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ORDINANCE NO. 2020-02

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AN ORDINANCE OF THE VILLAGE OF WELLINGTON AMENDING CHAPTER 23 OF THE CODE OF ORDINANCES ENTITLED “COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY” TO MODIFY CERTAIN STANDARDS AND REGULATIONS RELATING TO COMMUNICATIONS FACILITIES AND OTHER STRUCTURES WITHIN THE VILLAGE’S PUBLIC RIGHTS-OF-WAY CONSISTENT WITH FEDERAL AND STATE LAW; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, Section 337.401 of the Florida Statutes allows the Village to adopt by ordinance objective design standards and other requirements applicable to the deployment of both wireline and wireless communications infrastructure; and

WHEREAS, on April 23, 2019, pursuant to Chapter 166 and Section 337.401 of the Florida Statutes, the Village adopted Ordinance 2018-10, repealing Chapter 23 of the Code of Ordinances in its entirety and replacing it with a new Chapter 23, entitled “Communications Facilities in the Public Rights-of-Way”; and

WHEREAS, the Florida Legislature amended section 337.401 of the Florida Statutes, effective July 1, 2019; and

WHEREAS, the Village deems it necessary and appropriate to amend Chapter 23 of the Code of Ordinances to comport with the changes to Section 337.401 and with federal law.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF WELLINGTON, FLORIDA that:

SECTION 1: Chapter 23 entitled “Communications Facilities in the Public Rights-of-Way”, of the Code of Ordinances is hereby amended to read as follows:

~~Section 1-~~ **Sec. 23-1 - Title; authority.**

This Chapter shall be known and may be cited as the Village of Wellington Communications Facilities in the Public Rights-of-Way Ordinance. The Village derives the authority for this Chapter from Chapter 166 and Section 337.401 of the Florida Statutes. This Chapter, and any rules, regulations, specifications and agreements adopted pursuant to this Chapter, comply with all applicable federal and state laws.

~~Section 2-~~ **Sec. 23-1 - Purpose.**

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1 (a) The purpose of this Chapter, consistent with the Village’s obligation to promote the
2 public health, safety, and welfare, to manage the public rights-of-way, and to
3 ensure that the public is not inconvenienced by the use of the rights-of-way for the
4 placement of wireline and wireless communications facilities, is to establish a
5 process for managing, and enforcing uniform standards for acting upon requests
6 for the placement of wireline and wireless communications facilities within the
7 rights-of-way of the Village. The Village recognizes the importance of wireline and
8 wireless communications facilities to provide high-quality communications service
9 to the residents and businesses within the Village, and the Village also recognizes
10 its obligation to comply with applicable federal and state law regarding the
11 placement of wireline and wireless communications facilities in its rights-of-way.
12 This Ordinance shall be interpreted at all times to be consistent with those Federal
13 and Florida provisions.

- 14
15 (b) This Chapter is not intended to and shall not be interpreted or applied to:
- 16 (1) Prohibit or effectively prohibit the provision of communications services;
 - 17 (2) Unreasonably discriminate among providers of functionally equivalent
18 communications services;
 - 19 (3) Regulate the installation, operation, collocation, modification or removal of
20 communications facilities on the basis of the environmental effects of RF
21 emissions to the extent that such emissions comply with all applicable FCC
22 regulations;
 - 23 (4) Prohibit or effectively prohibit any collocation or modification that the Village
24 may not deny under state or federal law; or
 - 25 (5) Preempt any applicable state or federal law.

26
27 **Section 3. Sec. 23-3 - Definitions.**

28
29 **Antenna:** Any apparatus designed for the transmitting and/or receiving of
30 electromagnetic waves, including but not limited to telephonic, radio or television
31 communications. Types of elements include, but are not limited to omni-directional
32 (whip) antennas, sectionalized (panel) antennas, multi or single bay (FM and TV),
33 yagi, or parabolic (dish) antennas.

34
35 **Applicable Codes:** Uniform building, fire, electrical, plumbing, or mechanical
36 codes adopted by a recognized national code organization or local amendments to
37 those codes enacted solely to address threats of destruction of property or injury to
38 persons, or local codes or ordinances adopted to implement Section 337.401(7),
39 Florida Statutes, the “Advanced Wireless Infrastructure Deployment Act,” as
40 amended. The term includes objective design standards, including those related to
41 historical and environmental protection standards, adopted by ordinance that may
42 require a new utility pole that replaces an existing utility pole to be of substantially
43 similar design, material, and color or that may require reasonable spacing
44 requirements concerning the location of ground-mounted equipment.
45

1 **Application:** A formal request, including all required and requested
2 documentation and information submitted by an applicant to the Village, for a
3 communications facility permit.
4

5 **Applicant:** A person filing an application for placement or modification of a
6 communications facility in the rights-of-way.
7

8 **Base Station:** The electronic equipment utilized by the wireless communication
9 provider(s) for the transmission and reception of radio signals.
10

11 **Collocation:** To install, mount, maintain, modify, operate, or replace one (1) or
12 more wireless facilities on, under, within, or adjacent to a wireless support structure or
13 utility pole within a public right-of-way subject to Section 337.401, Florida Statutes, as
14 amended from time to time. The term does not include the installation of a new utility
15 pole or wireless support structure in the public rights-of-way. Collocation outside of a
16 public right-of-way means the mounting or installation of transmission equipment on
17 an eligible support structure for the purpose of transmitting and/or receiving radio
18 frequency signals for communications purposes, where an eligible support structure
19 is a tower or other structure that already has wireless communication equipment
20 located thereon.
21

22 **Communications Facility:** A wireless communications facility or wireline
23 communications facility.
24

25 **Communications Service Provider.** A provider engaged in the transmission,
26 conveyance, or routing of voice, data, audio, video, or any other information or signals,
27 including video services, to a point, or between or among points, by or through any
28 electronic, radio, satellite, cable, optical, microwave, or other medium or method now
29 in existence or hereafter devised, regardless of the protocol used for such
30 transmission or conveyance. The term includes providers of such transmission,
31 conveyance, or routing in which computer processing applications are used to act on
32 the form, code, or protocol of the content for purposes of transmission, conveyance,
33 or routing without regard to whether such service is referred to as voice-over-Internet-
34 protocol services or is classified by the Federal Communications Commission as
35 enhanced or value-added.
36

37 **Concealed:** A tower, wireless support structure, or equipment cabinet that is not
38 readily identifiable as such, and is designed to be aesthetically compatible with
39 existing and proposed structure(s) and uses on a site. There are three (3) types of
40 concealed facilities: 1) antenna attachments; examples of antenna attachments
41 include, but are not limited to the following: painted antenna and feed lines to match
42 the color of an existing structure, or other architectural features that blend with an
43 existing structure: 2) freestanding; freestanding concealed towers or wireless support
44 structures usually have a secondary, obvious function which may be, but is not limited
45 to the following: banner pole, streetlight, traffic signal light or light standard, and 3)
46 equipment cabinets painted or vinyl "wrapped" to blend with surroundings or to project

1 ~~public art consistent with Village regulations regarding same~~consistent with the
2 requirements of this Chapter.
3

4 **Eligible Facilities Request:** shall have the meaning as set forth in 47 C.F.R.
5 Section 1.60001(b)(3).
6

7 **Equipment Cabinet:** Any structure including cabinets, shelters, pedestals, and
8 other similar structures that are used exclusively to contain radio or other equipment
9 necessary for the transmission or reception of wireless communication signals
10

11 **Facility:** Facilities, equipment and installations of any kind, including but not limited
12 to any lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles,
13 towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters,
14 appurtenances, or other equipment. A reference to a facility refers both to the facility
15 considered as a whole and the individual elements of the facility.
16

17 **FCC:** The Federal Communications Commission or its lawful successor.
18

19 **Install:** The placing of a facility in the right-of-way, whether initially or as part of the
20 repair, modification, replacement, removal or expansion of an existing facility, and
21 including any process by which a facility is placed within a right-of-way, including but
22 not limited to attachment, construction, digging, excavation, placement, and pulling.
23

24 **Micro Wireless Facility:** A small wireless facility having dimensions no larger
25 than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12)
26 inches in height and an exterior antenna, if any, no longer than eleven (11) inches.
27

28 **Neutral Host Antenna:** An antenna or an antenna array designed and utilized to
29 provide services for more than one (1) wireless provider, or a single wireless provider
30 utilizing more than one (1) frequency band or spectrum, for the same or similar type
31 of services.
32

33 **Pass-Through Provider:** Any person who places or maintains a
34 communications facility in the roads or rights-of-way of a municipality or county that
35 levies a tax pursuant to Florida Statutes Chapter 202 and who does not remit taxes
36 imposed by the Village pursuant to Chapter 202.
37

38 **Permit:** A permit issued pursuant to this Chapter authorizing the placement or
39 modification of a communications facility of a design specified in the permit at a
40 particular location within the rights-of-way; and the modification of any existing support
41 structure to which the communications facility is proposed to be attached.
42

43 **Permittee:** any person or entity granted a permit pursuant to this Chapter.
44

45 **Personal Wireless Services:** shall have the meaning as set forth in 47 U.S.C.
46 Section 332(c)(7)(C)(i).

