

ORDINANCE NO. 2001-

1 **AN ORDINANCE OF THE BOARD OF COUNTY**
2 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA**
3 **TO BE KNOWN AS THE RIGHT-OF-WAY CONSTRUCTION**
4 **PERMITTING ORDINANCE; PROVIDING FOR TITLE;**
5 **PROVIDING FOR DEFINITIONS; PROVIDING FOR**
6 **PERMIT; PROVIDING FOR PERMIT APPLICATION;**
7 **PROVIDING FOR OBLIGATIONS OF PERMITTEE;**
8 **PROVIDING FOR COUNTY RIGHTS-OF-WAY; PROVIDING**
9 **FOR SUSPENSION OF PERMITS; PROVIDING FOR PERMIT**
10 **REVOCATION; PROVIDING FOR APPEALS; PROVIDING**
11 **FOR ENFORCEMENT REMEDIES; PROVIDING FOR**
12 **INSURANCE; PROVIDING FOR INDEMNIFICATION;**
13 **PROVIDING FOR CONSTRUCTION BOND PROVIDING**
14 **FOR ABANDONMENT OF FACILITIES; PROVIDING FOR**
15 **FORCE MAJEURE; PROVIDING FOR RESERVATION OF**
16 **RIGHTS AND REMEDIES; PROVIDING FOR**
17 **SEVERABILITY; PROVIDING FOR REPEAL OF**
18 **ORDINANCES IN CONFLICT; PROVIDING FOR**
19 **INCLUSION IN THE CODE OF LAWS AND ORDINANCES;**
20 **PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR**
21 **EFFECTIVE DATE.**

22 **WHEREAS**, Section 125.42, Florida Statutes, authorizes the Board of County
23 Commissioners to grant a license to any person or private corporation to construct, maintain, repair,
24 operate, and remove the lines for the transmission of water, sewage, gas, power, telephone, other
25 public utilities and television under, on, over, across and along any County highway or any public
26 road or highway acquired by the County or public by purchase, gift devise, dedication, or
27 prescription; and

28 **WHEREAS**, Section 337.401, Florida Statutes, provides that local governments are
29 authorized to prescribe and enforce reasonable rules and regulations with reference to the placing
30 and maintaining of utilities along, across, or on any road and may grant to a resident or corporation
31 organized or licensed in Florida the use of the Right-of-Way in accordance with said rules and
32 regulations; and

33 **WHEREAS**, Chapter 125, Florida Statutes, empowers counties to establish,
34 coordinate and enforce regulations as are necessary for the protection of the public, to adopt technical
35 codes and regulations, to regulate arterial and other roads and related facilities, and to perform other
36 acts not inconsistent with the laws of the State of Florida; and

37 **WHEREAS**, Palm Beach County is a Charter County and has all powers of local
38 self-government; and

1 **WHEREAS**, the Board of County Commissioners of Palm Beach County has
2 determined that the comprehensive system of permitting regulations set forth herein furthers the
3 public health, safety and welfare.

4 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
5 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

6 **Section 1 – Title**

7 This Ordinance shall be known as the “Right-of-Way Construction Permitting
8 Ordinance.”

9 **Section 2 – Definitions**

10 For purposes of this Ordinance, the following terms, phrases, words and their
11 derivations shall have the meanings given. Where not inconsistent with the context, words used in
12 the present tense include the future tense, words in the plural number include the singular number,
13 and words in the singular number include the plural number. The words "shall" and "will" are
14 mandatory, and "may" is permissive. Words not otherwise defined shall be construed to mean the
15 common and ordinary meaning.

16 1. "Abandonment" shall mean the permanent cessation of all uses of a Facility;
17 provided that this term shall not include cessation of all use of a Facility within a physical structure
18 where the physical structure continues to be used. By way of example, and not limitation, cessation
19 of all use of a cable within a conduit, where the conduit continues to be used, shall not be
20 "Abandonment" of a Facility in Rights-of-Way.

21 2. "County" shall mean Palm Beach County, Florida.

22 3. “Engineer” shall mean Palm Beach County Engineer or his or her designee.

