

ORDINANCE NO. 2025-11

**AN ORDINANCE OF THE VILLAGE OF ESTERO,
FLORIDA, CREATING A NEW CHAPTER 23 OF THE
VILLAGE CODE CREATING RIGHT OF WAY USE
REGULATIONS; MAKING RELATED FINDINGS;
PROVIDING FOR SEVERABILITY, CODIFICATION, AND
AN EFFECTIVE DATE.**

WHEREAS, the Village owns or holds in public trust certain lands, commonly referred to as right-of-way, for the placement of transportation and utility system infrastructure in, on, under or above such lands; and

WHEREAS, part of the Village Council's duties includes the necessity to ensure that the Village's ordinances, as codified in the Village Code, are up to date, reflect current Florida and federal statutory and case law, that they reflect current actual Village operations, and that they do not contain outdated, redundant or erroneous provisions; and

WHEREAS, since its incorporation, the Village has relied on administrative rules promulgated by Lee County regarding use of right-of-way, and the Village Code does not currently provide for any meaningful or modern regulations related to the use of the Village's right-of-way by private and public utilities; and

WHEREAS, Florida Statutes § 362.01 has, since 1927, given telegraph and telephone companies the special powers to install poles, wires and other fixtures on or beside public roads where permission is first obtained from the local government; and

WHEREAS, in the decades since the Village adopted its regulations on streets and sidewalks, the telecommunications industry landscape has changed in substantial ways, on the regulatory, business model, and technology fronts; and

WHEREAS, the federal Telecommunications Act of 1996, at 47 U.S.C. § 332, prohibits local government regulations which unreasonably discriminate among providers of telecommunication services, have the effect of prohibiting the provision of personal wireless services, and which regulate based on health or environmental effects of radio frequency emissions; and

WHEREAS, in 2003, the Florida Legislature adopted Florida Statutes § 364.0323, which prohibits local governments from directly or indirectly regulating the provision of voice-over-internet protocol services; and

WHEREAS, in 2003, the Florida Legislature adopted Florida Statutes § 365.172, which places significant constraints on local governments with respect to the permitting and approval process for cellular towers and antennae; and

WHEREAS, Florida Statutes § 337.401 provides that a municipality may grant to any person who is a resident of the state, or to any corporation which is organized under the laws of

the state or licensed to do business within the state, the use of a right-of-way for a utility in accordance with such rules or regulations as the municipality may adopt; and

WHEREAS, Florida Statutes § 337.401(2)(a) provides for permit application processing and approval deadlines which municipalities regulating right-of-way must follow; and

WHEREAS, on March 22nd 2018, the Federal Communications Commission approved an order to streamline the national approval process for deploying small cell technology, which is advanced radio hardware required for use of next-generation 5G cellular networks; and

WHEREAS, the Florida Legislature has adopted the Advanced Wireless Infrastructure Deployment Act (the “Act”), codified at Florida Statutes § 337.401(7), which as of July 1st 2017, places certain limitations on local government authority to regulate small or micro wireless communications facilities within the public right-of-way and requires local governments to expedite review of permit applications for such facilities; and

WHEREAS, the Act authorizes local governments to adopt objective design standards that may require wireless facilities in the right-of-way to meet reasonable location context, color, stealth, and concealment requirements, and spacing and location requirements for ground-mounted equipment; and

WHEREAS, in 2019 the Florida Legislature enacted amendments to the Act via Chapter Law 2019-131, Laws of Florida, creating additional restrictions on the right of local governments to regulate small or micro wireless communications facilities within the public right-of-way; and

WHEREAS, passage of the Act, along with the other legal and technological changes in the wireless industry since the Village last regulated on this topic, necessitates that the Village amend its current right-of-way regulations to ensure they comply with the law and properly address new technologies seeking to occupy its right-of-way; and

WHEREAS, the Village has at times experienced poor construction techniques being used by utility service providers installing infrastructure in the Village’s right-of-way but, without detailed regulatory authority at the local code level, the Village was not in the best position to fully address the disruption to other utility services and inconvenience to residents which resulted; and

WHEREAS, the Village is currently adopting a new fee schedule for right-of-way permitting activities, and intends to undertake a modernization of its utilities permitting procedures to include creating and maintaining electronic and online accessible utility location records, and adopting regulations requiring submission of permit applications and as-built images by electronic means will facilitate this process; and

WHEREAS, the Village finds that the regulatory revisions adopted hereby will advance public health, safety, and welfare, and help protect the unique aesthetic qualities of the Village, while complying with all state and federal laws, rules and regulations governing communications facilities; and

WHEREAS, the Village Council therefore finds that it is in the best interests of the Village of Estero, its citizens, businesses, and property owners, to adopt this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Village Council of the Village of Estero, Florida, that:

Section 1. A new Chapter 23 of the Village Code, entitled USE OF VILLAGE RIGHT-OF-WAY, is hereby created as follows:

Chapter 23 – USE OF VILLAGE RIGHT-OF-WAY

ARTICLE I. - RIGHT-OF-WAY CONSTRUCTION REQUIREMENTS

Sec. 23-1. – Statutory references; definitions.

- (a) Any statute referenced in or incorporated into this chapter shall be deemed to be the most recent version of that statute notwithstanding any contrary provision of this chapter.
- (b) The following definitions shall be applicable to this chapter:
 - 1. Annual General Permit shall mean the permit as issued in accordance with § 23-5 of this chapter.
 - 2. Antenna means any outdoor apparatus designed for telephonic, radio or television communications through the sending or receiving of electromagnetic waves.
 - 3. Cable Service shall have the same definition as that set out in Florida Statutes § 230.103.
 - 4. Camouflage shall mean disguising an object with paint, structural elements or foliage; concealment by means of encasement within or placement upon a different object in a manner which conceals the object so placed.
 - 5. Collocate shall mean to install, mount, maintain, modify, operate, or replace one or more wired or wireless facilities on, under, within, or adjacent to a wired or wireless support structure or utility pole. The term includes installing additional fiberoptic or other lines in existing conduit but does not include the installation of a new utility pole or wireless support structure in the public right-of-way.
 - 6. Communications Services shall mean the transmission, conveyance or routing of voice, data, audio, video or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable,

optical, microwave or other medium or method now in existence or hereafter devised and regardless of the protocol used for such transmission or conveyance.

7. Communications Services Provider (CSP) shall mean any person who transmits, conveys, or routes voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. This term does not include any utility holding a valid franchise or registration with the village that provides any of the above-mentioned services for use only by its employees or contractors who construct facilities for that utility in the right-of-way.
8. Construct or Construction, and any variations thereof, shall mean any repair, alteration, pavement cut, grading, excavation, filling, relocation, replacement, placement of new facilities, or other type of improvement in the right-of-way.
9. Economically Unreasonable shall mean the cost of performing the activity required by this chapter would place an unreasonable economic hardship on the utility.
10. Emergency shall mean a situation when a repair is needed to be completed immediately due to danger to property or individuals or interruption in service.
11. Expedited Permit shall mean the permit issued in accordance with § 23-4 of this chapter.
12. Facilities shall mean any device or structure used or to be used for transmission of telecommunications, electricity, gas, television broadcasts, including but not limited to cables, wires, conduits, ducts, pipes, antennas, converters, splice boxes, cabinets, handholes, manholes, vaults, drains, surface location markers, or any other facility used or to be used by a utility to deliver utility service to its customers.
13. FCC shall mean the Federal Communications Council.
14. FDOT shall mean the Florida Department of Transportation.
15. Franchise shall mean an agreement between a utility and the village for use and occupation of the rights-of-way.

16. *Pavement* shall include, but not limited to, asphalt, concrete, brick, or other like materials laid on the right-of-way, but does not include gravel, dirt or other loose materials laid on the right-of-way.
17. *Person* includes individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
18. *Place or Maintain or Placement or Maintenance or Placing or Maintaining* shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications service provider that owns or exercises physical control over facilities in the rights-of-way, such as the physical control to maintain and repair, is “placing or maintaining” the facilities. 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 facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the rights-of-way does not constitute “placement or maintenance” of facilities in the right-of-way.
19. *PSC* shall mean the Florida Public Service Council.
20. *Public Land* shall mean any property owned by the village that is not considered right-of-way under Florida law.
21. *Registrant* shall mean a communications service provider that has registered with the village in accordance with the provisions of article III of this chapter.
22. *Right-of-Way* shall mean a right-of-way, easement, highway, street, bridge, tunnel or alley owned by the village or in which the village holds a property interest and exercises rights of management or control, and includes the surface, the air space over the surface and the area below the surface. The term does not include parks, open space and other public lands not designated for utility use. This term includes any privately-owned area within the village which has not yet become a public street, but is a proposed public street on any subdivision map approved by the village. Any portion of driveways located in or on a right-of-way shall be considered a part of that right-of-way.
23. *Technically Impossible* shall mean that the facility will not function as required if the utility does as required by this chapter.
24. *Village Staff* shall mean the village manager or such other person or firm assigned by the manager to administer any part of this chapter.