1
2 **Pole:** Any street, utility, traffic signal, streetlight, banner or any other pole in the
3 ROW designed to support facilities in addition to wireless facilities.
4

5 **Right(s)-of-Way, or ROW:** The term right(s)-of-way or ROW means the surface,
6 the airspace above the surface and the area below the surface of any public street,
7 alley, viaduct, elevated roadway, bridge, public easement, or any other public way for
8 which the Village is the authority that has jurisdiction and control and may lawfully
9 grant access to such property pursuant to applicable law, including rights of way
10 owned or dedicated to the Acme Improvement District, a dependent special district of
11 the Village (collectively with Wellington, the "Village"). "Public rights-of-way" shall not
12 include any real or personal Village property except as described above and shall not
13 include Village buildings, fixtures, or other structures or improvements, regardless of
14 whether they are situated in the public rights-of-way.
15

16 **Small Wireless Facility:** A wireless communications facility that meets the
17 following conditions:

18 (1) Each antenna associated with the facility is located inside an enclosure of no
19 more than six cubic feet in volume, or in the case of antennas that have exposed
20 elements, each antenna and all of its exposed elements would fit within an enclosure
21 of no more than six cubic feet in volume; and

22 (2) All other wireless equipment associated with the facility is cumulatively no more
23 than 28 cubic feet in volume. The following types of associated ancillary equipment
24 are not included in the calculation of equipment volume: electric meters, concealment
25 elements, telecommunications demarcation boxes, ground-based enclosures,
26 grounding equipment, power transfer switches, cutoff switches, vertical cable runs for
27 the connection of power and other services, and utility poles or other support
28 structures.
29

30 **Underground areas:** Those areas where there are no electrical facilities or
31 facilities of the incumbent local exchange carrier in the right-of-way; or where the wires
32 associated with the same are or are required to be located underground; or where the
33 same are scheduled to be converted from overhead to underground. Electrical
34 facilities are distribution facilities owned by an electric utility and do not include
35 transmission facilities used or intended to be used to transmit electricity at nominal
36 voltages in excess of 35,000 volts.
37

38 **Utility Pole:** A pole or similar structure that is used in whole or in part to provide
39 communications services or for electric distribution, lighting, traffic control, signage, or
40 a similar function. The term includes the vertical support structure for traffic lights but
41 does not include a horizontal structure to which signal lights or other traffic control
42 devices are attached and does not include a pole or similar structure 15 feet in height
43 or less unless the Village grants a waiver for such pole.
44

1 **Village Pole:** A Village-owned or controlled structure, Utility Pole, object, or
2 equipment in the right-of-way, including, but not limited to, street lights, traffic control
3 structures, banner poles, bus shelters, or other poles, lighting fixtures, or electroliers.
4

5 **Wireless Communications Facility:** Equipment at a fixed location which enables
6 wireless communications between user equipment and a communications network,
7 including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other
8 cables, regular and backup power supplies, and comparable equipment, regardless
9 of technological configuration, and equipment associated with wireless
10 communications. The term includes small wireless facilities. . The term does not
11 include: (a) The structure or improvements on, under, within, or adjacent to the
12 structure on which the equipment is collocated; (b) Wireline backhaul facilities; or (c)
13 Coaxial or fiber-optic cable that is between wireless structures or utility poles or that
14 is otherwise not immediately adjacent to or directly associated with a particular
15 antenna.
16

17 **Wireless Provider:** A wireless infrastructure provider or a wireless services
18 provider.
19

20 **Wireless Infrastructure Provider:** A person who (a) has ~~been~~ received a
21 certificate under Chapter 364 from the Florida Public Service Commission to provide
22 telecommunications service in Florida or a certificate under Chapter 610 from the
23 Florida Public Service Commission to provide cable or video services and (b) ~~who~~
24 builds or installs wireless communication transmission equipment, wireless
25 communication facilities, or wireless support structures but is not a wireless services
26 provider.
27

28 **Wireless Services Provider:** A person or entity that provides wireless services
29 as defined by the Federal Communications Commission.
30

31 **Wireless Support Structure:** A freestanding structure, such as a monopole, a
32 guyed or self-supporting tower, or another existing or proposed structure designed to
33 support or capable of supporting wireless facilities. The term does not include a utility
34 pole, pedestal, or other support structure for ground-based equipment not mounted
35 on a utility pole and less than 5 feet in height.
36

37 **Wireline Communications Facility:** Equipment at a fixed location which enables
38 wireline communications services between user equipment and a communications
39 network, including wires, coaxial or fiber-optic cable or other cables, regular and
40 backup power supplies, and comparable equipment, regardless of technological
41 configuration, and equipment associated with wireline communications.
42

43 **Section 4. — Sec. 23-4 - Scope.**
44

45 (a) **In general.** Unless exempted, every person who desires to place a
46 communications facility in the rights-of-way or modify an existing communications

1 facility in the rights-of-way must obtain a permit authorizing the placement or
2 modification in accordance with this Chapter. Except for small wireless facilities,
3 facilities qualifying as Eligible Facilities Requests, or any other type of facility expressly
4 allowed in the right-of-way by state or federal law, no other communications facilities
5 shall be permitted pursuant to this Chapter.
6

7 (b) **Exemptions.** This Chapter does not apply to:

- 8 (1) The placement or modification of communications facilities by the Village or
9 by any other agency of the state solely for public safety purposes.
- 10
- 11 (2) Routine maintenance of a wireless or wireline communications facility;
- 12 (3) Replacement of an existing wireless or wireline facilities with wireless or
13 wireline facilities that are substantially similar or of the same or smaller size.
- 14 (4) Installation, placement, maintenance or replacement of micro wireless
15 facilities that are suspended on cables strung between existing utility poles in
16 compliance with applicable codes by or for a wireless services provider
17 authorized to occupy the rights-of-way and who is remitting taxes under
18 Florida Statutes Chapter 202;
- 19 (5) Any facilities located on public or private property outside the rights-of-way
20 managed by the Village.
21

22 (c) **Other applicable requirements.** In addition to the permit required herein, the
23 placement of a communications facility in the rights-of-way requires the persons who
24 will own or control those facilities to obtain all permits required by applicable law, and
25 to comply with applicable law, including, but not limited to, applicable Federal law
26 governing radio frequency (RF) emissions, and the Village Engineering Standards
27 Manual or its successor, as may be amended from time to time.
28

29 (d) **Public use.** Except as otherwise provided by state law, any use of the right-of-way
30 authorized pursuant to this Chapter will be subordinate to the Village's use and use
31 by the public.
32

33 **Section 5. — Sec. 23-5 - Administration.**
34

35 (a) **Review by Village Engineer.** The Village Engineer or his designee shall be
36 responsible for administering this Chapter. As part of the administration of this
37 Chapter, the Village Engineer may:

- 38
- 39 (1) Adopt regulations governing the placement and modification of
40 communications facilities consistent with the requirements of this Chapter
41 and applicable state and federal law, including regulations governing
42 collocation and resolution of conflicting applications for placement of both
43 wireline and wireless communications facilities;
- 44 (2) Interpret the provisions of this Chapter;
- 45 (3) Develop acceptable engineering standards for wireline and wireless
46 communications facilities in particular corridors;

- 1 (4) Issue any notices of incompleteness, requests for information, or conduct or
2 commission such studies as may be required to determine whether a permit
3 should be issued.
- 4 (5) Develop forms and procedures for submission of applications for placement
5 or modification of wireline and wireless communications facilities, and
6 proposed changes to any wireless support structure consistent with this
7 Chapter;
- 8 ~~(6)~~ Determine the amount of and collect, as a condition of the completeness of
9 any application, any fee established by this Chapter that is allowed by state
10 law;
- 11 ~~(7)~~ ~~(6) Require, as part of, and as a condition of completeness of any application,~~
12 ~~notice to members of the public who may be affected by the placement or~~
13 ~~modification of any above-ground wireline or wireless communications facility~~
14 ~~visible to the public and proposed changes to any above-ground wireline or~~
15 ~~wireless support structure. Notice of the proposed work shall be in writing~~
16 ~~(e.g. doorhanger, letter) to property owners within 250 feet of the proposed~~
17 ~~location within such rights-of-way, as well as provide notification to any~~
18 ~~affected homeowners' association or neighborhood association in writing by~~
19 ~~letter, each concurrent with the application submittal;~~
- 20 ~~(8)~~ (7) Establish deadlines for submission of information related to an application,
21 and extend or shorten deadlines where appropriate and consistent with
22 federal and state laws and regulations;
- 23 ~~(9)~~ (8) Subject to appeal as provided herein, determine whether to approve,
24 approve subject to conditions, or deny an application; and
- 25 ~~(10)~~ (9) Take such other steps as may be required to timely act upon
26 applications for placement of personal wireless services facilities, including
27 issuing written decisions and entering into agreements to mutually extend the
28 time for action on an application.

29
30 (b) **Appeal.**

- 31 (1) Any person adversely affected by the decision of the Village Engineer
32 pursuant to this Chapter may appeal the Village Engineer's decision to the
33 Village Manager, who may decide the issues *de novo*, and whose written
34 decision will be the final decision of the Village. An appeal by a wireless
35 infrastructure provider which already has identified in its application a wireless
36 service provider for such wireless communications facility must be taken
37 jointly with such wireless service provider. All appeals must be filed within
38 three (3) business days of issuance of the written decision of the Village
39 Engineer.
- 40 (2) Any appeal shall be conducted so that a timely written decision may be issued
41 in accordance with applicable law including but not limited to Florida Statutes
42 337.401.
- 43 (3) An appeal or the availability of an appeal does not bar review of an application
44 denial in a court of competent jurisdiction
45

1 **Section 6. ~~Sec. 23-6~~ - Registration.**

2
3 (a) A communications services provider, as defined by Florida law, who desires to
4 place or maintain a communications facility in public rights-of-way within the Village
5 shall first register with the Village in accordance with this Chapter. Subject to the
6 terms and conditions prescribed in this Chapter, a registrant may place or maintain a
7 communications facility in public rights-of-way.
8

9 (b) A registration shall not convey any title, equitable or legal, to the registrant in
10 the public rights-of-way. Registration under this Chapter governs only the placement
11 or maintenance of communications facilities in public rights-of-way. Other ordinances,
12 codes or regulations may apply to the placement or maintenance in the public rights-
13 of-way of facilities that are not communications facilities. Registration does not excuse
14 a communications services provider from obtaining appropriate access or pole
15 attachment agreements before locating its facilities on the Village or another person's
16 facilities. Registration does not excuse a communications services provider from
17 complying with Applicable Codes.
18

19 (c) Each communications services provider who desires to place or maintain a
20 communications facility in public rights-of-way in the Village shall file a single
21 registration with the Village, which shall include the following information:

- 22 (1) Name and federal employment identification number of the applicant
23 under which it will transact business in the Village and, if different, in
24 the State of Florida;
- 25 (2) Name, address, email address, and telephone number of the
26 applicant's primary contact person in connection with the
27 registration;
- 28 (3) The type of communications services that the applicant intends to
29 provide within the Village (if more than one, state all that apply), or,
30 if none, state that the applicant is a pass-through provider.
- 31 (4) A copy of the applicant's current certificate of authorization or license
32 or resale certificate to provide communications services issued by
33 the Florida Public Service Commission, the Florida Department of
34 Revenue, the Federal Communications Commission, or other federal
35 or state authority, if any;
- 36 (5) Evidence of the insurance coverage ~~and any bond~~ required under
37 this Chapter;
- 38 (6) If the registrant is a corporation or limited liability company, proof of
39 authority to do business in the State of Florida, which may be
40 satisfied by an electronic certificate of good standing from the Florida
41 Department of State or by other means; and
- 42 (7) Acknowledgment that the applicant has received and reviewed a
43 copy of this Chapter, which acknowledgment shall not be deemed an
44 agreement.
45

1 (d) The Village shall review the information submitted by the applicant. Such review
2 shall be conducted by the Village Manager or his designee. If the Village determines
3 that the applicant submitted information in accordance with subsection (c) of this
4 section, the registration shall be effective and the Village shall notify the applicant of
5 the effectiveness of registration in writing. If the Village determines that the
6 information has not been submitted in accordance with subsection (c) of this section,
7 the Village shall notify the applicant of the non-effectiveness of registration, and
8 reasons for the non-effectiveness, in writing. The Village shall so reply to an applicant
9 within 30 days after receipt of registration information from the applicant. Non-
10 effectiveness of registration shall not preclude an applicant from filing subsequent
11 applications for registration under the provisions of this section. An applicant has 30
12 days after receipt of a notice of non-effectiveness and denial of registration to appeal
13 the decision.

