

ITEM #40

ADDITIONAL MATERIAL
Public Hearing

DECEMBER 8, 2020

SUBMITTED AT THE REQUEST OF
OFFICE OF THE COUNTY ATTORNEY



954-357-7600 · FAX 954-357-7641

MEMORANDUM

TO: Board of County Commissioners

FROM: Michael J. Kerr, Deputy County Attorney /s/ Michael J. Kerr

DATE: December 4, 2020

RE: **Agenda Item No. 40 on the December 8, 2020, County Commission Agenda Relating to Wireless Communications**
CAO File: 451888

Agenda Item No. 40 on the published December 8, 2020, agenda of the Board of County Commissioners references a proposed ordinance that has been prepared by the Office of the County Attorney in response to and as required by Senate Bill 1000 (2019) which amended Section 337.401, Florida Statutes.

Based on industry input, revisions have been made to the proposed ordinance. The changes include updates to the terms and definitions to more accurately reflect the current industry standards, an enhanced and detailed method for calculation of construction bonds, and clarifications to the registration requirements. Changes from the published agenda for December 8, 2020, are highlighted in grey, with deleted language being struck through and new language being underlined.

Please contact the County Attorney or me if you have any questions or need additional information regarding this matter.

MJK/AT/jc
Attachment

c: Bertha Henry, County Administrator
Robert Melton, County Auditor
Andrew J. Meyers, County Attorney

PROPOSED

ORDINANCE NO. 2020-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO WIRELESS COMMUNICATIONS; ~~REPEALING SECTION 39-102 AND~~ AMENDING CHAPTER 20, ARTICLE XX OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, Section 337.401, Florida Statutes, was amended by CS/CS/CS/SB 1000 (2019) (the "Act");

WHEREAS, the Act limits a local government agency's authority to regulate the placement and maintenance of wireless communications facilities in public rights-of-way;

WHEREAS, the Act provides that a county may prescribe and adopt objective design standards required of ~~wireless~~ communications providers for placement and maintenance of ~~wireless~~ communications facilities in its rights-of-way;

WHEREAS, the Act further provides that a county may adopt reasonable, nondiscriminatory requirements for insurance coverage, indemnification, construction bonds, and force majeure; and

WHEREAS, Broward County ("County"), in accordance with the Act, has developed objective design standards and technical specifications for collocation of small wireless facilities and micro wireless facilities on County-owned utility poles, utility poles within County rights-of-way, and utility poles supporting traffic signal infrastructure operated and maintained by the County through valid interlocal traffic engineering agreements,

1 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
2 BROWARD COUNTY, FLORIDA:

3
4 Section 1. ~~Section 39-102 of the Broward County Code of Ordinances,~~
5 ~~"Wireless communications facilities," is hereby repealed in its entirety.~~

6 ~~Section 2.~~ Chapter 20, Article XX of the Broward County Code of Ordinances is
7 hereby amended to read as follows:

8 **ARTICLE XX. TELECOMMUNICATIONS COMMUNICATIONS SERVICES**

9 **PROVIDERS**

10 **DIVISION 1. GENERALLY**

11 **Sec. 20-581. Intent and purpose.**

12 It is the intent of the Broward County ("County") to promote the public, health,
13 safety, and general welfare by providing for the Registration of operators using Broward
14 County rights-of-way; to adopt and administer regulations consistent with state and
15 federal law including Section 337.401, Florida Statutes; 2 County home-rule authority, and
16 the Federal Communications Commission guidelines and regulations in accordance with
17 the provisions of the Telecommunications Act of 1996 ~~to provide for the payment of~~
18 ~~occupancy fees by Registrant to the County for the cost of establishing, maintaining, and~~
19 ~~regulating the use of the County's rights-of-way;~~ and to establish objective standards for
20 the maintenance and regulation of rights-of-way in the County for all operators using
21 Broward County rights-of-way. In regulating rights-of-way, the County shall be governed
22 by and shall comply with all controlling federal, state, and local laws and regulations.

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underscored type are additions.

1 **Sec. 20-582. Name and scope.**

2 This article ~~shall be~~ is known as the Broward County ~~Telecommunications~~
3 ~~Communications Services Providers~~ Ordinance. It ~~shall~~ will be applicable to all
4 ~~telecommunications companies operators~~ that occupy Broward Countys rights-of-way on
5 or after the effective date of this article.

6 **Sec. 20-583. Definitions.**

7 For the purposes of this article, the following terms, phrases, words, and
8 abbreviations shall have the meanings given herein, unless otherwise expressly stated.
9 When not inconsistent with the context, words used in the present tense include the future
10 tense; words in the plural number include the singular number; words in the singular
11 number include the plural number; and words defined in upper and lower case shall have
12 the same meaning as words in all lower case. The words "and" and "or" may be read
13 conjunctively or disjunctively. The words "shall" and "will" are mandatory, and "may" is
14 permissive. Unless otherwise expressly stated, words not defined in this article shall be
15 given the meaning set forth in Chapter ~~203~~ 337, Florida Statutes, and, if not defined
16 therein, their common and ordinary meaning. References to governmental entities
17 (whether persons or entities) refer to those entities or their successors in authority. If
18 specific provisions of law referred to herein are renumbered, then the reference shall be
19 read to refer to the renumbered provision. References to laws, ordinances, or regulations
20 shall be interpreted broadly to cover government actions, however nominated, and
21 include laws, ordinances, and regulations now in force or hereinafter enacted or
22 amended.

23 Abandonment means the cessation of all uses of a telecommunications facility for
24 a period of at least one hundred eighty (180) consecutive days. This term does not include

1 cessation of all uses of a telecommunications facility within a physical structure where the
2 physical structure continues to be used for some purpose or use accessory to the
3 telecommunications facility.

4 (a) *Affiliate* means a person that (directly or indirectly) owns or controls, is owned or
5 controlled by, or is under common ownership or control with, another person.

6 *Applicable laws or applicable codes* means uniform building, fire, or electrical
7 codes, including the Florida Building Code, National Electric Safety Code, Florida
8 Administrative Code, Florida Department of Transportation ("FDOT") Manual of Uniform
9 Minimum Standards for Design, Construction and Maintenance for Streets and Highways,
10 FDOT Standard Specifications for Road and Bridge Construction, FDOT Roadway
11 Design Standards, FDOT Structures Manual, AASHTO Standard Specifications for
12 Structural Supports for Highway Signs, Luminaries and Traffic Signals, the County's
13 Minimum Standards, and all applicable FCC, and state, and local laws, and regulations,
14 and ordinances.

15 *Applicant* means an ~~person~~ operator who submits an application ~~and is a wireless~~
16 services provider.

17 *Application* means a request submitted by an applicant to an authority for a permit
18 to collocate small wireless facilities or to place a new utility pole used to support a small
19 wireless facility.

20 (b) *Board* means the Board of County Commissioners ~~for~~ of Broward County, Florida,
21 ~~the governing body for Broward County government.~~

22 *Collocate or collocation* means to install, mount, maintain, modify, operate, or
23 replace one or more wireless facilities on, under, within, or adjacent to a wireless support

1 structure or utility pole. The term does not include the installation of a new utility pole or
2 wireless support structure in County rights-of-way.

3 Communications facility is a facility that may be used to provide communications
4 services. Multiple cables, conduits, strands, or fibers located within the same conduit shall
5 be considered one communications facility.

6 Communications services means the transmission, conveyance, or routing of
7 voice, data, audio, video, or any other information or signals to a point, or between or
8 among points, by or through any electronic, radio, satellite, cable, optical, microwave, or
9 other medium or method now in existence or hereafter devised, including wireless
10 services, regardless of the protocol used for such transmission or conveyance, and shall
11 also include cable service and video service as defined in Sections 610.103(1) and (11),
12 Florida Statutes.

13 ~~(c) Construction, operation, or repair and similar formulations of those terms mean the~~
14 ~~named actions interpreted broadly, encompassing, among other things, installation,~~
15 ~~extension, maintenance, replacement of components, relocation, under grounding,~~
16 ~~grading, site preparation, adjusting, testing, make ready, and excavation.~~

17 ~~(d) Effective date of Registration means the date specified on the written~~
18 ~~acknowledgment of the Registration.~~

19 Existing structure means a structure within the County right-of-way that exists at
20 the time of filing an application with the County, for placement of a telecommunications
21 facility on that preexisting structure.

22 ~~(e) FCC means the Federal Communications Commission or its designee.~~
23
24

1 Micro wireless facility (MWF) means a small wireless facility having dimensions no
2 larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12)
3 inches in height and an exterior antenna, if any, no longer than eleven (11) inches.

4 (f) Minimum Standards means those standards set forth in Chapter 25, ~~Part I,~~
5 Exhibit 25.A, of the Broward County Administrative Code entitled "Minimum Standards
6 Applicable to Public Rights-of-Way Under Broward County Jurisdiction," as may be
7 amended from time to time by resolution of the Board.

8 (g) ~~Occupancy fee means an annual per linear foot charge established by resolution~~
9 ~~of the Board against (1) the operator of telecommunications facilities; and (2) the owner~~
10 ~~of a private communications system that use the County's rights-of-way but does not~~
11 ~~provide services to unincorporated areas of the County.~~

12 (h) ~~Operator, when used with reference to a telecommunications facility, means a~~
13 ~~person (1) who owns a telecommunications facility; or (2) who otherwise controls or is~~
14 ~~responsible for, through any arrangement, the placement, management, and operation of~~
15 ~~such a facility including communications services providers, wireless infrastructure~~
16 ~~providers, and pass-through providers. A Registrant shall may also be referred to herein~~
17 ~~as an operator.~~

18 ~~Pass-through provider means any person or entity who places or maintains a~~
19 ~~communications facility in the public right-of-way and does not remit communications~~
20 ~~service taxes imposed by the County under Chapter 202, Florida Statutes, as amended~~
21 ~~has the meaning set forth in Section 337.401(6)(a)(1), Florida Statutes.~~

22 Permit means the County right-of-way permit that must be obtained before a
23 person or entity may perform construction in the County right-of-way and includes, but is
24

1 not limited to, engineering and construction permits issued by the County's Highway
2 Construction & Engineering Division.

3 (i) *Person* means any individual, corporation, partnership, business association, or
4 other business entity, firm, joint stock company venture, partnership, trust, or any other
5 legal entity, but not the County.

6 (j) ~~*Private communications system* means a facility placed, in whole or in part, in the~~
7 ~~rights-of-way for the provision of telecommunications for a private business or personal~~
8 ~~use but not encompassing in any respect the provision of telecommunication services.~~

9 (k) ~~*Private communications system owner* means a person who owns or leases a~~
10 ~~private communications facility.~~

11 (l) *Register* means compliance with Division 2 and other provisions of this article.

12 *Registrant* means a person who has filed for registration with and who has received
13 a written acknowledgment from the County.