25. *Trench* shall mean an opening in or along the right-of-way that is dug for the purpose of placing wires, cables, pipes, or other facilities in the right-of-way.
26. *Utility* shall mean any communications service provider, electric utility, gas utility, or other utility provider not owned by the village, and any authorized agent of any of the aforementioned.
27. *Utility Pole* shall mean 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.
28. *Utility Service* shall mean any service provided by a utility to customers within the corporate limits of the village, including, but not limited to, electric service, gas service, cable service, voice communication services, wireless data service, fiber optic service, and internet service.
29. *Video Service Provider* means any person who provides transmission of video, audio, or other programming service to a purchaser, including any purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services, and including point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises (not including direct-to-home satellite service), and including basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.
30. *Wireless Facility* means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications.
31. *Wireless Infrastructure Provider* means a person who has been certificated to provide telecommunications service in Florida and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

32. *Wireless Services* means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

33. *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.

§ 23-2. - Permit required; fees.

- (a) At least forty-five (45) days prior to construction not considered an emergency and not covered by an annual general permit or an expedited permit, the utility shall proceed with due diligence to obtain all necessary permits and authorizations, including, but not limited to, any joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by federal or state law or agency or by the village.
- (b) With respect to any utility operating under a franchise agreement with the village, within sixty (60) days after acceptance of any franchise, the utility shall proceed with due diligence to obtain all necessary permits and authorizations, including, but not limited to, any joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of that utility. Prior to the issuance of any permits, the utility shall provide the village with a construction plan, including a map and schedule, which shall be incorporated by reference and made part of the franchise.
- (c) Except in an emergency, no person shall begin any construction in the right-of-way without first obtaining the applicable permit, pursuant to this chapter. This requirement shall apply to all contractors and/or utilities performing work within the village's right-of-way. Such permits are in addition to any other approvals that may be required.
- (d) Application fee; exemptions.

 - 1. Each application for any permit required by this chapter shall be accompanied by a permit application fee, which, if established, shall be set at a reasonable amount by the village council from time to time, to defray the village's costs of filing, engineering and inspection.
 - 2. Communications services providers paying the communications services tax pursuant to Florida Statutes Chapter 202 are exempt from this fee.
 - 3. Pursuant to Florida Statutes § 337.401(2)(b), the village may not prohibit, or require a permit for, the installation of a public sewer transmission line placed and maintained within and under publicly dedicated right-of-way as part of a septic-to-sewer conversion where the work is being performed under permits issued by the Florida

Department of Transportation pursuant to Florida Statutes Chapter 337 and the Department of Environmental Protection, or its delegate, pursuant to Florida Statutes Chapter 403.

4. The Pursuant to Florida Statutes § 337.401(3)(g), the Village may not require any permit for the maintenance, repair, replacement, extension, or upgrade of existing aerial wireline communications facilities on utility poles or for aerial wireline facilities between existing wireline communications facility attachments on utility poles by a communications services provider. However, it may require a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane or parking lane, unless the provider is performing service restoration to existing facilities. A permit application required by the Village under this subsection for placement of communications facilities must be processed and acted upon consistent with the permit review process set forth in § 23-49. As used in this subsection, the term “extension of existing facilities” includes those extensions from the rights of way into a customer’s private property for purposes of placing a service drop or those extensions from the rights of way into a utility easement to provide service to a discrete identifiable customer or group of customers.

§ 23-3. - Right-of-way construction permit, exemption.

- (a) If the utility does not hold an annual general permit, if the construction to be performed is not included in the utility’s annual general permit, or if the construction does not qualify for an expedited permit, the utility shall obtain a right-of-way construction permit prior to any construction within the right-of-way.

(b) Process.

1. The utility shall apply to the village for a permit through the village staff at least forty-five (45) days before construction is scheduled to commence, and shall provide:
 - (i) the addresses of the property located at the termination points of the proposed work area and the location of the work area;
 - (ii) name and address of the party doing the work;
 - (iii) name and business address of the employees, contractors or other agents retained to perform the work;
 - (iv) name and business address of the agent of the utility applying for the permit on the utility’s behalf, if the utility is not directly applying for the permit;
 - (v) a site map for the construction detailing the proposed work;
 - (vi) a maintenance of traffic control plan (MOT);

- (vii) a proposed timetable which contains a detailed description of each phase of construction;
 - (viii) unless operating under an annual general permit, a statement verifying the applicant's status as a utility authorized by this chapter and Florida law to install and maintain facilities, and to operate in the public's right-of-way;
 - (ix) permit fee, if a fee has been established and is required; and
 - (x) any other information as the village staff shall find reasonably necessary to the determination of whether a permit should be issued hereunder.
2. Any plans submitted shall not unreasonably or unnecessarily conflict with, create access difficulty, or otherwise adversely affect the village's use and construction of any of its utilities.
 3. Once a completed application is received by the village, relevant village staff will review the application for completeness and, if found to be complete, then reviewed to ensure the requested work will be consistent with all applicable village ordinances, rules or regulations in effect at the time of review of the application.
 4. Within 14 days after receiving an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the village will specifically identify the missing information. An application is deemed complete if the authority fails to provide notification to the applicant within 14 days.
 5. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if the village fails to approve or deny the application within 60 days after receipt of the completed application. The applicant and village may mutually agree to extend the 60-day application review period. The village will grant or deny the application at the end of the extended period.
 6. The village will notify the applicant of approval or denial by electronic mail.
 7. The village will approve a complete application unless it does not meet the village's applicable codes and administrative regulations, including the provisions of this chapter.
 8. If an application is denied, the village will specify in writing the basis for denial, including the specific statutory or code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the village denies the application. The applicant may cure the deficiencies identified by the village and resubmit the application within 30 days after notice of the denial is sent to the applicant.

9. The village will approve or deny the revised application within 30 days after receipt or the application is deemed approved. The review of a revised application is limited to the deficiencies cited in the denial.
10. A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the authority.
11. If issued a permit, a utility shall contact the village staff at least twenty-four (24) hours prior to commencement of construction.
12. Right-of-way permits are issued to permit utilities to occupy and work in village right-of-way, and for no other purpose. Therefore, every permit application must clearly identify the utility for which the work is to be performed, and shall contain a statement under penalty of perjury that the person completing and filing the application is an authorized agent of the utility with the authority to submit the application on the utility's behalf. Village staff are prohibited from processing permit applications which do not contain the foregoing content.

§ 23-4. - Expedited permit.

- (a) A utility that is required by the PSC to provide new customer service or guarantees service to new customers within a specified time period that is less than forty-five (45) days shall apply to village staff for an expedited permit if it is necessary to cross the paved area of the rights-of-way. The utility must apply for the permit as soon as reasonably possible.
- (b) The following are required to be included in the application for an expedited permit:
 1. the name and address of the utility;
 2. the name and address of the contractor performing the work, if applicable;
 3. an MOT;
 4. the type of facilities to be installed;
 5. the proposed location of the facilities;
 6. a description of the pavement to be crossed;
 7. estimated length of time necessary to complete construction;
 8. if the utility does not hold an annual general permit, a statement verifying the applicant's status as a utility authorized by this chapter and Florida law to install and maintain facilities, and to operate in the public's right-of-way;
 9. if PSC required, the number of the regulation requiring the expedited installation;
 10. if customer service driven, documentation written to the customer stating the date upon which service was promised;
 11. permit fee, if a fee is required and if not exempt; and

12. any other information the village staff shall find reasonably necessary to the determination of whether a permit should be granted hereunder.
- (c) If all of subsection (b) is included in the application and is acceptable, the village staff shall approve the expedited permit as soon as possible, in order for the utility to meet its service deadline.
- (d) A utility constructing under an expedited permit shall notify village staff at least sixty (60) minutes after arrival at the site that construction has commenced.
- (e) If requested by village staff, within a reasonable time, the utility shall provide a map of the proposed areas of construction in the rights-of-way within the village detailing the work performed or to be performed.
- (f) Unless deemed an emergency, a utility engaging in construction within the rights-of-way under an expedited permit is subject to every section of this article, with the exception of § 23-8 (j) and (l).

§ 23-5. - Annual general permit.

- (a) A utility shall apply to the village staff for an annual general permit no later than November 1 of each year, and the effective dates of that permit shall be from January 1 until December 31 of the subsequent year. Any utility seeking to obtain an annual general permit for the current year shall apply as soon as possible, and the effective dates of that permit shall be from the date of issuance of the permit until December 31 of that year. An annual general permit may be issued only to utilities with existing facilities in the rights-of-way. The annual general permit allows the following activities:
1. Communications services providers new customer service:
- (i) installation of service drops no longer than 500 feet from serving location;
- (ii) installation of a new buried distribution cable no longer than 500 feet that does not cross or begin in the pavement;
- (iii) extension of a buried distribution cable up to 500 feet, so long as it does not cross or begin in the pavement;
- (iv) extension of two-way four-inch conduit system up to 500 feet, so long as it does not cross or begin in the pavement;
- (v) adding a new terminal to existing cable;
- (vi) pulling in new underground feeder cables in an existing permitted conduit or manhole and conduit system;
- (vii) digging of a splice hole to splice a new cable or adding a terminal;
- (viii) digging of a splice hole for cable acceptance testing for quality;
- (ix) digging of a splice hole to change the count of a cable leg for new service;

- (x) extension of existing aerial distribution cable up to 500 feet from existing poles, providing other aerial utility service still exists and providing it does not cross the pavement.

