

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: May 7, 2019

[] Consent

[] Workshop

[X] Regular

[] Public Hearing

Department: Engineering and Public Works

Submitted By: Engineering and Public Works

Submitted For: Land Development Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve on preliminary reading and advertise for public hearing on Tuesday, June 18, 2019 at 9:30 a.m.: An Ordinance of the Board of County Commissioners (BCC) of Palm Beach County (County), Florida, repealing and replacing Palm Beach County Code Chapter 23, Article III, Ordinance No. 2008-006, governing right-of-way permitting; providing for title; definitions; permit required; permit application; provider and pass-through provider permit applications; provider and pass-through provider permit review; obligations of permittee; construction surety; enforcement remedies; permit revocation; abandonment of a facility; appeals; insurance; indemnification; force majeure; reservation of rights and remedies; severability; inclusion in the code of laws and ordinances; savings clause; captions; and for an effective date.

SUMMARY: This Ordinance repeals and replaces the existing ordinance that governs permitting of facilities placed in the County's Right-of-Way. This Ordinance will also govern placement of Small and Micro Wireless Facilities to be consistent with the "Advanced Wireless Infrastructure Deployment Act," which relates to 5G wireless deployment. Additional clarifications are proposed to assist staff in their review of permit applications for all types of facilities. Countywide (YBH)

Background and Policy Issues: Review of the existing permitting ordinance began in 2016 with the goal of clarifying the Ordinance for Code Enforcement cases. Since 2016, the State Legislature enacted new rules pertaining to review of permit applications for wireless facilities which necessitated additional changes to the Ordinance. The proposed Ordinance now addresses the Code Enforcement issues, clarifies permitting requirements and is in compliance with Florida Statute requirements. Staff has received numerous requests for revisions during the drafting of the Ordinance from the communications industry. Many of the requests were accommodated; however, any request that sought to decrease the County's authority over County Rights-of-Way or negatively impact the public's health, safety or welfare is not recommended. The Ordinance was presented to the League of Cities on January 23, 2019, and received unanimous support for the revisions. This Ordinance replaces the existing Right-of-Way Permitting Ordinance that was approved by the BCC on March 11, 2008.

Attachments:

1. Proposed Right-of-Way Permitting Ordinance: Strike-through/Underlined Version
2. Proposed Right-of-Way Permitting Ordinance: Clean Version

Recommended by:

ybh

County Engineer

Date _____

Approved by:

Assistant County Administrator

Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ **	-0-	-0-	-0-	-0-
# ADDITIONAL FTE					
POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes No
Does this item include the use of federal funds? Yes No X

Budget Acct No.: Fund__ Dept.__ Unit__ Object
Program

Recommended Sources of Funds/Summary of Fiscal Impact:

**This item has no fiscal impact.

C. Departmental Fiscal Review: . Alii Kovalainen

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Lisa R 3/29/19
OFMB
3/28
3/28
3/28
Contract Dev and Control
4/3/19
4/4/19

B. Approved as to Form
and Legal Sufficiency:

JP Herman 4/9/2019
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

ORDINANCE NO. 2019-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA TO BE KNOWN AS THE RIGHT-OF-WAY PERMITTING ORDINANCE; REPEALING AND REPLACING CHAPTER 23, ARTICLE III OF THE PALM BEACH COUNTY CODE (ORD. 2008-006) PERTAINING TO RIGHT-OF-WAY PERMITTING; PROVIDING FOR SECTION 23-36 OF THE PALM BEACH COUNTY CODE (TITLE); PROVIDING FOR SECTION 23-37 OF THE PALM BEACH COUNTY CODE (DEFINITIONS); PROVIDING FOR SECTION 23-38 OF THE PALM BEACH COUNTY CODE (PERMIT REQUIRED); PROVIDING FOR SECTION 23-39 OF THE PALM BEACH COUNTY CODE (PERMIT APPLICATION); PROVIDING FOR SECTION 23-40 OF THE PALM BEACH COUNTY CODE (PROVIDER AND PASS-THROUGH PROVIDER PERMIT APPLICATION); PROVIDING FOR SECTION 23-41 OF THE PALM BEACH COUNTY CODE (PROVIDER AND PASS-THROUGH PROVIDER PERMIT REVIEW); PROVIDING FOR SECTION 23-42 OF THE PALM BEACH COUNTY CODE (OBLIGATIONS OF PERMITTEE); PROVIDING FOR SECTION 23-43 OF THE PALM BEACH COUNTY CODE (CONSTRUCTION SURETY); PROVIDING FOR SECTION 23-44 OF THE PALM BEACH COUNTY CODE (ENFORCEMENT REMEDIES); PROVIDING FOR SECTION 23-45 OF THE PALM BEACH COUNTY CODE (PERMIT REVOCATION); PROVIDING FOR SECTION 23-46 OF THE PALM BEACH COUNTY CODE (ABANDONMENT OF A FACILITY); PROVIDING FOR SECTION 23-47 OF THE PALM BEACH COUNTY CODE (APPEALS); PROVIDING FOR SECTION 23-48 OF THE PALM BEACH COUNTY CODE (INSURANCE); PROVIDING FOR SECTION 23-49 OF THE PALM BEACH COUNTY CODE (INDEMNIFICATION); PROVIDING FOR SECTION 23-50 OF THE PALM BEACH COUNTY CODE (FORCE MAJEURE); PROVIDING FOR SECTION 23-51 OF THE PALM BEACH COUNTY CODE (RESERVATION OF RIGHTS AND REMEDIES); PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR INCLUSION IN THE CODE OF

1 **LAWS AND ORDINANCES; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING**
2 **FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

3
4 WHEREAS, Chapter 125, Florida Statutes as may be amended, empowers
5 counties to establish, coordinate and enforce regulations as are necessary for the
6 protection of the public, to adopt technical codes and regulations, to regulate arterial
7 and other roads and related facilities, and to perform other acts not inconsistent with
8 the laws of the State of Florida; and

9 WHEREAS, Section 125.01(1)(m), Florida Statutes, as may be amended,
10 authorizes the Board of County Commissioners of Palm Beach County, Florida (Board)
11 to provide and regulate arterial, toll, and other roads, bridges, tunnels, and related
12 facilities as well as regulate the placement of signs, lights, and other structures within
13 the right-of-way limits of the County road system; and

14 WHEREAS, Section 125.42, Florida Statutes, as may be amended,
15 authorizes the Board to grant a license to any person or private corporation to construct,
16 maintain, repair, operate, and remove lines for the transmission of water, sewage, gas,
17 power, telephone, other public utilities, television, or other communications services as
18 defined in Section 202.11(1) under, on, over, across, or within the right-of-way limits
19 of any County highway or any public road or highway acquired by the County or public
20 by purchase, gift, devise, dedication, or prescription; and

21 WHEREAS, Section 337.401, Florida Statutes, as may be amended,
22 provides that local governments are authorized to prescribe and enforce reasonable
23 rules and regulations with reference to the placing and maintaining of utilities along,
24 across, within, or on the right-of-way limits of any road under local governments'
25 jurisdiction and may grant to a resident or corporation organized or licensed in Florida
26 the use of the right-of-way in accordance with said rules and regulations; and

27 WHEREAS, Section 334.03, Florida Statutes, as may be amended, defines
28 the County Road System as all collector roads in the unincorporated areas of a County
29 and all extensions of such collector roads into and through any incorporated areas, all
30 local roads in the unincorporated areas, and all urban minor arterial roads not in the
31 State Highway System; and

1 WHEREAS, Palm Beach County is a Charter County and has all powers of
2 local self- government; and

3
4 WHEREAS, the Board has determined that the comprehensive system of
5 Permitting regulations set forth herein furthers the public health, safety and welfare;
6 and

7 WHEREAS, the Board has delegated the responsibility for accepting,
8 processing, reviewing and approving or denying applications to place or maintain
9 facilities in the County Rights-of-Way to the County Engineer; and

10 WHEREAS, public hearings have been held in conformance with the
11 requirements set forth in Section 125.66, Florida Statutes.

12 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
13 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

14
15 Chapter 23, Article III of the Palm Beach County Code (Ord. 2008-006) is hereby repealed and
16 replaced with the following:

17
18 **Section 1. Section 23-36 – Title.**

19 This Ordinance shall be known as the “Right-of-Way Permitting Ordinance.”
20

21 **Section 2. Section 23-37 – Definitions.**

22 For purposes of this Ordinance, the following terms, phrases, words and their derivations shall
23 have the meanings given. Where not inconsistent with the context, words used in the present tense
24 include the future tense, words in the plural number include the singular number, “any” includes
25 “all,” “and” includes “or.” The words “shall” and “will” are mandatory, and “may” is permissive.
26 Words not otherwise defined shall be construed to mean the common and ordinary meaning.

- 27 1. “Abandoned” shall mean any Facility, except a Communications Facility, not in continued
28 use for a period of 180 consecutive days. A Communications Facility shall be deemed
29 “abandoned” if it is not in continued use for a period of 365 days.

- 1 2. "Abandonment" shall mean the permanent cessation of all uses of a Facility; provided that
2 this term shall not include cessation of all use of a Facility within a physical structure where
3 the physical structure continues to be used. By way of example, and not limitation,
4 cessation of all use of a cable within a conduit, where the conduit continues to be used or
5 cessation of all use of an Antenna mounted on a streetlight, where the streetlight continues
6 to be used, shall not be "Abandonment."
- 7 3. "Antenna" shall mean communications equipment that transmits or receives
8 electromagnetic radio frequency signals used in providing wireless services.
- 9 4. "Applicable Code(s)" shall mean this Ordinance, including the regulations and standards
10 in this Ordinance as well as state statutes and state and federal standards, and any uniform
11 building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national
12 code organization or local amendments to those codes enacted solely to address threats of
13 destruction of property or injury to persons.
- 14 5. "Collocation" shall mean to install, mount, maintain, modify, operate, or replace one or
15 more wireless facilities on, under, within, or adjacent to a wireless support structure or
16 utility pole. The term does not include the installation of a new utility pole or wireless
17 support structure in the public rights-of-way.
- 18 6. "Communications Facility" or "Communications Facilities" shall mean a Structure, Pole,
19 or equipment at a fixed location that enables communication services between user
20 equipment and a communications network, Antennas, towers, equipment enclosures,
21 cabling, Antenna brackets, and other such equipment, and includes a Small Wireless
22 Facility.
- 23 7. "County" shall mean Palm Beach County, Florida, a political subdivision of the State of
24 Florida, including but not limited to, the Department of Engineering and Public Works,
25 and the Palm Beach County Sheriff's Office.
- 26 8. "County Engineer" shall mean the County Engineer of Palm Beach County or his or her
27 designee.
- 28 9. "Facility" shall mean any permanent or temporary plant, property, Structure, or equipment,
29 including but not limited to, sewer, gas, water, electric, drainage, Communications Facility,
30 and any type of cable, conduit, duct, fiber optic, Pole, Antenna, converter, splice box,

- 1 cabinet, hand hole, manhole, vault, surface location marker, or appurtenance, landscape
2 material, access drive, road connection, pathway, signage, curbing, marking or pavement.
- 3 10. "In Right-of-Way" or "in the Right-of-Way" shall mean in, on, over, under, within, or
4 across the Right-of-Way.
- 5 11. "Law" shall mean any local, state or federal legislative, judicial or administrative order,
6 certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff,
7 guideline or other requirement, as amended, now in effect or subsequently enacted or
8 issued, including, but not limited to, the Communications Act of 1934, 47 USC 151 et seq.,
9 as amended by the Telecommunications Act of 1996, PL 104-104 § 101(a), 110 Stat. 70,
10 and all orders, rules, tariffs, guidelines and regulations issued by the Federal
11 Communications Commission or the governing state authority pursuant thereto.
- 12 12. "Micro Wireless Facility" shall mean a small wireless facility having dimensions no larger
13 than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna,
14 if any, no longer than 11 inches.
- 15 13. "Ordinance" shall mean the Right-of-Way Permitting Ordinance.
- 16 14. "Pass-through Provider" shall mean any Person who, pursuant to this Ordinance, Places or
17 Maintains a Communications Facility in the Right-of-Way, and does not remit
18 communications service taxes, as imposed by the County pursuant to Chapter 202 and
19 Section 337.401, Florida Statutes.
- 20 15. "Permit" shall mean the Right-of-Way Permit, including but not limited to right-of-way
21 (RW), utility permit (UT) and landscape permit (LA), pursuant to the Ordinance.
- 22 16. "Permittee" shall mean any Person who obtains or applies to obtain a Permit pursuant to
23 the Ordinance.
- 24 17. "Person" shall mean any entity or individual, including but not limited to, a governmental
25 entity, except for Palm Beach County Engineering and Public Works Department,
26 contractor, firm, association, joint venture, partnership, estate, trust, business trust,
27 syndicate, fiduciary, corporation, organization or legal entity of any kind, successor,
28 assignee, transferee, personal representative and any other group.
- 29 18. "Place or maintain," "Placement or Maintenance," or "Placing or Maintaining" shall mean
30 to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, replace,
31 locate or relocate. Physical control, ownership or maintenance of a Facility is considered

1 “Placing or Maintaining” a Facility. A Person providing service only through resale or only
2 through use of a third party’s unbundled network elements is not “Placing or Maintaining”
3 the Communications Facility through which such service is provided. The transmission
4 and receipt of radio frequency signals through the airspace of the Right-of-Way is not
5 Placing or Maintaining a Facility in the Right-of-Way.

