

Introduced by: Council Member Chris Hoffman

1st Reading: April 6, 2020

2nd Reading: April 20, 2020

ORDINANCE NO. 2020-8136

AN ORDINANCE AMENDING CHAPTER 28, ARTICLE IV OF THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA; REVISING ARTICLE IV TO BE CONSISTENT WITH AMENDMENTS TO SECTION 337.401, FLORIDA STATUTES ADOPTING REGULATIONS OF WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR LEGISLATIVE FINDINGS, SEVERABILITY, REPEAL OF CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 337.401, Florida Statutes “Use of right-of-way for utilities subject to regulation; permit; fees”, local governments may grant the use of the public right-of-way (“ROW”) to support small wireless and micro wireless facilities in accordance with regulations as the local government may adopt; and

WHEREAS, local governments having jurisdiction of the public ROW are authorized to prescribe and enforce reasonable regulations over the placing and maintaining across, on, or within the ROW limits, any electric transmission or other communications services lines or wireless facilities, pole lines, poles, or other structures; and

WHEREAS, the City of Jacksonville Beach (“City”) adopted reasonable regulations, standards, spacing and location requirements for placement and maintenance of communications facilities within the public ROW by the passage of Ordinance No. 2017-8099 and Ordinance No. 2017-8101, as contained in City Code of Ordinances Chapter 28, Article IV known as “Communications Rights-Of-Way Ordinance” and Sections 34-409 through 34-410 for “Personal Wireless Service Facilities”; and

WHEREAS, Florida Legislature 2019 amendments to Section, 337.401, Florida Statutes prohibit, restrict, specify, and create exemptions to the City’s ability and authority to regulate small and micro wireless communications facilities within the public ROW that necessitates that the City amend Chapter 28, Article IV, to comply with new state laws; and

WHEREAS, the City Council desires to manage the growth of wireless communications facilities within the City limits in the best interests of the public safety, health and prudent land use of the limited resource of the ROW, in a manner consistent with new 2019 state laws; and

WHEREAS, the City complied with statutory notice requirements concerning the adoption of this Ordinance to amend City Code consistent with new Florida laws related to wireless facilities and utilities activities in the ROW; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JACKSONVILLE BEACH, FLORIDA:

SECTION 1. RECITALS AND LEGISLATIVE FINDINGS. The above recitals and legislative findings are ratified, correct and made a part of this Ordinance.

SECTION 2. AMENDMENTS TO SECTION 28-71, CODE OF ORDINANCES. That Section 28-71, Chapter 28, Article IV, Communications Rights-of-Way, of the Code of Ordinances of the City of Jacksonville Beach, Florida, is hereby amended to read as follows:

Sec. 28-71. - Intent and purpose.

- (a) The City hereby makes and declares the following findings and declares its legislative intent as follows:
- (1) The public rights-of-way within the City of Jacksonville Beach are a unique and physically limited resource and important amenity that are critical to the travel and transport of persons and property in the City.
 - (2) The demand for telecommunications services has grown exponentially in recent years, requiring the continual upgrading of telecommunications equipment and services to satisfy such demand.
 - (3) The placement of telecommunications equipment and facilities in the public rights-of-way to satisfy the demand for telecommunications services raises important issues with respect to the City's responsibility to manage its public rights-of-way.
 - (4) The public rights-of-way must be managed and controlled in a manner that enhances the health, safety and general welfare of the City and its citizens.
 - (5) The use and occupancy of the public rights-of-way by providers of communications services must be subject to regulation, which can ensure minimal inconvenience to the public, coordinate users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of an optimal number of providers of cable, telecommunications, and other services in the public interest.
 - (6) Section 166.041, Florida Statutes, provides for procedures for adoption of an ordinance which is a regulation of general and permanent nature and enforceable as local law.
 - (7) Section 337.401, Florida Statutes, addresses the authority of municipalities to regulate the placement and maintenance of communication facilities, and other utilities, in the public rights-of-way.
 - (8) In 2017, Florida passed Chapter 2017-136, Laws of Florida, which among other things, amends § 337.401, Florida Statutes, to create the new Subsection (7) known as the Advanced Wireless Infrastructure Deployment Act ("Wireless Deployment Act"), effective July 1, 2017, to address municipalities' regulation of access to the

public rights-of-way for wireless communications facilities and wireless support structures.

