

ORDINANCE 2025-11 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 19 "STREETS AND SIDEWALKS," ARTICLE I "GENERAL," SECTIONS 19-3 "ABANDONMENT OF RIGHT-OF-WAY; AUTHORIZED," 19-4 "PROCEDURE FOR ABANDONMENT," AND 19-5 "VESTING OF ABANDONED RIGHT-OF-WAY IN ADJACENT PROPERTIES," TO AMEND THE REQUIREMENTS AND PROCEDURES FOR ABANDONMENT; ARTICLE II "UTILITIES IN THE RIGHTS-OF-WAY," TO PROVIDE FOR UNDERGROUNDING OF UTILITIES CONCURRENT WITH CITY PROJECTS; AND ARTICLE III "REVOCABLE PERMITS," TO AMEND THE REQUIREMENTS AND PROCEDURES FOR REVOCABLE PERMITS; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AN EFFECTIVE DATE, AND FOR OTHER PURPOSES

WHEREAS, the City of Lake Worth Beach, Florida (the "City") is a duly constituted municipality having such home rule power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the City Commission desires to amend Sections 19-3, 19-4, and 19-5 of Article I of Chapter 19 of the City's Code of Ordinances, which address abandonment of public right-of-way by the City; and

WHEREAS, the City Commission desires to amend Article II of Chapter 19 of the City's Code of Ordinances, which addresses permits that may be issued by the City for location of utilities within right-of-way; and

WHEREAS, the City Commission desires to amend Article III of Chapter 19 of the City's Code of Ordinances, which addresses revocable permits that may be issued by the City for use of right-of-way; and

WHEREAS, the City Commission finds and declares that this Ordinance is appropriate and is in the best interest of the health, safety, and welfare of the City, its residents, and visitors.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:

Section 1: The foregoing "WHEREAS" clauses are incorporated into this Ordinance as true and correct findings of the City Commission.

Section 2: Chapter 19 "Streets and Sidewalks," Sections 19-3 "Abandonment of right-of-way; authorized," 19-4 "Procedures for abandonment," and 19-5 "Vesting of abandoned right-of-way in adjacent properties," all of Article I "In General," are hereby amended as follows (deletions in ~~strike through~~ text and additions in underline text):

Sec. 19-3. - Abandonment of right-of-way; authorized.

The city commission, with respect to rights-of-way under its control, may of its own initiative, or upon the ~~request~~ application of any person(s), abandon and close any existing public right-of-way, including roads, streets, alleys and other public right-of-way property, or any portion thereof, and to renounce and disclaim any right of the city and the public in and to any land in

connection therewith. This procedure of abandonment of the public interest in rights-of-way shall apply only to lands of the city right-of-way system, and dedicated to the public as such. An abandonment of public rights-of-way shall be effective regardless of the method whereby the city originally acquired such public right-of-way, whether by plat, deed, user or other lawful means.

Sec. 19-4. - Procedure for abandonment.

- (a) ~~Resolution~~ Application to consider abandonment. The city commission may, upon its own initiative or upon the ~~request~~ application of other person(s), ~~adopt a resolution declaring the intention of the city commission to consider the abandonment of a particular portion of public rights-of-way. Said resolution~~ application shall clearly set forth the description of the property under consideration and shall establish a time and place for a public hearing on the proposed for abandonment and proof of the applicant's ownership of the adjacent property. No applications for abandonment will be considered for public rights-of-way accessible to public waterways.
- (b) *Notice of public hearing*. At least ~~ten (10)~~ fourteen (14) days prior to the date ~~set in the resolution~~ for the public hearing, a notice of public hearing shall be published one (1) time in accordance with Chapter 50, Florida Statutes ~~a newspaper of general circulation in the city~~. Said notice shall set forth the description of the public right-of-way to be considered under consideration for abandonment and shall set forth the time, place and purpose of the public hearing.
- (c) *Resolution of abandonment*. After such public hearing, the city commission approve, approve with conditions, or deny the request for abandonment. Approvals and approvals with conditions shall be ~~may~~ adopted by a second resolution which shall state that the public right-of-way under consideration is abandoned for all legal purposes. Said resolution shall state the finding of the city commission that the public right-of-way under consideration is not needed by the public as right-of-way and the same should therefore be returned to private ownership. The resolution may include reasonable conditions such as, but not limited to, a reservation of easements for utilities or other public purposes. Notice of adoption of such resolution shall be published one (1) time in accordance with Chapter 50, Florida Statutes, within thirty (30) days following adoption.
- (d) *Recording*. Upon adoption and execution of a resolution for abandonment, the ~~city clerk~~ applicant shall record the resolution and proof of publication of the hearing and adoption notices in the public records of Palm Beach County, Florida, to evidence said abandonment and any conditions which may be set forth therein. The abandonment resolution shall not be effective until the required recording is completed. The applicant must provide proof of recording to the City prior to the City issuing permits related to use of the abandoned property. If the abandonment resolution is not recorded within ninety (90) days after its adoption, it shall automatically be deemed void.
- (e) *Service charge*. There is hereby fixed a service charge ~~of five hundred dollars (\$500.00)~~ for each request for the abandonment of a particular portion of public right-of-way which shall be adopted by resolution of the city commission.

