

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: June 18, 2019

☐ **Consent**
☐ **Workshop**

☐ 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 adopt: 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 VII, Ordinance No. 2000-009, Palm Beach County Telecommunications Right-of-Way Ordinance, governing registration for use of right-of-way; providing for title; definitions; registration required; registration term and renewal; registration revocation and termination; insurance; abandonment; severability; inclusion in the code of laws and ordinances; enforcement; savings clause; captions; and for an effective date.

SUMMARY: This Ordinance repeals and replaces the existing ordinance that governs the requirements for telecommunication companies to register with the County prior to applying for approval to install facilities within the County's Right-of-Way. This Ordinance will expand the registration requirements to all types of communication companies and pursuant to the "Advanced Wireless Infrastructure Deployment Act," which relates to 5G wireless technology deployment. These revisions are consistent with revisions proposed concurrently to the County's Right-of-Way Permitting Ordinance. Countywide (YBH)

Background and Policy Issues: In 2017, the State Legislature enacted new rules pertaining to review of permit applications for wireless facilities which necessitated changes to this ordinance as well as changes to the County's Right-of-Way Permitting Ordinance. The proposed Ordinance now requires registration from all types of communication companies, not just telecommunication companies, and complies with the new State laws to assist with deployment of 5G wireless technology. Staff has received requests for revisions from the wireless community and accommodated many of these requests, where feasible, while still meeting the State law. 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 Palm Beach County Telecommunications Right-of-Way Ordinance that was approved by the BCC on February 15, 2000.

Attachments:

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

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Recommended by: YbH John McConnell 6/2/19
County Engineer Date

Approved by: Nancy L. Bolton 6/11/19
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	<u>\$ -0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>\$ **</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# 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:

III. REVIEW COMMENTS

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


OFMB 6/6/19
 SP6/5
 um 6/5


Contract Dev. and Control 6/10/19
 6/10/19 JW

**B. Approved as to Form
and Legal Sufficiency:**

MBHerman 6/16/19
Assistant County Attorney

C. Other Department Review:

Department Director

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

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CHAPTER 23, ARTICLE VII OF THE PALM BEACH COUNTY CODE
(ORD. 2000-009)

Section 23-151 – Title.

This ordinance shall be known and cited in the future as the “Palm Beach County
Telecommunications Communications Right-of-Way Registration Ordinance.”

Section 23-152 – Purpose.

The purpose of this article is:

- ~~(1) To establish a competitively neutral policy for the use of the public right of way for the provision of local exchange telecommunications services and toll telephone telecommunications services;~~
- ~~(2) To regulate the placement of structures and facilities in the public right of way pursuant to Florida Statutes, § 125.01;~~
- ~~(3) To prescribe reasonable rules for such uses pursuant to Florida Statutes, §§ 337.401 and 364.0361, so as to minimize disruption of services in the public right of way, regulate the use of the public right of way by telecommunications providers, and regulate the construction, installation, maintenance, repair, removal and replacement of facilities in the public right of way.~~

Section 23-153 – Definitions.

The following words, phrases, or terms when used in this Ordinance shall, unless the content otherwise indicates, have the meanings provided below. No attempt is made to define ordinary words which are used in accordance with their established dictionary meaning except when necessary to avoid misunderstanding.

- 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

1 limitation, cessation of all use of a cable within a conduit, where the conduit continues
2 to be used or cessation of all use of an antenna mounted on a streetlight, where the
3 streetlight continues to be used, shall not be “Abandonment.”

4 3. “Communications Facility” or “Communications Facilities” of “Facility” shall mean
5 a structure requiring a permanent location on the ground or an attachment to such,
6 pole, or equipment at a fixed location that enables communication services between
7 user equipment and a communications network, antennas, towers, equipment
8 enclosures, cabling, antenna brackets, and other such equipment, and includes a Small
9 Wireless Facility.

10 4. “Communications Services” shall mean the offering of communications for a fee to
11 the public or to such classes of users as to be effectively available directly to the public,
12 regardless of the Facilities used.

13 5. “County” shall mean Palm Beach County, Florida.

14 ~~1. “FCC” shall mean the Federal Communications Commission.~~

15 6. “Facility” shall mean Communications Facility.

16 ~~2.7.~~ “Ordinance” shall mean this—article. ordinance; the “Palm Beach County
17 Communications Registration Right-of-Way Ordinance.”

18 8. “Pass-through Provider” shall mean any Person who, pursuant to this Ordinance,
19 Places or Maintains a Communications Facility in the Right-of-Way, and does not
20 remit communications service taxes, as imposed by the County pursuant to Chapter
21 202 and Section 337.401, Florida Statute.

22 9. “Provider” shall mean any Person who, pursuant to this Ordinance, Places or
23 Maintains a Communications Facility in the Right-of-Way, and remits
24 Communications Service taxes, as imposed by the County pursuant to Chapter 202
25 and Section 337.401, Florida Statutes.

26 ~~3.10.~~ “Permit” shall mean the Right-of-Way Permit, including but not limited to right-of-
27 way (RW), utility permit (UT) and landscape permit (LA), pursuant to the Right-of-
28 Way Permitting Ordinance.

