

**ORDINANCE NO. 244**

**AN ORDINANCE OF THE TOWN OF CINCO BAYOU, FLORIDA, PROVIDING AUTHORITY; RATIFYING RECITALS; AMENDING SECTION 6.01.00 OF THE TOWN LAND DEVELOPMENT CODE ENTITLED RIGHT OF WAY (ROW) PROTECTION; AMENDING SECTION 7.10.04 OF THE TOWN LAND DEVELOPMENT CODE ENTITLED APPLICABILITY; AMENDING CHAPTER 7 OF THE TOWN LAND DEVELOPMENT CODE, CREATING SECTION 7.10.12 OF THE TOWN LAND DEVELOPMENT CODE FOR THE PURPOSE OF ESTABLISHING REQUIREMENTS FOR WIRELESS FACILITIES IN THE TOWN RIGHTS-OF-WAY; CREATING SECTION 7.10.12(a) TITLE; CREATING SECTION 7.10.12(b) DEFINITIONS; CREATING SECTION 7.10.12(c) FINDINGS, INTENT AND PURPOSE; CREATING SECTION 7.10.12(d) REGISTRATION; CREATING SECTION 7.10.12(e) NOTICE OF TRANSFER, SALE OR ASSIGNMENT OF ASSETS IN PUBLIC RIGHTS-OF-WAY; CREATING SECTION 7.10.12(f) PERMIT REQUIREMENTS AND CONDITIONS; CREATING SECTION 7.10.12(g) GENERAL STEALTH DESIGN REQUIREMENTS FOR ABOVE-GROUND WIRELESS FACILITIES; CREATING SECTION 7.10.12(h) NONINTERFERENCE WITH OTHERS; CREATING SECTION 7.10.12(i) RESTORATION OF RIGHTS-OF-WAY; CREATING SECTION 7.10.12(j) ENFORCEMENT OF PERMIT OBLIGATIONS, SUSPENSION AND REVOCATION OF PERMITS; CREATING SECTION 7.10.12(k) APPEALS; CREATING SECTION 7.10.12(l) INSURANCE AND BONDING; CREATING SECTION 7.10.12(m) ABANDONMENT; CREATING SECTION 7.10.12(n) NO WARRANTY OR REPRESENTATION OF FITNESS OR SUITABILITY; CREATING SECTION 7.10.12(o) TOWN NOT LIABLE; CREATING SECTION 7.10.12(p) INDEMNIFICATION; PROVIDING FOR CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS; PROVIDING FOR CONFLICT OF LAW; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, it is the intent of the Town Council of the Town of Cinco Bayou, Florida (hereinafter "Town") to exercise its authority over Wireless Providers' placement and maintenance of Wireless Facilities in the Town's Public Rights-of-Way and to implement the Advanced Wireless Infrastructure Deployment Act as provided in §337.401(7), *Florida Statutes*; and,

**WHEREAS**, this Ordinance seeks to address new communications facilities technologies, while also protecting, preserving, and maintaining the aesthetic character of areas where such rights-of-way exist within the Town; and,



**WHEREAS**, §337.401, *Florida Statutes*, addresses the authority of local governments to regulate the placement and maintenance of communications facilities in the Public Rights-of-Way, and requires that rules and regulations imposed by a local government relating to communications services providers that desire to Place or Maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and,

**WHEREAS**, §337.401(7), *Florida Statutes*, addresses, *inter alia*, the authority of local governments to adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, and objective design standards requiring a new utility pole that replaces an existing facility to be of substantially similar design, material, and color, and prescribing reasonable spacing requirements concerning the location of ground-mounted equipment; and,

**WHEREAS**, §337.401(7)(d)(12), *Florida Statutes*, provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, abandonment, Town liability, and Town warranties, provided such provisions are reasonable and nondiscriminatory; and,

**WHEREAS**, traditional wired-based solutions are being complimented with wireless and mobile offerings, the Town of Cinco Bayou seeks to integrate these technological advances into its Land Development Code in order to streamline the review process for Wireless Facilities installed in the Public Rights-of-Way; and,

**WHEREAS**, it is the Town Council's intent to ensure there is sufficient wireless infrastructure deployed to support public safety and access to reliable wired, wireless and mobile communications services; and,

**WHEREAS**, it is the Town Council's further intent to treat each such Wireless Provider in a reasonable, nondiscriminatory and competitively neutral manner in exercising such authority, which authority is limited to only those matters necessary to manage the roads or Public Rights-of-Way of the Town; and,

**WHEREAS**, the Town's Public Rights-of-Way are essential for the travel of persons and transport of goods and other tangibles through the Town by all citizens; are a unique and physically-limited resource requiring proper management by the Town in order to maximize efficiency, minimize the costs to the taxpayers of the foregoing uses, and to reasonably balance the potential inconvenience to and negative effects upon the public from such communications facilities placement and maintenance in the Public Rights-of-Way against the substantial benefits that accrue from such placement and maintenance of communications facilities to promote the public health, safety and general welfare; and are intended for public uses and must be managed and controlled consistently with that intent; and,

**WHEREAS**, it is the intent of the Town Council to exercise its authority to adopt reasonable and nondiscriminatory rules and regulations to the fullest extent allowed by federal and state law; and,



WHEREAS, adoption of the following Ordinance is necessary to satisfy the above objectives.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CINCO BAYOU, FLORIDA, AS FOLLOWS:

**Section 1. Authority.** This Ordinance is enacted pursuant to §166.021, *Florida Statutes*, under the Home Rule Authority of the Town and §337.401, *Florida Statutes*, in the interest of the health, peace, safety and general welfare of the people of the Town of Cinco Bayou, Florida.