23 4. “Facility" shall mean any permanent or temporary plant, equipment and
24 property, including but not limited to sewer, gas, water, electric, storm drainage, communications,
25 and other types of facilities, cables or conduit, ducts, fiber optics, poles, antennae, converters, splice
26 boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and
27 other equipment, construction, or pathway placed or maintained or to be placed or maintained in
28 Rights-of-Way of the County.

29 5. "In Rights-of-Way" or "in the Rights-of-Way" shall mean in, on, over, under
30 or across Rights-of-Way.

1 6. "Ordinance" shall mean this Ordinance.

2 7. "Permit" shall mean a Right-of-Way Construction Permit that must be
3 obtained before placing or maintaining Facilities in the Right-of-Way.

4 8. "Permittee" shall mean any Person who obtains or seeks to obtain a Permit
5 pursuant to this Ordinance.

6 9. "Person" shall include any individual, children, firm, association, joint
7 venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or
8 legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups
9 or combinations, and shall include the County to the extent the County places or maintains Facilities
10 in its Rights of Way.

11 10. "Place or maintain" or "placement or maintenance" or "placing or
12 maintaining" shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove,
13 occupy, locate or relocate Facilities in Rights-of-Way.

14 11. "Rights-of-Way" shall mean a public right-of-way, public utility easement,
15 highway, street, bridge, tunnel or alley for which the County is the authority that has jurisdiction and
16 control and may lawfully grant access to pursuant to applicable law, and includes the surface, the air
17 space over the surface and the area below the surface. "Rights-of-Way" shall not include private
18 property. The term also includes but is not limited to associated sidewalks, the roadbed, all culverts,
19 drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls,
20 bridges, and viaducts. "Rights-of-Way" shall not include County buildings, fixtures, poles, conduits,
21 Facilities or other structures or improvements, regardless of whether they are situated in Rights-of-
22 Way.

23 **Section 3 – Permit Required**

24 1. A Permittee shall at all times comply with and abide by all applicable
25 provisions of the State and Federal law and County ordinances, codes and regulations in placing or
26 maintaining a Facility in Rights-of-Way. Obtaining a Permit pursuant to the terms of this Ordinance
27 does not excuse a Permittee from complying with all applicable County Ordinances.

28 2. No person shall commence to place or maintain a Facility in Rights-of-Way
29 without first having obtained a Permit as set forth in this Ordinance, except in the case of an
30 emergency.

1 3. The term "emergency" as set forth in this Section shall mean a condition that
2 threatens the public's health, safety or welfare, and includes an unplanned out-of-service condition
3 of a pre-existing service. Permittee shall provide prompt notice to the County of the placement or
4 maintenance of a Facility in Rights-of-Way in the event of an emergency, and shall be required to
5 obtain an after-the-fact permit if a Permit would have originally been required to perform the work
6 undertaken in Rights-of-Way in connection with the emergency.

7 4. Permittee acknowledges that as a condition of granting Permits, the County
8 may impose reasonable rules, conditions or regulations governing the placement or maintenance of
9 a Facility in Rights-of-Way.

10 5. Permits shall apply only to the areas of Rights-of-Way specifically identified
11 in the Permit and to dates set forth therein, unless modified by the Engineer.

12 6. Permits issued shall be conspicuously displayed at all times or immediately
13 available at the indicated work site for inspection by the County.

14 7. To the extent not otherwise prohibited by State or Federal law, the County
15 shall have the power to prohibit or limit the placement of new or additional Facilities within a
16 particular area of Rights-of Way.

17 8. A Permittee shall be required by the County to coordinate placement or
18 maintenance activities under a Permit with any other work, construction, installation or repairs that
19 may be occurring or scheduled to occur in the subject Rights-of-Way, and Permittee shall be required
20 to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions
21 and disturbance in Rights-of-Way.

22 9. A Permit from the County constitutes authorization to undertake only certain
23 activities in Rights-of-Way in accordance with this Ordinance, and does not create a property right
24 or grant authority to impinge upon the rights of others who may have an interest in the Rights-of-
25 Way.

26 **Section 4 - Permit Application**

27 1. A Permit application to place a new or replace an existing Facility in
28 Rights-of-Way shall include engineering drawings showing the location of the proposed installation
29 of Facilities in the Rights-of-Way. If the engineering drawings so provided require revision based

1 upon actual installation, the Permittee shall promptly provide revised engineering drawings. The
2 engineering drawings shall be in a hard copy format and an electronic format specified by the County
3 upon the County's request, provided such electronic format is maintained by the Permittee. Such
4 plans in a format maintained by the Permittee shall be provided at no cost to the County.