2. Communications services providers maintenance of existing facilities:

- (i) replacement of existing service drops up to 500 feet in length;
- (ii) replacement/repair of existing terminals;
- (iii) replacement up to 500 feet in length or repair of existing aerial cable providing other aerial utility service exists;
- (iv) replacement up to 500 feet in length or repair of existing underground feeder cable in an existing permitted manhole and conduit system, so long as it does not cross the pavement;
- (v) pumping water out of a manhole to maintain underground cables in conduit system;
- (vi) digging of a splice hole to change the count of a cable;
- (vii) digging of a splice hole to locate and repair air leaks in cables;
- (viii) digging of a splice hole to add a side leg off feeder cable;
- (ix) digging of a hole to repair broken conduits;
- (x) digging of a splice hole for cable acceptance testing for quality;
- (xi) digging of a splice hole to repair wet or damaged cable;
- (xii) digging of a hole to verify the location of buried facilities;
- (xiii) removal of facilities no longer needed for services;
- (xiv) adjust aerial facilities to meet National Electric Safety Code;
- (xv) trim trees, so long as the utility complies with § 23-11 of this article;
- (xvi) Any facility relocations required for village improvements.

3. Natural gas providers:

- (i) extend and/or replace existing facilities up to 500 feet parallel to the rights-of-way, provided it does not cross pavement;
- (ii) install 5/8" and up to 1-1/4" service and connect to existing main, so long as it does not extend more than 500 feet or cross the pavement;
- (iii) maintain anodes, rectifiers, and telemetering stations;
- (iv) repair existing facilities, providing they do not cross the pavement;
- (v) retire services and mains;
- (vi) install and maintain valves, regulator stations, and insulators;
- (vii) install test stations, gas markers and vents;
- (viii) perform field inspections for conditions and location of gas facilities;
- (ix) perform miscellaneous minor maintenance related work;

- (x) install gas facilities in existing casing/pipe;
- (xi) any facility relocations required for village improvements.

4. Cable service providers and electric utilities:

- (i) routine maintenance of equipment, including, but not limited to, poles, overhead/underground transformers, streetlights, and brackets, wire and cable (underground or aerial, provided other aerial facilities exist), pedestals, switches, arresters, risers, fuses, and all associated hardware;
- (ii) installation of equipment in order to provide new customer service within 500 feet, providing it does not cross the pavement;
- (iii) extend or replace existing underground facilities up to 500 feet parallel to the rights-of-way, provided it does not cross the pavement;
- (iv) extend or replace existing aerial facilities up to 500 feet parallel to the rights-of-way, provided other aerial facilities exist and it does not cross the pavement;
- (v) repair existing facilities, provided it does not cross the pavement;
- (vi) replace or upgrade existing facilities, up to 500 feet, provided it does not cross the pavement;
- (vii) perform field inspections for conditions and locations of electric facilities;
- (viii) perform miscellaneous minor maintenance related work;
- (ix) install electric facilities in existing casing/pipe or conduit system;
- (x) remove facilities no longer needed for service;
- (xi) adjust aerial facilities to meet National Electric Safety Code;
- (xii) trim trees, so long as the utility complies with § 23-11 of this article;
- (xiii) any facility relocations required for village improvements.

(b) A utility shall submit the following in order to obtain an annual general permit:

- 1. name and address of the utility;
- 2. general MOT for various types of construction that may occur in the right-of-way;
- 3. either proof of a valid franchise or valid registration with the village, or a letter from village staff stating that the utility is expressly permitted by the village to operate within the rights-of-way without a franchise or registration;
- 4. permit fee, if a fee has been established and if the utility is not exempt; and
- 5. any other information as the village staff shall find reasonably necessary to the determination of whether a permit should be issued hereunder.

(c) A utility operating under an annual general permit shall provide village staff with weekly locations and a schedule of construction in the rights-of-way or shall notify village staff within sixty (60) minutes of any construction in the rights-of-way, if no map is provided or if construction is required to facilities not on the weekly map and schedule.

- (d) If a utility is operating under an annual general permit and the construction is not on the provided weekly map and schedule, the utility must notify village staff within twenty-four (24) hours of completion of construction in the rights-of-way pursuant to this section.
- (e) Unless deemed an emergency, a utility engaging in construction in the rights-of-way under an annual general permit is subject to every section of this article, with the exception of § 23-8(e), (m), (j) and (l).

§ 23-6. - Appeals process for denial of permits.

The applicant may request administrative review of the denial of an application by submitting a written request for review to the village public works director. The request must set forth all factual and legal reasons why the applicant believe the denial was in error. The public works director shall complete the review and issue a written decision within 45 days after a written request for review is made. A denial must identify the specific statutory or code provisions on which the denial is based. If the administrative review is not complete within 45 days, the village will be deemed to have waived any claim regarding failure to exhaust administrative remedies in any judicial review of the denial of an application. Appeals from the director's decision may be taken in the circuit court by way of a petition for writ of certiorari as provided for by general law and court rules.

§ 23-7. - Emergencies.

- (a) If an emergency arises, a utility may repair or replace any facilities affected without obtaining the usual necessary permits.
- (b) The following paragraphs or subparagraphs of this article do not apply in the event of an emergency: § 23-2; 23-3; 23-4; 23-5; 23-6; 23-8(c), (e), (f), (g), (j), (l), and (p); and 23-9(d).
- (c) If a utility begins any construction in the rights-of-way due to an emergency, the utility or its designee shall notify the village within sixty (60) minutes of arrival at the site.

§ 23-8. - Construction specifications.

- (a) The village staff, in coordination with county staff, may develop a Utility Accommodations Guide that will provide an outline of the procedures and requirements, as provided in this article, that a utility shall follow in order to be considered for approval from the village.
- (b) All construction in the rights-of-way by any utility shall be performed in an orderly and professional manner.

- (c) Prior to the issuance of a permit for construction in the rights-of-way, the utility shall obtain all necessary permits, licenses, or other authorizations from federal, state and local authorities for construction of facilities in the rights-of-way.
- (d) The utility shall construct facilities in a manner consistent with and in full compliance with the rules and regulations promulgated by any federal or state agency having jurisdiction over the utility. If the village council, after holding a public hearing, determines that there are reasonable grounds to believe the utility is not in compliance with the rules and regulations promulgated by the federal and/or state agencies having jurisdiction over the utility, the utility shall have thirty (30) days to come into compliance and verify compliance. If the utility fails to come into compliance and verify compliance within thirty (30) days, the utility may report any violations to the appropriate agency and suspend any permits in connection with the violation.
- (e) All new utility construction in the right-of-way shall comply with the village's Land Development Code.
- (f) Upon the undergrounding of the aerial facilities of the utility owning the poles upon which other utilities are located, all such other utilities shall concurrently place its facilities underground at depths and locations approved by the village staff. All new electrical or communications services facilities placed underground shall be placed in conduits unless the village staff agrees that doing so is technically impossible. Those poles no longer being used by such utilities shall be deemed abandoned and removed from the rights-of-way as soon as possible.
- (g) Commencement of construction shall take place as soon as possible after issuance of a permit by the village, but not later than twenty (20) days after line location, unless the utility notifies village staff and provides a good faith reason for not proceeding with construction.
- (h) The utility shall comply in all respects with the requirements of Florida Statutes Chapter 556, including the Florida One Call/Sunshine 811 System.
- (i) The utility shall comply with all applicable federal, state, and local laws and all applicable federal, state, and local rules and regulations.
- (j) Except as provided for in article III of this chapter, if construction of an approved plan is not commenced within one year after the issuance of a rights-of-way construction permit, unless the utility provides a good faith reason in writing for the delay, it is presumed that the utility failed to proceed expeditiously, and the permit(s) issued by the village are deemed to be revoked.
- (k) Nothing in this article shall prevent early completion of construction of facilities. Once commenced, construction within the rights-of-way shall not exceed ten (10) working days, unless otherwise provided for in the permit.