14
15 (e) *Cancellation of Registration.* A registrant may cancel a registration upon written
16 notice to the Village stating that it will no longer place or maintain any communications
17 facilities in public rights-of-way within the Village and will no longer need to obtain
18 permits to perform work in public rights-of-way. A registrant cannot cancel a
19 registration if the registrant continues to place or maintain any communications
20 facilities in public rights-of-way.

21
22 (f) *Limited Rights Conferred by Registration.* Registration does not, in and of itself,
23 establish a right to place or maintain or priority for the placement or maintenance of a
24 communications facility in public rights-of-way within the Village, but shall establish for
25 the registrant a right to apply for a permit from the Village. Registrations are expressly
26 subject to any future amendment to or replacement of this Chapter and further subject
27 to any additional Village ordinances, as well as any state or federal laws that may be
28 enacted.

29
30 (g) *Registration Renewal and Updates.* A registrant shall renew its registration with
31 the Village by October 1 of every ~~five~~^{two} (5~~2~~) years in accordance with the registration
32 requirements of subsection (c) of this section. Additionally, within ~~90~~³⁰ days of any
33 change in the information required to be submitted pursuant to subsection (c) of this
34 section, a registrant shall provide updated information to the Village. If no information
35 in the then-existing registration has changed, the renewal may state that no
36 information has changed. Failure to renew a registration may result in the Village
37 restricting the issuance of additional permits until the communications services
38 provider has complied with the registration requirements of this Chapter.

39
40 (h) *Permit Required.* In accordance with applicable Village ordinances, codes, or
41 regulations and except for the exemptions provided in this Chapter, a permit is
42 required for a communications services provider to place or maintain a
43 communications facility in the public rights-of-way. An effective registration shall be a
44 condition of obtaining such a permit. Notwithstanding an effective registration, all
45 permitting requirements shall apply. A permit may be obtained by or on behalf of a

1 registrant having an effective registration if all permitting requirements of the Village
2 and other provisions of this Chapter are met.

3
4 (i) *Insurance.* At all times during the use or occupancy of the public rights-of-way,
5 including any time during placement or maintenance of communications facilities, the
6 Permittee shall obtain, pay all premiums for, and maintain satisfactory to the Village,
7 insurance coverage insuring the Permittee and naming the Village, its officers, boards,
8 council, council members, agents and employees as additional insureds: workers'
9 compensation and employer liability insurance to meet all requirements of Florida law
10 and commercial general liability insurance with respect to the construction, operation
11 and maintenance of the communications facilities, and the conduct of registrant's
12 business in the Village, in the minimum amounts of:

- 13
- 14 (1) \$1,000,000.00 in any one accident for bodily injury, personal injury or
15 death, property damage;
- 16 (2) \$500,000.00 for personal injury to any one person;
- 17 (3) \$250,000.00 for property damage in any one accident;
- 18 (4) Business automobile liability insurance valid in the State of Florida which
19 policy limit shall be in an amount not less than \$1,000,000.00 combined
20 single limit, including bodily injury and property damage covering owned,
21 leased, hired and non-owner vehicles.
- 22 (5) Workers' Compensation valid in the State of Florida which policy limit
23 shall be in an amount not less than the statutory limit for Workers'
24 Compensation.
- 25 (6) Employer's liability insurance valid in the State of Florida which policy
26 limit shall be in an amount not less than \$1,000,000.00 each accident
27 for employer's liability.
- 28 (7) All insurance providers used shall be admitted and duly authorized to do
29 business in the State of Florida and shall have been assigned by A. M.
30 Best Company a minimum Financial Strength Rating of "A" and a
31 minimum Financial Size Category of "IX" (i.e., a size of \$250,000,000.00
32 to \$500,000,000.00 based on capital, surplus, and conditional reserve
33 funds). Insurance policies and certificates issued by non-admitted
34 insurance companies are not acceptable. All liability policies shall name
35 the Village, its council members, officers, boards, agents and employees
36 as additional insureds with respect to any covered liability arising out of
37 the placement or maintenance of communications facilities in the public
38 rights-of-way or other activities under this Chapter. Each
39 communications services provider shall furnish annually to the Village
40 certificates showing proof of all required insurance coverage. All liability
41 coverage must be in occurrence form and in accordance with the limits
42 specified. Claims made policies are not acceptable. No insurance policy

1 shall be canceled, nor shall the occurrence or aggregate limits set forth
2 herein be reduced, until the Village has received at least 30 days'
3 advance written notice by registered, certified or regular mail of any
4 cancellation, intent not to renew or reduction in policy coverage. Each
5 communications services provider shall be responsible for notifying the
6 Village of such cancellation, intent not to renew or reduction in coverage.
7 All certificate(s) of insurance, including all endorsements and riders,
8 evidencing insurance coverage shall be submitted to the Village within
9 30 days after the date of registration with the Village in order for a
10 communications services provider to obtain a permit required for
11 construction in the public rights-of-way. Each communications services
12 provider shall, in the event of any such notice described above, obtain,
13 pay all premiums for, and file with the Village, written evidence of the
14 issuance of replacement policies within 30 days following receipt by the
15 Village or the communications services provider of such notice.

- 16 (8) Nothing contained in this Chapter shall limit a communications service
17 provider's liability to the Village to the limits of insurance certified or
18 carried.

19
20 A communications services provider may satisfy the insurance requirements of this
21 Chapter by providing documentation of self-insurance that, in the sole discretion of the
22 Village Manager, demonstrates incontrovertibly the adequacy to defend and cover
23 claims of any nature that might arise from the placement and maintenance of facilities
24 in the public ROW. The communications services provider must be authorized as a
25 self-insurer by the Department of Insurance under the laws of the State of Florida.
26

27 **Section 7. — Sec. 23-7 - General Standards for Wireless Communications Facilities**
28 **in the Rights-of-Way.**

29
30 (a) **Generally.** Consistent with Section 337.401, Florida Statutes, as may be
31 amended, only small wireless facilities and micro wireless facilities may be considered
32 for placement within the Village's rights-of-way, and same shall be limited to the size
33 parameters listed therein and any other design specifications detailed in this
34 subdivision. Due to the unique nature of wireless signals and the specific equipment
35 needed for transmission and reception of wireless signals, placement of wireless
36 communications facilities in the public right-of-way shall comply with the following:

- 37 (1) Collocation or use of concealed facilities. A small or non-exempt micro
38 wireless facility and any antennas in the public right-of-way shall, to the extent
39 possible, be collocated on an existing power, light or other utility pole as illustrated
40 in the examples in subsection (e)(5)vi. below. When collocation of an antenna or
41 small wireless facility or non-exempt micro wireless facility is not possible, a
42 freestanding new concealed facility is preferred, as illustrated in the examples in
43 subsection (e)(5)vi. below. The applicant shall submit a permit application to the

1 Village Engineer for approval prior to any installation which shall be processed in
2 accordance with this Section and F.S. Section 337.401(7). The Village prefers that
3 small wireless facilities and non-exempt micro wireless facilities located in the
4 public right-of-way, whether collocated or freestanding, be technically capable of
5 servicing a minimum of four (4) wireless service providers with like technical
6 facilities through the use of neutral host antenna.

7
8 (2) When collocation occurs upon Village utility poles within the Village's rights-
9 of-way, in addition to the permit, the Village shall require the communications
10 service provider and/or owner, if different parties, to execute a lease agreement
11 and remit an annual rent of one hundred and fifty dollars (\$150) per Village utility
12 pole as provided for herein below.

13
14 (3) Height, setbacks and related location requirements.

15
16 i. The height limitation of a small wireless or non-exempt micro
17 wireless facility is ten (10) feet above the utility pole or structure upon
18 which the small wireless or non-exempt micro wireless facility is to be
19 collocated. Unless waived by the Village, the height for a new utility pole
20 is limited to the tallest existing utility pole as of July 1, 2017, located in
21 the same right-of-way, other than a utility pole for which a waiver has
22 previously been granted, measured from grade in place within five
23 hundred (500) feet of the proposed location of the small wireless facility.
24 If there is no utility pole within five hundred (500) feet, the Village shall
25 limit the height of the new utility pole to fifty (50) feet.

26
27 ii. Except as otherwise provided herein, small wireless or non-exempt
28 micro wireless facilities in the public rights-of-way shall conform to the
29 standards and requirements set forth in the State of Florida Department
30 of Transportation Manual of Uniform Minimum Standards for Design,
31 Construction and Maintenance for Streets and Highways.

32
33 iii. No antenna attached to a freestanding pole in the public rights-of-
34 way with a ground mounted equipment, other than as a collocation with
35 an existing power, light or other utility pole, or unless installed as a
36 concealed facility, shall be permitted within fifty (50) feet of any principal
37 residential structure.

38
39 iv. An external box or cabinet housing the equipment connected to an
40 antenna attached to a freestanding pole in the public rights-of-way shall
41 be ~~vaulted underground or, if located aboveground, vinyl~~ wrapped in
42 accordance with the design standards set forth in subsection (c)(5)iv.

~~below, with a design that screens it from view consistent with the requirements of this subdivision, or complies with the Village Public Art Program as set forth in Chapter 54.~~

v. When collocation is not available, the Village prefers the following locations for new small wireless facilities or non-exempt micro wireless facilities within a right of way: from most preferred to least preferred:

1. Within existing utility easements in the public right-of-way on the same side of the street as an existing pole line;
2. Within the public right-of-way behind sidewalks on the same side of the street as an existing pole line;
3. Within existing utility easements in the public right-of-way;
4. Behind sidewalks;
5. On the same side of the street as an existing pole line.