14 (m) ~~*Registration* means an informational documents that must be completed submitted~~
15 ~~and filed with the County before use of the its rights-of-way by an operator of a~~
16 ~~telecommunications facility or an owner of a private communications system for the~~
17 ~~purpose of constructing, operating, or repairing its telecommunications facility or private~~
18 ~~communications system. The operator of a telecommunications facility or an owner of a~~
19 ~~private communications system An operator shall renew its Rregistration annually on~~
20 ~~every five (5) years after the anniversary date of its initial Rregistration. Registration forms~~
21 ~~may be obtained from Broward County's Office of Information Technology. Written~~
22 ~~acknowledgment of Registration shall be provided to an operator by the County's Office~~
23 ~~of Information Technology when required by Section 20-597 of this article.~~

1 ~~Notwithstanding the above, within ninety (90) days after any change of its registration~~
2 ~~information, a registrant must update the registration information provided.~~

3 ~~(n) *Registrant* means a person who has filed a Registration with and who has received~~
4 ~~a written acknowledgment from the County.~~

5 ~~(e) *Right-of-way or Rights-of-way* has the meaning given to "Public rights-of-way"~~
6 ~~"Public Right-of-Way/Easements" in the Minimum Standards. The terms right-of-way or~~
7 ~~rights-of-way shall also include all of the airport rights-of-way located at any~~
8 ~~County - owned airports that are operated, maintained, and controlled by the Aviation~~
9 ~~Department, which airport rights-of-way are used or to be used for ingress or egress,~~
10 ~~including, but not limited to, any and all roadways, alleys, thoroughfares, walkways,~~
11 ~~bikeways, or paths. No reference herein to rights-of-way, or in any Registration shall will~~
12 ~~be deemed to be a representation or guarantee by the County that its interest or other~~
13 ~~right to control the use of such property is sufficient to permit its use for such purposes,~~
14 ~~and a Registration shall will be applicable to only those rights-of-way as are properly in~~
15 ~~the County.~~

16 *Small wireless facility (SWF)* means a wireless facility that meets the following
17 qualifications:

- 18 (1) Each antenna associated with the facility is located inside an enclosure of
19 no more than six (6) cubic feet in volume or, in the case of antennas that
20 have exposed elements, each antenna and all of its exposed elements
21 could fit within an enclosure of no more than six (6) cubic feet in volume;
22 and
23 (2) All other wireless equipment associated with the facility is cumulatively no
24 more than twenty-eight (28) cubic feet in volume. The following types of

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1 associated ancillary equipment are not included in the calculation of
2 equipment volume: electric meters, concealment elements,
3 telecommunications demarcation boxes, ground-based enclosures,
4 grounding equipment, power transfer switches, cutoff switches, vertical
5 cable runs for the connection of power and other services, and utility poles
6 or other support structures.

7 ~~(p) *Transfer* means any transaction in which: (1) all or a portion of the~~
8 ~~telecommunications facility is sold or assigned (except a sale or assignment that results~~
9 ~~in removal of a particular portion of the facility from the rights-of-way); (2) there is any~~
10 ~~change, acquisition, direct or indirect transfer of control of the Registrant; or (3) the rights~~
11 ~~and/or obligations held by the Registrant under the Registration are transferred, sold,~~
12 ~~assigned, or leased, in whole or in part, directly or indirectly, to another party. In~~
13 ~~succeeding provisions of this article, all these activities are referred to as Registration~~
14 ~~transfers.~~

15 ~~(q) *Telecommunications facility* means a facility that is used to provide one (1) or more~~
16 ~~telecommunications services, any portion of which occupies rights-of-way. The term~~
17 ~~telecommunications facility includes cable, fiber optic, conduit, pathway or other~~
18 ~~supporting structures, and associated facilities used to transmit telecommunications~~
19 ~~signals real estate, easements, apparatus, property, and routes used and operated to~~
20 ~~provide two-way telecommunications services to the public for hire.~~

21 ~~(r) *Telecommunications services* has the meaning given in Section 203.012(5),~~
22 ~~Florida Statutes means the offering of telecommunications for a fee directly to the public,~~
23 ~~or to such classes of users as to be effectively available directly to the public, regardless~~
24 ~~of the facilities used.~~

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1 ~~Transfer means any transaction in which: (1) all or a portion of the~~
2 ~~telecommunications facility is sold or assigned (except a sale or assignment that results~~
3 ~~in removal of a particular portion of the facility from the rights-of-way); (2) there is any~~
4 ~~change, acquisition, direct or indirect transfer of control of the registrant; or (3) the rights~~
5 ~~or obligations held by the registrant under the registration are transferred, sold, assigned,~~
6 ~~or leased, in whole or in part, directly or indirectly, to another party. In succeeding~~
7 ~~provisions of this article, all these activities are referred to as registration transfers.~~

8 ~~(s) User means any person lawfully receiving for any purpose any service provided by~~
9 ~~the telecommunications operator.~~

10 ~~Utility pole means a pole or similar structure that is used in whole or in part to~~
11 ~~provide telecommunications services or for electric distribution, lighting, traffic control,~~
12 ~~signage, or a similar function. The term includes the vertical support structure for traffic~~
13 ~~signal lights but does not include a horizontal structure to which traffic signal lights or~~
14 ~~other traffic control devices are attached and does not include a pole or similar structure~~
15 ~~fifteen (15) feet in height or less unless a regulatory authority grants a waiver for such~~
16 ~~pole.~~

17 ~~Wireless facility means equipment at a fixed location that enables wireless~~
18 ~~communications between user equipment and a telecommunications network, including~~
19 ~~radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular~~
20 ~~and backup power supplies, and comparable equipment, regardless of technological~~
21 ~~configuration, and equipment associated with wireless communications. The term~~
22 ~~includes small wireless facilities. The term does not include:~~

- 23 ~~(1) The structure or improvements, on, under, within, or adjacent to the~~
24 ~~structure on which the equipment is collocated;~~

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1 (2) Wireline backhaul facilities; or

2 (3) Coaxial or fiber-optic cable that is between wireless structures or utility
3 poles or that is otherwise not immediately adjacent to or directly associated
4 with a particular antenna.

5 Wireless infrastructure provider means a person who has been certificated under
6 Chapter 364, Florida Statutes, to provide communications service or under Chapter 610,
7 Florida Statutes, to provide cable or video services in the state, and such person's affiliate,
8 and who builds or installs wireless communications transmission equipment, wireless
9 facilities, or wireless support structures but is not a wireless services provider.

10 Wireless services means any services provided using licensed or unlicensed
11 spectrum, whether at a fixed location or mobile, using wireless facilities.

12 Wireless services provider means a person who provides wireless services.

13 Wireless support structure means a freestanding structure, such as a monopole, a
14 guyed or self-supporting tower, or another existing or proposed structure designed to
15 support or capable of supporting wireless facilities. The term does not include a utility
16 pole, pedestal, or other support structure for ground-based equipment not mounted on a
17 utility pole and less than five (5) feet in height.

18 **Sec. 20-584. Purpose and characteristics.**

19 (a) In order to ensure ~~as far as possible and appropriate~~ that persons providing
20 similar services are treated similarly, considering differences in circumstances, and to
21 comply with requirements of state and federal law, all operators ~~of a telecommunications~~
22 ~~facility or owners of a private communications system shall~~ must Rregister before using
23 County rights-of-way. The revocation of a Rregistration for one particular type of service
24 in and of itself will not affect the authority of an operator to continue to provide other types

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1 of services for which it holds a franchise or license. No ~~R~~egistration acknowledged by
2 the County ~~shall~~ will be exclusive.

3 (b) A ~~R~~egistration ~~shall~~ does not convey title, equitable or legal, in the
4 rights-of-way, nor does it establish priority for the placement or maintenance of a
5 communications facility in County roads or rights-of-way. The right acknowledged by the
6 County is only the right to occupy rights-of-way for the purposes of constructing,
7 operating, maintaining, upgrading, and/or repairing the operator's telecommunications
8 facility ~~or the owner's private communications system~~ for the period stated in the
9 ~~R~~egistration, ~~which may not be alienated, assigned, or transferred without the prior~~
10 ~~written consent of the County's Office of Information Technology~~ Highway Construction &
11 Engineering Division.

12 (c) The fact that a particular telecommunications facility may be used for
13 multiple purposes ~~does will~~ not obviate the need to obtain a license or franchise for other
14 purposes if required by state or federal law. By way of illustration and not limitation, a
15 cable operator of a cable system must obtain a cable franchise or license, and, if the
16 operator elects to provide telecommunication services over the same facilities, the
17 operator must first Register in accordance with this article. Notwithstanding, an operator
18 is not required to apply for or enter into an individual license, franchise, or other
19 agreement with County as a condition of placing or maintaining communications facilities
20 in its roads or rights-of-way.

21 **Sec. 20-585. Registration required.**

22 (a) An operator of a telecommunications facility covered by this ~~S~~ection shall
23 ~~R~~egister (in accordance with this article) prior to constructing a telecommunications
24 facility within the a County ~~rights-of-way~~ right-of-way. An operator of a

1 telecommunications facility within the County rights-of-way on the date of enactment of
2 this article ~~shall be~~ is required to ~~R~~register on the effective date of this article except as
3 provided in Section 20-596. All ~~R~~registration ~~form shall~~ documents must be submitted to
4 the County in accordance with the provisions of Division 2 of this article.

5 (b) ~~Every private communications system owner must Register as provided for~~
6 ~~in Division 2 of this article.~~

7 (c) ~~(b)~~ No ~~R~~registration shall will be transferred or assigned in whole or in part by
8 ~~a R~~registrant without prior written approval of the County's Office of Information
9 Technology ~~Highway Construction & Engineering Division~~, which approval shall must not
10 ~~be unreasonably withheld. Any transfer of a R~~registration shall will be subject to the
11 ~~requirements of Division 2 of this article.~~

12 **Sec. 20-586. Reseller.**

13 A reseller is a ~~person~~ ~~pass-through provider~~ who has entered into an agreement
14 with a ~~R~~registrant to utilize the ~~R~~registrant's tele~~communications~~ facility to provide
15 tele~~communications~~ services. A reseller is not required to ~~R~~register, so long as it does
16 not own underlying facilities in the rights-of-way and is not involved in construction or
17 repair of the underlying facilities in the rights-of-way. A ~~R~~registrant ~~shall be~~ is required to
18 provide the ~~Chief Information Officer~~ Director of the County's ~~Office of Information~~
19 ~~Technology~~ Highway Construction & Engineering Division with thirty (30) days' written
20 notice, sent by certified mail, following its decision to ~~permit~~ allow another person
21 providing tele~~communications~~ services to utilize its tele~~communications~~ facility within the
22 rights-of-way. If a ~~R~~registrant is allowing the use of airport rights-of-way by a reseller, the
23 ~~R~~registrant shall also provide thirty (30) days' written notice, sent by certified mail, to the
24 Director of the Aviation Department in accordance with the requirements set forth in this

1 section. Notwithstanding a Registrant's right to permit a reseller to use its
2 telecommunications facility, the Registrant shall will remain responsible for all terms and
3 conditions contained in this article.

4 **Sec. 20-587. Term of registration.**

5 A Registration shall will be effective on the date of the written acknowledgment by
6 the County's ~~Office of Information Technology~~ Highway Construction & Engineering
7 Division. A Registration issued under this article shall be for a term of ~~one (1)~~ five (5)
8 years. A registrant must update its registration information within ninety (90) days after a
9 change in such information. The County's ~~Office of Information Technology~~ Highway
10 Construction & Engineering Division or Aviation Department, as applicable, may
11 terminate, subject to the provisions of Section 337.403 and Sections 337.404, Florida
12 Statutes, the right to use a particular right-of-way ~~in the event that~~ if the right-of-way is
13 transferred, closed, abandoned, vacated, discontinued, or reconstructed.

14 **Sec. 20-588. Compensation required. Reserved.**

15 (a) ~~General.~~ ~~The County shall require persons using its rights-of-way to provide~~
16 ~~telecommunications facilities and private communications system owners to pay~~
17 ~~compensation in accordance with applicable state law and, as provided for in this article,~~
18 ~~to (1) ensure that the County, as far as possible, is compensated for the use of property~~
19 ~~over which it exercises control, or which is held in public trust; (2) ensure that the County~~
20 ~~is compensated for expenses arising from the use of that property, the regulation of the~~
21 ~~use and the cost to acquire, construct, and maintain the rights-of-way areas; and (3)~~
22 ~~ensure that similarly situated persons providing the same services are treated similarly,~~
23 ~~as far as is possible and appropriate considering differences in circumstances.~~

24 (b) Occupancy Fee.

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1 (1) Each Registrant that uses the County's rights-of-way but does not provide
2 services to unincorporated areas of the County shall pay to the County
3 annually for the use of the rights-of-way a fee based on the total per linear
4 foot of cable, fiber optic, or other pathway using the rights-of-way. The
5 occupancy fee shall be based upon usage of all of the rights-of-way, as
6 defined herein, whether located in unincorporated Broward County or within
7 incorporated municipal boundaries and calculated as provided for in
8 subsection (b)(4)e. below. The County shall establish from time to time by
9 resolution of the Board the annual occupancy fees to be paid by Registrants
10 for use of the rights-of-way calculated on a per linear foot basis. Occupancy
11 fees with respect to use of rights-of-way operated, maintained, and
12 controlled by the Aviation Department shall be paid to the Aviation
13 Department.

