Commission.

**PUBLIC RIGHTS-OF-WAY.** A public right-of-way, public easement, highway, street, bridge, tunnel, waterway, dock, wharf, court, lane, path, or alley, or any other way for which the Town is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. **PUBLIC RIGHTS-OF-WAY** shall not include private property. **PUBLIC RIGHTS-OF-WAY** shall not include any real or personal Town property except as described above, and shall not include Town parks, buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the **PUBLIC RIGHTS-OF-WAY**.

**REGISTRANT or FACILITY OWNER.** A communications services provider or other person that has registered with the Town in accordance with the provisions of this section.

**REGISTRATION and REGISTER.** The process described in this section whereby a communications services provider provides certain information to the Town.

**SHROUD.** A covering or enclosure of equipment associated with a small wireless facility, other than the antenna, collocated on an existing structure or wireless support structure.

**SIGNAGE.** Any display of characters, ornamentation, letters or other display such as, but not limited to, a symbol, logo, picture, or other device used to attract attention, or to identify, or as an advertisement, announcement, or to indicate directions, including the structure or frame used in the display. The term Signage shall not include identification of the owner and contact information of the wireless facility provider or utility pole, or identification of wires, cables, etc. necessary to aid in safety or hazard work or maintenance or repair work of the communications facility.

**SMALL WIRELESS FACILITY.** 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.

**STEALTH DESIGN.** A method of camouflaging any tower, antenna or other communications

facility, including, but not limited to, supporting electrical or mechanical equipment, or utility pole which is designed to enhance compatibility with the surrounding neighborhood and be as visually unobtrusive as possible.

***SURROUNDING NEIGHBORHOOD.*** The area within a five hundred (500) foot radius of a communications facility site or proposed communications facility site.

***TOWN.*** The Town of Southwest Ranches, Florida, a municipal corporation of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

***TOWN ADMINISTRATOR.*** The Town of Southwest Ranches, FL, Town Administrator or his/her designee.

***UTILITY.*** Any person or entity that is a local exchange carrier or an electric, gas, water, steam or other public utility, and who owns or operates appurtenant facilities or equipment that is situated with the public rights-of-way for transmission of such utility's goods, commodities or services.

***UTILITY POLE.*** A pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless an authority grants a waiver for such pole.

***WIRELESS FACILITY.*** 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;
- (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.

***WIRELESS INFRASTRUCTURE PROVIDER.*** 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.

***WIRELESS PROVIDER.*** A wireless infrastructure provider or a wireless services provider.

***WIRELESS SERVICES.*** Any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

**WIRELESS SERVICES PROVIDER.** A person who provides wireless services.

**WIRELESS SUPPORT STRUCTURE.** 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.

**WRAP.** An aesthetic covering depicting artistic or scenic imagery. Imagery in a wrap may not contain any advertising.

**22.20 Registration For Placing Or Maintaining Communications Facilities in the Public Right-Of-Way.**

- (a) All persons, including, but not limited to a communications services provider, pass-through provider, or wireless infrastructure provider, seeking to place or maintain a communications facility, backhaul facility, utility pole for collocation of a small wireless facility, or small wireless facility in public rights-of-way in the Town pursuant to this Ordinance shall first register with the Town in accordance with this subsection before being eligible to receive a permit. Subject to the terms and conditions prescribed in this subsection and approval of a permit, a registrant may place or maintain a communications facility in public rights-of-way. A communications services provider, pass-through provider, or wireless infrastructure provider with an existing communications facility in the public rights-of-way of the Town as of the effective date of this section has ninety (90) days from the effective date of this section to comply with the terms of this subsection, including, but not limited to obtaining an effective registration, or be in violation thereof.
- (b) Requirements for an effective registration. A person that desires to place or maintain a communications facility, backhaul facilities and an infrastructure provider that seeks to apply to install a utility pole for collocation of a small wireless facility in the public rights-of-way in the Town shall file an original registration, along with two complete copies with the Town Administrator that shall include the following information:
  - (1) Name of the registrant;
  - (2) Name, address and telephone number of the registrant's primary contact person in connection with the registration and name, address, telephone number and email addresses of the registrant's primary contact person in the event of an emergency or issue involving its facilities, which shall be monitored 24 hours per day, 7 days per week.
  - (3) The type of communications services that the registrant provides or intends to provide within the Town (if more than one, state all that apply), or, if none, indicate that the registrant is a communications facility provider,

wireless infrastructure provider, or pass-through provider, as the case may be, and whether the registrant currently remits or intends to remit Communications Services Tax, as authorized in Ch. 202, F.S.;

- (4) Evidence of the insurance coverage required under this section;
- (5) Acknowledgment that registrant has received and reviewed a copy of this Ordinance;
- (6) A copy of the registrant's certificate of authorization, public convenience and necessity, or other similar certification or licenses issued by the PSC, the Florida Department of State, the FCC, or other federal authority. A copy of federal or state certification authorizing the registrant to provide communications services, if any;
- (7) If the registrant is a corporation, proof of authority to do business in the State of Florida, including the number of the corporate certification; and
- (8) A security fund in accordance with this section.

(c) Insurance.

- (1) Registrant shall provide, pay for and maintain satisfactory to the Town, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the state of Florida and having a rating in Best's Insurance Guide of A or better, or having a rating acceptable to the Town. All liability policies shall provide that the Town is an additional insured in the endorsement. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the Town annually. Thirty-days advance written notice by registered or certified mail must be given to the Town of any cancellation, intent not to renew, or reduction in the policy coverages. In addition to the certificate of insurance, the registrant shall provide a copy of the insurance policy, if requested by the Town.
- (2) The limits of coverage of insurance required shall be not less than the following:
  - i. Worker's compensation and employer's liability. Insurance employer's liability: Florida statutory requirements.
  - ii. Comprehensive general liability. Bodily injury and property damage: \$3,000,000 combined single limit each occurrence. Said coverage shall not exclude contractual liability, products/completed operations, independent or contractors.
  - iii. Automobile liability. Bodily injury and property damage: \$3,000,000 combined single limit each accident.

- iv. Umbrella or excess liability. Registrant may satisfy the minimum limits required above for either commercial general liability, business auto liability and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The Town shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow-form" basis.
  - v. Self-insurance. Registrant may satisfy the insurance requirements and conditions of this division under a self-insurance plan and/or retention if acceptable to the Town in its sole discretion based on the Town's evaluation of the registrant's ability to comply with the Town Code. Registrant agrees to notify the Town, and/or indicate on the certificate(s) of insurance when self-insurance is relied upon or when a self-insured retention meets or exceeds \$100,000. The Town reserves the right, but not the obligation, to request and review a copy of the registrant's most recent annual report or audited financial statement, which the registrant agrees to furnish for the purpose of determining the registrant's financial capacity self-insure.
- (3) Right to review. Town, by and through its risk manager, reserves the right to review, modify, reject or accept any required policies of insurance or self-insurance, including limits, coverages, or endorsements herein from time to time throughout the life of this division. Town reserves the right, but not the obligation, to review and reject any insurer or self-insurer providing coverage because of its poor financial condition or failure to operate legally.
  - (4) This section shall not be construed to affect in any way the Town's rights, privileges and immunities as set forth in F.S. §768.28. Insurance under this division shall run continuously with the presence of the registrant's facilities in the public rights-of-way, and any termination or lapse of such insurance shall be a violation of this division and subject to the remedies as set forth herein. Notwithstanding the foregoing, the Town may, in its sole discretion, require increased or decreased levels of insurance.
- (d) Security fund. For an effective registration, a registrant shall file with the Town, for Town approval, a security fund in the amount of twenty five thousand dollars (\$25,000), in the form of a cash deposit or irrevocable letter of credit. Any cash deposit shall be held in a separate, non-interest bearing account. The letter of credit shall be issued by a financial institution within Broward County and shall be in a form and issued by a financial institution acceptable to the Town Attorney. The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon the registrant

by the provisions of this section, including but not limited to requirements to restore the public rights-of-way and guarantee such restoration, remove any abandoned communications facilities, pay appropriate compensation to the Town, and pay for any damage to Town or other facilities in the public rights-of-way. Should the Town draw upon the security fund, the Town shall promptly notify the registrant, and the registrant shall promptly restore the cash deposit and/or letter of credit, as may be necessary, to the full amount. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this Section, subject to provisions for notice in Chapter 20, Article 3, Section 20-54, as it may be amended, there shall be recoverable, jointly and severally from the principal and surety of the security fund, including a letter of credit, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. The cash deposit and instruments of the security fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. A registrant may request that the Town return the security fund or approve the cancellation of the security fund upon the expiration of a registrant's obligations pursuant to the Town Code and in no event while a registrant maintains any obligations with respect to facilities in the public rights-of-way.

- (e) **Review of Registration.** The Town shall review the information submitted by the registration applicant. If the applicant submits information in accordance with this subsection 22.20, the Town shall notify the applicant of the effectiveness of registration in writing. If the Town determines that the information has not been submitted in accordance with this subsection, the Town shall notify the applicant in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The Town shall so notify an applicant within 30 days after receipt of registration information from the applicant. A notice of non-effectiveness of a registration shall not preclude an applicant from reapplying or filing subsequent applications for registration under the provisions of this Section.
  
- (f) **Regulations Applicable to Registrations.**
  - (1) A registration shall not convey any title, equitable or legal, in the public rights-of-way. Registration under this section governs only the placement or maintenance of communications facilities in public rights-of-way. To the extent not inconsistent with applicable law, registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the Town's or another person's facilities. Within 30 days of any change in the information required to be submitted by a registrant, a registrant shall provide updated information to the Town.
  
  - (2) Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a communications facility in any

particular area in public rights-of-way within the Town. Registrations are expressly subject to any future amendment to or replacement of this section, and further subject to any additional Town ordinances, as well as any applicable state or federal laws.

- (3) Unregistered use of public rights of way. To the extent that a communications services provider, wireless infrastructure provider or pass-through provider with facilities in the public rights-of-way, is not registered as required herein, said person shall register with the Town pursuant to this Section within ninety (90) days from the effective date of this Ordinance. No new permits shall be issued to unregistered persons with communications facilities within the public rights-of-way and such persons may be subject to the enforcement remedies.
- (4) Registration renewal. A registrant shall renew its registration with the Town by March 1, of even-numbered years in accordance with the registration requirements in this Section, as may be amended, except that a registrant 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 until the next even-numbered year. 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 Town restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this section. An existing registrant pursuant to the Town Code shall comply with this Ordinance by the earlier of the following: ninety (90) days from the effective date of this Ordinance, the renewal of a registration as required herein, or prior to submitting an application for a permit.
- (5) Indemnification. A registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the Town, its officials, boards, members, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the Town arising out of the placement or maintenance of its communications system or facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this section. This provision includes, but is not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. Town agrees to notify the registrant, in writing, within a reasonable time of Town receiving notice, of any issue it determines may require indemnification. Nothing in this division shall prohibit the Town from participating in the defense of any litigation by its own counsel and at its own cost, if in the Town's reasonable belief there exists or may exist a conflict, potential conflict or appearance

of a conflict. Nothing contained in this Section shall be construed or interpreted:

- i. as denying to either party any remedy or defense available to such party under the laws of the state of Florida;
  - ii. as consent by the Town to be sued; or
  - iii. as a waiver of sovereign immunity beyond the waiver provided in F.S. §768.28, as it may be amended.
- (6) A registrant may cancel a registration upon written notice to the Town that the registrant will no longer place or maintain any communications facilities in public rights-of-way, and will no longer need to obtain permits to perform work in the public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.
- (7) Liens. No liens shall apply to public rights-of-way or Town property as a result of the placement or maintenance of a registrant's facilities in the public rights-of-way or on a Town utility pole. Any liens on a registrant's facilities shall be subordinate to the rights of the Town pursuant to this Ordinance. In the event any liens are filed on the Town property or public rights-of-way, the registrant shall discharge such lien at its expense within ten (10) days of receiving notice, or the Town may discharge such lien, and charge such costs plus reasonable attorney's fees to registrant.
- (8) A registrant shall pay any personal property or other taxes or assessments that may be imposed on the registrant's facilities placed or maintained in the public rights-of-way or on the Town's property including a utility pole as a result of a registrant's collocation on a Town utility pole. A registrant shall reimburse the Town for taxes paid by the Town as a result of a registrant's facilities being placed or maintained in the public rights-of-way or on a Town-owned utility pole.
- (9) Reports and records.
  - (a) Upon reasonable request, a registrant shall provide the following documents to the Town as received or filed:
    - i. Any pleadings, petitions, notices, and documents, which may directly impact the obligations under this Ordinance and which are reasonably necessary for the Town to protect its interests under this Ordinance.
    - ii. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.
  - (b) The Town shall keep any documentation, books and records of the registrant confidential to the extent required under Florida Statutes.

