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AN ORDINANCE OF THE VILLAGE OF WELLINGTON AMENDING THE VILLAGE CODE BY REPEALING AND REPLACING CHAPTER 23, "COMMUNICATIONS FACILITIES RIGHTS-OF-WAY ORDINANCE", TO PROVIDE FOR CERTAIN STANDARDS AND REGULATIONS RELATING TO THE LOCATION OF COMMUNICATION FACILITIES AND OTHER STRUCTURES WITHIN THE VILLAGE'S PUBLIC RIGHTS-OF-WAY, CONSISTENT WITH FEDERAL AND STATE LAW; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, pursuant to Chapter 166 of the Florida Statutes, the Village of Wellington (“Village”) has the authority to adopt such ordinances as it deems necessary and appropriate to assure good government in the Village, to protect and preserve the Village’s rights, property and privileges, and to preserve peace, safety and good order; and

**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**, the Village deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of communications facilities, and other structures within the Village's public rights-of-way ("ROW"), and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the Village Council, that Chapter 23 of the Code of Ordinances for the Village of Wellington (“Code”) be repealed in its entirety and replaced with a new Chapter 23, entitled “Communications Facilities in the Public Rights-of-Way”, to read as follows:

## CHAPTER 23 COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

## Section 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.

1 **Section 2. Purpose.**

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

16  
17 (b) This Chapter is not intended to and shall not be interpreted or applied to:

- 18 (1) Prohibit or effectively prohibit the provision of communications services;  
19 (2) Unreasonably discriminate among providers of functionally equivalent  
20 communications services;  
21 (3) Regulate the installation, operation, collocation, modification or removal of  
22 communications facilities on the basis of the environmental effects of RF  
23 emissions to the extent that such emissions comply with all applicable FCC  
24 regulations;  
25 (4) Prohibit or effectively prohibit any collocation or modification that the Village  
26 may not deny under state or federal law; or  
27 (5) Preempt any applicable state or federal law.  
28

29 **Section 3. Definitions.** The terms used in this Chapter shall have the following  
30 meanings:

31  
32 **Antenna:** Any. apparatus designed for the transmitting and/or receiving of  
33 electromagnetic waves, including but not limited to telephonic, radio or television  
34 communications. Types of elements include, but are not limited to omni-directional  
35 (whip) antennas, sectionalized (panel) antennas, multi or single bay (FM and TV),  
36 yagi, or parabolic (dish) antennas.  
37

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

1  
2       **Application:** A formal request, including all required and requested  
3 documentation and information submitted by an applicant to the Village, for a  
4 communications facility permit.  
5

6       **Applicant:** A person filing an application for placement or modification of a  
7 communications facility in the rights-of-way.  
8

9       **Base Station:** The electronic equipment utilized by the wireless communication  
10 provider(s) for the transmission and reception of radio signals.  
11

12       **Collocation:** To install, mount, maintain, modify, operate, or replace one (1) or  
13 more wireless facilities on, under, within, or adjacent to a wireless support structure or  
14 utility pole within a public right-of-way subject to Section 337.401, Florida Statutes, as  
15 amended from time to time. The term does not include the installation of a new utility  
16 pole or wireless support structure in the public rights-of-way. Collocation outside of a  
17 public right-of-way means the mounting or installation of transmission equipment on  
18 an eligible support structure for the purpose of transmitting and/or receiving radio  
19 frequency signals for communications purposes, where an eligible support structure  
20 is a tower or other structure that already has wireless communication equipment  
21 located thereon.  
22

23       **Communications Facility:** A wireless communications facility or wireline  
24 communications facility.  
25

26       **Communications Service Provider.** A provider engaged in the transmission,  
27 conveyance, or routing of voice, data, audio, video, or any other information or signals,  
28 including video services, to a point, or between or among points, by or through any  
29 electronic, radio, satellite, cable, optical, microwave, or other medium or method now  
30 in existence or hereafter devised, regardless of the protocol used for such  
31 transmission or conveyance. The term includes providers of such transmission,  
32 conveyance, or routing in which computer processing applications are used to act on  
33 the form, code, or protocol of the content for purposes of transmission, conveyance,  
34 or routing without regard to whether such service is referred to as voice-over-Internet-  
35 protocol services or is classified by the Federal Communications Commission as  
36 enhanced or value-added.  
37

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

1 equipment cabinets painted or vinyl “wrapped” to blend with surroundings or to project  
2 public art consistent with Village regulations regarding same.  
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 has been received a certificate  
21 from the Florida Public Service Commission to provide telecommunications service in  
22 Florida and who builds or installs wireless communication transmission equipment,  
23 wireless communication facilities, or wireless support structures but is not a wireless  
24 services provider.  
25

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

29       **Wireless Support Structure:** A freestanding structure, such as a monopole, a  
30 guyed or self-supporting tower, or another existing or proposed structure designed to  
31 support or capable of supporting wireless facilities. The term does not include a utility  
32 pole.  
33

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

#### 40   **Section 4.    Scope.**

41

42       (a) **In general.** Unless exempted, every person who desires to place a  
43 communications facility in the rights-of-way or modify an existing communications  
44 facility in the rights-of-way must obtain a permit authorizing the placement or  
45 modification in accordance with this Chapter. Except for small wireless facilities,  
46 facilities qualifying as Eligible Facilities Requests, or any other type of facility expressly

1 allowed in the right-of-way by state or federal law, no other communications facilities  
2 shall be permitted pursuant to this Chapter.  
3

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

- 5 (1) The placement or modification of communications facilities by the Village or  
6 by any other agency of the state solely for public safety purposes.  
7
- 8 (2) Routine maintenance of a wireless or wireline communications facility;
- 9 (3) Replacement of an existing wireless or wireline facilities with wireless or  
10 wireline facilities that are substantially similar or of the same or smaller size.
- 11 (4) Installation, placement, maintenance or replacement of micro wireless  
12 facilities that are suspended on cables strung between existing utility poles in  
13 compliance with applicable codes by or for a wireless services provider  
14 authorized to occupy the rights-of-way and who is remitting taxes under  
15 Florida Statutes Chapter 202;
- 16 (5) Any facilities located on public or private property outside the rights-of-way  
17 managed by the Village.  
18

