



City of North Port

ORDINANCE NO. 2017-37

1 (Updating code language related to communication and wireless facilities to be consistent
2 with Florida Statutes Section 337.401 by creating Chapter 86 – Communication and
3 Wireless Infrastructure Right-of-Way Utilization in the Code of the City of North Port,
4 Florida and by amending Appendix A – City Fee Structure)

5 **AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, AMENDING THE**
6 **CODE OF THE CITY OF NORTH PORT, FLORIDA, RELATING TO**
7 **COMMUNICATION AND WIRELESS FACILITIES TO BE CONSISTENT WITH**
8 **FLORIDA STATUTES SECTION 337.401, ESTABLISHING NEW**
9 **REGULATIONS FOR COMMUNICATION AND WIRELESS INFRASTRUCTURE**
10 **IN THE RIGHTS-OF-WAY; CREATING CHAPTER 86 – COMMUNICATION**
11 **AND WIRELESS INFRASTRUCTURE RIGHT-OF-WAY UTILIZATION;**
12 **AMENDING APPENDIX A – CITY FEE STRUCTURE; PROVIDING FOR**
13 **FINDINGS; PROVIDING FOR ADOPTION; PROVIDING FOR CONFLICTS;**
14 **PROVIDING FOR SEVERABILITY; PROVIDING FOR CODING OF**
15 **AMENDMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

16 **WHEREAS**, the public rights-of-way within the City of North Port are a unique and physically
17 limited resource and important amenity that are critical to the travel and transport of
18 persons and property in the City; and

19 **WHEREAS**, the demand for communications and wireless services has grown exponentially
20 in recent years, requiring the continual upgrading of telecommunications equipment and
21 services to satisfy such demand; and

22 **WHEREAS**, the public rights-of-way must be managed and controlled in a manner that
23 enhances the health, safety and general welfare of the City and its citizens; and

24 **WHEREAS**, the use and occupancy of the public rights-of-way by providers of
25 communications and wireless services must be subject to regulation that can ensure minimal
26 inconvenience to the public, coordinate users, maximize available space, reduce
27 maintenance costs to the public, and facilitate entry of an optimal number of providers of
28 services in the public interest; and

29 **WHEREAS**, Florida Statutes Section 337.401 provides that because federal and state law
30 require the nondiscriminatory treatment of providers of telecommunications services, and
31 because of the desire to promote competition among providers of communications and
32 wireless services, the Florida Legislature intends that municipalities treat providers of
33 communications and wireless services in a nondiscriminatory and competitively neutral
34 manner when imposing rules or regulations governing the placement or maintenance of
35 communications facilities in the public rights-of-way; and

36 **WHEREAS**, the City Commission of the City of North Port finds that to promote the public
37 health, safety and general welfare, it is necessary to: (a) provide for the placement or
38 maintenance of communications and wireless facilities in the public rights-of-way within the
39 City limits; (b) adopt and administer reasonable rules, regulations and general conditions
40 not inconsistent with applicable state and federal law; (c) manage the placement and
41 maintenance of communications and wireless facilities in the public rights-of-way by all
42 providers; (d) minimize disruption to the public rights-of-way; (e) require the restoration of
43 the public rights-of-way to original condition; and (f) minimize the impact on surrounding
44 areas by establishing standards for location, landscape screening and compatibility; and

45 **WHEREAS**, the City Commission of the City of North Port intends on providing for the
46 regulation and management of micro-wireless and small wireless facilities on the public-
47 rights-of way is in the public interest; and

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48 **WHEREAS**, the City Commission of the City of North Port has held public hearings on
49 December 12, 2017, ~~and~~ January 23, 2018 ~~and~~ March 6, 2018, with due public notice to
50 receive comments on the revision of the Code of the City of North Port; and

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51 **WHEREAS**, the City Commission of the City of North Port has determined that the proposed
52 rules and regulations serve the public health, safety and welfare of the citizens of the City of
53 North Port, Florida.

54
55 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF**
56 **NORTH PORT, FLORIDA, AS FOLLOWS:**

57
58 **SECTION 1 – FINDINGS:**

59 1.01 The recitals outlined above are incorporated by reference as findings of fact as if
60 expressly set forth herein.

61 **SECTION 2 – ADOPTION:**

62 2.01 Chapter 86 of the Code of the City of North Port, Florida, is hereby created to read as
63 follows:

64
65 **“Chapter 86 – COMMUNICATION AND WIRELESS INFRASTRUCTURE RIGHT-OF-WAY**
66 **UTILIZATION**

67

68 **ARTICLE I. – IN GENERAL**

69 **Sec. 86-1. - Scope.**

70 This Chapter shall apply to any public or private entity that seeks to construct, place,
71 install, maintain or operate a communications system or facilities, as such terms are defined
72 herein, in the public rights-of-way, unless otherwise exempt by operation of applicable state
73 law. This Chapter shall equally apply to a City owned or controlled communications system
74 except to the extent such facilities are utilized on an internal, non-commercial basis by the
75 City or any of its agencies, departments or bureaus.

76

77 **Secs. 86-2 – 86-5. - Reserved.**

78

79 **ARTICLE II. – ADMINISTRATION**

80 **Sec. 86-6. - Definitions.**

81 For purposes of this Chapter, the following terms, phrases, words and their derivations
82 shall have the meanings ascribed herein. All references herein to state, federal, and local
83 laws, rules, and regulations shall mean and include all amendments to same.

84 Abandonment means the permanent cessation of all uses of a communications facility;
85 provided that this term shall not include cessation of all use of a facility that is completely
86 enclosed within a physical structure where the physical structure continues to be used.
87 Abandonment shall also include failure to maintain the facilities in accordance with all
88 requirements of this Chapter.

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90 Affiliate means each entity, directly or indirectly controlling, controlled by, or under
91 common control with a communications services or wireless services provider that is
92 registered with the City; provided that affiliate shall in no event mean any limited partner,

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93 member, or shareholder holding an interest of less than fifteen percent (15%) in such
94 communication services or wireless services provider.

95 Applicable code(s) means uniform building, fire, electrical, plumbing, and/or mechanical
96 codes adopted by a recognized national code organization or local amendments to those
97 codes enacted solely to address threats of destruction of property or injury to persons, or
98 local codes and/or ordinances adopted to implement this subsection. The term includes
99 objective design standards adopted by ordinance that may require a new utility pole that
100 replaces an existing utility pole to be of substantially similar design, material, and color or
101 that may require reasonable spacing requirements concerning the location of ground-
102 mounted equipment. The term includes objective design standards adopted by ordinance.

103 Applicant means an entity who submits an application under this Chapter.

104 As-built survey(s) means an applicant's final and complete drawings, produced at their
105 cost, in hard copy signed and sealed by a professional surveyor and mapper (as defined in
106 Section 472.005, Florida Statutes) and the final and complete electronic overview map (in
107 autocad, microstation, map info, ESRI or other format acceptable to the City) presented in
108 computer input media. As-Built Surveys, in both the drawings and the electronic overview
109 map, must show the present state of a communications services or wireless services
110 provider's facilities in the public rights-of-way, including but not limited to, the horizontal
111 and vertical location of facilities located at least every 100 feet and at any alignment change.
112 Horizontal locations on all points of such facilities shall be from road right-of-way or right-
113 of-way centerline. Vertical locations on all points of such facilities shall consist of elevations
114 in either NGVD 1929 or NAVD 1988.

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115 Authority means a county or municipality having jurisdiction and control of the rights-
116 of-way of any public road. The term does not include the Florida Department of
117 Transportation. Rights-of-way under the jurisdiction and control of the Florida Department
118 of State are excluded from this Chapter.

119 Authority utility pole means a utility pole owned by an authority in the right-of-way.

120 Collocate or collocation means to install, mount, maintain, modify, operate, or replace
121 one or more wireless facilities on, under, within, or adjacent to a wireless support structure
122 or utility pole. The term does not include the installation of a new utility pole or wireless
123 support structure in the public rights-of-way.

124 Communications facility means any portion of a communications system located in the
125 public rights-of-way.

126 Communications services means the definition ascribed in Section 202.11(1), Florida
127 Statutes.

128 Communications services provider means: (1) any entity, municipality or county
129 providing communications services through the use and operation of a communications
130 system or communications facilities installed, placed and/or maintained in the public rights-
131 of-way, regardless of whether such system or facilities are owned or leased by such entity,
132 municipality or county and regardless of whether such entity, municipality or county has
133 registered with the Florida Department of Revenue as a provider of communications services
134 in Florida pursuant to Chapter 202, Florida Statutes; and (2) any entity, municipality or

135 county that constructs, installs, places, maintains or operates communications facilities in
136 the public rights-of-way but does not provide communications services, including for
137 example an entity that places dark fiber or conduit in the public rights-of-way and leases or
138 otherwise provides those facilities to an entity that provides communications services.

139 Communications system or system means any permanent or temporary plant, equipment
140 and/or property placed or maintained in the public rights-of-way that is occupied or used,
141 or is capable of being occupied or used, by a communications services provider for the
142 purpose of producing, conveying, routing, transmitting, receiving, amplifying, distributing,
143 providing or offering communications services; including but not limited to, cables, wires,
144 lines, conduits, fiber optics, antennae, radios and any associated utility poles, converters,
145 splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, and
146 other plant, equipment or pathway.

147 Dealer means any entity, municipality, county or reseller providing communications or
148 wireless services to an end user in the City through the use and operation of communications
149 facilities installed, placed and maintained in the public rights-of-way, whether owned or
150 leased, and that has registered with the Florida Department of Revenue as a provider
151 pursuant to Chapter 202, Florida Statutes.

152 Director of Public WorksCity of North Port means the Director of Public WorksCity of
153 North Port for the City or the Director's designee.

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154 Emergency, as determined by the City of North Port, means a condition that affects the
155 public's health, safety or general welfare, which includes an unplanned out-of-service
156 condition of a pre-existing service.

157 Entity means any individual, firm, joint venture, partnership, estate, trust, business trust,
158 syndicate, fiduciary, association, corporation, company, organization or legal entity of any
159 kind, including any affiliate, successor, assignee, transferee or personal representative
160 thereof, and all other groups or combinations, and shall include the City to the extent that
161 the City acts as a communications services provider.

162 Facility means any or all of the following: communications system, communications
163 facility, wireless facility, and/or wireless service.

164 Micro wireless facility, as defined in Florida statute, means a small wireless facility
165 having dimensions no larger than twenty-four (24) inches in length, fifteen (15) inches in
166 width, and twelve (12) inches in height and an exterior antenna, if any, no longer than eleven
167 (11) inches.

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168 Non-dealer means any entity, municipality or county that places or maintains a
169 communications system or communications facility in the public rights-of-way but that does
170 not provide communications or wireless services, including an entity that places dark fiber
171 or conduit in the public rights-of-way and leases or otherwise provides those facilities to an
172 entity that provides communications or wireless services to an end user. This definition is
173 intended to include any entity that places or maintains pass-through facilities in the public
174 rights-of-way, but does not provide communications or wireless services to an end user
175 within the corporate limits of the City.