**Section 2. Recitals.** The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

**Section 3. Amending Chapter 6, Section 6.01.00, Right-of-Way (ROW) Protections, subsection B, of the Town's Land Development Code.** Underlined text as additions and strikethrough text as deletions.

Section 6.01.00 Right-of-Way (ROW) Protections.

- B. Use of rights-of-way for public or private utilities, including, but not limited to, sanitary sewer, potable water, telephone wires, cable television wires, gas lines electricity transmission or Wireless Facilities pursuant to Ch. 7 of this Code, shall be allowed subject to the placement specifications included in applicable existing or future Town regulations.

**Section 4. Amending Chapter 7, Section 7.10.04, Applicability of the Town's Land Development Code.** Underlined text as additions and strikethrough text as deletions.

All new Wireless Facilities, towers and Antennas proposed to be located in the Town shall be subject to the regulations in this section, except as provided in subsection 7.10.09 (c) and except for Wireless Facilities and Wireless Support Structures located in Public Rights-of-Way which shall be regulated by section 7.10.12.

**Section 5. Amendment of Chapter 7 of the Town Land Development Code.** Chapter 7 of the Land Development Code of the Town is hereby amended to create a new section 7.10.12 as follows and containing the following provisions:

Section 7.10.12(a). Title. This section shall be known as and may be cited as the "Town of Cinco Bayou Wireless Facilities in the Public Rights-of-Way Ordinance."

Section 7.10.12(b). Definitions. For purposes of this section 7.10.12, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context words used in the present tense include the future tense, words in plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words and phrases not otherwise defined in this section shall be construed to have their common and ordinary meaning. The

following definitions apply only for purposes of this section 7.10.12:

*Abandonment* means the cessation of all uses of a Wireless Facility for a period of one hundred eighty (180) or more calendar days; provided that, this term shall not include cessation of all use of a Wireless Facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "Abandonment" of a Wireless Facility in the Public Rights-of-Way.

*Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in telecommunications and providing wireless services.

*Applicant* means any Person who submits an Application to the Town under this section and for purposes of section 7.10.12 and is a Wireless Provider.

*Application* means a request submitted by an Applicant to the Town for a Permit to Place or Collocate Wireless Facilities.

*Authority* means a county or municipality having jurisdiction and control of the Public Rights-of-Way of any public road.

*Authority Utility Pole* means a Utility Pole owned by an Authority in the Public Rights-of-way. The term does not include a Utility Pole owned by a municipal electric utility, a Utility Pole used to support municipally owned or operated electric distribution facilities, or a Utility Pole located in the Public Rights-of-Way pursuant to §337.401(7)(b)6, *Florida Statutes*.

*Collocation or Collocate or Attach* means to install, mount, maintain, modify, operate, or replace one or more Wireless Facilities on, under, within, or adjacent to a Wireless Support Structure or Utility Pole. The term does not include the installation of a new Utility Pole or Wireless Support Structure in the Public Rights-of-Way.

*Day(s)*. In computing any period of time expressed in day(s) in this section 7.10.12, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

*Distributed Antenna System or DAS* is a network of spatially separated antenna modes connected to a common source within a geographic areas or structure. A DAS is a Wireless Facility.

*Existing Structure* shall mean a structure within the Public Rights-of-Way that exists at the time an Application for a Permit to Place or Collocate a Wireless Facility on the preexisting structure is filed with the Town. The term includes any structure that:



- (1) Can structurally support the attachment of a Wireless Facility;
- (2) Can be modified or repurposed to support the attachment of a Wireless Facility;
- (3) can be removed and replaced with a structure of similar design and purpose as the original Existing Structure that supports the attachment of a Wireless Facility; or
- (4) Other facilities in compliance with applicable codes and laws.

"FCC" shall mean the Federal Communications Commission.

In Public Rights-of-Way or in the Public Rights-of-Way shall mean over, above, in, on or under the Public Rights-of-Way within the Town over which the Town has jurisdiction, control and authority to regulate.

Maintain shall mean to exercise physical control over a Wireless Facility in the Public Rights-of-Way, including ownership or the right to maintain and repair. A Person providing service only through resale or only through use of a third party's unbundled network elements is not "maintaining" the Wireless Facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the Public Rights-of-way does not constitute "maintaining" Facilities in the Public Rights-of-Way.

Micro Wireless Facility means a small wireless facility having dimensions no larger than 24 inches in length, 15-inches in width, and 12-inches in height and an exterior antenna, if any, no longer than 11- inches.

Pass-Through Provider means any entity or Person who, upon Registering with the Town, places or Maintains a Wireless Facility the Town's Rights-of-Way and that does not remit communications service taxes as imposed by the Town pursuant to F.S. Ch. 202 and §337.401, Florida Statutes. A Pass-Through Provider can also be a Wireless Infrastructure Provider pursuant to §337.401, Florida Statutes, as amended.