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

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

## 30 **Section 5. Administration.**

31  
32 (a) **Review by Village Engineer.** The Village Engineer or his designee shall be  
33 responsible for administering this Chapter. As part of the administration of this  
34 Chapter, the Village Engineer may:  
35

- 36 (1) Adopt regulations governing the placement and modification of  
37 communications facilities consistent with the requirements of this Chapter  
38 and applicable state and federal law, including regulations governing  
39 collocation and resolution of conflicting applications for placement of both  
40 wireline and wireless communications facilities;
- 41 (2) Interpret the provisions of this Chapter;
- 42 (3) Develop acceptable engineering standards for wireline and wireless  
43 communications facilities in particular corridors;
- 44 (4) Issue any notices of incompleteness, requests for information, or conduct or  
45 commission such studies as may be required to determine whether a permit  
46 should be issued.

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

**(b) Appeal.**

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

**Section 6. Registration.**

- (a) A communications services provider, as defined by Florida law, who desires to place or maintain a communications facility in public rights-of-way within the Village



1 shall first register with the Village in accordance with this Chapter. Subject to the  
2 terms and conditions prescribed in this Chapter, a registrant may place or maintain a  
3 communications facility in public rights-of-way.  
4

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

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

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

41 (d) The Village shall review the information submitted by the applicant. Such review  
42 shall be conducted by the Village Manager or his designee. If the Village determines  
43 that the applicant submitted information in accordance with subsection (c) of this  
44 section, the registration shall be effective and the Village shall notify the applicant of  
45 the effectiveness of registration in writing. If the Village determines that the  
46 information has not been submitted in accordance with subsection (c) of this section,

1 the Village shall notify the applicant of the non-effectiveness of registration, and  
2 reasons for the non-effectiveness, in writing. The Village shall so reply to an applicant  
3 within 30 days after receipt of registration information from the applicant. Non-  
4 effectiveness of registration shall not preclude an applicant from filing subsequent  
5 applications for registration under the provisions of this section. An applicant has 30  
6 days after receipt of a notice of non-effectiveness and denial of registration to appeal  
7 the decision.  
8

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

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

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

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

43 (i) *Insurance.* At all times during the use or occupancy of the public rights-of-way,  
44 including any time during placement or maintenance of communications facilities, the  
45 Permittee shall obtain, pay all premiums for, and maintain satisfactory to the Village,  
46 insurance coverage insuring the Permittee and naming the Village, its officers, boards,

1 council, council members, agents and employees as additional insureds: workers'  
2 compensation and employer liability insurance to meet all requirements of Florida law  
3 and commercial general liability insurance with respect to the construction, operation  
4 and maintenance of the communications facilities, and the conduct of registrant's  
5 business in the Village, in the minimum amounts of:  
6

- 7 (1) \$1,000,000.00 in any one accident for bodily injury, personal injury or  
8 death, property damage;
- 9 (2) \$500,000.00 for personal injury to any one person;
- 10 (3) \$250,000.00 for property damage in any one accident;
- 11 (4) Business automobile liability insurance valid in the State of Florida which  
12 policy limit shall be in an amount not less than \$1,000,000.00 combined  
13 single limit, including bodily injury and property damage covering owned,  
14 leased, hired and non-owner vehicles.
- 15 (5) Workers' Compensation valid in the State of Florida which policy limit  
16 shall be in an amount not less than the statutory limit for Workers'  
17 Compensation.
- 18 (6) Employer's liability insurance valid in the State of Florida which policy  
19 limit shall be in an amount not less than \$1,000,000.00 each accident  
20 for employer's liability.
- 21 (7) All insurance providers used shall be admitted and duly authorized to do  
22 business in the State of Florida and shall have been assigned by A. M.  
23 Best Company a minimum Financial Strength Rating of "A" and a  
24 minimum Financial Size Category of "IX" (i.e., a size of \$250,000,000.00  
25 to \$500,000,000.00 based on capital, surplus, and conditional reserve  
26 funds). Insurance policies and certificates issued by non-admitted  
27 insurance companies are not acceptable. All liability policies shall name  
28 the Village, its council members, officers, boards, agents and employees  
29 as additional insureds with respect to any covered liability arising out of  
30 the placement or maintenance of communications facilities in the public  
31 rights-of-way or other activities under this Chapter. Each  
32 communications services provider shall furnish annually to the Village  
33 certificates showing proof of all required insurance coverage. All liability  
34 coverage must be in occurrence form and in accordance with the limits  
35 specified. Claims made policies are not acceptable. No insurance policy  
36 shall be canceled, nor shall the occurrence or aggregate limits set forth  
37 herein be reduced, until the Village has received at least 30 days'  
38 advance written notice by registered, certified or regular mail of any  
39 cancellation, intent not to renew or reduction in policy coverage. Each  
40 communications services provider shall be responsible for notifying the  
41 Village of such cancellation, intent not to renew or reduction in coverage.

1 All certificate(s) of insurance, including all endorsements and riders,  
2 evidencing insurance coverage shall be submitted to the Village within  
3 30 days after the date of registration with the Village in order for a  
4 communications services provider to obtain a permit required for  
5 construction in the public rights-of-way. Each communications services  
6 provider shall, in the event of any such notice described above, obtain,  
7 pay all premiums for, and file with the Village, written evidence of the  
8 issuance of replacement policies within 30 days following receipt by the  
9 Village or the communications services provider of such notice.

10 (8) Nothing contained in this Chapter shall limit a communications service  
11 provider's liability to the Village to the limits of insurance certified or  
12 carried.

