

ORDINANCE NO. 2023-O-14

AN ORDINANCE OF THE CITY OF EDGEWATER, VOLUSIA COUNTY, FLORIDA, PROVIDING FOR THE IMPLEMENTATION OF REGULATIONS FOR THE USE OF PUBLIC RIGHT-OF-WAY; PROVIDING DEFINITIONS FOR THE PROPOSED RIGHT-OF-WAY REGULATIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING TELECOMMUNICATIONS OR OTHER FACILITIES IN PUBLIC RIGHT-OF-WAY AND NATURE, EFFECTIVENESS AND TRANSFER OF REGISTRATION; PROVIDING FOR EXISTING TELECOMMUNICATIONS FACILITIES IN PUBLIC RIGHT-OF-WAY; PROVIDING FOR THE SUSPENSION OF PERMITS FOR WORK IN PUBLIC RIGHT-OF-WAY AND APPEAL OF SUSPENSION; PROVIDING FOR CONSTRUCTION IN PUBLIC RIGHT-OF-WAY; PROVIDING FOR REGISTRANT'S INDEMNIFICATION AND INSURANCE; PROVIDING FOR PENALTIES FOR VIOLATION OF RIGHT-OF-WAY REGULATIONS; PROVIDING FOR CONFLICTS, CODIFICATION, AND SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Pursuant to Chapter 166, Florida Statutes, the City Council has the power to regulate the placement of structures and facilities in the public right-of-way; and

WHEREAS, the City Council desires to establish regulations for the use of the public right-of-way for the provision of local exchange telecommunications services, toll telephone telecommunications services, and other utilities; and

WHEREAS, the City Council of the City of Edgewater hereby finds this Ordinance to be in the best interests of the health, safety, and welfare of the citizens of Edgewater.

NOW THEREFORE, BE IT ENACTED by the City Council of the City of Edgewater, Florida:

Section 1. **Recitals.** The foregoing recitals are true and correct and incorporated herein by reference as legislative findings of the City Council.

Section 2. Chapter 15.5, titled Right-of-Way Regulations, is hereby added to the City of Edgewater Code of Ordinances and shall read as follows:

PART A. CREATION OF CHAPTER 15.5 - RIGHT-OF-WAY REGULATIONS

Sec. 15.5-1. - Purpose.

The purpose of this chapter is:

- (1) To establish a competitively neutral policy for the use of the public right-of-way for the provision of local exchange telecommunications services, toll telephone telecommunications services, and other utilities, including but not limited to, those defined in section 337.401, Florida Statutes;
- (2) To regulate the placement of structures and facilities in the public right-of-way pursuant to its governmental powers as set forth at Chapter 166, Florida Statutes;
- (3) To prescribe reasonable rules for such uses pursuant to sections 337.401 and 364.0361, Florida Statutes, so as to minimize disruption of services in the public right-of-way, regulate the use of the public right-of-way by telecommunications and other utilities providers, and to regulate the construction, installation, maintenance, repair, removal and replacement of facilities in the public right-of-way.

Sec. 15.5-2. - Definitions.

FCC shall mean the Federal Communications Commission.

Person includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Public right-of-way shall mean a public right-of-way, public utility easement, highway, street or alley owned by the city, dedicated to the city or to the public, or for which the city holds a property interest and exercises rights of management or control. This term shall include the surface, the air space over the surface and the area below the surface of all public roads, streets, highways, alleys, boulevards, bridges, tunnels, public utility easements, and all public grounds.

Registrant shall mean a company that has registered with the city in accordance with the provisions of this chapter.

Registration and register shall mean the process described in section 15.5-3 whereby a telecommunications provider or other provider provides certain information to the city.

Telecommunications shall mean the transmission between or among points specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications facility or facility shall mean the plant, equipment, and property, including but not limited to cables, wires, conduits, ducts, fiber optics, antennae and other equipment or pathway used to transmit, receive, distribute, provide or offer telecommunications services.

Telecommunications provider or provider shall mean any person or entity that provides local telephone service (hereinafter referred to as a “local service provider”) as defined in section 203.012(3), Florida Statutes, as may be amended (“local service”), or any person or entity that provides toll telephone service (hereinafter referred to as a “toll service provider”) as defined in section 203.012(7), Florida Statutes, as may be amended (“toll service”), or any person or entity that provides any other type of utility service including but not limited to those defined at section 337.401, Florida Statutes.