6 19. “Pole” shall mean a pole or similar structure that is used in whole or in part to provide
7 communications services or for electric distribution, lighting, traffic control, signage, or a
8 similar function. The term includes the vertical support structure for traffic lights but does
9 not include a horizontal structure to which signal lights or other traffic control devices are
10 attached and does not include a pole or similar structure 15 feet in height or less unless an
11 authority grants a waiver for such pole. A Pole may be a part of a Communications Facility.

12 20. “Provider” shall mean any Person who, pursuant to this Ordinance, Places or Maintains a
13 Communications Facility in the Right-of-Way, and remits communications service taxes,
14 as imposed by the County pursuant to Chapter 202 and Section 337.401, Florida Statutes.

15 21. “Registrant” shall mean a Provider or Pass-through Provider that is registered pursuant to
16 the “Palm Beach County Communications Right-of-Way Registration Ordinance”, as
17 amended.

18 22. “Registration” shall mean the process described in the “Palm Beach County
19 Communications Registration Right-of-Way Ordinance”, as amended.

20 23. “Replacement” shall mean the removal of an existing Facility for purposes of installing a
21 new Facility.

22 24. “Right-of-Way” shall mean a public right-of-way, highway, street, bridge, tunnel, Right-
23 of-Way drainage area or alley which has been dedicated to the public or to the County and
24 for which the County is the maintenance authority, or intends to be the maintenance
25 authority, that has jurisdiction and control and may lawfully grant access to pursuant to
26 applicable law, and includes the surface, the air space over the surface and the area below
27 the surface. “Right-of-Way” shall not include private property unless it is subject to a
28 public easement for a use referenced above. The term also includes but is not limited to
29 associated sidewalks, the roadbed, all culverts, drains, sluices, ditches, water storage areas,
30 waterways, embankments, slopes, retaining walls, bridges, and viaducts. “Right-of-Way”

1 shall not include County buildings, fixtures, poles, conduits, Facilities or other structures
2 or improvements, regardless of whether they are situated in the Right-of-Way.

3 25. "Small Wireless Facility" shall mean a wireless facility that meets the following
4 qualifications:

5 a. Each antenna associated with the facility is located inside an enclosure of no more
6 than 6 cubic feet in volume or, in the case of antennas that have exposed elements,
7 each antenna and all of its exposed elements could fit within an enclosure of no
8 more than 6 cubic feet in volume; and

9 b. All other wireless equipment associated with the facility is cumulatively no more
10 than 28 cubic feet in volume. The following types of associated ancillary equipment
11 are not included in the calculation of equipment volume: electric meters,
12 concealment elements, telecommunications demarcation boxes, ground-based
13 enclosures, grounding equipment, power transfer switches, cutoff switches, vertical
14 cable runs for the connection of power and other services, and utility poles or other
15 support structures.

16 26. "Structure" shall mean anything constructed or erected, the use of which requires
17 permanent location on the ground, or attachment to something having a permanent location
18 on the ground.

19

20 **Section 3. Section 23-38 - Permit Required.**

21 1. Any Person Placing or Maintaining any Facility in the Right-of-Way shall have a Permit,
22 except:

- 23 a. In an Emergency, as defined in this Section;
- 24 b. Where Permittee performs routine maintenance of a Communications Facility;
- 25 c. For replacement of an existing Communications Facility with a Communications
26 Facility that is substantially similar or is of the same or smaller size;
- 27 d. For installation, Placement or Maintenance, or replacement of a Micro Wireless
28 Facility that is suspended on cables strung between existing utility Poles in
29 compliance with Applicable Codes by or for a Provider.

30 Notwithstanding paragraphs a. through d., above, a Permit is required for work that involves
31 excavation, closure of a sidewalk, or closure of a vehicular lane.

- 1 2. As used in this Section, “Emergency” shall mean a condition that threatens the public’s
2 health, safety or welfare, and includes an unplanned out-of-service condition of a pre-
3 existing service. Permittee shall provide prompt notice to the County of the Placement or
4 Maintenance of a Facility in the Right-of-Way in the event of an Emergency, and shall be
5 required to obtain an after-the-fact Permit if a Permit would have originally been required
6 to perform the work undertaken in the Right-of-Way in connection with the Emergency.
- 7 3. A Permit shall be valid only for the Right-of-Way location identified in the Permit and for
8 the dates set forth therein, unless modified in writing by the County.
- 9 4. A Permit shall be conspicuously displayed at all times or immediately available at the
10 location identified in the Permit, for inspection by the County. Where the Ordinance
11 requires a Permit, the County shall have the right to immediately stop any work within the
12 Right-of-Way if a valid Permit is not displayed or immediately produced for inspection.
- 13 5. A Permit authorizes the Permittee to perform the work described in the Permit and in
14 accordance with the Ordinance, and does not create any property right or grant any
15 authority to impinge upon the rights of another who may have an interest in the Right-of-
16 Way.
- 17 6. The County reserves the right to Place or Maintain, and permit to be Placed or Maintained,
18 a Facility in any Right-of-Way subject to a Permit. The County further reserves, without
19 limitation, the right to alter, change, or cause to be altered or changed, the grading, location,
20 or width of a Right-of-Way.
- 21 7. To the extent not otherwise prohibited by State or Federal law, the County shall have the
22 power to prohibit, limit, or regulate the location of any Facility in a Right-of Way, as
23 follows:
 - 24 a. when necessary to protect an existing Facility in a Right-of-Way;
 - 25 b. to accommodate documented, funded, or approved County plans for public
26 improvements or projects;
 - 27 c. to prevent interference with the operations of public safety telecommunications
28 services; or
 - 29 d. to accommodate traffic safety issues of the County, State, or any other agency with
30 authority over a Right-of-Way.

1 8. The County does not make any warranties or representations
2 regarding the fitness, suitability or availability of a Right-of-Way for the Permittee's
3 Facility, and any work, cost or service provided by Permittee shall be at Permittee's sole
4 risk.

5 9. Nothing in the Ordinance shall affect the County's authority to add, vacate or abandon
6 Right-of-Way pursuant to applicable federal, state or local law, and the County does not
7 make any warranties or representations regarding the availability of any added, vacated or
8 abandoned Right-of-Way.

9
10 **Section 4. Section 23-39 - Permit Application.**

11 1. Provider or a Pass-through Provider shall first complete the Registration and become a
12 Registrant, prior to applying for a Permit under the Ordinance.

13 2. A Permittee, except a Provider or Pass-through-Provider that is a Registrant, shall submit
14 a nonrefundable application fee at the time of Permit application. The application fee
15 shall be established by a County Resolution, and shall not exceed the County's costs
16 incurred in reviewing the application, processing the Permit, and monitoring the work
17 authorized by the Permit.

18 3. The Permit application fee may be waived where:

19 a. the Permittee is a governmental agency, which is a party to a contract for work to
20 be performed under the Permit, and the work is for the benefit of the governmental
21 agency; or

22 b. the Right-of-Way is located within the municipal boundaries of a municipality,
23 which also requires a permit before the same Facility is Placed or Maintained in the
24 Right-of-Way, and the municipality charges a permit fee.

25 4. A Permit application to Place or Maintain any Facility in the Right-of-Way shall include
26 the following:

27 a. An engineering plan in compliance with Applicable Codes, signed and sealed by a
28 Florida-licensed Professional Engineer, or prepared by a person who is exempt
29 from such registration requirements as provided in Section 471.003, Florida
30 Statutes. The engineering plan shall identify the location of the proposed Facility

- 1 with respect to at least one major roadway, and describe the Facility, including the
2 approximate size of Facility;
- 3 b. A description of the manner in which the Facility would be Placed and Maintained,
4 such as a description of proposed construction methods or techniques, and shall
5 identify any deviation from the County's engineering standards as stated in the
6 Land Development Design Standards Manual, or applicable other regulations, as
7 amended;
- 8 c. A maintenance of traffic (MOT) plan to address any disruption of the Right-of-
9 Way. Except for a Registrant's MOT plan, the MOT plan will be processed by the
10 Department's Traffic Division through a separate application only after the Permit
11 application has been approved;
- 12 d. If Replacement of a Facility owned by the County is requested by the Permittee,
13 indicate the function of the Facility to be replaced, the type of replacement Facility
14 proposed, and provide evidence of compliance with County standards;
- 15 e. Information regarding the ability of Right-of-Way to accommodate the proposed
16 Facility, including relevant information that identifies all above and below ground
17 Facilities that currently exist in the Right-of-Way, if available;
- 18 f. An engineer's cost estimate, including but not limited to MOT costs, survey costs,
19 mobilization, unit prices for each Facility installed, linear footage, and cost of
20 restoration, as appropriate. However, a Registrant is not required to submit survey
21 costs, mobilization, and unit prices for each Facility Placed or Maintained, and
22 linear footage, as part of the Registrant's engineer's cost estimate;
- 23 g. The timetable for the Placement or Maintenance of the Facility, or each phase
24 thereof, and the areas of the County which will be affected;
- 25 h. If appropriate given the Facility proposed, an estimate of the cost of restoration to
26 the Right-of-Way, specifically for open cut applications; and
- 27 i. Such additional information as the County finds reasonably necessary with respect
28 to the Placement or Maintenance of the Facility.
- 29 5. A Permittee that is a private utility provider that is not subject to Registration may also be
30 required to:

- a. Pay an additional fee equal to 110% of the construction costs, including any pavement restoration cost, as approved by the County Engineer;
- b. Notify Sunshine 811 of the Facility's final constructed location; and
- c. Indemnify the County for any damage to the Facility caused by action of the County or by any other Person.

Section 5. Section 23-40 – Provider and Pass-Through Provider Permit Application.

1. In addition to Section 4, above, a Provider or Pass-through Provider shall also comply with all applicable provisions of this Section and this Ordinance and Applicable Codes regarding Placement or Maintenance of a Communications Facility in the Right-of-Way.
2. The County reserves the right to permit the Placement and Maintenance of other Facilities in the same Right-of-Way occupied by the Provider and Pass-through Provider.
3. A Permit application to Place or Maintain a Communications Facility in the Right-of-Way shall provide such additional information as the County finds reasonably necessary to demonstrate compliance with Applicable Codes regarding the Placement or Maintenance of the Communications Facility.
4. If a Communications Facility must be Placed or Maintained in a Right-of-Way with residential use on any side, no part of any Communications Facility may be placed directly in front of a residential structure, and the Communications Facility shall preferably be located adjacent to common lot lines. If a Right-of-Way has a residential structure on only one side, the Communications Facility shall be Placed or Maintained on the opposite side of the Right-of-Way, whenever reasonably feasible.
5. Any proposed Pole shall, to the extent reasonably feasible, be Placed and Maintained so as to align with existing Poles in the Right-of-Way and have equal setback distances with existing Poles from the Right-of-Way line.
 - a. The height of a Small Wireless Facility shall be limited to ten (10) feet above the Pole upon which the Small Wireless Facility is to be Collocated. The height for a new Pole shall be limited to the tallest existing Pole as of July 1, 2017, located in the same Right of Way, other than a Pole for which a waiver has previously been granted, measured from grade in place within five hundred (500) feet of the

proposed location of the Small Wireless Facility. If there is no Pole within five hundred (500) feet, the height of the Pole shall be limited to fifty (50) feet.

- b. The Permittee shall make reasonable efforts to Collocate on an existing Pole. If the Permittee seeks to Collocate a Small Wireless Facility on an existing Pole that is a County maintained Pole, the Permittee may petition the County Engineer to replace the existing Pole with a Pole capable of accommodating the Permittee's needs and continuing to serve the original County function, if necessary to accommodate the Collocation. If the proposed replacement Pole will function as a streetlight, the replacement Pole and the light fixture must meet County standards for structural integrity and lighting, must be a lighting type approved by the County Engineer, and must be metered separately for electric power to the streetlight and to the Communications Facility. The Permittee shall be responsible for maintaining the replacement Pole, and the County shall be responsible for maintaining the light fixture. A replacement Pole proposed under this section, is subject to review and approval of the County Engineer and the make-ready provisions of Section 337.401(7)(f), Florida Statutes.