- (10) Termination of Registration. The Town may terminate a registration if:
- (a) A federal or state authority suspends, denies, or revokes a registrant's certification or license required to provide communications services;
  - (b) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice;
  - (c) The registrant abandons its facilities in the public rights-of-way; or
  - (d) The registrant commits substantive and material violations of any of the provisions of applicable codes including but not limited to this Ordinance.
- (11) Notice of intent to terminate. Prior to termination, the Town shall notify the registrant with a written notice setting forth all matters pertinent to the proposed termination action, including the reason therefore. The registrant shall have thirty (30) days after receipt of such notice within which to address or to eliminate the reasons or within which to present a plan, satisfactory to the Town, to accomplish the same and to take such steps as are necessary to render every portion of the facilities remaining in the public rights-of-way of the Town safe. If the plan is rejected by the Town, the Town shall provide written notice of such rejection within fifteen (15) days of receipt of the plan to the registrant and shall make a final determination as to termination of the registration and the terms and conditions relative thereto.
- (12) Post termination action. In the event of termination, following any appeal period, the former registrant shall: (a) in accordance with the provisions of this section and as may otherwise be provided under state law, notify the Town of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in the public rights-of-way; or (b) provide the Town with an acceptable plan for removal or disposition of its communications facilities in the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal. If a registrant fails to comply with this subsection, the communications facilities are deemed to be abandoned and the Town may exercise any remedies or rights it has at law or in equity as well as the Town's remedies pursuant to this section, including but not limited to, utilize or allow other persons to utilize the registrant's facilities. The obligations of the registrant hereunder shall survive the termination of a registration. A registrant that has its registration terminated by the Town under this section may reapply for registration one (1) year after the

termination date of the prior registration, unless otherwise permitted to reapply at the sole discretion of the Town.

- (13) When removal not authorized or required. In the event of termination of a registration, this section does not authorize the Town to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the communications facilities holds a valid certification or license with the governing federal or state agency, if required, for the provision of such service, and is registered with the Town, if required.
- (14) Transfer or control, sale or assignment of assets. If a registrant transfers, sells or assigns its registration or its facilities in the public rights-of-way, incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this section. Written notice of any such transfer, sale or assignment shall be provided to the Town within 20 days of the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, and is in compliance with the provisions of this Section, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, or has an effective registration that is not in compliance with this Section as it may have been amended, then the transferee, buyer or assignee shall register as provided in this Section within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the appropriate Town officials that the transferee, buyer or assignee is the new applicant.
- (15) Pledges in trust or mortgages of the registrant may be made to any person with notice to the Town. Any mortgage, pledge, lease or other encumbrance on the communications facilities shall be subject and subordinate to the rights of the Town under this section and applicable law.
- (16) Town makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the registrant's communications facilities, and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk. Nothing in this section shall affect the Town's authority to add, vacate or abandon public rights-of-way, and the Town makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.
- (17) Conditional use of public rights-of-way.
  - (a) In the event registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision

of communications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from the Town for such activities as may be required by applicable law.

- (b) To the extent that any person or registrant leases or otherwise uses the facilities of a person that is duly registered or otherwise authorized to place or maintain facilities in the public rights-of-way of the Town, such person or registrant shall make no claim, nor assert any right which will impede the lawful exercise of the Town's rights, including requiring the removal of such facilities from the public rights-of-way of the Town, regardless of the effect on registrant's ability to place or maintain its own communications facilities in public rights-of-way of the Town.

**22.21 Requirement of a Permit.**

- (a) In accordance with applicable law, Town ordinances, codes and regulations, including this section, a right-of-way use permit issued by the Town shall be required for a communications services provider, communications facility provider or a pass-through to place or to maintain a communications facility in the public rights-of-way unless otherwise exempt pursuant to this section. An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall continue to apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met. A registrant shall not commence to place or to maintain a communications facility in the public rights-of-way until all applicable permits have been issued by the Town or other appropriate authority. Registrant shall comply with all Town requirements for issuing permits, including reasonable rules or regulations governing the placement or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The Town may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits or may impose lesser requirements.

- (b) Limited Exceptions to Permit Requirement.

- (1) A registrant shall be allowed to perform emergency maintenance within the public rights-of-way without first obtaining a permit or providing a performance bond. The term EMERGENCY shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. A registrant shall provide prompt notice to the Town of the placement or maintenance of a communications facility in the public rights-of-way in the event of an emergency and, within fifteen (15) days of completing the emergency maintenance, apply for a permit if such activity required a permit under this Section.

- (2) A registrant shall be allowed to perform routine maintenance within the public rights-of-way if such proposed routine maintenance does not involve excavation, construction, or disruption to transportation in the public rights-of-way. In the case of routine maintenance, a registrant shall provide reasonable advance written notice to the Town identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. If routine maintenance requires the closure of the public rights-of-way, a permit shall be required.
  - (3) A permit shall not be required for replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size.
  - (4) A registrant shall be allowed to place or to maintain a service drop within the public rights-of-way without first obtaining a permit if such proposed work does not involve excavation, construction, or the temporary closure of the public rights-of-way.
  - (5) A permit shall not be required for the installation, placement, maintenance, or replacement of Micro Wireless Facilities that are suspended on cable strung between Existing Utility Poles in the public rights-of-way, in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights-of-way and who is remitting Communications Services Tax under Chapter 202, Florida Statutes. Prior to placing a micro wireless facility in the public rights-of-way pursuant to this subsection, at least thirty (30) days prior to commencing said work, the registrant shall submit a certification of the micro wireless facility's dimensions to the Town for review. If the micro wireless facility's dimensions exceed the dimensions for to constitute a micro wireless facility, the registrant shall not be authorized to place such facility in the public rights-of-way.
- (c) The Town Administrator may cause an immediate stop work order where any permitted or unpermitted construction or other work in the public rights-of-way poses a serious threat to the health, safety or welfare of the public until such serious threat has been abated. Failure to comply with such order may subject a registrant, and its agents, employees, and contractors as applicable to appropriate enforcement remedies as set forth in this Ordinance and applicable law.

#### **22.22 Permit Application Requirements and Review Procedures.**

- (a) Pre-application meeting. To minimize issues related to a permit application, prior to submitting materials for a permit application, a registrant shall conduct a pre-submittal meeting with the Town to discuss the registrant's plans and network goals for placing or maintaining facilities in the public rights-of-way. The Town shall undertake efforts to accommodate a registrant's request for a pre-application

meeting within ten (10) business days of a request. At a registrant's request, the Town, in its sole discretion, may waive the requirement of a pre-application meeting for good cause based on the scope of the proposed permit and registrant's compliance with this section. In no event shall the requirement of a pre-application meeting be waived for a consolidated permit.

- (b) As part of any permit application to place or maintain any facility pursuant to this Ordinance in the public rights-of-way, a registrant or a registrant's agent or contractor shall provide a permit application that sets forth, at a minimum, the following:
  - (1) If the applicant for the permit is not the registrant, a statement of authority by the registrant for the applicant to act on behalf of the registrant is required. In addition, if the applicant is a contractor, the contractor's license or registration confirming the contractor's authority to perform construction in the Town, the contractor's insurance in the forms and amounts required in subsection 22.20(c) herein naming the Town as an additional insured, and statements as to whether the contractor has any open permits with the Town, and if so, the permit identification number or information.
  - (2) Confirmation that the applicant engaged in a pre-application meeting or such meeting was waived by the Town and that the applicant has an effective registration with the Town.
  - (3) Engineering plan. An engineering plan signed and sealed by a Florida Registered Professional Engineer, or prepared by a person who is exempt from such registration requirements as provided in F.S. § 471.003, that includes the following:
    - (a) For new facilities to be located that are not proposed to be collocated on existing facilities in the public rights-of-way, an American Land Title Association (ALTA) survey demonstrating that the proposed location of the facility or utility pole is within the public rights-of-way, unless waived by the Town in its sole discretion, pursuant to an applicant's attestation that the proposed facility is located within the public rights-of-way;
    - (b) The type of proposed facility, location of the proposed facility, and the dimensions, height, footprint, stealth design, and concealment features of the proposed facility;
    - (c) The Global Positioning System (GPS) coordinates of the proposed facility. The GPS coordinates shall be based on the reading from a handheld mobile GPS unit set to Datum NAD 83 or WGS84. GPS coordinates based on Google Earth or similar application may be used where areas of shading occur due to overhead canopy. GPS Coordinates shall be provided in decimal degrees at a six (6) decimal point precision;

- (d) Whether the proposed facility is proposed within a location subject to restrictions pursuant to this Ordinance;
  - (e) Distances between the proposed facility and the edge of nearby pavement, sidewalks, driveways, ramps, the nearest residential properties, nearby drainage systems, trees, ground-mounted equipment, nearby structures in the public rights-of-way, underground utilities and other above-grade and below-grade structures and utilities located within the public rights-of-way;
  - (f) For new communications facilities, within a fifty (50) foot radius, a sketch showing pavement, sidewalks, driveways, ramps, trees, below-grade utilities, and other above-grade and below-grade structures and facilities located within the public rights-of-way;
  - (g) Sufficient specificity demonstrating compliance with applicable codes, the Florida Building Code, most current edition, specifically including but not limited to terms of compliance with the High Velocity Zone Criteria specified therein, the 2010 Florida Department of Transportation Utility Accommodation Manual, as applicable; National Electrical Code, the National Electrical Safety Code and 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, as may be amended;
  - (h) The routes of all transmission and distribution lines to be placed or maintained in the public rights-of-way in connection with the proposed facility (such lines may be subject to separate permit requirements);
  - (i) Certification that the proposed facility will not materially interfere with the safe operation of traffic control equipment;
  - (j) Certification that the proposed facility will not interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes or result in the public rights-of-way being inconsistent with the Florida Greenbook;
  - (k) Certification that the proposed facility will not materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement; and
  - (l) Other engineering information that may be requested by the Town.
- (4) Trees or landscaping to be removed or impacted upon the placement or maintenance of the proposed facility.
  - (5) Photographic or video documentation of the pre-construction condition of the public rights-of-way in the area to be affected by the installation of the proposed facility.
  - (6) Description of installation or construction. A description of the method by which the facility will be installed and/or modified (i.e. anticipated

construction methods or techniques).

- (7) Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, if appropriate, to accommodate placement or maintenance of the facility.
- (8) Temporary maintenance of traffic (MOT) plan. The applicant shall provide a temporary traffic lane closure and maintenance of traffic (MOT) plan, if appropriate, to accommodate placement or maintenance of the facility. Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, if appropriate, to accommodate placement or maintenance of the facility.
- (9) Restoration plan and estimated cost of restoration of the public rights-of-way. A restoration plan and a good faith estimate of the cost of restoration of the public rights-of-way. Such good faith estimate shall be accepted by the Town unless the Town determines such estimated costs are not representative of the actual costs of the restoration of the public rights-of-way. Estimates of the cost to restore the public rights-of-way shall include all costs necessary to restore the public rights-of-way to its original condition. Such good faith estimate may include, but shall not be limited to, costs to restore the paving, curbs/gutters, sidewalks, multi-purpose trails, and landscaping. All planted or naturally occurring shrubbery or vegetation, including sod, damaged or destroyed during work in the public rights-of-way shall be replaced. Tree or landscaping removal shown on the permit shall not be considered damage or impairment to be restored to the original condition provided the applicant complies with the approved mitigation plan, if any.
- (10) Timetable for construction or installation. The timetable for construction, placement or maintenance of the proposed facility or each phase thereof.
- (11) Indemnification. A statement shall be included with the permit application that by execution of the application and by applying for the permit, the applicant shall be bound to the Town with respect to the indemnification provisions set forth in subsection 22.20(f)(5) herein.
- (12) Airport airspace protection. If applicable, the applicant shall confirm compliance with Chapter 333, F.S. and all State and federal laws and regulations pertaining to airport airspace protections.
- (13) Attestation. For applications by a wireless infrastructure provider or its contractor for the placement or maintenance of a utility pole in the public rights-of-way for collocation of a small wireless facility, the applicant shall provide an attestation by an officer of the registrant that a small wireless facility will be collocated on the utility pole and will be used by a wireless services provider to provide communication service within nine (9) months

after the date the application is approved.

- (14) Pole attachment agreement. If applicable for the proposed facility, the applicant shall provide a copy of a fully executed valid pole attachment agreement between the owner of the utility pole and registrant. In lieu of providing the complete pole attachment agreement between the owner of the utility pole and registrant, the applicant may provide the first page of such agreement and the signature page or a notarized letter of authorization from the owner of the utility pole, providing adequate identifying information, acceptable to the Town, and indicating the registrant is authorized to install its facility on the identified utility pole.
- (15) Information regarding height limitations. For an application for a new utility pole to support the collocation of a small wireless facility, the applicant shall provide information regarding the heights of other utility poles located in the same public rights-of-way as of July 1, 2017, measured from grade in place within five hundred (500) feet of the proposed location of the utility pole. If there is no utility pole within five hundred (500) feet of the proposed utility pole as of July 1, 2017, the applicant shall so certify.
- (16) If the permit application includes a backup power supply, information to demonstrate that the backup power supply and proposed fuel storage satisfies the applicable provisions of the Town Code and the Florida Building Code.
- (17) In addition to the requirements herein, as part of any permit application to place or maintain a small wireless facility in the public rights-of-way, the applicant shall provide the following:
  - (a) Documentation to the satisfaction of the Town from a Florida Registered Professional Engineer, or prepared by a person who is exempt from such registration requirements as provided in F.S. §471.003, that the structure and foundation of the utility pole intended to support the collocation of the small wireless facility can support the additional load of the proposed small wireless facility consistent with the requirements of the Florida Building Code;
  - (b) Certification and description by the applicant to the satisfaction of the Town how the proposed small wireless facility complies with the objective design standards set forth in this Ordinance.
  - (c) Accurate photo simulations of the proposed small wireless facility and if applicable, as collocated on the utility pole.
- (18) Applicable permit fees including reimbursement for Town consultants, to the extent not inconsistent with applicable law.
- (19) Consolidated permit application and single application for multiple locations. A registrant may submit a single application to place or to maintain multiple Facilities in the public rights-of-way, where it would be

more efficient for the registrant and the Town to address multiple facilities in one permit application. An applicant seeking to collocate multiple small wireless facilities may file a consolidated permit application and receive a single permit for the collocation of up to 30 small wireless facilities. The application must include the information required for an application each for all proposed small wireless facilities. In addition, prior to applying for a consolidated permit, the applicant must engage in a pre-application meeting with the Town to discuss all proposed small wireless facilities. If the application includes multiple small wireless facilities, the Town may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

- (20) To the extent not inconsistent with applicable law, such additional information requested by the Town reasonably necessary for the permit application.