5 2. Each applicant for a Permit shall submit a non-refundable application fee at
6 the time of Permit application. The amounts shall be established by Resolution of the Palm Beach
7 County Board of County Commissioners, but in no event shall exceed the County's costs incurred
8 in reviewing the application and processing the Permit, and in monitoring construction work
9 authorized by the Permit. Such fees shall not be applies in the following circumstances:

10 (a) Where the construction performed is for the benefit of a governmental
11 or subgovernmental agency and that agency is a direct party to the contract for the construction.

12 (b) Where the Right-of-Way lies within the corporate boundaries of a
13 municipality and the municipality charges a permit fee for the same construction or installation work.

14 (c) Where providers of communications services seek a Permit under this
15 Ordinance. For the purposes of this Section, "communications services" shall mean the
16 transmission, conveyance or routing of voice, data, audio, video, or any other information or signals,
17 including cable services, to a point, or between or among points, by or through any electronic, radio,
18 satellite, cable, optical, microwave, or other medium or method now in existence or hereafter
19 devised, regardless of the protocol used for such transmission or conveyance. Prior to seeking a
20 Permit under this Ordinance, providers of communications services are first required to register
21 pursuant to Palm Beach County Ordinance 2000-009, Palm Beach County Code, section 23, Article
22 VII as may be amended.

23 3. As part of any Permit application to place or maintain or to replace an
24 existing Facility in Rights-of-Way, the Permittee shall provide the following:

25 (a) Engineering drawings depicting the location of the proposed Facilities,
26 including a description of the Facilities to be installed, where the Facilities are to be located, the size
27 of Facilities that will be located in Rights-of-Way, and an indication of the manner in which the
28 Facility will be installed (i.e. installation methods or techniques);

29 (b) A maintenance of traffic plan may be required to address any
30 disruption of Rights-of-Way;

1 (c) Information on the ability of Rights-of-Way to accommodate the
2 proposed Facility, if available (such information shall be provided without certification as to
3 correctness, to the extent obtained from other Persons);

4 (d) An engineer's cost estimate including but not limited to maintenance
5 of traffic plan, survey costs, mobilization, unit prices for each Facility installed, linear footage, and
6 cost of restoration as appropriate.

7 (e) The timetable for construction of the project or each phase thereof, and
8 the areas of the County which will be affected; and

9 (f) Such additional information as the County finds reasonably necessary
10 with respect to the placement or maintenance of the Facility that is the subject of the Permit
11 application to review such Permit application.

12 **Section 5 – Obligations of Permittee**

13 1. All Facilities shall be placed or maintained so as not to unreasonably interfere
14 with the use of Rights-of-Way by the public and with the rights and convenience of property owners
15 who adjoin any of the Rights-of-Way. The use of trenchless technology (i.e., directional boring,
16 horizontal drilling, micro tunneling, or other similar method) for the installation of Facilities in
17 Rights-of-Way as well as joint trenching or the co-location of Facilities in existing conduit is
18 strongly encouraged, and should be employed wherever feasible. The Engineer may promulgate
19 reasonable rules and regulations concerning the placement or maintenance of a Facility in Rights-of-
20 Way consistent with this Ordinance and other applicable law.

21 2. A Permittee shall place and maintain its Facility in Rights-of-Way in a manner
22 consistent with accepted industry practice and applicable law.

23 3. In connection with excavation in Rights-of-Way, a Permittee shall, where
24 applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in
25 Chapter 556, Florida Statutes (2000), as it may be amended.

26 4. Permittee shall use and exercise due caution, care and skill in performing
27 permitted work in Rights-of-Way and shall take all reasonable steps to safeguard work site areas.

28 5. A Permittee shall not place or maintain its Facilities so as to interfere with,
29 displace, damage or destroy any Facilities, including but not limited to, sewers, gas or water mains,
30 storm drains, pipes, cables or conduits of the County or any other Person's Facilities lawfully

1 occupying Rights-of-Way of the County. A Permit does not excuse a Permittee from obtaining
2 access or pole attachment agreements before placing or maintaining its Facilities on another Person's
3 Facilities.