176 Pass-through facility means any facility that merely pass through the City from one point
177 to another point and from which no revenues are directly attributable to end users or other
178 providers within the City.

179 Pass-through provider means any entity that places or maintains a communications
180 facility in the roads or rights-of-way of the City and that does not remit taxes imposed by the
181 City pursuant to Chapter 202, Florida Statutes.

182 Placement or maintenance or placing or maintaining, or other similar formulation of that
183 term, means the named actions interpreted broadly to encompass, among other things,
184 erection, construction, reconstruction, installation, inspection, replacement, extension,
185 expansion, repair, removal, operation, occupation, location, relocation, grading,
186 undergrounding, trenching or excavation. Any communications or wireless services
187 provider that owns, leases or otherwise controls the use of a communications system or
188 facility in the public rights-of-way, including the physical control to maintain and repair, is
189 placing or maintaining a communications system or facility. A reseller is not placing or
190 maintaining the communications facilities through which such service is provided. The
191 transmission and receipt of radio frequency signals through the airspace of the public rights-
192 of-way does not constitute placing or maintaining facilities in the public rights-of-way.

193 Provider means a communications service provider, a wireless service provider, or a
194 wireless infrastructure provider.

195 Public rights-of-way means a road, street, highway, bridge, tunnel or alley that is owned
196 by the City, publicly held by the City, or dedicated in fee simple or via easement to the City
197 for public use and over which the City has jurisdiction and control and may lawfully grant
198 access pursuant to applicable law, and includes the space above, at or below the surface of
199 such right-of-way. pPublic rights-of-way shall include public utility easements and City
200 services easements that are under the jurisdiction and control of the City wherein the City
201 now has or hereafter acquires the right to locate or permit the location of communications
202 facilities, provided that the terms and conditions of any such easement expressly allow, or
203 any restrictions thereon do not expressly prohibit, the use of the particular easement for
204 purposes other than which it was conveyed, dedicated or condemned. public rights-of-way
205 shall not include: (1) county, state or federal rights-of-way; (2) property owned by any entity
206 other than the City; (3) service entrances or driveways leading from the road or street onto
207 adjoining property; or (4) except as described above, any real or personal property of the
208 City, such as, but not limited to, City parks, buildings, fixtures, poles, conduits, sewer lines,
209 facilities or other structures or improvements, regardless of whether they are situated in the
210 public rights-of-way.

211 Record drawings means a final and complete drawing accurately depicting the
212 improvements as constructed. Record drawings are not required to be signed and sealed by
213 a professional surveyor and mapper.

214 Reseller means a communications services or wireless services provider who purchases
215 communications services from another communications service or wireless service provider
216 and then resells, uses as a component part of, or integrates the purchased services into a
217 mobile communications service.

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218 Routine Maintenance, also known as preventative, preemptive or cyclical maintenance,
219 is an essential part of the on-going care and upkeep of any wireless related facility.

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220 Small wireless facility means a wireless facility that meets the following qualifications:

221 (1) Each antenna associated with the facility is located inside an enclosure of no
222 more than six (6) cubic feet in volume or, in the case of antennas that have exposed
223 elements, each antenna and all its exposed elements could fit within an enclosure of
224 no more than six (6) cubic feet in volume; and

225 (2) All other wireless equipment associated with the facility is cumulatively no
226 more than twenty-eight (28) cubic feet in volume. The following types of ancillary
227 equipment are not included in the calculation of equipment volume: electric meters,
228 concealment elements, telecommunications demarcation boxes, ground-based
229 enclosures, grounding equipment, power transfer switches, cutoff switches, vertical
230 cable runs for the connection of power and other services, and utility poles or other
231 support structures.

232 (2) Stealth design or style means any small wireless facility which is designed to
233 blend into the surrounding environment to the extent that an average person would be
234 unaware of its presence.

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235 Utility pole means a pole or similar structure that is used in whole or in part to provide
236 communications services or for electric distribution, lighting, traffic control, signage, or a
237 similar function. The term includes the vertical support structure for traffic lights but does
238 not include a horizontal support structure to which signal lights or other traffic control
239 devices are attached and does not include a pole or similar structure fifteen feet (15') in
240 height or less unless an authority grants a waiver for such pole.

241 Wireless facility means equipment at a fixed location that enables wireless
242 communications between user equipment and a communications network, including radio
243 transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup
244 power supplies, and comparable equipment, regardless of technological configuration, and
245 equipment associated with wireless communications. The term includes small wireless
246 facilities. The term does not include:

247 (1) The structure or improvements on, under, within, or adjacent to the structure
248 on which the equipment is collocated;

249 (2) Wireline backhaul facilities; or

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

253 Wireless infrastructure permit means the building permit(s) required by the City and the
254 right-of-way utilization permit required under City Code Chapter 66 prior to commencement
255 of any placement or maintenance of facilities in the public rights-of-way, which have received
256 approvals from the appropriate departments.

257 Wireless infrastructure provider means an entity that the Public Service Commission has
258 certificated to provide telecommunications service in the state and that builds or installs

259 wireless communication transmission equipment, wireless facilities, or wireless support
260 structures but is not a wireless service provider.

261 Wireless services means any services provided using license or unlicensed spectrum,
262 whether at a fixed location or mobile, using wireless facilities.

263 Wireless services provider means an entity that provides wireless services.

264 Wireless support structure means a freestanding structure, such as a monopole, a guyed
265 or self-supporting tower, or another existing or proposed structure design to support or
266 capable of supporting wireless facilities. The term does not include a utility pole.

267 **Sec. 86-7. - Registration.**

268
269 (a) **Registration Required;** Every provider that desires to place or maintain facilities
270 in the public rights-of-way, including any pass-through facilities, shall first register
271 with the ~~Public Works~~City of North Port Department and shall submit the following
272 information and documentation on such forms and permits as required by the City
273 of North Port;

274 (1) The name of the applicant under which it will transact business in the City and,
275 if different, in the state; and

276 (2) The address, email, and telephone number of the applicant's principal place of
277 business in Florida and any branch office located in the City or, if none, the
278 name, address, e-mail and telephone number of the applicant's national
279 headquarters and its registered agent in Florida; and

280 (3) The name, address, email, and telephone number of the applicant's primary
281 contact person and the name, address, email and telephone number of the
282 person to contact in case of an emergency, if different from the primary contact
283 person; and

284 (4) The type of service provider that the applicant intends to act as within the
285 corporate limits of the City (if more than one, state all that apply), or, if none,
286 state that the applicant is a non-dealer or is intending only to place and maintain
287 pass-through facilities; and

288 (5) A copy of both the applicant's resale certificate and certificate of registration
289 issued by the Florida Department of Revenue to engage in the business of being
290 a Service provider in the state; and

291 (6) A copy of the applicant's certificate of authorization, public convenience and
292 necessity or other similar certification issued by the Public Service Commission;
293 and

294 (7) The number of the applicant's certificate of authorization or license to be a
295 Service provider issued by the Public Service Commission, the Florida

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296 Department of State, the Federal Communications Commission or other federal
297 authority, if any; and

298 (8) For an applicant that is a non-dealer, in lieu of providing the information
299 identified in paragraphs (5), (6) and (7) above, the applicant shall provide a
300 certified copy of the certificate or license issued by the Florida Department of
301 State, or other appropriate state agency or department, authorizing the entity
302 to do business in the state; and

303 (9) Evidence of meeting the applicant's insurance coverage as required in this
304 Chapter; and

305 (10) The security fund requirement as required in this Chapter; and

306 (11) Proof of registration with the City, for a business tax receipt, evidence of
307 compliance with any contractor or sub-contractor license or other licensure
308 requirements, in accordance with applicable City Code Chapter 34, if
309 applicable; and

310 (12) Evidence of an Acknowledgment that the applicant has received and
311 reviewed a copy of this Chapter, which acknowledgment shall not be deemed
312 an agreement.

313 (b) Approval Process: The Director of Public Works City of North Port shall review the
314 information submitted by the applicant. The applicant shall be notified of an
315 approval or of any non-effectiveness and deficiencies denial of within their
316 registration within thirty (30) calendar days through electronic and standard mail,
317 including reasons for denial if applicable. Non-effectiveness and denial of
318 registration shall not preclude an applicant from reapplying or filing subsequent
319 applications for registration under the provisions of this Section.

320 (c) Registration Renewal Process: A registrant shall renew its registration with the
321 city by April 1 of even numbered years in accordance with the registration
322 requirements in this article, except that a registrant that initially registers during an
323 even numbered year when renewal would be due or the odd numbered year
324 immediately preceding such even numbered year, shall not be required to renew
325 until the next even numbered year.

326 (1) If no information in the existing registration on file has changed, a renewal
327 request letter may be provided to state that no information has changed.

328 (2) Failure to renew a registration may, at the city's discretion, result in the city
329 restricting the issuance of additional permits, and any other remedies available to
330 the city, until the communications services provider has complied with the
331 registration requirements of this article.

332 (3) A provider shall also submit updated information to the City within thirty (30)
333 calendar days of any changes to the information previously submitted pursuant to
334 Subsection (a 1-12) herein.

335 (d) Registration Applicability: in accordance with City ordinance, codes or
336 regulations, a wireless infrastructure permit is required for a provider to place or

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337 maintain a facility in the public rights of way. An effective registration does not, and
338 shall not be construed to, convey equitable or legal title in the public rights-of-way
339 to any provider.

340 (1) Registration under this Chapter governs only the placement or maintenance of
341 facilities in the public rights-of-way. Other ordinances, codes or regulations may
342 apply to the placement or maintenance in the public rights-of-way of facilities that
343 are not part of a communications system.

344 (2) Registration does not excuse a provider from obtaining appropriate access or
345 attachment agreements before locating its facilities on those facilities or on property
346 belonging to the City or another entity. Registration does not excuse a provider from
347 complying with all other applicable City ordinances, codes or regulations, including
348 the rules, regulations and general conditions as set forth in this Chapter.

349 (3) Registration, in and of itself, does not establish a right to place or maintain, or a
350 priority for the placement or maintenance of, a facility in the public rights-of-way,
351 but shall establish for the provider a right to apply for a wireless infrastructure
352 permit from the City. Registrations are expressly subject to any future amendment
353 to or replacement of this Chapter and further subject to any additional City
354 ordinances, as well as any state or federal laws that may be enacted.

355 (4) A reseller that does not place or maintain facilities in the public rights-of-way is
356 not required to register with the City.

357 (e) **Cancellation:** A provider may cancel a registration upon written notice to the City
358 stating that it will no longer place or maintain facilities in the public rights-of-way
359 and will no longer have a need to apply for wireless infrastructure permits to
360 perform construction or other work in the public rights-of-way. A provider cannot
361 cancel a registration if it intends to continue placing or maintaining facilities in the
362 public rights-of-way.