(c) Application Review and Procedures.

- (1) Review procedures for applications for small wireless facilities or for utility poles for collocation of small wireless facilities. Time periods within this subsection 22.22(d) may be extended for the period of time impacted by a force majeure event or by a declared State of Emergency by the Town or Governor of the State that impacts the Town (“force majeure extension”). If an applicant opposes a force majeure extension pursuant to this subsection, it shall notify the Town within 24 hours of such extension becoming effective or the applicant shall be deemed to have consented to the extension.

- (a) Unless extended by mutual consent of the applicant and Town, within 14 days after receiving an application, the Town Administrator will notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the Town will specifically identify the missing information. An application is deemed complete if the Town fails to provide notification to the applicant within 14 days.

(b) Negotiation Process.

- (1) Unless extended by mutual consent of the applicant and the Town, or pursuant to a force majeure extension, within 14 days after the date of filing the application, the Town 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 Town utility pole or support structure or may place a new utility pole. The Town 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.

- (2) At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the Town 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.
  - (3) If an agreement is not reached, the applicant must notify the Town of such nonagreement and the Town must grant or deny the original application within 90 days after the date the application was filed unless extended by mutual consent of the applicant and Town. Failure of the applicant to so notify the Town as required herein shall be deemed to constitute the applicant's consent to the Town's alternative location. 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 Town processes all applications on a nondiscriminatory basis. Unless the Town and the applicant engage in negotiations as provided above, the Town will approve or deny the application and will notify the applicant by electronic mail whether the application is approved or denied within 60 days after the receipt of a completed application.
- (d) Extension of time. If the Town and the applicant do not engage in negotiations, the applicant and Town may mutually agree to extend the 60-day application review period. The Town shall grant or deny the application at the end of the extended period.
- (e) The Town 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; or

- (5) Fails to comply with applicable codes.
- (f) Cure Procedure.
    - (1) If the application is denied, the Town will specify the basis for the denial, including the specific code provisions on which the denial was based, on the day the Town denies the application.
    - (2) The applicant may cure the deficiencies identified by the Town and resubmit the application within 30 days after the notice of denial is sent.
    - (3) If an attempt to cure is made by the applicant, the Town will approve or deny the revised application within 30 days after receipt of the revised application. If the applicant revises any information in the application other than to address expressly the deficiencies identified by the Town, the applicant shall submit a new application.
    - (4) The Town's second and subsequent reviews of revised applications will be limited to the deficiencies cited in the denial notice.
  - (g) A permit issued pursuant to an approved application shall remain in effect for one (1) year unless otherwise extended, suspended, or revoked by the Town pursuant to this Ordinance. If a small wireless facility or utility pole is installed without a permit pursuant to applicable state or federal law, the applicant shall nevertheless be required to have an effective registration, comply with development standards and provide the performance bond required in this Ordinance prior to performing construction.
  - (h) A permit from the Town constitutes authorization to undertake only certain activities in the public rights-of-way in accordance with this section, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.
- (2) Review procedures for applications for all other communications facilities. The Town shall review and process applications for other communications facilities consistent with applicable law.
  - (3) Suspension and revocation of permits.
    - (a) The Town may order the suspension of placement and maintenance work under a permit and ultimately may suspend or revoke any

permit, in the event of a material breach of the terms and conditions of any applicable codes including but not limited to this Ordinance, State and federal laws and regulations, or any condition of the permit. A material breach by the permittee may include, but is not limited to:

- (1) The violation of any material provision of the permit or applicable codes;
- (2) An evasion or attempt to evade any material provision of the permit or the perpetration or attempt to perpetrate any fraud or deceit upon the Town;
- (3) Any material misrepresentation of fact in the process of permittee's request for a permit or Registration;
- (4) The failure to maintain the required performance bond, security fund or insurance;
- (5) The failure to properly restore the Public Rights-of-way;
- (6) The failure to correct within the specified time an order issued by the Town
- (7) The failure to Register, renew a registration, or provide notice of transfer in accordance with this Section;
- (8) The failure to relocate or remove facilities pursuant to this Section and Sections 337.402, 337.403 and 337.404, F.S., as amended;
- (9) Conducting work in the public rights-of-way without a permit, if required.

(b) If the Town determines that a registrant has committed a substantial breach of a term or condition of the permit or violation of applicable codes including but not limited to this Ordinance, the Town shall make a written demand upon the registrant to remedy such violation. The demand shall state that the continued violation(s) may be cause for suspension or revocation of the permit. Further, the Town may place additional or revised permit conditions on the permit following a substantial breach. In addition, the Town may refuse to issue new permits and may deny an application for a new permit to a registrant that has materially violated any provisions of a permit or applicable codes including but not limited to this Ordinance, until such time as the registrant cures the violation to the satisfaction of the Town, including paying any damages, costs or penalties that may have been assessed.

(c) Within thirty (30) days of receiving notification of the breach, the permittee shall contact the Town and provide a plan, acceptable to the Town. The Town shall provide additional time as reasonably necessary for a permittee to establish an acceptable plan taking into account the nature and scope of the alleged breach. The permittee's failure to so contact the Town, or the permittee's failure to submit

an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for revocation or suspension of the permit. A final determination to suspend or to revoke a permit may be appealed in accordance with the procedures set forth in this Ordinance. Nothing herein shall affect the Town's ability to take immediate action or to cause a registrant to take immediate action pursuant to this Ordinance or applicable law to address any condition that threatens the health, safety or welfare of persons or property.

- (d) If a permit is revoked, the permittee shall reimburse the Town for the Town's reasonable costs, including restoration costs, administrative costs, and the cost of collection. These cost may also be deducted from the registrant's security fund in the Town's discretion.
- (e) The Town may cause an immediate stop work order where the construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has been abated.

(4) Requests for waivers.

- (a) Nothing in this Ordinance shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of public rights-of-way by communications service providers, communications facility providers or pass-through providers, in violation of federal or state law.
- (b) A waiver may be granted by the Town in those circumstances where a competitively neutral use of the public rights-of-way is impaired by strict application of the requirements of this Ordinance.
- (c) A request for a waiver shall be filed either prior to or contemporaneously with the permit application. The request for waiver shall contain each provision for which a waiver is sought. A request for a waiver shall include the following information:
  - (1) A detailed explanation, with supporting engineering by a Florida licensed engineer or other data, as to why a waiver from the requirements of this Ordinance is required to allow the applicant to have nondiscriminatory and competitively neutral use of the public rights-of-way, including a detailed explanation addressing the relevant engineering criteria;
  - (2) Nature and characteristics of the surrounding neighborhood;
  - (3) Any special conditions and circumstances affecting the

proposed site which prevent compliance with the Ordinance or subsection for which a waiver is being sought;

- (4) If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed facility or within the surrounding neighborhood;
  - (5) Design of the proposed facility with particular reference to achieving compatibility with the surrounding neighborhood and other structures in the public rights-of-way and eliminating adverse visual impacts;
  - (6) If the proposed waiver is compliant with the Americans With Disabilities Act, 42 U.S.C. Sec. 12101, *et seq.*, and applicable codes;
  - (7) Any other information the Town may reasonably require to process the request for waiver.
- (d) The Town shall grant or deny a request for a waiver within forty-five (45) days after receiving the request for waiver or time frame under applicable law unless the applicant and Town consent to an extension. In granting any waiver, the Town may impose conditions to the extent the Town determines such conditions are necessary to minimize any adverse effects of the proposed facility on the surrounding neighborhood or to protect the health, safety and welfare of the public.
- (e) Should a request for waiver, and ultimately a permit, be denied by the Town, the denial of the waiver may be appealed with an appeal of the permit denial in accordance with this Ordinance.
- (f) Appeals. Final, written decisions of a designee of the Town Administrator, including but not limited to, a decision suspending, revoking, or denying a permit, denying a registration, denying a renewal of a registration, suspending or terminating a registration or denying a request for a waiver, or imposing costs or a fine, are subject to appeal to the Town Administrator. An appeal must be filed with the Town Administrator within thirty (30) days of the date of the final, written decision to be appealed. An applicant shall waive any appeal that is not timely filed as set forth herein. The Town Administrator shall hear or may appoint a hearing officer to consider the appeal. The decision on appeal shall be based on the information submitted previously to the Town and no new information shall be considered. Subject to a force majeure extension, the hearing shall occur within 30 days of the receipt of

the appeal, unless waived by the applicant, and a written decision shall be rendered within 20 days of the hearing. An appeal from a decision of the Town Administrator or a hearing officer may be appealed to the Town Council within 30 days, by filing a written notice of appeal with the Town Clerk and providing copies to the Town Manager and the Town Attorney. Any appeal not timely filed shall be waived. The notice of appeal shall state the decision which is being appealed, the grounds for appeal, a brief summary of the relief which is sought, and shall be accompanied by a nonrefundable fee to be established by administrative order of the Town Manager. The Town Council may affirm, modify or reverse the decision of the Town Manager or hearing officer. The Town Manager shall notify any party who has filed a written request for such notification of the date when the matter will be presented to the Town Council. Nothing contained herein shall preclude the Town Council from seeking additional information prior to rendering a final decision. The decision of the Town Council shall be by resolution and a copy of the decision shall be forwarded to the Town Manager and the appealing party. Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, a party aggrieved by a decision of the Town Council may appeal an adverse decision to the Circuit Court In And For Broward County or applicable federal district court. The party making the appeal shall be required to pay to a fee to be established by administrative order of the Town Manager, to defray the costs of preparing the record on appeal.

### **22.23 Performance bond.**

- (a) Prior to the issuance of any permit in accordance with this Ordinance, or performing any work in the public rights-of-way, either pursuant to a permit or without a permit if authorized by applicable law except in the case of an emergency pursuant to subsection 22.21(b)(1), a registrant shall establish in the Town's favor a performance bond to secure the restoration of the public rights-of-way, and to ensure the registrant's faithful performance of the construction or other work in the public rights-of-way, in accordance with applicable sections of the Town Code. The performance bond must name the Town as obligee and be conditioned upon the full and faithful compliance by the registrant with all requirements, duties, and obligations imposed by the permit and provisions of this section during and through completion of the placement or maintenance project. The performance bond shall be in an amount as determined by the Town Administrator based on the estimated costs of the restoration of the public rights-of-way. No performance bond is required if the estimated costs of the restoration of the public rights-of-way is less than one thousand dollars (\$1,000) provided the registrant has a fully replenished security fund on file with the Town. For wireless facilities, including wireless facilities where the application has been deemed approved pursuant to this

Ordinance, the performance bond shall be in an amount of the estimated costs of the restoration of the public rights-of-way following installation or removal of such facility, but in no event shall be less than five thousand dollars (\$5,000). For a consolidated permit, the registrant shall provide a performance bond based on the amount of the total costs of the restoration of the public rights-of-way for all small wireless facilities to be collocated on utility poles within the public rights-of-way, but in no event shall be less than ten thousand dollars (\$10,000). The minimum amount of the performance bond for a new or replaced utility pole or small wireless facility over six (6) cubic feet shall be twenty-five thousand (\$25,000) dollars. The bond shall be issued by a surety licensed to operate in Florida having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the Town Attorney and may be administratively accepted by the Town Administrator.

- (b) In the event a registrant subject to such a performance bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit or Town code, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.
- (c) The performance bond must be issued as non-cancelable and shall provide the following: "This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the Town, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
- (d) The performance bond shall be for a term of not less than one-year after the anticipated date of the later of completion of construction, restoration and Town inspection. In the event the term of any performance bond expires, or is reasonably expected to expire, prior to one-year after the completion of construction, restoration and Town inspection, the registrant shall immediately obtain, pay for, and file with the Town a replacement performance bond. No less than one-year after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request that the Town remove the requirement to continue the performance bond. Notwithstanding, the Town may require a new bond for any subsequent work performed in the public rights-of-way.
- (e) The rights reserved by the Town with respect to any performance bond established pursuant to this division are in addition to all other rights and remedies the Town may have under this Ordinance, or at law or equity, and no action, proceeding or exercise of a right with respect to the performance bond will affect any other right the Town may have.