4 6. A Permittee shall, on the request of any Person holding a Permit issued by the
5 County, temporarily raise or lower its Facilities to allow the work authorized by the Permit. The
6 expense of such temporary raising or lowering of Facilities shall be paid by the Person requesting
7 the same, and the Permittee shall have the authority to require such payment in advance. The
8 Permittee shall be given advance written notice not less than thirty (30) days prior to commencement
9 of the activity requiring the temporary raising or lowering of its Facilities to arrange for such
10 temporary relocation.

11 7. After the completion of any placement or maintenance of a Facility in
12 Rights-of-Way or each phase thereof, a Permittee shall, at its own expense, restore Rights-of-Way
13 to its original condition before such permitted work. If the Permittee fails to make such restoration
14 within thirty (30) days, or such longer period of time as may be reasonably required under the
15 circumstances, following the completion of such placement or maintenance, the County may perform
16 restoration and charge the costs of the restoration against the Permittee in accordance with Section
17 337.402, Florida Statutes (2000), as it may be amended. For twelve (12) months following written
18 acceptance of the permitted work by the Engineer, the Permittee shall guarantee its restoration work
19 and shall correct any restoration work that does not satisfy the requirements of this Ordinance at its
20 own expense.

21 8. The County shall have the right to make such inspections of Facilities placed
22 or maintained in Rights-of-Way as it finds necessary to ensure compliance with this Ordinance.

23 **Section 6 – County Rights-of-Way**

24 1. The County makes no warranties or representations regarding the fitness,
25 suitability, or availability of County's Rights-of-Way for the Permittee's Facilities and any
26 performance of permitted work, costs incurred or services provided by Permittee shall be at
27 Permittee's sole risk. Nothing in this Ordinance shall affect the County's authority to add, vacate or
28 abandon Rights-of-Way pursuant to applicable state or local law, and the County makes no
29 warranties or representations regarding the availability of any added, vacated or abandoned Rights-
30 of-Way for Facilities.

1 2. The County reserves the right to place and maintain, and permit to be placed
2 or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of
3 Facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead
4 installation or improvement that may be deemed necessary or proper by the County in Rights-of-Way
5 occupied by the Permittee. The County further reserves without limitation the right to alter, change,
6 or cause to be changed, the grading, installation, relocation, or width of Rights-of-Way within the
7 limits of the County and within said limits as same may from time to time be altered.

8 3. Removal or relocation at the direction of the County of a Permittee's Facility
9 in Rights-of-Way shall be governed by the provisions of Section 125.42 and Sections 337.403 and
10 337.404, Florida Statutes (2000), as they may be amended.

11 **Section 7 – Suspension of Permits**

12 The County may suspend a Permit for work in Rights-of-Way for one or more of the
13 following reasons:

14 1. Violation of Permit conditions, including conditions set forth in the Permit,
15 this Ordinance or other applicable County ordinances, codes or regulations governing placement or
16 maintenance of Facilities in Rights-of-Way;

17 2. Misrepresentation or fraud by Permittee in a Permit application to the County;

18 3. Failure to relocate or remove Facilities as may be lawfully required by the
19 County; or

20 4. As to Telecommunications service providers, failure to properly renew or
21 ineffectiveness of Registration as required by Palm Beach County Code Section 23, Article VII as
22 may be amended.

23 The Engineer shall provide notice and an opportunity to cure any violation of
24 1 through 4 above, each of which shall be reasonable under the circumstances. Failure to cure the
25 violation in a manner and within the time frame specified by the Engineer may result in a suspension
26 of the Permit. Such notice of suspension is subject to appeal as set forth in Section 9 - Appeals of
27 this Ordinance.

1 **Section 8 – Permit Revocation**

2 1. The County may revoke a Permit if:

3 (a) a Federal or State authority suspends, denies, or revokes any applicable
4 certification or license required by Permittee to provide services related to the placement or
5 maintenance of Facilities in the Rights-of-Way;

6 (b) the Permittee ceases to use all of its Facilities in Rights-of-Way and
7 has not complied with Section 14 – Abandonment of Facilities of this Ordinance; or

8 (c) the Permittee's placement or maintenance of a Facility in the Rights-
9 of-Way presents an extraordinary danger to the general public or other users of the Rights-of-Way
10 and the Permittee fails to remedy the danger promptly after receipt of written notice.