14 (2) If a Registrant provides services within unincorporated areas of the County,
15 fees based on those services shall be paid in accordance with state law.

16 (3) The County may, from time to time, and upon reasonable advance written
17 notice, inspect and audit, subject to applicable state law, any and all books
18 and records reasonably necessary to the determination of whether fees paid
19 according to state law and occupancy fees paid pursuant to this article have
20 been accurately computed and paid.

21 (4) General Rules for Payment of Occupancy Fees.

22 a. Each Registrant shall pay the occupancy fee described in
23 subsection (b)(1) above on a quarterly basis based on a calendar
24 year for the preceding quarter. The quarterly payments shall be

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1 submitted according to the following schedule: January-March
2 payments due April 25; April-June payments due July 25; July-
3 September payments due October 25; and October-December
4 payments due January 25 of each year. Initial and final payments
5 shall be prorated for any portion of the quarter at the beginning or
6 end of the term of the Registration. In the event an error by the
7 Registrant results in an overpayment of an occupancy fee, the
8 County may, at its sole option, credit the overpayment to the next
9 payment due or spread the credit over a period equal to the period
10 over which the error occurred.

11 b. Unless a Registration provides otherwise, each occupancy fee
12 payment shall be accompanied by a statement showing the manner
13 in which the fee was calculated on a monthly basis.

14 c. Accrual of the occupancy fee shall begin on the Effective Date of the
15 Registration.

16 d. Subject to Section 20-588(b) (1), the occupancy fee is calculated
17 based on the following:

18 1. The occupancy fee shall be calculated based on the rights-of-
19 way fee resolution, as approved by the Board, and on the
20 actual usage of the rights-of-way for the placement of
21 telecommunication facilities identified in the Registration as
22 verified by as-built maps and County inspection.

23 2. For the purposes of this article, linear feet on which the
24 occupancy fees are due shall be measured by the length of

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1 cable, conduit, or other pathway either owned or controlled by
2 any telecommunication facility. All measurements shall be
3 calculated to the nearest foot by rounding up, where
4 applicable.

5 3. The Registrant shall be charged for all cable or other pathway
6 in place at the time the quarterly occupancy fee is due to the
7 County. Where an existing Registration is amended to include
8 additional occupancy of the rights-of-way, the Registrant shall
9 be charged an additional occupancy fee based upon the
10 amended total per linear foot usage of the rights-of-way.

11 e. The Registrant shall submit with the occupancy fee a quarterly report
12 in a form provided by the County which provides detailed information
13 on all aerial and underground usage of the rights-of-way, including
14 any amended areas that have been approved by the County within
15 that quarter. The report shall list by category existing or any newly
16 amended aerial and underground installations on a per linear foot
17 basis in the rights-of-way areas of Broward County.

18 f. Each quarterly payment for the occupancy fee shall be accompanied
19 by a summary form provided by the County, with a cover letter on
20 company letterhead which contains a statement by an officer of the
21 Registrant certifying that the information and computation of the
22 payment amount shown on the summary form are true and accurate.

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- ~~g. All occupancy fees listed in this section shall apply at the same rate for all aerial and underground cable, fiber optic, or other pathway installed by the Registrant on the Effective Date of the Registration.~~
- ~~h. The County may accept compensation as in-kind services for the occupancy fee, in accordance with state law, from an operator of a telecommunications facility; provided, that the County shall not accept in-kind payments from any operator without providing other Registrants that submit or have submitted their Registration within twelve (12) months an opportunity to make an equivalent in-kind payment. Such in-kind services shall be negotiated in good faith between the Registrant and the County.~~
- ~~i. No acceptance of payment for the occupancy fee shall be construed as a release or as an accord and satisfaction of any claim the County may have for further sums payable under this article or for the performance of any other obligation hereunder.~~
- ~~j. Nothing in this section shall limit the Registrant's liability to pay other local taxes, fees, charges, or assessments to the County and other taxing and governmental authorities.~~
- ~~k. The occupancy fee is not a payment in lieu of any tax, fee, or other assessment except as specifically provided in this article, or as required by applicable law. By way of example, and not limitation, business license taxes are not waived and remain applicable.~~
- ~~l. All occupancy fees which are not paid when due and payable hereunder shall bear interest at the statutory interest rate applicable~~

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1 to judgments, until paid. Payment of interest is in addition to any
2 applicable penalties as may be provided by law or County ordinance.

3 m. ~~The compensation paid by each Registrant for occupancy fees shall~~
4 ~~be subject to public disclosure by the County.~~

5 n. ~~A Registrant may elect to pay its occupancy fee annually in advance,~~
6 ~~on the date that the first quarterly payment would otherwise be due,~~
7 ~~together with the quarterly reports then due. A Registrant which~~
8 ~~elects to pay annually shall not be required to file any other quarterly~~
9 ~~reports. Any credit, overpayment, or under-payment by any~~
10 ~~Registrant shall be applied to the occupancy fee due for the year~~
11 ~~following the prior annual payment.~~

12 **Sec. 20-589. Registration for persons providing different types of services**
13 **Objective design standards and technical requirements.**

14 ~~The fact that a fee is paid on one type of service provided over a~~
15 ~~telecommunications facility does not excuse an operator from its duty to pay fees on other~~
16 ~~types of services provided over that same facility as required by this article or other~~
17 ~~County ordinances. As an example, and not as a limitation of the foregoing, a cable~~
18 ~~operator that is granted a franchise or a license and who according to state law pays a~~
19 ~~fee must pay the fee as identified under Section 20-588 of this article to the extent that~~
20 ~~the operator maintains telecommunication facilities; likewise, the operator of a~~
21 ~~telecommunications facility must pay subject to applicable state law a fee under Broward~~
22 ~~County Code, Article XVII, Cable TV Regulations. Wireless services providers~~

23 (a) Operators must comply with the County's objective design standards as set
24 forth in this section unless waived by the County upon a showing that the design

standards are not reasonably compatible for the particular location of a small wireless facility or utility pole, are technically infeasible, or impose an excessive expense. Any waiver request must be granted or denied within forty-five (45) days after the date of the written request. The objective design standards require the following:

- (1) Any new utility pole that replaces an existing utility pole must be of substantially similar design, material, and color;
- (2) ~~Compliance with reasonable spacing requirements concerning the~~ location of all ground-mounted components of a small wireless facility ~~as detailed in the technical specifications to be provided by the County upon submission of a registrant's permit application~~ must not exceed 15 feet from the associated support structure;
- (3) ~~Compliance with reasonable location, context, color, camouflage, and concealment requirements, in accordance with the above-referenced technical specifications~~ An operator must design any proposed pole installation in any County right-of-way located in an incorporated area consistent with all design requirements outlined in the applicable municipal codes and the County reserves the right to reject new poles not in compliance with those codes, subject to the limitations of Section 337.401, Florida Statutes, as amended; and
- (4) Any new utility pole used to support a small wireless facility must meet reasonable location, context, color, and material of the predominant utility pole type at the proposed location of the new utility pole.

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1 **(b)** An operator must comply with all provisions of this section and any
2 applicable codes regarding the placement or maintenance of a wireless facility in any
3 County right-of-way.

4 **(1)** The County reserves the right to permit the placement and maintenance of
5 other facilities in the same right-of-way occupied by an operator.

6 **(2)** A permit application to place or maintain a wireless facility provide such
7 additional information as the County finds reasonably necessary to
8 demonstrate compliance with applicable codes.

9 **(3)** If a wireless facility must be placed or maintained in a right-of-way with
10 residential use on any side, no part of any wireless facility may be placed
11 directly in front of a residential structure, and the wireless facility should
12 preferably be located adjacent to common lot lines. If a right-of-way has a
13 residential structure on only one side, the wireless facility shall be placed or
14 maintained on the opposite side of the right-of-way, whenever reasonably
15 feasible. This subsection does not apply to small wireless facilities.

16 **(4)** Any proposed pole shall, to the extent reasonably feasible, be placed and
17 maintained so as to align with existing poles in the right-of-way and have
18 equal setback distances with existing poles from the right-of-way line, and
19 shall conform to the requirements in the Minimum Standards.

20 **(5)** The height of a small wireless facility shall be limited to ten (10) feet above
21 the pole upon which the small wireless facility is to be collocated. The height
22 for a new pole shall be limited to the tallest existing pole as of January 1,
23 2021, located in the same right of way, other than a pole for which a waiver
24 has previously been granted, measured from grade in place within five

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1 hundred (500) feet of the proposed location of the small wireless facility. If
2 there is no pole within five hundred (500) feet, the height of the pole shall
3 be limited to fifty (50) feet.

4 **Sec. 20-590. General conditions upon use of rights-of-way.**

5 (a) *Responsibility for Costs.* An operator, or its contractors or subcontractors,
6 who is required to performs under this Ssection shall do so at its own cost. If an operator
7 fails to perform work that it is required to perform within the time provided for
8 performance, the County may perform the work, and bill the operator therefor. The
9 operator shall pay the amounts billed within thirty (30) days. Prior to performing work
10 pursuant to this Section, the County shall give the operator notice and a reasonable
11 opportunity to cure; provided, however, that no notice shall be required in the event that
12 the failure presents an immediate threat to public health, safety, or welfare as determined
13 by the County in its sole discretion.

14 (b) *Right to use ~~R~~ights-of-~~w~~Way not ~~w~~arranted.* It is understood that there
15 may from time to time be within the County various rights-of-way ~~which~~ that the County
16 does not have the unqualified right to authorize the operator to use; therefore,
17 ~~R~~egistration under this article does not warrant or represent that the County has the
18 right, as to any particular right-of-way, or portion of a right-of-way, to authorize the
19 operator to install or maintain portions of its facility therein, and in each case the burden
20 and responsibility for making such determination in advance of the installation ~~shall~~ will
21 be upon the operator.

22 (c) *Responsibilities of Operator.*

23 (1) In installing, maintaining, operating, or removing its telecommunications
24 facility in, upon, or from any County right-of-way, the operator shall ensure:

1 a. That the safety, functioning, and appearance of the rights-of-way and
2 the convenience and safety of users of the rights-of-way and other
3 persons are not ~~be~~ adversely affected by the installation,
4 construction, or removal of the telecommunications facility in
5 accordance with the applicable codes.

6 b. That the costs of the installation, construction, operation, or removal
7 of the telecommunications facility ~~shall be~~ are borne by the operator
8 or user, or a combination of such parties.

9 c. That the damages caused by the installation, construction, operation,
10 or removal of such telecommunications facility by the operator ~~shall~~
11 be are the responsibility of the operator.

12 ~~(2) Nothing herein shall be construed to prohibit or prevent any property owner~~
13 ~~from constructing, installing, or continuing to maintain and operate a private~~
14 ~~communications facility subject to the provisions of Division 3 of this article;~~
15 ~~provided, however, that the construction, installation, maintenance, and~~
16 ~~operation of such private communications facility shall not prevent an~~
17 ~~operator of a telecommunications facility from constructing, installing,~~
18 ~~maintaining, and operating its facility.~~

19 ~~(3) (2)~~ This ~~S~~section is not intended to, and nothing herein ~~shall~~ will be construed
20 to, preclude appropriate payments, arrangements, or agreements for the
21 use by operators of other utilities' facilities and equipment, including pole
22 attachment and conduit agreements.

23 (d) ~~Other a~~Agreements, ~~p~~Permit, and ~~e~~Easement rRequirements. The County
24 ~~shall~~ will not be required to assume any responsibility for securing any rights-of-way,

1 easements, or other rights ~~which~~ that may be required of the R~~eg~~istrant for the
2 installation of a tele~~communications~~ facility, nor ~~shall~~ will the County be responsible for
3 securing any permits or agreements with other persons or utilities.