29 ~~4.11.~~ “Person” includes individuals, children, firms, joint ventures, partnerships, estates,
30 trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or
31 combinations. shall mean any entity or individual, including but not limited to, a
32 governmental entity, except for Palm Beach County Engineering and Public Works

1 Department, contractor, firm, association, joint venture, partnership, estate, trust,
2 business trust, syndicate, fiduciary, corporation, organization or legal entity of any
3 kind, successor, assignee, transferee, personal representative and any other group.

4 5.12. “Place or Maintain,” “Placement or Maintenance,” or “Placing or Maintaining” shall
5 mean to erect, construct, install, maintain, place, repair, extend, expand, remove,
6 occupy, replace, locate or relocate. Physical control, ownership or maintenance of a
7 Facility is considered “Placing or Maintaining” a Facility. A Person providing service
8 only through resale or only through use of a third party’s unbundled network elements
9 is not “Placing or Maintaining” the Communications Facility through which such
10 service is provided. The transmission and receipt of radio frequency signals through
11 the airspace of the Right-of-Way is not Placing or Maintaining a Facility in the Right-
12 of-Way.

13 6.13. “Public Right-of-Way” shall mean a public right-of-way, public utility easement,
14 highway, street or alley owned by the county or for which the county holds a property
15 interest and exercises rights of management or control, and includes the surface, the
16 air space over the surface and the area below the surface of all public roads, streets,
17 highways, alleys, boulevards, bridges, tunnels, public utility easements, and all public
18 grounds. highway, street, bridge, tunnel, Right-of-Way drainage area or alley which
19 has been dedicated to the public or to the County and for which the County is the
20 maintenance authority, or intends to be the maintenance authority, that has jurisdiction
21 and control and may lawfully grant access to pursuant to applicable law, and includes
22 the surface, the air space over the surface and the area below the surface. “Right-of-
23 Way” shall not include private property unless it is subject to a public easement for a
24 use referenced above. The term also includes but is not limited to associated sidewalks,
25 the roadbed, all culverts, drains, sluices, ditches, water storage areas, waterways,
26 embankments, slopes, retaining walls, bridges, and viaducts. “Right-of-Way” shall not
27 include County buildings, fixtures, poles, conduits, Facilities or other structures or
28 improvements, regardless of whether they are situated in the Right-of-Way.

29 7.14. “Registrant” shall be a telecommunications company Person that has registered with
30 the county in accordance with the provisions of this article. this Ordinance.

1 ~~15. “Registration and register” shall mean the process described in section 23-154~~
2 ~~whereby a telecommunications provider provides certain information to the county.~~
3 ~~this Ordinance.~~

4
5 ~~8. “Telecommunications” shall mean the transmission between or among points~~
6 ~~specified by the user of information of the user's choosing, without change in the~~
7 ~~form or content of the information as sent and received.~~

8 ~~9. “Telecommunications facility or facility” shall mean the plant, equipment, and~~
9 ~~property, including but not limited to cables, wires, conduits, ducts, fiber optics,~~
10 ~~antennae and other equipment or pathway used to transmit, receive, distribute,~~
11 ~~provide or offer telecommunications services.~~

12 ~~10. “Telecommunications provider or provider” shall mean any person or entity that~~
13 ~~provides telecommunications service as defined in Florida Statutes, § 203.012(5), as~~
14 ~~may be amended.~~

15 ~~11. “Telecommunications services” shall mean the offering of telecommunications for~~
16 ~~a fee to the public or to such classes of users as to be effectively available directly~~
17 ~~to the public, regardless of the facilities used. Cable services and open video systems~~
18 ~~are expressly excluded from the definition of telecommunications services.~~

19 **Section 23-154 – Registration for use of right-of-way Registration Required.**

20 ~~(a) Each telecommunications provider that desires to erect, construct, install, maintain, repair,~~
21 ~~expand, or use any telecommunications facilities in, under, over or across any public right-of-~~
22 ~~way in the county shall first register with the county in accordance with the terms of this~~
23 ~~article. As to toll service providers, such registration shall be accepted by the county as an~~
24 ~~ordinance of the board of county commissioners.~~

25 ~~(b) Subject to the terms and conditions contained in this article, a registrant may erect,~~
26 ~~construct, install, repair, maintain, expand and use the telecommunications system in, on,~~
27 ~~over, under, and across the designated public right-of-way.~~

28
29 1. Any Provider or Pass-through Provider Placing or Maintaining any Communications
30 Facility in the Right-of-Way shall first register in accordance with this Ordinance.

1 Subject to the terms and conditions prescribed in this Ordinance, a Registrant may
2 Place or Maintain a Communications Facility in Right-of-Way.

3 2. Registration Application. Any Provider or Pass-through Provider that desires to Place
4 or Maintain a Communications Facility in the Right-of-Way shall file a single
5 registration in a letter format with the County that shall include the following
6 information:

7 a. Name of the Provider or Pass-through Provider;

8 b. Name, address, telephone number and email address of an authorized
9 representative of the Provider or Pass-through Provider;

10 c. Name, address and telephone number of the Provider or Pass-through
11 Provider's primary contact person in case of an emergency;

12 d. Evidence of the insurance coverage required under this Ordinance;

13 e. Acknowledgment that Provider or Pass-through Provider has received and
14 reviewed a copy of this Ordinance;

15 f. A copy of federal or state certification authorizing the Provider or Pass-through
16 Provider to provide Communications Services, if any;

17 g. If the Provider or Pass-through Provider is a corporation, proof of authority to
18 do business in the State of Florida, which may be satisfied by providing the
19 number of the corporate certification; and

20 h. For a Provider, evidence of remitting Communications Services taxes, as
21 imposed by Chapter 202, Florida Statutes. For a Pass-through-Provider,
22 evidence of eligibility as a Pass-through-Provider.