363 ~~(f) Registration, in and of itself, does not establish a right to place or maintain, or a~~
364 ~~priority for the placement or maintenance of, a facility in the public rights-of-way,~~
365 ~~but shall establish for the provider a right to apply for a wireless infrastructure~~
366 ~~permit from the City. Registrations are expressly subject to any future amendment~~
367 ~~to or replacement of this Chapter and further subject to any additional City~~
368 ~~ordinances, as well as any state or federal laws that may be enacted.~~

369 ~~(g) A reseller that does not place or maintain facilities in the public rights-of-way is not~~
370 ~~required to register with the City.~~

371 **Sec. 86-8. - Notice of transfer, sale or assignment of assets.**

372 If a provider transfers, sells or assigns its system or any facilities located in the public
373 rights-of-way pursuant to a transfer, sale or assignment of the provider's assets, the
374 transferee, buyer or assignee shall be obligated to comply with the provisions set forth in
375 this Chapter. Written notice shall be provided by the provider to the City within ~~thirtysixty~~
376 (360) calendar days of the transfer, sale or assignment and the transferee, buyer or assignee

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377 shall register with the City pursuant to this Chapter within sixty (60) calendar days of the
378 effective date of the transfer, sale or assignment. The transferee, buyer or assignee shall be
379 considered the new applicant for any pending applications unless otherwise notified by the
380 provider and shall meet all requirements of this ordinance.

381 **Sec. 86-9. - Rules, regulations and general conditions.**

382 As a condition of allowing the placement or maintenance of a facility in the public rights-
383 of-way, and under additional authority granted pursuant to Chapter 337, Florida Statutes,
384 the City hereby imposes the following rules, regulations and general conditions. Unless
385 otherwise provided in this Chapter, these rules, regulations and general conditions shall
386 apply to all providers, including those that are non-dealers, irrespective of whether they
387 place and maintain only conduit, dark fiber or pass-through facilities.

388 (a) *Rules on utilization of the public rights-of-way.*

389 (1) **Compliance with laws.** A provider shall at all times comply with all federal, state
390 and local laws, codes and regulations for maintaining and operating facilities in
391 the public rights-of-way.

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392 (2) **Due care.** A provider shall use and exercise due caution, care and skill in
393 performing work in the public rights-of-way and shall take all reasonable steps to
394 safeguard work sites.

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395 (3) **Permits.** A provider shall not commence to place or maintain any wireless facility
396 in any public rights-of-way until all applicable permits have been issued by the
397 City and any other appropriate authorities, except as follows: .:

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398 (A) The provider shall provide prompt notice to the City of the placement or
399 maintenance of a facility in the public rights-of-way in the event of a City
400 declared emergency and shall be required after the fact, to submit plans,
401 record drawings and as-built surveys, showing the placement or relocation
402 of a facility due to the emergency at no cost to the City and as soon as
403 practical after said emergency declaration.

404 (B) Permits shall not be required for routine maintenance of facilities as
405 defined in this chapter.

406 (C) Permits shall not be required for the replacement of existing wireless
407 facilities with wireless facilities that are substantially similar or of the same
408 or smaller size.

409 (D) Permits shall not be required for the installation, placement, maintenance,
410 or replacement of micro wireless facilities that are suspended on cables
411 strung between existing utility poles in compliance with applicable codes
412 by or for a communications services provider authorized to occupy the
413 rights-of-way and who is remitting taxes under chapter 202.

414 ~~(C)~~(E) Permits shall not be required for aerial facilities located between utility
415 poles with associated pole attachments which do not provide wireless
416 services

417 (4) **Application for wireless infrastructure permit.** Prior to the issuance of a
418 wireless infrastructure permit to allow the placement or maintenance of a facility
419 in the public rights-of-way, the City has the right to first review and consider and
420 the provider shall provide all the following:

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- 421 (A) Proof of registration with the City in accordance with this Chapter.
- 422 (B) Schedule. The expected dates and times when the facility will be installed
423 and the estimated time needed for construction and placement of the
424 proposed facility:
- 425 (C) Location and description. The location of the proposed facility, the public
426 rights-of-way affected and a description of the facility, including the type of
427 facility (e.g., conduit, fiber, twisted pair, etc.), the number of fibers or other
428 cable being installed, and the approximate size of the facility (e.g., length,
429 height, width and diameter):
- 430 (D) Site plans. Complete and accurate plans and drawings to scale, prepared and
431 signed and sealed by a licensed Florida professional engineer, land
432 surveyor, and/or architect, including: (1) plan views and all elevations
433 before and after the proposed construction with all height and width
434 measurements called out; (2) a depiction of all proposed transmission
435 equipment; (3) a depiction of all proposed utility runs and points of contact;
436 and (4) a depiction of the leased or licensed area with all rights-of-way
437 and/or easements for access and utilities in plain view. Site plans and
438 drawings must include all applicable information to demonstrate a clear fall
439 zone and compliance with the Florida Building Code for wind load
440 requirements.
- 441 (E) Compaction and soil density evaluation. For installation of new utility poles
442 or wireless support structures, a compaction and soil density evaluation
443 prepared, signed and sealed by a licensed Florida professional engineer is
444 required.
- 445 (F) Visual analysis. A color visual analysis that includes to-scale visual
446 simulations that show unobstructed before-and-after construction daytime
447 and clear-weather views from at least four angles, together with a map that
448 shows the location from each view.
- 449 (G) Statement of purpose/radio frequency justification. A clear and complete
450 written statement of purpose shall minimally include: (1) a description of
451 the technical objective to be achieved; (2) a to-scale map that identifies the
452 proposed site location and the targeted service area to be benefited by the
453 proposed project; and (3) full-color signal propagation maps with objective
454 units of signal strength measurement that show the applicant's current
455 service coverage levels from all adjacent sites without the proposed site.

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456 predicted service coverage levels from all adjacent sites with the proposed
457 site, and predicted service coverage levels from the proposed site without
458 all adjacent sites. These materials shall be reviewed and signed by a
459 licensed Florida professional engineer.

460 (H) Design justification. A clear and complete written analysis that explains
461 how the proposed design complies with the applicable design standards
462 under this Chapter to the maximum extent feasible. A complete design
463 justification must identify all applicable design standards under this
464 Chapter and provide a factually detailed reason why the proposed design
465 either complies or cannot feasibly comply.

466 (I) Collocation and alternative site analysis.

467 1. All applications for a new facility will demonstrate that collocation is not
468 feasible, consistent with Section 86-9(b)(7) of this Chapter.

469 2. The application must address the City's preferred facility locations as
470 described in Section 86-9(b)(8) of this Chapter with a detailed
471 explanation justifying why a site of higher priority was not selected. The
472 City's facility location preferences must be addressed in a clear and
473 complete written alternative site analysis that shows at least five (5)
474 higher ranked, alternative sites considered that are in the geographic
475 range of the service coverage objectives of the applicant, together with a
476 factually detailed and meaningful comparative analysis between each
477 alternative site and the proposed site that explains the substantive
478 reasons why the applicant rejected the alternative sites. An applicant
479 may only reject an alternative site for one or more of the following
480 reasons:

481 a. Preclusion by structural limitations;

482 b. Inability to obtain authorization from the owner of the land or
483 facility;

484 c. Failure to meet the service coverage objectives of the applicant;

485 d. Failure to meet other engineering requirements for factors such
486 as location, height, and size;

487 e. Physical or environmental constraints, such as unstable soils or
488 wetlands; and/or

489 f. Being a more intrusive location despite the higher priority in this
490 Chapter as determined by the ~~Director of Public Works~~City of
491 North Port.

492 3. A complete alternative sites analysis provided under this Subsection
493 may include fewer than five (5) alternative sites so long as the applicant
494 provides a factually detailed written rationale for why it could not
495 identify at least five (5) potentially available, higher ranked, alternative
496 sites using the rejection criteria provided for under this Subsection.

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- 497 (J) Radio frequency emissions compliance report. A written report, prepared,
498 signed and sealed by a licensed Florida professional engineer which
499 assesses whether the proposed facility demonstrates compliance with the
500 exposure limits established by the Federal Communications Commission.
501 The report shall also include a cumulative analysis that accounts for all
502 emissions from all facilities located on or adjacent to the proposed site,
503 identifies the total exposure from all facilities and demonstrates planned
504 compliance with all maximum permissible exposure limits established by
505 the Federal Communications Commission. The report shall include a
506 detailed description of all mitigation measures required by the Federal
507 Communications Commission.
- 508 (K) Noise study. A noise study prepared, signed and sealed by a licensed Florida
509 professional engineer for the proposed facility and all associated
510 equipment in accordance with this Chapter.
- 511 (L) Maintenance-of-traffic plan. In the event that the provider's placement or
512 maintenance of facilities requires streets or traffic lanes to be temporarily
513 closed or obstructed, the provider must obtain all necessary permits from
514 the City, and shall obtain approval of its maintenance-of-traffic plan from
515 the ~~Public Works~~City of North Port Department. This plan shall include
516 potential disturbances to ADA-compliance of sidewalks and shall provide
517 for temporary access and pedestrian detours.
- 518 (M) Collocation consent. If the applicant is not utilizing a City-owned utility pole
519 or is not constructing a new facility in the City rights-of-way, the applicant
520 must provide a written and notarized statement from the property or
521 facility owner allowing the applicant to use the site.
- 522 (5) Review procedures. All applications for a new small wireless facility will be
523 processed in accordance with the requirements of Section 337.401(7), Florida
524 Statutes, as it applies to time frames for review, negotiation on location, and
525 reasons for denial of an engineering permit.
- 526 Fees for permits and inspections will be assessed for each location stated for a
527 facility installation, regardless of whether the application is submitted on an
528 individual basis or as a consolidated application.
- 529 (6) Limited purpose of wireless infrastructure permit. A wireless infrastructure permit
530 issued by the City constitutes authorization to undertake only certain activities in
531 public rights-of-way in accordance with this Chapter, and does not create any
532 property right or other vested interest, or grant authority to impinge upon the
533 rights of others who may have an interest in the public rights-of-way. Wireless
534 infrastructure permits shall be granted only for specific routes or locations in the
535 public rights-of-way and for such term as described in the permit. The City's
536 issuance of a wireless infrastructure permit shall not be construed as a warranty
537 that the placement of any facility complies with applicable codes, regulations or
538 laws.

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539 (7) Responsibility for contractors. Every provider that is registered with the City shall
540 be liable for the actions of contractor(s) hired by it to perform the placement or
541 maintenance of facilities in the public rights-of-way and shall be responsible for
542 making sure that such contractor meets and complies fully with the rules,
543 regulations and general conditions set forth in this Chapter.

544 (b) Regulations on the placement or maintenance of communications facilities.

545 (1) Underground.

546 (A) Requirement. Per Section 337.401(7)(i), Florida Statutes, a provider
547 shall comply with nondiscriminatory undergrounding requirements of
548 the City, as it prohibits aboveground structures in public rights-of-way.
549 The City currently prohibits the placement of aboveground structures
550 for utilities in Activity Centers, new subdivisions which have all utility
551 lines placed underground, properties with Residential Manufactured
552 Home (RMH) zoning, and any other location the City requires in the
553 future to place all utilities underground.