- (9) The Wireless Deployment Act provided that municipalities may require a registration process in accordance with § 337.401(3), Florida Statutes, may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties and further provides that, for any applications filed before the effective date of ordinances implementing this subsection, an authority may apply current ordinances relating to the placement of communications facilities in the rights-of-way related to registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties.
- (10) The City is exempt under 47 U.S.C. § 224 from federal pole attachment requirements, and finds that it is a “municipal electric utility” such that the City utility poles are not subject to the Wireless Deployment Act’s “Collocation” requirements as stated in § 337.401(7)(1), Florida Statutes, currently set forth in Chapter 2017-136, Laws of Florida.
- (11) The communication industry is in a constant state of emerging technology that includes the infrastructure required to support the increased demand and capacity to receive and to transmit increased data and voice communications.
- (12) A new network of wireless communications infrastructure has emerged comprised of a series of small individual antenna (“Small Cells”), or nodes (“Distributed Antenna Systems” or “DAS”), and wireless backhaul networks that are linked to a larger hub site.
- (13) The City has received requests to place new utility poles, wireless communications facilities, and wireless support structures within the public rights-of-way.
- (14) The current City Code contains requirements for registration, insurance, permitting, insurance coverage, indemnification, ~~performance bonds, security funds,~~ construction bonds, force majeure, abandonment, municipality liability or municipal warranties that address sufficiently the placement or maintenance within the public rights-of-way for wireline and wireless communications facilities or wireless support structures, ~~but needs to be updated to incorporate state law changes since the adoption of the original ordinance in 2001.~~
- (15) Consistent with state law, the City finds that, to promote the public health, safety and general welfare, and as a prudent land use, including the limited resource of the right-of-way, it is necessary to:
 - i. Provide for the placement or maintenance of Communications Facilities in the public rights-of-way within the City limits,

- ii. Adopt and administer reasonable rules, regulations and general conditions not inconsistent with applicable state and federal law,
 - iii. Manage the placement and maintenance of Communications Facilities in the public rights-of-way by all communications services providers,
 - iv. Minimize disruption to the public rights-of-way, and
 - v. Require the restoration of the public rights-of-way to original condition.
- (16) ~~It is the intent of the City to require that the placement or maintenance of any wireline or wireless communications facility or wireless support structure in the public rights-of-way must have an effective registration which satisfies the requirements set forth herein for such registration, to the extent not inconsistent with applicable federal and state laws and regulations. The City's intent is that these rules and regulations must be generally applicable to all providers of communications services, taking into account the distinct engineering, construction, operation, maintenance, public works, and safety requirements of the provider's facilities, and, notwithstanding any other law, may not require a provider of communications services to apply for or enter into an individual license, franchise, or other agreement with the City as a condition of placing or maintaining communications facilities in its roads or rights-of-way.~~
- (17) It is also the City's intent to exercise the City's retained authority to regulate and manage the City's roads and rights-of-way in exercising its police power over communications services providers' placement and maintenance of facilities in the public rights-of-way in a nondiscriminatory and competitively neutral manner.
- ~~(18) Since the adoption of amendments to § 337.401, Florida Statutes, in 2017 by Chapter 2017-136, Laws of Florida (the "Advanced Wireless Infrastructure Deployment Act"), the Florida Legislature adopted in 2019 additional modifications that prohibit, restrict, specify, and create exemptions to the City's ability to protect municipal proprietary property held in trust for the benefit of the City's taxpayers and citizens under threat of the imposition of lawsuits, attorneys' fees, and the suspension of local legislative power.~~
- ~~(19) Based upon the additional modifications that took effect on July 1, 2019, the City now seeks to amend the Jacksonville Beach Communications Rights-of-Way Ordinance consistent with both the legislative intent of these amendments and consistent with the provisions of the Florida Constitution as interpreted by the courts of the State of Florida.~~
- ~~(20) It is the City's express legislative intention that it shall take no action or issue no permit that is not subject to and conditioned upon this reserved authority of the Florida Legislature and the Florida Constitution as interpreted by the courts of the State of Florida, and in the event of a conflict, the Florida Constitution as interpreted by the courts of the State of Florida shall control.~~

- (b) This Article IV of City Code Chapter 28 shall apply to any public or private entity who seeks to construct, place, install, maintain or operate a communications system or facilities, as such terms are defined herein, in the public rights-of-way, unless otherwise exempt by operation of applicable state or federal law. Notwithstanding the above, this Article IV of City Code Chapter 28 shall not apply whatsoever to a City owned or controlled communications system.

SECTION 3. AMENDMENTS TO SECTION 28-72, CODE OF ORDINANCES. That Section 28-72, Chapter 28, Article IV, Communications Rights-of-Way, of the Code of Ordinances of the City of Jacksonville Beach, Florida, is hereby amended to read as follows:

Sec. 28-72. - Definitions.