- (l) On the final day of scheduled construction, an inspection by village staff or contracted agents shall take place, and if construction is completed, the permit shall expire and any further construction shall be a violation of this article. If construction is not completed on the final day of scheduled construction, the utility shall provide reasons for the delay, and if the village staff determines that there is good cause for the delay, the permit shall be extended for a reasonable amount of time, as determined by village staff. If village staff determines that the delay in completion of construction is unreasonable, it may (1) allow the utility to complete construction, (2) secure the area so as not to cause danger to the public, at the utilities sole expense, and require the utility to obtain a new permit, or (3) may complete the construction at the utility's sole expense. Village staff may deny any further permits to a utility that does not abide by construction schedules, as set forth by village staff, and may fine the utility pursuant to § 23-15 of this article.
- (m) Within three (3) working days after completion of construction in the rights-of-way, the utility shall notify the village staff of completion via email or facsimile. After notification is received, the permit issued is automatically deemed closed.
- (n) All utilities placing facilities in the rights-of-way shall mark their facilities for identification in such a manner as the village staff requests. A key to the identifying marks shall be kept by the village.
- (o) As soon as possible after completion of construction, a utility shall submit in a format acceptable to the village staff as-built plans to the village staff. The as-built plans should identify the size of the facility placed and its exact location within the rights-of-way. Any proprietary information regarding the installation not necessary for purposes of locating the facility should not be included in the as-builts.
- (p) Except as otherwise provided by federal or state law or federal or state agency with jurisdiction over the utility, poles that meet the definition of new facilities shall not be emplaced in the rights-of-way by any utility.
- (q) If any underground facilities are to be placed under pavement, the utility constructing said facilities shall use a boring technique. If boring is economically unreasonable or technically impossible, or if there is an active plan to resurface the pavement within twelve (12) months of commencement of construction, the utility may seek approval from the village staff to cut any pavement or excavate in order to construct facilities. Pavement shall not be cut unless no other reasonable construction alternatives are available and no alternative exists as to the desired route that will avoid cutting the pavement.
- (r) A village inspector may be present at various times during construction of facilities in order to assure compliance with this article and with any permits issued.
- (s) The permit holder is responsible for safety and is required to meet all federal, state and local construction standards.

- (t) The village reserves the right to limit the work of the utility to assure a minimum of inconvenience to the public.
- (u) Unless state or federal law or a state or federal agency with jurisdiction over the utility require otherwise, the village may request that a utility locate its facilities within a specific portion of the rights-of-way, so long as the request is not technically unreasonable or economically impossible.
- (v) At all times, at least one (1) individual on the construction site shall speak English.
- (w) If any terminals, cross-connect boxes, pedestals, junction boxes, or other like facilities are to be placed in the rights-of-way, they shall be placed on the property lines as they exist at the time of construction of the facilities or as close to the property lines as possible of adjacent private property. Unless otherwise required by federal or state law or federal or state agency, and unless technically impossible or economically unreasonable, all new construction of terminals, cross-connect boxes, pedestals, junction boxes, or other like facilities shall be placed at or below grade. If federal or state law or federal or state agency require the facilities be placed above ground, the village may, at its option, require the undergrounding of the facility at the village's expense, pursuant to federal or state law or federal or state agency. If the new terminals, cross-connect boxes, pedestals, junction boxes, or other like facilities are placed above grade, the utility shall provide camouflage reasonably related to the size and function of the facility, which shall be adequate to sufficiently conceal the facility in a manner approved by the village during the permitting process. In selecting such devices, utilities shall use the smallest and least obtrusive facilities to perform the desired function unless doing so would be technically impossible or economically unreasonable.
- (x) If the utility restores or reconstructs any part of any paved area of the rights-of-way, the utility shall comply with all federal and state requirements, as well as any applicable provisions of the village's zoning code. Any restoration or reconstruction of the rights-of-way performed by the utility as a consequence of its construction in the rights-of-way shall be at the utility's own expense. The utility shall maintain all such restoration or reconstruction in a condition approved by the village for a period of one year following such restoration or reconstruction or until such time as the right-of-way is damaged or altered by a person or force beyond the utility's control, whichever is shorter. If the utility does not proceed expeditiously to complete the restoration or reconstruction, the village may perform the restoration or reconstruction at the sole expense of the utility.
- (y) The village manager is authorized to adopt and periodically revise administrative rules, procedures, and forms deemed by the manager to be necessary to implement this chapter and applicable law. All such administrative regulations shall be published on the village's website, and may not be inconsistent with any provision of law or this chapter.

§ 23-9. - Collocation and cooperation requirement.

- (a) If not technically impossible or economically unreasonable, all communications services provider, video service provider or wireless infrastructure provider facilities shall be installed parallel with and in the same manner as utilities previously occupying the rights-of-way.
- (b) Multiple cable configurations shall be arranged in parallel and bundled or stacked so as to occupy as little space in the rights-of-way as possible with due respect for engineering considerations.
- (c) A utility shall install its underground equipment and apparatuses simultaneously with other like utilities whenever possible. The village shall notify in writing all other utilities located in that portion of the rights-of-way for which a utility has applied for and been granted a rights-of-way construction permit. If the village elects not to make such notice, it shall not enforce the foregoing undergrounding requirement as against such other utilities who do not possess knowledge of the approved project.
 - 1. Any utilities wishing to perform construction under an annual general permit in that portion of the rights-of-way in which another utility is planning construction shall notify the village staff at least forty-eight (48) hours prior to the scheduled date for commencement of construction.
 - 2. Any utility wishing to perform construction under an expedited permit in that portion of the rights-of-way in which another utility is planning construction shall apply for the permit as soon as possible after notification is received from the village, but no later than five (5) business days prior to commencement of construction.
 - 3. Any utilities wishing to perform joint construction under a rights-of-way construction permit in a portion of the rights-of-way for which another utility is planning construction shall notify the village staff within five (5) business days of receipt of the notification.
 - 4. The village shall issue a schedule of construction in writing to all utilities wishing to perform joint construction under rights-of-way construction permits at the issuance of the permits.
 - 5. The village shall amend the schedule as needed to accommodate those utilities that are engaging in construction under the annual general or expedited permits.
- (d) All horizontally-installed utilities of like kind shall occupy one (1) trench, unless technically impossible or economically unreasonable. If a utility cannot occupy an existing trench, that utility shall create a new trench into which all like utilities thereafter installed shall collocate, unless technically impossible or economically unreasonable, or until there is no space remaining for any additional utilities.

- (e) Unless technically impossible, a CSP, video service provider or wireless infrastructure provider shall install its horizontally-installed facilities within an existing conduit, if space is available in an existing conduit and agreeable terms can be reached between the owner of the conduit and the CSP, video service provider or wireless infrastructure provider seeking to enter into the conduit. The owner of the conduit may reserve inner ducts and conduits for future use, and if the only available space is a conduit or inner ducts reserved for future use, it is deemed that there is no space in the existing conduit. If there is no space in an existing conduit, a telecommunications service provider, video service provider or wireless infrastructure provider may construct a new conduit within an existing trench as provided in subsection (e). The CSP, video service provider or wireless infrastructure provider may charge a reasonable rental fee or divide the cost of construction and maintenance pro rata with any new CSPs, video service providers or wireless infrastructure providers required by this section to locate within its conduit, but not both.
- (f) If there is sufficient space within an existing conduit and it is not technically impossible to place the facilities in the conduit and no reasonable arrangement can be made with the owner of the conduit for use of that space, the utility seeking to locate its facilities within that portion of the rights-of-way may apply for a variance to the board of adjustment. A variance may be granted only if the utility owning the conduit refuses to charge a reasonable rental fee or construction and maintenance fee or if the utility owning the conduit places unreasonable conditions or restrictions upon the utility seeking to enter the rights-of-way. If a utility owning a conduit causes another utility to apply for a variance in violation of any requirements of this chapter, the conduit owner is subject to the penalties listed in § 23-16.
- (g) Any communications services provider, video service provider or wireless infrastructure provider unwilling to collocate its facilities as required in this subsection shall not be issued a permit.

§ 23-10. - Damage or injury caused by utility constructing in the rights-of-way.

- (a) In the event that a utility, during construction of facilities under any of the permits issued pursuant to this article or as otherwise authorized by this chapter causes damage to pavement, sidewalks, driveways, facilities owned by the village, facilities owned by other utilities, or other property, public or private, the utility shall notify the village and the owner of the damaged property within twenty-four (24) hours of such damage. Pursuant to Florida Statutes § 337.401(2), the permit-holder which caused the damage or its authorized agent shall, at its own expense and in a manner approved by the village, replace and restore such places to as good or better condition than existed before said work was commenced within a reasonable time and manner acceptable to village staff. If necessary, temporary repairs may be performed according to FDOT standards. If the owner of the damaged property requests that said owner repair the damage caused by the permit holder, and does in fact repair the damage in a reasonable time and in a manner acceptable to village staff, the permit holder shall reimburse the owner for the actual and reasonable cost

and labor of repairs resulting from the damage. If the permit holder damages any village streets or sidewalks, it shall abide by all guidelines provided in the village's land development code. The permit holder shall further maintain all such restoration in the condition approved by the village for a period of one year following such restoration, or until such time as the right-of-way is damaged or altered by a person, utility, or force beyond the control of the utility making the repairs, whichever is shorter.