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

## 20 **Section 7. General Standards for Wireless Communications Facilities in the** 21 **Rights-of-Way.** 22 23

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

31 (1) Collocation or use of concealed facilities. A small or non-exempt micro wireless  
32 facility and any antennas in the public right-of-way shall, to the extent possible, be  
33 collocated on an existing power, light or other utility pole as illustrated in the examples  
34 in subsection (d)5.vi. below. When collocation of an antenna or small wireless facility  
35 or non-exempt micro wireless facility is not possible, a freestanding new concealed  
36 facility is preferred, as illustrated in the examples in subsection (d)5.vi. below. The  
37 applicant shall submit a permit application to the Village Engineer for approval prior to  
38 any installation which shall be processed in accordance with this Section and F.S.  
39 Section 337.401(7). The Village prefers that small wireless facilities and non-exempt  
40 micro wireless facilities located in the public right-of-way, whether collocated or

freestanding, be technically capable of servicing a minimum of four (4) wireless service providers with like technical facilities through the use of neutral host antenna.

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

(3) Height, setbacks and related location requirements.

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

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

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

iv. An external box or cabinet housing the equipment connected to an antenna attached to a freestanding pole in the public rights-of-way shall be vaulted underground or, if located aboveground, wrapped 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. Within or adjacent to residential property where no pole line exists;
2. In swale areas utilized for stormwater collection;
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.

(c) Concealment. All new small wireless facilities within a public right-of-way shall be constructed using concealment techniques, as further described in subsection (d) below. In all residential and non-residential districts, the concealment technique to be utilized shall be through the installation of either (i) a decorative banner pole capable of concealing all equipment and related appurtenances within the pole structure or located under the ground, or design wrapped on the ground adjacent to the wireless facility support structure; or (ii) a concealed facility designed to replicate existing standard or decorative street lights located in the applicable zoning district. In the

1 Equestrian Overlay Zoning District, the concealment technique to be utilized may be  
2 through the installation of a decorative banner and/or pedestrian scale pole designed  
3 to be consistent with the equestrian nature of the Equestrian Preservation Areas, and  
4 capable of concealing all equipment and related appurtenances within the pole  
5 structure. The Village Engineer shall determine the applicable concealment technique  
6 for each proposed facility pursuant to the parameters described in subsection (d)  
7 below. In all instances, exterior looping of excess cable length installed on any small  
8 wireless facility or non-exempt micro wireless facility located in the public right-of-way  
9 is prohibited and all cabling and interconnecting wires must be concealed.

10  
11  
12 (d) **Design Standards.** In addition to the concealment requirements set forth in  
13 subsection (c) above, wireless communication facilities shall meet all applicable  
14 design standards. Specifically:

15  
16 (1) All underground portions of wireless communications facilities shall be  
17 placed in conduit using material subject to review and approval by the Village  
18 Engineer. The Village Engineer may permit the use of “trenchless technology” for  
19 installation in lieu of traditional installation methods but in all instances the  
20 underground portions of the wireless communications facility shall be contained  
21 within conduit material following installation.

22  
23 (2) The Village prefers that all underground facilities, poles, and all associated  
24 equipment should be placed in Utility Easements, dedicated for such a purpose,  
25 wherever Utility Easements exist, even if this means the underground facilities and  
26 associated equipment will be placed outside of the road right-of-way, on private  
27 property.

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

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

35 1. Horizontal separation: 10-ft preferred; 6-ft minimum

36 2. Vertical separation: 2-ft minimum

37 3. Small wireless facility underground conduit must be placed below  
38 existing Village-owned utilities.

39 4. The Village Engineer has the authority to allow lesser separations  
40 from Village owned utility infrastructure where deemed necessary.

41  
42 (5) The images below this section depict some examples of small wireless or  
43 non-exempt micro wireless facility pole types deemed acceptable by the Village of  
44 Wellington. These depictions are not meant to be inclusive. Other similar pole  
45 types may be deemed acceptable by the Village of Wellington Engineering  
46 Department, on a case by case basis, but must be presented to the Engineering

1 Department for approval. The exact pole type proposed by an applicant will be  
2 chosen by the Village of Wellington Engineering Department and shall be based  
3 on the character of the surrounding neighborhood and harmony of the proposed  
4 pole type with the surrounding neighborhood. The following small wireless or non-  
5 exempt micro wireless facility pole criteria must be met in order to achieve permit  
6 approval:

7 i. All equipment, meters, cables, or other attachments shall be either contained  
8 within the interior or concealed upon the exterior of the pole structure.

9 ii. The antenna element located on the top of the pole shall be encased in a  
10 shroud or other concealment element. Although the Village recognizes that the  
11 antenna element may be larger in diameter than the pole itself, in no instance  
12 shall the antenna element have a diameter greater than two times that of the  
13 pole.

14 iii. The pole must include a street light, pedestrian pathway light, or both,  
15 depending on the proposed location of the pole, together with design elements  
16 to permit affixation of a banner to the pole. If the pole is to be placed in close  
17 proximity to a vehicular travel way, a street light shall be included in the design  
18 of the pole. The street light shall be placed at a height similar to that of other  
19 street lights already existing along the roadway. The applicant shall be  
20 responsible for the cost of electricity for the light and the maintenance of  
21 same. If the pole is to be placed in close proximity to a pedestrian pathway, a  
22 pedestrian pathway light shall be included in the design of the pole. The  
23 pedestrian pathway light shall be placed at a height similar to that of other  
24 pedestrian pathway lights already existing along the pathway. If the proposed  
25 location of the pole is between a vehicular travel way and a pedestrian pathway,  
26 where existing lighting exists along the roadway and pedestrian pathway, then  
27 both a street light and a pedestrian pathway light shall be included in the design  
28 of the pole. Where existing lights exist, the type and character of the light,  
29 whether a street light, pedestrian pathway light, or both, shall be similar to that  
30 of the existing lights.