For purposes of this article, the following terms, phrases, words, and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory, and the word “may” is permissive. Words not otherwise defined 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 therein, as defined by Chapter 202, Florida Statutes, or Chapter 337, Florida Statutes, and, if not defined therein, be construed to mean the common and ordinary meaning.

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Wireless Support Structure means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole, pedestal, or other support structures for ground-based equipment not mounted on a Utility Pole and less than 5 feet in height.

SECTION 4. AMENDMENTS TO SECTION 28-73, CODE OF ORDINANCES. That Section 28-73, Chapter 28, Article IV, Communications Rights-of-Way, of the Code of Ordinances of the City of Jacksonville Beach, Florida, is hereby amended to read as follows:

Sec. 28-73. Registration.

- (a) A communications services company or provider that desires to place or maintain a communications facility in public rights-of-way in the City shall first register with the City in accordance with this article. Subject to the terms and conditions prescribed in this section, as amended, a Registrant may place and maintain communications facilities in public rights-of-way.
- (b) The act of registration shall not convey any title, equitable or legal, to the Registrant in the City’s public rights-of-way. Registration under this article embodies only the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes, or regulations apply to the placement or maintenance in the public rights-of-way of facilities, which are not communications facilities. Registration does not excuse a communications services company or provider from obtaining appropriate and required

access or pole attachment agreements before locating communication facilities on the City's facilities or another person's facilities. Registration does not excuse a communications services company or provider from complying with all applicable City ordinances, codes, or regulations including this section.

- (c) Each communications services company or provider that desires to place or maintain a communications facility in public rights-of-way in the City shall file a registration with the City, which shall include the following information:
- (1) Name of the applicant;
 - (2) Name, address, and telephone number of the applicant's primary contact person in connection with the registration, and the name, address, and telephone number of the person to contact in case of an emergency;
 - ~~(3) Registrations submitted prior to December 18, 2017, shall state if the applicant provides local service, toll service, or both;~~
 - (34) Evidence of the insurance coverage required under this section and acknowledgment that applicant has received and reviewed a copy of this section; however, the acknowledgment of the receipt of this section shall not be deemed an agreement;
 - (45) The type of communications services that the applicant intends to provide within the corporate limits of the City (if more than one, state all that apply), or, if none, state that the applicant is a pass-through provider or is intending only to place and maintain pass-through facilities, as the case may be;
 - ~~(6) For registrations submitted on or after December 18, 2017, a copy of both the applicant's resale certificate and certificate of registration issued by the Florida Department of Revenue to engage in the business of providing communications services in the State of Florida; and~~
 - (57) The applicant's certificate of authorization or license number to provide communications services issued by the state public service commission, the Federal Communications Commission, or other federal or state authority, if any, having jurisdiction; and
 - (68) For an applicant that does not provide a state public service commission certificate of authorization number, if the applicant is a corporation, proof of authority to conduct business in the state. A certificate number from, or filing with, the Florida Department of State will be acceptable.
 - ~~(9) For an applicant that is a pass-through provider, in lieu of paragraphs (5), (6), (7) and (8) above, the applicant shall provide a certified copy of the certificate or~~

~~license issued by the Florida Department of State, or other appropriate state agency or department, authorizing the company to do business in the State of Florida~~

- (d) The City shall review the information submitted by the applicant. The City Manager or the City Manager's designee shall conduct such review. If the applicant submits information in accordance with this article, the registration shall be effective and the City shall notify the applicant in writing of the effectiveness of the registration. If the City determines that the information has not been submitted in accordance with this article, the City shall notify the applicant in writing of the non-effectiveness of the registration, and reasons for the non-effectiveness. The City shall notify an applicant within thirty (30) calendar days after receipt of the registration information from the applicant. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration.
- (e) A Registrant may cancel a registration upon written notice to the City stating that Registrant will no longer place or maintain any communications facilities in public rights-of-way within the City and Registrant will no longer require permits to perform work in public rights-of-way. A Registrant shall not cancel a registration if the Registrant continues to place or maintain any communications facilities in public rights-of-way.
- (f) Registration does not establish a right or provide authority to place and maintain or establish priority for the future placement or maintenance of a communications facility in public rights-of-way within the City, but shall establish for the Registrant, a right to apply for a permit from the City. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any new or existing City laws, as well as any new or existing federal or state laws, rules, and regulations which may be enacted or which have been enacted.
- (g) A Registrant shall renew its registration with the City by the first day of April of the fifth year following Registration (i.e., 2024 if registered in 2019, and so forth) ~~of even-numbered years in accordance with the registration requirements in this section, 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.~~ Within ninety thirty (930) calendar days of any change in the information required herein, a Registrant shall provide updated information to the City. If the information in the then-existing registration has not changed, the renewal may provide that no information has changed. Failure to renew a Registration may result in the City restricting the issuance of additional permits until the communications services company or provider has complied with the registration requirements of this article.
- (h) In accordance with applicable City ordinances, codes, regulations, or policies a permit shall be required of a communications services company or provider that desires to place or maintain a communications facility in public rights-of-way unless otherwise exempt by state statute or this ordinance. An acceptable and approved registration shall be a condition precedent to requesting and obtaining a permit. Notwithstanding an acceptable and approved registration, permitting requirements shall always apply. A permit may be

obtained by a Registrant having an acceptable and approved registration if all permitting requirements are met.