4 (e) ~~No p~~Property ~~r~~Rights ~~e~~Conveyed. Nothing in this article or in the
5 R~~eg~~istration ~~shall~~ grants to the holder any property rights in County-owned property or
6 rights-of-way, nor ~~shall~~ will the County be compelled to maintain any of its property or
7 rights-of-way any longer than, or in any other ~~fashion~~ manner than, the County, in its
8 judgment, may require for its own needs. In addition, the R~~eg~~istrant ~~shall~~ will not be
9 entitled to any compensation for damages from the County as a result of having to
10 remove or relocate its property, lines, ~~and~~ or cables from such public property or rights-
11 of-way ~~in the event~~ if the County determines that a necessity exists for such removal or
12 relocation.

13 (f) *Construction Permits Required.* The R~~eg~~istrant shall apply for and obtain
14 permits for construction work involving excavation, closure of a sidewalk, or closure of a
15 vehicular lane or parking space as required by the County prior to the commencement
16 of construction. Permits are not required for the following:

17 (1) Routine maintenance, the performance of service restoration work on
18 existing facilities, or repair work, including, but not limited to, emergency
19 repairs of existing facilities or extensions of such facilities for providing
20 telecommunications services to customers;

21 (2) Replacement of existing wireless facilities with wireless facilities that are
22 substantially similar or of the same or smaller size; or

23 (3) Installation, placement, maintenance, or replacement of micro wireless
24 facilities that are suspended on cables strung between existing utility poles

1 in compliance with applicable codes by or for a telecommunications
2 services provider authorized to occupy the rights-of-way and who is
3 remitting taxes under Chapter 202. An initial letter from or on behalf of such
4 provider, which is effective upon filing, attesting that the micro wireless
5 facility's dimensions are compliant with the limitations set forth in
6 Section 337.401, Florida Statutes, must be submitted to the County's
7 Highway Construction & Engineering Division.

8 (4) The maintenance, repair, replacement, extension, or upgrade of existing
9 aerial wireline communications facilities on utility poles, or aerial wireline
10 facilities between existing wireline communications facility attachments on
11 utility poles by a communications services provider.

12 (5) Notwithstanding this paragraph, the County may require a right-of-way
13 permit for work that involves excavation, closure of a sidewalk, or closure
14 of a vehicular lane or parking lane, unless the provider is performing service
15 restoration on an existing facility and the work is done in compliance with
16 the 2017 edition of the Florida Department of Transportation Utility
17 Accommodation Manual. An operator must provide notice of such work
18 within thirty (30) days after restoration and obtain an after-the-fact permit
19 for work that would otherwise have required a permit.

20 (g) *Prior Approval by the County.* Notwithstanding any provision to the contrary
21 in this article, the Registrant must comply at all times with all policies, procedures, and
22 directives of the County's ~~Public Works Department~~ Highway Construction &
23 Engineering Division and, in the case of airport rights-of-way, any policies, procedures,
24 and directives of the Aviation Department. Except for individual service drops outside the

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1 rights-of-way, and the maintenance, repair, replacement, extension, or upgrade of
2 existing aerial wireline communications facilities on utility poles, or aerial wireline
3 facilities between existing wireline communications facility attachments on utility poles
4 by a telecommunications services provider, a Registrant shall must not erect any pole,
5 run any cable, conduit, fiber optic, or other pathway, nor shall any construction, as
6 described in Section 20-590(f), on rights-of-way related to the delivery of
7 telecommunications services, be commenced without the prior ~~written approval of~~
8 issuance of a permit by the County's Public Works Department, Highway Construction &
9 Engineering Division or the Aviation Department if the construction is on airport rights-
10 of-way. Prior to the issuance of such ~~approval and permit,~~ the Registrant ~~shall~~ must
11 submit to the County's ~~Public Works Department, Highway Construction & Engineering~~
12 Division, or, in the case of airport rights-of-way, to the Aviation Department, the following:

- 13 (1) If required by the County, hard copies of construction plans in a digital
14 format acceptable to the County, if prepared, utilizing Computer Aided
15 Drafting/Geographic Information Systems ("CAD/GIS") or another
16 automated system capable of exporting a file compatible with CAD/GIS, of
17 the proposed telecommunications facility illustrating plant routing and utility
18 poles to be utilized; and
- 19 (2) As a prerequisite to the issuance of a rights-of-way permit by the County, a
20 ~~performance and maintenance construction bond as required by~~
21 ~~Administrative Code, including the Minimum Standards, shall~~ must be
22 provided for any and all work performed in the rights-of-way to ensure
23 proper restoration and maintenance of the rights-of-way and to provide a
24 one (1) year warranty maintenance period.

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1 (h) *County's Right to Inspect.* The County ~~shall have~~ has and maintains the
2 right to inspect the installation and construction operations, as well as the maintenance
3 operations of the R~~egistrant's tele~~communications facility to ensure the proper
4 performance of the terms of this article and compliance with the Minimum Standards. The
5 County will request the operator's presence at an inspection when feasible, but may be
6 required to conduct independent inspections during emergency situations.

7 (i) ~~*Joint or Common Use of Poles.*~~ The R~~egistrant shall be encouraged to enter~~
8 ~~into agreements for the joint or common use of poles or other wire holding structures~~
9 ~~where poles or other wire holding structures already exist for use in serving the County~~
10 ~~or serving the public convenience.~~ *No Vested Interest.* No location of any pole or wire
11 holding structure of the R~~egistrant shall~~ will be a vested interest, and such pole or
12 structure ~~shall~~ must be removed or modified by the R~~egistrant at its own expense, to the~~
13 extent required by state or local law.

14 (j) Notwithstanding any other provision of this article, pledges in trust or
15 mortgages of the assets of a R~~egistrant's tele~~communications facility to secure the
16 construction, operation, or repair of the facility may be made without application and
17 without the County's prior consent; except, no such arrangement may be made if it would
18 in any respect or under any condition prevent the ~~tele~~communications facility operator or
19 any successor from complying with the R~~egistration and applicable law.~~ No arrangement
20 may permit a third party to succeed to the interest of the operator, or to own or control the
21 ~~tele~~communications facility, without R~~egistration pursuant to~~ under this A~~rticle.~~ Any
22 mortgage, pledge, or lease ~~shall~~ will be subject and subordinate to the rights of the County
23 under this article or other applicable law.

24 (k) *Location or Relocation of Facilities.*

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1 (1) A Registrant's telecommunications facility may be installed above ground
2 in areas where existing power or other facilities are above ground, and shall
3 must be installed underground in areas where existing power and other
4 facilities are required to be installed underground in accordance with
5 Section 337.401(7)(i). ~~If both power and other facilities are installed above~~
6 ~~ground, a Registrant shall install its facilities underground at the request of~~
7 ~~a resident or property owner when the resident or property owner agrees to~~
8 ~~pay the additional cost of such installation.~~

9 (2) A Registrant shall must not place any fixtures or equipment where the
10 same will materially interfere with any existing gas, electric, ~~CATV~~ Cable
11 TV, telephone, sewer, drainage or water lines, fixtures or equipment, or
12 other users having rights to place a facility within County rights-of-way. The
13 Registrant shall must locate its lines and equipment in such a manner so
14 as not to unreasonably interfere ~~unnecessarily~~ with the usual travel on
15 rights-of-way; with the installation or operation of gas, electric, ~~CATV~~ Cable
16 TV, telephone, water, drainage, or sewer lines equipment; or with the rights
17 or reasonable convenience of owners of ~~property which~~ properties that abut
18 any rights-of-way in accordance with applicable codes.

19 (3) A Registrant shall will have the authority to trim trees upon or overhanging
20 streets, alleys, sidewalks, and rights-of-way so as to prevent the branches
21 of such trees from coming in contact with the wires and cables of the
22 Registrant in a manner approved by and acceptable to the County. If the
23 County notifies the Registrant of the need for tree trimming and the
24 Registrant fails to take the appropriate action within a time prescribed by

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1 the County, the County may, at its option, cause such trimming to be done
2 by the County or by a third party under the County's supervision and
3 direction at the expense of the R~~eg~~istrant.

4 (4) A R~~eg~~istrant shall promptly, at its own expense, protect, temporarily
5 disconnect, remove, modify, or relocate any part of its facility when required
6 by the County by reason of its unreasonably interfering in any way with the
7 convenient, safe, or continuous use, or the maintenance, improvement,
8 extension, or expansion of rights-of-way or for any other reason to the
9 extent allowed or required by applicable law, upon thirty (30) days' written
10 notice.

11 (5) A R~~eg~~istrant shall, at the request of any person holding a ~~building moving~~
12 permit to relocate a building issued by the County, temporarily raise or lower
13 its wires to permit the moving of the building~~(s)~~. The expense of such
14 temporary raising or lowering of wires shall be paid by the person requesting
15 same, and the R~~eg~~istrant shall have the authority to require such payment
16 in advance. A R~~eg~~istrant shall be given not less than forty-eight (48) hours'
17 advance notice to arrange for such temporary wire changes.

18 (6) With regard to underground construction, all cables ~~shall~~ must be buried at
19 a sufficient depth so that no portion of the service drop is exposed or visible
20 and in accordance with the Minimum Standards.

21 (l) *Work in the Rights-of-Way.* All materials, installations, and construction in
22 any County rights-of-way ~~under the County's jurisdiction shall~~ must be in accordance
23 with the Minimum Standards.

24
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1 (1) ~~A~~ Except as provided in Section 20-590(f), a Rregistrant ~~shall~~ must obtain
2 any required rights-of-way permits before causing any damage or
3 disturbance to rights-of-way as a result of its construction or operations and
4 shall restore the property to its former condition or in a ~~manner~~ condition
5 approved by the County. If such restoration is not performed or is not
6 satisfactorily performed, the County, after ten (10) days' prior notice to the
7 Rregistrant, may cause the repairs to be made at the expense of the
8 Rregistrant if and to the extent permitted by state or federal law. Prior to
9 performing work ~~pursuant to~~ under this ~~S~~Section, the County shall give the
10 operator notice and a reasonable opportunity to cure; provided, however,
11 that no notice shall be required ~~in the event that~~ if the failure presents an
12 immediate threat to public health, safety, or welfare as determined by the
13 County in its sole discretion. All additional or reoccurring repairs required as
14 a result of the unsatisfactory work may also be made by the County at the
15 expense of the Rregistrant.

16 (2) A Rregistrant installing and operating a ~~tele~~communications facility in
17 ~~Broward~~ County rights-of-way, ~~except in the event of~~ for an emergency,
18 shall provide at least seven (7) days' (or such shorter period as the County
19 may accept) prior notice to the residents of the affected area, as determined
20 by the County, when construction crews will be performing construction or
21 maintenance that will block a travel lane used by residents of the affected
22 rights-of-way for more than two (2) hours in accordance with the applicable
23 permit requirements. Such notification shall ~~must~~ be by mail or through the
24 placement of notices on the front doorknobs of the residences notice boards

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1 in the affected area, with such notices providing the name and telephone
2 number of the Registrant.

3 (3) All vehicles utilized by a Registrant or its contractors or subcontractors in
4 the construction of a telecommunications facility ~~shall~~ must be clearly
5 marked providing the name of the Registrant, contractor, or subcontractor
6 and, if applicable, the Broward County occupational license number as
7 required by the Broward County Code of Ordinances. All personnel
8 employed by a Registrant or its contractors or subcontractors in the
9 construction of a telecommunications facility ~~shall~~ must possess
10 identification providing the ~~employee's name~~ employees' names and the
11 name and telephone number of the Registrant or its contractors or
12 subcontractors.

13 (4) The Registrant ~~must utilize any authorized underground locate service~~
14 notify Sunshine State One-Call of Florida prior to any excavation or
15 demolition activities conducted in construction of the telecommunications
16 facility. Only state licensed and/or Broward County certified contractors may
17 be utilized for this construction.

18 (5) All underground crossings of paved roadways ~~shall~~ must be made by the
19 directional bore method unless the Broward County Highway
20 & Construction & Engineering Division approves an alternate method prior
21 to the construction.

22 (m) Make-Ready Work for County Poles. The County may not require more
23 make-ready work than is required to meet applicable codes or industry standards. Fees
24 for make-ready work may not include costs related to preexisting damage or prior

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1 noncompliance. Fees for make-ready work, including any utility pole replacement, may
2 not exceed actual costs or the amount charged to telecommunications services providers
3 other than wireless services providers for similar work and may not include any consultant
4 fee or expense.