23 3. Within thirty (30) days of any change in the Registration information submitted, a
24 Registrant shall provide updated information to the County.

25 4.4. Registration shall be nonexclusive. Registration shall not establish any right or priority
26 to Place or Maintain a Communications Facility in any particular area in public rights-
27 of-way.

28
29
30 **Section 23-155 – Nature of Registration-Registration Review.**

31 ~~A registration shall not convey title, equitable or legal, in the public right of way. Registrants~~
32 ~~may only occupy public rights of way for telecommunications facilities. Registration does~~

1 ~~not excuse a telecommunications provider from obtaining appropriate access or pole~~
2 ~~attachment agreements before locating its facilities on another person's facilities. Registration~~
3 ~~does not excuse a provider from complying with all applicable county ordinances, including~~
4 ~~this article.~~

5 1. The County shall review the information submitted by the Provider or Pass-through
6 Provider. If the Provider or Pass-through Provider submits information in accordance
7 with this section, the Registration shall be effective and the County shall notify the
8 Registrant of the effectiveness of Registration in writing. If the County determines that
9 the information submitted is not complete, the County shall notify the Registrant in
10 writing of the non-effectiveness within thirty (30) calendar days after receipt of
11 information from the Registrant.

12 2. Every Provider and Pass-through Provider shall have an effective Registration prior
13 to applying for any and all permits that may be required pursuant to applicable County
14 codes and regulations.

15
16 **Section 23-156 – Registration; effectiveness of registration Term and Renewal.**

17 ~~(a) Registration. Any telecommunications provider desiring to use the public right of way~~
18 ~~shall file a registration with the county which shall include the following information:~~

19 ~~(1) Identity of the applicant and name, address and telephone number of applicant's primary~~
20 ~~contact person in connection with the registration;~~

21 ~~(2) General description of the services to be provided (in other words, if applicant is or expects~~
22 ~~to be a local service provider and/or a toll service provider);~~

23 ~~(3) Evidence of the insurance coverage required under this article and agreement to indemnify~~
24 ~~the county as required under this article;~~

25 ~~(4) A copy of federal and/or state certification authorizing the applicant to provide~~
26 ~~telecommunications services.~~

27 ~~(b) Registration application fees. Each applicant for a registration or renewal thereof shall~~
28 ~~submit a nonrefundable application fee with the application; provided that the fee may be~~
29 ~~credited against fees due under section 23-161(a) below. Fee amounts shall be established by~~
30 ~~resolution of the board of county commissioners but in no event shall exceed the county's~~
31 ~~costs incurred in reviewing the application.~~

1 ~~(c) *Review by county.* The county will review the information submitted by the applicant.~~
2 ~~Such review will be by the county engineer or his or her designee. If the applicant submits~~
3 ~~information in accordance with section 23-156(a) above, the registration shall be effective~~
4 ~~and the county shall notify the applicant of the effectiveness of registration in writing. If the~~
5 ~~county determines that the information has not been submitted in accordance with section 23-~~
6 ~~156(a) above, the county shall notify the applicant of the non-effectiveness of registration,~~
7 ~~and reasons for the non-effectiveness, in writing. The county shall so reply to an applicant~~
8 ~~within thirty (30) days after receipt of registration information from the applicant. A registrant~~
9 ~~may cancel a registration upon written notice to the county noticing that it will no longer~~
10 ~~provide local service or toll service in unincorporated areas of the county and will no longer~~
11 ~~need to pull permits to perform work in public right of way.~~

12 ~~(d) *Nonexclusive registration.* Registration with the county shall be nonexclusive.~~
13 ~~Registration does not establish any priority for the use of the public right of way by a~~
14 ~~registrant or any other registrants.~~

15 ~~(e) *Renewal of registration.* Registrants shall renew their registration with the county every~~
16 ~~ten (10) years in accordance with the registration requirements in this article. Registrations~~
17 ~~are expressly subject to any future amendment to or replacement of this article and further~~
18 ~~subject to any additional county ordinances, as well as any state or federal laws that may be~~
19 ~~enacted during the term of the registration.~~

20 ~~(f) *Permits.* In accordance with applicable county codes and regulations, permits shall be~~
21 ~~required of any telecommunications provider that desires to place, extend or locate its~~
22 ~~facilities in any public right of way. For telecommunications providers, an effective~~
23 ~~registration shall be a condition of obtaining a permit.~~

24
25 1. A Registrant shall renew its Registration with the County every ten years. Registration
26 renewal shall include:

- 27 a. updates to Registration information; and
28 b. a current insurance certificate.
29 c. if no information in the previous Registration has changed, the renewal
30 shall state that no information has changed. Failure to renew a Registration
31 may result in the County restricting the issuance of additional permits until

1 the Provider or Pass-through Provider has complied with the Registration
2 requirements of this Ordinance.