Telecommunications services shall mean the offering of telecommunications for a fee to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Cable services and open video systems are expressly excluded from the definition of telecommunications services.

City shall mean the City of Edgewater, Florida.

Utility or utilities shall refer to entities that place in the public right-of-way any electric transmission, telephone or telegraph lines, ditches, services, water, heat or gas mains, pipelines, fences; or any other structures, pipes, lines or facilities.

Sec. 15.5-3. - Registration for placing or maintaining telecommunications or other facilities in right-of-way.

- (a) A telecommunications or other utility provider that desires to erect, construct, install, maintain, place, repair, extend, expand, remove, locate or relocate a permanent or temporary telecommunications or other facility in, on, under, over or across the public right-of-way in the city shall first register with the city in accordance with this chapter.
- (b) Subject to the terms and conditions contained in this chapter, a registrant may erect, construct, install, place, repair, maintain, expand, remove, locate or relocate a permanent or temporary telecommunications or other facility in, on, over, under, or across the public right-of-way.

Sec. 15.5-4. - Nature of registration.

A registration shall not convey title, equitable or legal, in the public right-of-way. Registration under this chapter governs the occupation of public rights-of-way only. Registration does not excuse a telecommunications or other provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the city’s or another person’s facilities. Registration does not excuse any provider from complying with all applicable city ordinances, including this chapter.

Sec. 15.5-5. - Registration; effectiveness of registration.

- (a) Registration. ~~Except to the extent prohibited by 337.401(3)(a), Any~~ telecommunications or other utility provider desiring to use the public right-of-way shall file a registration form with the city which shall include the following information:

- (1) Name of the applicant;
- (2) Name, address and telephone number of the applicant’s primary contact person in connection with the registration;

~~(3) Whether the applicant is or expects to provide local service or toll service or both;~~

- (4) Evidence of the insurance coverage required under this chapter and acknowledgment of the indemnity and other provisions of this chapter; and
- (5) The number of the applicant's certificate or certificates of authorization, if any, to provide telecommunication or any other type of services issued by the Florida Public Services Commission, the Federal Communications Commission or other applicable governing boards or commissions.
- ~~(b) Registration application fees. Each applicant for a registration or renewal thereof shall submit a nonrefundable application fee with the application. Fee amounts shall be established by resolution of the city but in no event shall exceed the city's costs incurred in reviewing the application.~~
- (c) Review by city. The city will review the information submitted by the applicant. If the applicant submits all information in accordance with subsection 15.5-5(a) above, the registration shall be effective and the city shall notify the applicant of the effectiveness of the registration in writing. If the city determines that the information has not been submitted in accordance with the above-referenced subsection, the city shall notify the applicant in writing of the non-effectiveness of registration. The city shall so reply to an applicant within thirty (30) days after receipt of the registration information from the applicant.
- (d) Cancellation of registration. A registrant may cancel a registration upon written notice to the city that it will no longer place, maintain or own any telecommunications or other facilities in the public right-of-way of the city and will no longer need to pull permits to perform work in the public right-of-way. A registrant cannot cancel a registration if the registrant continues to place, maintain or own any telecommunications or other type facilities in the public right-of-way.
- (e) No priority in registration. Registration does not establish any priority for the use of the public right-of-way; however, an effective registration is required prior to the issuance of a permit to work in the public right-of-way. The fact that a telecommunications or other provider is registered shall not establish any right or priority for the use of the public right-of-way.
- (f) Renewal of registration. A registrant shall renew its registration with the city ~~by October 1st of each every five~~ years in accordance with the registration requirements in this chapter. Within ~~thirty ninety~~ (390) days of any change in the information required to be submitted pursuant to subsection 15.5-5(a) above, a registrant shall provide updated information to the city. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Registrations are expressly subject to any future amendment to or replacement of this chapter and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted during the term of the registration. If a registrant fails to renew its registration, the sole consequence shall be that the city may restrict the provider from obtaining permits under subsection (g) below until the telecommunications or other provider has complied with the registration requirements of this chapter.
- (g) Permits. ~~Except to the extent prohibited by 337.401(g), A~~ a permit is hereby required of a telecommunications or other provider that desires to erect, construct, install, maintain, place, repair, extend, expand, remove, locate or relocate a permanent or temporary telecommunications or other type facility in any public right-of-way. An effective registration shall be a condition of obtaining a permit. An effective registration does not mean that

applicable permitting requirements shall not apply or that such requirements have been or will be deemed to have been satisfied. ~~Permit fees shall be paid upon the submissions of an application for same; the amount of such permit fee shall be set by resolution of the city council.~~

Sec. 15.5-6. - Transfer of registration.