5 (1) For County utility poles that support an aerial facility used to provide
6 wireless communications services or electric service, the parties must
7 comply with the process for make-ready work codified in 47 U.S.C.
8 Section 224 and other applicable regulations. The good-faith estimate of
9 the person owning or controlling the utility pole for any make-ready work
10 necessary to enable the utility pole to support the requested collocation
11 must include utility pole replacement if necessary.

12 (2) For County utility poles that do not support an aerial facility used to provide
13 telecommunications services or electric service, the County will provide a
14 good-faith estimate for any make-ready work necessary to enable the utility
15 pole to support the requested collocations, including necessary pole
16 replacement, within sixty (60) days after receipt of a complete application.
17 Make-ready work, including any pole replacement, must be completed
18 within sixty (60) days after written acceptance of the good-faith estimate by
19 the applicant. Alternatively, the County may require the applicant seeking
20 to collocate a small wireless facility to provide a make-ready estimate at
21 the applicant's expense for the work necessary to support the small
22 wireless facility, including pole replacement, and perform the make-ready
23 work. If pole replacement is required, the scope of the make-ready
24 estimate is limited to the design, fabrication, and installation of a utility pole

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1 that is substantially similar in color and composition. The County will not
2 condition or restrict the manner in which the applicant obtains, develops,
3 or provides the estimate, and the County will not conduct the make-ready
4 work subject to usual construction restoration standards for work in the
5 right-of-way. The replaced or altered utility pole will remain the property of
6 the County.

7 ~~(m)~~ (n) *Safety of the Public.*

8 (1) A Registrant's work performance, equipment, and job sites ~~shall~~ must be
9 in compliance at all times with all applicable county, state, and federal
10 requirements and ~~shall~~ must conform to the applicable provisions of the
11 Minimum Standards. All work while in progress shall be properly protected
12 at all times with suitable barricades, flags, lights, flares, or other devices as
13 are required by the United States Department of Transportation's Manual ~~of~~
14 on Uniform Traffic Control Devices (MUTCD), latest edition, the Florida
15 Department of Transportation Utility Accommodation Manual (latest
16 edition), Florida Department of Transportation Design Standards (latest
17 edition), or any requirements of the County's ~~Public Works Department~~
18 Highway Construction & Engineering Division to protect all members of the
19 public while such work is being performed.

20 (2) A Registrant ~~shall~~ must at all times ~~employ~~ exercise due care and ~~shall~~
21 must install, maintain, and use commonly accepted methods and devices
22 for preventing failures and accidents ~~which~~ that are likely to cause damage,
23 injuries, or nuisances to the public. All structures and all lines, equipment,
24 and connections in, over, under, and upon the rights-of-way of the County

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1 wherever situated or located ~~shall~~ must at all times be kept and maintained
2 in a safe, suitable, substantial condition, and in good order and repair.

3 ~~(n)~~ (o) *Removal Required.* To the extent that it is determined by the County to be
4 in the best interest of the health, safety, and welfare of the public, a Registrant ~~shall~~ must
5 at its own expense, upon notice, promptly remove from the rights-of-way covered by this
6 article all portions of the ~~tele~~communications facility and its appurtenances, except as
7 otherwise provided by Sections 337.403 and 337.404, Florida Statutes.

8 ~~(e)~~ (p) *Restoration Required.*

9 (1) ~~In the event of~~ If such removal as referenced in subsection ~~(n)~~ (o) above is
10 required, the Registrant ~~shall~~ must promptly and reasonably restore the
11 rights-of-way area from which such property was removed to the condition
12 existing prior to the disruption of the rights-of-way area and in accordance
13 with the Minimum Standards.

14 (2) If a Registrant fails to properly and promptly restore the area, the County,
15 at its election, may restore the rights-of-way area and cause forfeiture of the
16 ~~permanent performance~~ construction bond in order to reimburse the County
17 for any costs and expenses it incurs for restoring the area. Prior to
18 performing work ~~pursuant to~~ under this Section, the County ~~shall~~ must give
19 the operator notice and a reasonable opportunity to cure as provided in
20 Section 20-590(l)(2); provided, however, that no notice ~~shall~~ will be required
21 ~~in the event that~~ if the failure presents an immediate threat to public health,
22 safety, or welfare as determined by the County in its sole discretion.

23 **Sec. 20-591. Indemnification; insurance requirements.**

24 (a) *Indemnification.*

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1 (1) By operation of this article and as conditions precedent to use of the
2 County's rights-of-way and the effectiveness of its R~~eg~~istration, a
3 R~~eg~~istrant shall:

4 a. Release the County, its officers, agents, and employees from and
5 against any and all liability and responsibility in or arising out of the
6 construction, operation, or maintenance of the tele~~com~~munications
7 facility to the extent caused by the operator, its contractors, or its
8 subcontractors. ~~No Registrant shall sue the County or seek any~~
9 ~~monetary damages or such other relief in connection with the above-~~
10 ~~mentioned matters;~~

11 b. Indemnify, hold harmless, and at the County Attorney's option,
12 ~~defend or~~ pay for an attorney ~~selected~~ approved by the County
13 Attorney to defend the County, whose approval will not be
14 unreasonably withheld, its officers, agents, and employees, against
15 any and all claims, losses, liabilities, and expenditures of any kind,
16 including attorneys' fees, court costs, and expenses, accruing or
17 resulting from any and all claims, demands, or causes of action of
18 any nature whatsoever resulting from injuries or damage sustained
19 by any person or property by virtue of the R~~eg~~istrant's construction,
20 operation, or maintenance of the tele~~com~~munications facility,
21 provided that such liabilities arise from the operator's negligence,
22 gross negligence, or willful conduct; and

23 c. Provide that the covenants and representations relating to the
24 indemnification provision ~~shall~~ survive the expiration or termination

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1 of any ~~R~~registration with the County and continue in full force and
2 effect as to the ~~R~~registrant's responsibility to indemnify.

3 (b) *Insurance; Policy Limits.* By operation of this article and as conditions
4 precedent to the use of the County's rights-of-way and the effectiveness of its
5 ~~R~~registration:

6 (1) Within thirty (30) days after the ~~E~~effective ~~D~~date of the ~~R~~registration, and
7 prior to any operations under the ~~R~~registration, the ~~R~~registrant shall provide
8 the County with proof of the required insurance. The ~~R~~registrant shall
9 maintain said insurance throughout the term of the ~~R~~registration and said
10 insurance ~~shall~~ must include, at a minimum, the following types of insurance
11 coverage in amounts not less than shown:

12 a. Workers' compensation. Coverage shall apply for all employees for
13 statutory limits in compliance with the applicable state and federal
14 laws. The policy must include Employers' Liability with a minimum
15 limit of ~~One~~ Five Hundred Thousand Dollars (~~\$4~~500,000.00) for each
16 accident.

17 b. Comprehensive general liability. Minimum limits of One Million
18 Dollars (\$1,000,000.00) per occurrence shall apply with combined
19 single limit for bodily injury liability and property damage liability. This
20 coverage shall include premises and/or operations, independent
21 contractors, and subcontractors and/or completed operations, broad
22 form property damage, explosion collapse, and underground (XCU)
23 coverage, and a contractual liability ~~endorsement~~ coverage.

24
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underscored type are additions.

1 c. Business auto policy. Minimum limits of Five Hundred Thousand
2 Dollars (\$500,000.00) per occurrence shall apply with combined
3 single limit for bodily injury liability and property damage liability. This
4 coverage shall include owned, ~~non-owned~~ nonowned, and hired
5 vehicles.

6 d. In lieu of subsections (b)(1)a. through (b)(1)c. above, a Rregistrant
7 may self-insure the foregoing requirements. Self-insured status must
8 be confirmed with certification of same by presentation of financial
9 statements ~~which~~ that are not more than one (1) year old, and signed
10 by the chief financial officer of the Rregistrant. Information contained
11 therein is subject to review and written approval by the County's Risk
12 Management Division. A State of Florida self-insurance certification
13 is not satisfactory or adequate certification under this option.

14 (2) The insurance certificate obtained by a Rregistrant in compliance with this
15 section ~~shall~~ must be approved in writing by the County's Risk Management
16 Division and ~~shall~~ must be filed and maintained with the ~~Chief Information~~
17 ~~Officer~~ Director of the County's Highway Construction & Engineering
18 Division during the term of the Rregistration. The certificate or policies of
19 insurance shall provide thirty (30) days' prior written notice to the County of
20 any ~~change, cancellation, and/or non-renewal~~ nonrenewal of the policy(ies).
21 except for nonpayment of premium for which a ten (10) day notice shall
22 apply.

23
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- 1 (3) Upon thirty (30) days' notice, insurance requirements may be changed and
2 increased from time to time at the discretion of the County's Risk
3 Management Division to reflect changing liability exposure and limits.
- 4 (4) Nothing herein is intended as a limitation to the extent of any legal liability
5 of the Rregistrant.
- 6 (5) Resident Company and Agent. All insurance policies, letters of credit, and
7 bonds as are required of a Rregistrant in this section shall be written by a
8 company or companies authorized and qualified to do business in the State
9 of Florida, and have a minimum rating of "A" in Best's Rating Guide.
- 10 (6) Certificates and Renewals. Certificates and renewals of all insurance
11 coverage required ~~shall~~ must be promptly ~~filed~~ submitted by the Rregistrant
12 with the Chief Information Officer to the County's Risk Management Division
13 with a copy issued to the Director of the County's Highway Construction &
14 Engineering Division. Renewal certificates ~~shall~~ must be filed with the
15 County no less than ~~thirty (30)~~ seven (7) days' prior to the policy expiration
16 date.
- 17 (7) Additional Insured. Broward County ~~and the Board of County~~
18 ~~Commissioners of Broward County shall~~ must be included as an additional
19 insureds on the Comprehensive General Liability policy.
- 20 (8) Premium Payment. Companies issuing the insurance policy(ies) ~~shall~~ will
21 have no recourse against the County for payment of any premiums or
22 assessments, and same ~~shall~~ will be the sole responsibility of the
23 Rregistrant.
24

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1 (9) Neither the provisions of this section, nor the acceptance of any bond by
2 the County pursuant to under this article, nor any damages received by the
3 County thereunder, ~~shall~~ will be construed to excuse performance by a
4 R~~eg~~istrant or limit the liability of a R~~eg~~istrant for damages to the full
5 amount of the bond or otherwise.

6 (10) If the operator has an existing certificate of insurance filed with ~~Broward~~ the
7 County as a prerequisite to provide other services such as cable television
8 or open video systems, the operator's insurer may amend the current
9 certificate filed with ~~Broward~~ the County to include the additional related
10 entities authorized by the County to provide telecommunications services.
11 The County's Risk Management Division may require an increase in the
12 amount of coverage of policy(ies) limits.

13 (11) ~~In the event~~ If the R~~eg~~istrant is using the County's airport rights-of-way
14 ~~pursuant to~~ under any R~~eg~~istration and only ~~in the event~~ if such R~~eg~~istrant
15 requires access to the secure area of the airport (the Airport Operations
16 Area), the R~~eg~~istrant shall comply with any additional insurance
17 requirements of the County's Aviation Department and the Risk
18 Management Division.