SECTION 5. AMENDMENTS TO SECTION 28-75, CODE OF ORDINANCES. That Section 28-75, Chapter 28, Article IV, Communications Rights-of-Way, of the Code of Ordinances of the City of Jacksonville Beach, Florida, is hereby amended to read as follows:

Sec. 28-75. - Placement or maintenance of communications facilities.

As a condition of allowing the placement or maintenance of a communications system or any communications facility in the public rights-of-way, and under additional authority granted pursuant to Chapter 337, Florida Statutes, the City hereby imposes the following rules, regulations and general conditions. Unless otherwise provided in this Article IV, these rules, regulations and general conditions shall apply to all communications services providers, including those that are pass-through providers irrespective of whether they place and maintain only conduit, dark fiber or pass-through facilities. Any permit application required hereunder for the placement of communications facilities shall be processed and acted upon in accordance with the following:

- (a) Within 14 days after receiving an application, the City shall determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the authority must specifically identify the missing information. An application is deemed complete if the City fails to provide notification to the applicant within 14 days.
- (b) An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if the City fails to approve or deny the application within 60 days after receipt of the application. A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the City.
- (c) The City must notify the applicant of approval or denial by electronic mail. The City shall approve a complete application unless it does not meet the authority's applicable codes. If the application is denied, the City must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the City denies the application. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days after notice of the denial is sent to the applicant. The City shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.
- (da) A Registrant shall, at all times, comply with and abide by all applicable provisions of federal and state laws, regulations, rules and the City ordinances, codes, regulations, and policies in placing and maintaining a communications facility in public rights-of-way.
- (eb) Neither a Registrant nor a communications service provider shall commence to place or maintain a communications facility in public rights-of-way until all applicable permits, if any, have been issued by the City and other appropriate authorities. Registrant

acknowledges and accepts, that as a condition of granting any permits, the City may impose reasonable rules, regulations, and policies governing the location, placement, and maintenance of a communications facility in public rights-of-way. The communications services provider shall provide prompt notice to the City of the placement or maintenance of a Communications Facility in the public rights-of-way in the event of an emergency and shall, after-the-fact, be required to submit plans and Record Drawings and As-Built Surveys, if required by the City Manager or his designee, showing the placement or relocation of a communications facility undertaken in connection with the emergency.

(fe) As part of the permit application to place a new ~~or replace or maintain an existing~~ communications facility in public rights-of-way, the Registrant shall, unless otherwise exempt pursuant to this ordinance or state statute, provide not less than the following:

~~(1) A description of the location of the proposed facilities including a narrative description and a scaled pictorial drawing of the facilities to be installed, where the facilities are to be located, and the size of facilities to be located in public rights-of-way; and~~

~~(2) A description of the construction methods or techniques which will be used to install the facilities; and~~

~~(13)~~ A maintenance plan for disruption of traffic; and

~~(24)~~ A statement concerning the ability of the public rights-of-way to accommodate the proposed facility; and

~~(35)~~ An estimate of the cost of the restoration to the public rights-of-way; and

~~(6) A timetable for project construction and each phase thereof, and the areas within the City which will be affected; and~~

~~(47)~~ Such additional information as the City finds necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application.

(5) Such information shall not include an inventory of communications facilities, maps, locations of such facilities, or other information by an applicant, but the City requires as part of a permit application that the applicant identify at-grade communications facilities within fifty (50) feet of the proposed installation location for the placement of at-grade communications facilities. Notwithstanding anything to the contrary set forth in this ordinance, the City, as mandated by state statute, hereby exempts communications service providers from the requirement to obtain a permit for the acts of maintenance, repair, replacement, extension, or upgrade of existing aerial wireline communications facilities between existing wireline communications facility attachments on utility poles.