Permit means the Public Rights-of-Way permit that must be obtained before a Person may construct in the Public Rights-of-Way and shall include, but not be limited to the Town's Public Rights-of-Way construction permits issued by Okaloosa County on behalf of the Town with the authorization of the Town Manager.

Person means any natural person or corporation, business association or other business entity, including, but not limited to a joint venture, partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, any other legal entity of any kind, or a successor or assign of any of the foregoing and shall include the Town to the extent the Town acts as a Wireless Provider.

Place or Placement or Placing shall mean to erect, construct, install, place, extend, remove, occupy, locate, relocate, or significantly alter the configuration of a Wireless Facility.

Pole Attachment means any attachment of a Wireless Facility by a Wireless Provider, to an existing Utility Pole or Existing Structure within a Public Rights-of-Way.

Public Rights-of-Way or Rights-of-Way shall mean property or any interest therein, which is acquired for or devoted to a public road, including but not limited to, roadways, highway, street, or bridge for which the Town is the Authority and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. "Public Rights-of Way" shall not include private property. "Public Rights-of Way" shall not include any real or personal Town property except as described above and shall not include Town buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way.

Registrant means a Wireless Provider or Pass-Through Provider that has registered with the Town in accordance with the provisions of section 7.10.12.

Registration or Register means the process described in this Chapter whereby a Wireless Provider or Pass-Through Provider provides certain information to the Town.

Small Cell means small, low-powered Wireless Facilities, consisting of a transmit-receive antenna that communicates with wireless devices, a wireless backhaul antenna that connects the facility to the carrier's core network, and compact radio equipment mounted on either Existing Structures or Utility Poles.

Small Wireless Facility means a wireless facility that meets the following qualifications:

a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and Utility Poles or other support structures.

Stealth Design means the method of camouflaging any tower, Antenna, Wireless Facility, or other ancillary supporting Wireless Facility or Wireless Support Structure, including but not limited to, supporting electrical, optical, or mechanical, or other equipment, which enhances compatibility with adjacent land uses and which is visually unobtrusive. Stealth Design may include a repurposed structure.



Town means the Town of Cinco Bayou, Florida. Where appropriate the word "Town" may refer to the Town Council or the relevant Town officer considering an Application under this section.

Utility Pole means a pole or similar structure that is used in whole or in part to provide Wireless Services or for electric distribution, lighting, traffic control, signage, or similar function. The term includes the vertical support structure for traffic control, signage, or similar function.

Wireless Facility means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes Small Wireless Facilities.

The term does not include:

- (1) The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- (2) Wireline backhaul facilities; or
- (3) Coaxial or fiber-optic cable that is between wireless structures or Utility Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna.

Wireless Infrastructure Provider means a person who has been certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, Wireless Facilities, or Wireless Support Structures but is not a Wireless Services Provider.

Wireless Provider shall mean a Wireless Infrastructure Provider or a Wireless Services Provider.

Wireless Services Provider means a Person who provides wireless services.

Wireless Support Structure means a free-standing structure, such as a monopole, a guyed or self-supporting tower, or other existing or proposed structure designed to support or be capable of supporting Wireless Facilities. The term does not include a Utility Pole.

Section 7.10.12(c). Findings, Intent and Purpose.

1. The Town Council of the Town hereby makes the following findings and declares its legislative intent as follows:

- a. The Public Rights-of-Way within the Town are unique and physically limited resource and important amenity that are critical to the travel and transport of persons and property in the town.

- b. The demand for wireless telecommunications services has grown exponentially in recent years, requiring the continual upgrading of wireless telecommunications equipment and services to satisfy such demand.
- c. The placement of wireless telecommunications equipment and facilities in the Public Rights-of-Way to satisfy the demand for telecommunications services raises important issues with respect to the Town's responsibility to manage its Public Rights-of-Way.
- d. The Public Rights-of-Way must be regulated, managed and controlled in a manner that ensures minimal inconvenience to the public, and enhances the health, safety and general welfare of the Town and its Citizens.
- e. Section 337.401, *Florida Statutes*, provides that because federal and state law require the nondiscriminatory treatment of providers of telecommunications services and because of the desire to promote competition among providers of communications services, it is the intent of the Florida Legislature that municipalities and counties treat providers of communications services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of Wireless Support Structure in the public roads or rights-of-way.
- f. It is also the Town's intent to exercise the Town's retained authority to regulate and manage the Town's roads and rights-of-way in exercising its police power over communications services providers' placement and maintenance of facilities in the Public Rights-of-Way in a nondiscriminatory and competitively neutral manner.

2. It is the intent of the Town to promote the public health, safety and general welfare by:

- a. Establishing reasonable rules and regulations governing the placement and/or maintenance of Wireless Facilities in the Public Rights-of-Way by all Wireless Providers, including both Wireless Providers as well as Pass-Through Providers.
- b. Adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including but not limited to, the Federal Communications Act of 1934, sections 332 and 253, section 6409(a) of 47 USC § 1455(a), or as hereinafter amended.
- c. Minimizing disruption to the Public Rights-of-Way; voiding potential damage to Public Rights-of-Way caused by Wireless Facilities by ensuring that such Wireless Facilities are soundly and carefully designed, constructed, modified and maintained.



Section 7.10.12(d). Registration.