Applicants should avoid proposing new small wireless or non-exempt micro wireless facilities in the following locations: (1)

- ~~1. Within or adjacent to residential property where no pole line exists;~~
- (2)
- ~~2. In swale areas utilized for stormwater collection;~~ (3)
- ~~3. Closer to the travel way than permitted by Florida Department of Transportation minimum roadside offset standards.~~

vi. Small wireless or non-exempt micro wireless communications facilities shall be located in state or county arterial or collector rights-of-way, whenever possible. Placement of small wireless or non-exempt micro wireless facilities in a Village collector street, cul-de-sac, local street and marginal access street rights-of-way shall be discouraged unless the applicant cannot otherwise provide service to a particular customer or customers without doing so, and the ability to place facilities in such rights-of-way is necessary to accomplish requirements of nondiscriminatory treatment of the applicant in relation to the Village's treatment of other communications service providers. In such circumstances, the applicant shall include with its Village permit application, sufficient evidence consistent with industry standards, to justify such placement. Whenever small wireless facilities must be placed in a right-of-way with residential uses on one (1) or both sides, neither poles, equipment, antennas or other structures shall be placed directly in front of a residential structure. If a right-of-way has residential structures on only one (1) side, the small wireless facilities shall be located on the opposite side of the right-of-way whenever possible. All small wireless facilities shall be located in such a way that they do not unreasonably interfere with views from residential structures, such as placement that is at the farthest point from the principal structure within the property line.

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1
2 ~~(e)~~**(b) Concealment.** All new small wireless facilities within a public right-of-way shall
3 be constructed using concealment techniques, as further described in subsection ~~(e)~~**(c)**
4 below. In all residential and non-residential districts, the concealment technique to be
5 utilized shall be through the installation of either (i) a decorative banner pole capable
6 of concealing all equipment and related appurtenances within the pole structure or
7 located under the ground, or ~~design wrapped on the ground~~**an above ground**
8 **equipment cabinet** adjacent to the wireless facility support structure **and concealed by**
9 **a vinyl wrap consistent with the requirements set forth in subsection (c)(5)iv. below;** or
10 (ii) a concealed facility designed to replicate existing standard or decorative street
11 lights located in the applicable zoning district. In the Equestrian Overlay Zoning
12 District, the concealment technique to be utilized may be through the installation of a
13 decorative banner and/or pedestrian scale pole designed to be consistent with the
14 equestrian nature of the Equestrian Preservation Areas, and capable of concealing all
15 equipment and related appurtenances within the pole structure. The Village Engineer
16 shall determine the applicable concealment technique for each proposed facility
17 pursuant to the parameters described in subsection ~~(e)~~**(c)** below. In all instances,
18 exterior looping of excess cable length installed on any small wireless facility or non-
19 exempt micro wireless facility located in the public right-of-way is prohibited and all
20 cabling and interconnecting wires must be concealed.

21
22 **(d) Design Standards.** In addition to the concealment requirements set forth in
23 subsection ~~(e)~~**(b)** above, wireless communication facilities shall meet all applicable
24 design standards. Specifically:

25
26 (1) All underground portions of wireless communications facilities shall be
27 placed in conduit using material subject to review and approval by the Village
28 Engineer. The Village Engineer may permit the use of “trenchless technology” for
29 installation in lieu of traditional installation methods but in all instances the
30 underground portions of the wireless communications facility shall be contained
31 within conduit material following installation.

32
33 (2) The Village prefers that all underground facilities, poles, and all associated
34 equipment should be placed in Utility Easements, dedicated for such a purpose,
35 wherever Utility Easements exist, even if this means the underground facilities and
36 associated equipment will be placed outside of the road right-of-way, on private
37 property.

38
39 (3) All underground facilities must be buried at a minimum depth of 24-inches
40 below existing grade.

41
42 (4) Conflicts between small wireless facilities (poles, underground facilities, and
43 above ground equipment) and existing Village-owned utilities including but not
44 limited to potable water, sanitary sewer, stormwater drainage, and reclaimed water
45 must be avoided, wherever possible. When avoiding conflicts with Village-owned
46 utilities is not feasible, the following minimum separations apply:

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- 1. Horizontal separation: 10-ft preferred; 6-ft minimum
- i. Vertical separation: 2-ft minimum
- ii. Small wireless facility underground conduit must be placed below existing Village-owned utilities.
- iii.
- iv. The Village Engineer has the authority to allow lesser separations from Village owned utility infrastructure where deemed necessary.

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(5) The images below this section depict some examples of small wireless or non-exempt micro wireless facility pole types deemed acceptable by the Village of Wellington. These depictions are not meant to be inclusive. Other similar pole types may be deemed acceptable by the Village of Wellington Engineering Department, on a case by case basis, but must be presented to the Engineering Department for approval. The exact pole type proposed by an applicant will be chosen by the Village of Wellington Engineering Department and shall be based on the character of the surrounding neighborhood and harmony of the proposed pole type with the surrounding neighborhood. The following small wireless or non-exempt micro wireless facility pole criteria must be met in order to achieve permit approval:

- i. All equipment, meters, cables, or other attachments shall be either contained within the interior or concealed upon the exterior of the pole structure.
- ii. The antenna element located on the top of the pole shall be encased in a shroud or other concealment element. Although the Village recognizes that the antenna element may be larger in diameter than the pole itself, in no instance shall the antenna element have a diameter greater than two times that of the pole.
- iii. The pole must include a street light, pedestrian pathway light, or both, depending on the proposed location of the pole, together with design elements to permit affixation of a banner to the pole. If the pole is to be placed in close proximity to a vehicular travel way, a street light shall be included in the design of the pole. The street light shall be placed at a height similar to that of other street lights already existing along the roadway. The applicant shall be responsible for the cost of electricity for the light and the maintenance of same. If the pole is to be placed in close proximity to a

1 pedestrian pathway, a pedestrian pathway light shall be included in the
2 design of the pole. The pedestrian pathway light shall be placed at a height
3 similar to that of other pedestrian pathway lights already existing along the
4 pathway. If the proposed location of the pole is between a vehicular travel
5 way and a pedestrian pathway, where existing lighting exists along the
6 roadway and pedestrian pathway, then both a street light and a pedestrian
7 pathway light shall be included in the design of the pole. Where existing
8 lights exist, the type and character of the light, whether a street light,
9 pedestrian pathway light, or both, shall be similar to that of the existing
10 lights.

11
12 iv. The Village's preference is for the equipment cabinet, meter, and any
13 other required non-antenna equipment be built into the base of the
14 pole. The Village recognizes that this may not always be possible due to
15 utility company requirements or space limitations such as, but not limited to,
16 minimum sidewalk width or minimum roadside offsets. When these utility
17 company requirements or space limitations exist, the Village shall permit a
18 separate cabinet to be installed adjacent to the proposed pole. A single
19 cabinet including all necessary equipment is preferred and multiple cabinets
20 or boxes shall not be permitted when a single cabinet can be utilized. When
21 a separate cabinet is necessary, the proposed cabinet shall be covered on
22 all exposed sides by a ~~polymer~~-vinyl wrap. Vinyl wrapped cabinet material
23 must meet the following material specifications or approved equal, as
24 determined by the Village of Wellington Engineering Department:

- 25 1. Multi-layered film (wrap) specifically designed for traffic cabinets;
- 26 2. Certified High definition/high quality graphic base material;
- 27 3. Certified TW360hd DePont Tedlar protective finish with Anti-graffiti,
28 graffiti proof, and chemical resistant film;
- 29 4. UV Protected and fade resistant with a minimum 5-year rated
30 protective coating;
- 31 5. Acid rain and environmental toxin resistant;
- 32 6. Anti-graffiti rated protection, which allows non-toxic removal of
33 graffiti;
- 34 7. Scratch resistant; and
- 35 8. 1-year warranty on workmanship, 5-year warranty on fading of
36 graphic.

37
38
39 The color and aesthetic design of the vinyl wrap shall be selected by the
40 Village of Wellington Engineering Department based on the subject
41 location. The wrap design type shall be provided to the permittee prior to
42 permit closeout.

43 ~~iv. The color and aesthetic design of the polymer wrap shall be selected by the~~
44 ~~Village of Wellington Engineering Department based on the subject location. The~~
45 ~~wrap design type shall be provided to the permittee in the permit approval package.~~

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v. In each approved application for a new wireless communications facility in a right-of-way, the Village shall be given the right by the permittee to attach and maintain a banner to the pole. The type of banner, wording, colors, and pictorial elements of the banner shall be chosen at the sole discretion of the Village.

vi. All new proposed poles shall be painted either gray or green at the sole discretion of the Village of Wellington. The exact paint color of the proposed pole shall be selected by the Village of Wellington Engineering Department. The exact paint color shall be provided to the permittee in the permit approval package. The Village of Wellington reserves the right to change the preferred color(s) of any and all proposed poles, prior to permit approval, at its sole discretion.