- (gd) To the extent not otherwise prohibited by federal or state laws, the City shall have the power to prohibit or limit the placement of new or additional communications facilities within particular areas of all public rights-of-way.
- (he) All communications facilities shall be placed and maintained so as not to interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin the public rights-of-way. The use of trenchless technology, joint trenching, and co-locating of facilities in existing conduit in the public rights-of-way is encouraged and shall be employed when feasible. The City Manager or the City Manager's designee may promulgate rules, regulations, and policies concerning the placement and maintenance of a communications facility in public rights-of-way consistent with this article and other applicable federal and state laws.
- (if) All safety practices required by applicable municipal, state, and federal laws or accepted industry practices and standards, shall be used during the placement or maintenance of communications facilities in public rights-of-way.
- (ig) After the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof, the Registrant shall at the Registrant's expense, restore the public rights-of-way to the original condition, or superior to the original condition, which existed before such placement or maintenance. If the Registrant fails to complete the restoration within thirty (30) calendar days, following the completion of such placement or maintenance, the City may perform the restoration and charge the total costs of the restoration to the Registrant in accordance with §337.402, Florida Statutes as amended. For twelve (12) calendar months following the original completion date of the work, the Registrant shall guarantee the restoration work and shall correct, at the Registrant's expense, any restoration work, which does not satisfy the requirements of the City.
- (kh) Removal or relocation, at the direction of the City of a Registrant's existing communications facility in public rights-of-way, shall be governed by the provisions of §337.403 and §337.404, Florida Statutes, as amended.
- (li) An approved permit from the City shall constitute authorization to undertake only certain activities in public rights-of-way in accordance with this article, and the permit does not create a property right or grant authority to impinge upon the rights of others who have an interest in the public rights-of-way.
- (mj) A Registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.
- (nk) 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 Ch. 556, Florida Statutes, as amended.

- (of) A Registrant shall use and exercise due caution, care, and skill in performing work in the public rights-of-way and shall take all reasonable and necessary steps to safeguard the entire work area and the general public.
- (pm) Upon request of the City, and as notified by the City of the other work, construction, installation, or repairs, a Registrant may be required to coordinate all placement and all maintenance activities with any other work, construction, installation, or repairs which may be occurring, or scheduled to occur, in public rights-of-way. A Registrant may be required to alter an installation and maintenance schedule to minimize disruptions and disturbance in the public rights-of-way.
- (qn) A Registrant shall not place or maintain communications facilities, which interfere with, displace, damage, or destroy other facilities including, but not limited to, sewer mains, gas mains, water mains, electric facilities, stormwater drains, pipes, cables, conduits, and all other facilities occupying the public rights-of-way.
- (re) The City makes no expressed or implied warranties or representations regarding the fitness, suitability, or availability of the City public rights-of-way for the Registrant's communications facilities and any performance of work, costs incurred, or services provided by Registrant shall be at Registrant's exclusive risk. Nothing in this article shall affect the City authority to add, increase, vacate, or abandon public rights-of-way, and the City makes no expressed or implied warranties or representations regarding the availability of any added, increased, vacated, or abandoned public rights-of-way for communications facilities.
- (sp) The City shall have the right and authority to make any inspections, at any time, of communications facilities placed or maintained in public rights-of-way as the City determines necessary to ensure compliance with this article.
- (te) A permit application to place a new ~~or maintain an existing~~ communications facility in public rights-of-way shall include plan and profile drawings, which show the actual location of the facilities in the public rights-of-way. If the drawings require revision based upon actual installation, the Registrant shall promptly provide the revised as-built drawings to the City. The City prefers as-built drawings shall be in a hard copy format and an electronic format specified by the City. All such drawings, data and information shall be provided at no cost to the City.
- (uf) The City reserves, without limitation, the exclusive right to place, maintain, and permit to be placed or maintained, all sewer, gas, water, electric, stormwater drainage, communications, all other types of facilities, cables, or conduits and to do, and to permit to be done, any underground and overhead installations or improvements which may be deemed necessary or proper by the City in public rights-of-way that may be occupied by a Registrant. The City further reserves, without limitation, the exclusive right to alter, change, or cause to be altered or changed the grading, installation, relocation, or width of the public rights-of-way within the limits of the City and within said limits as the limits may, from time to time, be altered.