1. *Registration required.* A Wireless Provider or Pass-Through Provider that desires to Place or Maintain a Wireless Facility and/or Wireless Support Structure in a Public Rights-of-Way shall first, before being eligible to receive a Permit to conduct work in the Public Rights-of-Way, register with the Town in accordance with this section. Subject to the terms and conditions prescribed in this section, a Registrant that has properly registered may apply for a Permit to Place or Maintain a Wireless Facility and/or Wireless Support Structure in Public Rights-of-Way.

2. *Registration.* Each Wireless Provider and/or Pass-Through Provider that desires to Place or Maintain a Wireless Facility and/or Wireless Support Structure in Public Rights-of-Way shall file a single Registration with the Town that shall include the following information:

- a. Name of the Registrant under which it will transact business in the Town and, if different, in the State of Florida;
- b. The address and telephone number of the Registrant's principal place of business in the State of Florida, if none, the name, address and telephone number of the Registrant's national headquarters and its Registered Agent in Florida;
- c. Name, address and telephone number of the Registrant's primary contact Person in connection with the Registration and the Person to contact in case of an emergency;
- d. Evidence of the Registrant's insurance coverage, or self-insurance status adequate to defend and cover claims;
- e. A copy of federal or state certification authorizing the Registrant to provide Wireless Services as a Wireless Services Provider or telecommunications services as a Wireless Infrastructure Provider issued by the Florida Public Service Commission, the FCC, or other federal or state authority, if any;
- f. For a Registrant that is a Pass-through Provider, in lieu of paragraph (e) above, the Registrant shall provide a certified copy of the certificate or license issued by the Florida Department of State, or other appropriate state agency or department, authorizing the company to do business in the State of Florida; and,
- g. If the Registrant is a corporation or limited liability company, proof of authority to do business in the State of Florida.

3. The Town shall review the information submitted by the Registrant. Such review shall be by the Town Manager or his/her designee. If it is found that the Registrant complied with the requirements in subsections (1) and (2) above, the Registration shall be effective and the Town



shall notify the Registrant of the effectiveness of Registration in writing. If the Town determines that the Registrant is not in compliance, the Town shall notify the Registrant in writing of the non-effectiveness and denial of Registration and the reasons therefor. The Town shall so reply to a Registrant within thirty (30) days after receipt of the Registration and all required information from the Registrant. Non-effectiveness and denial of Registration shall not preclude a Registrant from reapplying or filing subsequent Registrations under the provision of this section.

4. An effective Registration does not, and shall not be construed to, convey equitable or legal title in the Public Rights-of-Way to any Wireless Provider or Pass-Through Provider. Registration under this section governs only the Placement or Maintenance of a Wireless Facility or Wireless Support Structure in the Public Rights-of-Way.

5. A Wireless Provider or Pass-Through Provider may cancel a Registration upon written notice to the Town stating that it will no longer Place or Maintain a Wireless Facility in the Public Rights-of-Way and will no longer have a need to apply for a permit to perform construction or other work in the Public Rights-of-Way. A Wireless Provider or Pass-Through Provider cannot cancel a Registration if it intends to continue Placing or Maintaining a Wireless Facility or any Wireless Support Structure in the Public Rights-of-Way.

6. Registration, in and of itself, does not establish a right to Place or Maintain or a priority of the Placement or Maintenance of a Wireless Facility or any Wireless Support Structure in the Public Rights-of-way, but shall establish for the Wireless Provider or Pass-Through Provider a right to apply for a Permit from the Town. Registrations are expressly subject to any future amendment to or replacement of this section and further subject to any additional Town ordinances, as well as any state or federal laws that may be enacted.

7. To the extent that a Wireless Provider or Pass-Through Provider is not Registered consistent with section 7.10.12(d), said Person shall Register with the Town within ninety (90) days from the effective date of this Ordinance. No new Permits shall be issued to unregistered Persons with Wireless Facilities within the Public Rights-of-Way and such Persons may be subject to the enforcement remedies set forth in this section.

8. In January of each year, each Wireless Provider or Pass-Through Provider that has previously complied with the Registration requirements of this section shall submit an annual registration renewal to the Town on a form provided by the Town. Within thirty (30) days of any change in the information required to be submitted pursuant to subsections (1) and (2) above, a Wireless Provider or Pass-Through Provider shall provide updated information to the Town. If no information in the then-existing Registration has changed, the renewal may state that no information has changed. Failure to renew a Registration may result in the Town restricting the issuance of additional permits until the Wireless Provider or Pass-Through Provider has complied with the Registration requirements of this section.

Section 7.10.12(e). Notice of Transfer, Sale or Assignment of Assets in Public Rights-of-Way.

1. An Applicant shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, a



Registration granted pursuant to this section without having first provided the Town with at least thirty (30) Days written notice of the same. Further, any such Person to whom such transfer has been made, must register with the Town in accordance with this section and shall provide proof of insurance coverage in accordance with section 7.10.12(l) of this Code.

2. If Permit Applications are pending in the Applicant's name, the transferee, buyer or assignee shall notify the Town Manager that the transferee, buyer or assignee is the new Applicant.

3. A violation of the requirements of this section shall be a violation of this Code and the Applicant who is alleged to have violated any of the provisions of this section may be subject to the enforcement remedies set forth in this Code.