11 2. Prior to revocation, the Permittee shall be notified by the Engineer with a
12 written notice setting forth all matters pertinent to the proposed revocation action, including which
13 of (a) through (c) above is applicable as the reason therefore, and describing the proposed action of
14 the County with respect thereto. The Permittee shall have sixty (60) days after receipt of such notice
15 within which to address or eliminate the reason, or within which to present a plan, satisfactory to the
16 Engineer, to accomplish the same. In the event revocation is based on subsection 1(c) above, the
17 Engineer may demand such response from the Permittee in less than sixty (60) days based on the
18 nature of the danger to the general public. If the plan is rejected, the Engineer shall provide written
19 notice of such rejection to the Permittee and shall provide written notice of revocation of the Permit.
20 This notice of revocation may be appealed as set forth in Section 9 – Appeals of this Ordinance.

21 3. In the event of revocation, the former Permittee shall: (a) notify the County
22 of the assumption or anticipated assumption by another Permittee of ownership of the Permittee's
23 Facilities in Rights-of-Way; or (b) provide the County with an acceptable plan for disposition of its
24 Facilities in Rights-of-Way. If a Permittee fails to comply with this subsection 3, which
25 determination of non-compliance is subject to appeal as provided in Section 9 – Appeals, the County
26 may exercise any remedies or rights it has at law or in equity, including but not limited to taking
27 possession of the Facilities (where another Person has not assumed the ownership or physical control
28 of the Facilities) or requiring the Permittee within 90 days of the revocation, or such longer period
29 as may be agreed to by the County, to remove some or all of the Facilities from the Rights-of-Way
30 and restore the Rights-of-Way to its original condition before the removal.

1 4. In any event, a former Permittee shall take such steps as are necessary to
2 render safe every portion of the Facilities remaining in Rights-of-Way of the County.

3 5. In the event of revocation, this Section does not authorize the County to cause
4 the removal of Facilities used to provide another service for which the Permittee or another Person
5 who owns or exercises physical control over the Facilities holds a valid certification or license with
6 the governing Federal or State agency, if required for provision of such service.

7 **Section 9 – Appeals**

8 Final, written decisions of the Engineer revoking, suspending or denying a Permit,
9 are subject to appeal before a Hearing Officer as established in Palm Beach County Unified Land
10 Development Code, Section 4.15. An appeal must be filed with the Engineer within thirty (30) days
11 of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth
12 above shall be waived. The hearing shall occur within thirty (30) days of the receipt of the appeal,
13 unless waived by the Permittee, and a written decision shall be rendered within twenty (20) days of
14 the hearing. Upon correction of the grounds that gave rise to a suspension or denial, the suspension
15 or denial shall be lifted.

16 **Section 10 – Enforcement Remedies**

17 1. A Permittee's failure to comply with provisions of this Ordinance shall
18 constitute a violation of this Ordinance and shall subject the Permittee to the Suspension provisions
19 of this Ordinance and the code enforcement provisions set forth in the Palm Beach County Unified
20 Land Development Code, Article 14. In addition, violation of this Ordinance may be punishable as
21 provided in Section 125.69, Florida Statutes, as it may be amended, or any other legal or equitable
22 remedy available at law.

23 2. Failure of the County to enforce any requirements of this Ordinance shall not
24 constitute a waiver of the County's right to enforce that violation or subsequent violations of the
25 same type or to seek appropriate enforcement remedies.

26 **Section 11 – Insurance**

27 1. Except where the County or one of its Departments is a Permittee, a Permittee
28 shall provide, pay for and maintain satisfactory to the County the types of insurance described herein.
29 All insurance shall be from responsible companies duly authorized to do business in the State of
30 Florida and having a rating reasonably acceptable to the County. All liability policies shall provide

1 that the County is an additional insured as to the activities under this Ordinance. The required
2 coverages must be evidenced by properly executed Certificates of Insurance forms. The Certificates
3 must be signed by the authorized representative of the insurance company and shall be filed and
4 maintained with the County annually. Thirty (30) days advance written notice by registered, certified
5 or regular mail or facsimile as determined by the County must be given to the County of any
6 cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements
7 may be satisfied by evidence of self-insurance or other types of insurance acceptable to the County.