- (vs) A Registrant shall, upon request of any person holding a permit issued by the City, temporarily adjust any communications facilities to allow for work authorized by other permits. The expense of such temporary adjustments of facilities shall be paid by the person requesting the adjustment and the Registrant shall have the right to request such payment of expense in advance. If the City requests temporary or permanent adjustments of a Registrant's existing or proposed facilities to allow for work to be done by the City, its contractors, or its agents, however, all expenses and costs related to the adjustments of the Registrant's temporary or permanent facilities, shall be the responsibility of and shall be paid by the Registrant. The Registrant shall be given not less than fifteen (15) calendar days advance written notice to arrange for such temporary or permanent adjustments.
- (wt) Any communications facilities placed in the public rights-of-way by the communications services provider without first having obtained the required communications facilities development permits shall be removed within thirty (30) days of written notice by the City to remove the same and in default of compliance with such notice, such facilities may be removed by order of the City Manager or his designee and the cost of removal shall be borne and paid by the communications services provider upon demand.
- (xu) The placement or maintenance of all communications facilities shall be underground unless otherwise approved in writing and in compliance with the most current version of the provisions of Article IV, City Code Chapter 28. Communications facilities shall be placed between the property line and the curb line of all streets and avenues and shall not be within the roadway or the roadway recovery area unless specifically approved in writing by the City Manager or his designee. All communications facilities shall have consistent alignment parallel with the edge of pavement, a thirty-six inch (36") minimum depth of cover for and shall have a minimum of two feet (2') of horizontal clearance from other underground utilities and their appurtenances. Where approved by the City Manager or his designee, facilities to be placed in the street shall be laid according to the permanent grade of the street and at a depth below the surface of the permanent grade as each is determined by the City Manager or his designee. The City retains the final decision on vertical depth and/or height location and horizontal location within the right-of-way of communications facilities and appurtenances.
- (yv) The placement or maintenance of facilities aboveground, including new utility poles and aerial wires, is subject to written approval and to compliance with the most current version of the provisions of Article IV, City Code Chapter 28. Attachment to any pole or other aboveground structure must be pursuant to a valid and effective pole attachment agreement or similar instrument. Location on any utility pole or other above-ground structure shall not be considered a vested interest of the communications services provider and such Utility Poles or structures, if owned by the communications services provider, shall be removed or modified by the communications services provider at its own expense whenever the City or other governmental authority determines that the public convenience would be enhanced thereby. The communications services provider shall, at such time as the electric utility facilities or other communications facilities are placed underground or are required by the City to be placed underground, concurrently place its communications

facilities underground without cost to the City. The City retains the final decision on vertical depth and/or height location and horizontal location within the right-of-way of communications facilities and appurtenances.

- (zw) The placing of any new utility pole or other aboveground structure to support communications facilities is subject to written approval and to compliance with the most current version of the provisions of Article IV, City Code Chapter 28 and shall be done under the supervision of the City Manager or his designee. No such utility pole or other aboveground structure shall be placed in any gutter or drainage area and must be behind the curb to avoid damage to any sidewalk. In areas of the City where either electric utility wires or other communications facilities are aboveground and such facilities are moved, either voluntarily or at the direction of the City, to a new utility pole or other above-ground structure, the communications services provider or wireless infrastructure provider shall likewise move all its above-ground facilities on such utility poles or structures to such new utility pole or structure within thirty (30) days after receipt of written notice from either the City or the owner of the new utility pole or structure, without cost to the City. New utility poles installed by wireless infrastructure providers shall also be subject to and may avail themselves of the requirements and process set forth in § 28-76 hereof. The City retains the final decision on vertical depth and/or height location and horizontal location within the rights-of-way of communications facilities and appurtenances.
- (aa*) A communications services provider, in an effort to minimize the adverse impact on the useful life of the public rights-of-way, shall, whenever possible, enter into joint use agreements with the City and other parties who have registered with, or who are expressly authorized by, the City to use its public rights-of-way; provided that the terms of such agreements are satisfactory to the communications services provider. Nothing herein contained shall mandate that the communications services provider enter into joint use agreements with parties other than the City or an agency of the City. However, prior to placement of any new or additional underground conduit in the public rights-of-way, a communications services provider is required to certify in writing to the City Manager or his designee that it has made appropriate inquiry to all existing utilities and other entities possessing a right to occupy the public rights-of-way as to the availability of existing or planned conduit that the particular communications services provider could reasonably utilize to meet its needs, and that no such conduit is available or planned at a reasonable cost by any other entity on the time schedule reasonably needed. The communications services provider shall not be permitted to perform any placement or maintenance of facilities in those segments of the public rights-of-way where there exists vacant or available conduit, dark fiber or surplus fiber owned by the City, an agency of the City or another governmental body which is or, through a reasonable amount of effort and expense, can be made compatible with the communications services provider's system or network. Under such circumstances the communications services provider shall have the opportunity to enter into a use agreement or lease arrangement with the City or an agency of the City at or below reasonable and prevailing market rates for such conduit or fiber or, where owned by another governmental body, shall, in good faith, first exhaust all means of obtaining use of such conduit or fiber before applying for a communications facilities development permit from the City. The City retains the final decision on vertical depth

and/or height location and horizontal location within the rights-of-way of communications facilities and appurtenances.