Section 6. Section 23-41 – Provider and Pass-Through Provider Permit Review.

1. County shall review a Permit application submitted by a Provider or Pass-through Provider, pursuant to Sections 4 and 5, above, as follows:
- a. Within fourteen (14) days after receiving the Permit application, the County shall notify the Permittee whether the Permit application is complete, or if incomplete, which information is missing, or initiate the negotiation period, as provided below.
- i. Within fourteen (14) days after receiving the Permit application, County may request that the proposed location of a Small Wireless Facility be moved to another location in the Right of Way and placed on another Pole or Structure. County and Permittee may negotiate the alternative location for thirty (30) days after the date of this request. At the end of the negotiation period, if the alternative location is accepted by the Permittee, the Permittee must notify the County of such acceptance and the Permit application shall be deemed granted for any new location for which there is agreement and

- 1 all other locations in the Permit application. Permittee shall notify County
2 if an agreement is not reached, and County shall approve or deny the
3 original Permit application within ninety (90) days after the date the Permit
4 application was filed.
- 5 b. Unless County initiates the negotiation period, pursuant to Section 6.1.a.i., County
6 shall approve or deny the Permit application within 60 days after receipt of the
7 Permit application or the Permit application will be deemed approved. The County
8 and the Permittee may mutually agree to extend the 60-day Permit application
9 review period.
- 10 c. If the Permit application is denied, County shall notify the Permittee on the day of
11 the denial and provide the basis for the denial, including the specific code
12 provisions on which the denial was based.
- 13 d. The Permittee may cure the deficiencies identified in County's denial of the Permit
14 application and resubmit the Permit application within thirty (30) days of the denial.
- 15 e. County shall approve or deny the resubmitted Permit application within thirty (30)
16 days of receipt of the resubmitted Permit application. County review of the
17 resubmitted Permit application shall be limited to the deficiencies identified in the
18 denial.
- 19 2. Unless extended by the County, a Provider and Pass-through Provider Permit is effective
20 for one (1) year from the date issued.
- 21 3. County shall communicate with and notify the Permittee regarding its Permit application,
22 by e-mail.
- 23

24 **Section 7. Section 23-42 - Obligations of Permittee.**

- 25 1. A Permittee shall at all times comply with and abide by all applicable provisions of the
26 State and Federal law and, to the extent not inconsistent with state and federal law, County
27 ordinances, codes and regulations, as well as accepted industry practices, in Placing or
28 Maintaining a Facility. Obtaining a Permit pursuant to this Ordinance does not excuse a
29 Permittee from complying with all applicable County ordinances. In connection with
30 excavation in the Right-of-Way, a Permittee shall, where applicable, comply with the

- 1 Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida
2 Statutes, as may be amended.
- 3 2. A Permittee shall Place and Maintain its Facility in Right-of-Way in a manner consistent
4 with accepted industry practice and applicable law. The Facility shall continue to be
5 maintained by the Permittee unless otherwise approved by the County Engineer.
- 6 3. A Permittee acknowledges that as a condition of granting the Permit, the County may
7 impose reasonable rules, conditions or regulations governing the Placement or
8 Maintenance of a Facility to the extent consistent with applicable law.
- 9 4. A Facility shall be Placed and Maintained so as not to unreasonably interfere with the use
10 of the Right-of-Way by the public and with any rights and safety of property owners who
11 adjoin any of the Right-of-Way. The use of trenchless technology, such as directional
12 boring, horizontal drilling, micro tunneling, or other similar method, for the installation of
13 a Facility in the Right-of-Way, as well as joint trenching or the Collocation of a Facility in
14 existing conduit is strongly encouraged, and should be employed wherever feasible. A
15 Permittee shall not Place or Maintain a Facility so as to interfere with, displace, damage or
16 destroy any Facility, including but not limited to, any sewer, gas or water main, storm drain,
17 pipe, cable or conduit of the County or any other Person's Facility lawfully occupying
18 Right-of-Way of the County. The Permittee shall be liable for any displacement, damage
19 or destruction of any property, including but not limited to, any irrigation system or
20 landscaping, as a result of the Placement or Maintenance of a Facility within the Right-of-
21 Way. A Permit does not relieve a Permittee from obtaining any necessary agreement before
22 Placing or Maintaining its Facility on another Person's Facility. The County Engineer may
23 promulgate reasonable rules and regulations concerning the Placement or Maintenance of
24 a Facility in Rights-of- Way consistent with this Ordinance and other applicable law.
- 25 5. Upon County's request, a Permittee shall be required to coordinate the Placement or
26 Maintenance of a Facility with any other work, construction, installation or repair that may
27 be occurring or scheduled to occur within a reasonable time, in the subject Right-of-Way.
28 The Permittee shall reasonably alter its Placement or Maintenance schedule, as necessary
29 to minimize disruption and disturbance in the Right-of-Way. In the event of a conflict with
30 a County project, the Permittee shall yield to the County's schedule such that no two
31 entities are working within the same area of the Right-of-Way at the same time.

- 1 6. A Permittee shall use and exercise due caution, care and skill in Placing or Maintaining a
2 Facility in any Right-of-Way and shall take all reasonable steps to safeguard all work site
3 areas.
- 4 7. Subject to applicable law, a Permittee, on the request of any other Permittee under the
5 Ordinance, shall temporarily support, protect, raise, lower or otherwise reasonably modify
6 on a temporary basis, its Facility to allow the work authorized by the Permit of the other
7 Permittee. The expense of such temporary support, protection, raising or lowering of a
8 Facility shall not be the responsibility of the County, regardless of the requesting Permittee.
9 The Permittee shall be given not less than thirty (30) calendar days advance written notice
10 to arrange for such temporary relocation.
- 11 8. After the completion of the Placement or Maintenance of a Facility in the Right-of-Way or
12 each phase thereof, the Permittee shall, at its own expense, restore the Right-of-Way to at
13 least its original condition before the permitted work, subject to the County's inspection.
14 If the Permittee fails to make such restoration within thirty (30) days, or such longer period
15 of time as may be reasonably required under the circumstances, following the completion
16 of such Placement or Maintenance, the County may perform restoration and charge the
17 costs of the restoration against the Permittee, pursuant to Section 337.402, Florida Statutes.
18 Alternatively and at the County's sole discretion, the County may draw against any surety
19 received pursuant to Section 8 below, to recover expenses, costs, and any other damages
20 related to restoring the Right-of-Way. For a period of twelve (12) months following the
21 completion of the restoration, the Permittee shall warrant and guarantee its restoration work
22 and shall correct, at its own expense, any restoration work that does not satisfy the
23 requirements of this Ordinance.
- 24 9. The County shall have the right to inspect a Facility Placed or Maintained in the Right-of-
25 Way as the County finds necessary to ensure compliance with this Ordinance. In the event
26 the County determines that a violation of the Ordinance exists, which violation is not
27 considered to an emergency or danger to the public health, safety or welfare, the County
28 will provide Permittee written notice, setting forth the violation and requesting correction
29 within a reasonable time.
- 30 10. Removal or relocation of a Facility at the direction of the County is governed by Florida
31 Statutes 125.01, 125.42, 337.403 and 337.404, as amended.

11. Permittee shall promptly provide revised an engineering plan to reflect any deviation from any approved engineering plans.

12. Upon completion of the Placement of a Facility, Permittee shall promptly provide as-built drawings to the County unless the Permit applies only to attachments to existing poles or maintenance such that no as-built drawings are necessary. The as-built drawings shall identify all revisions made in the field that are not shown on the approved engineering plans. The as-built drawings shall be in an electronic format, showing the two-dimensional location of the Facility based on the County's geographical database, or other format acceptable to the County. The Permittee shall provide such plans at no cost to the County. The County shall maintain the confidentiality of such plans and any other information provided in accordance with Section 202.195, Florida Statutes, as amended.

Section 8. Section 23-43 – Construction Surety.

1. Prior to issuing a Permit, the County may require a construction surety in an amount equal to 100% of the engineer's cost estimate, as approved by the County Engineer, to secure the restoration of the Right-of-Way and in a form acceptable to the County Engineer. The Permittee shall provide a surety, pursuant to Section 287.0935, Florida Statutes, as amended, and Section 307.00, Palm Beach County Administrative Code, as amended.
2. The rights reserved to the County under this Section are in addition to all other rights of the County, whether reserved in this Ordinance, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction surety will affect any other right the County may have.
3. The County may withhold issuing a Permit until any amount past due from Permittee to County is paid in full.

Section 9. Section 23-44 - Enforcement Remedies.

1. A Permittee's failure to comply with any provision of this Ordinance shall constitute a violation of this Ordinance and shall subject the Permittee to the Revocation provisions of this Ordinance and the code enforcement provisions set forth in the Palm Beach County Unified Land Development Code, Article 10 - ENFORCEMENT. In addition, violation of

1 this Ordinance may be punishable as provided in Section 125.69, Florida Statutes, as may
2 be amended, or any other legal or equitable remedy available at law.

- 3 2. This Ordinance is enforceable by all means provided by law. Additionally, the County may
4 choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm
5 Beach County.
- 6 3. Failure of the County to enforce any requirement of this Ordinance shall not constitute a
7 waiver of the County's right to enforce that violation or subsequent violations of the same
8 type or to seek appropriate enforcement remedies.

9

10 **Section 10. Section 23-45 – Permit Revocation.**

- 11 1. The County may revoke a Permit for one or more of the following reasons:
- 12 a. Violation of a Permit condition, including but not limited to conditions set forth in
13 the Permit, this Ordinance or other applicable County ordinances, codes or
14 regulations governing the Placement or Maintenance of a Facility in the Right-of-
15 Way;
- 16 b. Misrepresentation or fraud by Permittee in a Permit application to the County;
- 17 c. Failure to relocate or remove Facilities, as may be lawfully required by the County;
- 18 d. As to a Provider and Pass-through Provider, failure to comply with the Palm Beach
19 County Communications Registration Right-of-Way Ordinance;
- 20 e. A Federal or State authority suspends, denies, or revokes any applicable
21 certification or license required by Permittee to provide services related to the
22 Placement or Maintenance of Facilities in the Right-of-Way;
- 23 f. The Permittee ceases to use all of its Facilities in the Right-of-Way and has not
24 complied with Section 9 - Abandonment of Facilities of this Ordinance;
- 25 g. The Permittee's placement or maintenance of a Facility in the Right-of-Way
26 presents an extraordinary danger to the general public or other users of the Right-
27 of-Way and the Permittee fails to remedy the danger promptly after receipt of
28 written notice;
- 29 h. The Permittee fails to commence work prior to the Permit expiration;
- 30 i. The Permit has been extended more than one time and work will not commence
31 prior to the extended expiration; or

- 1 j. The Permittee fails to maintain the Facility in accordance with the approved Permit
2 and/or appropriate regulations.
- 3 2. Prior to revocation, the Permittee shall be notified by the County Engineer with a written
4 notice setting forth all matters pertinent to the proposed revocation action, including which
5 of (a) through (j) above is applicable as the reason therefore, and describing the proposed
6 action of the County with respect thereto. The Permittee shall have sixty (60) days after
7 receipt of such notice within which to address or eliminate the reason, or within which to
8 present a plan, satisfactory to the County Engineer, to accomplish the same. In the event
9 revocation is based on subsection l(g) above, the County Engineer may demand such
10 response from the Permittee in less than sixty (60) days based on the nature of the danger
11 to the general public. If the plan is rejected, the County Engineer shall provide written
12 notice of such rejection to the Permittee and shall provide written notice of revocation of
13 the Permit. This notice of revocation may be appealed as set forth in Section 12 – Appeals.
- 14 3. In the event of revocation, the former Permittee shall:
- 15 a. Notify the County of the assumption or anticipated assumption by another
16 Permittee of ownership of the Permittee’s existing Facilities which were the subject
17 of the revoked Permit in the Right-of-Way and submit an acceptable application to
18 the County Engineer to allow issuance of a Permit to the new Permittee; or
- 19 b. Provide the County with an acceptable plan for disposition of its Facilities which
20 were the subject of the revoked Permit in the Right-of-Way. If a Permittee fails to
21 comply with this subsection 3, which determination of non-compliance is subject
22 to appeal as provided in Section 12 – Appeals, the County may exercise any
23 remedies or rights it has at law or in equity, including but not limited to taking
24 possession of the Facilities at issue (where another Person has not assumed the
25 ownership or physical control of the Facilities) or requiring the Permittee within 90
26 days of the revocation, or such longer period as may be agreed to by the County, to
27 remove some or all of the Facilities at issue from the Right-of-Way and restore the
28 Right-of-Way to its original condition before the removal.
- 29 4. In any event, a former Permittee shall take such steps as are necessary to render safe every
30 portion of the Facilities remaining in the Right-of-Way of the County.