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All collocations on existing utility poles shall utilize shrouds or canisters to conceal the antenna mounted on the top of the utility poles, such as the examples below, and shall either route transmission lines and cables through the interior of the poles when possible or use color matched conduit to conceal lines and cables on the exterior of the existing poles:



9
10

1 (6) The use of landscaping around any pole or external equipment, cabinet,
2 box or vault may be required as a buffer to further achieve concealment. Such
3 landscaping shall be consistent with the landscaping otherwise located in the
4 public rights-of-way. Additional landscaping may be required if deemed necessary
5 to buffer adjacent properties. In addition, for concealment purposes, all wireless
6 communications facilities and accompanying equipment must blend into the
7 surrounding environment by utilizing appropriate design wraps and/or colors as
8 described above. As a condition of approval, the Village Engineer, or his/her
9 designee, may require all buffering required in connection with the use of wireless
10 communications facilities in the public rights-of-way shall be maintained by the
11 owner of such facilities at its own cost.
12

13 (7) All above ground installations associated with a wireless communications
14 facility within the Village right-of-way are subject to minimum roadside offset and
15 clear zone requirements as specified in the latest edition of the Florida Department
16 of Transportation standards manuals.
17

18 **Section 8. — Sec. 23-8 - General Standards for Wireline Communications Facilities**
19 **in the Rights-of-Way.**
20

- 21 (a) Generally. The purpose of this section is to protect and limit deterioration and
22 obstruction of the Village rights-of-way resulting from the installation of utility poles
23 within the Village rights-of-way by communications service providers. The Village
24 herein adopts uniform regulations for the construction, placement, and
25 maintenance of equipment and wireline communications facilities in the rights-of-
26 way. Such rights-of-way within the Village are a unique and physically limited
27 resource that are critical to the travel and transport of persons and property and
28 must be managed and controlled in the best interest of the citizens of the Village
29 of Wellington, consistent with applicable federal and state law. When applicable,
30 all wireline communications facilities proposed to be installed in the Village's
31 rights-of-way must comply with the undergrounding regulations contained in this
32 Section.
- 33 (b) This section does not authorize an applicant to place wireline communications
34 facilities, including cables or wires, nor construct or install wireline facilities on a
35 privately owned utility pole, a utility pole owned by an electric cooperative or a
36 municipal electric utility, a privately owned communications facility support
37 structure, or other private property without first obtaining the consent of the
38 property owner.
- 39 (c) As part of a building, electrical, and/or an engineering permit application for a new
40 utility pole to support a wireline communications facility, a site development plan
41 shall be presented for approval to the Village Engineer. Each application for a
42 proposed new utility pole to support a wireline communications facility shall
43 include all requirements for site development plan approval as required by Article
44 7 of the Village Unified Land Development Code. The Village Engineer or his/her
45 designee may waive all or some of these provisions for underground wireline

1 facilities that comply with subsection (g) below in order to achieve the objectives
2 of that subsection. Each application shall contain a rendering or photograph of the
3 wireline communications facility including, but not limited to, colors and screening
4 devices.

5 (d) As part of a building, electrical, and/or an engineering permit application for a new
6 utility pole to support a wireline communications facility, a statement shall be
7 submitted, including technical data demonstrating that all existing utility poles
8 (including all potentially useable HVET poles) within the proposed service area
9 have been examined, and found unacceptable for attachment of new wireline
10 facility. The report shall include reasons why existing utility poles are not
11 acceptable alternatives to a new freestanding wireline utility pole. The report
12 regarding the adequacy of alternative existing facilities or the replacement or
13 mitigation of existing facilities to meet the applicant's need or the needs of service
14 providers indicating that no existing utility poles could accommodate the
15 applicant's proposed facility shall consist of any of the following:

16 ~~a.~~ (1) No existing poles located within the geographic area meet the
17 applicant's engineering requirements to attach wireline facilities to, and why.

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18 ~~b.~~ (2) Existing poles are not of sufficient height to meet the applicant's
19 engineering requirements, and cannot be increased in height.

20 ~~c.~~ (3) Existing poles do not have sufficient structural integrity to support
21 the applicant's proposed wireline communications facilities and related
22 equipment, and the existing facility cannot be sufficiently improved or
23 replaced.

24 ~~d.~~ (4) Other limiting factors that render existing poles unsuitable.

25 (e) Wireline communications facilities; inside the Village's rights-of-way. Because of
26 the unique nature of communications services transmitted via wires, cables, fiber
27 optic, or other hardline transmission equipment and the specific structures needed
28 for construction and/or assembly of same, placement of wireline communications
29 facilities in the public right-of-way shall comply with the following:

30 (1) All newly proposed wireline and/or pole fixtures for wireline communications
31 facilities, whether above or below ground, must not unreasonably interfere
32 with the presently existing infrastructure systems and other operations
33 within the Village's rights-of-way. Before consideration of constructing new
34 infrastructure for hardline or wireline communications services, the
35 communication services provider must show that other existing conduits or
36 poles cannot be used.

1 (2) Any wireline communications system located within the Village's rights-of-
2 way shall meet or exceed the technical standards set forth in 47 C.F.R. §
3 76.601, as applicable, and any other applicable technical standards.

4 (3) Any wireline communications system shall perform all tests necessary to
5 demonstrate compliance with the technical and performance standards
6 established by applicable law. Unless an applicable law provides otherwise,
7 all tests shall be conducted in accordance with federal rules and in
8 accordance with the most recent edition of National Cable Television
9 Association's "Recommended Practices for Measurements on Cable
10 Television Systems," or such other manual as may be directed under FCC
11 regulations. A written report of compliant test results shall be filed with the
12 Village within seven (7) days of a request by the Village. If a location fails to
13 meet technical or performance specifications, the owner of the wireline
14 communications facility, without requirement of additional notice or request
15 from the Village, shall promptly notify the Village of such noncompliance,
16 take corrective action, and retest the locations.

17
18 (4) Wireline communications facilities shall have the same distance separation
19 requirements from any principal residential structure as wireless
20 communications service facilities.

21
22 (5) The use of landscaping around any pole or external equipment, cabinet,
23 box or vault associated with a wireline communications facility may be
24 required as a buffer. Such landscaping shall be consistent with the
25 landscaping otherwise located in the public rights-of-way. Additional
26 landscaping may be required if deemed necessary to buffer adjacent
27 properties. In addition, for concealment purposes, all wireline
28 communications facilities and accompanying equipment must blend into the
29 surrounding environment by utilizing appropriate design wraps and colors.
30 As a condition of approval, the Village Engineer, or his/her designee, may
31 require: all buffering required in connection with the use of wireline
32 communications facilities in the public rights-of-way shall be maintained by
33 the owner of such facilities at its own cost.

34
35 (~~6~~) Minimum separation from Village-owned equipment.

36 a. i. Utility poles for wireline communications facilities including
37 appurtenances shall have a minimum horizontal separation of ten (10)
38 feet from any Village-owned utility pole and Village-owned underground
39 facility. Ten (10) feet shall be measured from closest outer diameter
40 (OD) or outer edge (OE) to OD or OE.

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2 (78) High voltage and "no trespassing" and other warning signs.
3

4 a.i. If high voltage is necessary for the operation of the wireline
5 communications facility or any accessory structures, "HIGH VOLTAGE
6 - DANGER" warning signs shall be permanently attached to the fence
7 or wall and shall be spaced no more than forty (40) feet apart.

8 b.ii. "NO TRESPASSING" warning signs shall be permanently attached to
9 the fence or wall and shall be spaced no more than forty (40) feet apart.

10 e.iii. The letters for the "HIGH VOLTAGE - DANGER" and "NO
11 TRESPASSING" warning signs shall be at least six (6) inches in
12 height. The two (2) warning signs may be combined into one (1) sign.
13 The warning signs shall be installed at least five (5) feet above the
14 finished grade of the fence.

15 e.iv. The warning signs may be attached to freestanding poles if the
16 content of the signs may be obstructed by landscaping.

17 v.e. Signs noting federal registration (if required) shall be attached to the
18 wireline communications facility in compliance with federal regulation.
19

20 (89) Equipment storage. Mobile or immobile equipment not used in direct support
21 of a wireline communications facility shall not be stored or parked on the site of the
22 wireline communications facility, except when in use for ongoing work, and when
23 repairs to same are being made.
24

25 (949) Signs and advertising. The use of any portion of a pole for signs or
26 advertising purposes including company name, banners, streamers, etc., shall be
27 strictly prohibited.
28

29 (104) Accessory buildings or structures. All accessory buildings or structures shall
30 meet all building design standards as listed in this Code, and in accordance with
31 the provisions of the Florida Building Code and shall be painted or constructed
32 using neutral colors. All accessory buildings or structures shall require a building
33 permit issued by the Planning, Zoning and Building Department.
34

35 (112) Colors. Except where superseded by the requirements of other county, state,
36 or federal regulatory agencies possessing jurisdiction over poles, poles shall be
37 painted or constructed in neutral colors, designed to blend into the surrounding
38 environment.
39

40 (123) Inspection report.

41 a. i. Owners of utility poles used to support wireline
42 communications facility owners shall submit a report to the Village Engineer
43 certifying structural and electrical integrity every two (2) years.

44 b. ii. Inspections shall be conducted by an engineer licensed to
45 practice in the State of Florida. The results of such inspections shall be
46 provided to the Planning, Zoning and Building Department. Based upon the

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1 results of an inspection, the building official may require repair or removal
2 of a wireline communications facility.

3 ~~e.~~ iii. Following the completion of construction of a wireline
4 communications facility in the Village, the owner shall submit a report to the
5 Village Engineer certifying "as-built" compliance with the permitted
6 structural and electrical parameters. The Village shall conduct a post-
7 construction inspection to verify the submitted report and confirm the
8 constructed facility does not present a public safety hazard.
9

10 (134) Existing wireline infrastructure.

11 ~~a.~~ i. Notwithstanding the above provisions of this section, wireline
12 communications facilities in existence as of ~~_____~~ April 23, 2019,
13 may be replaced with equal or less visually impacting facilities after approval
14 by the Village Engineer or his/her designee, and same are processed
15 through the permitting process outlined herein.
16

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17 (14) System maintenance. Scheduled maintenance shall be performed so as to
18 ensure the integrity of the structures and adjoining wirelines and to minimize
19 potentially hazardous conditions, and to minimize the existence and effect of any
20 downed lines in the Village's rights-of-way.
21

22 (15) Modifications or replacements. Modification or replacement of any utility pole
23 supporting wireline communications facilities in the Village shall be subject to
24 permit approval of the Village Engineer consistent with the requirements of this
25 section. Any removal or replacement of communications facilities that
26 substantially changes the physical dimensions of a wireline system shall be
27 subject to permit approval.
28

29 (f) Cooperative determination. In the event an applicant demonstrates, in writing, to the
30 satisfaction of the Village Engineer, or designee, that the operation of this section
31 produces a result which is either: (i) overly burdensome and a hardship on the
32 applicant, and is inconsistent with the general public welfare; or (ii) inconsistent with
33 the intent of the particular provisions of this section, and inconsistent with the general
34 public welfare, the applicant and the Village Engineer, or designee, shall cooperate
35 to determine an appropriate location and aesthetic design for the utility pole for the
36 proposed wireline communications facility. In any such cooperative determination
37 there shall be a preference for collocation with existing wireline communications
38 facilities or other utility facilities, or for use of unused space on existing wireline
39 communications facilities.
40

41 (g) Underground installation; relocation. Any wireline communications facility to be
42 located underground shall comply with the provisions of this subsection, to the extent
43 not prohibited by federal law, state law or applicable PSC rules and regulations.
44