3 4-2. If a Registrant transfers, sells or assigns its Communications Facilities in the Right-
4 of-Way, incident to a transfer, sale or assignment of the Registrant's assets, the
5 transferee, buyer or assignee shall comply with the terms of this Ordinance and any
6 and all permits issued. If the transferee, buyer or assignee is a current Registrant, then
7 the transferee, buyer or assignee is not required to re-register. If the transferee, buyer
8 or assignee is not a current Registrant, then the transferee, buyer or assignee shall
9 register as provided in this section within sixty (60) days of the transfer, sale or
10 assignment. If permit applications are pending in the Registrant's name, the transferee,
11 buyer or assignee shall notify the appropriate County officials that the transferee,
12 buyer or assignee is the new applicant.

13
14 **Section 23-157 – Transfer of Registration Revocation and Termination.**

15 ~~If the registrant transfers or assigns its registration incident to a sale or other transfer of the~~
16 ~~registrant's assets, the transferee or assignee shall be obligated to comply with the terms of~~
17 ~~this article. Written notice of any such prospective transfer or assignment shall be provided to~~
18 ~~the county at least twenty (20) days in advance of the date of such transfer. In order for the~~
19 ~~transfer of registration to be effective, such written notice must include the identity of the~~
20 ~~prospective transferee or assignee, evidence of insurance coverage and indemnification~~
21 ~~agreement as required in section 23-156 of this article.~~

22 1. The County Engineer may revoke a Registration and revoke all privileges granted
23 under that Registration if:

24 a. a federal, state or local authority suspends, denies, or revokes a Registrant's
25 certification or license to provide communications service or certificate of
26 use,

27 b. the Registrant's Placement and Maintenance in the Right-of-Way presents
28 an extraordinary danger to the general public or other users of the Right-
29 of-Way and Registrant fails to remedy the danger after notice,

30 c. the Registrant Abandons or ceases to use its Communications Facilities in
31 the Right-of-Way,

32 d. a Registrant fails to comply with the requirements of Section 3, or

1 e. a Registrant fails to obtain proper approvals prior to working within
2 County Right-of-Way .

3 2. Prior to revocation, the County shall notify the Registrant in writing of the intent to
4 revoke Registration and the reasons for such. Except in the case of extraordinary
5 danger to the general public, the Registrant shall have sixty (60) days after receipt of
6 such notice within which to cure the violation, or within which to present a plan,
7 satisfactory to the County Engineer, to accomplish the same. In the event of
8 extraordinary danger to the general public, the Registrant shall take all action
9 necessary to remedy the danger immediately.

10 3. In the event the County Engineer revokes a registration, the Registrant shall be given
11 written notice of such termination.

12 4. The revoked Registrant shall, within a reasonable time following such termination,
13 either:

14 a. Notify the County of the assumption or anticipated assumption by another
15 Registrant of ownership of the Registrant's Facilities in the public rights-
16 of-way; or

17 b. Provide an acceptable plan for disposition of its Communications Facilities
18 in the Right-of-Way. If a terminated Registrant fails to comply with this
19 provision, the County may, in addition to any other remedies available at
20 law or in equity, remove some or all of the Facilities from the Right-of-
21 Way and restore the Right-of-Way to its condition immediately prior to the
22 removal using County employees, agents or contractors, and charge any
23 and all costs to the Registrant and require reimbursement. In any event, a
24 terminated Registrant shall take all actions necessary to render every
25 portion of the Facilities remaining in the Right-of-Way of the County safe
26 to the satisfaction of the County Engineer.

27 5. In the event of a termination of Registration, this provision does not permit the County
28 to cause the removal of any Facilities that are used to provide another service for which
29 the Registrant holds a valid certificate of use or license with the governing federal or
30 state agency, where required, and is properly registered and permitted with the County,
31 where required.

1 ~~4.6.~~ Termination. A Registrant may request a termination of a Registration upon written
2 notice to the County that the Registrant will no longer Place or Maintain any
3 Communications Facilities in the Right-of-Way and will no longer need to obtain
4 permits to perform work in the Right-of-Way. A Registrant cannot terminate a
5 Registration if the Registrant continues to Place or Maintain any Communications
6 Facilities in the Right-of-Way.

7
8 **Section 23-158 — Existing telecommunications facilities in right-of-way Fees.**

9 ~~Lines or cables of telecommunications facilities which have been constructed or placed in the~~
10 ~~public right of way prior to the effective date of this article may remain in the right of way~~
11 ~~provided the telecommunications provider complies with the registration provisions of this~~
12 ~~article. Providers with existing lines and cables have one hundred twenty (120) days from the~~
13 ~~effective date of this article to comply with the terms of this article, or be in violation thereof.~~

14 1. A Pass-through Provider that Places or Maintains a Communications Facility in the
15 Right of Way, shall pay an annual fee not to exceed \$500 per linear mile or portion
16 thereof.

17 ~~4.2.~~ The County may withhold the issuance of any permits to a Registrant until any amount
18 past due from Registrant to County is paid in full.