**22.24 Construction Methods for Placing or Maintaining Communications Facilities in Public Rights-of-Ways.**

- (a) A registrant shall place and maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable codes. All safety practices required by applicable codes or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities, including but not limited to, Chapter 33 of the Florida Building Code. Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way, and shall take all reasonable steps to safeguard work site areas.
- (b) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. Ch. 556, as it may be amended. In the event of any conflicts with existing utilities or utility service laterals, the proposed location of the communications facility will be adjusted, not the utility.
- (c) To the extent non inconsistent with applicable codes, underground cables, where required, shall have consistent alignment parallel with the edge of pavement, a thirty-six-inch (36") depth of cover for the paved portion of roadways, a twenty-four-inch (24") to thirty-inch (30") depth of cover in all areas except the paved portion of roadways, and shall have a two-foot (2') horizontal clearance from underground utilities and their appurtenances.
- (d) Grounding rods and pull boxes. The grounding rod may not extend above the top of the public right-of-way or sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit. All pull boxes shall be vehicle load bearing, comply with applicable codes and FDOT Standard specification 635 and be listed on the FDOT Approved Products List. A concrete pad shall be installed around all pull boxes not located in the sidewalk. No new or replacement pull boxes shall be located in pedestrian ramps.
- (e) The Town may require the use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way. The registrant shall be solely liable for the displacement, damage or destruction of any property, irrigation system, utility, or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The Town may issue such rules and regulations concerning the method for placement or maintenance of a communications facility in public rights-of-way as may be consistent with this section and other applicable codes and standards. The provisions of this subsection are not intended to prevent the use of any method of construction not specifically prescribed by this subsection, provided that any such method has been approved by the Town.
- (f) In an effort to minimize adverse impacts and disruption in the public rights-of-way

and to other municipal improvements, the Town may require a communications services provider 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 the date(s) requested in the communications services provider's permit application. The Town may require a registrant to alter reasonably its placement or maintenance schedule as necessary to minimize disruptions and disturbance in the public rights-of-way. The Town may provide a more definite time frame based on specific Town construction or maintenance schedules. Within the public rights-of-way, every communications services provider shall make space available in its trench and/or conduit to other communications services 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 Town or other appropriate governmental authority, and, where applicable, from the private property owner.

- (g) Trees. A registrant shall not prune, remove or materially damage trees during placement or maintenance of communications facilities, small wireless facilities, micro wireless facility, or utility poles in the public rights-of-way without complying with Chapter 10, Article II, Tree Preservation, of the Town Code, as it may be amended. A registrant shall obtain at its expense any permit that may be required pursuant to Section 10-27 of the Town Code. Tree removal or pruning is not permitted within the public rights-of-way to increase signal strength or to provide a line-of-sight for wireless facilities. Landscaping may only be damaged or removed during placement or maintenance of communications facilities pursuant to a permit issued by the Town. The Town may require that any landscaping or trees so removed shall be replaced or mitigated in accordance with the approved restoration plan.
- (h) Restoration of public rights-of-way. A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition before such work in public rights-of-way was initiated, subject to the Town's satisfaction upon inspection. Registrant shall warrant its restoration for a period of 12 months after completion of such restoration. If the registrant fails to make such restoration within 30 calendar days after completion of construction, or such other time as may be required by the Town, the Town may, after written notice to the registrant, perform such restoration using Town employees, agents or contractors, and charge all costs of the restoration to the registrant in accordance with F.S. § 337.402, as it may be amended, and require reimbursement within 30 days after the submission of the invoice by the Town to the registrant.
- (i) Limits on excavation. To avoid continual disruption and degradation to the public rights-of-way, an area of the public rights-of-way that has been subject to excavation and restored shall not be subject to re-excavation until at least two years

following the completion of such restoration, to the extent not inconsistent with applicable law, unless waived by the Town. Registrants seeking to place communications facilities in the public rights-of-way through excavation are strongly encouraged to contact other registrants and communications services providers to coordinate the placement of communications facilities in the public rights-of-way.

- (j) Any communications facilities heretofore or hereafter placed upon, under, over, or along any public rights-of-way that is found by the Town to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way shall, upon thirty (30) days' written notice to the registrant or its agent, be removed or relocated by such registrant at its own expense except as explicitly provided under F.S. § 337.403. The Town may waive or extend the time within which a registrant shall remove or relocate a communications facility for good cause shown.
- (k) Removal or relocation at the direction of the Town of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, as they may be amended. Subject to F.S. § 337.403, whenever an order of the Town requires such removal or change in the location of any communications facility from the public rights-of-way, and the facility owner fails to remove or charge the same at its own expense to conform to the order within the time stated in the notice, the Town may proceed to cause the communications facility to be removed. The expense thereby incurred except as provided in F.S. §337.403(1)(a)—(c), shall be paid out of any money available therefor, and such expense shall be charged against the registrant of the communications facility and levied, collected and paid to the Town.
- (l) Subject to F.S. §337.403, whenever it shall be necessary for the Town to remove or relocate any communications facility, the registrant of the communications facility shall be given notice of such removal or relocation and an order requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than twenty (20) nor more than thirty (30) days in which to appear before the Town Council to contest the reasonableness of the order. Should the registrant not appear, the determination of the cost to the registrant shall be final, in accordance with F.S. § 337.404.
- (m) A final order of the Town shall constitute a lien on any property of the registrant and may be enforced by filing an authenticated copy of the order in the office of the clerk of the circuit court of the county wherein the registrant's property is located and/or by drawing upon the registrant's security fund and/or performance bond.
- (n) The Town retains the right and privilege to cut or move any communications facilities located within the public rights-of-way of the Town, as the Town may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Town shall attempt to notify the

registrant of the communications facility, if known, prior to cutting or removing a communications facility and shall notify the registrant of the communications facility, if known, after cutting or removing a facility.

- (o) The Town shall have the right to make such inspections of facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Ordinance. The Town shall have access without charge to any manholes or handholes at any time, of a communications services provider in which the Town has facilities, provided the Town has given such provider reasonable prior notice so that such provider can have trained personnel present when the accesses such manholes. Notwithstanding the foregoing, the Town, in the proper exercise of its municipal police powers and duties with respect to the public rights-of-way, shall have access to all manholes and handholes without charge of such provider. In the event the Town determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the Town will provide registrant no less than three days written notice setting forth the violation and requesting correction.
- (p) Following the completion of construction to place a new or replace an existing communications facility in the public rights-of-way, the registrant shall promptly provide revised plans and "as-builts" upon completion of any installation or construction. The plans shall be in a digitized format, showing the two-dimensional location of the facilities, based on the Town's geographical database or other format acceptable to the Town. The registrant shall provide such plans at no cost to the Town. The Town shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. §202.195, as it may be amended.
- (q) The Town reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other 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 Town in public rights-of-way occupied by the registrant. To the extent not inconsistent with applicable law, a registrant shall allow Town facilities to be collocated within Town's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and Town and may be subjected to other Town rights-of-way requirements. The Town further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the Town and within said limits as same may from time to time be altered.
- (r) A registrant shall, on the request of any person holding a permit issued by the Town, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given

not less than 30-days advance written notice to arrange for such temporary relocation. If the Town requests a temporary raising or lowering of a facility for a public purpose, the Town shall not be charged for the temporary raising or lowering of the facility.

- (s) This Ordinance 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.
- (t) **Abandonment.** Upon determination by a registrant or communications services provider that one or more of its communications facilities in the public rights-of-way is to be abandoned, the provider shall notify the Town no later than ninety (90) days from such determination, or no later than thirty (30) days following such abandonment, whichever is sooner. The Town may independently establish that a communications facility has been abandoned. In reaching such determination, the Town may request documentation and/or affidavits from the communications services provider or registrant regarding the active use of the facility. If the provider or registrant fails to provide the requested documentation within thirty (30) days, a rebuttable presumption shall exist that the provider or registrant has abandoned the communications facility. Any small wireless facility, micro wireless facility, utility pole for collocation of a small wireless facility, or other communications facility installed within the public rights-of-way that is abandoned shall be removed by the registrant or communications services provider at its expense within thirty (30) days of receipt of notice from the Town. Failure to remove an abandoned facility within the thirty (30) days' period shall be deemed to be the registrant's or communications provider's consent for the Town to remove the facility at the registrant's or provider's expense or for the Town to allow another person to remove the facility at the registrant's or provider's expense. The communications services provider or registrant shall be responsible for all damage to the public rights-of-way and any facilities or utilities damaged as a result of such removal, and shall restore the public rights-of-way as required in this subsection. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility. Notwithstanding the foregoing, if the facility is attached to an existing structure that has an independent function such as a light pole, intersection signal, pedestrian signal, utility pole or the like, said abandonment of the facility requires removal of the facility only and does not require the removal of the existing structure.

**22.25 Development And Objective Design Standards for the Placement Or Maintenance Of Communications Facilities In The Public-Rights-Of-Way.**

- (a) Terms and conditions for collocation on town utility poles.
  - (1) The Town shall not enter into an exclusive arrangement with any person for the right to attach equipment to Town utility poles. The Town reserves the

right to enter into agreements for collocation on Town utility poles in its discretion.

- (2) Reservation of space on a town utility poles. The Town may reserve space on Town utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the Town 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 make-ready provisions and the replaced pole shall accommodate the future public safety use. The replaced pole shall continue to be owned by the Town.
- (3) The rate to collocate a small wireless facility on a Town utility pole shall be one-hundred fifty dollars (\$150) per pole annually, or the highest rate authorized by applicable law. This amount shall not be deducted from any fees or taxes that may be due to the Town. The fee shall be paid upon the Town's issuance of a permit to collocate a small wireless facility on a Town utility pole and annually thereafter.
- (4) Agreements between the Town and wireless providers that were in effect on July 1, 2017, and that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on Town utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this Ordinance for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.
- (5) For a Town utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. §224 and implementing regulations. The good faith estimate of the Town for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.
- (6) For a Town utility pole that does not support an aerial facility used to provide communications services or electric service, the Town shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the Town may require the applicant seeking to collocate a 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 Town may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the Town .

- (7) The Town 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.
  - (8) A collocation of a small wireless facility on a Town utility pole shall comply with all applicable codes including this Ordinance, and shall not compromise the Town utility pole's finish, functionality, or structural integrity particularly with respect to vulnerability to high velocity wind conditions.
  - (9) A collocation of a small wireless facility on a Town utility pole shall not affect the Town's ability to remove or to replace the pole in its sole discretion. Within thirty (30) days after receiving notification that the Town intends to remove or to replace the utility pole, the registrant shall remove its collocated small wireless facility at its cost.
- (b) Location context and public safety regulations. A proposed communications facility shall comply with the following location context requirements for public safety unless waived by the Town.
- (1) A registrant shall comply with and abide by all applicable provisions of the state law and Town ordinances, applicable codes and regulations and applicable provisions of federal statutes, FCC regulations and PSC regulations in placing or maintaining a communications facility in the public rights-of-way. Wireless facilities shall be considered to be structures under the Florida Building Code, Building Risk Category IV, Structures, Chapter 16 Section 1620 – 1621, High Velocity Hurricane Zone Area.
  - (2) All communications facilities shall be placed and maintained so as not to interfere with, create any safety hazard, or create a visual obstruction to the traveling public's the use of the public rights-of-way or the use of bicycle lanes or multipurpose trails.
  - (3) For public safety purposes, aboveground communications facilities,

including but not limited to, small wireless facilities, micro wireless facilities and utility poles for collocation of small wireless facilities, shall not be placed or maintained on multipurpose trails.

- (4) Communications facilities shall be placed between the property line and the edge of pavement line of a street and shall not be located within a clear zone.
- (5) All communications facilities shall be placed and maintained so as not to cause unreasonable interference with the rights and convenience of property owners who abut any of the public rights-of-way. By way of example, the placement or maintenance of a communications facility in the public rights-of-way shall not cause excessive noise to adjacent properties, shall not impede ingress and egress to adjacent properties, materially block views from or into a business or residence, or materially block visibility of address or other signage on abutting properties.
- (6) A registrant shall not place or maintain its communications facilities to interfere, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the Town or any other person's facilities lawfully occupying the public rights-of-way of the Town.
- (7) The Town may prohibit or limit the placement of new or additional communications facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities in that area of the public rights-of-way, to safely accommodate additional installations at any location, for the protection of or access to existing facilities or utilities in the public rights-of-way, or to accommodate Town plans for public improvements, other approved capital improvements projects as part of the Town Comprehensive Plan or budget, or projects the Town determines are in the public interest. The Town's Transportation and Surface Drainage and Ongoing Rehabilitation program constitutes a public improvement program pursuant to this subsection where the placement of facilities may not be allowed in certain locations of the public rights-of-way or facilities may be required to be removed pursuant to notice by the Town Administrator to accommodate this program.
- (8) Facilities to be installed underground.
  - (a) All facilities shall be subject to the Town's non-discriminatory undergrounding requirements that prohibit above-ground structures in the public rights-of-way. All communications facilities shall be placed underground, to the extent that utilities other than fire hydrants, including electric and communications utilities, are required to be located underground. To the extent required by applicable PSC rules and regulations or court order, a registrant shall install its facilities underground. Additionally, a registrant shall

endeavor to place all facilities underground unless prevented from doing so by existing technology or by the physical characteristics of the installation location.

- (b) A permit from the Town does not create any right to place or to maintain utility poles for the collocation of small wireless facilities or collocated wireless facilities including small wireless facilities on utility poles when electric and communications utilities in the location of the proposed facility are required to be installed underground.
- (c) Wireline fiber or coaxial backhaul facilities for small wireless facilities shall be installed underground consistent with applicable codes, unless waived by the Town.
- (d) Small wireless facilities and utility poles intended to support the collocation of a small wireless facility in the public rights-of-way shall not be placed in locations subject to the Town's nondiscriminatory undergrounding requirements that prohibit aboveground utilities in the public rights-of-way. Any such requirements may be waived by the Town. For purposes of this subsection, adoption of a final resolution by the Town Council shall constitute an undergrounding requirement over any area of the public rights-of-way. This subsection 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 if the Town notifies the registrant of the micro wireless facility that aerial communications or electric distribution utilities will be converted to underground utilities, the registrant shall remove its micro wireless facility at its expense within the time frame required by the Town. In addition, no utility poles for the collocation of small wireless facilities, micro wireless facilities, small wireless facilities, or collocated small wireless facilities on utility poles shall be placed in a location in the public rights-of-way where the Town Council has determined that existing above ground electric and communications utilities in such location should be removed and relocated underground. The presence of small wireless facilities or micro wireless facilities shall not be a basis not to comply with the Town's requirements to convert above ground utilities to underground. To comply with the Town's undergrounding requirements, a registrant shall remove its small wireless facilities, micro wireless facilities, and utility poles for collocation of small wireless facilities at its expense within 60 days of being notified by the Town that such facilities must be removed. The Town shall have the right to remove such facilities at the registrant's expense if the registrant fails to do so.