31 iv. The Village's preference is for the equipment cabinet, meter, and any other  
32 required non-antenna equipment be built into the base of the pole. The Village  
33 recognizes that this may not always be possible due to utility company  
34 requirements or space limitations such as, but not limited to, minimum sidewalk  
35 width or minimum roadside offsets. When these utility company requirements  
36 or space limitations exist, the Village shall permit a separate cabinet to be  
37 installed adjacent to the proposed pole. A single cabinet including all  
38 necessary equipment is preferred and multiple cabinets or boxes shall not be  
39 permitted when a single cabinet can be utilized. When a separate cabinet is  
40 necessary, the proposed cabinet shall be covered on all exposed sides by a  
41 polymer wrap. The color and aesthetic design of the polymer wrap shall be  
42 selected by the Village of Wellington Engineering Department based on the



1 subject location. The wrap design type shall be provided to the permittee in the  
2 permit approval package.

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

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





1 All collocations on existing utility poles shall utilize shrouds or canisters to conceal  
 2 the antenna mounted on the top of the utility poles, such as the examples below,  
 3 and shall either route transmission lines and cables through the interior of the poles  
 4 when possible or use color matched conduit to conceal lines and cables on the  
 5 exterior of the existing poles:  
 6  
 7  
 8



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

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

## **Section 8. General Standards for Wireline Communications Facilities in the Rights-of-Way.**

(a) Generally. The purpose of this section is to protect and limit deterioration and obstruction of the Village rights-of-way resulting from the installation of utility poles within the Village rights-of-way by communications service providers. The Village herein adopts uniform regulations for the construction, placement, and maintenance of equipment and wireline communications facilities in the rights-of-way. Such rights-of-way within the Village are a unique and physically limited resource that are critical to the travel and transport of persons and property and must be managed and controlled in the best interest of the citizens of the Village of Wellington, consistent with applicable federal and state law. When applicable, all wireline communications facilities proposed to be installed in the Village's rights-of-way must comply with the undergrounding regulations contained in this Section.

(b) This section does not authorize an applicant to place wireline communications facilities, including cables or wires, nor construct or install wireline facilities on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned communications facility support structure, or other private property without first obtaining the consent of the property owner.

(c) As part of a building, electrical, and/or an engineering permit application for a new utility pole to support a wireline communications facility, a site development plan shall be presented for approval to the Village Engineer. Each application for a proposed new utility pole to support a wireline communications facility shall include all requirements for site development plan approval as required by Article 7 of the Village Unified Land Development Code. The Village Engineer or his/her

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

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

17 a. No existing poles located within the geographic area meet the  
18 applicant's engineering requirements to attach wireline facilities to,  
19 and why.

20 b. Existing poles are not of sufficient height to meet the applicant's  
21 engineering requirements, and cannot be increased in height.

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

26 d. Other limiting factors that render existing poles unsuitable.

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

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

1 communication services provider must show that other existing conduits or  
2 poles cannot be used.

3 (2) Any wireline communications system located within the Village's rights-of-  
4 way shall meet or exceed the technical standards set forth in 47 C.F.R. §  
5 76.601, as applicable, and any other applicable technical standards.

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

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

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

35 (7) Minimum separation from Village-owned equipment.

36 a. Utility poles for wireline communications facilities including  
37 appurtenances shall have a minimum horizontal separation of ten (10)

1 feet from any Village-owned utility pole and Village-owned  
2 underground facility. Ten (10) feet shall be measured from closest  
3 outer diameter (OD) or outer edge (OE) to OD or OE.

4 (8) High voltage and "no trespassing" and other warning signs.

- 5 a. If high voltage is necessary for the operation of the wireline  
6 communications facility or any accessory structures, "HIGH VOLTAGE  
7 - DANGER" warning signs shall be permanently attached to the fence  
8 or wall and shall be spaced no more than forty (40) feet apart.
- 9 b. "NO TRESPASSING" warning signs shall be permanently attached to  
10 the fence or wall and shall be spaced no more than forty (40) feet apart.
- 11 c. The letters for the "HIGH VOLTAGE - DANGER" and "NO  
12 TRESPASSING" warning signs shall be at least six (6) inches in  
13 height. The two (2) warning signs may be combined into one (1) sign.  
14 The warning signs shall be installed at least five (5) feet above the  
15 finished grade of the fence.
- 16 d. The warning signs may be attached to freestanding poles if the content  
17 of the signs may be obstructed by landscaping.
- 18 e. Signs noting federal registration (if required) shall be attached to the  
19 wireline communications facility in compliance with federal regulation.

20 (9) 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 (10) Signs and advertising. The use of any portion of a pole for signs or advertising  
25 purposes including company name, banners, streamers, etc., shall be strictly  
26 prohibited.

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

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

36 (13) Inspection report.

- 37 a. Owners of utility poles used to support wireline communications facility  
38 owners shall submit a report to the Village Engineer certifying structural  
39 and electrical integrity every two (2) years.
- 40 b. Inspections shall be conducted by an engineer licensed to practice in  
41 the State of Florida. The results of such inspections shall be provided to

1 the Planning, Zoning and Building Department. Based upon the results  
2 of an inspection, the building official may require repair or removal of a  
3 wireline communications facility.

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

10 (14) Existing wireline infrastructure.

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

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

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

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

- 37  
38 (g) Underground installation; relocation. Any wireline communications facility to be  
39 located underground shall comply with the provisions of this subsection, to the

1 extent not prohibited by federal law, state law or applicable PSC rules and  
2 regulations.

3 (1) Every applicant who places or constructs wireline communications  
4 facilities underground shall maintain appropriate participation in the regional  
5 notification center for subsurface installations.