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554 (B) Placement. Facilities shall be placed between the property line and the
555 curb line of all streets and avenues and shall not be within the paved
556 roadway or the roadway recovery area unless specifically approved in
557 writing by the Director of Public WorksCity of North Port. All facilities
558 shall have consistent alignment parallel with the edge of pavement, a
559 thirty-six inch (36") depth of cover and shall have two feet (2') of
560 horizontal clearance from other underground utilities and their
561 appurtenances. Where approved by the Director of Public WorksCity of
562 North Port, facilities to be placed in the street shall be laid according to
563 the permanent grade of the street and at a depth below the surface of
564 the permanent grade as each is determined by the Director of Public
565 WorksCity of North Port.

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566 (C) Waivers. Aboveground wireless facilities in Activity Centers may be
567 granted a waiver at the discretion of the Director of Public WorksCity of
568 North Port when one of the following scenarios is met and the proposed
569 facility includes a stealth design that fully conceals the facility within the
570 utility pole or wireless support structure:

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571 1. An aboveground facility is intended to be collocated on a City-
572 owned utility pole; or

573 2. Installation of a new facility is proposed that meets a locational
574 need as determined by the Director of Public WorksCity of North
575 Port, such as a light pole or traffic control device, and this need is
576 met or assisted through the installation of a new facility.

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577 (2) Aboveground approval. The placement and maintenance of facilities
578 aboveground, including new utility poles, wireless support structures, and
579 aerial wires, are subject to the provisions of this Chapter. Location on any utility
580 pole or wireless support structure shall not be considered a vested interest of

581 the provider and such poles or structures, if owned by the provider or by a non-
582 dealer, shall be removed or modified by the provider at its own expense
583 whenever the City or other governmental authority determines that the public
584 convenience would be enhanced thereby. The lowest placement of any facility
585 on any utility pole or other aboveground structure in the public rights-of-way
586 shall not be less than eighteen feet (18') from the ground. When electric utility
587 facilities or other facilities are placed underground or are required to be placed
588 underground, the provider shall concurrently place its facilities underground
589 without cost to the City.

590 (3) New utility poles or wireless support structures. The placing of any new utility
591 pole or wireless support structure to support facilities is subject to the
592 provisions of this Chapter. No utility pole or wireless support structure shall be
593 placed in any gutter or drainage area and must be behind the curb to avoid
594 damage to any sidewalk. In areas of the City where either electric utility wires
595 or other facilities are aboveground and such facilities are moved, either
596 voluntarily or at the direction of the City, to a new utility pole or wireless
597 support structure, the provider shall likewise move all its aboveground facilities
598 on such poles or structures to such new poles or structures within thirty (30)
599 calendar days after receipt of notice through electronic and standard mail from
600 the City or the owner of the new pole or structure, without cost to the City.

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601 (4) Placement and maintenance standards. The placement or maintenance of
602 facilities in the public rights-of-way shall be performed in accordance with the
603 standards and requirements of the following, as is applicable and as each is in
604 force at the time of the respective placement or maintenance of a facility:

605 (A) The Florida Department of Transportation Utilities Accommodation
606 Guide;

607 (B) The State of Florida Manual of Uniform Minimum Standards for Design
608 Construction and Maintenance for Streets and Highways;

609 (C) The Trench Safety Act (Chapter 553, Florida Statutes);

610 (D) The Underground Facility Damage Prevention and Safety Act (Chapter
611 556, Florida Statutes);

612 (E) The National Electrical Code or the ANSI National Electrical Safety Code;
613 and

614 (F) The Safety Rules for the Installation and Maintenance of Electrical
615 Supply and Communication Lines established by the Department of
616 Commerce, Bureau of Standards of the United States.

617 Maintenance of the facilities shall at all times be the responsibility of the
618 provider. If a provider chooses to co-locate on a City-owned utility pole, the
619 maintenance of the collocated facility shall be the responsibility of the provider.

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- 620 (5) Sunshine 811. Every provider shall utilize, and if permissible, maintain
621 membership in the utility notification one call system administered by Sunshine
622 State One-Call of Florida, Inc. d/b/a Sunshine 811.
- 623 (6) Safety and minimal interference. All placement and maintenance of facilities in
624 the public rights-of-way shall be subject to this Chapter and other regulations
625 of the City pertaining thereto, and shall be performed with the least possible
626 interference with the use and appearance of the public rights-of-way and the
627 rights and reasonable convenience of the property owners who abut or adjoin
628 the public rights-of-way and in compliance with the rules and regulations of the
629 Florida Department of Transportation. The provider shall at all times employ
630 reasonable care and use commonly accepted methods and devices for
631 preventing failures and accidents that are likely to cause damage or injury or be
632 a nuisance to the public. Suitable barricades, flags, lights, flares or other devices
633 shall be used at such times and places as are reasonably required for the safety
634 of all members of the public. All placement and maintenance shall be done in
635 such a manner as to minimize to the greatest extent any interference with the
636 usual travel on such public rights-of-way. The use of trenchless technology (i.e.,
637 micro tunneling and horizontal directional drilling techniques) for the
638 installation of facilities in the public rights-of-way as well as joint trenching or
639 the collocation of facilities in existing conduit is strongly encouraged, and
640 should be employed wherever and whenever feasible.
- 641 (7) Tower sharing and collocation. New facilities must, to the maximum extent
642 feasible, collocate on existing towers or other structures of a similar height to
643 avoid construction on new towers, unless precluded by zoning constraints such
644 as height, structural limitations, inability to obtain authorization by the owner
645 of an alternative location, or where an alternative location will not meet the
646 service coverage objectives of the applicant. Applications for a new facility must
647 address all existing structures of a similar height within one-half (1/2) mile of the
648 proposed site as follows: (a) by providing evidence that a request was made to
649 locate on the existing tower or other structure, with no success; or (b) by
650 showing that locating on the existing tower or other structure is infeasible.
- 651 (8) Small Wireless Facility Location considerations.
- 652 (A) Preferred facility locations. All new facilities must apply the following
653 siting priorities, ordered from most-preferred to least-preferred:
654 (i) City-owned property and facilities that are not within residential
655 zones or within one hundred fifty feet (150') of residential zones; (ii)
656 portions of rights-of-way in residential zones that have been designated
657 as school bus stops; and (iii) sites that do not meet either of these
658 criteria.
- 659 (B) Considerations for City rights-of-way. At a minimum, the following
660 considerations must be made for placement in City rights-of way: (i)
661 location of existing infrastructure, both aboveground and underground;
662 (ii) planned roadway expansion, creation of bike lanes, sidewalks, or

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663 multimodal paths, or similar planned infrastructure projects; and (iii)
664 potential for future conflicts with driveway locations for future
665 development.

666 (C) General considerations. Installation of new facilities shall take place in
667 the rights-of-way, not utility easements, and shall occur toward the
668 corner of property lines. New facilities will not be permitted at the
669 location of SCAT bus stops.

670 (D) Ground-mounted equipment. Ground-mounted equipment shall only be
671 placed at the intersection of two roadways. An applicant may request a
672 waiver to this requirement if it would inhibit proper functioning of the
673 pole-mounted facilities or if doing so would incur an excessive expense.
674 This waiver shall be approved or denied by the City within forty-five
675 (45) calendar days.

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676 (9) Height. The height of a facility is limited to ten feet (10') above the utility pole
677 or wireless support structure upon which the facility is to be collocated. The
678 height of a new utility pole or wireless support structure is limited to the tallest
679 existing utility pole as of July 1, 2017, located in the same right-of-way, other
680 than a utility pole for which a waiver previously has been granted, measured
681 from grade in place within five hundred feet (500') of the proposed location of
682 the small wireless facility. If there is no utility pole within five hundred feet
683 (500'), the height shall be limited to fifty feet (50').

684 (10) Use of stealth design/technology. Applicants must utilize stealth design, as
685 approved by the ~~Director of Neighborhood Development Services or~~
686 ~~designee~~City of North Port, for installation of all new wireless facilities, as
687 follows:

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688 (A) In Activity Centers, new utility poles and wireless support structures
689 must be the same color as all other authority utility poles in that Activity
690 Center and should be similar to the approved lighting structures in the
691 Urban Design Standards Pattern Book for that Activity Center.

692 (B) In residential zones, new utility poles and wireless support structures
693 must be designed to blend into the fabric of the neighborhood, using
694 architecturally compatible construction and colors, and shall include
695 street lighting that complies with the illumination standards in Section
696 37-50 of the City's Unified Land Development Code and meet the
697 requirements of installation, maintenance and operation of street
698 lighting under Section 37-50 of the Subdivision Control Regulations of
699 the City of North Port.

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700 (C) Facilities collocating on authority utility poles must use the same
701 construction type and color as the existing utility pole and be contained
702 within the same relative dimensions as the existing pole.

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703 (D) In all cases, no exposed wires are permitted.

704 (E) Accessory equipment must be located or placed in an existing building,
705 underground, or in an equipment shelter that is: (i) designed to blend in
706 with existing surroundings, using architecturally compatible
707 construction and colors,; or (ii) designed with the use of artistic vinyl
708 wraps.

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709 (11) Make-ready work. Make-ready work may be required for collocation of facilities
710 on City infrastructure. All work shall be done in accordance with Section
711 337.401(7), Florida Statutes.

712 (12) Noise. At no time shall transmission equipment or any other associated
713 equipment (including but not limited to heating and air conditioning units) at
714 any facility emit noise that exceeds the applicable limits established in the City
715 Code.

716 (13) Signage. Facilities may not bear any signage or advertisement(s) other than that
717 required by law.

718 (14) Correction of harmful conditions. If at any time the City or other authority of
719 competent jurisdiction reasonably determines that any facility is, or has caused
720 a condition that is, harmful to the health, safety or general welfare of any entity,
721 then the provider shall, at its own expense, promptly correct or eliminate all
722 such facilities and conditions. In such an emergency, as determined by the
723 Public Works City of North Port Director, when the provider is not immediately
724 available or is unable to provide the necessary immediate repairs to a facility
725 that is damaged or malfunctioning, or has caused a sunken area or other
726 condition and, in the Public Works City of North Port Director's sole discretion,
727 is deemed a threat to the health or safety of the general public, then the City
728 shall have the right to remove, make repairs to or eliminate same with the total
729 cost being charged to and paid for by the provider upon demand.

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730 (15) Remedy of hazardous conditions. If at any time a condition exists that the Public
731 Works City of North Port Director reasonably determines is an emergency that
732 is potentially hazardous or life threatening to any person or is a threat to the
733 health or safety of the general public, and to remedy such condition the Public
734 Works City of North Port Director reasonably determines that a provider must
735 temporarily relocate or temporarily shut off service or transmissions through a
736 facility, then the Public Works City of North Port Director may order the
737 provider to immediately perform such temporary relocation or shut off until the
738 condition has been remedied, and to do so at the provider's own expense and
739 without liability to or recourse against the City. In such an emergency, when the
740 provider is not immediately available or is unable to immediately relocate or
741 shut off the specific facility, then the City shall have the right to perform, or
742 cause to be performed, such temporary relocation or shut off until the condition
743 has been remedied with the total cost being charged to and paid for by the
744 provider upon demand.