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

7 **Section 11. Section 23-46 – Abandonment of a Facility.**

- 8 1. Upon Abandonment of a Facility by a Permittee, the Permittee shall notify the County in
9 writing within ninety (90) days.
- 10 2. The County may direct the Permittee by written notice to remove all or any portion of such
11 Abandoned Facility at the Permittee's sole expense if the County determines that the
12 Abandoned Facility's presence interferes with the public health, safety or welfare, which
13 shall include, but shall not be limited to, a determination that such Facility:
- 14 a. compromises safety at any time for any Right-of-Way user or during construction
15 or maintenance in the Right-of-Way; or
- 16 b. prevents another Person from locating a Facility in the area of Right-of-Way where
17 the Abandoned Facility is located when other alternative locations are not
18 reasonably available; or
- 19 c. creates a maintenance condition that is disruptive to the Rights-of-Way use. In the
20 event of (b), the County may require the third Person to coordinate with the
21 Permittee of the existing Facility for joint removal and placement, where agreed to
22 by the Permittee.
- 23 3. In the event that the County does not direct the removal of the Abandoned Facility, the
24 Permittee, by its notice of Abandonment to the County, shall be deemed to consent to the
25 alteration or removal of all or any portion of the Facility by the County or another Person
26 at such Person's cost.
- 27 4. If the Permittee fails to remove all or any portion of an Abandoned Facility as directed by
28 the County within a reasonable time period as may be required by the County under the
29 circumstances, the County may perform such removal and charge the cost of the removal
30 against the Permittee.
31

1 **Section 12. Section 23-47 – Appeals.**

2 Except for Permit issued to a Provider or Pass-Through Provider, pursuant to Section 6 above, a
3 final, written decision of the County revoking, suspending or denying a Permit, is subject to appeal
4 before a hearing officer in the same manner as the interpretations, as established in Palm Beach
5 County Unified Land Development Code, Article 2.A.14.C.2.d APPEAL, as may be amended.
6 Upon correction of the grounds that gave rise to a suspension, revocation or denial, the suspension,
7 revocation or denial shall be lifted. For a Permit revoked, suspended or denied to a Provider or
8 Pass-Through Provider, the Provider or Pass-Through Provider may waive the Permit Review time
9 limits in Section 6 and pursue an appeal under this Section 12, or pursue any remedy available in
10 a court of competent jurisdiction.
11

12 **Section 13. Section 23-48 – Insurance.**

13 1. Except where the County is a Permittee, a Permittee shall provide, pay for and maintain
14 satisfactory to the County the types of insurance described herein. The insurance shall be
15 from a responsible company duly authorized to do business in the State of Florida and
16 having a rating reasonably acceptable to the County. All liability policies shall provide that
17 the County is an additional insured as to the activities under this Ordinance. The required
18 coverages must be evidenced by properly executed Certificate of Insurance. The Certificate
19 of Insurance must be signed by the authorized representative of the insurance company and
20 shall be filed and maintained with the County prior to the Permittee receiving a
21 construction start date from the County. Thirty (30) days advance written notice must be
22 given to the County, of any cancellation, intent not to renew or reduction in any coverage
23 under the insurance policy. The insurance requirements may be satisfied by evidence of
24 self-insurance or other types of insurance acceptable to the County.

25 2. The limits of insurance coverage shall not be less than the
26 following:

- 27 a. Worker's Compensation and Liability Insurance – Florida Statutory Requirements
28 Employer's Liability - \$100,000 each accident; \$500,000 disease policy limit;
29 \$100,000 disease each employee.
30 b. Comprehensive General Liability -- Bodily injury and property damage -
31 \$1,000,000 each occurrence; \$3,000,000 general aggregate.

1 c. Automobile Liability Bodily injury and property damage - \$1,000,000 combined
2 single limit each accident.

3 3. In addition to the requirements in this section, a Permittee that is a Provider or a Pass-
4 through Provider shall maintain, at its own expense, commercial general liability insurance
5 for bodily injury and property damage with a policy limit of \$1,000,000 per occurrence, or
6 in such other amount specified by the County's risk management department.

7

8 **Section 14. Section 23-49 – Indemnification.**

9 1. A Permittee shall, at its sole cost and expense, protect, defend, reimburse, indemnify, and
10 hold the County, its elected officers, agents, and employees, harmless from and against all
11 claims, liability, expense, loss, damages causes of action of every kind or character,
12 including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising,
13 during, and as a result of Permittee's performance under the Ordinance. Nothing contained
14 in this Section shall be construed or interpreted: (a) as denying to either party any remedy
15 or defense available to such party under the laws of the State of Florida; (b) as a waiver of
16 sovereign immunity; or (c) as consent by the County to be sued.

17 2. The indemnification requirements shall survive and be in effect after the suspension,
18 revocation, termination or expiration of a Permit.

19

20 **Section 15. Section 23-50 - Force Majeure.**

21 In the event a Permittee's performance of or compliance with any of the provisions of this
22 Ordinance is prevented by a cause or event not within the Permittee's control, such inability to
23 perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a
24 result, provided, however, that such Permittee uses all practicable means to expeditiously cure or
25 correct any such inability to perform or comply. For purposes of this Ordinance, causes or events
26 not within a Permittee's control shall include, without limitation, acts of God, floods, earthquakes,
27 landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil
28 disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court.
29 Causes or events within Permittee's control, and thus not falling within this Section, shall include,
30 without limitation, Permittee's financial inability to perform or comply, economic hardship, and

misfeasance, malfeasance or nonfeasance by any of Permittee's directors, officers, employees, contractors or agents.

Section 16. Section 23-51 – Reservation of Rights and Remedies.

1. The County reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.
2. This Ordinance shall be applicable to any Facility Placed or Maintained in the Right-of-Way on or after the effective date of this Ordinance and shall apply to all existing Facilities in Rights-of- Way prior to the effective date of this Ordinance to the full extent permitted by State and Federal law. No 'grandfathering' of existing, non-conforming Facility shall occur, unless the County determines that the existing Facility does not pose a threat to the public's health, safety and welfare.
3. The adoption of this Ordinance is not intended to affect any right or defense of the County or a Permittee under any existing franchise, license or other agreement with a Permittee.
4. Nothing in this Ordinance shall affect any remedy the County or the Permittee has available under applicable law.

Section 17. Section 23-52 – Severability.

The invalidity of any provision, portion, article, paragraph, clause, or any portion thereof of this Ordinance shall not affect the validity of any other provision, portion, article, paragraph, clause, or any portion thereof.

Section 18. Section 23-53 – Repeal of Ordinances in Conflict.

The Right-of-Way Construction Permitting Ordinance, adopted as Ordinance No. 2008-006, as amended, and codified at Sections 23-36 through 23-65, Code of Laws and Ordinances of Palm Beach County, Florida, is hereby repealed, as are other applicable rules and regulations to the extent that they conflict with the provisions of this Ordinance.

Section 19. Section 23-54 – Inclusion in the Code of Laws and Ordinances.

The provisions of this Ordinance shall become and be made part of the Code of Laws and Ordinances of Palm Beach County, Florida, and the Sections of this Ordinance may be renumbered

1 or re-lettered to accomplish such intention, and the word Ordinance may be changed to Section,
2 Ordinance, or another appropriate word.

3
4 **Section 20. Section 23-55 – Savings Clause.**

5 All Permits issued pursuant to Ordinance No. 2008-006, as amended, along with all conditions,
6 and enforcement orders and all pending enforcement and other regulatory actions relating to such
7 Permits and all applicable Ordinance requirements; and the Palm Beach County Land
8 Development Fee Schedule in R-2009-0952, as may be amended, shall continue in full force and
9 effect and without interruption.

10
11 **Section 21. Section 23-56 – Captions.**

12 The captions, section headings, and section designations used in this Ordinance are for
13 convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

14
15 **Section 22. Section 23-57 – Effective Date.**

16 The provisions of this Ordinance shall become effective upon filing with the Department of State.

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APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County,
Florida, on this the ____ day of _____, 2019.

SHARON R. BOCK, CLERK **PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

By: _____ By: _____
Deputy Clerk Mack Bernard, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

ybh
By: _____
Yelizaveta B. Herman,
Assistant County Attorney

EFFECTIVE DATE: Filed with the Department of State on the ____ day of
_____, 2019.

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CHAPTER 23, ARTICLE III OF THE PALM BEACH COUNTY CODE (ORD. 2008-006)

Section 23-36 – Title.

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

Section 23-37 – Definitions.

For purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. “any” includes “all,” “and” includes “or.” The words “shall” and “will” are mandatory, and “may” is permissive. Words not otherwise defined shall be construed to mean the common and ordinary meaning.

1. “Abandoned” shall mean any Facility, except a Communications Facility, not in continued use for a period of 180 consecutive days. A Communications Facility shall be deemed “abandoned” if it is not in continued use for a period of 365 days.
2. “Abandonment” shall mean the permanent cessation of all uses of a Facility; provided that this term shall not include cessation of all use of a Facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used or cessation of all use of an Antenna mounted on a streetlight, where the streetlight continues to be used, shall not be “Abandonment” of a Facility in rights-of-way.
3. “Antenna” shall mean communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.
4. “Applicable Code(s)” shall mean this Ordinance, including the regulations and standards in this Ordinance as well as state statutes and state and federal standards, and any uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons.

- 1 5. “Collocation” shall mean to install, mount, maintain, modify, operate, or replace one or
2 more wireless facilities on, under, within, or adjacent to a wireless support structure or
3 utility pole. The term does not include the installation of a new utility pole or wireless
4 support structure in the public rights-of-way.
- 5 6. “Communications Facility” or “Communications Facilities” shall mean a Structure, Pole,
6 or equipment at a fixed location that enables communication services between user
7 equipment and a communications network, Antennas, towers, equipment enclosures,
8 cabling, Antenna brackets, and other such equipment, and includes a Small Wireless
9 Facility.
- 10 7. “County” shall mean Palm Beach County, Florida, a political subdivision of the State of
11 Florida, including but not limited to, the Department of Engineering and Public Works,
12 and the Palm Beach County Sheriff’s Office.
- 13 8. “County Engineer” shall mean Palm Beach County the County Engineer of Palm Beach
14 County or his or her designee.
- 15 9. “Facility” shall mean any permanent or temporary plant, equipment and property,
16 Structure, or equipment, including but not limited to, sewer, gas, water, electric, storm
17 drainage, communications Communications Facility, and other types of Facilities, cables
18 or conduit, ducts, fiber optics, poles antennae, converters, splice boxes, cabinets, hand
19 holes, manholes, vaults, drains, surface location markers, appurtenances and other
20 equipment, construction, or pathway placed or maintained or to be placed or maintained in
21 rights-of-way of the County and any type of cable, conduit, duct, fiber optic, Pole, Antenna,
22 converter, splice box, cabinet, hand hole, manhole, vault, surface location marker, or
23 appurtenance, landscape material, access drive, road connection, pathway, signage,
24 curbing, marking or pavement.
- 25 10. “In Rights-of-Way” or “in the Rights-of-Way” shall mean in, on, over, under, within, or
26 across the Rights-of-Way.
- 27 11. “Law” shall mean any local, state or federal legislative, judicial or administrative order,
28 certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff,
29 guideline or other requirement, as amended, now in effect or subsequently enacted or
30 issued, including, but not limited to, the Communications Act of 1934, 47 USC 151 et seq.,
31 as amended by the Telecommunications Act of 1996, PL 104-104 § 101(a), 110 Stat. 70,