6 (2) The applicant shall not in any way displace, damage, or destroy  
7 any wireline facilities, including, but not limited to, gas, sewer, water main, pipe,  
8 cable, conduit, fiber optic, or other pathway or any other facilities belonging to  
9 the Village. The applicant shall be liable to the Village for the costs of any repairs  
10 made necessary by any such displacement, damage or destruction, of facilities  
11 belonging to the Village, and the applicant shall pay such costs upon demand. In  
12 the case of an emergency, the Village may commence repairs without any prior  
13 notice to the applicant. The term emergency shall mean a condition that may  
14 affect the public's health, safety or welfare. In the event of an emergency, the  
15 Village may cause the repairs to be made at the facility owner's expense,  
16 utilizing Village employees, agents or contractors, charge any and all costs, and  
17 require reimbursement within 30 days after the submission of the bill by the  
18 Village to the applicant. In all other nonemergency circumstances, the applicant  
19 shall be given prior written notice. If such repairs are not performed in a  
20 reasonable and satisfactory manner within the 30 calendar days after receiving  
21 notice, the Village may cause the repairs to be made at the facility owner's  
22 expense, utilizing Village employees, agents or contractors, charge any and all  
23 costs, and require reimbursement within 30 days after the submission of the bill  
24 by the Village to the applicant.

25 (3) Subject to F.S. ch. 337.403, whenever an order of the Village  
26 requires such removal or change in the location of any wireline communications  
27 facility from the public rights-of-way, and the facility owner fails to remove or  
28 change the same at its own expense to conform to the directive within the time  
29 stated in the notice, the Village may proceed to cause the communications  
30 facility to be removed. The expense thereby incurred, except as provided in F.S.  
31 ch. 337.403 shall be paid out of any money available therefor, and such expense  
32 shall be charged against the owner of the wireline communications facility and  
33 levied, collected and paid to the Village.

34 (4) A final order of the Village imposed pursuant to the Florida Statutes  
35 and applicable provisions of the Village Code, if any, shall constitute a lien on  
36 any property of the owner and may be enforced as provided therein.

37 (5) The Village retains the right and privilege to cut or remove any  
38 wireline facilities located within the public rights-of-way as the Village Manager in  
39 his/her reasonable discretion may determine to be necessary, appropriate or  
40 useful in response to any public health or safety emergency. If circumstances



1 permit, the Village shall attempt to notify the owner of the wireline facility, if  
2 known, prior to cutting or removing a wireline facility and shall notify the owner of  
3 the facility, if known, after cutting or removing a wireline facility.

4 (6) An applicant shall, on the request of any person holding a permit  
5 issued by the Village, temporarily raise or lower its wireline communications  
6 facilities to permit the work authorized by the permit. The expense of such  
7 temporary raising or lowering of facilities shall be paid by the person requesting  
8 same, 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 to  
10 arrange for such temporary relocation.

## 11 12 **Section 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  
16 regarding an application, shall be submitted electronically through the Village's  
17 permitting portal.

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

23  
24 (c) **Content.** An applicant shall submit an application on the form approved by the  
25 Village Engineer for this purpose, which may be updated from time-to-time.

26  
27 (d) **Completeness Review.** A communications permit application is deemed  
28 submitted or resubmitted on the date the application is received by the Village  
29 Engineer. The Village Engineer shall notify the applicant in writing via electronic mail  
30 within ten (10) days after the date the application is initially submitted or additional  
31 information resubmitted, whether the application is properly completed in compliance  
32 with the Village's requirements. If the application is not completed in compliance with  
33 the Village's requirements, the Village Engineer shall so notify the applicant specifying  
34 any missing information or deficiencies which, if cured, make the application properly  
35 completed. An application is deemed complete if the Village fails to provide notification  
36 to the applicant within ten (10) days. Upon resubmission of information to cure the  
37 stated deficiencies, the Village shall notify the applicant, in writing via electronic mail,  
38 no later than ten (10) days after the additional information is submitted, of any  
39 remaining deficiencies that must be cured. If a specified deficiency is not properly  
40 cured when the applicant resubmits its application to comply with the notice of  
41 deficiencies, the Village may continue to request the information until such time as the  
42 specified deficiency is cured, or may establish a reasonable time frame within which  
43 the required information to cure the application deficiency is to be provided. If the

1 curative information is not provided within such time frame, the application will be  
2 considered withdrawn or closed for incompleteness.  
3

4 (e) **Consolidated Application.** A permit applicant seeking to collocate small  
5 wireless facilities or non-exempt micro wireless facilities within the Village right-of-way  
6 may file a consolidated communications facility application and receive a single permit  
7 for the collocation of up to thirty (30) small wireless facilities. If the permit application  
8 includes multiple small wireless facilities or non-exempt micro wireless facilities, the  
9 Village may separately address small wireless facility or non-exempt micro wireless  
10 facility collocations for which incomplete information has been received or which are  
11 denied. A consolidated communications facility application must include all the general  
12 permit application information required by this Section.  
13

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

- 34 (i) Materially interferes with the safe operation of traffic control equipment.  
35 (ii) Materially interferes with sight lines or clear zones for transportation,  
36 pedestrians, or public safety purposes.  
37 (iii) Materially interferes with compliance with the Americans with  
38 Disabilities Act or similar federal or state standards regarding  
39 pedestrian access or movement.  
40 (iv) Materially fails to comply with the 2010 edition of the Florida  
41 Department of Transportation Utility Accommodation Manual.  
42 (v) Fails to comply with Applicable Codes.  
43

44 (g) **Alternate location negotiation period for small wireless facilities or non-**  
45 **exempt micro facilities proposed in the public right-of-way.** Within fourteen (14)

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

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

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

## 37 **Section 10. Consultants.**

38  
39 The Village Engineer or Village Manager, as the case may be, is authorized, in its  
40 discretion, to select and retain independent consultant(s) with expertise in  
41 communications in connection with the review of any application under this Chapter.  
42 Such independent consultant review may be retained on any issue that involves  
43 specialized or expert knowledge in connection with an application, including, but not