19
20 **Section 23-159 — Suspension of Permits Indemnification.**

21 ~~Subject to section 23-160 below, the county may suspend a permit for work in the public~~
22 ~~rights of way for one (1) or more of the following reasons:~~

23 ~~(1) Violation of permit conditions, including conditions set forth in this article or other~~
24 ~~applicable county codes or regulations governing use of public right of way;~~

25 ~~(2) Misrepresentation or fraud by registrant in a registration or permit application to the~~
26 ~~county;~~

27 ~~(3) Violation of provisions in this article requiring payment of fees to the county;~~

28 ~~(4) Failure to relocate or remove facilities as may be lawfully required by the county; or~~

29
30 A Registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the
31 County, its commissioners, officials, employees and agents, against any and all claims, suits,

1 causes of action, proceedings, judgments for damages or equitable relief, and costs and
2 expenses incurred by the County arising during or as a result of performance under the
3 Ordinance, or arising out of the placement or maintenance of the Registrant's Communications
4 Facilities in the Right-of-Way, regardless of whether the act or omission complained of is
5 authorized, allowed or prohibited by this Ordinance, provided, however, that a Registrant's
6 obligation hereunder shall not extend to any damages caused solely by the negligence, gross
7 negligence or wanton or willful acts of the County. This provision includes, but is not limited
8 to, the County's reasonable attorneys' fees incurred in defending against any such claim, suit
9 or proceedings. County agrees to notify the Registrant, in writing, within a reasonable time
10 of County receiving notice, of any issue it determines may require indemnification. Nothing
11 in this section shall prohibit the County from participating in the defense of any litigation by
12 its own counsel and at its own cost if in the County's reasonable belief there exists or may
13 exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section
14 shall be construed or interpreted:

- 15 1. As denying to either party any remedy or defense available to such party under
16 the laws of the state of Florida;
- 17 2. As consent by the County to be sued; or
- 18 3. As a waiver of sovereign immunity beyond the waiver provided in F.S. §
19 768.28, as it may be amended.

20 The indemnification requirements shall survive and be in effect after the suspension,
21 revocation, termination or expiration of a Registration.

23 **Section 23-160 — Appeals Insurance.**

24 ~~Final, written decisions of the county engineer suspending a permit, denying an application~~
25 ~~for a registration or denying an application for renewal of a registration are subject to appeal.~~

26 ~~An appeal must be filed with the county engineer within thirty (30) days of the date of the~~
27 ~~final, written decision to be appealed. Any appeal not timely filed as set forth above shall be~~
28 ~~waived. The board of county commissioners shall appoint a hearing officer to consider the~~
29 ~~appeal as set forth in Palm Beach County Unified Land Development Code, section 4.15.~~

30 A Registrant, including Pass-through Providers, that places or maintains Communications
31 Facilities in the public rights-of-way shall be required to maintain, at its own expense,
32 commercial general liability insurance in the amount of \$1,000,000 per occurrence, or in such

1 other amount specified by the County's risk management division, for bodily injury and
2 property damage. The County must be named as an additional insured on this policy, and a
3 certificate of insurance containing such endorsement must be issued as part of the policy. The
4 Registrant must provide, and have approved by the County, an original certificate of insurance
5 as evidence that this requirement has been met prior to commencing operation.

6
7 **Section 23-161 – Abandonment.**

8 Abandonment of Communications Facility in Right-of-Way. Upon a Registrant's
9 Abandonment of a Communications Facility in the County public rights-of-way, the
10 Registrant shall notify the County of such Abandonment within ninety (90) calendar days.
11 The County Engineer shall direct the Registrant to remove all Abandoned Facilities within a
12 reasonable time. If the Registrant fails to remove all or any portion of an Abandoned
13 Communications Facility as directed by the County within a reasonable time period as may
14 be required by the County under the circumstances, the County may perform such removal
15 and charge the cost of the removal against the Registrant.

16
17 **Section 23-162 – Severability.**

18 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason
19 held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such
20 holding shall not affect the remainder of this Ordinance.

21
22 **Section 23-163 – Inclusion in the Code of Laws and Ordinances.**

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

26
27 **Section 23-164 – Penalties for violation Enforcement.**

28 Any violation of any of the provisions of this article may be enforced as provided for in Florida
29 Statutes, § 125.69. Each day or fraction thereof the violation continues shall be considered as
30 a separate offense.

31 In addition, the county can pursue all other lawful action, including filing a complaint with
32 Florida Public Service Commission advising of violation of county ordinance, filing an

1 ~~injunction in circuit court to enforce the terms of the ordinance or registration or to enjoin the~~
2 ~~use of the public right of way, filing an action in federal court to enforce payment of just~~
3 ~~compensation pursuant to the telecommunications act, pursuing action before the code~~
4 ~~enforcement board to impose daily fines, and/or denying permits or development orders for~~
5 ~~other projects or use of the right of way by the provider. These remedies shall be cumulative.~~
6 This Ordinance is enforceable by all means provided by law. Additionally, the County may
7 choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm
8 Beach County.

9
10 **Section 23-165 – Savings Clause.**

11 All Registrations issued pursuant to the Palm Beach County Telecommunications Right-of –
12 Way Ordinance, sections 23-151 through 23-164, along with all conditions, enforcement
13 orders all pending enforcement, and other regulatory action relating to such Registration shall
14 continue in full force and effect and without interruption.