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745 (16) Interference with other facilities. A provider shall not, in violation of any
746 applicable laws or regulatory standards, design, place or maintain its facilities

747 in a manner that will interfere with the signals or facilities of any municipal or
748 county police, fire or rescue department, the facilities of any public utility, or the
749 facilities of another provider, including any cable service provider.

750 (17) Relocation or removal of facilities. Except in cases of emergency, a
751 communications or wireless services provider, at its own expense, shall abide
752 by the following:

753 (A) Where the City finds that the facility is unreasonably interfering in some
754 way with the convenient, safe or continuous use, or the maintenance,
755 improvement, extension or expansion of any public rights-of-way, and
756 upon thirty (30) calendar days written notice, the provider shall
757 relocate or remove its facility as specified in said notice. In the event it
758 charges the provider for the cost and expense of relocating or removing
759 such facility, the City shall provide the provider with a notice and order
760 as provided for in Section 337.404, Florida Statutes, or any
761 subsequently enacted law of the state.

762 (B) Within a reasonable period of time from the date of written notice from
763 the City, but not more than thirty (30) calendar days thereafter, relocate
764 or remove, as specified in said notice, its facility in the event the ~~Public~~
765 ~~Works~~City of North Port Director determines it necessary: (i) for the
766 construction, completion, repair, relocation or maintenance of a City
767 project; (ii) because the particular facility is interfering with or
768 adversely affecting the proper operation of street light poles, traffic
769 signals, or any communications system belonging to the City or an
770 agency thereof; or (iii) because the particular facility is interfering with
771 the signals or facilities of the City of North Port Police Department,
772 North Port Fire Rescue District, or the City of North Port Utilities
773 Department. In the event the City issues any such written notice to the
774 provider pursuant to this paragraph, and the provider fails to cause the
775 relocation or removal within thirty (30) calendar days from the date of
776 written notice, the City may relocate or remove such facilities without
777 further notice to the provider and the total cost and expense shall be
778 charged to the provider.

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779 (18) Temporary raising or lowering of facilities. A provider, upon request of any entity
780 holding a validly issued building or moving permit from the City to temporarily
781 encroach on or perform moving operations in or across the public rights-of-
782 way, shall temporarily raise or lower its facilities to accommodate such
783 temporary encroachment or move. The expense of such temporary raising or
784 lowering of facilities shall be paid by the entity requesting the same, and the
785 provider shall have the authority to require such payment in advance. The
786 requesting entity shall give provider at least twenty (20) calendar days written
787 notice to arrange for the temporary relocation. The written notice must detail
788 the time and location of the permitted activity. The requesting entity also shall
789 give the provider at least twenty-four (24) hours' notice prior to the
790 commencement of the actual operation. The City is not subject to, nor shall it be

791 liable for any such expense or notice requirement for the moving of houses or
792 structures performed by the City or its contractors in response to an entity's
793 request.

794 (19) Coordination. To minimize the adverse impact on public rights-of-way and other
795 municipal improvements, the Director of Public WorksCity of North Port may
796 require that a provider coordinate the placement or maintenance of its facilities
797 with any ongoing or planned work, construction, installation or repairs to the
798 subject rights-of-way or other facilities therein. Within the public rights-of-way,
799 every provider shall make space in its trench and/or conduit available to other
800 providers consistent with the requirements of 47 U.S.C. Section 224. Providers
801 shall utilize existing conduits, pathways and other facilities whenever possible,
802 and shall not place or maintain any new, different, or additional utility poles or
803 wireless support structures, conduits, pathways or other facilities until written
804 approval is obtained from the City or other appropriate governmental
805 authority, and where applicable, from the private property owner.

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806 (20) Collocation and joint use.

807 (A) Prior to the placement of any new or additional underground conduit in
808 the public rights-of-way, a provider may enter into a joint use agreement
809 with the existing utility and/or other entity possessing a right to occupy
810 the public rights-of-way, to use an existing or planned conduit that the
811 provider could reasonably utilize to meet its needs, at a reasonable cost,
812 and on the time schedule reasonably needed. The provider, at their
813 expense, shall provide a copy of the joint use agreement to the Director
814 of Public WorksCity of North Port. Where a provider does not enter into
815 a joint use agreement, it shall certify in writing to the Director of Public
816 WorksCity of North Port that it has made appropriate inquiry to all
817 existing utilities and other entities possessing a right to occupy the
818 public rights-of-way as to the availability of an existing or planned
819 conduit that the provider could reasonably utilize to meet its needs, and
820 that no such conduit is available or planned at a reasonable cost by any
821 other entity on the time schedule reasonably needed.

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822 (B) A provider shall not be permitted to perform any placement or
823 maintenance of facilities in those segments of the public rights-of-way
824 where there exists vacant or available conduit, or where dark fiber or
825 surplus fiber owned by the City, an agency of the City, or another
826 governmental body, which is or through a reasonable amount of effort
827 and expense can be made compatible with the provider's system or
828 network. Under such circumstances the provider shall have the
829 opportunity to enter into a use agreement or lease arrangement with
830 the City, or an agency of the City, at or below reasonable and prevailing
831 market rates for such conduit or fiber. Where owned by another
832 governmental body a provider shall, in good faith, exhaust all means of
833 obtaining use of such conduit or fiber before applying for a wireless

834 infrastructure permit from the City. This subsection does not apply to
835 collocation of new facilities on existing authority utility poles.

836 (21) Restoration of the public rights-of-way. After completion of any placement or
837 maintenance of a facility in the public rights-of-way or each phase thereof, a
838 provider shall, at its own expense and in a manner reasonably acceptable to the
839 City, restore without delay the public rights-of-way so disturbed to their
840 original condition immediately prior to the placement or maintenance work. If
841 the provider fails to make such restoration within thirty (30) calendar days
842 following the completion of such placement or maintenance, the City may
843 perform such restoration and charge the costs of the restoration to the provider
844 in accordance with Section 337.402, Florida Statutes. The provider shall, to the
845 satisfaction of the ~~Director of Public Works~~City of North Port, maintain and
846 correct any restorations made pursuant hereto for a period of twelve (12)
847 months following the date of its completion.

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848 (22) Disruption or destruction of other facilities or property. A provider shall not
849 knowingly place or maintain any facility in a manner that in any way disrupts,
850 displaces, damages or destroys any sewer line, gas line, water main, pipe,
851 conduit, wires, fiber optics, or other facilities or property belonging to the City
852 or any other entity lawfully occupying the public rights-of-way, without first
853 obtaining written consent from the ~~Director of Public Works~~City of North Port.
854 The provider shall bear all responsibility and costs for any such conduct
855 undertaken without the City's written consent.

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856 (23) Trees and vegetation. Except in cases where normal tree or vegetation trimming
857 is necessary to ensure the safe operation of the communications and wireless
858 services or to protect the provider's facilities, the removal, cutting, marring,
859 defacing or destruction of any trees or other vegetation (other than grasses) by
860 the provider within the public rights-of-way is prohibited unless the provider
861 has obtained all applicable permits from the City. All such normal tree or
862 vegetation trimming by the provider must be performed in accordance with the
863 requirements of the City Code and shall be at the provider's own expense. All
864 other removal, cutting, marring, defacing or destruction of any trees or other
865 vegetation (other than grasses) by the provider shall be subject to the
866 supervision and direction of the City or other appropriate governmental
867 authority. If the provider either: (i) fails to engage in normal tree or vegetation
868 trimming on public property and such failure results in the provider's facilities
869 causing damage or injury to any property or person; or (ii) engages in normal
870 tree or vegetation trimming on public property and through such action causes
871 damage or injury to any property or person, then the provider, by act of
872 registering hereunder, agrees to indemnify, hold harmless, and defend the City
873 for any liability resulting from such damage or injury. The provider may
874 contract for such services, provided that any firm or individual so retained
875 obtains City approval prior to commencing such activity.

876 (24) Provision and form of record drawings and as-built surveys. Within forty-five (45)
877 calendar days after completion of any placement or maintenance of a facility in

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878 the public rights-of-way, the provider, at their own expense, shall provide the
879 City with record drawings, showing the final location of such facility. The
880 provider shall provide the City, at their own expense, the City with as-built
881 surveys within forty-five (45) calendar days after completion of any placement
882 or maintenance of a facility in the public rights-of-way.

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883 (25) Production and filing of as-builts. A provider that is registered with the City shall
884 produce and keep on file at its principal place of business, an accurate and
885 complete set of as-built surveys for all facilities it has placed and/or maintains
886 in the public rights-of-way. The location and identification of facilities and the
887 production of as-built surveys shall be produced at the sole expense of the
888 provider. Within thirty (30) calendar days of any written request by the
889 Director of Public WorksCity of North Port, the provider, at their expense, must
890 provide the City with copies of complete sets of as-builts for the indicated public
891 rights-of-way.

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892 (26) Removal of facilities placed without permit. Any facilities placed in the public
893 rights-of-way by the provider without first obtaining the required wireless
894 infrastructure permits shall be removed within thirty (30) calendar days of the
895 City providing written notice to remove the same. If the provider fails to timely
896 comply with such notice, the facilities may be removed by order of the City's
897 Director of Public WorksCity of North Port and upon demand, the provider shall
898 bear and pay the cost of removal.

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899 (c) General conditions on the utilization of the public rights-of-way and the placement or
900 maintenance of communications facilities.

901 (1) City not liable. Except for acts of willful misconduct or gross negligence and to
902 the extent permitted by applicable law, neither the City nor its officials,
903 Commissioners, consultants, agents, employees or independent contractors
904 shall have any liability to any provider for any claims for any damages, costs,
905 expenses or losses resulting from the City's breakage, removal, alteration or
906 relocation of a provider's facilities that: (i) arose out of or in connection with
907 any emergency or disaster situation; (ii) was, in the sole discretion of the
908 Director of Public WorksCity of North Port, deemed necessary to facilitate any
909 public worksCity of North Port project, public improvement, alteration of a City
910 structure, change in the grade or line of any public rights-of-way, or the
911 elimination, abandonment or closure of any public rights-of-way; or (c) was
912 found by City Commission to be in the best interest of the health, safety or
913 general welfare of the public.

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914 (2) No exemption from permits. Nothing in this Chapter shall exempt any provider
915 from obtaining wireless infrastructure permits for work done within the public
916 rights-of-way.

917 (3) Subject to police power. The rights of the provider shall be subject to all lawful
918 exercises of police power by the City, and to such other reasonable regulations
919 of the public rights-of-way as the City shall by resolution or ordinance provide
920 in the interest of the health, safety and general welfare of the public. Any

921 inconsistency or ambiguity between the provisions of this Chapter and any
922 lawful exercise of the City's police power shall be resolved in favor of the latter.

923 (4) City inspection. The City shall have the right to inspect a facility placed or
924 maintained in the public rights-of-way as the City finds necessary to ensure
925 compliance with this Chapter. This Chapter shall not be construed to create or
926 hold the City responsible or liable for any damage to persons or property due to
927 the City's inspection of a facility's placement or maintenance or due to the City's
928 failure to so inspect.