- 1 (1) Every applicant who places or constructs wireline communications facilities
2 underground shall maintain appropriate participation in the regional
3 notification center for subsurface installations.
4
- 5 (2) The applicant shall not in any way displace, damage, or destroy any wireline
6 facilities, including, but not limited to, gas, sewer, water main, pipe, cable,
7 conduit, fiber optic, or other pathway or any other facilities belonging to the
8 Village. The applicant shall be liable to the Village for the costs of any
9 repairs made necessary by any such displacement, damage or destruction,
10 of facilities belonging to the Village, and the applicant shall pay such costs
11 upon demand. In the case of an emergency, the Village may commence
12 repairs without any prior notice to the applicant. The term emergency shall
13 mean a condition that may affect the public's health, safety or welfare. In
14 the event of an emergency, the Village may cause the repairs to be made
15 at the facility owner's expense, utilizing Village employees, agents or
16 contractors, charge any and all costs, and require reimbursement within 30
17 days after the submission of the bill by the Village to the applicant. In all
18 other nonemergency circumstances, the applicant shall be given prior
19 written notice. If such repairs are not performed in a reasonable and
20 satisfactory manner within the 30 calendar days after receiving notice, the
21 Village may cause the repairs to be made at the facility owner's expense,
22 utilizing Village employees, agents or contractors, charge any and all costs,
23 and require reimbursement within 30 days after the submission of the bill by
24 the Village to the applicant.
25
- 26 (3) Subject to F.S. ch. 337.403, whenever an order of the Village requires such
27 removal or change in the location of any wireline communications facility
28 from the public rights-of-way, and the facility owner fails to remove or
29 change the same at its own expense to conform to the directive within the
30 time stated in the notice, the Village may proceed to cause the
31 communications facility to be removed. The expense thereby incurred,
32 except as provided in F.S. ch. 337.403 shall be paid out of any money
33 available therefor, and such expense shall be charged against the owner of
34 the wireline communications facility and levied, collected and paid to the
35 Village.
36
- 37 (4) A final order of the Village imposed pursuant to the Florida Statutes and
38 applicable provisions of the Village Code, if any, shall constitute a lien on
39 any property of the owner and may be enforced as provided therein.
40
- 41 (5) The Village retains the right and privilege to cut or remove any wireline
42 facilities located within the public rights-of-way as the Village Manager in
43 his/her reasonable discretion may determine to be necessary, appropriate
44 or useful in response to any public health or safety emergency. If
45 circumstances permit, the Village shall attempt to notify the owner of the
46 wireline facility, if known, prior to cutting or removing a wireline facility and

1 shall notify the owner of the facility, if known, after cutting or removing a
2 wireline facility.

- 3
4 (6) An applicant shall, on the request of any person holding a permit issued by
5 the Village, temporarily raise or lower its wireline communications facilities
6 to permit the work authorized by the permit. The expense of such temporary
7 raising or lowering of facilities shall be paid by the person requesting same,
8 and the applicant shall have the authority to require such payment in
9 advance. The applicant shall be given not less than 30 days' advance notice
10 to arrange for such temporary relocation.

11
12 **Section 9. — Sec. 23-9 - Applications & Decisions.**

13
14 (a) **Submission.** All applications, including the full application, amendments, or
15 supplements to an application, or responses to requests for information regarding an
16 application, shall be submitted electronically through the Village's permitting portal.

17
18 (b) **Pre-application meeting.** Prior to filing an application for a communications
19 permit, an applicant is strongly encouraged to schedule a pre-application meeting with
20 the Village Engineer or his designee to discuss the proposed facility, the requirements
21 of this Chapter, and any potential impacts of the proposed facility.

22
23 (c) **Content.** An applicant shall submit an application on the form approved by the
24 Village Engineer for this purpose, which may be updated from time-to-time.
25 Application materials shall include certification of compliance with all applicable codes,
26 including 47 CFR §1.1310 and §1.1312.

27
28 (d) **Completeness Review.** A communications permit application is deemed
29 submitted or resubmitted on the date the application is received by the Village
30 Engineer. The Village Engineer shall notify the applicant in writing via electronic mail
31 within ten (10) days after the date the application is initially submitted or additional
32 information resubmitted, whether the application is properly completed in compliance
33 with the Village's requirements. If the application is not completed in compliance with
34 the Village's requirements, the Village Engineer shall so notify the applicant specifying
35 any missing information or deficiencies which, if cured, make the application properly
36 completed. An application is deemed complete if the Village fails to provide notification
37 to the applicant within ten (10) days. Upon resubmission of information to cure the
38 stated deficiencies, the Village shall notify the applicant, in writing via electronic mail,
39 no later than ten (10) days after the additional information is submitted, of any
40 remaining deficiencies that must be cured. If a specified deficiency is not properly
41 cured when the applicant resubmits its application to comply with the notice of
42 deficiencies, the Village may continue to request the information until such time as the
43 specified deficiency is cured, or may establish a reasonable time frame within which
44 the required information to cure the application deficiency is to be provided. If the
45 curative information is not provided within such time frame, the application will be
46 considered withdrawn or closed for incompleteness.

1
2 (e) **Consolidated Application.** A permit applicant seeking to collocate small wireless
3 facilities or non-exempt micro wireless facilities within the Village right-of-way may file
4 a consolidated communications facility application and receive a single permit for the
5 collocation of up to thirty (30) small wireless facilities. If the permit application includes
6 multiple small wireless facilities or non-exempt micro wireless facilities, the Village
7 may separately address small wireless facility or non-exempt micro wireless facility
8 collocations for which incomplete information has been received or which are denied.
9 A consolidated communications facility application must include all the general permit
10 application information required by this Section.
11

12 (f) **Application Decisions.** Unless otherwise specified herein, the Village shall grant
13 or deny a properly completed application for small wireless facilities or non-exempt
14 micro wireless facilities in the public right-of-way within sixty (60) days or, as otherwise
15 required by federal and state law, after the date the application is received. Failure to
16 take any action on the permit application within that time shall be deemed to be
17 approval of such application. Unless the parties engage in alternate location
18 negotiations as provided herein below, the parties may mutually agree to extend the
19 sixty (60) day application review period. At the end of such extended time, the Village
20 shall grant or deny the permit application. A permit issued pursuant to this subdivision
21 shall remain effective for one (1) year unless extended by the Village. If a permit is
22 denied pursuant to this subdivision, the specific reasons for rejecting the permit
23 application, including the specific code provisions on which the denial was based, shall
24 be explained and set forth in writing via electronic mail to the permit applicant on the
25 day the Village denies the application. The permit applicant may cure the deficiencies
26 identified by the Village and resubmit the application within thirty (30) days after notice
27 of the denial is sent to the applicant. The Village shall approve or deny the revised
28 application within thirty (30) days after receipt, otherwise the application is deemed
29 approved. The subsequent review shall be limited to the deficiencies cited in the
30 denial. The Village may deny an application for small wireless facilities or non-exempt
31 micro wireless facilities in the public right-of-way if the proposed application:

- 32 (1) ~~(i)~~ —Materially interferes with the safe operation of traffic control equipment.
- 33
- 34 (2) ~~(ii)~~ —Materially interferes with sight lines or clear zones for transportation,
35 pedestrians, or public safety purposes.
- 36
- 37 ~~(iii)~~ —Materially interferes with compliance with the Americans with Disabilities
38 Act or similar federal or state standards regarding
39 (3) pedestrian access or movement.
- 40
- 41 ~~(iv)~~ —Materially fails to comply with the 2017~~0~~ edition of the Florida
42 Department of Transportation Utility Accommodation Manual.
- 43 (4)
- 44 (5) ~~(v)~~ —Fails to comply with Applicable Codes.
- 45
- 46 (1)~~(6)~~ (vi) —Fails to comply with the design standards in Section 23-7(c).

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1
2 (g) **Alternate location negotiation period for small wireless facilities or non-**
3 **exempt micro facilities proposed in the public right-of-way.** Within fourteen (14)
4 days after receipt of an application to install a small wireless facilities or non-exempt
5 micro facility within the public right-of-way, the Village may request the applicant via
6 e-mail to move the proposed small wireless facility or non-exempt micro wireless
7 facility to another utility pole within the right-of-way or to construct a new utility pole or
8 support structure within the right-of-way. The Village and applicant shall negotiate the
9 design, location and spacing of the alternate small wireless facility for thirty (30) days
10 after the date of the request. At the conclusion of the negotiation period, the applicant
11 shall either accept the proposed modification, which will thereafter be approved by the
12 Village, or reject the proposed modification in which event the Village shall process
13 the original application for a decision to be made within ninety (90) days of original
14 submission. Decisions issued by the Village must be in writing and provided by
15 electronic mail.

16 ~~(h) **Public notice.** Prior to the issuance of any permit pertaining to the placement and~~
17 ~~maintenance of any communications facilities within the public rights-of-way located~~
18 ~~in residential zoning districts, the Village Engineer or designee may require the~~
19 ~~applicant to issue notice of the proposed work in writing (e.g. doorhanger, letter) to~~
20 ~~property owners within 250 feet of such rights-of-way, as well as provide notification~~
21 ~~to any affected home owners' association or neighborhood association (the~~
22 ~~"notification area") concurrent with the application submittal. The Village may further~~
23 ~~require the applicant to hold a public information meeting for purposes of answering~~
24 ~~questions from affected property owners. Such public information meeting shall be~~
25 ~~held within ten (10) days of the Village's receipt of request for same.~~

26 ~~(i)(h) **Waivers.**~~ Requests for waivers from any requirement of this section shall
27 be made in writing to the Village Engineer or his or her designee. The Village Engineer
28 may grant or deny a request for a waiver pursuant to this subsection. The Village
29 Engineer may grant a request for waiver if it is demonstrated that, notwithstanding the
30 issuance of a waiver, the Village will be provided all information necessary to
31 understand the nature of the construction or other activity to be conducted pursuant
32 to the permit sought, or if otherwise required by law. The Village Engineer's decision
33 as to any waiver request pursuant to this subsection shall be subject to appeal in
34 accordance with Section 5(b) of this Chapter. All waivers approved pursuant to this
35 subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored
36 to minimize deviation from the requirements of the Village Code.

37
38 ~~Section 10-~~ **Sec. 23-10 - Consultants.**

39
40 The Village Engineer or Village Manager, as the case may be, is authorized, in its
41 discretion, to select and retain independent consultant(s) with expertise in
42 communications in connection with the review of any application under this Chapter.
43 Such independent consultant review may be retained on any issue that involves
44 specialized or expert knowledge in connection with an application, including, but not
45 limited to, application completeness or accuracy, structural engineering analysis, and/or
46 verification of compliance with FCC radio frequency emissions standards.