- (9) Prohibition against placement in violation of OSHA or NESC or NERC rules and regulations. Communications facilities, including but not limited to small wireless facilities and utility poles for the collocation of small wireless facilities shall not be placed in a location which violates rules and regulations set by Occupational Safety and Health Administration or the National Electrical Safety Code or the North American Electric Reliability Corporation standards. By way of example and not limitation, a small wireless facility or utility pole intended to support the collocation of a small wireless facility may not be placed within a ten (10) foot radius of an electric distribution facility or within a twenty (20) foot radius of an electric transmission line.
- (10) No communications facilities, including but not limited to small wireless facilities or utility poles for the collocation of small wireless facilities shall be placed or maintained in any location that is subject to or that would interfere with the Town's master tertiary drainage plan, adopted by Resolution 2005-008, as it may be amended, unless waived by the Town.
- (11) Prohibition against placement within a location subject to homeowners' association restrictions. Small wireless facilities shall not be placed in a location subject to covenants, restrictions, articles of incorporation, or bylaws of a homeowners' association unless specifically authorized by the homeowners' association. For purposes of this subsection, a location in a public right-of-way that abuts parcels within a homeowners' association on both sides of its width shall be considered a location subject to covenants, restrictions, articles of incorporation, or bylaws of such homeowners' association. This subsection shall not apply to limit the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facility.
- (12) Placement in relation to adjacent uses of property and building facades thereon. Where parking and/or loading spaces are not permitted between a building façade and the corresponding property line (i.e. front façade and front property line, side street façade and side street property line) by design standard, or such spaces do not exist in those locations on existing properties, new communication facilities and new utility poles for collocation of small wireless facilities shall be placed in-line with the common, interior side lot lines and shall not be placed in-line with the front/principal façade of a residence, place of business, or any other principal use building located on property that abuts the public-right-of-way.
- (13) Placement within a scenic or gateway corridor. Unless otherwise authorized by a franchise agreement or for public safety purposes, no new wireless

facilities, small wireless facilities or new utility poles for collocation of small wireless facilities shall be placed within a designated scenic or gateway corridor, as described in the Town Comprehensive Plan, as it may be amended.

- (14) A structure granted a permit and installed pursuant to this Section shall comply with Chapter 333, F.S., and federal regulations pertaining to airport airspace protections.
- (15) Historic preservation. This Ordinance does not limit the Town's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such laws. Communications facilities shall not be collocated on nor interfere with historic property or landmark that may be within or adjacent to the public rights-of-way unless waived by the Town. Small wireless facilities, utility poles for the collocation of small wireless facilities and micro wireless facilities shall not be located in a manner that would impact negatively historic property unless waived by the Town. Historic properties may be so designated as being listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, a property within a National Register-listed district, or individually listed in the Town Register of Historic Places, pursuant to Town ordinance.

(c) Objective design standards.

- (1) Intent and purpose. Small wireless facilities in the public rights-of-way and utility poles installed or repurposed in the public rights-of-way for collocation of small wireless facilities shall be designed in such a manner to maximize compatibility with the surrounding neighborhood and to minimize any negative visual impact on the surrounding neighborhood. The objective design standards contained in this Ordinance regulating the location context, color, stealth design, and concealment of the proposed small wireless facility shall apply, unless waived by the Town.
- (2) Applicants shall not place or maintain signage on communications facilities, including small wireless facilities or utility poles for collocation of small wireless facilities, in public rights-of-way, unless otherwise required by federal or State law, provided; however, existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law.
- (3) A small wireless facility shall not have any type of lighted signal, lights, or illuminations unless required by applicable codes, local codes or

regulations, a permit issued by the Town, or state and federal laws and regulations or as permitted by the Town.

- (4) Stealth design for new or replaced utility poles for collocation of small wireless facilities. All proposed new or replaced utility poles for collocation of small wireless facilities shall meet the design standards contained in this subsection unless waived by the Town.
  - (a) A replaced or restructured utility pole to accommodate the collocation of a small wireless facility shall be located substantially in the same location as the original utility pole.
  - (b) The replaced or restructured utility pole shall be substantially similar in finish, design and composition as the original pole being replaced, unless the Town requires a different design, color or composition to be consistent with Town standards for new utility poles.
  - (c) Unless waived by the Town, the height for a new utility pole or replaced utility pole installed pursuant to this Ordinance shall not exceed the height of the tallest existing utility pole as of July 1, 2017, in the same right-of-way, 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 in the same public right-of-way as of July 1, 2017, the height shall be limited to 50 feet measured from grade. Height shall include only the height of the utility pole and shall not include any light, antennas, masts or other attachments to the utility pole. This subsection does not authorize the installation of a new utility pole for collocation of a small wireless facility if the proposed location is subject to the Town's location context regulations.
  - (d) A new utility pole shall be designed to blend in with other utility poles in the same block or vicinity of the public rights-of-way. By way of example, if existing utility poles in the same area of the public rights-of-way are light poles, the new utility pole should be designed consistent with such light poles and to the extent consistent with location context regulations, equidistant between existing poles. Unless waived by the Town, any such stealth utility pole for collocation of a small wireless facility shall function in the same manner as the facility it is intended to resemble in compliance with the Town Code, at the expense of the registrant. A new utility pole shall not contain any functioning light unless allowed by the Town consistent with the Town Code or required by applicable law..
  - (e) The design of the base of a new or replaced utility pole shall match

the base of adjacent utility poles within the public rights-of-way.

- (f) The color finish of a new utility pole shall be faux wood grain similar to the color finish of utility poles depicted on the Town's website to the extent technically feasible and not inconsistent with applicable codes.
  - (g) If there are no existing utility poles adjacent to or in close proximity to a proposed new utility pole for collocation, the new utility pole shall be a Louis Poulsen Nyhavn Park Pole, or substantially similar to such pole, which can be described in greater detail by the Town Administrator. Alternatively, the proposed new utility pole shall be designed as a round, metal non-fluted pole, not to exceed twelve (12) inches in diameter with the pole base to be installed beneath the finished grade.
- (5) Stealth design for collocation of small wireless facilities.
- (a) Wires, cables, conduit, and equipment to be collocated on a utility pole shall be within the utility pole or if not possible to being installed within the utility pole, covered with a shroud. No exposed wires or cables are permitted. Painted or unpainted conduit shall not be attached to the outside of a utility pole. A small wireless facility and shroud to be collocated on a utility pole that has a faux wood grain finish in accordance with subsection 4(f) above, shall have the same faux wood grain finish to the extent not inconsistent with applicable codes.
  - (b) If the utility pole for the proposed collocation of a small wireless facility is a light pole, a street light fixture substantially similar in design to the existing street light fixture shall be used to camouflage the small wireless facility such as through replacement of the cobra head with a new cobra head containing the small wireless facility, or a side-mounted light may be replaced with a substantially similarly designed side mounted light containing the small wireless facility. Unless consistent with the design of the utility pole, a small wireless facility shall not be collocated on a mast of a utility pole. In no event shall a small wireless facility be collocated on the mast of a pole that serves as a traffic signal pole. Any street light fixture installed by the registrant shall be maintained in good working order by the registrant at its cost.
  - (c) Slim design shall be used wherein the top mounted antenna does not exceed the diameter of the supporting utility pole by more than twelve (12) inches at the level of the antenna attachment, and side

mounted enclosures, if any, do not extend more than thirty (30) inches beyond the exterior dimensions of the existing structure, repurposed structure or utility pole at the level of antenna attachment measured from the edge of the pole to the outermost surface of the antenna.

- (d) Maximum height restrictions. A small wireless facility, including any attached antennas, shall not exceed ten (10) feet above the existing structure, repurposed structure or utility pole upon which the small wireless facility is to be collocated. A small wireless facility in the public rights-of-way shall not be used for the attachment of any communications facilities or fiber other than the equipment included within the small wireless facility.
- (6) Small wireless facilities not collocated on utility poles or existing structures.
- (a) Ground-mounted small wireless facilities greater than 6 cu. ft. in dimension shall be located within a ten (10) foot radius of the existing structure or utility pole for the collocated small wireless facility. Pursuant to Section 337.401(7)(b)(2), F.S., ground mounted equipment for a small wireless facility is to be reasonably spaced at least 200 feet from other ground mounted equipment in the public rights-of-way, unless waived by the Town.
  - (b) The ground-mounted small wireless facility shall be architecturally designed and of the same materials and color finish to resemble other at-grade public rights-of-way infrastructure such as waste receptacles or utility facilities in the public rights-of-way, except as provided in subsection (c) herein.
  - (c) To the extent not inconsistent with applicable codes, at the Town's direction, ground mounted small wireless facilities shall be enclosed in a wrap that has been approved by the Town's Rural Public Arts and Design Advisory Board. The registrant shall maintain the wrap in good condition at its sole cost and expense.
  - (d) To the extent not inconsistent with applicable codes, at the Town's direction the registrant owner of a ground mounted small wireless facility in the public rights-of-way shall conceal the facility with landscaping and plantings. Landscaping and plantings pursuant to this subsection shall be subject to the Town's approval and be maintained by the registrant at its sole cost and expense consistent with Article 75, Landscaping Requirements of the Town Unified Land Development Code, as it may be amended, for so long as the small wireless facility remains in the public rights-of-way.

- (e) The Town Administrator is authorized to create a manual showing figures of acceptable and unacceptable designs for facilities to be placed or maintained in the public rights-of-way.
- (7) Development standards for communications facilities other than small wireless facilities and utility poles for collocation of small wireless facilities.
- (a) Dimensional limits. No communications facility located aboveground, excluding utility poles, having exterior dimensions greater than four feet high, by four and one-half feet long, by two and one-half feet wide, or having a total volume exceeding 45 cubic feet, shall be granted a permit for construction or installation nor shall be constructed within the corporate limits of the Town on any public rights-of-way unless:
    - (1) The communication service provider can properly demonstrate in its permit application for placement of communication facilities in the public rights-of-way that strict compliance with the dimensional limits in this subsection will prevent the communications service provider from installing, constructing, maintaining, or providing its communications network; and
    - (2) The communication service provider demonstrates in its permit application that the proposed communications facilities it desires to construct which exceeds the dimensional limits set forth above in this subsection are necessary to provide adequate capacity to meet the requirements of the applicant at a specific location, or that said limits are otherwise technologically infeasible at the location, and that the proposed equipment the service provider desires to utilize is of the minimum size available to meet the requirements of the applicant's communications network; and
    - (3) The communications service provider demonstrates in its permit application that the proposed communications facilities are located and composed in a manner to minimize adverse impacts to abutting properties and the surrounding neighborhood and does not create a hazard by impairment of visibility to motorists or pedestrians at the proposed site and does not negatively impact or violate location and other regulations contained in this Ordinance: and
    - (4) The communications facilities proposed by the

communications provider does not otherwise create a hazard to the public health, safety and welfare

- (b) Notice to residential areas. Whenever a communications service provider subject to this subsection (7) submits a permit application to locate communications equipment which exceeds the dimensional limits in this subsection within residentially-zoned districts in the Town, the applicant shall provide notice by posting an 18" x 24" sign, satisfactory to the Town, at the proposed location advising residents that they may review the permit application at the Town and provide their comments to the Town. The sign shall be posted a minimum of 14 days prior to any decision being made on the permit application to allow adequate time for input by residents and so as not to unduly delay the processing of any application.

**22.26. Fees and Taxes for Access to Public Rights-of-Way.**

- (a) A registrant that places or maintains communications facilities in the public rights-of-way shall be required to pay fees and taxes as required by applicable law and ordinances of the Town, including this Ordinance.
- (b) Pass-through providers shall pay to the Town on an annual basis an amount equal to five hundred dollars (\$500.00) per linear mile or portion thereof of communications facilities placed and/or maintained in the public rights-of-way. The amounts charged pursuant to this Ordinance shall be based on the linear miles of public rights-of-way or portion thereof, where communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.
- (c) The Town shall discontinue charging pass-through provider fees to a person that has ceased being a pass-through provider. any annual amounts charged shall be reduced for a prorated portion of any 12-month period during which the pass-through provider remits communications services taxes imposed by the Town pursuant to Chapter 202, F.S., as amended.
- (d) The initial amount of pass-through provider fees shall be paid prior to issuance of a permit to a pass-through provider based on the facilities authorized to be installed in the public rights-of-way pursuant to the permit. The amount due may be modified based upon the as-builts submitted by the pass-through provider. Subsequent annual payments of pass-through provider fees shall be due and payable on March 1 of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the Town shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the Town may have for additional sums due and payable. All fee payments shall

be subject to audit by the Town, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the Town, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made.