- 1 and all orders, rules, tariffs, guidelines and regulations issued by the Federal
2 Communications Commission or the governing state authority pursuant thereto.
- 3 12. “Micro Wireless Facility” shall mean a small wireless facility having dimensions no larger
4 than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna,
5 if any, no longer than 11 inches.
- 6 13. “Ordinance” shall mean this article the Right-of-Way Permitting Ordinance.
- 7 14. “Pass-through Provider” shall mean any Person who, pursuant to this Ordinance, Places or
8 Maintains a Communications Facility in the Right-of-Way, and does not remit
9 communications service taxes, as imposed by the County pursuant to Chapter 202 and
10 Section 337.401, Florida Statutes.
- 11 15. “Permit” shall mean a the Right-of-Way construction Permit that must be obtained before
12 placing or maintaining facilities in the right-of-way-, including but not limited to right-of-
13 way (RW), utility permit (UT) and landscape permit (LA), pursuant to the Ordinance.
- 14 16. “Permittee” shall mean any Person who obtains or seeks applies to obtain a Permit pursuant
15 to the Ordinance.
- 16 17. “Person” shall include any individual, children, firm, association, joint venture,
17 partnership, estate, trust business trust, syndicate, fiduciary, corporation, organization or
18 legal entity of any kind, successor, assignee, transferee, personal representative, and all
19 other groups or combinations, and shall include the county to the extent the county places
20 or maintains facilities in its rights-of-way. mean any entity or individual, including but not
21 limited to, a governmental entity, except for Palm Beach County Engineering and Public
22 Works Department, contractor, firm, association, joint venture, partnership, estate, trust,
23 business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind,
24 successor, assignee, transferee, personal representative and any other group.
- 25 18. “Place or maintain,” “Placement or Maintenance,” or “Placing or Maintaining” shall mean
26 to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, replace,
27 locate or relocate facilities in rights-of-way. Physical control, ownership or maintenance
28 of a Facility is considered “Placing or Maintaining” a Facility. A Person providing service
29 only through resale or only through use of a third party’s unbundled network elements is
30 not “Placing or Maintaining” the Communications Facility through which such service is

- 1 provided. The transmission and receipt of radio frequency signals through the airspace of
2 the Right-of-Way is not Placing or Maintaining a Facility in the Right-of-Way.
- 3 19. “Pole” shall mean a pole or similar structure that is used in whole or in part to provide
4 communications services or for electric distribution, lighting, traffic control, signage, or a
5 similar function. The term includes the vertical support structure for traffic lights but does
6 not include a horizontal structure to which signal lights or other traffic control devices are
7 attached and does not include a pole or similar structure 15 feet in height or less unless an
8 authority grants a waiver for such pole. A Pole may be a part of a Communications Facility.
- 9 20. “Provider” shall mean any Person who, pursuant to this Ordinance, Places or Maintains a
10 Communications Facility in the Right-of-Way, and remits communications service taxes,
11 as imposed by the County pursuant to Chapter 202 and Section 337.401, Florida Statutes.
- 12 21. “Registrant” shall mean a Provider or Pass-through Provider that is registered pursuant to
13 the “Palm Beach County Communications Right-of-Way Registration Ordinance”, as
14 amended.
- 15 22. “Registration” shall mean the process described in the “Palm Beach County
16 Communications Registration Right-of-Way Ordinance”, as amended.
- 17 23. “Replacement” shall mean the removal of an existing Facility for purposes of installing a
18 new Facility.
- 19 24. ~~“Rights-of-Way” shall mean a public right of way, public utility easement, highway,~~
20 ~~street, bridge, tunnel or alley for which the county is the authority that has jurisdiction and~~
21 ~~control and may lawfully grant access to pursuant to applicable law, and includes the~~
22 ~~surface, the air space over the surface and the area below the surface. "rights of way" shall~~
23 ~~not include private property. The term also includes but is not limited to associated~~
24 ~~sidewalks, the roadbed, all culverts, drains, sluices, ditches, water storage areas,~~
25 ~~waterways, embankments, slopes, retaining walls, bridges, and viaducts. "rights of way"~~
26 ~~shall not include county buildings, fixtures, poles, conduits, facilities or other structures or~~
27 ~~improvements, regardless of whether they are situated in rights of way. shall mean a~~
28 public right-of-way, highway, street, bridge, tunnel, Right-of-Way drainage area or alley
29 which has been dedicated to the public or to the County and for which the County is the
30 maintenance authority, or intends to be the maintenance authority, that has jurisdiction and
31 control and may lawfully grant access to pursuant to applicable law, and includes the

1 surface, the air space over the surface and the area below the surface. “Right-of-Way” shall
2 not include private property unless it is subject to a public easement for a use referenced
3 above. The term also includes but is not limited to associated sidewalks, the roadbed, all
4 culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes,
5 retaining walls, bridges, and viaducts. “Right-of-Way” shall not include County buildings,
6 fixtures, poles, conduits, Facilities or other structures or improvements, regardless of
7 whether they are situated in the Right-of-Way.

8 25. “Small Wireless Facility” shall mean a wireless facility that meets the following
9 qualifications:

10 a. Each antenna associated with the facility is located inside an enclosure of no more
11 than 6 cubic feet in volume or, in the case of antennas that have exposed elements,
12 each antenna and all of its exposed elements could fit within an enclosure of no
13 more than 6 cubic feet in volume; and

14 b. All other wireless equipment associated with the facility is cumulatively no more
15 than 28 cubic feet in volume. The following types of associated ancillary equipment
16 are not included in the calculation of equipment volume: electric meters,
17 concealment elements, telecommunications demarcation boxes, ground-based
18 enclosures, grounding equipment, power transfer switches, cutoff switches, vertical
19 cable runs for the connection of power and other services, and utility poles or other
20 support structures.

21 26. “Structure” shall mean anything constructed or erected, the use of which requires
22 permanent location on the ground, or attachment to something having a permanent location
23 on the ground.

24
25 **Section 23-38 - Permit Required.**

26 ~~a) A permittee shall at all times comply with and abide by all applicable provisions of the state and~~
27 ~~federal law and county ordinances, codes and regulations in placing or maintaining a facility in~~
28 ~~rights of way. Obtaining a permit pursuant to the terms of this article does not excuse a permittee~~
29 ~~from complying with all applicable county ordinances.~~

30 ~~(b) No person shall commence to place or maintain a facility in rights of way without first having~~
31 ~~obtained a permit as set forth in this article, except either:~~

1 ~~(1) In the case of an emergency; or~~

2 ~~(2) For road construction in a platted road right-of-way dedicated to the public and not maintained~~
3 ~~by the county, or not intended to be maintained by the county.~~

4 ~~(c) The term "emergency" as set forth in this section shall mean a condition that threatens the~~
5 ~~public's health, safety or welfare, and includes an unplanned out-of-service condition of a~~
6 ~~pre-existing service. Permittee shall provide prompt notice to the county of the placement~~
7 ~~or maintenance of a facility in rights-of-way in the event of an emergency, and shall be~~
8 ~~required to obtain an after-the-fact permit if a permit would have originally been required~~
9 ~~to perform the work undertaken in rights-of-way in connection with the emergency.~~

10 ~~(d) Permittee acknowledges that as a condition of granting permits, the county may impose~~
11 ~~reasonable rules, conditions or regulations governing the placement or maintenance of a~~
12 ~~facility in rights-of-way.~~

13 ~~(e) Permits shall apply only to the areas of rights-of-way specifically identified in the permit and~~
14 ~~to dates set forth therein, unless modified by the engineer.~~

15 ~~(f) Permits issued shall be conspicuously displayed at all times or immediately available at the~~
16 ~~indicated work site for inspection by the county.~~

17 ~~(g) To the extent not otherwise prohibited by state or federal law, the county shall have the power~~
18 ~~to prohibit or limit the placement of new or additional facilities within a particular area of~~
19 ~~rights-of-way.~~

20 ~~(h) A permittee shall be required by the county to coordinate placement or maintenance activities~~
21 ~~under a permit with any other work, construction, installation or repairs that may be~~
22 ~~occurring or scheduled to occur in the subject rights-of-way, and permittee shall be~~
23 ~~required to reasonably alter its placement or maintenance schedule as necessary so as to~~
24 ~~minimize disruptions and disturbance in rights-of-way.~~

25 ~~(i) A permit from the county constitutes authorization to undertake only certain activities in rights-~~
26 ~~of-way in accordance with this article, and does not create a property right or grant~~
27 ~~authority to impinge upon the rights of others who may have an interest in the rights-of-~~
28 ~~way.~~

29
30 1. Any Person Placing or Maintaining any Facility in the Right-of-Way shall have a Permit,
31 except:

- 1 a. In an Emergency, as defined in this Section;
- 2 b. Where Permittee performs routine maintenance of a Communications Facility;
- 3 c. For replacement of an existing Communications Facility with a Communications
4 Facility that is substantially similar or is of the same or smaller size;
- 5 d. For installation, Placement or Maintenance, or replacement of a Micro Wireless
6 Facility that is suspended on cables strung between existing utility Poles in
7 compliance with Applicable Codes by or for a Provider.

8 Notwithstanding paragraphs a. through d., above, a Permit is required for work that involves
9 excavation, closure of a sidewalk, or closure of a vehicular lane.

10 2. As used in this Section, "Emergency" shall mean a condition that threatens the public's
11 health, safety or welfare, and includes an unplanned out-of-service condition of a pre-
12 existing service. Permittee shall provide prompt notice to the County of the Placement or
13 Maintenance of a Facility in the Right-of-Way in the event of an Emergency, and shall be
14 required to obtain an after-the-fact Permit if a Permit would have originally been required
15 to perform the work undertaken in the Right-of-Way in connection with the Emergency.

16 3. A Permit shall be valid only for the Right-of-Way location identified in the Permit and for
17 the dates set forth therein, unless modified in writing by the County.

18 4. A Permit shall be conspicuously displayed at all times or immediately available at the
19 location identified in the Permit, for inspection by the County. Where the Ordinance
20 requires a Permit, the County shall have the right to immediately stop any work within the
21 Right-of-Way if a valid Permit is not displayed or immediately produced for inspection.

22 5. A Permit authorizes the Permittee to perform the work described in the Permit and in
23 accordance with the Ordinance, and does not create any property right or grant any
24 authority to impinge upon the rights of another who may have an interest in the Right-of-
25 Way.

26 6. The County reserves the right to Place or Maintain, and permit to be Placed or Maintained,
27 a Facility in any Right-of-Way subject to a Permit. The County further reserves, without
28 limitation, the right to alter, change, or cause to be altered or changed, the grading, location,
29 or width of a Right-of-Way.

1 7. To the extent not otherwise prohibited by State or Federal law, the County shall have the
2 power to prohibit, limit, or regulate the location of any Facility in a Right-of Way, as
3 follows:

4 a. when necessary to protect an existing Facility in a Right-of-Way;

5 b. to accommodate documented, funded, or approved County plans for public
6 improvements or projects;

7 c. to prevent interference with the operations of public safety telecommunications
8 services; or

9 d. to accommodate traffic safety issues of the County, State, or any other agency with
10 authority over a Right-of-Way.

11 8. The County does not make any warranties or representations
12 regarding the fitness, suitability or availability of a Right-of-Way for the Permittee's
13 Facility, and any work, cost or service provided by Permittee shall be at Permittee's sole
14 risk.

15 9. Nothing in the Ordinance shall affect the County's authority to add, vacate or abandon
16 Right-of-Way pursuant to applicable federal, state or local law, and the County does not
17 make any warranties or representations regarding the availability of any added, vacated or
18 abandoned Right-of-Way.

19
20 **Section 23-39 - Permit Application.**

21 ~~(a) A permit application to place a new or replace an existing facility in rights-of-way shall include~~
22 ~~engineering drawings showing the location of the proposed installation of facilities in the rights-~~
23 ~~of-way. If the engineering drawings so provided require revision based upon actual installation,~~
24 ~~the permittee shall promptly provide revised engineering drawings. The engineering drawings~~
25 ~~shall be in an electronic format specified by the county or in a hard copy format and an electronic~~
26 ~~format specified by the county upon the county's request, provided such electronic format is~~
27 ~~maintained by the permittee. Such plans in a format maintained by the permittee shall be provided~~
28 ~~at no cost to the county.~~

29 ~~(b) Each applicant for a permit shall submit a nonrefundable application fee at the time of permit~~
30 ~~application. The amounts shall be established by resolution of the board of county~~
31 ~~commissioners, but in no event shall exceed the county's costs incurred in reviewing the~~

1 application and processing the permit, and in monitoring construction work authorized by
2 the permit. Such fees shall not be applied in the following circumstances:

3 (1) Where the construction performed is for the benefit of a governmental agency and that agency
4 is a direct party to the contract for the construction.

5 (2) Where the right of way lies within the corporate boundaries of a municipality and the
6 municipality charges a permit fee for the same construction or installation work.