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1
2 **Section 11. Sec. 23-11 - Conditions of Approval.**
3

4 **(a) Generally.** In addition to any supplemental conditions assigned by the Village
5 Engineer or Village Manager, as the case may be, all permits granted pursuant to this
6 Chapter shall be subject to the following conditions, unless modified by the approving
7 authority:
8

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- 9 (1) *Code compliance.* The Permittee shall at all times maintain compliance with
10 all Applicable Codes, including federal, state and local laws, regulations and
11 other rules, including, without limitation, those applying to use of rights-of-
12 way.
13
- 14 (2) *Inspections; Emergencies.* The Village or its designee may enter onto the
15 facility area to visually inspect the communications facility upon 48 hours prior
16 notice to the Permittee. The Permittee shall cooperate with all inspections
17 and may be present for any inspection of its communications facility by the
18 Village. The Village reserves the right to examine or direct its designee to
19 examine the facility and support, repair, disable, or remove any elements of
20 the facility in an emergency when the facility threatens imminent harm to
21 persons or property. The Village shall make every effort to contact the
22 Permittee prior to disabling or removing any facility elements, but in any case
23 shall notify Permittee within 24 hours of doing so.
24
- 25 (3) *Contact.* The Permittee shall at all times maintain accurate contact
26 information for all parties responsible for the facility, which shall include a
27 phone number, street mailing address and email address for at least one
28 natural person.
29
- 30 (4) *Indemnities.* The Permittee shall defend, indemnify and hold harmless the
31 Village, its agents, officers, officials, and employees (i) from any and all
32 damages, liabilities, injuries, losses, costs, and expenses, and from any and
33 all claims, demands, lawsuits, writs of mandamus, and other actions or
34 proceedings brought against the Village or its agents, officers, officials, or
35 employees to challenge, attack, seek to modify, set aside, void or annul the
36 Village's approval of the permit, and (ii) from any and all damages, liabilities,
37 injuries, losses, costs, and expenses, and any and all claims, demands, law
38 suits, or causes of action and other actions or proceedings of any kind or
39 form, whether for personal injury, death or property damage, arising out of or
40 in connection with the activities or performance of the Permittee or any of
41 each one's agents, employees, licensees, contractors, subcontractors, or
42 independent contractors excepting therefrom any damages, liabilities,
43 injuries, losses, costs and expenses that are the result of the negligent,
44 intentional or willful and wanton acts of the Village, its agents, officers, officials
45 and employees. Further, Permittees shall be strictly liable for interference
46 caused by their facilities with the Village's communications systems.

1 Whenever the Village encounters radio frequency interference with its public
2 safety communications equipment, and it believes that such interference has
3 been or is being caused by one (1) or more wireless communications
4 facilities, the Village shall provide notification to all wireless providers
5 operating in the Village of possible interference with the public safety
6 communications equipment, and upon such notifications, the wireless
7 providers shall use their best efforts to cooperate and coordinate with the
8 Village and among themselves to investigate and mitigate the interference, if
9 any, utilizing the procedures set forth in the joint wireless industry-public
10 safety "Enhanced Best Practices Guide," released by the FCC in Appendix D
11 of FCC 04-168 (released August 6, 2004), including the "good engineering
12 practices," as may be amended or revised by the FCC from time to time in
13 any successor regulations. If any wireless provider fails to cooperate with the
14 Village in complying with the wireless provider's obligations under this section
15 or if the FCC makes a determination of radio frequency interference with the
16 Village public safety communications equipment, the wireless provider who
17 failed to cooperate and/or the owner of the equipment that caused the
18 interference shall be responsible, upon FCC determination of radio frequency
19 interference, for reimbursing the Village for all costs associated with
20 ascertaining and resolving the interference, including but not limited to any
21 engineering studies obtained by the Village to determine the source of the
22 interference. For the purposes of this subsection, failure to cooperate shall
23 include failure to initiate any response or action as described in the "best
24 practices guide" within twenty-four (24) hours of Village's notification.
25

- 26 (5) *Adverse impacts on adjacent properties.* Permittee shall undertake all
27 reasonable efforts to avoid material adverse impacts to adjacent properties
28 and/or uses that may arise from the construction, operation, maintenance,
29 modification, and removal of the facility.
30
- 31 (6) *General maintenance; Graffiti.* The site and the facility, including, but not
32 limited to, any landscaping, concealment elements, and related transmission
33 equipment, must be maintained in a neat, orderly, and clean manner and in
34 accordance with all approved plans and conditions of approval. All graffiti on
35 facilities must be removed at the sole expense of the Permittee within 7 days
36 after notification from the Village.
37
- 38 (7) *RF exposure compliance.* All facilities must comply with all standards and
39 regulations of the FCC and any other state or federal government agency with
40 the authority to regulate RF exposure standards. All applications must
41 demonstrate compliance by including a certified analysis showing that the
42 proposed facility satisfies the FCC's Radio-Frequency ("RF") exposure
43 guidelines applicable on an individual basis, and on a cumulative basis
44 (considering all frequencies, and all emitting sources as required by FCC
45 regulations). After transmitter and antenna system optimization, but prior to
46 unattended operations of the facility, Permittee or its representative must

1 conduct on-site post-installation RF emissions testing to demonstrate actual
2 compliance with the FCC OET Bulletin 65 RF emissions safety rules for
3 general population/uncontrolled RF exposure in all sectors. For this testing,
4 the transmitter shall be operating at maximum operating power, and the
5 testing shall occur outwards to a distance where the RF emissions no longer
6 exceed the uncontrolled/general population limit.

7
8 (8) *Testing.* Testing of any back-up generators and other noise producing
9 equipment associated with any communications facility located within a
10 Village right-of-way shall take place on weekdays only, and only between the
11 hours of 9:00 a.m. and 4:00 p.m., except that testing is prohibited on holidays
12 that fall on a weekday. In addition, testing is prohibited on weekend days.

13
14 (9) *Utilities undergrounded.* Extensions of electrical and communications land
15 lines to serve any communications facility located in the Village right-of-way
16 shall be undergrounded where the existing electrical and communications
17 facilities are located below grade.

18
19 (10) *Other approvals.* The Permittee shall obtain all other applicable permits,
20 approvals, and agreements necessary to install and operate the facility in
21 conformance with federal, state, and local laws, rules, and regulations.

22
23 (11) *Modifications.* No changes shall be made to the approved plans without
24 review and approval in accordance with this Chapter subject to the
25 exemptions provided in Section 337.401(7)(e).

26
27 (12) *Agreement with Village.* Permittee shall enter into the appropriate agreement
28 with the Village, as determined by the Village, prior to constructing, attaching,
29 or operating a facility on a Village Pole. Such agreement shall include
30 provisions outlining the process for make-ready work as provided in Section
31 337.401(7)(f), Florida Statutes and 47 U.S.C. §224 and implementing
32 regulations, including provisions for good-faith estimates for such make-ready
33 work necessary to support the proposed facility, or provide a replacement
34 pole if the existing pole is incapable of hosting the facility. Alternatively, the
35 Village may require the Permittee to provide such make-ready estimate at
36 Permittee's expense for the work necessary to support the facility, including
37 a pole replacement, and perform the make-ready work. If pole replacement
38 is required, the scope of the make-ready estimate shall include the design,
39 fabrication and installation of a pole that is substantially similar in color, size,
40 and composition to the existing pole. The replacement pole shall remain the
41 property of the Village.

42
43 (13) *Village Not Liable.* Nothing contained in this Chapter shall be construed to
44 make or hold the Village responsible or liable for any damage to persons or
45 any property whatsoever, from any cause whatsoever, arising from the use,
46 operation or condition of the Permittee's wireline or wireless communications

1 facilities; or by reason of any inspection or reinspection authorized herein or
2 failure to inspect or reinspect. Nor shall the issuance of any permit or the
3 approval or disapproval of any placement or maintenance of the Permittee's
4 wireline or wireless communications facilities as authorized herein constitute
5 any representation, guarantee or warranty of any kind by, nor create any
6 liability upon, the Village or any official, agent or employee.

7
8 (14) *Construction Bond.*
9

10 (a) i. Prior to performing any permitted work in the Village's rights-
11 of-way, the Village shall require the Permittee and/or owner of the
12 communications facility to establish in the Village's favor a construction
13 performance and payment bonds in an amount equal to a minimum of one
14 hundred ten (110) percent of the cost to secure restoration of the post-
15 construction right-of-way to the preconstruction condition of the work being
16 permitted, exclusive of equipment cost to secure the restoration of the public
17 rights-of-way, and to ensure the Permittee's and/or owner's faithful
18 performance of the construction or other obligations related to the work in
19 the public rights-of-way, in accordance with applicable sections of the
20 Village Code of Ordinances.
21

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22 (b) ii. In the event a Permittee and/or owner of the communications
23 facility fails to complete the work in accordance with the provisions of the
24 permit and this subdivision, or fails to complete all restoration work in the
25 right-of-way as required by the Village, including but not limited to repair or
26 replacement of damaged landscaping, structures, hardscape, underground
27 utility facilities, structures or equipment, or any other item or feature
28 disturbed by the permitted work, there shall be recoverable, jointly and
29 severally from the principal and surety of the bond, any damages or loss
30 suffered by the Village as a result, including the full amount of any
31 compensation, indemnification or cost of removal of any property of the
32 Permittee or owner, or the cost of completing the work, plus a reasonable
33 allowance for attorney's fees, up to the full amount of the bond.
34

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35 (c) iii. No less than eightentwelve (182) months after completion of
36 the construction and satisfaction of all obligations in accordance with the
37 bonds, the Permittee and/or owner of the communications facility may
38 request the Village Engineer or his/her designee to remove the requirement
39 to continue the bonds and the Village, if the communications facility is
40 completed, shall release the bonds within ten (10) days. Notwithstanding
41 the foregoing, the Village shall require a new bond for any subsequent work
42 performed in the public rights-of-way.
43

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44 (d) iv. The bonds shall be issued by a surety; (i1) authorized to do
45 business in the United States state of Florida and having evidenced same
46 by a certificate of good standing from the Florida Department of State, and

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1 (#2) having a minimum rating of A-1 in Best's Key Rating Guide,
2 Property/Casualty Edition; the bond shall be subject to the approval of the
3 Village Attorney; and shall provide that:
4