929 (5) Access to manholes. The City, in the proper exercise of its municipal powers and
930 duties with respect to the public rights-of-way, shall have access at any time to
931 all hand holes and manholes in the City belonging to a provider. Before
932 accessing any manhole, the City will make a reasonable good-faith effort to
933 provide the provider notice and to afford the provider an opportunity to have
934 trained personnel present, unless determined by the ~~Public Works~~City of North
935 Port Director to be an emergency.

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936 (6) No warranty of fitness or suitability. The City makes no express or implied
937 warranties or representations regarding the fitness, suitability, or availability
938 of the public rights-of-way for any facility or its right to authorize the placement
939 or maintenance of any facility in the public rights-of-way. Any performance of
940 work, costs incurred or services rendered by a provider shall be at such
941 provider's sole risk. Nothing in this Chapter shall affect the City's authority to
942 acquire or add public rights-of-way, or to vacate or abandon public rights-of-
943 way as provided for in the Florida Statutes or other applicable law. The City
944 makes no express or implied warranties or representations regarding the
945 availability of any acquired, added, vacated or abandoned public rights-of-way
946 for a facility.

947 **Sec. 86-10. - Duty to notify City of resellers; conditional use of public rights-of-way.**

948 Within thirty (30) calendar days of any registered provider using its facilities to carry
949 the communication services of any reseller, such provider shall notify the City of the name,
950 address, and email of such reseller. A reseller's lease, interconnection or other use of facilities
951 belonging to a provider registered in accordance with this Chapter and permitted to place or
952 maintain its facilities in the public rights-of-way, does not and shall not afford such reseller
953 any right, claim or cause of action to impede the lawful exercise of the City's rights or police
954 powers, including but not limited to requiring the registered provider to remove such
955 facilities from the public rights-of-way.

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956 **Sec. 86-11. - Revocation or suspension of wireless infrastructure permits.**

957 The City may revoke any wireless infrastructure permit currently issued to a provider
958 for work in the public rights-of-way or suspend the issuance of wireless infrastructure

959 permits in the future to a provider for, in addition to any other circumstances provided for
960 in this Chapter, any of the following reasons:

961 (1) A violation of permit conditions, including conditions set forth in the permit, this
962 Chapter, and other applicable codes or regulations governing the placement or
963 maintenance of facilities in the public rights-of-way.

964 (2) A misrepresentation or fraud made or committed on the part of the provider in the
965 registration process or in the application for a wireless infrastructure permit.

966 (3) The failure to properly renew the registration or the ineffectiveness of registration.

967 (4) The failure to relocate or remove facilities as required by the City pursuant to this
968 Chapter.

969 The ~~Director of Public Works~~City of North Port shall provide notice and an opportunity to
970 cure any violation above, each of which shall be reasonable under the circumstances.

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971 **Sec. 86-12. - Involuntary termination of registration.**

972 (a) The City may terminate a registration if:

973 (1) A federal or state authority suspends, denies, or revokes a provider's certification
974 or license to provide communications or wireless services;

975 (2) The provider's placement or maintenance of a facility in the public rights-of-way
976 presents an extraordinary danger to the general public or other users of the public
977 rights-of-way and the provider fails to remedy the danger promptly after receipt of
978 written notice through electronic and standard mail from the City;

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979 (3) The provider ceases to use all its facilities in the public rights-of-way and has not
980 complied with the regulations in this Chapter for abandonment of a facility; or

981 (4) The provider fails to comply with any of the rules, regulations or general conditions
982 set forth in this Chapter.

983 (b) Prior to termination of a registration, the ~~Director of Public Works~~City of North Port
984 shall issue the provider a written notice through electronic and standard mail setting
985 forth all matters pertinent to the proposed termination. The provider shall have thirty
986 (30) calendar days after receipt of such notice within which to eliminate the reason or
987 to present a plan satisfactory to the ~~Director of Public Works~~City of North Port. If not
988 eliminated or if the plan presented is rejected, the ~~Director of Public Works~~City of North
989 Port shall provide written notice through electronic and standard mail of such rejection
990 to the provider and a final determination to terminate registration. A final determination
991 to terminate registration may be appealed in accordance with the procedures set forth
992 in this Chapter.

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993 (c) In the event of registration termination, following any appeal period, the provider
994 formerly registered shall: (i) notify the City of the assumption or anticipated assumption
995 by another registrant of ownership of the provider's facilities in the public rights-of-way;

996 or (ii) provide the City with an acceptable plan for disposition of its facilities in the public
997 rights-of-way. Where a provider fails to comply with this Subsection the City may
998 exercise any and all remedies available at law or in equity, including but not limited to
999 taking possession of the facilities where another entity has not assumed the ownership
1000 or physical control of the facilities or requiring the provider, within ninety (90) calendar
1001 days of the termination or such longer period as may be mutually agreed to between the
1002 City and the provider, to remove some or all of the facilities from the public rights-of-
1003 way and restore the public rights-of-way to their original condition prior to such
1004 removal. A determination of non-compliance is subject to appeal as provided in this
1005 Chapter.

1006 (d) A provider whose registration has been terminated shall take all steps necessary to
1007 render safe every portion of its facilities remaining in the public rights-of-way.

1008 (e) In the event of termination of a registration, this Section does not authorize the City to
1009 cause the removal of facilities used to provide another service for which the provider, or
1010 another entity that owns or exercises physical control over the facilities, holds a valid
1011 certification or license with the governing federal or state agency, if required for
1012 provision of such service, and that is registered with the City, if required.

1013 (f) The City's right to terminate a registration shall be in addition to all other rights of the
1014 City, whether reserved in this Chapter or authorized by other law, and no action,
1015 proceeding or exercise of the right to terminate a registration will affect or preclude any
1016 other right the City may have.

1017 **Sec. 86-13. - Appeals.**

1018 The following actions are subject to appeal to the City Manager: (i) a final denial of an
1019 initial registration; (ii) a denial of an application for renewal of a registration; (iii) a
1020 termination of a registration; or (iv) a denial, revocation, or suspension of any wireless
1021 infrastructure permit. A notice of appeal of such decision may be filed with the City Manager
1022 within thirty (30) calendar days of the date of the final written decision to be appealed. The
1023 City Manager shall have thirty (30) calendar days from the date the appeal is filed to review
1024 the matter and render a written decision through electronic and standard mail to uphold or
1025 reverse the final decision made by staff. Where a notice of appeal to the City Manager is not
1026 timely filed as provided herein, such right to appeal shall be waived. Upon the timely
1027 correction by the provider of the circumstances that gave rise to a suspension or denial of a
1028 wireless infrastructure permit, the suspension or denial shall be lifted (the same does not
1029 apply to the revocation of a wireless infrastructure permit).

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1030 **Sec. 86-14. - Charge for pass-through providers.**

1031 (a) *Applicability.* Pass-through providers that place or maintain a communications facility in
1032 the City's roads or rights-of-way shall pay the City an amount based on and in accordance
1033 with Subsection (b).

1034 (b) Charge. Applicable pass-through providers shall pay to the City an annual amount
1035 totaling the greater of:

1036 (1) Five hundred dollars (\$500.00) per linear mile of the roads or rights-of-way
1037 where a communications facility is placed; or

1038 (2) The maximum amount allowable per linear mile, as provided for in Section
1039 337.401(6), Florida Statutes.

1040 In any case, said charge shall not exceed the amount allowable by Section 337.401(6),
1041 Florida Statutes.

1042 (c) Administration of charge. The charge in this Section may be charged only once annually
1043 and only to one entity annually for any communications facility. The City shall
1044 discontinue charging an entity that has ceased to be a pass-through provider. The annual
1045 amount charged shall be reduced for a prorated portion of any twelve (12) month period
1046 during which the entity remits taxes imposed by the City pursuant to Chapter 202,
1047 Florida Statutes. Upon receipt of the entity's written notice of any excess amounts paid,
1048 and the City's review and verification of the overcharge, the City shall refund the excess.
1049 The charge in this Section shall not apply to any communications facility that is used
1050 exclusively for the internal communications of an electric utility or other entity in the
1051 business of transmitting or distributing electric energy.

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1052 **Sec. 86-15. - Collocation fees.**

1053 The rate to collocate small wireless facilities on an authority utility pole shall be one
1054 hundred and fifty dollars (\$150.00) per pole, annually, or such maximum rate as is adopted
1055 in Section 337.401, Florida Statutes.

1056 **Sec. 86-16. - Existing communications or wireless facilities.**

1057 All provisions herein shall be fully applicable to entities/providers already having in
1058 existence, prior to the effective date of this Chapter, valid and effective authorization from
1059 the City to construct, place, install, maintain or operate a facility in the public rights-of-way.
1060 A provider with a facility in the public rights-of-way as of the effective date of this Chapter
1061 has until October 1, 2018 to comply with the provisions of this Chapter, including but not
1062 limited to registration, or be in violation thereof.

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1063 **Secs. 86-17 - 86-20. - Reserved.**

1064 **ARTICLE III. - INSURANCE, BONDS, AND ENFORCEMENT**

1065 **Sec. 86-21. - Insurance.**

1066 (a) At all times during the use or occupancy of the public rights-of-way, including any time
1067 during placement or maintenance of facilities, the provider shall obtain, pay all
1068 premiums for, and maintain the types of insurance policies and coverage limits
1069 described in this Section. Nothing contained in this Chapter shall limit a provider's
1070 liability to the City to the limits of insurance certified or carried.

1071 (1) Commercial general liability insurance valid in the state; including contractual
1072 liability and products completed operations liability coverage on an occurrence
1073 basis, which policy limit shall be in an amount not less than one million dollars
1074 (\$1,000,000) per occurrence, combined single limit, for bodily injury, personal
1075 injury or death, or property damage and in an amount not less than two million
1076 dollars (\$2,000,000) policy aggregate for each personal injury liability, broad form
1077 property damage (without XCU exclusions), contractual liability and products-
1078 completed operations liability.

1079 (2) Business automobile liability insurance valid in the state; which policy limit shall be
1080 in an amount not less than one million dollars (\$1,000,000) combined single limit,
1081 including bodily injury and property damage covering owned, leased, hired and
1082 non-owner vehicles.

1083 (3) Workers' compensation valid in the state; which policy limit shall be in an amount
1084 not less than the statutory limit for workers' compensation.

1085 (4) Employer's liability insurance valid in the state; which policy limit shall be in an
1086 amount not less than one million dollars (\$1,000,000) for each accident for
1087 employer's liability.