- (b) Acknowledgment required. At the time a utility submits its application for an annual general permit, or if the utility does not apply for an annual general permit prior to January 1 of each year, that utility shall sign an acknowledgment stating the following: if, during construction of a utility's facilities by the utility, a claim arises against the utility and/or the village as a result of the utility's negligent or intentional acts, the utility will indemnify, hold harmless, and defend the village against all claims.
- (c) In addition to the foregoing, and pursuant to Florida Statutes § 337.402, should any public road be damaged or impaired in any way because of the installation, inspection, or repair of a utility located on such road, the owner of the utility shall, at its own expense, restore the road to its original condition before such damage. If the owner fails to make such restoration, the village is authorized to undertake the work and to charge the cost thereof against the owner.
- (d) At the time a utility submits its application for an annual general permit, or if the utility does not apply for an annual general permit, prior to being issued a site-specific permit, that utility shall sign an acknowledgment stating the following:
 - If, during construction of a utility's facilities by the utility or its agents, a claim arises against the village as a result of the utility's negligent or intentional acts, the utility will indemnify, defend and hold harmless the village against all such claims.
- (e) The village may require a utility to present proof of insurance prior to the commencement of construction in the rights-of-way.
- (f) To ensure that property owners are not required to pursue subcontractors and sub-subcontractors in order to have their damaged property repaired, the utility for which the work is being performed shall be deemed to be a co-permit holder, along with its contractor and any of its contractor's subcontractors. Any property owner who is not afforded the repair work required by this section is authorized to file a civil action in the appropriate court to enforce the terms of this section.

§ 23-11. – Trimming, maintenance or removal of greenery.

- (a) Any utility trimming or removal of any tree protected by state or local law trees in or from the right-of-way must do so only in compliance with those laws.

- (b) If any utility finds it necessary to trim trees or other plant life in the rights-of-way in order to avoid contact between wires or cables and branches, the utility shall notify the village staff at least 24 hours prior to the proposed trimming. At the option of the village, the trees or other plant life may be trimmed either by the village at the expense and under the supervision of the utility or by the utility under the supervision of the village. Trimming shall be limited to the area required for clear cable passage and shall not include major structural branches which materially alter the appearance and natural growth habits of the tree. Any trees or other plant life may not be trimmed in a manner that would adversely affect its natural growth pattern or cause the tree to appear unnatural. The utility shall be responsible for any and all damages to any trees or other plant life as a result of the trimming, to property surrounding any tree or plant life and to persons who may be injured as a result of the trimming.
- (c) A utility that is an electric power transmission utility shall also comply with Florida Statutes § 163.3209. To the extent the provisions of this section and the statute conflict, the statute shall control.
- (d) If a utility seeks to temporarily remove trees or other plant life from the rights-of-way to construct facilities, the utility shall submit a restoration plan to village staff (which may consult with a qualified arborist) with its application for permit or, if constructing facilities under an annual general permit, at least forty-eight (48) hours prior to construction. The restoration plan shall propose to restore the disturbed area to its previous state, or as close as possible to its previous state. If the plan is unacceptable, village staff shall state the defects in the plan in writing as soon as possible after submission, and, village staff may deny any permits in connection with the restoration plan or may delay construction under an annual general permit until the defects in the restoration plan are corrected.
- (e) To the extent the village requires a utility, as a condition of permitting the installation of utility infrastructure in the right-of-way, to install trees, shrubs or other greenery, the utility shall continue to maintain such greenery to the standards set forth in the permit and the village's landscaping code and any applicable franchise agreement.

§ 23-12. - Relocation required if requested.

- (a) If a utility facility that is placed upon, under, over, or within the right-of-way limits of any village road is found by the village to be unreasonably interfering in any way with the convenient, safe or continuous use, or the maintenance, improvement, extension, or expansion of such road or rights-of-way, the facility owner shall, upon 30 days' written notice to the owner or its agent by the village, initiate the work necessary to alleviate the interference, including by relocating or removing its facilities, at its own expense, except in those circumstances set forth in Florida Statutes § 337.403(1)(a)-(k).
- (b) The village shall notify, by certified mail, return receipt requested, all affected utilities in writing at least ninety (90) days prior to construction. The village shall require all utilities to respond within thirty (30) days of receipt of the notice, stating the amount of time, in

days, the utility estimates it will require to remove their facilities and whether the utility can perform work simultaneously with any other utilities. Depending on the scope of the project, the village may grant additional time to the utilities to respond to the notice.

- (c) Pursuant to the information received from the affected utilities, the village shall prepare a removal and relocation plan in writing, and all affected utilities shall remove or relocate their facilities according to that plan. If any facilities are relocated pursuant to this paragraph, the utility shall comply with this article in its entirety, except that the utility shall not need to apply for a permit.
- (d) If a utility fails to comply with an order of the village to relocate its facilities or otherwise to alleviate the interference as required by this section, and the village must undertake the work at its own expense, the village shall first provide the utility owner's chief executive officer or other agent designated by the utility notice that the village will perform the work. Pursuant to Florida Statutes § 337.404, after the work has been completed at the village's expense, the village shall present an order to the utility requiring the payment of the cost of the work, and affording the utility a reasonable time, which shall be not less than twenty (20) days and not more than thirty (30) days, to appear before the village clerk to contest the reasonableness of the order. A utility which does not make an appearance within this time, the order is deemed final. A final order shall constitute a lien on any property of the utility owner and may be enforced in the manner set forth in Florida Statutes § 337.404(2).
- (e) Notwithstanding the foregoing, if required relocation is of a facility of a CSP, the village shall comply with the requirements of Florida Statutes § 337.404(4) and Florida Statutes § 337.4031 in addition to the provisions of this chapter.

§ 23-13. - Guarantees.

- (a) The following guarantee is required prior to the approval of an application for any permit established by this article:

Repair guarantee. If the village council finds that a utility has a demonstrated history of damaging property during right of way work in the village, then, prior to November 1 of every year, the applicant shall provide a repair guarantee for the subsequent year of no less than five thousand dollars (\$5,000) to be submitted to the village guaranteeing that construction performed throughout the year has not damaged any utility owned by the village or other property, public or private. The amount of the guarantee may vary according to the scope of construction at the discretion of the village staff. The guarantee may be in the form of an acceptable irrevocable letter of credit or bond approved by the village attorney, a cashier's check, or cash deposited with the village. Such guarantee will be written in favor of the village. If any damage to village owned utilities or other property, public or private, is discovered, the repair guarantee shall be used to repair that damage. The village reserves the right to require a utility that has caused damage at a value above the amount of the guarantee herein to pay any amount above the guarantee. If there is no damage to any property caused by the utility found within the village, the repair guarantee may be released to the utility by no later than January 31

or, at the option of the utility, may be utilized by the utility as the repair guarantee for the subsequent year.

(b) The following guarantees may, in the village's sole discretion, be required to accompany an application for any permit established by this article:

1. *Performance guarantee.* In cases where the estimated cost of the project exceeds two thousand five hundred dollars (\$2,500.00) and the utility is not currently occupying any portion of the rights-of-way within the village, the village may require a performance guarantee to be filed with the application for a permit hereunder in an amount equal to one hundred percent (100%) of the estimated cost of the project. The guarantee may be in the form of an irrevocable letter of credit or bond approved by the village attorney, cashier's check, or cash deposited with the village. Such guarantees shall be written in favor of the village and shall be conditioned on the completion of the project within the time limit on the face of the permit. The amount of the performance guarantee shall be based on standard construction cost determining methods and approved by village staff. No guarantee shall be released until a final inspection by the village staff determines that the installations are acceptable.
2. *Maintenance guarantee.* In cases where the estimated cost of the project exceeds ten thousand dollars (\$10,000), the village may require a maintenance guarantee to be submitted to the village guaranteeing the improvement for a period of not less than eighteen (18) months. The guarantee may be in the form of an acceptable irrevocable letter of credit or bond approved by the village attorney, cashier's check, or cash deposited with the village. The applicant shall request an inspection of the guaranteed facilities three (3) months prior to the expiration of the eighteen (18) month guarantee period, and no security shall be released until an acceptable inspection has been conducted by the village staff.

§ 23-14. - Removal of facilities not in use.

- (a) If any utility does not utilize any facilities or portion thereof placed in the rights-of-way within twelve (12) months of location therein, upon written request, the utility shall provide proof to the village staff that the facilities will be used within three (3) months or a written statement that those facilities are reserved for future use. If the utility does not provide the above, the utility shall remove those facilities not utilized when construction of facilities by another utility takes place in that portion of the rights-of-way where the facilities to be removed are located, or at such other reasonable time as the village shall require in light of the needs of the village to manage its rights-of-way, including risks associated with allowing abandoned facilities to remain therein, as well as the needs of other utilities to deploy or plan to deploy facilities within the same rights-of-way.
- (b) If any utility abandons any facilities located within the rights-of-way, the utility shall notify the village clerk within sixty (60) days of the intent to abandon the facilities. When a notice of intent to abandon facilities is received, the utility has the option of leaving those facilities in place and giving the village a bill of sale for such facilities, or removing the

facilities. The village shall notify the utility within sixty (60) days whether the village will accept the bill of sale or require the utility to remove the facilities. Failure of such notice shall not obligate the village to purchase the same and the village may renotify the utility of its preferred alternative at a later date. If the village rejects the bill of sale, the facilities shall be removed at the expense of the utility when construction of facilities by another utility takes place in that portion of the rights-of-way where the abandoned facilities are located.

§ 23-15. – Remain underground rule.

Unless state or federal law prohibits enforcement of this section, once a utility has located its facilities underground, such facilities must not thereafter be relocated above-ground.

§ 23-16. - Penalties.