1 limited to, application completeness or accuracy, structural engineering analysis,  
2 and/or verification of compliance with FCC radio frequency emissions standards  
3

#### 4 **Section 11. Conditions of Approval.**

5  
6 **Generally.** In addition to any supplemental conditions assigned by the Village  
7 Engineer or Village Manager, as the case may be, all permits granted pursuant to this  
8 Chapter shall be subject to the following conditions, unless modified by the approving  
9 authority:  
10

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

1 and employees. Further, Permittees shall be strictly liable for interference  
2 caused by their facilities with the Village's communications systems.  
3 Whenever the Village encounters radio frequency interference with its public  
4 safety communications equipment, and it believes that such interference has  
5 been or is being caused by one (1) or more wireless communications  
6 facilities, the Village shall provide notification to all wireless providers  
7 operating in the Village of possible interference with the public safety  
8 communications equipment, and upon such notifications, the wireless  
9 providers shall use their best efforts to cooperate and coordinate with the  
10 Village and among themselves to investigate and mitigate the interference, if  
11 any, utilizing the procedures set forth in the joint wireless industry-public  
12 safety "Enhanced Best Practices Guide," released by the FCC in Appendix D  
13 of FCC 04-168 (released August 6, 2004), including the "good engineering  
14 practices," as may be amended or revised by the FCC from time to time in  
15 any successor regulations. If any wireless provider fails to cooperate with the  
16 Village in complying with the wireless provider's obligations under this section  
17 or if the FCC makes a determination of radio frequency interference with the  
18 Village public safety communications equipment, the wireless provider who  
19 failed to cooperate and/or the owner of the equipment that caused the  
20 interference shall be responsible, upon FCC determination of radio frequency  
21 interference, for reimbursing the Village for all costs associated with  
22 ascertaining and resolving the interference, including but not limited to any  
23 engineering studies obtained by the Village to determine the source of the  
24 interference. For the purposes of this subsection, failure to cooperate shall  
25 include failure to initiate any response or action as described in the "best  
26 practices guide" within twenty-four (24) hours of Village's notification.  
27

28 (5) *Adverse impacts on adjacent properties.* Permittee shall undertake all  
29 reasonable efforts to avoid material adverse impacts to adjacent properties  
30 and/or uses that may arise from the construction, operation, maintenance,  
31 modification, and removal of the facility.  
32

33 (6) *General maintenance; Graffiti.* The site and the facility, including, but not  
34 limited to, any landscaping, concealment elements, and related transmission  
35 equipment, must be maintained in a neat, orderly, and clean manner and in  
36 accordance with all approved plans and conditions of approval. All graffiti on  
37 facilities must be removed at the sole expense of the Permittee within 7 days  
38 after notification from the Village.  
39

40 (7) *RF exposure compliance.* All facilities must comply with all standards and  
41 regulations of the FCC and any other state or federal government agency with the  
42 authority to regulate RF exposure standards. All applications must demonstrate  
43 compliance by including a certified analysis showing that the proposed facility  
44 satisfies the FCC's Radio-Frequency ("RF") exposure guidelines applicable on an  
45 individual basis, and on a cumulative basis (considering all frequencies, and all  
46 emitting sources as required by FCC regulations). After transmitter and antenna

- 1 system optimization, but prior to unattended operations of the facility, Permittee  
2 or its representative must conduct on-site post-installation RF emissions testing  
3 to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions  
4 safety rules for general population/uncontrolled RF exposure in all sectors. For  
5 this testing, the transmitter shall be operating at maximum operating power, and  
6 the testing shall occur outwards to a distance where the RF emissions no longer  
7 exceed the uncontrolled/general population limit.
- 8 (8) *Testing.* Testing of any back-up generators and other noise producing equipment  
9 associated with any communications facility located within a Village right-of-way  
10 shall take place on weekdays only, and only between the hours of 9:00 a.m. and  
11 4:00 p.m., except that testing is prohibited on holidays that fall on a weekday. In  
12 addition, testing is prohibited on weekend days.
- 13
- 14 (9) *Utilities undergrounded.* Extensions of electrical and communications land lines to  
15 serve any communications facility located in the Village right-of-way shall be  
16 undergrounded where the existing electrical and communications facilities are  
17 located below grade.
- 18
- 19 (10) *Other approvals.* The Permittee shall obtain all other applicable permits, approvals,  
20 and agreements necessary to install and operate the facility in conformance with  
21 federal, state, and local laws, rules, and regulations.
- 22
- 23 (11) *Modifications.* No changes shall be made to the approved plans without review  
24 and approval in accordance with this Chapter subject to the exemptions provided  
25 in Section 337.401(7)(e).
- 26
- 27 (12) *Agreement with Village.* Permittee shall enter into the appropriate agreement with  
28 the Village, as determined by the Village, prior to constructing, attaching, or  
29 operating a facility on a Village Pole. Such agreement shall include provisions  
30 outlining the process for make-ready work as provided in Section 337.401(7)(f),  
31 Florida Statutes and 47 U.S.C. §224 and implementing regulations, including  
32 provisions for good-faith estimates for such make-ready work necessary to support  
33 the proposed facility, or provide a replacement pole if the existing pole is incapable  
34 of hosting the facility. Alternatively, the Village may require the Permittee to  
35 provide such make-ready estimate at Permittee's expense for the work necessary  
36 to support the facility, including a pole replacement, and perform the make-ready  
37 work. If pole replacement is required, the scope of the make-ready estimate shall  
38 include the design, fabrication and installation of a pole that is substantially similar  
39 in color, size, and composition to the existing pole. The replacement pole shall  
40 remain the property of the Village.
- 41 (13) *Village Not Liable.* Nothing contained in this Chapter shall be construed to make  
42 or hold the Village responsible or liable for any damage to persons or any property  
43 whatsoever, from any cause whatsoever, arising from the use, operation or  
44 condition of the Permittee's wireline or wireless communications facilities; or by  
45 reason of any inspection or reinspection authorized herein or failure to inspect or  
46 reinspect. Nor shall the issuance of any permit or the approval or disapproval of