Section 7.10.12(f). Permit Requirements and Conditions.

1. *Permit Required.* An Applicant shall not commence to Place or Maintain a Wireless Facility in Public Rights-of-Way until all applicable Permits have been issued by Town, except in the case of an emergency as provided for in the Emergency subsection herein. Permits shall apply only to the areas of Public Rights-of-Way specifically identified in the Permit. The Town Manager or his/her designee shall consider the following in the review and consideration of an Application and imposition of reasonable Permit conditions:

- a. *Permit Applications.* Applications to place a Wireless Facility in Public Rights-of-Way shall contain the following:
  - i. An engineering plan signed and sealed by a Florida Registered Professional Engineer, or prepared by a person who is exempt from such registration requirements as provided in §471.003, *Florida Statutes*, identifying the location of the proposed facility, including a description of the facilities to be installed, where it is to be located, and the approximate size of facilities and equipment that will be located in Public Rights-of-Way;
  - ii. A description of the manner in which the facility will be installed (i.e. anticipated construction methods and/or techniques);
  - iii. If appropriate given the facility proposed, the timetable for construction of the project or each phase thereof, and the areas of the Town which will be affected;
  - iv. The verification and communication from Eglin AFB required by section 7.10.06(2) above; and,
  - v. Such additional information requested by the Town that the Town finds reasonably necessary to review the Application.

- b. *Permitting Timeline.* Within fourteen (14) days after receiving an Application, the Town must determine and notify the Applicant, by electronic mail, if the Application is deemed complete. If an Application is deemed incomplete, the Town must specifically identify the missing information. An Application is deemed complete if the Town fails to provide notification to the Applicant within fourteen (14) days. A complete Application is deemed approved if the Town fails to approve or deny the Application within sixty (60) days after receipt of the Application.
- i. Within fourteen (14) days after the date of filing an Application, the Town may request that the proposed location of a Wireless Facility be moved to another location in the Public Rights-of-Way and placed on an alternative Town pole or Existing Structure or Wireless Support Structure or may place a new Utility Pole.
  - ii. Town and Applicant may negotiate the alternative location for thirty (30) days after the date of the request. At the end of the 30-day negotiation period, if the alternative location is agreed upon by the Applicant, the Applicant will notify Town of this acceptance. The Application is deemed granted for any new location where there is agreement, and all other locations in the Application.
  - iii. If no agreement is reached, the Applicant will notify Town of the non-agreement and Town shall grant or deny the original Application within ninety (90) days after the date the Application was filed. A request for an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.
  - iv. Town and Applicant may agree to extend the 60-day Application review period.
  - v. A Permit issued pursuant to an approved Application shall remain effective for one (1) year unless extended by the Town.
- c. *Permit Denial.* The Town will notify the Applicant of approval or denial by electronic mail. The Town will specify, in writing, any basis for denial, including the specific code provisions on which the denial was based. This denial letter will be sent to Applicant via electronic mail on the day the Town denies the Application.
- i. Applicant may cure the deficiencies identified by the Town and resubmit the Application within thirty (30) days after notice of the denial is sent to Applicant.
  - ii. Town shall approve or deny the revised Application within thirty (30) days after receipt, or the Application will be deemed approved. Any additional review will be limited to the deficiencies cited in the denial.



- iii. Town may deny a proposed Collocation of a Wireless Facility if the Collocation:
  - a. Materially interferes with the safe operation of traffic control equipment.
  - b. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
  - c. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
  - d. Materially fails to comply with the 2010 edition of the FDOT Utility Accommodation Manual.
  - e. Fails to comply with Town's applicable codes.
- d. *Emergency.* In the case of an emergency, an Applicant may restore its damaged Wireless Facility in the Public Rights-of-Way to their pre-emergency condition or replace its destroyed Wireless Facility in the Public Rights-of-Way with Wireless Facility of the same size, character and quality, all without first applying for or receiving a Permit.
  - i. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service.
  - ii. Applicant shall provide prompt notice to the Town of the repair or replacement of a Wireless Facility in the Public Rights-of-Way in the event of an emergency, and shall be required to obtain an after-the-fact Permit if a Permit would have originally been required to perform the work undertaken in the Public Rights-of-Way in connection with the emergency.
- e. *Removal of Wireless Facilities and Wireless Support Structures Placed without Permits.* Any Wireless Facilities and/or Wireless Support Structures Placed in the Public Rights-of-Way by the Wireless Provider or Pass-Through Provider without first having obtained the required Permit shall be removed by the Wireless Provider or Pass-Through Provider within thirty (30) days of written notice from the Town to remove the same and, in default of compliance with such notice, such Wireless Facilities and/or Wireless Support Structures may be removed by order of the Town Manager and the cost of removal shall be borne and paid for by the Wireless Provider or Pass-Through Provider upon demand.

Section 7.10.12(g). General Stealth Design requirements for above-ground Wireless Facilities.