- (a) Any violation of this chapter shall be punishable by fine or otherwise as provided for in article II of chapter 1 of the code. However, enforcement, including fines, will not be imposed for any violation under appeal pursuant to § 23-6.
- (b) In addition, after giving written notice and reasonable time to cure, the village can pursue all other lawful action, including suspending or denying permits issued pursuant to this article, filing a complaint with the Florida PSC advising of a violation of the village's code, filing an injunction in the circuit court to enforce the terms of this article or to enjoin the use of the rights-of-way, filing an action in federal court to enforce payment of just compensation pursuant to the federal Telecommunications Act, pursuing action before the code enforcement board to impose daily fines, and/or denying permits or development orders for other projects or use of the rights-of-way by the utility. These remedies shall be cumulative.

ARTICLE III. – USE BY COMMUNICATIONS SERVICES PROVIDERS

§ 23-30. - Purpose.

The purpose of this article is:

- (a) To establish a competitively neutral policy for the use of the rights-of-way for the provision of communications services, as defined in Florida Statutes § 202.11.
- (b) To protect the village's investment in the rights-of-way by providing rules and regulations governing communications services providers' access to and use of the rights-of-way by communications service providers to ensure and protect the public health, safety and welfare.
- (c) To regulate the placement of structures and facilities in the rights-of-way pursuant to Florida Statutes § 166.021.

- (d) To prescribe reasonable rules for such uses not inconsistent with Florida Statutes § 337.401 and Florida Statutes § 364.0323, so as to minimize disruption of services in the rights-of-way, regulate the use of the rights-of-way by communications services providers, and regulate the construction, installation, maintenance, repair, removal and replacement of such facilities in the rights-of-way.
- (e) To preserve the public's traditional use of the rights-of-way while allowing access to the rights-of-way to utilities.

§ 23-31. - Registration for construction, placement, maintenance, or ownership of facilities in rights-of-way.

- (a) A CSP that desires to place or maintain facilities in the rights-of-way in the village shall first register with the village in accordance with the terms of this article. Subject to the terms and conditions prescribed in this article, a registrant may place or maintain facilities in the rights-of-way.
- (b) Subject to the terms and conditions contained in this division, a registrant may construct, install, maintain, repair, expand, remove, or locate permanent or temporary facilities in, on, over, under, on and across the designated rights-of-way.

§ 23-32. - Nature of registration.

A registration shall not convey to the registrant any title, equitable or legal in the rights-of-way. Registration under this article governs only the placement or maintenance of facilities in the rights-of-way. Other ordinances, codes, or regulations may apply to the placement or maintenance in the rights-of-way of facilities that are not facilities as defined herein. Registration does not excuse a CSP from obtaining appropriate access or pole attachment agreements before locating its facilities on the village's or another person's facilities. Registration does not excuse a CSP from complying with all applicable village ordinances, including this article.

§ 23-33. - Registration; effectiveness.

- (a) Registration. Each CSP that desires to place or maintain facilities in rights-of-way shall file a registration with the village, which shall include the following information:
 - (1) Name of the applicant;
 - (2) Name, address and telephone number of applicant's primary contact person in connection with the registration;
 - (3) Evidence of insurance coverage required under this article;

- (4) The number of the registrant's current certificate of authorization issued by the Florida PSC, the FCC or other federal or state authority, if any; and
- (5) For an applicant that does not provide a Florida PSC certificate of authorization number, if the applicant is a corporation, proof of authority to do business in the State of Florida, including the number of certificate of incorporation.
- (b) The village shall review the information submitted by the applicant. Such review shall be by the village staff. If the applicant submits information in accordance with § 23-33(1) above, the registration shall be effective and the village shall notify the applicant of the effectiveness of the registration in writing. If the village determines that the information has not been submitted in accordance with § 23-33(1) above, the village shall notify the applicant of the non-effectiveness of registration, and reasons for non-effectiveness, in writing. The village shall so reply to an applicant within thirty (30) days after receipt of registration information from the applicant. Appeals from denials of registration shall be governed by § 23-36.
- (c) A registrant may cancel a registration upon sixty (60) days written notice to the village noticing that it will not place or maintain facilities in the right-of-way and will no longer need to obtain permits to perform work in the rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any facilities in the rights-of-way.
- (d) Registration shall not in itself establish any right to place or maintain priority for the placement or maintenance of the rights-of-way within the village, but shall establish a right for the registrant to apply for a permit. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional village ordinances, as well as any state or federal laws that may be enacted.
- (e) Pursuant to Florida Statutes § 337.401(3)(a), a registrant shall renew its registration with the village no later than April 1 of every fifth year after the initial year of registration. During periods between renewals, registrants shall notify the village within ninety (90) days of any change in registration information. If no information has changed in the then existing registration, the renewal may state that no information has changed. If the village finds that non-renewal of registration was a good faith error on the part of the CSP, the only penalty for non-registration shall be the non-issuance or revocation of permits to work in the rights-of-way; otherwise § 23-42 shall apply.
- (f) In accordance with applicable village codes and ordinances, a permit is required of a CSP that desires to place or maintain facilities in the rights-of-way. An effective registration shall be a condition of obtaining a permit. An effective registration with the village shall not be construed to mean that permit requirements shall not apply or that such requirements have been satisfied by the registrant.

- (g) Maintenance of registration documents, registration fee. The village shall provide a registration number to a CSP that has satisfied the requirements in subsections (a) and (b) of this section. The village shall maintain records of registration and renewal for all CSP's placing or maintaining facilities within the rights-of-way. Pursuant to Florida Statutes § 337.401(3)(a), the village is prohibited from requiring a provider to pay any fee, cost or other charge for registration or renewal thereof.

§ 23-34. - Assignment of facilities; effect on registration.

If the registrant transfers, sells or assigns any of its facilities located within the rights-of-way within the village, the transferee, buyer or assignee shall comply with the terms of this article as of the effective date of the transfer or assignment. Written notice of any such sale, transfer or assignment shall be provided by the registrant to the village within 20 days after the effective date of the transfer. If the transferee, buyer or assignee is registered with the village at the time of the transfer, sale or assignment, the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant. No later than sixty (60) days after the effective date of the transfer, sale or assignment, the transferee, buyer or assignee shall register in its own name in accordance with § 23-33(a) of this article.

§ 23-35. - Suspension of permits.

- (a) After giving reasonable notice and time to cure, the village may suspend or deny any permit for work in the rights-of-way for one or more of the following reasons:
- (1) Violation of permit conditions, including conditions set forth in this chapter or other applicable village codes, ordinances, or regulations governing use of the rights-of-way;
 - (2) Misrepresentation or fraud by registrant in a registration or permit application to the village;
 - (3) Failure to relocate or remove facilities as may be lawfully required by the village;
 - (4) Failure of a CSP to timely renew its registration; or
 - (5) Any other unlawful activity that may affect the village or the rights-of-way.
- (b) A suspension or denial of a permit may be appealed pursuant to § 23-36.

§ 23-36. - Appeals.

Final, written decisions of the village staff denying an application for registration, denying an application for renewal of a registration, or suspending or denying permits are subject to appeal. An appeal must be filed with the village clerk within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The village council shall hear the appeal and may affirm or reverse the decision of the staff. If the decision is reversed, the village staff shall reevaluate the registration information provided, pursuant to § 23-33(1) of this article, and the village shall reinstate any suspended permits and issue any permits which were denied as a result of violations of this article. The filing of a timely appeal acts as a stay upon any final decision being appealed until such appeal is decided by the council.

§ 23-37. - Construction in the rights-of-way.

- (a) *Registrant must obtain applicable permits.* Registrant shall not place or maintain its facilities in the rights-of-way until all applicable permits have been issued by the village or other appropriate authority, subject to article II of this chapter. The registrant may place or maintain the facilities in the rights-of-way specifically identified in permits obtained in accordance with applicable provisions of this chapter or other applicable village codes and regulations. The permission to use and construct in the rights-of-way is only for those areas specifically identified in the permit.
- (b) *Compliance with village codes and regulations.* Registrant shall comply with all applicable village codes and regulations in placing or maintaining the facilities in the rights-of-way, including, but not limited to, engineering regulations, permit requirements, contractor licensing requirements, landscaping codes, fire codes and zoning codes.
- (c) *Construction standards.* Registrant shall place or maintain its facilities in the rights-of-way in compliance with all applicable construction standards as established by local, state or federal law and in conformance with the village codes and regulations, including the standards set forth in this chapter. Registrant shall use and exercise due caution, care, skill and expertise in performing work in the rights-of-way and shall take all reasonable steps to safeguard work site areas.
- (d) *Maintenance.* A registrant shall maintain its facilities in the rights-of-way in a safe condition.

§ 23-38. - Involuntary termination of registration.

- (a) The village may terminate a registration if:

 - (1) A federal or state authority suspends, denies, or revokes a registrant's certification or license to provide communications services;
 - (2) The registrant's placement or maintenance of a communications facility in the rights-of-way presents, in the reasonable judgment of the village, an extraordinary

danger to the general public or other users of the rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice;

(3) The registrant ceases to use all of its communications facilities in rights-of-way and has not complied with § 23-14 of this chapter; or

(4) The registrant intentionally misrepresented itself on its registration.