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

SECTION 6. AMENDMENTS TO SECTION 28-76, CODE OF ORDINANCES. That Section 28-76, Chapter 28, Article IV, Communications Rights-of-Way, of the Code of Ordinances of the City of Jacksonville Beach, Florida, is hereby amended to read as follows:

Sec. 28-76. —Wireless facilities.

- (a) Generally. The placement of telecommunication towers and antennae anywhere in the corporate limits of the City shall in all cases be subject to the City’s zoning and land use regulations, including those set forth in the most current version of §§ 34-409 and 34-410 in the City’s Land Development Code, which is a part of the City Code. Where placement of a wireless antenna in the public rights-of-way has been approved by the City and to the extent not inconsistent with any City zoning and land use regulations, a wireless antenna attached to a permitted and legally maintained vertical structure in the public rights-of-way, such as a light pole or utility pole, shall, unless otherwise agreed to by the City in writing:
- (1) Not extend more than 10 feet above the highest point of the vertical structure;
 - (2) Not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law;
 - (3) Comply with any applicable Federal Communications Commission Emissions Standards;
 - (4) Comply with any applicable local building codes in terms of design, construction and installation; and
 - (5) Not contain any commercial advertising thereon.
- (b) Small Wireless Facilities in Public Rights-of Way. The City is exempt under 47 U.S.C. § 224 from federal pole attachment requirements, and finds that it is a “municipal electric utility” such that the City utility poles are not subject to the Wireless Deployment Act’s

“Collocation” requirements as stated in §337.401(7)(i), Florida Statutes, ~~currently set forth in Chapter 2017-136, Laws of Florida.~~ Unless and until the City adopts an ordinance regulating pole attachments, the City reserves the right to approve or deny individual requests for pole attachments to City utility poles within its sole discretion.

- (c) **Placement of Utility Poles in the Public Rights-of-Way in Support of Collocation of Small Wireless Facilities.** A wireless infrastructure provider may apply to the City to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within 9 months after the date the application is approved by the City, and the application must contain an attestation that the applicant cannot find a leasable site for the utility pole on private property within the City. The City shall accept and process the application in accordance with the procedure set forth below and any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way. Applicants seeking permission to install new utility poles within public rights-of-way shall comply with the registration, insurance coverage, indemnification, ~~performance bonds, security funds,~~ force majeure, abandonment, City liability, and City warranties provisions contained in this Chapter 28.
- (1) **Filing, Review, and Processing of Applications.** The City shall accept applications for permits and shall process and issue permits for the placement of utility poles in the public rights-of-way in support of collocation of small wireless facilities subject to the following requirements:
- a. Prior to filing any such application, the applicant shall notify the City ~~and schedule a pre-application conference~~ for the purpose of notifying and disclosing all information relevant to the City’s assessment of any application to be filed hereunder. ~~No such application may be filed until the pre-application meeting has been scheduled and conducted. The pre-application meeting shall be scheduled and held at least fourteen (14) days prior to the filing of any such application.~~
 - b. The applicant shall as a part of its application provide information necessary to demonstrate the applicant’s compliance with §337.401(7), Florida Statutes, the applicable provisions of Chapter 28 and other applicable provisions of the City Code for the placement of a new utility pole in the locations identified in the application, and shall bear the burden of demonstrating compliance therewith.
 - c. Within fourteen (14) days after receiving an application, the City must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the City must specifically identify the missing information. An application is deemed complete if the City fails to provide notification to the applicant within fourteen (14) days. If the applicant fails to complete the application

within thirty (30) days after receiving a notice from the City that the application is deemed incomplete, then the City may deny the application.

- d. The City shall process all applications on a nondiscriminatory basis. If the City fails to approve or deny a complete application within 60 days after receipt of the application, the application is deemed approved. The parties may mutually agree to extend the 60-day application review period. The City shall grant or deny the application at the end of the extended period.
 - e. A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the City.
 - f. The City shall notify the applicant of approval or denial by electronic mail. The City shall approve a complete application unless it does not meet the applicable provisions of § 337.401(7), Florida Statutes, this Chapter 28, and other applicable provisions of the City Code.
 - g. If the application is denied, the City shall specify in writing the basis for denial, including the specific statutory or code provisions on which the denial is based, and shall send the documentation to the applicant by electronic mail on the day the City denies the application.
 - h. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days after notice of the denial is sent to the applicant. Failure by the applicant to resubmit the application timely shall result in a final denial of the application. The City shall approve or deny a timely filed revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial. If the City provides for administrative review of the denial of an application, the review must be complete and a written decision issued within 45 days after a written request for review is made. A denial must identify the specific code provisions on which the denial is based.
- (2) The City may deny a proposed new utility pole in the public rights-of-way if the proposed new utility pole violates or fails to comply with one or more of the following:
- a. Violates or fails to comply with any provision of §337.401(7), Florida Statutes.
 - b. Violates or fails to comply with any provision of Chapter 28, City Code, as amended from time to time.
 - c. Violates or fails to comply with any provision of § 34-409 and § 34-410 in the City's Land Development Code.