1 any placement or maintenance of the Permittee's wireline or wireless  
2 communications facilities as authorized herein constitute any representation,  
3 guarantee or warranty of any kind by, nor create any liability upon, the Village or  
4 any official, agent or employee

5 (14) *Construction Bond.*

6 (a) Prior to performing any permitted work in the Village's rights-of-way, the  
7 Village shall require the Permittee and/or owner of the communications facility to  
8 establish in the Village's favor a performance and payment bonds in an amount  
9 equal to a minimum of one hundred ten (110) percent of the cost of the work being  
10 permitted, exclusive of equipment cost to secure the restoration of the public  
11 rights-of-way, and to ensure the Permittee's and/or owner's faithful performance  
12 of the construction or other obligations related to the work in the public rights-of-  
13 way, in accordance with applicable sections of the Village Code of Ordinances.

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

25 (c) No less than twelve (12) months after completion of the construction and  
26 satisfaction of all obligations in accordance with the bonds, the Permittee and/or  
27 owner of the communications facility may request the Village Engineer or his/her  
28 designee to remove the requirement to continue the bonds and the Village, if the  
29 communications facility is completed, shall release the bonds within ten (10) days.  
30 Notwithstanding the foregoing, the Village shall require a new bond for any  
31 subsequent work performed in the public rights-of-way.

32 (d) The bonds shall be issued by a surety; (i) authorized to do business in the  
33 state of Florida and having evidenced same by a certificate of good standing from  
34 the Florida Department of State, and (ii) having a minimum rating of A-1 in Best's  
35 Key Rating Guide, Property/Casualty Edition; the bond shall be subject to the  
36 approval of the Village Attorney; and shall provide that:

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

41 (e) The rights reserved by the Village with respect to any bond established  
42 pursuant to this section are in addition to all other rights and remedies the Village  
43 may have under this section, or at law or equity, and no action, proceeding or

1 exercise of a right with respect to the bonds will affect any other right the Village  
2 may have.  
3  
4

5 (15) *Conflicts with improvements.* Except as may be otherwise provided by Section  
6 337.403 and 337.404, Florida Statutes, for all communications facilities located  
7 within the right-of-way, the Permittee shall remove or relocate, at its expense and  
8 without expense to the Village, any or all of its facilities when such removal or  
9 relocation is deemed necessary by the Village by reason of any change of grade,  
10 alignment, or width of any right-of-way, for installation of services, water pipes,  
11 drains, storm drains, power or signal lines, traffic control devices, right-of-way  
12 improvements, or for any other construction, repair, or improvement to the right-  
13 of-way. Any removal or relocation required under this paragraph shall be  
14 completed by Permittee within ninety (90) days of receipt of notice from the Village.  
15 In the event Permittee fails to abide by this timeframe, and Permittee's failure to  
16 remove or relocate its facilities impedes the progress of the project that  
17 necessitated said removal or relocation, the Village shall have the right to cure this  
18 deficiency, and recover the costs incurred in doing so by drawing on the required  
19 performance bond. In such a case, the Village shall bear no liability for any damage  
20 or disruption to Permittee's facilities or operations directly or indirectly resulting  
21 from the Village's reasonable efforts to cure Permittee's noncompliance with this  
22 paragraph.  
23

24 (16) *Vacation.* Permittee shall notify the Village Engineer of the intent to vacate a facility  
25 at least thirty (30) days prior to the vacation.  
26

27 (17) *Abandonment.* If a facility is not operated for a continuous period of nine (9)  
28 months, the wireless permit and any other permit or approval therefor shall be  
29 deemed abandoned and terminated automatically, unless before the end of the  
30 nine (9) month period (i) the Village Engineer has determined that the facility has  
31 resumed operations, or (ii) the Village has received an application to transfer the  
32 permit to another service provider. No later than ninety (90) days from the date  
33 the facility is determined to have ceased operation or the Permittee has notified  
34 the Village Engineer of its intent to vacate the site, the Permittee shall remove all  
35 equipment and improvements associated with the use and shall restore the site to  
36 its original condition to the satisfaction of the Village Engineer. The Permittee shall  
37 provide written verification of the removal of the facilities within thirty (30) days of  
38 the date the removal is completed. If the facility is not removed within thirty (30)  
39 days after the permit has been discontinued pursuant to this subsection, the site  
40 shall be deemed to be a nuisance, and the Village may cause the facility to be  
41 removed at Permittee's expense. If there are two (2) or more users of a single  
42 facility or support structure, then this provision shall apply to the specific elements  
43 or parts thereof that were abandoned, but will not be effective for the entirety  
44 thereof until all users cease use thereof.  
45



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

5  
6 (19) *Compliance.* The Permittee must at all times construct, operate, and maintain the  
7 facility in accordance with all permits, requirements, Applicable Codes, and  
8 approvals.

9  
10 (20) *Force Majeure.* In the event the Village's or Permittee's performance of or  
11 compliance with any of the provisions of this Chapter is prevented by a cause or  
12 event not within the Village's or Permittee's control, such inability to perform or  
13 comply shall be deemed excused and no penalties or sanctions shall be imposed  
14 as a result, provided, however, that such Permittee uses all practicable means to  
15 expeditiously cure or correct any such inability to perform or comply. For the  
16 purposes of this section, cause or events not within the Village's or Permittee's  
17 control shall include, but not be limited to, acts of God, floods, earthquakes,  
18 landslides, hurricanes, fires and other natural disasters, acts of public enemies,  
19 riots or civil disturbances, sabotage, strikes, and restraints imposed by order of a  
20 governmental agency or court. Causes or events within a Permittee's control, and  
21 thus not falling within this section shall include without limitation, Permittee's  
22 financial inability to perform or comply, economic hardship, and misfeasance,  
23 malfeasance or nonfeasance by any of Permittee's directors, officers, employees,  
24 contractors, or agents.