15
16 **Section 23-166 – Captions.**

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

20
21 **Section 23-167 – Effective Date.**

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

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, REPEALING AND REPLACING PALM BEACH COUNTY CODE, SECTION 23-151 THROUGH 23-167 IN ITS ENTIRETY AND REPLACING IT WITH THE PALM BEACH COUNTY COMMUNICATIONS RIGHT-OF-WAY REGISTRATION ORDINANCE; PROVIDING FOR: TITLE, DEFINITIONS, REGISTRATION REQUIRED, REGISTRATION REVIEW, REGISTRATION TERM AND RENEWAL, REGISTRATION REVOCATION AND TERMINATION, FEES, INDEMNIFICATION, INSURANCE, ABANDONMENT, SEVERABILITY, INCLUSION IN THE CODE OF LAWS AND ORDINANCES, ENFORCEMENT, SAVINGS CLAUSE, CAPTIONS, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 253(c) of the Telecommunications Act of 1996 (Act), leaves to State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government; and

WHEREAS, Section 337.401(3)(a), Florida Statutes, as may be amended, provides that local governments are authorized to require a provider of communications services that places or seeks to place facilities in its roads or rights-of-way to register with the local government;

WHEREAS, Section 337.401(3)(b), Florida Statutes, as may be amended, provides that the registration described therein does not establish a right to place or maintain, or priority for the placement or maintenance of, a communications facility in roads or rights-of-way of a local governments; and

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

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WHEREAS, the Board of County Commissioners of Palm Beach County, Florida (Board) has determined that the registration set forth herein furthers the public health, safety and welfare; and

WHEREAS, pursuant to the authority set forth in the Act and Section 337.401, Florida Statutes, the County desires to impose reasonable rules and regulations and recover costs for the use of the County rights-of-way; and

WHEREAS, the Board has delegated the responsibility for accepting, processing, reviewing and approving or denying registration applications to place or maintain communication facilities in the County rights-of-way to the County Engineer; and

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

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

Chapter 23, Article VII of the Palm Beach County Code (Ord. 2000-009) is hereby repealed and replaced with the following:

Section 1. Section 23-151 – Title.

This ordinance shall be known as the “Palm Beach County Communications Right-of-Way Registration Ordinance.”

Section 2. Section 23-152 – Definitions.

The following words, phrases, or terms when used in this Ordinance shall, unless the content otherwise indicates, have the meanings provided below. No attempt is made to define ordinary words which are used in accordance with their established dictionary meaning except when necessary to avoid misunderstanding.

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.

- 1 2. “Abandonment” shall mean the permanent cessation of all uses of a Facility; provided
2 that this term shall not include cessation of all use of a Facility within a physical
3 structure where the physical structure continues to be used. By way of example, and
4 not limitation, cessation of all use of a cable within a conduit, where the conduit
5 continues to be used or cessation of all use of an antenna mounted on a streetlight,
6 where the streetlight continues to be used, shall not be “Abandonment.”
- 7 3. “Communications Facility” or “Communications Facilities” of “Facility” shall mean
8 a structure requiring a permanent location on the ground or an attachment to such,
9 pole, or equipment at a fixed location that enables communication services between
10 user equipment and a communications network, antennas, towers, equipment
11 enclosures, cabling, antenna brackets, and other such equipment, and includes a Small
12 Wireless Facility.
- 13 4. “Communications Services” shall mean the offering of communications for a fee to
14 the public or to such classes of users as to be effectively available directly to the public,
15 regardless of the Facilities used.
- 16 5. “County” shall mean Palm Beach County, Florida.
- 17 6. “Facility” shall mean Communications Facility.
- 18 7. “Ordinance” shall mean this ordinance; the “Palm Beach County Communications
19 Registration Right-of-Way Ordinance.”
- 20 8. “Pass-through Provider” shall mean any Person who, pursuant to this Ordinance,
21 Places or Maintains a Communications Facility in the Right-of-Way, and does not
22 remit communications service taxes, as imposed by the County pursuant to Chapter
23 202 and Section 337.401, Florida Statute.
- 24 9. “Provider” shall mean any Person who, pursuant to this Ordinance, Places or
25 Maintains a Communications Facility in the Right-of-Way, and remits
26 Communications Service taxes, as imposed by the County pursuant to Chapter 202
27 and Section 337.401, Florida Statutes.
- 28 10. “Permit” shall mean the Right-of-Way Permit, including but not limited to right-of-
29 way (RW), utility permit (UT) and landscape permit (LA), pursuant to the Right-of-
30 Way Permitting Ordinance.
- 31 11. “Person” shall mean any entity or individual, including but not limited to, a
32 governmental entity, except for Palm Beach County Engineering and Public Works

1 Department, contractor, firm, association, joint venture, partnership, estate, trust,
2 business trust, syndicate, fiduciary, corporation, organization or legal entity of any
3 kind, successor, assignee, transferee, personal representative and any other group.

4 12. “Place or Maintain,” “Placement or Maintenance,” or “Placing or Maintaining” shall
5 mean to erect, construct, install, maintain, place, repair, extend, expand, remove,
6 occupy, replace, locate or relocate. Physical control, ownership or maintenance of a
7 Facility is considered “Placing or Maintaining” a Facility. A Person providing service
8 only through resale or only through use of a third party’s unbundled network elements
9 is not “Placing or Maintaining” the Communications Facility through which such
10 service is provided. The transmission and receipt of radio frequency signals through
11 the airspace of the Right-of-Way is not Placing or Maintaining a Facility in the Right-
12 of-Way.

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

25 14. “Registrant” shall be a Person that has registered in accordance with this Ordinance.

26 15. “Registration” shall mean the process described in this Ordinance.