- d. Violates or fails to comply with any provision related to historic preservation set forth in the City Code, as amended from time to time.
- e. Materially interferes with the safe operation of traffic control equipment.
- f. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
- g. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

SECTION 7. AMENDMENTS TO SECTION 28-84, CODE OF ORDINANCES. That Section 28-84, Chapter 28, Article IV, Communications Rights-of-Way, of the Code of Ordinances of the City of Jacksonville Beach, Florida, is hereby amended to read as follows:

Sec. 28-84. - Security account Construction bond; Communications Facilities.

~~At or prior to the time a Registrant receives the initial permit to place or maintain a communications facility in public rights of way after the effective date of this section, the Registrant shall, at the sole discretion of the City, be required to file with the City, for the City approval, an annual bond, cash deposit, or irrevocable letter of credit in the sum of one hundred thousand dollars (\$100,000.00) having as a surety a company qualified to do business in the state, and shall be referred to as the "security account." The security account shall be maintained from such time through the: (a) transfer, sale, assignment, or removal of all communications facilities in the public rights of way; or (b) twelve (12) calendar months after the termination or cancellation of any registration. The security account shall be conditioned upon the full and faithful performance by the Registrant of all requirements, duties, and obligations imposed upon Registrant by the provisions of this section and other ordinances, as amended. The security account shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the Registrant's full and faithful performance at all times. In the event a Registrant fails to perform the duties and obligations imposed upon the Registrant by the provisions of this section, there shall be recoverable, jointly and severally from the principal and surety of the security account, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, cost of removal, relocation, or abandonment of any facilities of the Registrant in public rights of way, including a reasonable allowance for attorneys' fees, up to the full amount of the security account. The City shall not pay Registrants interest on any monies held by the City in a Registrant's security account.~~

(a) Except in the case of an emergency, which shall include without limitation an out of service condition affecting 911 service, prior to performing any work in the public rights-of-way, a Registrant shall establish in the City's favor a construction bond in an amount specified in an engineering permit or other authorization as necessary to ensure the Registrant's faithful performance of the construction or other work in the public rights-of-way, in accordance with the City code and/or regulations. The amount of the construction bond shall be as set forth in the engineering permit, and may be modified in the City Manager's reasonable discretion, based on

the cost of the restoration to take place in the public rights-of-way, and any previous history of the Registrant concerning construction within the public rights-of-way of the City.

(b) In the event a Registrant subject to such a construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City 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 attorneys' fees, up to the full amount of the bond.

(c) No less than 12 months after the completion of the construction of the telecommunications facility and satisfaction of all obligations in accordance with the bond, the City may eliminate the bond. However, the City may subsequently require a new bond for any subsequent work in the public rights-of-way.

(d) The construction bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, Property-Casualty Edition; shall be subject to the approval of the City Attorney; and shall provide that:

"This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(e) The rights reserved by the City with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the City may have under this Chapter, or at law or equity.

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

SECTION 8. SEVERABILITY. It is the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence paragraph or section of this Code shall be declared unconstitutional by the valid judgement or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

SECTION 9. CONFLICTING ORDINANCES. All ordinances or parts of ordinances in conflict with this ordinance are, to the extent that the same may conflict, hereby repealed.

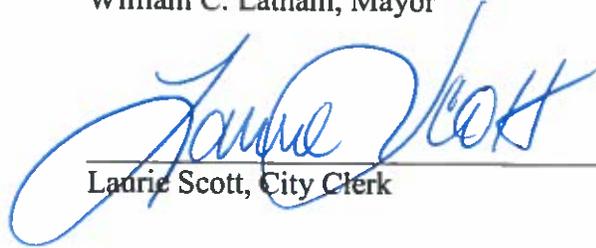
SECTION 10. EFFECTIVE DATE. This Ordinance shall take effect upon its final adoption in accordance with applicable law.

Ordinance No. 2020-8136

AUTHENTICATED THIS 20th DAY OF April, A.D., 2020.



William C. Latham, Mayor



Laurie Scott, City Clerk