If the registrant transfers or assigns its registration incident to a sale or other transfer of the registrant's assets located within the city, the transferee or assignee shall be obligated to comply with the terms of this chapter. Written notice of any such transfer or assignment shall be provided to the city ~~as of the effective date within 90 days~~ of such transfer. In order for the transfer of registration to be effective, such written notice must include the identity of the transferee or assignee, and notice of any changes to the information provided under subsection 15.5-5(a), including any changed evidence of insurance coverage.

Sec. 15.5-7. - Existing telecommunications facilities in right-of-way.

Lines or cables of telecommunications or other facilities which have been constructed or placed in the public right-of-way prior to the effective date [] of this chapter may remain in the right-of-way provided the provider complies with the registration provisions of this chapter.

(Ord. No. 2023-O-____, Pt. A, 04-03-2023)

Sec. 15.5-8. - Suspension of permits.

Subject to section 15.5-9. below, the city may suspend a permit for work in the public right-of-way and issue a stop work order for one (1) or more of the following reasons:

- (1) Violation of permit conditions, including conditions set forth in this chapter or other applicable city codes or regulations governing use of the public right-of-way;
- (2) Misrepresentation or fraud by registrant in a registration or permit application to the city;
- ~~(3) Violation of provisions in this chapter requiring payment of registration or permit fees to the city; or~~
- (4) Failure to relocate or remove facilities as may be lawfully required by the city;
- (5) Violation of the provisions in this chapter by displacing, damaging or destroying any facilities belonging to the city, or to any third party who placed such facilities therein by express authority of the city, without the consent of the city; ~~or~~
- (6) Violation of any other provisions of this chapter.

Sec. 15.5-9. - Appeals.

Final, written decisions of the city manager suspending a permit, issuing a stop work order, denying an application for a registration or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the city manager within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth herein shall

be waived. The city council shall consider the appeal at the next regularly scheduled meeting and shall consider whether the applicant meets the requirements for a registration or permit based upon the provisions of this chapter and the applicable state and federal laws.

Sec. 15.5-10. - Construction in the right-of-way.

- (a) Permits to construct. The registrant may construct the telecommunications system or other utilities in the public right-of-way specifically identified in permits obtained in accordance with applicable provisions of this chapter or other applicable city codes and regulations. The permission to use and construct in the public right-of-way is only for those areas specifically identified in the permit.
- (b) Compliance with city codes and regulations. Registrant agrees to comply with all applicable city codes and regulations in constructing any facilities in the public right-of-way, including, but not limited to, engineering regulations, permit requirements, contractor licensing requirements, fire codes and zoning codes.
- (c) Registrant must obtain applicable permits. Except in the case of an emergency, registrant shall not commence any construction in the public right-of-way until all applicable permits have been issued by the city or other appropriate authority. The term emergency shall mean an out-of-service condition or other condition that may affect the public's health, safety and welfare. Registrant shall provide reasonable advance notice to the city of its intent to commence construction in the right-of-way in the event of an emergency. Registrant acknowledges that as a condition of granting such permits, the city may impose conditions on the permits as necessary and reasonable for the construction in the public right-of-way.
- (d) Construction standards. Registrant shall construct, maintain, install, remove and/or repair the telecommunications system or other utilities in the public right-of-way in compliance with all applicable construction standards as established by all local, state or federal law and in conformance with the city's codes and regulations. Registrant shall use and exercise due caution, care, skill and expertise in performing work in the public right-of-way and shall take all reasonable steps to safeguard work site areas. Registrant shall not in any way displace, damage or destroy any facilities belonging to the city, or to any third party who placed such facilities therein by express authority of the city, without the consent of the city, and the registrant shall be liable to the city or to the third party owner, as the case may be, for the cost of any repairs made necessary by such displacement, damage or destruction, and shall pay such costs upon demand.
- (e) Installation and construction schedule; inspections. In the interest of public health, safety and welfare, registrant shall cooperate with the city in coordinating use of the public right-of-way. Upon request of the city, a registrant shall coordinate work under a permit with any other construction, installation or repairs that may be occurring or scheduled to occur in the subject public right-of-way and alter its construction schedule as necessary so as to minimize disruptions and disturbance in the public right-of-way.
- (f) Maintenance. A registrant shall maintain its facilities in the public right-of-way in a safe condition.
- (g) Notice to city. Prior to any excavation in the public right-of-way for construction, installation, repair or maintenance, the registrant must call prior to construction activity to locate any

underground equipment in accordance with Chapter 556, Florida Statutes, as it may be amended. A registrant must be a member of Sunshine State One Call of Florida, Inc. (1-800-432-4770) or any successor alert and warning system to protect and locate its underground equipment.