7 (3) Where providers of communications services seek a permit under this article. For the purposes
8 of this section, "communications services" shall mean the transmission, conveyance or
9 routing of voice, data, audio, video, or any other information or signals, including cable
10 services, to a point, or between or among points, by or through any electronic, radio,
11 satellite, cable, optical, microwave, or other medium or method now in existence or
12 hereafter devised, regardless of the protocol used for such transmission or conveyance.
13 Prior to seeking a permit under this article, providers of communications services are first
14 required to register pursuant to Palm Beach County Ordinance 2000-009, Palm Beach
15 County Code, chapter 23, article VII as may be amended.

16 (c) As part of any permit application to place or maintain or to replace an existing facility in rights-
17 of way, the permittee shall provide the following:

18 (1) Engineering drawings depicting the location of the proposed facilities, including a description
19 of the facilities to be installed, where the facilities are to be located, the size of facilities
20 that will be located in rights of way, and an indication of the manner in which the facility
21 will be installed (i.e. installation methods or techniques);

22 (2) A maintenance of traffic plan may be required to address any disruption of rights of way;

23 (3) Information on the ability of rights of way to accommodate the proposed facility, if available
24 (such information shall be provided without certification as to correctness, to the extent
25 obtained from other persons);

26 (4) An engineer's cost estimate including but not limited to maintenance of traffic plan, survey
27 costs, mobilization, unit prices for each facility installed, linear footage, and cost of
28 restoration as appropriate. Survey costs, mobilization, and unit prices for each facility
29 installed and linear footage, shall not be required to be a part of an engineer's cost estimate
30 when the work proposed by the permit application is for the provision of communications
31 services as that term is defined in subsection (b)(3) of this section.

1 ~~(5) The timetable for construction of the project or each phase thereof, and the areas of the county~~
2 ~~which will be affected; and~~

3 ~~(6) Such additional information as the county finds reasonably necessary with respect to the~~
4 ~~placement or maintenance of the facility that is the subject of the permit application to~~
5 ~~review such permit application.~~

6
7 1. Provider or a Pass-through Provider shall first complete the Registration and become a
8 Registrant, prior to applying for a Permit under the Ordinance.

9 2. A Permittee, except a Provider or Pass-through-Provider that is a Registrant, shall submit
10 a nonrefundable application fee at the time of Permit application. The application fee
11 shall be established by a County Resolution, and shall not exceed the County's costs
12 incurred in reviewing the application, processing the Permit, and monitoring the work
13 authorized by the Permit.

14 3. The Permit application fee may be waived where:

15 a. the Permittee is a governmental agency, which is a party to a contract for work to
16 be performed under the Permit, and the work is for the benefit of the governmental
17 agency; or

18 b. the Right-of-Way is located within the municipal boundaries of a municipality,
19 which also requires a permit before the same Facility is Placed or Maintained in the
20 Right-of-Way, and the municipality charges a permit fee.

21 4. A Permit application to Place or Maintain any Facility in the Right-of-Way shall include
22 the following:

23 a. An engineering plan in compliance with Applicable Codes, signed and sealed by a
24 Florida-licensed Professional Engineer, or prepared by a person who is exempt
25 from such registration requirements as provided in Section 471.003, Florida
26 Statutes. The engineering plan shall identify the location of the proposed Facility
27 with respect to at least one major roadway, and describe the Facility, including the
28 approximate size of Facility;

29 b. A description of the manner in which the Facility would be Placed and Maintained,
30 such as a description of proposed construction methods or techniques, and shall
31 identify any deviation from the County's engineering standards as stated in the

- 1 Land Development Design Standards Manual, or applicable other regulations, as
2 amended;
- 3 c. A maintenance of traffic (MOT) plan to address any disruption of the Right-of-
4 Way. Except for a Registrant's MOT plan, the MOT plan will be processed by the
5 Department's Traffic Division through a separate application only after the Permit
6 application has been approved;
- 7 d. If Replacement of a Facility owned by the County is requested by the Permittee,
8 indicate the function of the Facility to be replaced, the type of replacement Facility
9 proposed, and provide evidence of compliance with County standards;
- 10 e. Information regarding the ability of Right-of-Way to accommodate the proposed
11 Facility, including relevant information that identifies all above and below ground
12 Facilities that currently exist in the Right-of-Way, if available;
- 13 f. An engineer's cost estimate, including but not limited to MOT costs, survey costs,
14 mobilization, unit prices for each Facility installed, linear footage, and cost of
15 restoration, as appropriate. However, a Registrant is not required to submit survey
16 costs, mobilization, and unit prices for each Facility Placed or Maintained, and
17 linear footage, as part of the Registrant's engineer's cost estimate;
- 18 g. The timetable for the Placement or Maintenance of the Facility, or each phase
19 thereof, and the areas of the County which will be affected;
- 20 h. If appropriate given the Facility proposed, an estimate of the cost of restoration to
21 the Right-of-Way, specifically for open cut applications; and
- 22 i. Such additional information as the County finds reasonably necessary with respect
23 to the Placement or Maintenance of the Facility.
- 24 5. A Permittee that is a private utility provider that is not subject to Registration may also be
25 required to:
- 26 a. Pay an additional fee equal to 110% of the construction costs, including any
27 pavement restoration cost, as approved by the County Engineer;
- 28 b. Notify Sunshine 811 of the Facility's final constructed location; and
- 29 c. Indemnify the County for any damage to the Facility caused by action of the County
30 or by any other Person.
- 31

1 **Section 23-40 – Provider and Pass-Through Provider Permit Application.**

- 2 1. In addition to Section 4, above, a Provider or Pass-through Provider shall also comply with
3 all applicable provisions of this Section and this Ordinance and Applicable Codes
4 regarding Placement or Maintenance of a Communications Facility in the Right-of-Way.
- 5 2. The County reserves the right to permit the Placement and Maintenance of other Facilities
6 in the same Right-of-Way occupied by the Provider and Pass-through Provider.
- 7 3. A Permit application to Place or Maintain a Communications Facility in the Right-of-Way
8 shall provide such additional information as the County finds reasonably necessary to
9 demonstrate compliance with Applicable Codes regarding the Placement or Maintenance
10 of the Communications Facility.
- 11 4. If a Communications Facility must be Placed or Maintained in a Right-of-Way with
12 residential use on any side, no part of any Communications Facility may be placed directly
13 in front of a residential structure, and the Communications Facility shall preferably be
14 located adjacent to common lot lines. If a Right-of-Way has a residential structure on only
15 one side, the Communications Facility shall be Placed or Maintained on the opposite side
16 of the Right-of-Way, whenever reasonably feasible.
- 17 5. Any proposed Pole shall, to the extent reasonably feasible, be Placed and Maintained so as
18 to align with existing Poles in the Right-of-Way and have equal setback distances with
19 existing Poles from the Right-of-Way line.
- 20 a. The height of a Small Wireless Facility shall be limited to ten (10) feet above the
21 Pole upon which the Small Wireless Facility is to be Collocated. The height for a
22 new Pole shall be limited to the tallest existing Pole as of July 1, 2017, located in
23 the same Right of Way, other than a Pole for which a waiver has previously been
24 granted, measured from grade in place within five hundred (500) feet of the
25 proposed location of the Small Wireless Facility. If there is no Pole within five
26 hundred (500) feet, the height of the Pole shall be limited to fifty (50) feet.
- 27 b. The Permittee shall make reasonable efforts to Collocate on an existing Pole. If the
28 Permittee seeks to Collocate a Small Wireless Facility on an existing Pole that is a
29 County maintained Pole, the Permittee may petition the County Engineer to replace
30 the existing Pole with a Pole capable of accommodating the Permittee's needs and
31 continuing to serve the original County function, if necessary to accommodate the

1 Collocation. If the proposed replacement Pole will function as a streetlight, the
2 replacement Pole and the light fixture must meet County standards for structural
3 integrity and lighting, must be a lighting type approved by the County Engineer,
4 and must be metered separately for electric power to the streetlight and to the
5 Communications Facility. The Permittee shall be responsible for maintaining the
6 replacement Pole, and the County shall be responsible for maintaining the light
7 fixture. A replacement Pole proposed under this section, is subject to review and
8 approval of the County Engineer and the make-ready provisions of Section
9 337.401(7)(f), Florida Statutes.

10
11 **Section 6. Section 23-41 – Provider and Pass-Through Provider Permit Review.**

12 1. County shall review a Permit application submitted by a Provider or Pass-through Provider,
13 pursuant to Sections 4 and 5, above, as follows:

14 a. Within fourteen (14) days after receiving the Permit application, the County shall
15 notify the Permittee whether the Permit application is complete, or if incomplete,
16 which information is missing, or initiate the negotiation period, as provided below.

17 i. Within fourteen (14) days after receiving the Permit application, County
18 may request that the proposed location of a Small Wireless Facility be
19 moved to another location in the Right of Way and placed on another Pole
20 or Structure. County and Permittee may negotiate the alternative location
21 for thirty (30) days after the date of this request. At the end of the negotiation
22 period, if the alternative location is accepted by the Permittee, the Permittee
23 must notify the County of such acceptance and the Permit application shall
24 be deemed granted for any new location for which there is agreement and
25 all other locations in the Permit application. Permittee shall notify County
26 if an agreement is not reached, and County shall approve or deny the
27 original Permit application within ninety (90) days after the date the Permit
28 application was filed.

29 b. Unless County initiates the negotiation period, pursuant to Section 6.1.a.i., County
30 shall approve or deny the Permit application within 60 days after receipt of the
31 Permit application or the Permit application will be deemed approved. The County

- 1 and the Permittee may mutually agree to extend the 60-day Permit application
2 review period.
- 3 c. If the Permit application is denied, County shall notify the Permittee on the day of
4 the denial and provide the basis for the denial, including the specific code
5 provisions on which the denial was based.
- 6 d. The Permittee may cure the deficiencies identified in County's denial of the Permit
7 application and resubmit the Permit application within thirty (30) days of the denial.
- 8 e. County shall approve or deny the resubmitted Permit application within thirty (30)
9 days of receipt of the resubmitted Permit application. County review of the
10 resubmitted Permit application shall be limited to the deficiencies identified in the
11 denial.
- 12 2. Unless extended by the County, a Provider and Pass-through Provider Permit is effective
13 for one (1) year from the date issued.
- 14 3. County shall communicate with and notify the Permittee regarding its Permit application,
15 by e-mail.

16

17 **Section 23-4042 - Obligations of Permittee.**

- 18 ~~(a) All facilities shall be placed or maintained so as not to unreasonably interfere with the use of~~
19 ~~rights of way by the public and with the rights and convenience of property owners who adjoin~~
20 ~~any of the rights of way. The use of trenchless technology (i.e., directional boring, horizontal~~
21 ~~drilling, micro tunneling, or other similar method) for the installation of facilities in rights of way~~
22 ~~as well as joint trenching or the co-location of facilities in existing conduit is strongly encouraged,~~
23 ~~and should be employed wherever feasible. The engineer may promulgate reasonable rules and~~
24 ~~regulations concerning the placement or maintenance of a facility in rights of way consistent with~~
25 ~~this article and other applicable law.~~
- 26 ~~(b) A permittee shall place and maintain its facility in rights of way in a manner consistent with~~
27 ~~accepted industry practice and applicable law.~~
- 28 ~~(c) In connection with excavation in rights of way, a permittee shall, where applicable, comply~~
29 ~~with the Underground Facility Damage Prevention and Safety Act set forth in F.S. ch. 556,~~
30 ~~as it may be amended.~~

1 ~~(d) Permittee shall use and exercise due caution, care and skill in performing permitted work in~~
2 ~~rights of way and shall take all reasonable steps to safeguard work site areas.~~

3 ~~(e) A permittee shall not place or maintain its facilities so as to interfere with, displace, damage or~~
4 ~~destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains,~~
5 ~~pipes, cables or conduits of the county or any other person's facilities lawfully occupying~~
6 ~~rights of way of the county. A permit does not excuse a permittee from obtaining access~~
7 ~~or pole attachment agreements before placing or maintaining its facilities on another~~
8 ~~person's facilities.~~

9 ~~(f) A permittee shall, on the request of any person holding a permit issued by the county,~~
10 ~~temporarily raise or lower its facilities to allow the work authorized by the permit. The~~
11 ~~expense of such temporary raising or lowering of facilities shall be paid by the person~~
12 ~~requesting the same, and the permittee shall have the authority to require such payment in~~
13 ~~advance. The permittee shall be given advance written notice not less than thirty (30) days~~
14 ~~prior to commencement of the activity requiring the temporary raising or lowering of its~~
15 ~~facilities to arrange for such temporary relocation.~~

16 ~~(g) After the completion of any placement or maintenance of a facility in rights of way or each~~
17 ~~phase thereof, a permittee shall, at its own expense, restore rights of way to its original~~
18 ~~condition before such permitted work. If the permittee fails to make such restoration within~~
19 ~~thirty (30) days, or such longer period of time as may be reasonably required under the~~
20 ~~circumstances, following the completion of such placement or maintenance, the county~~
21 ~~may perform restoration and charge the costs of the restoration against the permittee in~~
22 ~~accordance with F.S. § 337.402, as it may be amended. For twelve (12) months following~~
23 ~~written acceptance of the permitted work by the engineer, the permittee shall guarantee its~~
24 ~~restoration work and shall correct any restoration work that does not satisfy the~~
25 ~~requirements of this article at its own expense.~~

26 ~~(h) The county shall have the right to make such inspections of facilities placed or maintained in~~
27 ~~rights of way as it finds necessary to ensure compliance with this article.~~

28 1. A Permittee shall at all times comply with and abide by all applicable provisions of the
29 State and Federal law and, to the extent not inconsistent with state and federal law, County
30 ordinances, codes and regulations, as well as accepted industry practices, in Placing or
31 Maintaining a Facility. Obtaining a Permit pursuant to this Ordinance does not excuse a

1 Permittee from complying with all applicable County ordinances. In connection with
2 excavation in the Right-of-Way, a Permittee shall, where applicable, comply with the
3 Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida
4 Statutes, as may be amended.