1088 (b) All insurance providers used shall be admitted and duly authorized to do business in the
1089 state and shall have assigned by A. M. Best Company a minimum Financial Strength
1090 Rating of "A" and a minimum Financial Size Category of "IX" (i.e., a size of \$250,000,000
1091 to \$500,000,000 based on capital, surplus, and conditional reserve funds). Insurance
1092 policies and certificates issued by non-admitted insurance companies are not
1093 acceptable. All liability policies shall name the City, its Commissioners, officers, and
1094 employees as additional insureds with respect to any covered liability arising out of the
1095 placement or maintenance of facilities in the public rights-of-way or other activities
1096 under this Chapter. Each provider shall furnish annually to the City certificates showing
1097 proof of all required insurance coverage. All liability coverage must be in occurrence
1098 form and in accordance with the limits specified. Claims-made policies are not
1099 acceptable. No insurance policy shall be canceled, nor shall the occurrence or aggregate
1100 limits set forth herein be reduced, until the City has received at least thirty (30) calendar
1101 days' written notice by registered or certified mail of any cancellation, intent not to
1102 renew, or reduction in policy coverage. Each provider shall be responsible for notifying
1103 the City of such cancellation, intent not to renew, or reduction in coverage. All certificates
1104 of insurance, including all endorsements and riders, evidencing insurance coverage,
1105 shall be submitted to the City within thirty (30) calendar days after the date of the
1106 provider's registration with the City pursuant to this Chapter. Each provider shall, in the
1107 event of any such notice described above, obtain, pay all premiums for, and file with the

1108 City, written evidence of the issuance of replacement policies within thirty (30) calendar
1109 days following receipt by the City or the provider of such notice.

1110 (c) The certificates of insurance must be properly executed by the authorized
1111 representative of the insurance provider and must include all endorsements, riders and
1112 notices. Each provider shall file and maintain with the City on an annual basis the
1113 required certificates of insurance. The certificates of insurance must indicate the
1114 following:

1115 (1) The policy number, name of insurance company, name, ~~and address and e-mail of~~
1116 the agent or authorized representative, name, ~~and address and e-mail of insured,~~
1117 that the policy coverage "pertains to the requirements of Chapter 86 of the City of
1118 North Port Code," policy expiration date, and specific coverage amounts;

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1119 (2) Any applicable deductibles or self-insured retentions;

1120 (3) That the City, its Commissioners, officers and employees are additional insureds;

1121 (4) That the City shall receive thirty (30) calendar days' written notice of cancellation,
1122 intent not to renew, or reduction in coverage; and

1123 (5) That the commercial general liability insurance policy is primary and respects any
1124 other valid or collectible insurance that the City may possess, including any self-
1125 insured retentions the City may have, and any other insurance the City does possess
1126 shall be considered excess insurance only and shall not be required to contribute
1127 with this insurance.

1128 (d) Under extraordinary circumstances, a provider may satisfy the insurance requirements
1129 of this Chapter by providing documentation of self-insurance that, in the sole discretion
1130 of the City's Risk Manager, demonstrates incontrovertibly the adequacy to defend and
1131 cover claims of any nature that might arise from the placement and maintenance of
1132 facilities in the public rights-of-way. The provider must be authorized as a self-insurer
1133 by the Department of Insurance under the laws of the state.

1134 **Sec. 86-22. - Indemnification.**

1135 (a) Except with respect to the willful misconduct, negligence or gross negligence of the City,
1136 a provider, by registering with the City pursuant to this Chapter, shall be obligated at its
1137 sole cost and expense to defend, indemnify and hold harmless the City, its officials,
1138 Commissioners, consultants, agents, employees and independent contractors from and
1139 against any and all claims, suits, causes of action, proceedings, liabilities and judgments
1140 for damages or equitable relief, and costs and expenses arising out of or in connection
1141 with the placement or maintenance of its facilities in the public rights-of-way by the
1142 provider or its agent or hired contractor. This indemnification provision shall include
1143 but not be limited to damages and penalties arising out of claims: (i) by any entity on
1144 account of bodily injury to a person or persons, death of a person or persons, or property
1145 damage, where any of the foregoing is occasioned by the operations of the provider, or

1146 alleged to have been so caused or occurred; or (ii) involving the provider's violation of
1147 any easement or private property rights.

1148 (b) Nothing in this Section shall prohibit the City from participating in the defense of any
1149 litigation by its own counsel if in the City's reasonable belief there exists or may exist a
1150 conflict, potential conflict, or appearance of a conflict.

1151 (c) Indemnified costs and expenses shall include, but not be limited to, all out-of-pocket
1152 expenses and reasonable attorneys' fees in defending against any such claim, suit or
1153 proceeding, including the reasonable value of any services rendered by the City
1154 Attorney's Office and any consultants, experts, agents and employees of the City. The City
1155 will attempt to notify the provider, in writing, within a reasonable time of the City's
1156 receiving notice of any issue it determines may require indemnification.

1157 (d) Nothing contained in this Section shall be construed or interpreted: (i) as denying the
1158 City, the provider, or any entity any remedy or defense available under the laws of the
1159 state; or (ii) as a waiver of sovereign immunity beyond the waiver provided in Section
1160 768.28, Florida Statutes.

1161 (e) The indemnification requirements of this Chapter shall survive and be in effect after the
1162 termination or cancellation of a registration.

1163 **Sec. 86-23. - Construction bond.**

1164 (a) Prior to issuance of any wireless infrastructure permit where the type of work allowed
1165 under the permit will require restoration of the public rights-of-way, the provider or its
1166 contractor must obtain, pay for, and file with the City a construction bond. The
1167 construction bond shall serve to guarantee the timeliness and quality of the construction
1168 and restoration work and to secure, and enable the City to recover, all costs related to
1169 the restoration of the public rights-of-way in the event the provider or its contractor fails
1170 to make such restoration to the City's satisfaction or causes damage to the public rights-
1171 of-way during construction. The construction bond must name the City as obligee and
1172 be in the face amount of fifteen thousand dollars (\$15,000) conditioned upon the full and
1173 faithful completion of construction and restoration of the public rights-of-way to its
1174 original condition. Six (6) months following completion and inspection of the restoration
1175 of the public rights-of-way satisfactory to the ~~Director of Public Works~~City of North Port,
1176 the provider or its contractor may reduce the face amount of the construction bond to
1177 five thousand dollars (\$5,000) and thereafter may allow the bond to lapse in accordance
1178 with its terms. For any subsequent work in the public rights-of-way, the provider or its
1179 contractor will be required to replenish any existing construction bond or provide a new
1180 construction bond in the face amount of fifteen thousand dollars (\$15,000). The
1181 construction bond shall be in a form acceptable to the City Attorney and must be issued
1182 by a surety having a rating reasonably acceptable to the ~~Director of Public Works~~City of
1183 North Port and authorized by the Florida Department of Insurance to issue surety bonds
1184 in this state.

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1185 (b) The construction bond must be issued as non-cancelable and be for a term of not less
1186 than twelve (12) months. In the event the term of any construction bond expires or is
1187 reasonably expected to expire prior to the completion of construction, restoration and
1188 City inspection, the provider or its contractor must immediately obtain, pay for, and file
1189 with the City a replacement bond.

1190 (c) The City's requirement of a construction bond is not in lieu of any additional bonds
1191 required under this Chapter or through the permitting process. The City's right to
1192 recover under the construction bond shall be in addition to all other rights of the City,
1193 whether reserved in this Chapter, or authorized by other law, and no action, proceeding
1194 or exercise of a right with respect to the construction bond will affect or preclude any
1195 other right the City may have.

1196 **Sec. 86-24. - Performance bond.**

1197 (a) Before any provider is permitted to begin the placement or maintenance of an initial
1198 build, any substantial rebuild, upgrade, or extension of its communications system, or
1199 when construction plans show that there would be at least one thousand (1,000) feet of
1200 open trenching in the public rights-of-way at any given time, the provider must obtain,
1201 pay for, and file with the City a performance bond. The performance bond must name
1202 the City as obligee and be in the face amount of two-hundred-fifty thousand dollars
1203 (\$250,000) conditioned upon the full and faithful compliance by the provider with all
1204 requirements, duties, and obligations imposed by this Chapter during and through
1205 completion of the placement or maintenance project. The performance bond shall be in
1206 a form acceptable to the City Attorney and must be issued by a surety having a rating
1207 reasonably acceptable to the ~~Director of Public Works~~City of North Port and authorized
1208 by the Florida Department of Insurance to issue performance bonds in this state.

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1209 (b) The performance bond must be issued as non-cancelable and be for a term consistent
1210 with the reasonably expected duration of the placement or maintenance project
1211 (including restoration and City inspection), but in no event less than eighteen (18)
1212 months. In the event the term of any performance bond expires, or is reasonably
1213 expected to expire, prior to the completion of such placement or maintenance project,
1214 including restoration and City inspection, the provider must immediately obtain, pay for,
1215 and file with the City a replacement bond.

1216 (c) The City's requirement of a performance bond is not in lieu of any additional bonds
1217 required under this Chapter or through the permitting process. The City's right to
1218 recover under the performance bond shall be in addition to all other rights of the City,
1219 whether reserved in this Chapter, or authorized by other law, and no action, proceeding
1220 or exercise of a right with respect to the performance bond will affect or preclude any
1221 other right the City may have. Any proceeds recovered under the performance bond may
1222 be used to reimburse the City for such additional expenses incurred by the City due to
1223 the provider's failure to comply with the responsibilities imposed by this Chapter,
1224 including but not limited to attorney's fees and costs of any action or proceeding,
1225 including the reasonable value of any services rendered by the City Attorney's Office and

1226 any consultants, experts, agents and employees of the City, as well as the cost of removal
1227 or abandonment of any property.

1228 **Sec. 86-25. - Security fund.**

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1229 Every provider shall make a twenty-five-thousand-dollar (\$25,000) cash deposit, or
1230 shall file with the City an irrevocable letter of credit in the same amount, which shall serve,
1231 and be referred to, as the *security fund*. The security fund shall be conditioned upon the full
1232 and faithful compliance with and performance by the provider of all requirements, duties
1233 and obligations imposed by this Chapter. The letter of credit shall be in a form and issued by
1234 an institution acceptable to the City's Finance Director. Should the City draw upon the
1235 security fund, it shall promptly notify the provider, and the provider shall promptly restore
1236 the cash deposit or letter of credit to the full amount. The security fund shall be maintained
1237 until the later of: (i) the effective date of transfer, sale or assignment by the provider of all its
1238 facilities in the public rights-of-way; (ii) twelve (12) months after the removal or
1239 abandonment by the provider of all its facilities in the public rights-of-way; or (iii) six (6)
1240 months after the termination of registration, including any appeals undertaken. Upon the
1241 later of these events, the cash deposit will be returned without interest or the letter of credit
1242 may be cancelled. In the event a provider fails to perform any requirement, duty, or
1243 obligation of this Chapter, there shall be recoverable, jointly and severally from the security
1244 fund, any damages or loss suffered by the City as a result, including the full amount of any
1245 compensation, indemnification, or cost of removal, relocation or abandonment of any
1246 facilities in public rights-of-way, plus a reasonable allowance for attorneys' fees, including
1247 the reasonable value of any services rendered by the City Attorney's Office and any
1248 consultants, experts, agents and employees of the City, up to the full amount of the security
1249 fund.