19 (c) ~~Permanent Performance and Payment~~ Construction Bond. Each
20 R~~eg~~istrant shall ~~within thirty (30) days of the Effective Date of its Registration under this~~
21 ~~article or within thirty (30) days of the County's written consent to the transfer or~~
22 ~~assignment of a Registration,~~ upon application for a permit to perform construction in any
23 County right-of-way, furnish to the County a performance construction bond or an
24 irrevocable letter of credit in the amount of One Hundred Thousand Dollars (\$100,000.00)

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1 for the bond amount required by this section, issued by a ~~Florida bank or a~~ federally
2 ~~insured lending institution in the amount of One Hundred Thousand Dollars (\$100,000.00)~~
3 authorized to do business within the United States, provided that a claim against the
4 financial instrument may be made by electronic means, including by facsimile. The
5 ~~performance~~ construction bond or letter of credit shall will be used to ~~guarantee the~~
6 ~~compliance with performance requirements and payment of all sums which may become~~
7 ~~due to the County under this article~~ secure restoration of the post-construction rights-of-
8 way to the pre-construction condition. The ~~performance~~ construction bond or letter of
9 credit shall will be maintained in the full amount specified herein throughout the term of
10 the Registration, and for one (1) year after the Registration expires or is terminated for up
11 to eighteen (18) months after the construction for which the bond applies is completed,
12 without reduction or allowances for any amounts ~~which~~ that are withdrawn or paid
13 ~~pursuant to~~ under this article. ~~In the event~~ If the R~~egistrant~~ is using the County's airport
14 rights-of-way ~~pursuant to~~ under any R~~egistration~~, the R~~egistrant~~ shall comply with any
15 additional ~~permanent performance and payment~~ construction bond requirements of the
16 County's Aviation Department. An operator may provide and the County will accept a
17 single construction bond or irrevocable letter of credit covering multiple permits for work
18 in the County rights-of-way in lieu of any requirement that a separate construction bond
19 or irrevocable letter of credit be provided for each individual permit. The bond amounts
20 for each location described in the permit will be as follows:

- 21 (1) For each new pole installation, the bond amount will be Ten Thousand
22 Dollars (\$10,000.00).
- 23 (2) For each boring pit or receiving pit, the bond amount will be Five Thousand
24 Dollars (\$5,000.00) for the first four (4) pits. For pits five (5) through fourteen

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1 (14), the bond amount will be Three Thousand Dollars \$3,000 per pit. For
2 fifteen (15) or more pits, the bond amount will be One Thousand Dollars
3 (\$1,000) per pit.

4 (3) For each foot of directional drilling with no existing utilities or drainage
5 facilities in the path or adjacent to the drilling alignment, the bond amount
6 will be Three Dollars (\$3.00).

7 (4) For each foot of directional drilling with existing utilities or drainage facilities
8 in the path or adjacent to the drilling alignment, the bond amount will be Five
9 Dollars (\$5.00).

10 (d) All required insurance coverages and policies shall be without a deductible
11 unless approved in writing by the County's Risk Management Division.

12 (e) An operator may add the County to any existing bond, insurance policy, or
13 other financial instrument, and such proof of coverage will be accepted without any
14 conditions other than consent to venue for purposes of any litigation to which the County
15 is a party.

16 (f) Solely upon request, the Director of the County's Highway Construction &
17 Engineering Division shall have the authority, and sole discretion, to modify the bond
18 requirements outlined herein if, in the Director's professional opinion, the circumstances
19 of any given situation so warrant.

20 **Sec. 20-592. Enforcement and remedies Registration authority and content.**

21 (a) ~~Office of Information Technology Responsible for Administration.~~ The
22 County's ~~Office of Information Technology~~ Highway Construction & Engineering Division
23 is responsible for enforcing and administering this article, and its ~~Chief Information Officer~~
24 Director or designee is authorized to give any notice required by law or under any

1 ~~R~~registration. The ~~Chief Information Officer~~ Director of the Highway Construction &
2 Engineering Division or designee is authorized to seek information from any operator
3 relative to this article, to establish forms for submission of ~~R~~registrations and other
4 information, and to take all other actions necessary or appropriate ~~to~~ for the administration
5 of this article. Registrations ~~shall~~ will only be issued or revoked by action of the County's
6 ~~Office of Information Technology~~ Highway Construction & Engineering Division. If the
7 ~~R~~registrant is occupying airport rights-of-way, then the County's Aviation Department
8 ~~shall~~ will be responsible for enforcing and administering this article in accordance with the
9 requirements set forth in this ~~S~~ection.

10 (b) ~~Minimum Contents of Every Registration~~ Minimum Contents of Every
11 Registration. In addition to satisfying the other applicable requirements of Divisions 4—
12 ~~3~~ 1-3 of this article, every ~~R~~registration pertaining to the provision of ~~telecommunications~~
13 services ~~shall~~ must contain the following provisions:

14 (1) The ~~R~~registration, or any provision thereof, ~~shall~~ will not constitute a waiver
15 or bar to the exercise of any governmental right or power, police power, or
16 regulatory power of the County ~~which~~ that may exist on the ~~E~~ffective Date
17 of the ~~R~~registration or ~~which~~ that may become effective thereafter.

18 (2) The ~~R~~registration to occupy the rights-of-way is solely for the purpose of
19 providing ~~telecommunications~~ services described in the ~~R~~registration.

20 (3) The ~~R~~registration ~~shall~~ will not convey title, equitable or legal, in the
21 rights-of-way. The ~~R~~registration is only to occupy rights-of-way for the
22 purposes and for the period stated in the ~~R~~registration, and the ~~R~~registration
23 may not be alienated, assigned, or transferred except as permitted by this
24 article or by state or federal law.

1 (4) A transfer of a ~~R~~egistration shall must be ~~completed on form(s) supplied by~~
2 ~~the Office of Information Technology and~~ submitted in accordance with
3 Division 2 of this article, except that, if the information provided by the
4 ~~R~~egistrant/transferor under Division 2 remains accurate, the transferee
5 may simply cross-reference the earlier ~~R~~egistration.

6 (5) Appropriate provisions for enforcement, ~~compensation,~~ and protection of
7 the public, consistent with the other provisions of this article.

8 **Sec. 20-593. Theft, vandalism, tampering; violation.**

9 (a) It is unlawful ~~pursuant to~~ under Section 812.14, Florida Statutes, and a
10 violation of this article for any person to:

11 (1) Willfully alter, tamper with, injure, or knowingly ~~suffer to be injured~~ damage
12 any conduit, wire, line, cable, transformer, amplifier, or other apparatus or
13 device belonging to a utility line service in such a manner as to cause loss
14 or damage.

15 (2) ~~Make or cause to be made~~ Connect or cause any connection with any wire
16 without the consent of the utility.

17 (3) Use or receive the direct benefit from the use of a utility knowing, or under
18 ~~such~~ circumstances as that would induce a reasonable person to believe,
19 that such direct benefits have resulted from any tampering with, altering of,
20 or injury to any connection, wire, conduit, line, cable, transformer, amplifier,
21 or other apparatus or device owned, operated, or controlled by such utility,
22 for the purpose of avoiding payment.

23 (b) The actual possession by a person on property of any device or alteration
24 ~~which effects~~ that affects the diversion or use of the services of a utility so as to avoid the

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1 ~~R~~egistration of such use by the utility or so as to otherwise avoid the reporting of use of
2 such service for payment ~~shall~~ will be prima facie evidence of a violation of this ~~S~~section
3 by such person; however, this presumption does not apply unless:

- 4 (1) The presence of such a device or alteration can be attributed only to a
5 deliberate act in furtherance of an intent to avoid payment for utility services;
- 6 (2) The person charged has received the direct benefit of the reduction of the
7 cost of such utility services; and
- 8 (3) The customer or recipient of the utility services has received the direct
9 benefit of such utility service for at least one full billing cycle.

10 **Sec. 20-594. Revocation; ~~e~~County's right of revocation.**

11 (a) The County's ~~Office of Information Technology~~ Highway Construction
12 & Engineering Division or Aviation Department, as applicable, reserves the right to
13 suspend or revoke a ~~R~~egistration and all rights and privileges granted thereunder ~~in the~~
14 ~~event~~ if any one of the following occurs:

- 15 (1) The ~~R~~egistrant, after sixty (60) days' notice of a violation sent by certified
16 mail by the County Administrator or designee, continues to violate any
17 material provision set forth in this article or the ~~R~~egistration ~~pursuant to~~
18 under this article; ~~provided, however, that the notice period shall will be~~
19 ~~thirty (30) days in the event that if such violation is (i) the failure to make a~~
20 ~~required payment of occupancy fees under Sec. 20-588 above, (ii) the~~
21 ~~failure to submit to an audit as applicable under state law, or (iii) the failure~~
22 ~~to provide the quarterly report required by Section 20-588(4).~~
23 (2) The ~~R~~egistrant becomes insolvent, unable, or unwilling to pay its debts, or
24 makes an assignment for the benefit of creditors;

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1 ~~(3)~~ The Registrant practices any fraud or deceit upon the County in connection
2 with its responsibilities under its application for Registration; or

3 ~~(4)~~ The Registrant fails to commence any required construction, if applicable,
4 within one (1) year from the Effective Date of the Registration.

5 This subsection shall will not apply to permit authorize the County to revoke a
6 Registration to the extent such revocation is prohibited by federal ~~bankruptcy~~ or state
7 law.

8 (b) *Procedures for Revocation.* A Registration may be revoked by the County
9 in accordance with the following procedures:

10 (1) The ~~County Administrator~~ Director of the Highway Construction
11 & Engineering Division or designee shall notify the Registrant, in writing, of
12 the exact nature of the alleged violation(s) constituting grounds for
13 revocation and give the Registrant sixty (60) days, or such other greater
14 amount of time as the ~~County Administrator~~ Director of the Highway
15 Construction & Engineering Division or designee may specify, to correct
16 such violation(s) or to present facts and argument refuting the alleged
17 violation(s).

18 (2) If within the designated time the Registrant does not remedy ~~and/or~~ cease
19 the alleged violation, or if corrective action is not being actively and
20 expeditiously pursued, the ~~County Administrator~~ Director of the Highway
21 Construction & Engineering Division or designee may, after giving the
22 Registrant an opportunity to meet upon not less than fourteen (14) days'
23 written notice, revoke the Registration if it determines that such action is
24 warranted.

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- 1 (3) Following the meeting, the ~~County Administrator~~ Director of the Highway
2 Construction & Engineering Division or designee shall order an
3 administrative hearing if the issues have not been satisfactorily resolved.
4 The ~~County Administrator~~ Director of the Highway Construction
5 & Engineering Division shall initiate an administrative proceeding by issuing
6 an order ~~which~~ that establishes the issues to be addressed in the hearing
7 and the procedures to be followed, and the ~~County Administrator~~ Director
8 of the Highway Construction & Engineering Division shall appoint a hearing
9 officer for the hearing. Said hearing officer shall be a member of good
10 standing of The Florida Bar engaged in the private practice of law in
11 Broward, Miami-Dade, or Palm Beach County with experience in areas
12 related to ~~tele~~communications issues. Upon completion of the hearing, the
13 hearing officer shall issue a preliminary order. The ~~Office of Information~~
14 ~~Technology~~ Highway Construction & Engineering Division shall publish
15 notice in a newspaper of general circulation in the County inviting public
16 comment on the preliminary order. Parties to the hearing and the public
17 shall have thirty (30) calendar days to comment on the preliminary order
18 after publication of the notice. Within thirty (30) days after the public
19 comment period, the hearing officer shall decide whether or not to revoke
20 the ~~R~~egistration in accordance with Section (4) below.
- 21 (4) The hearing officer shall determine whether or not to revoke the
22 ~~R~~egistration based on the comments provided, the evidence and argument
23 presented at the hearing, any recommendations of the ~~county administrator~~
24 Director of the Highway Construction & Engineering Division or designee,

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1 and other evidence of record. The hearing officer's determination shall be
2 reflected in a written opinion setting forth the reasons for his/her decision.