27

28 **Section 3. Section 23-153 – Registration Required.**

29 1. Any Provider or Pass-through Provider Placing or Maintaining any Communications
30 Facility in the Right-of-Way shall first register in accordance with this Ordinance.
31 Subject to the terms and conditions prescribed in this Ordinance, a Registrant may
32 Place or Maintain a Communications Facility in Right-of-Way.

- 1 2. Registration Application. Any Provider or Pass-through Provider that desires to Place
2 or Maintain a Communications Facility in the Right-of-Way shall file a single
3 registration in a letter format with the County that shall include the following
4 information:
- 5 a. Name of the Provider or Pass-through Provider;
- 6 b. Name, address, telephone number and email address of an authorized
7 representative of the Provider or Pass-through Provider;
- 8 c. Name, address and telephone number of the Provider or Pass-through
9 Provider's primary contact person in case of an emergency;
- 10 d. Evidence of the insurance coverage required under this Ordinance;
- 11 e. Acknowledgment that Provider or Pass-through Provider has received and
12 reviewed a copy of this Ordinance;
- 13 f. A copy of federal or state certification authorizing the Provider or Pass-through
14 Provider to provide Communications Services, if any;
- 15 g. If the Provider or Pass-through Provider is a corporation, proof of authority to
16 do business in the State of Florida, which may be satisfied by providing the
17 number of the corporate certification; and
- 18 h. For a Provider, evidence of remitting Communications Services taxes, as
19 imposed by Chapter 202, Florida Statutes. For a Pass-through-Provider,
20 evidence of eligibility as a Pass-through-Provider.
- 21 3. Within thirty (30) days of any change in the Registration information submitted, a
22 Registrant shall provide updated information to the County.
- 23 4. Registration shall be nonexclusive. Registration shall not establish any right or priority
24 to Place or Maintain a Communications Facility in any particular area in public rights-
25 of-way.
- 26

27 **Section 4. Section 23-154 – Registration Review.**

- 28 1. The County shall review the information submitted by the Provider or Pass-through
29 Provider. If the Provider or Pass-through Provider submits information in accordance
30 with this section, the Registration shall be effective and the County shall notify the
31 Registrant of the effectiveness of Registration in writing. If the County determines that
32 the information submitted is not complete, the County shall notify the Registrant in

1 writing of the non-effectiveness within thirty (30) calendar days after receipt of
2 information from the Registrant.

3 2. Every Provider and Pass-through Provider shall have an effective Registration prior
4 to applying for any and all permits that may be required pursuant to applicable County
5 codes and regulations.

6

7 **Section 5. Section 23-155 – Registration Term and Renewal.**

8 1. A Registrant shall renew its Registration with the County every ten years. Registration
9 renewal shall include:

- 10 a. updates to Registration information; and
- 11 b. a current insurance certificate.
- 12 c. if no information in the previous Registration has changed, the renewal
13 shall state that no information has changed. Failure to renew a Registration
14 may result in the County restricting the issuance of additional permits until
15 the Provider or Pass-through Provider has complied with the Registration
16 requirements of this Ordinance.

17 2. If a Registrant transfers, sells or assigns its Communications Facilities in the Right-
18 of-Way, incident to a transfer, sale or assignment of the Registrant's assets, the
19 transferee, buyer or assignee shall comply with the terms of this Ordinance and any
20 and all permits issued. If the transferee, buyer or assignee is a current Registrant, then
21 the transferee, buyer or assignee is not required to re-register. If the transferee, buyer
22 or assignee is not a current Registrant, then the transferee, buyer or assignee shall
23 register as provided in this section within sixty (60) days of the transfer, sale or
24 assignment. If permit applications are pending in the Registrant's name, the transferee,
25 buyer or assignee shall notify the appropriate County officials that the transferee,
26 buyer or assignee is the new applicant.

27

28 **Section 6. Section 23-156 –Registration Revocation and Termination.**

29 1. The County Engineer may revoke a Registration and revoke all privileges granted
30 under that Registration if:

- a. a federal, state or local authority suspends, denies, or revokes a Registrant's certification or license to provide communications service or certificate of use,
 - b. the Registrant's Placement and Maintenance in the Right-of-Way presents an extraordinary danger to the general public or other users of the Right-of-Way and Registrant fails to remedy the danger after notice,
 - c. the Registrant Abandons or ceases to use its Communications Facilities in the Right-of-Way,
 - d. a Registrant fails to comply with the requirements of Section 3, or
 - e. a Registrant fails to obtain proper approvals prior to working within County Right-of-Way .
2. Prior to revocation, the County shall notify the Registrant in writing of the intent to revoke Registration and the reasons for such. Except in the case of extraordinary danger to the general public, the Registrant shall have sixty (60) days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the County Engineer, to accomplish the same. In the event of extraordinary danger to the general public, the Registrant shall take all action necessary to remedy the danger immediately.
3. In the event the County Engineer revokes a registration, the Registrant shall be given written notice of such termination.
4. The revoked Registrant shall, within a reasonable time following such termination, either:
 - a. Notify the County of the assumption or anticipated assumption by another Registrant of ownership of the Registrant's Facilities in the public rights-of-way; or
 - b. Provide an acceptable plan for disposition of its Communications Facilities in the Right-of-Way. If a terminated Registrant fails to comply with this provision, the County may, in addition to any other remedies available at law or in equity, remove some or all of the Facilities from the Right-of-Way and restore the Right-of-Way to its condition immediately prior to the removal using County employees, agents or contractors, and charge any and all costs to the Registrant and require reimbursement. In any event, a

1 terminated Registrant shall take all actions necessary to render every
2 portion of the Facilities remaining in the Right-of-Way of the County safe
3 to the satisfaction of the County Engineer.