1250 **Sec. 86-26. - Enforcement remedies.**

1251 (a) No provision of this Chapter shall be deemed to bar the right of the City to seek or obtain
1252 judicial relief from a violation of any provisions of this Chapter, the registration
1253 provisions, or any rule, regulation or general condition provided for hereunder, whether
1254 administratively, judicially or both. Neither the existence of other remedies identified in
1255 this Chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right
1256 of the City to recover fines, penalties, or monetary damages (except where liquidated
1257 damages are otherwise prescribed) for such violation by the provider. The remedies
1258 available to the City shall be cumulative and in addition to any other remedies provided
1259 by law or equity. The laws of the state shall govern with respect to any proceeding in law
1260 or equity pertaining to the enforcement of this Chapter or any cause of action arising out
1261 of or in connection herewith.

1262 (b) A provider's failure to comply with provisions of this Chapter shall constitute a Code
1263 violation and shall subject the provider to the code enforcement provisions and

1264 procedures as provided in Code Chapter 2, Article IX, and may be punishable as provided
1265 in this Code and Section 162.22, Florida Statutes.

1266 (c) The City may find a provider that does not demonstrate compliance with the terms and
1267 conditions of this Chapter in default and apply any appropriate remedy or remedies as
1268 authorized by this Chapter.

1269 (d) The ~~Director of Public Works~~City of North Port shall be responsible for administration
1270 and enforcement of this Chapter and is authorized to give any notice required herein or
1271 by law.

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1272 (e) Failure of the City to enforce any requirements of this Chapter shall not constitute a
1273 waiver of the City's right to enforce that violation or subsequent violations of the same
1274 type or to seek appropriate enforcement remedies.

1275 **Sec. 86-27. - Liquidated damages.**

1276 (a) In addition to any other rights or remedies available at law or equity or as otherwise
1277 provided in this Chapter, the City shall have the power to impose the following monetary
1278 liquidated damages in the event the provider violates any provision of this Chapter. The
1279 provider is required to pay the City the monetary liquidated damages within ten (10)
1280 calendar days from the date of written notification for payment thereof in accordance
1281 with the schedule set forth below. Any such liquidated damages shall be recoverable
1282 from the security fund at the City's option.

1283 (1) Failure to obtain a wireless infrastructure permit for the placement or maintenance
1284 of facilities in the public rights-of-way, or a violation of any permit condition — one
1285 hundred dollars (\$100.00) per occurrence.

1286 (2) Failure to complete construction for the placement of a facility in the public rights-
1287 of-way within 180 days of the City issuing the applicable wireless infrastructure
1288 permit, unless a longer period has been granted by the City — one hundred dollars
1289 (\$100.00) per day thereafter.

1290 (3) Failure to properly restore the public rights-of-way to their original condition
1291 following completion of the placement or maintenance of a facility in the public
1292 rights-of-way — one hundred dollars (\$100.00) per day.

1293 (4) Failure to adhere to the permitting, inspection and installation standards and
1294 requirements — one hundred dollars (\$100.00) per occurrence.

1295 (5) Failure to remove or relocate, either temporarily or permanently, facilities as
1296 required pursuant to this Chapter — one hundred dollars (\$100.00) per day.

1297 (6) Failure in an emergency to repair, relocate, shut off, or eliminate facilities or harmful
1298 conditions as required under paragraphs 14 and 15 of Section 86-9(b) of this
1299 Chapter — five hundred dollars (\$500.00) per occurrence.

1300 (7) Failure to move aboveground facilities or equipment to new utility poles or wireless
1301 support structures as required pursuant to this Chapter — one hundred dollars
1302 (\$100.00) per day.

1303 (8) Failure to pay for, keep, or maintain on file the required insurance or to provide
1304 evidence thereof to the City — five hundred dollars (\$500.00) per occurrence.

1305 (9) Failure to supply as-builts in accordance with this Chapter regarding placement or
1306 maintenance of communications facilities in the public rights-of-way — one
1307 hundred dollars (\$100.00) per day.

1308 (10) Failure to comply with any other material requirements contained in this Chapter
1309 — one hundred dollars (\$100) per day.

1310 (b) Before imposing any liquidated damages assessment pursuant to this Section, the
1311 Director of Public Works City of North Port shall give written notice of violation to the
1312 provider and the City's intention to assess liquidated damages; such notice shall set forth
1313 with reasonable specificity the circumstances and the nature of the alleged violation(s).
1314 Following receipt of such notice, the provider shall have thirty (30) calendar days to
1315 either: (i) correct the alleged violation to the City's satisfaction; or (ii) file a notice of
1316 appeal in accordance with this Chapter to contest the alleged violation. If no appeal has
1317 been timely filed and the alleged violation has not been corrected after the thirty (30)
1318 calendar days, the City may collect liquidated damages and the same shall be deemed to
1319 have begun to accrue from the date on the written notice of violation and shall continue
1320 to accrue until the violation is corrected or otherwise resolved to the satisfaction of the
1321 Director of Public Works City of North Port. The enforcement of collection of liquidated
1322 damages may be through any means allowed under the laws of the state.

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1323 (c) The provider's failure to comply with certain material provisions of this Chapter will
1324 result in injury to the City and its residents. Because it will be difficult to estimate the
1325 extent of such injury, the City and, by its acceptance of a registration pursuant to this
1326 Chapter, the provider, agree to these liquidated damages for the referenced violations,
1327 which represent both parties' best estimate of the damages, whether actual or potential,
1328 resulting from the specified non-compliance, and may include without limitation,
1329 increased costs of administration and other damages too difficult to measure. The City
1330 Commission reserves the right to amend the liquidated damage amounts or to adopt
1331 further assessments for violations not specifically set forth herein.

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1332 (d) The procedure, rights and remedies set forth in this Section are not exclusive.
1333 Alternative remedies that are not set forth herein may be pursued simultaneously or
1334 subsequently. Use by the City of the liquidated damages provisions set forth in this
1335 Section shall not constitute a waiver of any such alternative remedies.

1336 (e) Nothing herein shall be construed as affecting, in any manner, the rights of third parties
1337 to any relief available for damages or injury suffered due to alleged violations of this
1338 Chapter.

1339 **Sec. 86-28. - Abandonment of a communications facility.**

- 1340 (a) The provider shall notify the City within sixty (60) calendar days of the abandonment of
1341 any facility owned by the provider in the public rights-of-way.
- 1342 (b) The City may direct the provider, by written notice, to remove all or any portion of such
1343 abandoned facility at the provider's sole expense if the City determines that the
1344 abandoned facility's presence interferes with the public health, safety or welfare, which
1345 shall include but not be limited to a determination that such facility: (i) compromises
1346 safety at any time for any public rights-of-way user; (ii) compromises the safety of other
1347 entities performing placement or maintenance of facilities in the public rights-of-way;
1348 (iii) prevents another entity from locating other facilities in the area of the public rights-
1349 of-way where the abandoned facility is located when other alternative locations are not
1350 reasonably available; or (iv) creates a maintenance condition that is disruptive to the
1351 use of the public rights-of-way. In the event of (ii), the City may require the affected
1352 entity to coordinate with the provider that owns the existing facility for joint removal
1353 and placement, where agreed to by the provider.
- 1354 (c) If the provider fails to remove all or any portion of an abandoned facility as directed by
1355 the City within the time specified in the written notice, which time must be reasonable
1356 under the circumstances, the City may perform such removal and charge the cost of the
1357 removal against the provider.
- 1358 (d) In the event that the City does not direct the removal of the abandoned facility, the
1359 provider, by its notice of abandonment to the City, shall be deemed to consent to the
1360 alteration or removal of all or any portion of such abandoned facility by the City or other
1361 entity, provided that the cost of the alteration or removal is not borne by the provider.
1362 As an alternative to removing the facility, the City may take control of the facility if
1363 approved by the Public Service Commission as having the appropriate authority to
1364 provide telecommunications company service within the State of Florida.

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1365 **Sec. 86-29. - Reservation of rights.**

1366 The City hereby expressly reserves all the following rights:

- 1367 (a) As and when deemed necessary by the City Commission to be in the best interest of the
1368 City or its residents, to abandon portions of the public rights-of-way within the proper
1369 exercise of its municipal authority and without notice to or the consent of any provider.
1370 The City shall not be responsible for any costs, damages, loss or other expense to the
1371 provider due to the City's abandonment of any public rights-of-way.
- 1372 (b) To place and maintain, and permit to be placed or maintained, sewer, gas, water, electric,
1373 storm drainage, communications, and other types of facilities, cables or conduit, and to
1374 do, and to permit to be done, any underground and overhead installation or
1375 improvement that may be deemed necessary or proper by the City in the public rights-
1376 of-way occupied by any provider.
- 1377 (c) Without limitation, the right to alter, change, or cause to be changed, the grading,
1378 installation, relocation, or width of any public rights-of-way within the City limits and
1379 within said limits as the same may from time to time be altered.

1380 (d) To require a reseller to register in accordance with this Chapter to the extent such
1381 reseller wants the right to place or maintain facilities in the public rights-of-way. Any
1382 entity using or leasing facilities owned by a registered provider is not entitled to any
1383 rights to place or maintain facilities in the public rights-of-way, unless such entity
1384 registers with the City.

* * *

1385 **APPENDIX A – CITY FEE STRUCTURE**

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1386 **K. ROAD AND DRAINAGE FEES**

ROAD AND DRAINAGE FEES	
Culvert Permit (Line and Grade) + Right-of-Way	\$200.00
Right-of-Way Use Permit	\$50.00
Culvert Re-inspection	\$75.00
<u>Collocation of Small Wireless Facility on Authority Utility Pole</u>	<u>\$150.00 per pole annually</u>

1387 **SECTION 3 – CONFLICTS:**

1388 3.01 In the event of any conflict between the provisions of this Ordinance and any other
1389 Ordinance or portions thereof, the provisions of this Ordinance shall prevail to the extent of
1390 such conflict.

1391 **SECTION 4 – SEVERABILITY:**

1392 4.01 If any section, subsection, sentence, clause, phase, or provision of this Ordinance is
1393 for any reason held invalid or unconstitutional by any court of competent jurisdiction, such

1394 provision shall be deemed a separate, distinct, and independent provision and such holding
1395 shall not affect the validity of the remaining portions hereof.

1396 **SECTION 5 – CODING OF AMENDMENTS:**

1397 5.01 In this Ordinance, additions are shown as underlined and deletions as strikethrough.
1398 These editorial notations shall not appear in the codified text.

1399 **SECTION 6 – EFFECTIVE DATE:**

1400 6.01 This Ordinance shall take effect immediately after adoption by the City Commission
1401 of the City of North Port. No development order or development permits dependent on this
1402 Ordinance may be issued before it has become effective.

1403 READ BY TITLE ONLY at first reading by the City Commission of the City of North Port,
1404 Florida in public session this _____ day of _____, 2017.

1405 PASSED and DULY ADOPTED by the City Commission of the City of North Port, Florida on the
1406 second and final reading in public session this _____ day of _____, 2018.

CITY OF NORTH PORT, FLORIDA

VANESSA CARUSONE
MAYOR

ATTEST:

PATSY C. ADKINS, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:

Ordinance No. 2017-37

AMBER L. SLAYTON
CITY ATTORNEY