(b) Prior to termination, the registrant shall be notified in writing by the village of the proposed termination, setting forth all matters pertinent to the proposed termination action, including which of subsections (a) (1) through (4) above is applicable as the reason therefore, and describing the proposed action of the village with respect thereto. The registrant shall have sixty (60) days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the village, to accomplish the same. If the plan is rejected, the village shall provide written notice of such rejection to the registrant and shall make a recommendation to the village council regarding a final decision as to termination of registration. A decision by the village to terminate a registration may only be accomplished by an action of the village council. A registrant shall be notified by written notice of any decision by the village council to terminate its registration. Such written notice shall be sent within seven (7) days after the decision.

(c) In the event of termination, the former registrant shall: (a) notify the village of assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in rights-of-way; or (b) provide the village with an acceptable plan for disposition of its communications facilities in rights-of-way. If a registrant fails to comply with this subsection, the village may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the communications facilities, requiring the registrant's bonding company within 90 days of the termination to remove some or all of the communications facilities from the rights-of-way and restore the rights-of-way to its original condition before the removal, or requiring that some or all of the communications facilities be removed and the rights-of-way restored to as good or better condition as before the removal at the registrant's expense.

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

(e) In the event of termination of a registration, this provision does not permit the village to cause the removal of any communications facilities that are used to provide another service for which the registrant holds a valid certification or license with the governing federal or state agency, where required, and is properly registered or holds a valid franchise with the village for such certificated or licensed service, where required.

§ 23-39. - Insurance.

(a) A registrant shall provide, pay for, and maintain satisfactory to the village 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 Insurance Guide of "A" or better. All liability policies shall provide that the village is an additional insured as to the activities it will engage in under this chapter. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representatives of the insurance company and shall be filed and maintained with the village annually. The registrant shall add and maintain the village as an additional insured on its general liability policy. The document shall indicate that the village, a political subdivision of the state, is an additional insured as its interests may appear; and shall also provide that insurance shall not be canceled, limited, or nonrenewed until after 30 days' written notice has been received by the village; however, insurance may be canceled and replaced with a policy that continues to meet the requirements of this division. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the village.

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

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

Worker's Compensation/Florida Statutory Requirements.

Employer's Liability - \$500,000 limit each accident.

\$500,000 limit per accident.

\$500,000 limit per each employee.

(2) *Comprehensive general liability.*

Bodily Injury and Property Damage - \$3,000,000 combined single limit each occurrence.

(3) *Automobile liability.*

Bodily Injury and Property Damage - \$3,000,000 combined single limit each accident.

§ 23-40. - Indemnification.

(a) In matters related to any actions or activities of the CSP arising under this article, CSP shall, at its sole cost and expense, fully indemnify, defend and hold harmless the village, its officers, boards, councils, charter officials, employees, agents, and volunteers against any and all claims, suits, actions, proceedings, liabilities, and judgments for damages (including, but not limited to, expenses for reasonable legal fees and disbursements and liabilities assumed by the village in connection therewith) or equitable relief regardless of whether the act or omission complained of is authorized, allowed or prohibited by this chapter. The CSP's indemnification of the village shall include, but not be limited to all claims, suits, actions, proceedings, liabilities, and judgments for damages arising out of the following:

- (1) To persons or property, in any way arising out of or through the acts or omissions of the CSP, its officers, agents, employees, servants, contractors, subcontractors, consultants or volunteers or to which the CSP's negligence shall in any way contribute; and
 - (2) Arising out of any claim of invasion of the right of privacy, for defamation of any person, firm, or corporation, or the violation or infringement of any copyright, trademark, trade name, service name, patent, or of any other right of any person, firm or corporation; and
 - (3) Arising out of the CSP's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to the CSP in the conduct of its business under this chapter.
- (b) The village shall be responsible for its own negligence, including that of its elected officials, charter officials, officers, and/or employees resulting from activities arising from its sole responsibilities under this chapter, but only to the extent provided by the waiver of sovereign immunity in Florida Statutes § 768.28.
 - (c) The CSP shall have the duty to defend the village in any action to which the village is a part which fails to allege specific actions by the village resulting from its activities under this chapter, whether or not the same claims damages for which the village is immune under federal or state law, including, but not limited to Florida Statutes § 768.28.
 - (d) The village shall give the CSP prompt notice of the making of any claim or the commencement of an any action, suit, or other proceeding covered by the provisions of this chapter. Nothing in this chapter shall be deemed to prevent village from cooperating with the CSP in participating in the defense of any litigation by its own counsel at its sole cost and expense.
 - (e) Nothing in this article shall be construed to abrogate any immunity under federal or state law, including, but not limited to, 47 U.S.C. § 555a or Florida Statutes § 768.28.

§ 23-41. - Notification of leasing and/or subleasing.

- (a) Any communications services provider registered under § 23-31(a) shall notify the village within thirty days after entering into a lease agreement or sublease agreement with another communications services provider that such agreement has been entered into. Notification shall be sent to the village clerk with a copy being sent to the village attorney.
- (b) The notification shall include:
 - (1) The name of the telecommunications company from which the facilities are leased,

- (2) The name of the telecommunications company to which the facilities are leased,
 - (3) The address of the company to which the facilities are leased,
 - (4) A contact person of the company to which the facilities are leased,
 - (5) The telephone number where that contact person can be reached, and
 - (6) If not all facilities have been leased or subleased, the location of the facilities leased or subleased to the new telecommunications company.
- (c) The communications services provider leasing the facilities within the village's right-of-way may, at any time, be required to provide financial information necessary to verify the accuracy of the Department of Revenue's calculations in establishing the local share of the Florida communications services tax for the village. Any information provided to the Department of Revenue shall, at the village's request, be provided to the village. The village shall not require any information of the communications provider leasing the facilities within the village's rights-of-way that is more than three years old.

§ 23-42. - Penalties for violation.

Any violation of this article shall be punishable by a fine or otherwise, as provided for in chapter 19 of the code. However, enforcement will not be pursued for any violation under appeal, pursuant to § 23-36.

In addition, after giving written notice and reasonable time to cure, the village can pursue all other lawful action, including filing a complaint with the Florida Public Service Council advising of a violation of this article, filing an injunction in the circuit court to enforce the terms of this article or registration or to enjoin the use of the rights-of-way, filing an action in federal court to enforce payment of just compensation pursuant to the Telecommunications Act, and/or denying or suspending permits or development orders for other projects or use of the rights-of-way by the CSP. These remedies shall be cumulative.

§ 23-43. - Reservation of rights and remedies.

- (a) The village reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
- (b) This article shall be applicable to all facilities placed or maintained in the rights-of-way on or after the effective date of this article and shall apply to all existing facilities in the rights-of-way prior to the effective date of this article to the full extent permitted by state and federal law.

- (c) Nothing in this article shall limit the remedies of the village or the registrant available under applicable law.

ARTICLE IV. – SMALL AND MIRCO CELL SITES IN VILLAGE RIGHT-OF-WAY

§ 23-45. – Definitions unique to article.

For purposes of this article, the following terms shall have the following meanings:

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.

Small Wireless Facility – A wireless facility that meets the following qualifications:

1. 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
2. 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.

§ 23-46. – Preemption of village authority.

(a) Pursuant to Florida Statutes § 337.401(7)(c), (d) and (g), the village may not:

- (1) prohibit, regulate, or charge for the collocation of small wireless facilities in the right-of-way or for the installation, maintenance, modification, operation, or replacement of utility poles used for the collocation of small wireless facilities in the public rights-of-way;
- (2) require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole;
- (3) directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the village, including reserving fiber, conduit, or pole space for the village;

- (4) require an applicant to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application;
 - (5) limit the placement of small wireless facilities by minimum separation distances;
 - (6) require a demonstration that collocation of a small wireless facility on an existing structure is not legally or technically possible as a condition for granting a permit for the collocation of a small wireless facility on a new utility pole except as provided for in subsections (b) and (c) below;
 - (7) require compliance with the village's regulations regarding placement of small wireless facilities or a new utility pole used to support a small wireless facility in rights-of-way under the control of the Florida department of transportation unless the authority has received a delegation from the department for the location of the small wireless facility or utility pole, or require such compliance as a condition to receive a permit that is ancillary to the permit for collocation of a small wireless facility, including an electrical permit;
 - (8) require a meeting before filing an application;
 - (9) require direct or indirect public notification or a public meeting for the placement of communication facilities in the right-of-way;
 - (10) limit the size or configuration of a small wireless facility or any of its components, if the small wireless facility complies with the size limits in § 23-47 of this code;
 - (11) prohibit the installation of a new utility pole used to support the collocation of a small wireless facility if the installation otherwise meets the requirements of Florida Statutes § 337.401(7)(d);
 - (12) require that any component of a small wireless facility be placed underground except as provided in subsections (b) and (c) below; and
 - (13) institute, either expressly or de facto, a moratorium, zoning-in-progress, or other mechanism that would prohibit or delay the filing, receiving, or processing of registrations, applications, or issuing of permits or other approvals for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles used to support the collocation of small wireless facilities.
- (b) In an area where the village has required all public utility lines in the rights-of-way to be placed underground, a wireless provider must comply with written, objective, reasonable, and nondiscriminatory requirements that prohibit new utility poles used to support small wireless facilities if:

- (1) The village, at least 90 days prior to the submission of an application, has required all public utility lines to be placed underground;
 - (2) Structures that the village allows to remain above ground are reasonably available to wireless providers for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities; and
 - (3) A wireless provider may install a new utility pole in the designated area in the right-of-way that otherwise complies with this subsection and it is not reasonably able to provide wireless service by collocating on a remaining utility pole or other structure in the right-of-way.
- (c) For small wireless facilities installed before the village adopts requirements that public utility lines be placed underground, the village must:
- (1) Allow a wireless provider to maintain the small wireless facilities in place subject to any applicable pole attachment agreement with the pole owner; or
 - (2) Allow the wireless provider to replace the associated pole within 50 feet of the prior location in accordance with subsection (d) below.
- (d) The village may require wireless providers to comply with its objective design standards adopted in this code. However, the code may only require:
- (1) A new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color;
 - (2) Reasonable spacing requirements concerning the location of a ground-mounted component of a small wireless facility which does not exceed 15 feet from the associated support structure; or
 - (3) A small wireless facility to meet reasonable location context, color, camouflage, and concealment requirements, subject to the limitations in Florida Statutes § 337.401(7); and
 - (4) A new utility pole used to support a small wireless facility to meet reasonable location context, color, and material of the predominant utility pole type at the proposed location of the new utility pole.

Such design standards under this paragraph may be waived by the village upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or utility pole or are technically infeasible or that the design standards impose an excessive expense. The waiver must be granted or denied within 45 days after the date of the request.

§ 23-47. – Small wireless facility height and design provisions.

- (a) The height of a small wireless facility shall be limited to 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. The height for a new utility pole is limited to the tallest existing utility pole located in the same contiguous right-of-way as of July 1st 2017, measured from a grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the height of the utility pole shall be no greater than 50 feet, inclusive of the height of the small wireless facility attached thereto.
- (b) A new utility pole or similar vertical structure to support a small wireless facility installed in public right-of-way must be designed to afford collocation of at least three antennae, and must be of a design which will limit the added visual blight the installation will cause, and/or which will provide alternative functionality to enhance public safety, such as by incorporation of decorative lighting elements.

§ 23-48. – Small wireless support facilities right-of-way permit process.

- (a) A permit shall be required prior to the installation in the public right-of-way of a small wireless facility or a utility pole designed to support a small wireless facility. Except as preempted or limited in this part, such permit applications shall be applied for under the same process, and shall be reviewed under the same standards, and shall be subject to the same conditions, as applies to all other utilities seeking right-of-way permits under this article, including but not limited to provisions on insurance coverage, indemnification, performance bonds, security funds, abandonment, landscaping, undergrounding requirements, and village liability. The village staff shall approve a complete application unless it does not meet the village's applicable codes.
- (b) In addition to denial for a failure to satisfy the standards and conditions referenced in subsection (a) above, a permit application for the collocation of a small wireless facility or to place a utility pole used to support a small wireless facility in the right-of-way submitted under this part may be denied if the proposed collocation or pole:
 - (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 2017 edition of the FDOT Utility Accommodation Manual;
 - (5) fails to comply with applicable codes; or

- (6) fails to comply with objective design standards provided for in this code.
- (c) At the applicant's discretion, an applicant seeking to collocate small wireless facilities within the village may file a consolidated application and receive a single permit for the collocation of up to 30 small wireless facilities.
- (d) At the village's discretion, the village may require a construction bond to secure restoration of the postconstruction rights-of-way to the preconstruction condition. However, such bond must be time-limited to not more than 18 months after the construction to which the bond applies is completed. For any financial obligation required by the village allowed under this section, the village shall accept a letter of credit or similar financial instrument issued by any financial institution that is authorized to do business within the United States, provided that a claim against the financial instrument may be made by electronic means, including by facsimile. A provider of communications services may add the village to any existing bond, insurance policy, or other relevant financial instrument, and the village must accept such proof of coverage without any conditions other than consent to venue for purposes of any litigation to which the village is a party. The village may not require a communications services provider to indemnify it for liabilities not caused by the provider, including liabilities arising from the village's negligence, gross negligence, or willful conduct.

§ 23-49. – Permit review process.

- (a) Permit applications submitted under this part must, in addition to the permit information required in this article, contain an email address the applicant has designated for use as the official means for the village to communicate with it concerning the application process.
- (b) Permit applications for the placement of a utility pole designed to support a small wireless facility 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.
- (c) For permit applications submitted under this section, the village staff must, within 14 days after receiving an application, determine and notify the applicant by electronic mail as to whether the application is complete. If the application is found to be incomplete, the village staff must specifically identify the missing information. An application is deemed complete if the village staff fails to provide notification to the applicant within 14 days.
- (d) A complete application must be reviewed, and either approved or denied, within 60 days after receipt of a complete application. Applications not approved or denied within that period shall be deemed to be approved unless the applicant mutually agrees to extend the review period in writing.
- (e) The village staff shall notify the applicant of approval or denial by electronic mail. If the application is denied, the village staff must specify in writing the basis for the denial,

including the specific code provision(s) on which the denial was based, and send the documentation to the applicant by electronic mail on the day the application is denied. To the extent the application is denied due to deficiencies within the application, the applicant shall have 30 days after the notice of denial is sent to cure the deficiencies identified and to resubmit the application. The village staff shall, within 30 days after any such resubmission, grant or deny the application. Any denial of a resubmitted application shall be limited to the deficiencies cited in the initial denial. Resubmitted applications not acted on within 30 days shall be deemed approved. If the applicant fails to resubmit the application within the 30 days provided for above, the application shall be deemed to have been withdrawn.

- (f) A permit approved under this section shall be effective for 1 year unless extended further by the village.

§ 23-50. – Exemptions from permitting.

- (a) The following actions with respect to small wireless facilities shall not require a permit:
- (1) Routine maintenance, the performance of service restoration work on existing facilities, or repair work, including, but not limited to, emergency repairs of existing facilities or extensions of such facilities for providing communications services to customers;
 - (2) Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size, or
 - (3) Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way and who is remitting communications services tax under Florida Statutes Chapter 202. The village may require an initial letter from or on behalf of such provider, which is effective upon filing, attesting that the micro wireless facility dimensions comply with the limits of this subsection. The village may not require any additional filing or other information as long as the provider is deploying the same, a substantially similar, or smaller-sized micro wireless facility equipment.
- (b) Notwithstanding the foregoing, an application for right-of-way work shall be required whenever excavation, closure of a sidewalk, or closure of a vehicle lane or parking lane are required, unless the provider is performing service restoration on an existing facility and the work is done in compliance with the latest edition of the Florida Department of Transportation Utility Accommodation Manual. The village requires notice of such work within 30 days after restoration and may require an after-the-fact permit for work which would otherwise have required a permit.

§ 23-51. – Collocation on village poles.

- (a) Collocation of small or micro wireless facilities on village-owned poles pursuant to agreement between an applicant and the village is authorized.
- (b) Such collocations on village poles are subject to the following limitations:
 - (1) The village may not enter into an exclusive arrangement with any person for the right to attach equipment to its poles.
 - (2) The rates and fees charged by the village for such collocations on village poles must be nondiscriminatory, regardless of the type of wireless services provided by the collocated facilities.
- (c) Should the village receive a request to collocate a small or micro wireless facility on a village pole, the village council is authorized to enter an agreement to permit such collocation at a rate of \$150 per pole annually. Such agreement shall be in a form approved by the village attorney and shall, at a minimum, provide for indemnification of the village and terms of use and maintenance. The terms of such agreement shall not conflict with the limitations and conditions set forth in Florida Statutes § 337.401(7)(f)(5)a-d.

Section 2. For purposes of codification of any existing section of the Estero Village Code herein amended, words **underlined** represent additions to original text, words **stricken** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Village Council would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Estero Village Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4)(a), prior to the date the public notice of the public hearing for this Ordinance was published, the Village prepared and posted on its website a business impact estimate which included: a) a summary of the Ordinance, a statement of the public purpose to be served by the Ordinance, b) an estimate of the direct economic impact of the Ordinance on private, for-profit businesses in the Village, c) an estimate of direct compliance costs that businesses may reasonably incur due to the Ordinance, d) identification of any new charge or fee on businesses created by the Ordinance or for which businesses will be financially responsible, e) an estimate of the Village's regulatory costs and of revenues from any new charges or fees imposed on businesses to cover such costs, and f) a good faith estimate of the number of businesses likely to be impacted by the Ordinance.

Section 6. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the **1st day of October, 2025**, by the Village Council of the Village of Estero, Florida.

ADOPTED ON SECOND AND FINAL READING on the **15th day of October, 2025**, by the Village Council of the Village of Estero, Florida.

VILLAGE OF ESTERO, FLORIDA

Attest:

By: _____
Joanne Ribble, Mayor

By: _____
Carol Sacco, CMC, Village Clerk