- (e) If the payments required by this Section are not made within ninety (90) days after the due date, the Town may withhold the issuance of any permits to the registrant until the amount past due is paid in full, in addition to any other remedies available pursuant to this Ordinance and applicable law, including but not limited to drawing upon a registrant's security fund and/or performance bond.
- (f) To the extent consist with applicable law, the Town shall not charge fees for registrations and permits pursuant to this Ordinance.

**22.27. Enforcement Remedies.**

- (a) Nothing in this Ordinance shall affect or limit the remedies the Town has available under applicable law. In addition to any other remedies available at law, including but not limited to F.S. §§166.0415(municipalities) and Ch. 162, (municipalities and counties), or equity or provided in this section, the Town may apply any one or combination of the following remedies in the event a registrant violates this Ordinance, or applicable local law or order related to the public rights-of-way.
- (b) In addition to the Town's ability to terminate a registration pursuant to Section 22.20(f) or to deny, suspend or revoke permits pursuant to Section 22.22(d), the failure to comply with the provisions of this Ordinance or other law applicable to occupants of the public rights-of-way may result in imposition of penalties to be paid by the responsible person to the Town in an amount of not less than \$250.00 per day or part thereof that the violation continues. A registrant's or person's failure to obtain a permit before commencing work, except where a permit is not required pursuant to this Ordinance, may result in imposition of penalties to be paid to the Town in an amount pursuant to the Town Code and applicable law, per day or part thereof that the violation continues.
- (c) In addition to or instead of any other remedy, the Town may seek legal or equitable relief from any court of competent jurisdiction.
- (d) Before imposing a fine, the Town shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the person shall have 30 days to either:
  - ii. Cure the violation to the Town's satisfaction, and the Town shall make good faith reasonable efforts to assist in resolving the violation; or
  - iii. File an appeal with the Town to contest the alleged violation pursuant to this Section, which shall govern such appeal. If no appeal is filed and if the

violation is not cured within the 30-day period, the Town may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.

- (e) In determining which remedy or remedies are appropriate, the Town or hearing officer shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required to prevent further violations, and such other matters as the Town or hearing officer determines are appropriate to the public interest.
- (f) Failure of the Town to enforce any requirements of this Ordinance shall not constitute a waiver of the Town's right to enforce that violation or subsequent violations of the same type, or to seek appropriate enforcement remedies.
- (g) In any proceeding before the Town where there exists an issue with respect to a registrant's performance of its obligations pursuant to this Ordinance, the registrant 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 Town may find a registrant that does not demonstrate compliance with the terms and conditions of this Ordinance in default and apply any one or combination of the remedies otherwise authorized by this Section.
- (h) *Force majeure*. In the event a registrant's performance of or compliance with any of the provisions of this Ordinance is prevented by a *force majeure* cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such registrant uses all practicable means to cure or correct any such inability to comply expeditiously.

**SECTION 4.** The provisions of this ordinance shall be included and incorporated in the Southwest Ranches Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Southwest Ranches Code.

**SECTION 5.** If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

**SECTION 6.** All ordinances or parts of ordinances inconsistent or in conflict herewith are hereby repealed to the extent of any conflict. Any moratorium, zoning in progress, or other temporary abatement on the Town accepting or processing applications for permits for wireless facilities in the public rights-of-way is hereby repealed upon the effective date of this Ordinance.

**SECTION 7.** This Ordinance shall become effective immediately upon the date of its adoption herein.

**PASSED ON FIRST READING** this 26<sup>TH</sup> day of April , 2018 on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**PASSED ON SECOND READING** this \_\_\_ day of \_\_\_\_\_, 2018 on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

McKay \_\_\_\_\_  
Fisikelli \_\_\_\_\_  
Breitkreuz \_\_\_\_\_  
Jablonski \_\_\_\_\_  
Schroeder \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

\_\_\_\_\_  
Doug McKay, Mayor

Attest:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith Poliakoff, Town Attorney114849027.1



Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330-2628

(954) 434-0008 Town Hall  
(954) 434-1490 Fax

Town Council  
Doug McKay, *Mayor*  
Steve Breitkreuz, *Vice Mayor*  
Freddy Fisikelli, *Council Member*  
Gary Jablonski, *Council Member*  
Denise Schroeder, *Council Member*

Andrew D. Berns, *Town Administrator*  
Keith M. Poliakoff, *JD, Town Attorney*  
Russell Muniz, *Assistant Town Administrator/Town Clerk*  
Martin D. Sherwood, *CPA, CGMA, CGFO, Town Financial Administrator*

## COUNCIL MEMORANDUM

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Russell Muñoz, Assistant Town Administrator/Town Clerk  
**DATE:** 5/24/2018  
**SUBJECT:** Gas Tax Agreements

### Recommendation

Town Council consideration of a motion to approve the resolution incorporating two 2018 amendments to Broward County Interlocal Agreements (Exhibit 1, and 2) for the distribution of gas taxes.

### Strategic Priorities

A. Sound Governance

D. Improved Infrastructure

### Background

Currently, the Town of Southwest Ranches receives gas tax revenue via three Interlocal Agreements with Broward County, which collects gas tax, on behalf of the municipalities, from the sale of every gallon of motor fuel and special fuel sold in Broward County. These proceeds are then redistributed to all participating municipalities within the County based upon individual municipal populations. Each of these agreements provides that the rates for redistribution of proceeds shall be adjusted annually based upon the population figures listed in the current "Florida Estimates of Population" as published by the Bureau of Economics and Business Research, Population Division, University of Florida. Due to the earlier expiration of the six cent local option gas tax, the County requested that all municipalities execute that agreement earlier this year. Pursuant to Resolution 2018-045 approved on March 22, 2018 the Town entered into the interlocal agreement for the distribution of such proceeds. The

Town now must execute two additional interlocal agreements for the distribution of the "additional" and "transit gas tax" agreements.

The two interlocal Agreements and amendments are described below:

1. The "additional" local option gas tax agreement adopted in 1994 now provides for Cities to receive 51.27% of three cents of gas tax. The Cities' share of this gas tax has increased over the years due to annexations, however, there were no annexations of populated areas effective September 2013 so the Cities share of the three cents of gas tax will remain the same as last year. As a result, this amendment adjusts each City's percentage share of the 51.27% based on updated population figures.

2. The "transit gas tax" agreement adopted in 2001 provides for Cities to receive 26% of the proceeds of one cent of gas tax. This amendment includes adjustments to each City's percentage share based on updated population figures.

This resolution and the attached Interlocal Agreements serve to continue this important revenue stream to the Town.

### **Fiscal Impact/Analysis**

Below are the projected and historical percentage rates calculated by the County based upon the Town's population:

	<b><u>Fiscal Year 2017-2018</u></b>	<b><u>Fiscal Year 2018-2019</u></b>
Estimated Town Population	7,572	7,614
Broward County Population	1,854,513	1,873,970
Additional Local Option Gas Tax	0.211015%	0.209993%
Transit Local Option Gas Tax	0.107010%	0.106492%

The Town's estimated population increased to 7,614 from 7,572. The Town's estimated population percentage increase (.5547) was less than the overall Broward County municipal population percentage increase (1.049) therefore, the Town's shared percentage decreased (per the above table) on a year to year basis. Additionally, annual proceeds vary based on actual gasoline consumption within Broward County. However, assuming no change in consumption, it is estimated that gas taxes will decrease approximately \$205 and \$275 in Fiscal Year 2018-2019 for the additional, and transit local option gas taxes, respectively.

### **Staff Contact:**

Russell Muñiz, Assistant Town Administrator/Town Council  
Martin Sherwood, Town Financial Administrator

### **ATTACHMENTS:**

Description	Upload Date	Type
Gas Tax Reso - TA Approved May 24, 2018 Regular Meeting	5/16/2018	Resolution

Exhibit 1	5/18/2018	Agreement
Exhibit 2	5/18/2018	Agreement
Gas Tex Memo from County	5/18/2018	Backup Material

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**RESOLUTION NO. 2018 -**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING THE 2018 AMENDMENTS TO THE TWO (2) INTERLOCAL AGREEMENTS WITH BROWARD COUNTY PROVIDING FOR THE DIVISION AND DISTRIBUTION OF THE PROCEEDS OF THE BROWARD COUNTY FIFTH-CENT LOCAL OPTION GAS TAX, AND THE ADDITIONAL THIRD-CENT LOCAL OPTION GAS TAX; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE SAID AGREEMENTS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Broward County Commission enacted Ordinance #88-27 on June 14, 1988 to extend the levy of the six-cent local option gas tax upon every gallon of motor fuel and special fuel sold in Broward County; and

**WHEREAS**, the Broward County Commission enacted Ordinance #2000-25 on June 13, 2000 to extend the levy of the fifth-cent local option gas tax upon every gallon of motor fuel and special fuel sold in Broward County; and

**WHEREAS**, upon the creation of the municipality, the Town entered into an agreement with Broward County establishing its third-cent local option gas tax; and

**WHEREAS**, all three (3) Agreements provide that the population figures, which are the basis for the revenue, be adjusted annually based on the current "Florida Estimates of Population" as published by the Bureau of Economics and Business Research, Population Division, University of Florida; and

**WHEREAS**, on March 22, 2018 pursuant to Resolution 2018-045 the Town approved the interlocal agreement with Broward County for 2018-19 distribution of the Town's share of the proceeds from the sixth-cent local option gas tax; and

**WHEREAS**, this Agreement will provide funding for the 2018-19 fiscal year through the distribution of the Town's share of the proceeds from the fifth-cent local option gas tax in the amount of .106492% of the incorporated portion; and

**WHEREAS**, this Agreement will provide funding for the 2018-19 fiscal year through the distribution of the Town's share of the proceeds from the third-cent local option gas tax for transit in the amount of .209993% of the incorporated portion; and

**WHEREAS,** Section 336.025 (1)(a), Florida Statutes, requires the majority of the population of the incorporated areas within the County to approve an Interlocal Agreement in support of the distribution and methodology for the distribution to continue in its present form.

**NOW, THEREFORE, BE IT RESOLVED,** by the Town Council of the Town of Southwest Ranches, Florida:

**Section 1:** Recitals. The above-referenced recitals are true and correct and are incorporated herein by reference.

**Section 2:** The Town Council hereby approves the Interlocal Agreement with Broward County, substantially in the form of the Agreements attached as Exhibit "1," and "2," providing for the division and distribution of the proceeds of the local option gas tax.

**Section 3:** Authorization. The Mayor, Town Administrator and Town Attorney are hereby authorized to enter into the Interlocal Agreement with Broward County, substantially in the form of the Agreements attached as Exhibit "1," and "2," providing for the division and distribution of the proceeds of the local option gas tax and to make such modifications, additions and/or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

**Section 4:** Effective Date. This Resolution shall become effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest

Ranches, Florida, this 24<sup>th</sup> day of May, 2018 on a motion by

\_\_\_\_\_ and seconded by \_\_\_\_\_.

McKay	<u>Yes</u>	Ayes	_____
Breitkreuz	<u>Yes</u>	Nays	_____
Fisikelli	<u>Yes</u>	Absent	_____
Jablonski	<u>Yes</u>		
Schroeder	<u>Yes</u>		

**[Signatures on Following Page]**

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Doug McKay, Mayor

ATTEST:

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Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

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Keith M. Poliakoff, J.D., Town Attorney

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**2018 AMENDMENT TO INTERLOCAL AGREEMENT PROVIDING FOR DIVISION AND DISTRIBUTION OF THE PROCEEDS FROM THE BROWARD COUNTY ADDITIONAL LOCAL OPTION GAS TAX ON MOTOR FUEL ORDINANCE**

This 2018 Amendment to Interlocal Agreement is entered into by and between Broward County, a political subdivision of the State of Florida (the "County") and the municipalities executing a signature page bearing the above legend, each of which is a municipal corporation existing under the laws of the State of Florida (the "Municipalities").