1. *In General.* An above-ground Wireless Facility, including a Small Wireless Facility, Micro Wireless Facility and Small Cells shall be designed in such a manner that the Wireless Facility is compatible with the surrounding neighborhood. The Town shall require the

following standards for all facilities:

- a. All Wireless Facilities, including Antennas, shall use camouflage techniques which incorporate architectural treatment to conceal or screen their presence from public view through design to unobtrusively blend in aesthetically with the surrounding environment.
- b. New and replacement Wireless Support Structures and Utility Poles that support Wireless Facilities shall consist of concrete or metal and substantially match the style, design, and color of the existing Utility Poles in the surrounding five hundred (500) foot area. Further, all Wireless Support Structures and Utility Poles shall meet current safety standards in applicable codes.
- c. Ground-based equipment boxes for Wireless Facilities must be located in areas with existing foliage or another aesthetic feature to obscure the view of the equipment box. Additional plantings may be required to meet this condition. Any new landscaping in the Public Rights-of-Way must be approved by the Town, who may require a landscape maintenance agreement to be executed prior to approval.
- d. With the exception of electric meters, disconnect switches and one equipment box for radio equipment, other equipment such as back-haul components shall not be mounted on the exterior of the Utility Pole. Any items mounted to the pole shall be painted to substantially match the colors of the Utility Pole.
- e. No exposed wiring or conduit is permitted.
- f. The grounding rod may not extend above the top of the sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit.
- g. All pull boxes must be vehicle load bearing, comply with FDOT Standard Specification section 635 and be listed on the FDOT Approved Products List. A concrete apron must be installed around all pull boxes not located in the sidewalk. No new pull boxes may be located in pedestrian ramps.
- h. Aerial power connections and fiber connections from the Utility Pole are prohibited.
- i. A Wireless Facility shall not have any type of lighted signal, lights or illuminations unless required by applicable federal, state or local rule, regulation or law.
- j. No commercial advertising shall be allowed on any Wireless Facilities.



- k. Antenna shall be slim design and shall not exceed the diameter of the Wireless Support Structure Utility Pole to which it/they are attached.

2. *Maximum Height Restrictions.* A Wireless Facility, including any attached Antennas, shall be no more than ten (10) feet above the Utility Pole or vertical structure upon which the Wireless Facility is to be collocated. Unless waived by Town, the height for a new Utility Pole is limited to the tallest existing Utility Pole as of July 1, 2017, located in the Public Rights- of-Way, other than a Utility Pole for which a waiver has been previously granted, measured from grade in place within five hundred (500) feet of the proposed location of the Wireless Facility. If there is no Utility Pole within five hundred (500) feet, the Authority shall limit the height of the Utility Pole to fifty (50 feet). In no circumstance shall a Utility Pole be fifteen (15) feet in height or less, unless the Town Manager or Town Manager's designee determines that aesthetics or design is improved with the placement.

Section 7.10.12(h). Noninterference with Others.

All Wireless Facilities shall be placed or maintained so as not to unreasonably interfere, as determined at the sole discretion of the Town, with the use of the Public Rights-of-Way by the public and by the Town for installation of its utilities, with the rights and convenience of property owners who adjoin any of the Public Rights-of-Way. The use of trenchless technology (i.e., directional bore method), with the proper subsurface engineering, for the installation of facilities in the Public Rights-of-Way as well as joint trenching or the collocation of facilities in existing conduit is strongly encouraged and should be employed wherever feasible. The Town may promulgate reasonable rules and regulations concerning the Placement or Maintenance of a Wireless Facility in Public Rights-of-Way consistent with this section and other applicable law.

Section 7.10.12(i). Restoration of Rights-of-Way.

After the completion of any Placement or Maintenance of a Wireless Facility in Public Rights-of-Way or each phase thereof, an Applicant shall, at its own expense, restore the Public Rights-of-Way to its original condition before such work to the satisfaction of the Town. If the Applicant fails to make such restoration within fourteen (14) calendar days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such Placement or Maintenance, the Town may perform restoration and charge the costs of the restoration against the Applicant in accordance with §337.402, *Florida Statutes*, as it may be amended. For twelve (12) months following the original completion of the work, the Applicant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this section at its own expense.

Section 7.10.12(j). Enforcement of Permit Obligations; Suspension and Revocation of Permits.

The Town Engineer may order the suspension of work under a Permit and ultimately may revoke any Permit, in the event of a substantial breach of the terms and conditions of any applicable statute, ordinance, rule or regulation or any condition of the Permit. Any suspension of work or revocation must be in writing and contain the legal basis for such suspension or



revocation.

Section 7.10.12(k). Appeals.

An Applicant aggrieved by an action or decision of the Town Engineer shall be entitled to appeal a decision denying, suspending, or revoking a Permit to the Town Manager by filing notice of appeal with the Town Manager within thirty (30) days of the decision appealed from. The Town Manager shall schedule a hearing on the appeal to be held within thirty (30) days of the date the appeal is filed and shall provide the Applicant notice of the date of such hearing.

Section 7.10.12(l). Insurance and Bonding.

1. *General.* An Applicant shall provide, pay for and maintain satisfactory to the Town, the types of insurance described herein. All insurance shall be from companies duly authorized to do business in the State and having a rating reasonably acceptable to the Town. All liability policies shall provide the Town as an additional insured. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and a copy shall be filed and maintained with the Town on an annual basis. The required certificates must be on file with the Town prior to the issuance of any Permit. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the Town.