4 5. In the event of a termination of Registration, this provision does not permit the County
5 to cause the removal of any Facilities that are used to provide another service for which
6 the Registrant holds a valid certificate of use or license with the governing federal or
7 state agency, where required, and is properly registered and permitted with the County,
8 where required.

9 6. Termination. A Registrant may request a termination of a Registration upon written
10 notice to the County that the Registrant will no longer Place or Maintain any
11 Communications Facilities in the Right-of-Way and will no longer need to obtain
12 permits to perform work in the Right-of-Way. A Registrant cannot terminate a
13 Registration if the Registrant continues to Place or Maintain any Communications
14 Facilities in the Right-of-Way.

15

16 **Section 7. Section 23-157 – Fees.**

17 1. A Pass-through Provider that Places or Maintains a Communications Facility in the
18 Right of Way, shall pay an annual fee not to exceed \$500 per linear mile or portion
19 thereof.

20 2. The County may withhold the issuance of any permits to a Registrant until any amount
21 past due from Registrant to County is paid in full.

22

23 **Section 8. Section 23-158 – Indemnification.**

24 A Registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the
25 County, its commissioners, officials, employees and agents, against any and all claims, suits,
26 causes of action, proceedings, judgments for damages or equitable relief, and costs and
27 expenses incurred by the County arising during or as a result of performance under the
28 Ordinance, or arising out of the placement or maintenance of the Registrant's Communications
29 Facilities in the Right-of-Way, regardless of whether the act or omission complained of is
30 authorized, allowed or prohibited by this Ordinance, provided, however, that a Registrant's
31 obligation hereunder shall not extend to any damages caused solely by the negligence, gross
32 negligence or wanton or willful acts of the County. This provision includes, but is not limited

1 to, the County's reasonable attorneys' fees incurred in defending against any such claim, suit
2 or proceedings. County agrees to notify the Registrant, in writing, within a reasonable time
3 of County receiving notice, of any issue it determines may require indemnification. Nothing
4 in this section shall prohibit the County from participating in the defense of any litigation by
5 its own counsel and at its own cost if in the County's reasonable belief there exists or may
6 exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section
7 shall be construed or interpreted:

- 8 1. As denying to either party any remedy or defense available to such party under
9 the laws of the state of Florida;
- 10 2. As consent by the County to be sued; or
- 11 3. As a waiver of sovereign immunity beyond the waiver provided in F.S. §
12 768.28, as it may be amended.

13 The indemnification requirements shall survive and be in effect after the suspension,
14 revocation, termination or expiration of a Registration.

15

16 **Section 9. Section 23-159 – Insurance.**

17 A Registrant, including Pass-through Providers, that places or maintains Communications
18 Facilities in the public rights-of-way shall be required to maintain, at its own expense,
19 commercial general liability insurance in the amount of \$1,000,000 per occurrence, or in such
20 other amount specified by the County's risk management division, for bodily injury and
21 property damage. The County must be named as an additional insured on this policy, and a
22 certificate of insurance containing such endorsement must be issued as part of the policy. The
23 Registrant must provide, and have approved by the County, an original certificate of insurance
24 as evidence that this requirement has been met prior to commencing operation.

25

26 **Section 10. Section 23-160 –Abandonment.**

27 Abandonment of Communications Facility in Right-of-Way. Upon a Registrant's
28 Abandonment of a Communications Facility in the County public rights-of-way, the
29 Registrant shall notify the County of such Abandonment within ninety (90) calendar days.
30 The County Engineer shall direct the Registrant to remove all Abandoned Facilities within a
31 reasonable time. If the Registrant fails to remove all or any portion of an Abandoned
32 Communications Facility as directed by the County within a reasonable time period as may

1 be required by the County under the circumstances, the County may perform such removal
2 and charge the cost of the removal against the Registrant.

3

4 **Section 11. Section 23-161 – Severability.**

5 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason
6 held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such
7 holding shall not affect the remainder of this Ordinance.

8

9 **Section 12. Section 23-162 – Inclusion in the Code of Laws and Ordinances.**

10 The provisions of this Ordinance shall become and be made a part of the Palm Beach County
11 Code. The sections of this Ordinance may be renumbered or re-lettered to accomplish such,
12 and the word Ordinance may be changed to Section, Ordinance, or another appropriate word.

13

14 **Section 13. Section 23-163 – Enforcement.**

15 This Ordinance is enforceable by all means provided by law. Additionally, the County may
16 choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm
17 Beach County.

18

19 **Section 14. Section 23-164 – Savings Clause.**

20 All Registrations issued pursuant to the Palm Beach County Telecommunications Right-of –
21 Way Ordinance, sections 23-151 through 23-164, along with all conditions, enforcement
22 orders all pending enforcement, and other regulatory action relating to such Registration shall
23 continue in full force and effect and without interruption.

24

25 **Section 15. Section 23-165 – Captions.**

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

29

30 **Section 16. Section 23-166 – Effective Date.**

31 The provisions of this Ordinance shall become effective upon filing with the Department of
32 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.**