5 2. A Permittee shall Place and Maintain its Facility in Right-of-Way in a manner consistent
6 with accepted industry practice and applicable law. The Facility shall continue to be
7 maintained by the Permittee unless otherwise approved by the County Engineer.

8 3. A Permittee acknowledges that as a condition of granting the Permit, the County may
9 impose reasonable rules, conditions or regulations governing the Placement or
10 Maintenance of a Facility to the extent consistent with applicable law.

11 4. A Facility shall be Placed and Maintained so as not to unreasonably interfere with the use
12 of the Right-of-Way by the public and with any rights and safety of property owners who
13 adjoin any of the Right-of-Way. The use of trenchless technology, such as directional
14 boring, horizontal drilling, micro tunneling, or other similar method, for the installation of
15 a Facility in the Right-of-Way, as well as joint trenching or the Collocation of a Facility in
16 existing conduit is strongly encouraged, and should be employed wherever feasible. A
17 Permittee shall not Place or Maintain a Facility so as to interfere with, displace, damage or
18 destroy any Facility, including but not limited to, any sewer, gas or water main, storm drain,
19 pipe, cable or conduit of the County or any other Person's Facility lawfully occupying
20 Right-of-Way of the County. The Permittee shall be liable for any displacement, damage
21 or destruction of any property, including but not limited to, any irrigation system or
22 landscaping, as a result of the Placement or Maintenance of a Facility within the Right-of-
23 Way. A Permit does not relieve a Permittee from obtaining any necessary agreement before
24 Placing or Maintaining its Facility on another Person's Facility. The County Engineer may
25 promulgate reasonable rules and regulations concerning the Placement or Maintenance of
26 a Facility in Rights-of- Way consistent with this Ordinance and other applicable law.

27 5. Upon County's request, a Permittee shall be required to coordinate the Placement or
28 Maintenance of a Facility with any other work, construction, installation or repair that may
29 be occurring or scheduled to occur within a reasonable time, in the subject Right-of-Way.
30 The Permittee shall reasonably alter its Placement or Maintenance schedule, as necessary
31 to minimize disruption and disturbance in the Right-of-Way. In the event of a conflict with

1 a County project, the Permittee shall yield to the County's schedule such that no two
2 entities are working within the same area of the Right-of-Way at the same time.

3 6. A Permittee shall use and exercise due caution, care and skill in Placing or Maintaining a
4 Facility in any Right-of-Way and shall take all reasonable steps to safeguard all work site
5 areas.

6 7. Subject to applicable law, a Permittee, on the request of any other Permittee under the
7 Ordinance, shall temporarily support, protect, raise, lower or otherwise reasonably modify
8 on a temporary basis, its Facility to allow the work authorized by the Permit of the other
9 Permittee. The expense of such temporary support, protection, raising or lowering of a
10 Facility shall not be the responsibility of the County, regardless of the requesting Permittee.
11 The Permittee shall be given not less than thirty (30) calendar days advance written notice
12 to arrange for such temporary relocation.

13 8. After the completion of the Placement or Maintenance of a Facility in the Right-of-Way or
14 each phase thereof, the Permittee shall, at its own expense, restore the Right-of-Way to at
15 least its original condition before the permitted work, subject to the County's inspection.
16 If the Permittee fails to make such restoration within thirty (30) days, or such longer period
17 of time as may be reasonably required under the circumstances, following the completion
18 of such Placement or Maintenance, the County may perform restoration and charge the
19 costs of the restoration against the Permittee, pursuant to Section 337.402, Florida Statutes.
20 Alternatively and at the County's sole discretion, the County may draw against any surety
21 received pursuant to Section 8 below, to recover expenses, costs, and any other damages
22 related to restoring the Right-of-Way. For a period of twelve (12) months following the
23 completion of the restoration, the Permittee shall warrant and guarantee its restoration work
24 and shall correct, at its own expense, any restoration work that does not satisfy the
25 requirements of this Ordinance.

26 9. The County shall have the right to inspect a Facility Placed or Maintained in the Right-of-
27 Way as the County finds necessary to ensure compliance with this Ordinance. In the event
28 the County determines that a violation of the Ordinance exists, which violation is not
29 considered to an emergency or danger to the public health, safety or welfare, the County
30 will provide Permittee written notice, setting forth the violation and requesting correction
31 within a reasonable time.

10. Removal or relocation of a Facility at the direction of the County is governed by Florida Statutes 125.01, 125.42, 337.403 and 337.404, as amended.

11. Permittee shall promptly provide revised an engineering plan to reflect any deviation from any approved engineering plans.

12. Upon completion of the Placement of a Facility, Permittee shall promptly provide as-built drawings to the County unless the Permit applies only to attachments to existing poles or maintenance such that no as-built drawings are necessary. The as-built drawings shall identify all revisions made in the field that are not shown on the approved engineering plans. The as-built drawings shall be in an electronic format, showing the two-dimensional location of the Facility based on the County's geographical database, or other format acceptable to the County. The Permittee shall provide such plans at no cost to the County. The County shall maintain the confidentiality of such plans and any other information provided in accordance with Section 202.195, Florida Statutes, as amended.

Section 23-41—County rights-of-way

~~(a) The county makes no warranties or representations regarding the fitness, suitability, or availability of county's rights-of-way for the permittee's facilities and any performance of permitted work, costs incurred or services provided by permittee shall be at permittee's sole risk. Nothing in this article shall affect the county's authority to add, vacate or abandon rights-of-way pursuant to applicable state or local law, and the county makes no warranties or representations regarding the availability of any added, vacated or abandoned rights-of-way for facilities.~~

~~(b) The county reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the county in rights-of-way occupied by the permittee. The county further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of rights-of-way within the limits of the county and within said limits as same may from time to time be altered.~~

~~(c) Removal or relocation at the direction of the county of a permittee's facility in rights-of-way shall be governed by the provisions of F.S. §§ 125.42, 337.403 and 337.404, as they may be amended.~~

1 (d) All road construction intended to be maintained by the county will be required to be permitted
2 in accordance with this article and be constructed to minimum county standards.
3

4 **Section 23-43 – Construction Surety.**

- 5 1. Prior to issuing a Permit, the County may require a construction surety in an amount equal
6 to 100% of the engineer's cost estimate, as approved by the County Engineer, to secure the
7 restoration of the Right-of-Way and in a form acceptable to the County Engineer. The
8 Permittee shall provide a surety, pursuant to Section 287.0935, Florida Statutes, as
9 amended, and Section 307.00, Palm Beach County Administrative Code, as amended.
10 2. The rights reserved to the County under this Section are in addition to all other rights of
11 the County, whether reserved in this Ordinance, or authorized by other law, and no action,
12 proceeding or exercise of a right with respect to the construction surety will affect any other
13 right the County may have.
14 3. The County may withhold issuing a Permit until any amount past due from Permittee to
15 County is paid in full.
16

17 **Section 23-44 - Enforcement Remedies.**

- 18 1. A Permittee's failure to comply with any provision of this Ordinance shall constitute a
19 violation of this Ordinance and shall subject the Permittee to the Revocation provisions of
20 this Ordinance and the code enforcement provisions set forth in the Palm Beach County
21 Unified Land Development Code, Article 10 - ENFORCEMENT. In addition, violation of
22 this Ordinance may be punishable as provided in Section 125.69, Florida Statutes, as may
23 be amended, or any other legal or equitable remedy available at law.
24 2. This Ordinance is enforceable by all means provided by law. Additionally, the County may
25 choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm
26 Beach County.
27 3. Failure of the County to enforce any requirement of this Ordinance shall not constitute a
28 waiver of the County's right to enforce that violation or subsequent violations of the same
29 type or to seek appropriate enforcement remedies.
30

1 **Section 23-43-45 – Permit Revocation.**

2 1. The County may revoke a Permit for one or more of the following reasons:

- 3 a. Violation of a Permit condition, including but not limited to conditions set forth in
4 the Permit, this Ordinance or other applicable County ordinances, codes or
5 regulations governing the Placement or Maintenance of a Facility in the Right-of-
6 Way;
- 7 b. Misrepresentation or fraud by Permittee in a Permit application to the County;
- 8 c. Failure to relocate or remove Facilities, as may be lawfully required by the County;
- 9 d. As to a Provider and Pass-through Provider, failure to comply with the Palm Beach
10 County Communications Registration Right-of-Way Ordinance;
- 11 e. A Federal or State authority suspends, denies, or revokes any applicable
12 certification or license required by Permittee to provide services related to the
13 Placement or Maintenance of Facilities in the Right-of-Way;
- 14 f. The Permittee ceases to use all of its Facilities in the Right-of-Way and has not
15 complied with Section 9 - Abandonment of Facilities of this Ordinance;
- 16 g. The Permittee's placement or maintenance of a Facility in the Right-of-Way
17 presents an extraordinary danger to the general public or other users of the Right-
18 of-Way and the Permittee fails to remedy the danger promptly after receipt of
19 written notice;
- 20 h. The Permittee fails to commence work prior to the Permit expiration;
- 21 i. The Permit has been extended more than one time and work will not commence
22 prior to the extended expiration; or
- 23 j. The Permittee fails to maintain the Facility in accordance with the approved Permit
24 and/or appropriate regulations.

25 2. Prior to revocation, the Permittee shall be notified by the County Engineer with a written
26 notice setting forth all matters pertinent to the proposed revocation action, including which
27 of (a) through (j) above is applicable as the reason therefore, and describing the proposed
28 action of the County with respect thereto. The Permittee shall have sixty (60) days after
29 receipt of such notice within which to address or eliminate the reason, or within which to
30 present a plan, satisfactory to the County Engineer, to accomplish the same. In the event
31 revocation is based on subsection 1(g) above, the County Engineer may demand such

1 response from the Permittee in less than sixty (60) days based on the nature of the danger
2 to the general public. If the plan is rejected, the County Engineer shall provide written
3 notice of such rejection to the Permittee and shall provide written notice of revocation of
4 the Permit. This notice of revocation may be appealed as set forth in Section 12 – Appeals.

5 3. In the event of revocation, the former Permittee shall:

6 a. Notify the County of the assumption or anticipated assumption by another
7 Permittee of ownership of the Permittee's existing Facilities which were the subject
8 of the revoked Permit in the Right-of-Way and submit an acceptable application to
9 the County Engineer to allow issuance of a Permit to the new Permittee; or

10 b. Provide the County with an acceptable plan for disposition of its Facilities which
11 were the subject of the revoked Permit in the Right-of-Way. If a Permittee fails to
12 comply with this subsection 3, which determination of non-compliance is subject
13 to appeal as provided in Section 12 – Appeals, the County may exercise any
14 remedies or rights it has at law or in equity, including but not limited to taking
15 possession of the Facilities at issue (where another Person has not assumed the
16 ownership or physical control of the Facilities) or requiring the Permittee within 90
17 days of the revocation, or such longer period as may be agreed to by the County, to
18 remove some or all of the Facilities at issue from the Right-of-Way and restore the
19 Right-of-Way to its original condition before the removal.

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

22 5. In the event of revocation, this Section does not authorize the County to cause the removal
23 of Facilities not the subject of the Permit under revocation or which are used to provide
24 another service for which the Permittee or another Person who owns or exercises physical
25 control over the Facilities holds a valid certification or license with the governing Federal
26 or State agency, if required for provision of such service.