2. *Insurance Coverage and Limits of Insurance Coverage.* At all times requiring the use or occupancy of the Public Rights-of-Way, including any time during Placement or Maintenance of Wireless Facilities, the Wireless Provider or Pass-Through Provider shall obtain, pay all premiums for, and maintain satisfactory to the Town the types of insurance policies and coverage limits described in this section. Nothing contained in this section shall limit Wireless Provider's or Pass-Through Provider's liability to the Town to be the limits of insurance certified or carried. The insurance coverage and limits of coverage of insurance required shall be not less than the following:

- a. Commercial general liability insurance valid in the State of Florida, including contractual liability and products-completed operations liability coverage on an occurrence basis, which policy limit shall be in an amount not less than One Million No/00 Dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury, personal injury or death, or property damage and in an amount not less than Two Million No/00 Dollars (\$2,000,000.00) policy aggregate for each personal injury liability, broad form property damage (with exclusions related to explosion, collapse and underground ("XCU") exclusions), contractual liability and products-completed operations liability.
- b. Business automobile liability insurance valid in the State of Florida which policy limit shall be in an amount not less than One Million and No/00 Dollars (\$1,000,000.00) combined single limit, including bodily injury and property damage covering owned, leased, hired, and non-owner



vehicles.

- c. Workers' Compensation valid in the State of Florida which policy limit shall be in an amount not less than the statutory limit for Workers' Compensation.
- d. Employer's liability insurance valid in the State of Florida which policy shall be in an amount not less than One Million and No/00 Dollars (\$1,000,000.00) each accident for employer's liability.

3. *Construction Bond.*

- a. Prior to issuance of any Permit where the type of work allowed under the Permit will require restoration of the Public Rights-of-Way, the Wireless Provider and/or Pass-Through Provider or the contractor performing such work on its behalf shall obtain, pay for, and file with the Town a construction bond. The construction bond shall serve to guarantee the timeliness and quality of the construction and restoration work and to secure, and enable the Town to recover, all costs related to the restoration of the Public Rights-of-Way in the event the Wireless Provider and/or Pass-Through Provider or its contractor fails to make such restoration to the Town's satisfaction or causes damage to the Public Rights-of-Way during construction. The construction bond must name the Town as Obligee and be in the face amount of either Fifteen Thousand and No/00 Dollars (\$15,000.00) or 110% of the estimated cost of the project, whichever is greater, conditioned upon the full and faithful completion of construction and restoration of the Public Rights-of-Way to the delineated specifications stipulated in the Permit. Six (6) months following completion and inspection of the restoration of the Public Rights-of-Way satisfactory to the Town Manager, the Wireless Provider and/or Pass-Through Provider or its contractor, as the case may be, may reduce the face amount of the construction bond to Five Thousand and No/00 Dollars (\$5,000.00) and, thereafter, may allow the bond to lapse in accordance with its terms. However, for any subsequent work in the Public Rights-of-Way, the Wireless Provider and/or Pass-Through Provider or its contractor will be required to replenish any existing construction bond or provide a new construction bond in the face amount of Fifteen Thousand and No/00 Dollars (\$15,000.00). The construction bond shall be in a form acceptable to the Town Attorney and must be issued by a surety having a rating reasonably acceptable to the Town Manager and authorized by the Florida Department of Insurance to issue surety bonds in this State.
- b. The construction bond must be issued as non-cancelable and for a term of not less than twelve (12) months. In the event the term of any construction bond expires, or is reasonably expected to expire, prior to the completion of construction, restoration, and Town inspection, the Wireless Provider

and/or Pass-Through Provider or the contractor acting on its behalf, shall immediately obtain, pay for, and file with the Town a replacement bond.

- c. The Town's requirement of a construction bond is not in lieu of any additional bonds that may be required under this section or through the Permitting process. The Town's right to recover under the construction bond shall be in addition to all other rights of the Town, whether reserved in this section, or authorized by other law, and no action, proceeding, or exercise of right with respect to the construction bond will affect or preclude any other right the Town may have.

Section 7.10.12(m). Abandonment.

1. Upon abandonment of Wireless Facilities owned by a Registrant in Public Rights-of-Way, the Registrant shall notify the Town within ninety (90) days.

2. The Town may direct the Registrant by written notice to remove all or any portion of such abandoned Wire Facilities at the Registrant's sole expense if the Town determines that the presence of the abandoned Wire Facilities interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such Wireless Facilities:

- a. compromise safety at any time for any Public Rights-of-Way user or during construction or maintenance in Public Rights-of-Way;
- b. prevents another Person from locating facilities in the area of Public Rights-of-Way where the abandoned Wireless Facilities are located when other alternative locations are not reasonably available;
- c. creates a maintenance condition that is disruptive to the use of the Public Rights-of Way; and/or,
- d. removal of the Wireless Facilities would improve or enhance the Town's aesthetics. In the event of (b) above, the Town may require the third Person to coordinate with the Registrant that owns the existing Wireless Facilities for joint removal and placement, where agreed to by the Registrant.

3. In the event that the Town does not direct the removal of the abandoned Wireless Facilities, the Registrant, by its notice of abandonment to the Town, shall be deemed to consent to the alteration or removal of all or any portion of the Wireless Facilities by the Town or another Person at such third party's cost.

4. If the Registrant fails to remove all or any portion of abandoned Wireless Facilities as directed by the Town within a reasonable time period as may be required by the Town under the circumstances, the Town may perform such removal and charge the cost of the removal against the Registrant or any successor in interest to the Registrant.