8 2. The limits of coverage of insurance required shall be not less than the
9 following:

10 (a) Worker's Compensation and Employer's Liability Insurance

11 Worker's Compensation-Florida Statutory Requirements

12 Employer's Liability - \$100,000 each accident

13 - \$500,000 disease--policy limit

14 - \$100,000 disease--each employee

15 (b) Comprehensive General Liability

16 Bodily injury and property damage -

17 \$1,000,000 each occurrence

18 \$3,000,000 general aggregate

19 (c) Automobile Liability

20 Bodily injury and property damage-

21 \$1,000,000 combined single limit each accident

22 **Section 12 – Indemnification**

23 1. A Permittee shall, at its sole cost and expense, indemnify, hold harmless, and
24 defend the County, its officials, boards, members, agents, and employees, against any and all claims,
25 suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and
26 expenses incurred by the County arising out of the placement or maintenance of its Facilities in
27 Rights-of-Way, regardless of whether the act or omission complained of is authorized, allowed or
28 prohibited by this Ordinance; provided, however, that a Permittee's obligation hereunder shall not
29 extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the
30 County. This provision includes, but is not limited to, the County's reasonable attorneys' fees

1 incurred in defending against any such claim, suit or proceedings. County agrees to notify the
2 Permittee, in writing, within a reasonable time of County receiving notice, of any issue it determines
3 may require indemnification. Nothing in this Section shall prohibit the County from participating
4 in the defense of any litigation by its own counsel and at its own cost if in the County's reasonable
5 belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing
6 contained in this Section shall be construed or interpreted: (a) as denying to either party any remedy
7 or defense available to such party under the laws of the State of Florida; or (b) as a waiver of
8 sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes (2000), as it may
9 be amended.

10 2. The indemnification requirements shall survive and be in effect after the
11 revocation or expiration of a Permit.

12 **Section 13 – Construction Bond**

13 1. Prior to issuing a Permit where the work under the Permit will require
14 restoration of Rights-of-Way, the County may require a construction bond in an amount equal to the
15 engineer's cost estimate to secure the restoration of the Rights-of-Way. Twelve (12) months after
16 the completion of the restoration in Rights-of-Way in accordance with the bond, the Permittee may
17 eliminate the bond. However, the County may subsequently require a new bond for any subsequent
18 work in Rights-of-Way. The construction bond shall be issued by a surety having a rating
19 reasonably acceptable to the County; shall be subject to the approval of the Engineer; and shall
20 provide that: "For twelve (12) months after issuance of this bond, this bond may not be canceled, or
21 allowed to lapse, until sixty (60) days after receipt by the County, by certified mail, return receipt
22 requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.

23 2. The rights reserved by the County with respect to any construction bond
24 established pursuant to this Section are in addition to all other rights and remedies the
25 County may have under this Ordinance, or at law or equity.

1 3. The rights reserved to the County under this Section are in addition to all other
2 rights of the County, whether reserved in this Ordinance, or authorized by other law, and no action,
3 proceeding or exercise of a right with respect to the construction bond will affect any other right the
4 County may have.

5 **Section 14 – Abandonment of Facilities**

6 1. Upon Abandonment of a Facility owned by a Permittee in Rights-of-Way, the
7 Permittee shall notify the County within ninety (90) days.

8 2. The County may direct the Permittee by written notice to remove all or any
9 portion of such Abandoned Facility at the Permittee's sole expense if the County determines that the
10 Abandoned Facility's presence interferes with the public health, safety or welfare, which shall
11 include, but shall not be limited to, a determination that such Facility: (a) compromises safety at any
12 time for any Rights-of-Way user or during construction or maintenance in Rights-of-Way; (b)
13 prevents another Person from locating Facilities in the area of Rights-of-Way where the Abandoned
14 Facility is located when other alternative locations are not reasonably available; or (c) creates a
15 maintenance condition that is disruptive to the Rights-of-Way's use. In the event of (b), the County
16 may require the third Person to coordinate with the Permittee that owns the existing Facility for joint
17 removal and placement, where agreed to by the Permittee.