**RECITALS**

- A. Section 336.025(1)(b), Florida Statutes, authorizes the counties to extend the levy of the additional local option gas tax upon every gallon of motor fuel sold in Broward County for a period not to exceed thirty (30) years on a majority vote of the governing body of the County; and
- B. The Board of County Commissioners enacted Section 31½-38, Broward County Code of Ordinances, effective January 1, 1994, through December 31, 2024, pursuant to Section 336.025(1)(b), Florida Statutes, imposing the levy of the three-cent (\$.03) local option fuel tax for thirty years and providing for a method of distribution of the proceeds of the tax; and
- C. Pursuant to said Ordinance, the method for distribution of the proceeds is the execution of an Interlocal Agreement with one or more of the municipalities representing a majority of the population of the incorporated area within the County which establishes the distribution formulas for dividing the proceeds of the tax among the County and all eligible municipalities within the County; and
- D. Paragraph 3 of the Interlocal Agreement requires annual adjustment of the population of the individual municipalities and unincorporated Broward County in accordance with the population figures set forth in the most current edition of "Florida Estimates of Population," published by the Bureau of Economics and Business Research, Population Division, University of Florida;

NOW, THEREFORE, for good and valuable consideration, and pursuant to the authorization of Section 336.025(1)(b)2, Florida Statutes, the County and Municipalities agree as follows:

- 1. Paragraph 2 of the Interlocal Agreement, as previously amended, is hereby amended to read:
  - 2. Forty-eight and Seventy-three One-hundredths percent (48.73%) of the total proceeds from the Broward County Additional Local Option Gas Tax on Motor Fuel Ordinance shall be distributed to the County and the remaining Fifty-one and Twenty-seven One-hundredths percent (51.27%) of the total proceeds

shall be divided among and distributed to the eligible municipalities within the County as follows:

$$\frac{\text{Population of Individual Municipality}}{\text{Total Incorporated Area Population}} \times 51.27\% =$$

<b>Recipient</b>	<b>FY19 Percent Share of Proceeds</b>
Coconut Creek	1.582947%
Cooper City	0.931042%
Coral Springs	3.513152%
Dania	0.868021%
Davie	2.776990%
Deerfield Beach	2.152389%
Fort Lauderdale	4.938536%
Hallandale	1.068610%
Hillsboro Beach	0.052705%
Hollywood	4.060089%
Lauderdale-by-the-Sea	0.170306%
Lauderdale Lakes	0.967888%
Lauderhill	1.963081%
Lazy Lake	0.000719%
Lighthouse Point	0.290306%
Margate	1.598557%
Miramar	3.757648%
North Lauderdale	1.224767%
Oakland Park	1.224795%
Parkland	0.868104%
Pembroke Park	0.175629%
Pembroke Pines	4.498361%
Plantation	2.444101%
Pompano Beach	3.018369%
Sea Ranch Lakes	0.019085%
Southwest Ranches	0.209993%
Sunrise	2.533625%
Tamarac	1.762630%
Weston	1.837068%
West Park	0.411271%
Wilton Manors	0.349216%
<b>Total Incorporated</b>	<b>51.270000%</b>

2. Paragraph 3 of the Interlocal Agreement, as previously amended, is hereby amended to read:

3. The population figures set out herein are based on the figures contained in the document referred to as the "Florida Estimates of Population," published on an annual basis by the Bureau of Economics and Business Research, Population Division, University of Florida. The population figures to be utilized in the formula described in Paragraph 2 of this Interlocal Agreement, for the division and distribution of the proceeds from the Broward County Additional Local Option Gas Tax on Motor Fuel Ordinance, shall be adjusted annually based on the then-current "Florida Estimates of Population."

For the purpose of this Agreement, the following population figures are hereby agreed upon by the parties hereto:

<b>Recipient</b>	<b>FY19 Population</b>
Coconut Creek	57,395
Cooper City	33,758
Coral Springs	127,381
Dania	31,473
Davie	100,689
Deerfield Beach	78,042
Fort Lauderdale	179,063
Hallandale	38,746
Hillsboro Beach	1,911
Hollywood	147,212
Lauderdale-by-the-Sea	6,175
Lauderdale Lakes	35,094
Lauderhill	71,178
Lazy Lake	26
Lighthouse Point	10,526
Margate	57,961
Miramar	136,246
North Lauderdale	44,408
Oakland Park	44,409
Parkland	31,476
Pembroke Park	6,368
Pembroke Pines	163,103
Plantation	88,619
Pompano Beach	109,441

Sea Ranch Lakes	692
Southwest Ranches	7,614
Sunrise	91,865
Tamarac	63,910
Weston	66,609
West Park	14,912
Wilton Manors	12,662
<b>Total Incorporated</b>	<b>1,858,964</b>
<b>Unincorporated Area</b>	<b>15,006</b>
<b>Total County</b>	<b>1,873,970</b>

3. This 2018 Amendment to Interlocal Agreement shall be effective as of the date it is executed by the County after having previously been executed by eligible municipalities cumulatively representing a majority of the incorporated area population of the County; the amended population figures and share of proceeds shall take effect as provided by applicable law.

4. In the event any provision within this 2018 Amendment to Interlocal Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless the County or any executing Municipality necessary to maintain the cumulative majority referenced in the preceding paragraph elects to terminate this Agreement. The election to terminate pursuant to this provision must be made within seven (7) days after such court ruling; provided, however, that if a timely notice appealing the court ruling is filed, the election shall be held in abeyance until the appeal is determined or dismissed.

5. Except to the extent amended, the Interlocal Agreement shall remain in full force and effect. In the event of any conflict between the terms of this 2018 Amendment and the Interlocal Agreement, as previously amended, the parties agree that this 2018 Amendment shall control.

6. This 2018 Amendment to Interlocal Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have made and executed this 2018 Amendment to the Interlocal Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on April 10th, 2018, and each MUNICIPALITY, signing by and through its \_\_\_\_\_, duly authorized to execute same.

**COUNTY**

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
Ex-Officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor

\_\_ day of \_\_\_\_\_, 2018

Approved as to form by:  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_  
Claudia Capdesuner  
Assistant County Attorney

Date: \_\_\_\_\_

By \_\_\_\_\_  
Angela J. Wallace  
Deputy County Attorney

Date: \_\_\_\_\_

**2018 AMENDMENT TO INTERLOCAL AGREEMENT PROVIDING FOR DIVISION AND DISTRIBUTION OF THE PROCEEDS FROM THE BROWARD COUNTY ADDITIONAL LOCAL OPTION GAS TAX ON MOTOR FUEL ORDINANCE**

**Town of Southwest Ranches**

WITNESSES:

Town of Southwest Ranches

\_\_\_\_\_

By \_\_\_\_\_  
Doug McKay, Mayor

\_\_\_\_\_

24<sup>th</sup> day of May, 2018.

ATTEST:

By \_\_\_\_\_  
Russell Muñiz,  
Assistant Town Administrator/Town Clerk

\_\_\_\_\_  
Andrew D. Berns, Town Administrator

24<sup>th</sup> day of May, 2018

(CORPORATE SEAL)

APPROVED AS TO FORM:

By \_\_\_\_\_  
Keith Poliakoff, Town Attorney

**2018 AMENDMENT TO INTERLOCAL AGREEMENT PROVIDING FOR DIVISION AND DISTRIBUTION OF THE PROCEEDS FROM THE BROWARD COUNTY FIFTH CENT ADDITIONAL LOCAL OPTION GAS TAX ON MOTOR FUEL FOR TRANSIT**

This 2018 Amendment to Interlocal Agreement is entered into by and between Broward County, a political subdivision of the State of Florida (the "County") and the municipalities executing a signature page bearing the above legend, each of which is a municipal corporation existing under the laws of the State of Florida (the "Municipalities").

**RECITALS**

- A. Section 336.025(1)(b), Florida Statutes, authorizes the counties to extend the levy of the additional local option gas tax upon every gallon of motor fuel sold in Broward County for a period not to exceed thirty (30) years on a majority vote of the governing body of the County; and
- B. On June 13, 2000, the Board of County Commissioners enacted Ordinance No. 2000-25, effective January 1, 2001, through December 31, 2031, pursuant to Section 336.025(1)(b), Florida Statutes, extending the levy of the fifth-cent local option gas tax for thirty years and providing for a method of distribution of the proceeds of the tax; and
- C. Pursuant to said Ordinance, the method for distribution of the proceeds is the execution of an Interlocal Agreement with one or more of the municipalities representing a majority of the population of the incorporated area within the County which establishes the distribution formulas for dividing the proceeds of the tax among the County and all eligible municipalities within the County; and
- D. Paragraph 4 of the Interlocal Agreement requires annual adjustment of the population of the individual municipalities and unincorporated Broward County in accordance with the population figures set forth in the most current edition of "Florida Estimates of Population," published by the Bureau of Economics and Business Research, Population Division, University of Florida;

NOW, THEREFORE, for good and valuable consideration, and pursuant to the authorization of paragraph Section 336.025(1)(b), Florida Statutes, the County and Municipalities agree as follows:

- 1. Paragraph 2 of the Interlocal Agreement, as previously amended, including section 2.1.2, is hereby amended to read as follows:

2.1 Seventy-four percent (74%) of said proceeds shall be distributed to the County, from which amount the County will retain forty-eight percent (48%) of the total proceeds and will distribute twenty-six percent (26%) of the total proceeds to the municipalities through grant agreements for Community Shuttle Services.

The remaining twenty-six percent (26%) shall be distributed to the eligible municipalities in the following manner:

$$\frac{\text{Population of Individual Municipality}}{\text{Total incorporated area Population}} \times 26.0000\%$$

<b>Recipient</b>	<b>FY19 Population</b>	<b>FY19 Percent Share of Proceeds</b>
Coconut Creek	57,395	0.802743%
Cooper City	33,758	0.472149%
Coral Springs	127,381	1.781587%
Dania	31,473	0.440190%
Davie	100,689	1.408265%
Deerfield Beach	78,042	1.091518%
Fort Lauderdale	179,063	2.504426%
Hallandale	38,746	0.541913%
Hillsboro Beach	1,911	0.026728%
Hollywood	147,212	2.058949%
Lauderdale-by-the-Sea	6,175	0.086365%
Lauderdale Lakes	35,094	0.490835%
Lauderhill	71,178	0.995516%
Lazy Lake	26	0.000363%
Lighthouse Point	10,526	0.147220%
Margate	57,961	0.810659%
Miramar	136,246	1.905575%
North Lauderdale	44,408	0.621103%
Oakland Park	44,409	0.621117%
Parkland	31,476	0.440232%
Pembroke Park	6,368	0.089065%
Pembroke Pines	163,103	2.281205%
Plantation	88,619	1.239451%
Pompano Beach	109,441	1.530673%
Sea Ranch Lakes	692	0.009679%
Southwest Ranches	7,614	0.106492%
Sunrise	91,865	1.284850%
Tamarac	63,910	0.893863%
Weston	66,609	0.931612%
West Park	14,912	0.208563%
Wilton Manors	12,662	0.177094%
<b>Total Incorporated</b>	<b>1,858,964</b>	<b>26.000000%</b>
<b>Unincorporated Area</b>	<b>15,006</b>	

<b>Total County</b>	<b>1,873,970</b>

The population figures set forth above are based on the figures contained in the document referred to as the "Florida Estimates of Population," published on an annual basis by the Bureau of Economic and Business Research, Population Division, of the University of Florida. The population figures to be utilized in the formula described in this section, for the distribution of the Fifth Cent, shall be adjusted annually based on the current Florida Estimates of Population.

2.1.2 As stated above, the other Twenty-six percent (26%) shall be distributed by the County to the Municipalities through grant agreements for Community Shuttle Services.

2. This 2018 Amendment to Interlocal Agreement shall be effective as of the date it is executed by the County after having previously been executed by eligible municipalities cumulatively representing a majority of the incorporated area population of the County; the amended population figures and share of proceeds shall take effect as provided by applicable law.

3. In the event any provision within this 2018 Amendment to Interlocal Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless the County or any executing Municipality necessary to maintain the cumulative majority referenced in the preceding paragraph elects to terminate this Agreement. The election to terminate pursuant to this provision must be made within seven (7) days after such court ruling; provided, however, that if a timely notice appealing the court ruling is filed, the election shall be held in abeyance until the appeal is determined or dismissed.

4. Except to the extent amended, the Interlocal Agreement shall remain in full force and effect. In the event of any conflict between the terms of this 2018 Amendment and the Interlocal Agreement, as previously amended, the parties hereby agree that this document shall control.

5. This 2018 Amendment to Interlocal Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

[THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have made and executed this 2018 Amendment to the Interlocal Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on April 10th, 2018, and each MUNICIPALITY, signing by and through its \_\_\_\_\_, duly authorized to execute same.

**COUNTY**

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
Ex-Officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor

\_\_ day of \_\_\_\_, 2018

Approved as to form by:  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_  
Claudia Capdesuner  
Assistant County Attorney

Date: \_\_\_\_\_

By \_\_\_\_\_  
Angela J. Wallace  
Deputy County Attorney

Date: \_\_\_\_\_

**2018 AMENDMENT TO INTERLOCAL AGREEMENT PROVIDING FOR DIVISION AND DISTRIBUTION OF THE PROCEEDS FROM THE BROWARD COUNTY FIFTH CENT ADDITIONAL LOCAL OPTION GAS TAX ON MOTOR FUEL FOR TRANSIT**

**Town of Southwest Ranches**

WITNESSES:

Town of Southwest Ranches

\_\_\_\_\_

By \_\_\_\_\_  
Doug McKay, Mayor

\_\_\_\_\_

24th day of May, 2018.

ATTEST:

By \_\_\_\_\_  
Russell Muñiz,  
Assistant Town Administrator/Town Clerk

\_\_\_\_\_  
Andrew D. Berns, Town Administrator

24<sup>th</sup> day of May, 2018

(CORPORATE SEAL)

APPROVED AS TO FORM:

By \_\_\_\_\_  
Keith Poliakoff, Town Attorney



**Office of Management and Budget**

115 S. Andrews Avenue, Room 404 • Fort Lauderdale, Florida 33301 • 954-357-6345 • FAX 954-357-6364

April 11, 2018

Dear Municipality:

Attached are the amendments to two interlocal gas tax agreements requiring approval by your municipal governing board no later than June 1, 2018. The two attached amendments for those gas tax agreements are required to adjust each City's percentage share based on updated population figures until they expire in 2024 and 2031. As a reminder, early this year the "Original" Local Option Gas Tax renewal for 30 years that your city received has gathered over 51% of population approval for renewal and will be going to the Board of County Commissioners for approval soon.

Summary of Amendments

The two interlocal agreements and amendments are described below:

- The "additional" local option gas tax agreement levied in 1994 provides for Cities to receive 51.27% of three cents of gas tax. The Cities' share of this gas tax has increased over the years due to annexations, however, there were no annexations of populated areas effective September 2017 so the Cities' share of the three cents of gas tax will remain the same as last year. As a result, this amendment adjusts each City's percentage share of the 51.27% based on updated population figures.
- The "transit gas tax" agreement levied in 2001 provides for Cities to receive 26% of the proceeds of one cent of gas tax. This amendment includes adjustments to each City's percentage share based on updated population figures.