5 "Unless released by the Village, this bond may not be canceled, or allowed
6 to lapse, until sixty (60) days after receipt by the Village, by certified mail,
7 return receipt requested, of a written notice from the issuer of the bond of
8 intent to cancel or not to renew."
9

10 (e) v. The rights reserved by the Village with respect to any bond
11 established pursuant to this section are in addition to all other rights and
12 remedies the Village may have under this section, or at law or equity, and
13 no action, proceeding or exercise of a right with respect to the bonds will
14 affect any other right the Village may have.
15

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16 (15) *Conflicts with improvements.* Except as may be otherwise provided by
17 Section 337.403 and 337.404, Florida Statutes, for all communications
18 facilities located within the right-of-way, the Permittee shall remove or
19 relocate, at its expense and without expense to the Village, any or all of its
20 facilities when such removal or relocation is deemed necessary by the Village
21 by reason of any change of grade, alignment, or width of any right-of-way, for
22 installation of services, water pipes, drains, storm drains, power or signal
23 lines, traffic control devices, right-of-way improvements, or for any other
24 construction, repair, or improvement to the right-of-way. Any removal or
25 relocation required under this paragraph shall be completed by Permittee
26 within ninety (90) days of receipt of notice from the Village. In the event
27 Permittee fails to abide by this timeframe, and Permittee's failure to remove
28 or relocate its facilities impedes the progress of the project that necessitated
29 said removal or relocation, the Village shall have the right to cure this
30 deficiency, and recover the costs incurred in doing so by drawing on the
31 required performance bond. In such a case, the Village shall bear no liability
32 for any damage or disruption to Permittee's facilities or operations directly or
33 indirectly resulting from the Village's reasonable efforts to cure Permittee's
34 noncompliance with this paragraph.
35

36 (16) *Vacation.* Permittee shall notify the Village Engineer of the intent to vacate a
37 facility at least thirty (30) days prior to the vacation.
38

39 (17) *Abandonment.* If a facility is not operated for a continuous period of nine (9)
40 months, the wireless permit and any other permit or approval therefor shall
41 be deemed abandoned and terminated automatically, unless before the end
42 of the nine (9) month period (i) the Village Engineer has determined that the
43 facility has resumed operations, or (ii) the Village has received an application
44 to transfer the permit to another service provider. No later than ninety (90)
45 days from the date the facility is determined to have ceased operation or the
46 Permittee has notified the Village Engineer of its intent to vacate the site, the

1 Permittee shall remove all equipment and improvements associated with the
2 use and shall restore the site to its original condition to the satisfaction of the
3 Village Engineer. The Permittee shall provide written verification of the
4 removal of the facilities within thirty (30) days of the date the removal is
5 completed. If the facility is not removed within thirty (30) days after the permit
6 has been discontinued pursuant to this subsection, the site shall be deemed
7 to be a nuisance, and the Village may cause the facility to be removed at
8 Permittee's expense. If there are two (2) or more users of a single facility or
9 support structure, then this provision shall apply to the specific elements or
10 parts thereof that were abandoned, but will not be effective for the entirety
11 thereof until all users cease use thereof.
12

13 (18) *Encourage co-location.* Where the facility site is capable of accommodating
14 a co-located facility upon the same site, the owner and operator of the existing
15 facility shall allow another carrier to co-locate its facilities and equipment
16 thereon, provided the parties can mutually agree upon reasonable terms and
17 conditions.
18

19 (19) *Compliance.* The Permittee must at all times construct, operate, and maintain
20 the facility in accordance with all permits, requirements, Applicable Codes,
21 and approvals.
22

23 (20) *Force Majeure.* In the event the Village's or Permittee's performance of or
24 compliance with any of the provisions of this Chapter is prevented by a cause
25 or event not within the Village's or Permittee's control, such inability to
26 perform or comply shall be deemed excused and no penalties or sanctions
27 shall be imposed as a result, provided, however, that such Permittee uses all
28 practicable means to expeditiously cure or correct any such inability to
29 perform or comply. For the purposes of this section, cause or events not
30 within the Village's or Permittee's control shall include, but not be limited to,
31 acts of God, floods, earthquakes, landslides, hurricanes, fires and other
32 natural disasters, acts of public enemies, riots or civil disturbances, sabotage,
33 strikes, and restraints imposed by order of a governmental agency or court.
34 Causes or events within a Permittee's control, and thus not falling within this
35 section shall include without limitation, Permittee's financial inability to
36 perform or comply, economic hardship, and misfeasance, malfeasance or
37 nonfeasance by any of Permittee's directors, officers, employees,
38 contractors, or agents.
39

40 ~~(a)~~ (b) **Eligible Facilities Requests.** An application to add a second wireless
41 communications facility to an existing wireless communications facility located within
42 a right-of-way that meets the specifications for an "eligible facilities request" under
43 section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, (47 USC §
44 1455(a)) and does not cause the existing wireless communications facility to exceed
45 the definition of "small wireless facility" as defined herein shall be subject to the
46 processing and approval by the Village Engineer or his/her designee pursuant to the

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1 processes outlined in this Chapter and shall be subject to the following conditions,
2 unless modified by the approving authority:

- 3
- 4 (1) *General conditions.* The conditions provided in Section 7 of this Chapter shall
5 apply to the extent permissible by law.
- 6
- 7 (2) *No permit term extension.* The Village's grant or grant by operation of law of
8 an Eligible Facilities Request permit constitutes a federally-mandated
9 modification to the underlying permit or approval for the subject wireless
10 facility. The Village's grant or grant by operation of law of an Eligible Facilities
11 Request permit will not extend the permit term for the underlying permit or
12 any other underlying regulatory approval, and its term shall be coterminous
13 with the underlying permit or other regulatory approval for the subject tower
14 or base station.
- 15
- 16 (3) *No waiver of standing.* The Village's grant or grant by operation of law of an
17 Eligible Facilities Request does not waive, and shall not be construed to
18 waive, any standing by the Village to challenge Section 6409(a) of the
19 Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum
20 Act, or any modification to Section 6409(a) of the Spectrum Act.

21

22 **Section 12- Sec. 23-12 - Breach; Termination of Permit.**

23

24 (a) **For breach.** A permit granted under this Chapter may be revoked for failure to
25 comply with the conditions of the permit or applicable law. Upon revocation, the
26 communications facility must be removed; provided that removal of a Utility Pole
27 owned by the Village, a utility, or another entity authorized to maintain a Utility Pole in
28 the right-of-way need not be removed, but must be restored to its prior condition,
29 except as specifically permitted by the Village. All costs incurred by the Village in
30 connection with the revocation and removal shall be paid by entities who own or
31 control any part of the communications facility.

32

33 (b) **For installation without a permit.** Any communications facility installed without
34 a permit (except for those exempted by this Chapter or pursuant to F.S. §337.401)
35 must be removed; provided that removal of a Utility Pole owned by the Village, a utility,
36 or another entity authorized to maintain a Utility Pole in the right-of-way need not be
37 removed, but must be restored to its prior condition, except as specifically permitted
38 by the Village. All costs incurred by the Village in connection with the revocation and
39 removal shall be paid by entities who own or control any part of the personal wireless
40 services facility.

41

42 (c) **Municipal Infraction.** Any violation of this Chapter will be subject to the same
43 penalties as a violation of the Chapter II, Article IV, Division I of the Village Code.

44

45 **Section 13- Sec. 23-13 - Infrastructure Controlled By Village.**

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1 The Village, as a matter of policy, will negotiate agreements for use of Village Poles. The
2 placement of small wireless facilities on Village Poles shall be subject to the agreement.
3 The agreement shall specify the compensation to the Village for use of the Village Pole
4 as provided in F.S. §337.401.

5
6
7 ~~Section 14.~~ **Sec. 23-14 - Nondiscrimination.**

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8
9 In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent
10 of the Village to treat each applicant or public right-of-way user in a competitively neutral
11 and nondiscriminatory manner, to the extent required by law, and with considerations that
12 may be unique to the technologies, situation and legal status of each particular applicant
13 or request for use of the public rights-of-way.

14 ~~Section 15. Severability. If any section, subsection, provision, sentence, clause,
15 phrase or word of this Chapter is for any reason held to be illegal or otherwise invalid by
16 any court of competent jurisdiction, such invalidity shall be severable, and shall not affect
17 or impair any remaining section, subsection, provision, sentence, clause, phrase or word
18 included within this Chapter, it being the intent of the Village that the remainder of the
19 Chapter shall be and shall remain in full force and effect, valid, and enforceable.~~

20
21 ~~Section 16. Conflicts. Should any section, paragraph, sentence, clause, or phrase of
22 this Ordinance conflict with any section, paragraph, clause or phrase of any prior
23 Wellington Ordinance, Resolution, or Municipal Code provision; then in that event the
24 provisions of this Ordinance shall prevail to the extent of such conflict.~~

25
26 ~~Section 17. Effective Date. This Ordinance shall become effective immediately upon
27 adoption of the Wellington Council following second reading.~~

Commented [RB1]: Check with Laurie on this

28
29 **SECTION 2:** Should any section, paragraph, sentence, clause, or phrase of this
30 Ordinance conflict with any section, paragraph, clause or phrase of any prior Wellington
31 Ordinance, Resolution, or Municipal Code provision; then in that event the provisions of
32 this Ordinance shall prevail to the extent of such conflict.

33
34 **SECTION 3:** Should any section, paragraph, sentence, clause, or phrase of this
35 Ordinance be declared by a court of competent jurisdiction to be invalid, such decision
36 shall not affect the validity of this Ordinance as a whole or any portion or part thereof,
37 other than the part so declared to be invalid.

38
39 **SECTION 4:** This Ordinance shall become effective immediately upon adoption of
40 the Wellington Council following second reading.

41
42 **PASSED** this _____ day of _____, 20__ upon first reading.

43
44 **PASSED AND ADOPTED** this _____ day of _____, 20__ on second
45 and final reading.

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WELLINGTON

	FOR	AGAINST
BY: _____ Anne Gerwig, Mayor	_____	_____
_____ Michael Napoleone, Vice Mayor	_____	_____
_____ John McGovern, Councilman	_____	_____
_____ Michael Drahos, Councilman	_____	_____
_____ Tanya Siskind, Councilwoman	_____	_____

ATTEST:

BY: _____
Chevelle Nubin, Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: _____
Laurie S. Cohen, Village Attorney