25  
26 (i) **Eligible Facilities Requests.** An application to add a second wireless  
27 communications facility to an existing wireless communications facility located within  
28 a right-of-way that meets the specifications for an "eligible facilities request" under  
29 section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, (47 USC §  
30 1455(a)) and does not cause the existing wireless communications facility to exceed  
31 the definition of "small wireless facility" as defined herein shall be subject to the  
32 processing and approval by the Village Engineer or his/her designee pursuant to the  
33 processes outlined in this Chapter and . shall be subject to the following conditions,  
34 unless modified by the approving authority:

35  
36 (1) *General conditions.* The conditions provided in Section 7 of this Chapter shall  
37 apply to the extent permissible by law.

38  
39 (2) *No permit term extension.* The Village's grant or grant by operation of law of  
40 an Eligible Facilities Request permit constitutes a federally-mandated  
41 modification to the underlying permit or approval for the subject wireless  
42 facility. The Village's grant or grant by operation of law of an Eligible Facilities  
43 Request permit will not extend the permit term for the underlying permit or  
44 any other underlying regulatory approval, and its term shall be coterminous  
45 with the underlying permit or other regulatory approval for the subject tower  
46 or base station.

- 1  
2 (3) *No waiver of standing.* The Village's grant or grant by operation of law of an  
3 Eligible Facilities Request does not waive, and shall not be construed to  
4 waive, any standing by the Village to challenge Section 6409(a) of the  
5 Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum  
6 Act, or any modification to Section 6409(a) of the Spectrum Act.  
7

8 **Section 12. Breach; Termination of Permit.**  
9

10 (a) **For breach.** A permit granted under this Chapter may be revoked for failure to  
11 comply with the conditions of the permit or applicable law. Upon revocation, the  
12 communications facility must be removed; provided that removal of a Utility Pole  
13 owned by the Village, a utility, or another entity authorized to maintain a Utility Pole  
14 in the right-of-way need not be removed, but must be restored to its prior condition,  
15 except as specifically permitted by the Village. All costs incurred by the Village in  
16 connection with the revocation and removal shall be paid by entities who own or  
17 control any part of the communications facility.  
18

19 (b) **For installation without a permit.** Any communications facility installed without  
20 a permit (except for those exempted by this Chapter or pursuant to F.S. §337.401)  
21 must be removed; provided that removal of a Utility Pole owned by the Village, a utility,  
22 or another entity authorized to maintain a Utility Pole in the right-of-way need not be  
23 removed, but must be restored to its prior condition, except as specifically permitted  
24 by the Village. All costs incurred by the Village in connection with the revocation and  
25 removal shall be paid by entities who own or control any part of the personal wireless  
26 services facility.  
27

28 (c) **Municipal Infraction.** Any violation of this Chapter will be subject to the same  
29 penalties as a violation of the Chapter II, Article IV, Division I of the Village Code.  
30

31 **Section 13. Infrastructure Controlled By Village.** The Village, as a matter of policy,  
32 will negotiate agreements for use of Village Poles. The placement of small wireless  
33 facilities on Village Poles shall be subject to the agreement. The agreement shall specify  
34 the compensation to the Village for use of the Village Pole as provided in F.S. §337.401.  
35

36 **Section 14. Nondiscrimination.** In establishing the rights, obligations and conditions  
37 set forth in this Chapter, it is the intent of the Village to treat each applicant or public right-  
38 of-way user in a competitively neutral and nondiscriminatory manner, to the extent  
39 required by law, and with considerations that may be unique to the technologies, situation  
40 and legal status of each particular applicant or request for use of the public rights-of-way.  
41

42 **Section 15. Severability.** If any section, subsection, provision, sentence, clause,  
43 phrase or word of this Chapter is for any reason held to be illegal or otherwise invalid by  
44 any court of competent jurisdiction, such invalidity shall be severable, and shall not affect  
45 or impair any remaining section, subsection, provision, sentence, clause, phrase or word

1 included within this Chapter, it being the intent of the Village that the remainder of the  
2 Chapter shall be and shall remain in full force and effect, valid, and enforceable.

3  
4 **Section 16. Conflicts.** Should any section, paragraph, sentence, clause, or phrase of  
5 this Ordinance conflict with any section, paragraph, clause or phrase of any prior  
6 Wellington Ordinance, Resolution, or Municipal Code provision; then in that event the  
7 provisions of this Ordinance shall prevail to the extent of such conflict.

8  
9 **Section 17. Effective Date.** This Ordinance shall become effective immediately upon  
10 adoption of the Wellington Council following second reading.

11  
12 **PASSED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ upon first reading.

13  
14 **PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ on second  
15 and final reading.

16  
17 **WELLINGTON**

	<b>FOR</b>	<b>AGAINST</b>
18 BY: _____	_____	_____
19 Anne Gerwig, Mayor		
20 _____	_____	_____
21 Michael Drahos, Vice Mayor		
22 _____	_____	_____
23 John McGovern, Councilman		
24 _____	_____	_____
25 Michael Napoleone, Councilman		
26 _____	_____	_____
27 Tanya Siskind, Councilwoman		

28  
29  
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32  
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35  
36 **ATTEST:**

37  
38 BY: \_\_\_\_\_  
39 Chevelle Nubin, Clerk

40  
41  
42 **APPROVED AS TO FORM AND**  
43 **LEGAL SUFFICIENCY**

44  
45 BY: \_\_\_\_\_  
46 Laurie S. Cohen, Village Attorney

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4