18 3. In the event that the County does not direct the removal of the Abandoned
19 Facility, the Permittee, by its notice of Abandonment to the County, shall be deemed to consent to
20 the alteration or removal of all or any portion of the Facility by the County or another Person at such
21 third party's cost.

22 4. If the Permittee fails to remove all or any portion of an Abandoned Facility
23 as directed by the County within a reasonable time period as may be required by the County under
24 the circumstances, the County may perform such removal and charge the cost of the removal against
25 the Permittee.

26 **Section 15 – Force Majeure**

27 In the event a Permittee's performance of or compliance with any of the provisions
28 of this Ordinance is prevented by a cause or event not within the Permittee's control, such inability
29 to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a
30 result, provided, however, that such Permittee uses all practicable means to expeditiously cure or

1 correct any such inability to perform or comply. For purposes of this Ordinance, causes or events
2 not within a Permittee's control shall include, without limitation, acts of God, floods, earthquakes,
3 landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil
4 disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court.
5 Causes or events within Permittee's control, and thus not falling within this Section, shall include,
6 without limitation, Permittee's financial inability to perform or comply, economic hardship, and
7 misfeasance, malfeasance or nonfeasance by any of Permittee's directors, officers, employees,
8 contractors or agents.

9 **Section 16 – Reservation of Rights and Remedies**

10 1. The County reserves the right to amend this Ordinance as it shall find
11 necessary in the lawful exercise of its police powers.

12 2. This Ordinance shall be applicable to all Facilities placed in Rights-of-Way
13 on or after the effective date of this Ordinance and shall apply to all existing Facilities in Rights-of-
14 Way prior to the effective date of this Ordinance, to the full extent permitted by State and Federal
15 law.

16 3. The adoption of this Ordinance is not intended to affect any rights or defenses
17 of the County or a Permittee under any existing franchise, license or other agreements with a
18 Permittee.

19 4. Nothing in this Ordinance shall affect the remedies the County or the
20 Permittee has available under applicable law.

21 5. Any Person who uses the Facilities of a Permittee, other than the Permittee
22 that owns the Facilities, shall not be entitled to any rights to place or maintain such Facilities in
23 excess of the rights of the Permittee that places or maintains the Facilities.

24 **Section 17 – Severability**

25 The provisions of this Ordinance are declared to be severable and if any section,
26 sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or
27 unconstitutional, such decision shall not affect the validity of the remaining sections, sentences,
28 clauses and phrases of this Ordinance but shall remain in effect, it being the legislative intent that
29 this Ordinance shall stand notwithstanding the invalidity of any part.

1 **Section 18 – Repeal of Ordinances in Conflict**

2 The Construction in Public Right-of-Way Ordinance, adopted as Ordinance No. 76-2,
3 as amended, and codified at Sections 23-36 through 23-53, Code of Laws and Ordinances of Palm
4 Beach County, Florida, are hereby repealed, as are other applicable rules and regulations to the extent
5 that they conflict with the provisions of this Ordinance.

6 **Section 19 – Inclusion in the Code of Laws and Ordinances**

7 The provisions of this Ordinance shall become and be made part of the Code of Laws
8 and Ordinances of Palm Beach County, Florida, and the Sections of this Ordinance may be
9 renumbered or re-lettered to accomplish such intention, and the words “section” or “subsection” may
10 be changed.

11 **Section 20 – Savings Clause**

12 All Right-of-Way construction Permits issued pursuant to Ordinance No. 76-2, as
13 amended, along with all conditions relating to such Permits and all applicable Ordinance
14 requirements, shall continue in full force and effect and without interruption.

15 **Section 21 – Effective Date**

16 This Ordinance shall be effective immediately upon filing with the Department of
17 State.

18 **APPROVED AND ADOPTED** by the Board of County Commissioners of Palm
19 Beach County, Florida, this _____ day of _____, 2001.

20 DOROTHY H. WILKEN, CLERK
21 Board of County Commissioners

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

22 By: _____
23 Deputy Clerk

By: _____
Warren H. Newell, Chairman

24 APPROVED AS TO FORM AND
25 LEGAL SUFFICIENCY

26 By: _____
27 Assistant County Attorney

28 **EFFECTIVE DATE:** Filed with the Department of State on this _____ day of
29 _____, 2001.