- (h) Removal of registrant's cables/lines in right-of-way. To the extent authorized by section 337.403, Florida Statutes, the city may require registrant to remove or relocate, and registrant shall, at city's direction, remove or relocate any cable, line, or installation in the public right-of-way when the city manager determines that such removal or relocation is necessary to protect or preserve the public health, safety and welfare, or to protect the proper operation of city's traffic signals or traffic control devices or other city facilities. City shall provide ninety (90) days written notice to registrant before the lines must be relocated or removed. If registrant fails to commence and complete this removal work by the dates requested by the city in its written notice, or within thirty (30) days following the expiration or termination of this registration, then the city shall have the right to perform this removal work and charge registrant for the costs incurred by the city in performing this work. Upon payment by registrant of the costs to the city, the city shall promptly return to registrant equipment removed by the city pursuant to this provision.
- (i) Restoration of right-of-way. Upon the completion of each installation, construction, repair, maintenance, or removal in the right-of-way, a registrant shall restore the public right-of-way to a safe condition and to the city's standard specifications for the right-of-way, at registrant's expense. Registrant shall, at its own expense, repair or replace any other property disturbed or damaged on account of its activities in the public right-of-way upon demand.
- (j) Interference with other uses in public right-of-way. A registrant shall use reasonable efforts not to disturb or otherwise disrupt the operation or maintenance of any other utilities or uses in the public right-of-way, including, but not limited to, sewers, storm drains, gas or water mains, or other underground cables or conduits.
- (k) No warranties or representations by city. The city makes no warranties or representations regarding the fitness or suitability of city's property for the installation of registrant's cables or conduits and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk.
- ~~(l) Maps. Within thirty (30) days of a request by the city, the registrant shall provide the city with copies of maps on disk, in a format specified by the city manager, provided such format is maintained by the registrant. Any such maintained geographic data, media and information will be provided at no cost to the city. In no event shall any proprietary confidential information be required to be disclosed pursuant to this section, except that the location of telecommunications or other utilities facilities previously placed in the public right-of-way shall not be deemed proprietary confidential information. As part of the permit application the registrant shall identify at-grade communications facilities within fifty (50) feet of the proposed installation location for the placement of at-grade communications facilities.~~
- (m) Relocation of facilities and reservation of city's rights:

 - (1) The city reserves the right to lay, and permit to be laid, sewer, gas, water, electric, storm drainage, telecommunications, and other pipelines or cables or conduit, and to do and to permit to be done any underground installation or improvement that may be deemed

necessary or proper by the city in, across, along, over or under any public right-of-way occupied by the registrant, and to change any curb or sidewalk or the grade of any street. The city, its contractors and subcontractors shall be required to call Sunshine State One Call of Florida, Inc. (1-800-432-4770), or successor alert and warning system, prior to excavation, in accordance with Chapter 556, Florida Statutes, as it may be amended, in order to avoid damages to registrant's facilities.

- (2) The city expressly reserves the right to change, or cause to be changed through exercise of its police powers, the grading, installation, relocation, or width of city streets, sidewalks, bikeways, alleys, public thoroughfares, highways and public ways and places within the present limits of the city and within said limits as same may from time to time be altered, and the registrant shall relocate, at its own expense where allowed by section 337.403, Florida Statutes, as it may be amended, its poles wires, cables, anchors, manholes, conduits, and other facilities and appurtenances in order to accommodate the installation, relocation, widening or changing of the grade of any public streets, sidewalks, bikeways, alleys, public thoroughfares, highways and public ways and places, including if necessary relocating such poles, wires, cables, anchors, manholes, conduits or other facilities or appurtenances to a sufficient distance from the edge of the pavement to permit a reasonable work area for machinery and individuals engaged in installing, relocating, widening, or changing the grade of any such streets, sidewalks, bikeways, alleys, public thoroughfares, highways and public ways and places. Upon notice in writing from the city that changes in the public right-of-way are required pursuant to the city's police power in such a manner as will necessitate the relocation of its facilities in the public right-of-way, the registrant shall relocate the same at no expense to the city, where allowed by section 337.403, Florida Statutes, as it may be amended, so as to permit the construction of such improvements when ordered. Should the registrant fail to comply with such notice, the facilities may be relocated by the city and the cost thereof recovered from the registrant, where allowed by section 337.403, Florida Statutes, as it may be amended.