3 (5) ~~In the event of For foreclosure or other judicial sale of any of the facilities,~~
4 ~~equipment, or property of the R_{eg}istrant located in the County~~
5 ~~rights-of-way, the County's Office of Information Technology Highway~~
6 ~~Construction & Engineering Division shall, upon not less than fourteen (14)~~
7 ~~days' written notice, give a successful bidder an opportunity to be heard~~
8 ~~prior to revoking the R_{eg}istration. If the Office of Information Technology~~
9 ~~Highway Construction & Engineering Division decides to revoke the~~
10 ~~R_{eg}istration, it shall do so by serving written notice upon the R_{eg}istrant~~
11 ~~and the successful bidder, in which event the R_{eg}istration and all rights~~
12 ~~and privileges of the R_{eg}istration will be revoked ninety (90) calendar days~~
13 ~~after serving such notice, unless:~~

- 14 a. ~~The County has approved the transfer of the R_{eg}istration to the~~
15 ~~successful bidder; and~~
- 16 b. ~~The successful bidder complies with the terms and conditions of the~~
17 ~~R_{eg}istration and this article.~~

18 (c) *Effect of Termination or Forfeiture.* Upon termination of a R_{eg}istration,
19 whether by revocation, forfeiture, or otherwise, the R_{eg}istrant shall be obligated to cease
20 using the telecommunications facilities pursuant to under this article or to remove some
21 or all of the R_{eg}istrant's facilities from the rights-of-way and restore the rights-of-way to
22 their proper condition. Should the R_{eg}istrant neglect, refuse, or fail to remove such
23 facility, the County may remove the facility at the expense of the R_{eg}istrant. The
24 obligation of the R_{eg}istrant to remove facilities shall survive the termination of the

1 R_registration for a period of two (2) years. Notwithstanding the above, the County may
2 not require the R_registrant to remove any facilities that are used to provide another service
3 for which the R_registrant holds a valid franchise or license issued by the County.

4 (d) *Remedies Cumulative.* All remedies under this article, federal law, state law,
5 and pursuant to under any R_registration are cumulative unless otherwise expressly
6 stated. The exercise of one remedy shall not foreclose use of another, nor shall the
7 exercise of a remedy or the payment of penalties relieve an operator of its obligations to
8 comply with its R_registration. Remedies may be used singly or in combination. In addition,
9 the County may exercise any rights it has at law or equity. Recovery by the County of any
10 amounts under insurance, the ~~performance~~ construction bond, or letter of credit, or
11 otherwise does not limit an operator's duty to indemnify the County ~~in any way~~ to the
12 extent permitted by state or federal law; nor shall such recovery relieve an operator of its
13 obligations under a R_registration, limit the amounts owed to the County, or in any respect
14 prevent the County from exercising any other right or remedy it may have.

15 **Sec. 20-595. Access to books and records.**

16 (a) ~~Subject to applicable state law, each operator shall provide the County~~
17 ~~access to all books and records related to the construction, operation, maintenance, or~~
18 ~~repair of the telecommunications facility so that the County may inspect and copy these~~
19 ~~books and records for the purpose of determining compliance with this article. An operator~~
20 ~~is responsible for obtaining or maintaining the necessary possession or control of all~~
21 ~~books and records related to the construction, operation, maintenance, or repair of the~~
22 ~~telecommunications facility, so that it can produce the documents upon request. Books~~
23 ~~and records shall be maintained for a period of five (5) years, except that: (1) any record~~
24 ~~that is a public record shall be maintained for a greater period of time if required by state~~

1 law; or (2) ~~any record that is not a public record may be maintained~~ for a shorter period
2 of time if not in conflict with state law for certain categories of voluminous books and
3 records where the information contained therein can be derived simply from other
4 materials.

5 (b) For purposes of this article, the term "books and records" shall be read
6 expansively to include information in whatever format stored. Books and records
7 requested shall be produced to the County Administrator or designee, except as provided
8 pursuant to under subsection (c) below.

9 (c) If any books and records are too voluminous, or for security reasons cannot
10 be copied and or moved, then a telecommunications facility operator may request that
11 the inspection take place at some other location mutually agreed to by the County and
12 the operator, provided that (1) the operator must make necessary arrangements for
13 copying documents selected by the County after its review; and (2) the operator must pay
14 all travel and additional copying expenses incurred by the County (above those that would
15 have been incurred had the documents been produced in the County) in inspecting those
16 documents or having those documents inspected by a County designee. Notwithstanding
17 the above, a registrant is not required to provide inventories, maps, or locations of
18 telecommunications facilities in County rights-of-way other than as necessary to avoid
19 interference with other at-grade, below grade, or aerial facilities located at the specific
20 location proposed for a small wireless facility or within ~~one hundred (100)~~ fifty (50) feet of
21 such location. A pass-through provider, however, upon request by the County, must
22 provide reasonable access to maps of pass-through facilities located in County rights-of-
23 way subject to the following:

24

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1 (1) The scope of the request must be limited to only those maps of pass-
2 through facilities from which the calculation of linear miles of pass-through
3 facilities in the rights-of-way can be determined;

4 (2) The request must be accompanied by an affidavit that the person making
5 the request is authorized by the County to review tax information related to
6 the revenue and mileage calculations for pass-through providers; and

7 (3) A request has not been made more than once annually to the pass-through
8 provider.

9 (d) Without limiting the foregoing, the operator of a telecommunications facility
10 shall provide the County with the following information or, in the case of documents
11 created by the operator or its affiliate, filing within ten (10) days of after receipt:

12 (1) ~~Notices of deficiency or forfeiture related to the operation of the~~
13 ~~telecommunications facility; and~~

14 (2) ~~Copies of any request for protection under bankruptcy laws, or any~~
15 ~~judgment related to a declaration of bankruptcy by the R_{egistrant} or by any~~
16 ~~partnership or corporation that owns or controls the R_{egistrant} directly or~~
17 ~~indirectly.~~

18 (e) *Retention of Records; Relation to Privacy Rights.* Each telecommunications
19 facility operator shall take all reasonable steps required, if any, to ensure that it is able to
20 provide the County all information ~~which~~ that must be provided or may be requested under
21 this article, its R_{egistration}, or applicable law. Each operator shall be responsible for
22 providing the County with only the information that it is permitted by law to disclose.

23 (f) ~~(e)~~ *Reports.* The County may require operators of telecommunications facilities
24 to maintain records and prepare reports relevant to determining the compliance of the

1 telecommunications facility operator with the terms and conditions of this article and the
2 Rregistration.

3 ~~(g)~~ (f) *Maps.* Each telecommunications facility operator shall maintain accurate
4 maps and improvement plans (it being understood that such maps and plans may not be
5 to scale) ~~which~~ that show the location, size, and a general description of all facilities
6 installed in the rights-of-way and any power supply sources (including voltages and
7 connections). Maps shall be based upon accurate as-built data to verify location. The
8 operator shall provide a map to the County showing the location of its facilities as
9 described in Sections 20-590(f) and (g), as may be applicable but only if, and to the extent,
10 required by Section 337.401, Florida Statutes. ~~New~~ These maps, to the extent statutorily
11 required, shall be promptly submitted to the County when the facility expands or is
12 relocated. If statutorily required to be provided to the County, ~~C~~copies of as-built maps in
13 a digital format acceptable to the County, if prepared, utilizing CAD/GIS or other
14 automated system capable of exporting a file compatible with CAD/GIS, shall be
15 submitted to the County's Highway Construction & Engineering Division. If the ~~as-built~~
16 as-built maps include airport rights-of-way, such as-built maps shall be submitted to the
17 Aviation Department.

18 ~~(h)~~ (g) *Compliance with Laws.* Each operator shall comply with all applicable laws
19 heretofore and hereafter adopted or established during the entire term of its Rregistration.

20 ~~(i)~~ (h) *No Waiver.* The failure of the County to insist on timely performance or
21 compliance by any operator shall not constitute a waiver of the County's right to later insist
22 on timely performance or compliance by that operator or any other person holding a
23 Rregistration.

24

1 ~~(j)~~ (i) *Powers Reserved.* The County expressly reserves the right to amend this
2 article from ~~time to time~~ time to time in the exercise of its lawful powers and shall, at a
3 minimum, review all matters related to the Broward County ~~Telecommunications~~
4 Communications Services Ordinance every three (3) years.

5 DIVISION 2. REGISTRATION PROCESS FOR ~~TELECOMMUNICATION FACILITIES~~
6 OPERATORS

7 **Sec. 20-596. Registration, renewal, transfer, or modification.**

8 (a) *Registration Required.* In order to obtain an initial, renewal, transfer, or
9 modification of a ~~R~~registration, an operator of a ~~telecommunications facility~~
10 complete and submit a ~~R~~registration form documents to the County's ~~Office of Information~~
11 ~~Technology~~ Highway Construction & Engineering Division in accordance with the
12 requirements of Divisions ~~4—3~~ 1-3 of this article. The ~~R~~registration form documents for a
13 ~~telecommunications services provider~~ must contain ~~such~~ the name, address, and
14 telephone number of a contact person for the registrant, the number of the registrant's
15 current certificate of authorization issued by the Florida Public Service Commission, the
16 Federal Communications Commission, or the Department of State; a statement of
17 whether the registrant is a pass-through provider as defined in Section 337.401(6)(a)1,
18 Florida Statutes; the registrant's federal employer identification number; proof of
19 insurance or self-insurance status adequate to defend and cover claims; and any other
20 information as the County may from time to time require to the extent allowed by state or
21 federal law. ~~Registration forms may be obtained from the County's Office of Information~~
22 ~~Technology.~~ If the ~~R~~registration is for the use of airport rights-of-way, then the
23 ~~R~~registration documents as required by this ~~S~~section shall must be submitted to the
24 Aviation Department.

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1 (b) *Contents of a Registration.* All ~~R~~registrations, renewals, transfers, or
2 modifications shall be initiated by submission of ~~an original and two (2) copies of a~~
3 ~~completed form~~ the renewed, transferred, or modified documents. All ~~R~~registrations shall
4 be submitted to the ~~Chief Information Officer~~ Director of the County's ~~Office of~~
5 ~~Information Technology~~ Highway Construction & Engineering Division or the Aviation
6 Department, or designee. The County has the right to request additional information if
7 the ~~form~~ submission is incomplete. All completed ~~R~~registration forms documents shall
8 be available for public inspection and shall include the names and addresses of persons
9 authorized to act on behalf of the operator with respect to the ~~R~~registration.

10 (c) A ~~R~~registration may be filed by any person on that person's own initiative or
11 in response to a request for proposals by the County.

12 (d) *Registration Filing Fee.*

13 (1) ~~Every Registration shall be accompanied by a nonrefundable Registration~~
14 ~~fee established by resolution of the Board and incorporated into the Broward~~
15 ~~County Administrative Code.~~

16 (2) ~~All checks shall be made payable to the Board of County Commissioners~~
17 ~~for Broward County, Florida, and delivered to the Chief Information Officer~~
18 ~~of the County's Office of Information Technology or designee.~~

19 (3) ~~Where the County's out-of-pocket costs in considering the Registration~~
20 ~~exceed the amount of the filing fee, such costs shall be paid by the operator.~~
21 ~~Within thirty (30) calendar days of the Effective Date of the Registration, the~~
22 ~~County Administrator or designee must notify the successful Registrant of~~
23 ~~the amount of any such costs and its method of calculation. If the costs are~~
24 ~~not paid within sixty (60) calendar days of the Effective Date of the~~

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1 ~~Registration, the Registration shall be deemed null and void. Payment~~
2 ~~under protest of the costs shall be a prerequisite to contesting the amount~~
3 ~~of the out-of-pocket costs. Amounts paid under this subsection shall be~~
4 ~~amortized over the term of the Registration and shall be applied as credit~~
5 ~~against the occupancy fee~~

6 (e) (d) *Modification of Registration.*

7 (1) ~~Each operator requesting modification of a Rregistration shall, at a~~
8 ~~minimum, set forth the information contained in subsection (2) below. To be~~
9 ~~deemed acceptable for filing, an original and two (2) copies of the request~~
10 ~~for modification shall be submitted to the County accompanied by the~~
11 ~~required fee.~~

12 (2) ~~Each request for modification shall contain;~~

- 13 a. ~~The specific modification requested;~~
- 14 b. ~~The justification for the requested modification, including the impact~~
15 ~~of the requested modification on the use of the rights-of-way, and the~~
16 ~~impact on the operator if the modification is denied;~~
- 17 c. ~~A statement whether the modification is sought pursuant to under~~
18 ~~federal or state law and, if so, a demonstration that the requested~~
19 ~~modification meets all the requirements of that law; and~~
- 20 d. ~~Any other information deemed necessary by the County in order for~~
21 ~~the County to make a determination regarding the use and regulation~~
22 ~~of its rights-of-way.~~

23 (3) ~~No fee shall be required where the modification is required to bring the~~
24 ~~Registration into conformity with any state, federal, or local law or~~

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1 regulation. A registrant must update its registration information provided
2 under this section within ninety (90) days after any change in such
3 information.