27
28 **Section 23-44. Appeals.**

29 ~~Final written decisions of the engineer revoking, suspending or denying a permit, are subject to~~
30 ~~appeal before a hearing officer as established in Palm Beach County Unified Land Development~~
31 ~~Code, section 4.15. An appeal must be filed with the engineer within thirty (30) days of the date~~

1 of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall
2 be waived. The hearing shall occur within thirty (30) days of the receipt of the appeal, unless
3 waived by the permittee, and a written decision shall be rendered within twenty (20) days of the
4 hearing. Upon correction of the grounds that gave rise to a suspension or denial, the suspension or
5 denial shall be lifted.

6
7 **Section 23-45—Enforcement Remedies.**

8 a) A permittee's failure to comply with provisions of this article shall constitute a violation of
9 this article and shall subject the permittee to the suspension provisions of this article and the code
10 enforcement provisions set forth in the Palm Beach County Unified Land Development Code,
11 Article 14. In addition, violation of this article may be punishable as provided in F.S. § 125.69,
12 as it may be amended, or any other legal or equitable remedy available at law.

13 (b) Failure of the county to enforce any requirements of this article shall not constitute a waiver
14 of the county's right to enforce that violation or subsequent violations of the same type or to seek
15 appropriate enforcement remedies.

16 **Section 23-48.—Construction Bond.**

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

27 (b) The rights reserved by the county with respect to any construction bond established pursuant
28 to this section are in addition to all other rights and remedies the county may have under this
29 article, or at law or equity.

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

5
6 **Section 23-4946 – Abandonment of facilities-a Facility.**

- 7 1. Upon Abandonment of a Facility by a Permittee, the Permittee shall notify the County in
8 writing within ninety (90) days.
- 9 2. The County may direct the Permittee by written notice to remove all or any portion of such
10 Abandoned Facility at the Permittee's sole expense if the County determines that the
11 Abandoned Facility's presence interferes with the public health, safety or welfare, which
12 shall include, but shall not be limited to, a determination that such Facility:
- 13 a. compromises safety at any time for any Rights-of-Way user or during construction
14 or maintenance in the Rights-of-Way; or
- 15 b. prevents another Person from locating a Facility in the area of Right-of-Way where
16 the Abandoned Facility is located when other alternative locations are not
17 reasonably available; or
- 18 c. creates a maintenance condition that is disruptive to the Rights-of-Way use. In the
19 event of (b), the County may require the third Person to coordinate with the
20 Permittee of the existing Facility for joint removal and placement, where agreed to
21 by the Permittee.
- 22 3. In the event that the County does not direct the removal of the Abandoned Facility, the
23 Permittee, by its notice of Abandonment to the County, shall be deemed to consent to the
24 alteration or removal of all or any portion of the Facility by the County or another Person
25 at such third party's Person's cost.
- 26 4. If the Permittee fails to remove all or any portion of an Abandoned Facility as directed by
27 the County within a reasonable time period as may be required by the County under the
28 circumstances, the County may perform such removal and charge the cost of the removal
29 against the Permittee.
- 30

1 **Section 23-47 – Appeals.**

2 Sec. 23-47 of the Palm Beach County Code of Ordinances is amended as follows:

3 Except for Permit issued to a Provider or Pass-Through Provider, pursuant to Section 6 above, a
4 final, written decision of the County revoking, suspending or denying a Permit, is subject to appeal
5 before a hearing officer in the same manner as the interpretations, as established in Palm Beach
6 County Unified Land Development Code, Article 2.A.14.C.2.d APPEAL, as may be amended.
7 Upon correction of the grounds that gave rise to a suspension, revocation or denial, the suspension,
8 revocation or denial shall be lifted. For a Permit revoked, suspended or denied to a Provider or
9 Pass-Through Provider, the Provider or Pass-Through Provider may waive the Permit Review time
10 limits in Section 6 and pursue an appeal under this Section 12, or pursue any remedy available in
11 a court of competent jurisdiction.

12
13 **Section 23-46-48 – Insurance.**

14 ~~(a) Except where the county or one (1) of its departments is a permittee, a permittee shall provide,~~
15 ~~pay for and maintain satisfactory to the county the types of insurance described herein. All~~
16 ~~insurance shall be from responsible companies duly authorized to do business in the state and~~
17 ~~having a rating reasonably acceptable to the county. All liability policies shall provide that the~~
18 ~~county is an additional insured as to the activities under this article. The required coverages must~~
19 ~~be evidenced by properly executed certificates of insurance forms. The certificates must be signed~~
20 ~~by the authorized representative of the insurance company and shall be filed and maintained with~~
21 ~~the county annually. Thirty (30) days advance written notice by registered, certified or regular mail~~
22 ~~or facsimile as determined by the county must be given to the county of any cancellation, intent~~
23 ~~not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by~~
24 ~~evidence of self insurance or other types of insurance acceptable to the county.~~

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

26 ~~(1) Worker's compensation and employer's liability insurance worker's compensation Florida~~
27 ~~statutory requirements employer's liability: \$100,000 each accident;~~
28 ~~\$500,000 disease — policy limit;~~
29 ~~\$100,000 disease — each employee.~~

1 ~~(2) Comprehensive general liability bodily injury and property damage: \$1,000,000 each~~
2 ~~occurrence \$3,000,000 general aggregate.~~

3 ~~(3) Automobile liability bodily injury and property damage: \$1,000,000 combined single limit~~
4 ~~each accident.~~

5 1. Except where the County is a Permittee, a Permittee shall provide, pay for and maintain
6 satisfactory to the County the types of insurance described herein. The insurance shall be
7 from a responsible company duly authorized to do business in the State of Florida and
8 having a rating reasonably acceptable to the County. All liability policies shall provide that
9 the County is an additional insured as to the activities under this Ordinance. The required
10 coverages must be evidenced by properly executed Certificate of Insurance. The Certificate
11 of Insurance must be signed by the authorized representative of the insurance company and
12 shall be filed and maintained with the County prior to the Permittee receiving a
13 construction start date from the County. Thirty (30) days advance written notice must be
14 given to the County, of any cancellation, intent not to renew or reduction in any coverage
15 under the insurance policy. The insurance requirements may be satisfied by evidence of
16 self-insurance or other types of insurance acceptable to the County.

17 2. The limits of insurance coverage shall not be less than the
18 following:

19 a. Worker's Compensation and Liability Insurance – Florida Statutory Requirements
20 Employer's Liability - \$100,000 each accident; \$500,000 disease policy limit;
21 \$100,000 disease each employee.

22 b. Comprehensive General Liability -- Bodily injury and property damage -
23 \$1,000,000 each occurrence; \$3,000,000 general aggregate.

24 c. Automobile Liability Bodily injury and property damage - \$1,000,000 combined
25 single limit each accident.

26 3. In addition to the requirements in this section, a Permittee that is a Provider or a Pass-
27 through Provider shall maintain, at its own expense, commercial general liability insurance
28 for bodily injury and property damage with a policy limit of \$1,000,000 per occurrence, or
29 in such other amount specified by the County's risk management department.

1 **Section 23-47-49 – Indemnification.**

2 ~~(a) A permittee shall, at its sole cost and expense, indemnify, hold harmless, and defend the~~
3 ~~county, its officials, boards, members, agents, and employees, against any and all claims, suits,~~
4 ~~causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses~~
5 ~~incurred by the county arising out of the placement or maintenance of its facilities in rights of~~
6 ~~way, regardless of whether the act or omission complained of is authorized, allowed or prohibited~~
7 ~~by this article; provided, however, that a permittee's obligation hereunder shall not extend to any~~
8 ~~claims caused by the negligence, gross negligence or wanton or willful acts of the county. This~~
9 ~~provision includes, but is not limited to, the county's reasonable attorneys' fees incurred in~~
10 ~~defending against any such claim, suit or proceedings. County agrees to notify the permittee, in~~
11 ~~writing, within a reasonable time of county receiving notice, of any issue it determines may require~~
12 ~~indemnification. Nothing in this section shall prohibit the county from participating in the defense~~
13 ~~of any litigation by its own counsel and at its own cost if in the county's reasonable belief there~~
14 ~~exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in~~
15 ~~this section shall be construed or interpreted:~~

16 ~~(1) As denying to either party any remedy or defense available to such party under the laws of the~~
17 ~~state; or~~

18 ~~(2) As a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as it may be~~
19 ~~amended.~~

20 ~~(b) The indemnification requirements shall survive and be in effect after the revocation or~~
21 ~~expiration of a permit.~~

22 1. A Permittee shall, at its sole cost and expense, protect, defend, reimburse, indemnify, and
23 hold the County, its elected officers, agents, and employees, harmless from and against all
24 claims, liability, expense, loss, damages causes of action of every kind or character,
25 including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising,
26 during, and as a result of Permittee's performance under the Ordinance. Nothing contained
27 in this Section shall be construed or interpreted: (a) as denying to either party any remedy
28 or defense available to such party under the laws of the State of Florida; (b) as a waiver of
29 sovereign immunity; or (c) as consent by the County to be sued.

30 2. The indemnification requirements shall survive and be in effect after the suspension,
31 revocation, termination or expiration of a Permit.

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Section 23-50 - Force Majeure.

In the event a Permittee’s performance of or compliance with any of the provisions of this Ordinance is prevented by a cause or event not within the Permittee’s control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such Permittee uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Ordinance, causes or events not within a Permittee’s control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within Permittee’s control, and thus not falling within this Section, shall include, without limitation, Permittee’s financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Permittee’s directors, officers, employees, contractors or agents.

Section 23-51 – Reservation of Rights and Remedies.

1. The County reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.
- ~~(b) This article shall be applicable to all facilities placed in rights of way on or after the effective date of this article and shall apply to all existing facilities in rights of way prior to the effective date of this article, to the full extent permitted by state and federal law.~~
- ~~(c) The adoption of this article is not intended to affect any rights or defenses of the county or a permittee under any existing franchise, license or other agreements with a permittee.~~
- ~~(d) Nothing in this article shall affect the remedies the county or the permittee has available under applicable law.~~
- ~~(e) Any person who uses the facilities of a permittee, other than the permittee that owns the facilities, shall not be entitled to any rights to place or maintain such facilities in excess of the rights of the permittee that places or maintains the facilities.~~
2. This Ordinance shall be applicable to any Facility Placed or Maintained in the Right-of-Way on or after the effective date of this Ordinance and shall apply to all existing Facilities

1 in Rights-of- Way prior to the effective date of this Ordinance to the full extent permitted
2 by State and Federal law. No ‘grandfathering’ of existing, non-conforming Facility shall
3 occur, unless the County determines that the existing Facility does not pose a threat to the
4 public’s health, safety and welfare.

5 3. The adoption of this Ordinance is not intended to affect any right or defense of the County
6 or a Permittee under any existing franchise, license or other agreement with a Permittee.

7 4. Nothing in this Ordinance shall affect any remedy the County or the Permittee has available
8 under applicable law.

9
10 **Section 23-52 – Severability.**

11 Sec. 23-52 of the Palm Beach County Code of Ordinances is added as follows:

12 The invalidity of any provision, portion, article, paragraph, clause, or any portion thereof of this
13 Ordinance shall not affect the validity of any other provision, portion, article, paragraph, clause,
14 or any portion thereof.

15
16 **Section 23-53 – Repeal of Ordinances in Conflict.**

17 The Right-of-Way Construction Permitting Ordinance, adopted as Ordinance No. 2008-
18 006, as amended, and codified at Sections 23-36 through 23-65, Code of Laws and Ordinances of
19 Palm Beach County, Florida, is hereby repealed, as are other applicable rules and regulations to
20 the extent that they conflict with the provisions of this Ordinance.

21
22 **Section 23-54 – Inclusion in the Code of Laws and Ordinances.**

23 The provisions of this Ordinance shall become and be made part of the Code of Laws and
24 Ordinances of Palm Beach County, Florida, and the Sections of this Ordinance may be renumbered
25 or re-lettered to accomplish such intention, and the word Ordinance may be changed to Section,
26 Ordinance, or another appropriate word.

27

1 **Section 23-55 – Savings Clause.**

2 All Permits issued pursuant to Ordinance No. 2008-006, as amended, along with all conditions,
3 and enforcement orders and all pending enforcement and other regulatory actions relating to such
4 Permits and all applicable Ordinance requirements; and the Palm Beach County Land
5 Development Fee Schedule in R-2009-0952, as may be amended, shall continue in full force and
6 effect and without interruption.

7

8 **Section 23-56 – Captions.**

9 The captions, section headings, and section designations used in this Ordinance are for
10 convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

11

12 **Section 23-57 – Effective Date.**

13 The provisions of this Ordinance shall become effective upon filing with the Department of
14 State.

15