Revisions to Population Figures

The two interlocal agreements provide for the distribution of gas taxes among the Cities based on population figures published annually by the University of Florida Bureau of Economics and Business Research. The interlocal agreements also provide for the population numbers to be revised annually using the most current published figures.

Please place the two amendments on the agenda for approval by the municipal governing board as soon as possible and only return the signed municipality signature pages to the County no later than June 1, 2018. If you have any questions about the amendments, please contact SunJin Zanker from the County's Office of Management and Budget at 954-357-6361.

Attached are copies of the above discussed amendments. Please keep one set of each executed 2018 amendment for your city records and return two original signature pages only of each amendment (four pages total) to:

Thomas Hutka, Director  
Broward County Public Works Department  
Attention: Highway and Bridge Maintenance Division  
1600 N.W. 30th Ave. (Blount Road)  
Pompano Beach, FL 33069  
Ph. (954) 357-6040

Sincerely,

Norman Foster, Director  
Office of Management and Budget  
Attachments

Broward County Board of County Commissioners

Mark D. Bogen • Beam Furr • Steve Geller • Dale V.C. Holness • Chip LaMarca • Nan H. Rich • Tim Ryan • Barbara Sharief • Michael Udine  
www.broward.org

**REGULAR MEETING MINUTES OF THE TOWN COUNCIL**  
**Southwest Ranches, Florida**

Thursday 7:00 PM

April 26, 2018

13400 Griffin Road

Present:

Mayor Doug McKay

Vice Mayor Freddy Fisikelli

Council Member Steve Breitkreuz

Council Member Gary Jablonski

Andy Berns, Town Administrator

Russell Muñiz, Assistant Town Administrator/Town Clerk

Martin D. Sherwood, Town Financial Administrator

Keith Poliakoff, Town Attorney

Regular Meeting of the Town Council of Southwest Ranches was held at 13400 Griffin Road in the Southwest Ranches Council Chambers. The meeting, having been properly noticed, was called to order by Mayor McKay at 7:02 PM. Attendance was noted by roll call and was followed by the Pledge of Allegiance.

The following motion was made by Council Member Breitkreuz, seconded by Council Member Jablonski and passed by a 4-0 roll call vote. The vote was as follows: Council Members Breitkreuz, Jablonski, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO EXCUSE COUNCIL MEMBER SCHROEDER.

**3. 2018 Legislative Session Update – Senator Lauren Book & Representative Richard Stark**

Senator Lauren Book presented the Town with a check in the amount of \$500,000 which represented an appropriation from the Legislature for a drainage project in Green Meadows that the Town had submitted for funding.

Representative Stark was also on hand to discuss other legislative priorities that were legislated during the session.

**4. Public Comment**

The following members of the public addressed the Town Council: None.

**5. Board Reports**

Newell Hollingsworth, Chair of the Comprehensive Planning Advisory Board announced, that a joint meeting would be held with the Drainage Infrastructure Advisory Board on Wednesday May 2<sup>nd</sup> to discuss nurseries in the Town. He indicated the purpose of the meeting was to gain resident input and make a recommendation to the Town Council.

**6. Council Member Comments**

Council Member Breitkreuz encouraged everyone to attend the joint meeting regarding the nurseries. He hoped to gain input from the residents as well as the nurseries to come up with a balanced approach to address these uses into the future.

Council Member Jablonski announced that a Household Hazardous Waste event was being held at Waste Pro's site in Pembroke Pines on May 12<sup>th</sup>. Bingo at the Barn would be held on May 19<sup>th</sup> at the Rolling Oaks Barn and encouraged all to attend. He announced that election qualifying would begin on June 18<sup>th</sup> and that he would be running for reelection. Lastly, he addressed allegations made at the last meeting by a resident that members of the Town Council were being blackmailed by CAP Government. The allegations made by that resident and others concerning excessive violation fees were incorrect and he cited inspection statistics to prove that CAP Government was not denying inspections excessively to increase their profits. Furthermore, he cited that the selection committee used by the Town to make the recommendation to select CAP Government was made up of independent industry professionals with no vested interest to CAP Government. He hoped that an apology would be made by the resident.

Mayor McKay spoke about his attendance at the Country Estates Barbecue wherein he noted the unsatisfactory condition of the ballfields. He asked the rest of the Council what they thought about the field. Council Member Breitzkreuz felt that the next step needed to be taken to get good fill and seed the fields. Vice Mayor Fisikelli wanted to see how much utilization of the field before the Town should spend a lot of money on it. Town Administrator Berns indicated that he had asked Town Engineer Rod Ley to look into this and calculate costs to improve the field. Based on adding 2 inches of fill the cost would be approximately \$26,000, and to go to 3 inches would cost approximately \$32,000. Mayor McKay asked Gay Chaples to offer some ideas. Mary Gay Chaples suggested stapling screening to the field and then adding fill over the top which is a method that has been used to keep the rocks and pebbles from rising to the surface.

## **7. Legal Comments**

Town Attorney Poliakoff introduced Gary Resnick who was on hand to discuss the Telecommunications Ordinance that would be discussed later in the meeting. He recently met with CCA's counsel regarding the case against Pembroke Pines. He spoke of a subpoena he received from the Sun Bergeron group and he would be representing the Town. Regarding the fire truck, a demand letter was sent to Rosenbauer in which a response was received on April 25<sup>th</sup>. He indicated that if nothing occurred as a result of this last ditch effort he would be recommending that the Town file suit against Rosenbauer for the damages for selling the Town a "lemon." Town Administrator Berns supplemented the discussion and indicated that Rosenbauer's position is that the Town has been negligent in following up on the issues which he vehemently disagreed with. He has tasked Chief Bennett with going through all of his email correspondence to retrieve all of the messages in which Rosenbauer was made aware of issues with the vehicles and their responses. He felt that this would help in the legal process.

## **8. Administration Comments**

Town Administrator Berns advised that there was a recent coyote sighting and asked residents not to shoot the animal if spotted but rather to contact the regional office for the Florida Wildlife Commission. Regarding the new fire station modular, he advised that the RVs had been delivered as well as the storage containers to begin the process of emptying out the current station. He anticipated site work to begin the week of May 7<sup>th</sup>. Lastly, he reminded everyone that on Saturday May 12<sup>th</sup> Newell Hollingsworth would be recognized as one of the Town's pioneers at the 44<sup>th</sup> Annual Pioneer Day celebration at Davie Town Hall.

Ordinance – 1<sup>st</sup> Reading

**9.** AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, VACATING, CLOSING AND ABANDONING A PORTION OF UNIMPROVED RIGHT-OF-WAY RECORDED AS THE WEST 20 FEET OF TRACTS 13 THROUGH 16, LESS THE SOUTH 40 FEET OF TRACT 16, EVERGLADE SUGAR & LAND CO. SUBDIVISION OF SECTION 34, TOWNSHIP 50 SOUTH, RANGE 40 EAST, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 152, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; GENERALLY LOCATED AT THE 13800 BLOCK OF STIRLING ROAD MIDWAY BETWEEN HANCOCK ROAD AND HOLATEE TRAIL AND EXTENDING 1,280.75 FEET NORTH OF STIRLING ROAD; AUTHORIZING THE PREPARATION AND EXECUTION OF EFFECTUATING DOCUMENTS; PROVIDING INSTRUCTIONS TO THE TOWN CLERK; PROVIDING FOR RECORDATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE. {Second Reading to be held on May 10, 2018}

The following motion was made by Vice Mayor Fisikelli, seconded by Council Member Breikreuz, and passed by 4-0 roll call vote. The vote was as follows: Council Members Breikreuz, Jablonski, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE ORDINANCE.

**10.** AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES FLORIDA AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHWEST RANCHES BY AMENDING ARTICLE III, CHAPTER 22, OF THE CODE, ENTITLED CABLE TELEVISION; AMENDING SECTION 22-88 OF THE CODE BY PROVIDING THAT A CERTIFICATEHOLDER AS DEFINED IN SECTION 610.103(1)(4), FLORIDA STATUTES, SHALL COMPLY WITH THE TOWN OF SOUTHWEST RANCHES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE, ARTICLE II, CHAPTER 22, SECTIONS 22.18-22.31 OF THE TOWN CODE, FOR PLACING OR MAINTAINING A CABLE SYSTEM OR FACILITIES IN THE TOWN PUBLIC RIGHTS-OF-WAY; REPEALING AND REPLACING ARTICLE II, CHAPTER 22, SECTIONS 22.19 – 22.31, ENTITLED "PLACEMENT OF FACILITIES IN RIGHTS-OF-WAY," WITH NEW SECTIONS 22.18-22.27 AND CREATING THE TOWN OF SOUTHWEST RANCHES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR A PERFORMANCE BOND; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND TAXES; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR REPEAL OF ZONING IN PROGRESS; AND PROVIDING AN EFFECTIVE DATE. {Second Reading to be held on May 10, 2018}

The following motion was made by Council Member Breitreuz, seconded by Council Member Jablonski, and passed by 4-0 roll call vote. The vote was as follows: Council Members Breitreuz, Jablonski, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE ORDINANCE.

#### Resolutions

**11.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A CHANGE ORDER WITH ADVANCED MODULAR STRUCTURES, INC. IN THE AMOUNT OF FOURTEEN THOUSAND FIVE HUNDRED THIRTY-ONE DOLLARS AND ZERO CENTS (\$14,531.00) TO UPGRADE THE ELECTRICAL WORK FOR THE FIRE MODULAR PROJECT AT 17220 GRIFFIN ROAD AND TO REMOVE AN EXISTING CANOPY; APPROVING A FISCAL YEAR 2017-2018 BUDGET AMENDMENT; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ISSUE A PURCHASE ORDER; AND PROVIDING FOR AN EFFECTIVE DATE.

The following motion was made by Council Member Breitreuz, seconded by Vice Mayor Fisikelli, and passed by 4-0 roll call vote. The vote was as follows: Council Members Breitreuz, Jablonski, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

**12.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT WITH THOMAS M. SQUARINI SERVICES, LLC FOR POLICE CIVILIAN COORDINATOR SERVICES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

The following motion was made by Council Member Breitreuz, seconded by Council Member Jablonski and passed by 4-0 roll call vote. The vote was as follows: Council Members Breitreuz, Jablonski, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

**13.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AUTHORIZING A NEW EMERGENCY LINE OF CREDIT NOTE IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$10,000,000, TO PROVIDE FINANCING TO MEET RECOVERY COSTS RELATING TO A DECLARED STATE OF EMERGENCY AFFECTING THE TOWN AND COSTS RELATED THERETO; COVENANTING TO REPAY SUCH NOTE FROM REIMBURSEMENTS RECEIVED BY THE TOWN FROM FEMA AND THE STATE OF FLORIDA, AND COVENANTING TO BUDGET AND APPROPRIATE FUNDS, FROM LEGALLY AVAILABLE NON-AD VALOREM REVENUES; AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT, LOAN NOTE AND SUCH OTHER LOAN DOCUMENTS DEEMED NECESSARY; TO REPAY SUCH NOTE; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

The following motion was made by Council Member Breitzkreuz, seconded by Vice Mayor Fisikelli and passed by 4-0 roll call vote. The vote was as follows: Council Members Breitzkreuz, Jablonski, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION IN AN AMOUNT NOT TO EXCEED \$10,000,000.

**14.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, ENACTING A ZONING IN PROGRESS FOR WIRELESS SERVICE FACILITIES AND PERSONAL WIRELESS SERVICE FACILITIES, AS DEFINED IN SECTION 365.172 F.S. AND 47 U.S.C. §332(c)(7)(C)(ii); ADDING INTO THE ZONING IN PROGRESS THE INSTALLTION OF FIBER FOR BACKHAUL, WITHIN THE TOWN'S RIGHTS-OF-WAY; DIRECTING TOWN STAFF TO DEFER THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS AND PROHIBITING THE ISSUANCE OF BUILDING PERMITS, DEVELOPMENT ORDERS, OR LOCAL BUSINESS TAX RECEIPTS UNTIL THE EARLIER OF THE DATE THE TOWN ADOPTS ITS CODE REVISIONS OR DECEMBER 31, 2018; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

The following motion was made by Council Member Breitzkreuz, seconded by Council Member Jablonski, and passed by 4-0 roll call vote. The vote was as follows: Council Members Breitzkreuz, Jablonski, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

Discussion

**15. Amendment to Ground Lease with Helen Homes of Weston Development, LLC**

The following motion was made by Council Member Breitreuz, seconded by Council Member Jablonski and passed by a 4-0 roll call vote. The vote was as follows: Council Members Breitreuz, Jablonski, Vice Mayor Fisikelli and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE AMENDMENT TO THE LEASE AGREEMENT.

**16. Approval of Minutes**  
**a. March 8, 2018 Regular Meeting**

The following motion was made by Council Member Jablonski, seconded by Council Member Breitreuz and passed by a 4-0 roll call vote. The vote was as follows: Council Members Breitreuz, Jablonski, Vice Mayor Fisikelli and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE MINUTES.

**17. Adjournment - Meeting was adjourned at 9:37 p.m.**

*Respectfully submitted:*

\_\_\_\_\_  
*Russell Muñiz, Assistant Town Administrator/Town Clerk*

*Adopted by the Town Council on  
this 24th day of May, 2018.*

\_\_\_\_\_  
*Doug McKay, Mayor*

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.