Sec. 15.5-11. - Insurance and indemnification.

- (a) Indemnification. Registrant shall agree to protect, defend, reimburse, indemnify and hold city, its agents, employees and elected officers and each of them free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature whether arising in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission or fault, of anyone acting under registrant's direction or control, or on registrant's behalf in any matter related to registrant's use of the right-of-way or any property registrant is entitled or authorized to use as a result of the registration or other authorization. Registrant's aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the negligence or willful misconduct of the city, its respective agents, servants, employees or officers, nor shall the liability limits set forth in section 768.28, Florida Statutes, be waived.

- (b) Insurance. A registrant shall maintain in full force and effect general liability insurance acceptable to the city, which specifically covers all exposures incident to the intent and responsibilities under this chapter in the amounts set forth below:
- (1) Workers' compensation insurance within Florida statutory limits and employers' liability insurance with minimum limits of one hundred thousand dollars (\$100,000.00) each accident.
 - (2) Comprehensive general liability insurance with minimum limits of three million dollar (\$3,000,000.00) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket liability insurance and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.
 - (3) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by the provider, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of the applicable state law, including residual liability insurance with minimum limits of two million dollars (\$2,000,000.00) as the combined single limit for each occurrence for bodily injury and property damage.
 - (4) Named insureds. All certificates of insurance shall name the City of Edgewater as an additional insured.
 - (5) Cancellation of policies of insurance. At least sixty (60) days prior written notice shall be given to the city by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the city.

Sec. 15.5-12. – Enforcement remedies.

In addition to any other remedies available at law or equity or provided in this chapter, the city may apply any one or combination of the following remedies in the event a registrant violates this chapter, or applicable local law or order related to use of the public right-of-way:

- (a) If the registrant in any way displaces, damages or destroys any facilities belonging to the city the registrant shall be liable to the city for the costs of any repairs made necessary by any such displacement, damage or destruction, and shall pay such costs upon demand. The city shall be entitled to collect such costs by filing a lawsuit for collection of such costs, or in any other lawful manner. In the event the city files a lawsuit to collect such costs the registrant will be liable for the city's prevailing party attorney's fees and costs of collection.
- (b) Any violation of any of the provisions of this chapter may be enforced as provided for in Chapter 162, Florida Statutes. Each day or fraction thereof the violation continues shall be considered as a separate offense. In addition, the city can pursue any and/or all other lawful actions, including filing a complaint with Florida Public Service Commission or Federal Communications Commission advising of violations of city ordinances, filing an injunction in circuit court to enforce the terms of the chapter, registration or permit or to

enjoin the use of the public right-of-way, pursuing action before the code enforcement board to impose daily fines, and/or denying permits, suspending permits, issuing stop work orders or denying development orders for other projects or use of the right-of-way by the provider. These remedies shall be cumulative.

PART B. CONFLICTING PROVISIONS

All conflicting ordinances and resolutions, or parts thereof in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict.

PART C. SEVERABILITY AND APPLICABILITY

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative, or void, such holding shall not affect the remaining portions of this ordinance. If this ordinance or any provisions thereof shall be held to be inapplicable to any person, property, or circumstances, such holding shall not affect its applicability to any other person, property or circumstance.

PART D. CODIFICATION

Provisions of this ordinance shall be incorporated in the Code of Ordinances of the City of Edgewater, Florida, and the word “ordinance”, may be changed to “section”, “chapter”, or other appropriate word, and the sections of this ordinance may be renumbered or re-lettered to accomplish such intention; provided, however, that Parts B through F shall not be codified.

PART E. EFFECTIVE DATE

This ordinance shall take effect upon adoption.

PART F. ADOPTION

PASSED AND DULY ADOPTED this ____ day of _____, 2023.

Diezel DePew, Mayor

ATTEST:

Bonnie Zlotnik, CMC, City Clerk

Passed on first reading on the ____ day of _____, 2023.

REVIEWED AND APPROVED: _____
Aaron R. Wolfe, City Attorney