4 ~~(f)~~ (e) *Requests for Transfer.* Any operator requesting a transfer of a Registration
5 ~~must comply with the requirements set forth in subsection (d) above this section.~~
6 ~~However, if the proposed transferee has already been registered pursuant to under this~~
7 ~~article, to the extent information provided by the proposed transferee is accurate at the~~
8 ~~time of the request of the transfer, the proposed transferor may simply cross-reference~~
9 ~~the proposed transferee's previous submission.~~

10 ~~(g)~~ (f) *County Review of Registration.* The County Administrator or designee shall
11 review the request for Registration, or the request for changes to, renewal of, or transfer
12 of an existing Registration and may request such additional information as deemed
13 necessary in the review process and require such changes to the proposed use of the
14 County's rights-of-way as may be necessary and lawful in the exercise of the County's
15 authority over County roads and rights-of-way. Once the information required by the
16 County has been provided, the Registration request shall be promptly reviewed by the
17 County and written acknowledgment of Registration shall be provided if it finds that: the
18 registrant has provided the documents set forth in Section 20-596(a). An operator shall
19 not be registered if its registration form is incomplete.

20 ~~(1)~~ (1) ~~The operator has the qualifications to construct, operate, maintain, and~~
21 ~~repair the proposed telecommunications facility in conformity with~~
22 ~~applicable law.~~

23 ~~(2)~~ (2) ~~The operator has demonstrated compliance with state and federal law and~~
24 ~~with all the requirements for a R~~egistration provided in this article.

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1 ~~(3)~~ The operator accepts the modifications required by the County to its
2 proposed telecommunications facility.

3 ~~(4)~~ The operator has complied with all conditions precedent pursuant to under
4 this article.

5 ~~(5)~~ In the case of a transfer of a Registration, the County must also determine
6 that:

7 a. There will be no adverse effect on the use and regulation of the
8 County's rights-of-way, or the County's interest in the Registration;

9 b. The Proposed transferee agrees to be bound by all the conditions
10 of the Registration and to assume all the obligations of its
11 predecessor; and

12 c. Any outstanding compliance and compensation issues are resolved
13 or preserved to the satisfaction of the County.

14 ~~(h)~~ ~~(g)~~ (f) An operator shall may not be registered if it files or, in the previous three (3)
15 years, has filed ~~materially~~ purposefully misleading or fraudulent information in a ~~previous~~
16 submission to the County, ~~or a R~~egistration form is incomplete.

17 ~~(i)~~ ~~(h)~~ (g) *Denial of a Registration.* The County's denial of a Registration and the
18 basis therefor shall be supported by written findings which ~~that~~ may include, among other
19 things, past performance of the Registrant and findings of a material violation of this
20 article, which shall be provided to the operator and must include the specific code
21 provisions on which the denial was based. The County shall provide this written
22 documentation to the registrant by electronic mail on the day the registration is denied
23 and allow a reasonable opportunity for the operator to show that it would be inappropriate
24 for the County to deny the renewal, ~~transfer~~, or modification under this article. ~~A material~~

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1 violation of this article shall be deemed to exist in the event if any of the following exists
2 or has occurred:

3 (1) Failure to pay Registration filing fees pursuant to this article;

4 (2) (1) Operating in a manner inconsistent with the R~~egistration~~;

5 (3) (2) Failure to perform work within the rights-of-way pursuant to the
6 requirements of Section 20-591 of this article and the County's Minimum
7 Standards;

8 (4) (3) Failure to provide insurance and bonding requirements pursuant to
9 Section 20-591 of this article;

10 (5) (4) Permitting a reseller to use a R~~egistrant's~~ telecommunications facilities
11 within the rights-of-way without providing written notice to the County
12 pursuant to this article; or

13 (6) (5) Failure to comply with any provision of this article.

14 (j) (i) (h) *Acknowledgment of Registration.* Within thirty (30) calendar days after the
15 Office of Information Technology's Highway Construction & Engineering Division's receipt
16 of a completed the required R~~egistration~~ form documents, the Office of Information
17 Technology Highway Construction & Engineering Division shall issue a written
18 acknowledgment of the R~~egistration~~ when required by Section 20-596 of this article. All
19 material statements and declarations contained in the R~~egistration~~ form documents shall
20 be incorporated in the operator's R~~egistration~~.

21 DIVISION 3. PRIVATE COMMUNICATIONS FACILITIES PERMIT APPLICATION
22 PROCESS FOR WIRELESS COMMUNICATIONS SERVICE PROVIDERS

23 **Sec. 20-597. Private communications facilities Permit application process.**

24
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1 (a) Submission of Registration Permit Applications. An person wireless
2 communications services provider operator desiring to construct, or install, operate,
3 replace, reconstruct, or maintain a private communications system perform any work in
4 Broward a County, a new utility pole used to support a small wireless facility, or to
5 collocate small wireless facilities right-of-way that involves excavation, closure of a
6 sidewalk, or closure of a vehicular lane or parking lane, unless the provider is performing
7 service restoration to existing facilities, is required to Register submit an application for a
8 permit with the County's Highway Construction & Engineering Division. The Registration
9 shall only authorize application must request authorization for placement of the facilities
10 in a specific portion of the rights-of-way for a limited and specific purpose in connection
11 with the person's business; however, it shall not encompass, in whole or in part, the
12 carriage of telecommunications for hire in the rights-of-way accordance with Section
13 337.401, Florida Statutes, as amended. Such request shall must also be in the form
14 identified in Division 2 of accordance with this article and must be accompanied by a filing
15 fee, the amount of which shall be fixed by resolution of the Board as may be amended
16 from time to time the County's Minimum Standards.

17 (b) Conditions of Registration Application. Any Registration application shall be
18 subject to such conditions as the County may from time to time establish, shall be
19 expressly subordinate to the use of the rights-of-way by operators of telecommunications
20 facilities, and shall otherwise conform to the requirements of this article. Subject to the
21 foregoing, the provisions of Division 1, Division 2, and Division 3 of this article shall be
22 applicable to a private communications system as if it were a telecommunications facility.

23 (1) Within fourteen (14) days after receiving a permit application, the County
24 must determine and notify the applicant by electronic mail as to whether the

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1 application is complete. If the County deems an application incomplete, the
2 County will specifically identify the missing information. Notwithstanding, an
3 application will be deemed complete if the County fails to provide notification
4 to the applicant within fourteen (14) days or any other time frame
5 established by Section 337.40 Florida Statutes, as amended.

6 (2) Subject to Section 20-589, and Section 337.401 Florida Statutes, as
7 amended, the County may not limit the placement, by minimum separation
8 distances, of small wireless facilities, utility poles on which small wireless
9 facilities are or will be collocated, or other at-grade wireless communications
10 facilities. However, within fourteen (14) days after the date of filing a permit
11 application, the County may request that the proposed location of a small
12 wireless facility be moved to another location in the County's right-of-way
13 and placed on an alternative County utility pole or support structure or
14 placed on a new utility pole. The County may negotiate the alternative
15 location, including any objective design standards enacted by ordinance
16 and reasonable spacing requirements for ground-based equipment for thirty
17 (30) days after the date of the request. At the conclusion of the negotiation
18 period, if the alternative location is accepted by the applicant, the applicant
19 must notify the County of such acceptance, and the application will be
20 deemed granted for any new location where there is agreement and all
21 other locations in the application. If agreement is not achieved, the applicant
22 must notify the County of the absence of agreement and the County must
23 grant or deny the original application within ninety (90) days after the date
24

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1 the application was filed. All requests, acceptances, and rejections for
2 alternative locations must be in writing and provided by electronic mail.

3 (3) A complete application is deemed approved if the County fails to approve
4 or deny the application within sixty (60) days after receipt of the application.
5 If the County does not use the thirty (30) day negotiation period provided in
6 paragraph (2) above, the parties may mutually agree to extend the
7 sixty (60) day application review period. The County shall grant or deny the
8 application at the end of the extended period.

9 (4) The County must notify the applicant of approval or denial by electronic
10 mail. The County shall approve a complete application unless it does not
11 comply with applicable codes or regulations. If the application is denied, the
12 County will specifically write the basis for denial, including the specific code
13 provisions on which it is based, and send the documentation to the applicant
14 by electronic mail on the day the County denies the application. The
15 applicant may cure the deficiencies identified by the County and resubmit
16 the application within thirty (30) days after notice of the denial is sent to the
17 applicant. The County shall approve or deny the revised application within
18 thirty (30) days after receipt or the applicant application will be deemed
19 approved. The County's review of a revised application will be limited to the
20 deficiencies cited in the denial. If the County provides for administrative
21 review of the denial of an application, the review must be complete and a
22 written decision issued within forty-five (45) days after a written request for
23 review is made. If the administrative review is not complete within forty-five
24

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1 conviction shall be punished by a fine not to exceed ~~f~~Five ~~h~~Hundred ~~d~~Dollars (\$500.00)
2 or by imprisonment in a county jail for a definite term not to exceed
3 sixty (60) days or by both such fine and imprisonment.

4 **Sec. 20-601. Liability in case of emergency.**

5 If a fire, police action, disaster, or other emergency threatens the public health,
6 safety, and general welfare and it shall appear necessary in the reasonable judgment of
7 the County to cut, move, or otherwise interfere with any of the wires, cables, amplifiers,
8 appliances, or appurtenances thereto of the R~~r~~egistrant, the County shall not be liable for
9 any injury or damage to such property and equipment of the R~~r~~egistrant as a result of
10 such cutting, moving, or interference. If state, federal, or local emergency funds are
11 available, the County will reimburse the R~~r~~egistrant to the extent possible.

12 **Sec. 20-602. Abandonment.**

13 (a) The County may require removal of abandoned telecommunications
14 facilities thirty (30) days after notice of abandonment has been provided to the owner
15 registrant of the telecommunications facility, unless the registrant notifies the County that
16 the communications facility is not abandoned.

17 (b) Where a telecommunications facility is abandoned but not removed within
18 the specified time frame, the County may remove the facility in accordance with all
19 applicable codes, rules, and regulations.

20 (c) Where a telecommunications facility is removed by the operator, said
21 operator shall restore the area to a its original condition, as acceptable to the County in
22 the sole discretion of the Director of the Highway Construction & Engineering Division
23 accordance with the Minimum Standards, unless otherwise instructed by the County.

1 (d) Where a telecommunications facility is used for other purposes, including,
2 but not limited to, light standards and power poles, it will not be considered abandoned.

3
4 Section ~~3-~~ 2. Severability.

5 If any portion of this Ordinance is determined by any court to be invalid, the invalid
6 portion will be stricken, and such striking will not affect the validity of the remainder of this
7 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
8 legally applied to any individual, group, entity, property, or circumstance, such
9 determination will not affect the applicability of this Ordinance to any other individual,
10 group, entity, property, or circumstance.

11
12 Section ~~4-~~ 3. Inclusion in the Broward County Code of Ordinances.

13 It is the intention of the Board of County Commissioners that the provisions of this
14 Ordinance become part of the Broward County Code of Ordinances as of the effective
15 date. The sections of this Ordinance may be renumbered or relettered and the word
16 "ordinance" may be changed to "section," "article," or such other appropriate word or
17 phrase to the extent necessary in order to accomplish such intention.

1 Section ~~5.~~ 4. Effective Date.

2 This Ordinance is effective as of the date provided by law.

3 **PROPOSED**

4 ENACTED

5 FILED WITH THE DEPARTMENT OF STATE

6 EFFECTIVE

7
8 Approved as to form and legal sufficiency:
9 Andrew J. Meyers, County Attorney

10 By /s/ Amanda Tolbert 12/04/2020
11 Amanda Tolbert (date)
12 Assistant County Attorney

13 By /s/ Michael J. Kerr 12/04/2020
14 Michael J. Kerr (date)
15 Deputy County Attorney

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