Section 7.10.12(n). No Warranty or Representations of Fitness or Suitability.

The Town makes no express or implied warranties or representations regarding the fitness, suitability, or availability of the Town's Public Rights-of-Way for any Registrant's Wireless Facilities and any performance of work, costs incurred or services provided by Registrant shall be at Registrant's sole risk. Nothing in this section shall affect the Town's authority to acquire, add, vacate or abandon Public Rights-of-Way, and the Town makes no express or implied warranties or representations regarding the availability of any acquired, added, vacated or abandoned Public Rights-of-Way for Wireless Facilities.

Section 7.10.12(o). Town not Liable.

Except for acts of willful misconduct or gross negligence and to the extent permitted by applicable law, neither the Town nor its officials, boards, commissions, consultants, agents, employees, or independent contractors shall have any liability to the Wireless Provider and/or Pass-Through Provider for any claims for any damages, costs, expenses, or losses resulting for the Town's breakage, removal, alteration, or relocation of any Wireless Facilities of any Wireless Provider and/or Pass-Through Provider which arose out of, or in connection with, any emergency or disaster situation or was, in the sole discretion of the Town Manager, deemed necessary to facilitate any public works project, public improvement, alteration of a Town structure, change in the grade or line of any Public Rights-of-Way, or the elimination, abandonment, or closure of any Public Rights-of-Way, or was found by the Town to be in the best interest of the health, safety, or general welfare of the public; nor shall any charge be made by the Wireless Provider and/or Pass-Through Provider against the Town for any damages, costs, expenses or losses related thereto.

Section 7.10.12(p). Indemnification.

1. Except with respect to the willful misconduct, negligence, or gross negligence of the Town, a Wireless Provider and/or Pass-Through Provider, by act of Registering with the Town as such, shall be obligated, at its sole cost and expense, to defend, indemnify and hold harmless the Town, its Council members, officials, agents, and employees, from and against any and all claims, suits, causes of action, proceedings, liabilities, and judgments for damages or equitable relief, and costs and expenses, arising out of or in connection with the Placement or Maintenance of its Wireless Facilities in the Public Rights-of-Way by the Wireless Provider and/or Pass-Through Provider or its agent or hired contractor. This indemnification provision shall include, but not be limited to, such damages and penalties arising out of claim by any Person whatsoever on account of (a) bodily injury to a Person or Persons; (b) death of a Person or Persons; or (c) property damage, where any of the foregoing is occasioned by the operations of the Wireless Provider's and/or Pass-Through Provider's violation of any easement or private property rights.

2. Nothing contained in this section shall prohibit the Town from participating in the defense of any litigation by its own counsel if in the Town's reasonable belief there exists or may exist a conflict, potential conflict, or appearance of a conflict.



3. Indemnified costs and expenses shall include, but not be limited to, all out-of-pocket expenses and reasonable attorneys' fees in defending against any such claim, suit, or proceeding, and shall also include the reasonable value of any services rendered by the Town Attorney and his/her assistants, or any consultants, agents, and employees of the Town. The Town will attempt to notify the Wireless Provider and/or Pass-Through Provider, in writing, within a reasonable time of the Town's receiving notice of any issue it determines may require indemnification.

4. Nothing contained in this section shall be construed or interpreted:

- a. as denying the Town, the Wireless Provider and/or Pass-Through Provider, or any Person any remedy or defense available to them under the laws of the State of Florida; or
- b. as a waiver of sovereign immunity beyond the waiver provided in §768.28, *Florida Statutes*, as it may be amended.

5. The indemnification requirements shall survive and be in effect after the termination or cancellation of a Registration.

**Section 6. Codification, Inclusion in Code and Scrivener's Errors.** It is the intention of the Town Council for the Town of Cinco Bayou, Florida, that the provisions of this Ordinance shall become and be made part of the Cinco Bayou Land Development Code; and that sections of this Ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the Town Manager or his/her designee without need or public hearing, by filing a corrected or recodified copy of same with the Town Clerk.

**Section 7. Conflicts of Laws.** Whenever the requirements or provisions of this amending Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statutes, the most restrictive requirements shall apply.

**Section 8. Severability.** If any part, section, subsection or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reasons, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The Town declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision application.

**Section 9. Effective Date.** This Ordinance shall become effective immediately upon its adoption by the Town Council of the Town of Cinco Bayou, Florida and signature by the Mayor.



DULY PASSED, APPROVED AND ENACTED BY THE TOWN COUNCIL OF THE TOWN OF CINCO BAYOU, FLORIDA THIS 14 DAY OF MARCH 2019.

THE TOWN OF CINCO BAYOU, FLORIDA ATTEST:

ATTEST:

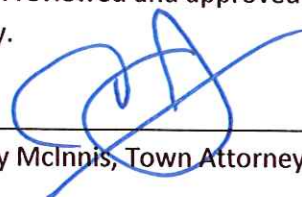
  
Keith Williams Town Manager/Clerk

By:   
Jean Hood, Mayor

First Reading: 02/28/2019

Second Reading and Public Hearing: 03/14/2019

The form and legal sufficiency of the foregoing has been reviewed and approved by the Town Attorney.

  
C. Jeffrey McInnis, Town Attorney