Sec. 19-5. - Vesting of abandoned right-of-way in adjacent properties.

In those cases where the abandoned public right-of-way is held by the city in trust for the benefit of the public, the abandonment shall cause the title to such right-of-way to vest in the adjacent property owner(s). This provision shall not preclude a sale of such property where deemed

appropriate by the city commission and not prohibited by law.

Section 3: Chapter 19 “Streets and Sidewalks,” Article II “Utilities in the rights-of-way,” is hereby amended as follows (deletions in ~~striketrough~~ text and additions in underline text):

Article II. – Utilities in the rights-of-way

Sec. 19-20. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Affiliate means each person, directly or indirectly, controlling, controlled by, or under common control with the provider; provided that affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen (15) percent of such provider, or any creditor of such provider solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such provider.

Code means the City of Lake Worth Beach Code of Ordinances.

Construct or construction means to excavate, obstruct, install poles, install signs, install physical features, other than landscaping, on, above, or under any part of the rights-of-way.

Construction bond means a bond posted to ensure proper and complete construction and repair of a facility pursuant to a permit.

Department means the department of public works-services.

Department inspector means any city employee or agent authorized by the public works ~~services~~ director to carry out inspections related to the provisions of this article.

Emergency means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property.

Excavate or excavation means to dig into or in any way remove or physically disturb or penetrate any part of any rights-of-way.

Facilities means any tangible thing located in any rights-of-way used to deliver utility service, excluding communications facilities not owned by the City of Lake Worth Beach.

In when used in conjunction with rights-of-way, means over, above, in, within, on or under any rights-of-way.

Permit means the rights-of-way construction permit that must be obtained before a person may construct in any rights-of-way.

Permittee means any person to whom a permit to construct in the rights-of-way has been granted by the city.

Person means any natural person or corporate, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any

other legal entity.

Probation means the status of a person that has not complied with the conditions of this article.

Probationary period means one (1) year from the date that a person has been notified in writing that they have been put on probation.

Provider means any person who owns, controls, or is the lessee of facilities in the rights-of-way, provided, however, that provider shall not mean the lessee of facilities from a registrant or from a person who has a use agreement with the city.

Public ~~services~~-works director shall mean the public ~~services~~-works director of the city or his designee.

Registrant means any person who has or seeks to have its facilities located in any rights-of-way, or in any way occupies or uses, or seeks to occupy or use, the rights-of-way or any facilities located in the rights-of-way.

Restoration means the process by which rights-of-way are returned to a condition as good or better as existed before the construction.

Rights-of-way means the surface and space above and below any real property including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, bridge, canal or waterway.

Service or utility service means services provided by utilities.

Trenchless technology means the use of directional boring, horizontal drilling and micro-tunneling and other similar techniques in the construction of underground portions of facilities.

Underground facilities means all lines, cables, conduits, posts, tanks and any other facilities owned or operated by persons other than the city, including, but not limited to, communication and power, which are located wholly or primarily underneath rights-of-way.

Use agreement means the agreement between the city and provider regarding its facilities in the rights-of-way. The form of such use agreement shall be approved by the city attorney.

Utility or utilities means any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, fiber, wire, cable, or operator thereof.

Sec. 19-21. - Registration of facilities.

- (a) Each person who occupies, uses, or seeks to occupy or use, the rights-of-way or any facilities located in the rights-of-way, or who has, or seeks to have, facilities located in any rights-of-way shall register with the public ~~services~~-works director.
- (b) No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof located in any rights-of-way without first being registered with the department.
- (c) The information provided to the department at the time of registration shall include, but not be limited to:

- (1) Each registrant's name, address and e-mail address and telephone number.
 - (2) The name, address and e-mail address and telephone number of a local representative. The local representative shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
 - (3) A certificate of insurance verifying that insurance coverage has been obtained by the registrant pursuant to [section 19-34](#) or other applicable requirement, by an insurance company licensed to do business in the State of Florida or a certificate of self-insurance, meeting the requirements of the risk manager for claims for personal injury, including death, claims for property damage arising out of the use, occupancy and placement of facilities in the rights-of-way by the registrant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property. Such policy or policies shall name the city as an additional insured and require that the public ~~services-works~~ director be notified thirty (30) calendar days in advance of cancellation of the policy or any change in coverage.
 - (4) If the person is a corporation, certification from the state that it is authorized to do business in the State of Florida.
 - (5) A copy of the registrant's certificate of authority from the Florida Public Service Commission, copies of any other applicable franchises, use agreements, or licenses.
 - (6) The registrant shall keep all of the information listed above current at all times by providing to the department information of changes within fifteen (15) calendar days following the date on which the registrant has knowledge of any change.
 - (7) If required of the registrant as provided by this article, the registrant shall provide for a security fund under the terms and conditions provided by the public ~~services-works~~ director.
- (d) Each registrant shall coordinate with the department, to the extent feasible and practical, its construction of facilities, in order to reduce the frequency of construction, excavation and obstructions in the rights-of-way.
 - (e) Each registrant shall, to the extent feasible and practical, provide to the department information indicating the horizontal and approximate vertical location, relative to the boundaries of the rights-of-way, of all facilities which it owns or over which it has control and which is located in any rights-of-way. This information shall be provided with the specificity and in the format required by the department.
 - (f) If any facilities are found in the rights-of-way and no registrant claims ownership within a reasonable time after notification in writing by the city of the location of such facilities, such facilities shall be deemed abandoned and the city may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of such facilities.
 - (g) A registrant who has determined to discontinue all operations in the city must notify the public ~~services-works~~ director of the assumption by another registrant of ownership of such facilities, obtain permission from the public ~~services-works~~ director to abandon such facilities in place or provide the public ~~services-works~~ director with an acceptable plan for disposition of such facilities. If a registrant fails to comply with this subsection, such facilities shall be deemed abandoned and the city may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the facilities.
 - (h) Registration shall not convey, transfer, or assign any property interest, equitable or legal, in the rights-of-way. Nothing contained in any registration granted pursuant to this article shall entitle a provider to use, alter, convert to, or interfere with, any real or personal

property of any kind whatsoever under the management or control of the city.

- (i) A registrant shall obtain and maintain any and all required regulatory approvals, permits, authorizations or licenses for the offering or provision of such services from the appropriate federal, state and local authorities.
- (j) A registrant 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 article without having first provided the city 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 city in accordance with this article and shall provide proof of insurance coverage in accordance with [section 19-34](#) of the Code. Transfers to affiliates shall not be exempt from the requirements of this subsection.
- (k) Each registrant shall renew its registration annually in accordance with the registration requirements of this article.

Sec. 19-22. - Rights-of-way permits.

- (a) Except as otherwise provided in the Code, no person may construct in any rights-of-way without first having obtained a permit from the ~~community sustainability director or designee~~.
- (b) A permit will allow the holder to construct in that part of the rights-of-way described in such permit and to hinder free and open passage over the specified portion of the rights-of-way by placing facilities described therein, to the extent and for the duration specified therein.
- (c) A permit is valid only for the dates and the area of rights-of-way specified in the permit, unless modified by the ~~public services director~~.
- (d) No person may construct in the rights-of-way beyond the date or dates specified in the permit unless such permit is modified by the ~~community sustainability director or designee~~.
- (e) Permits issued under this article shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by department inspectors and authorized city personnel.
- (f) All permit requests shall be submitted to the community sustainability department in the form specified by the ~~community sustainability director or designee~~ and shall contain at a minimum:
 - (1) Evidence that the person requesting the permit is a registrant or proof that the person requesting the permit has authority to apply for a permit on behalf of a registrant.
 - (2) A traffic control plan demonstrating the protective measures and devices that will be employed, consistent with uniform traffic control standards as designated by the ~~public services-works~~ department, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. The traffic control plan must be prepared by a certified traffic control design specialist.
 - (3) If the person requesting the permit is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way:
 - a. A statement that the permittee has verified that it is not feasible to locate its facilities in existing ducts and conduits;
 - b. The location, depth, size and quantity of proposed new ducts or conduits; and

- 319 c. A description of the excess space that may be available for use by other utilities
 320 after installation of the new facilities.
- 321 (4) A preliminary construction schedule and completion date.
- 322 (5) All money for which payment is currently due to the city, without offset or dispute.
- 323 (6) When a permit is requested for purposes of installing additional facilities, the posting
 324 of a construction bond for the additional facilities, if required.
- 325
- 326 (g) Except in the case of an emergency, as determined by the ~~community sustainability~~
 327 director or designee in his/her sole discretion, no permit will be granted to any person:
- 328 (1) Required to register who has not registered;
- 329 (2) Not in substantial compliance with the requirements of this article;
- 330 (3) With an outstanding debt which is due and payable to the city without offset or dispute;
- 331 or
- 332 (4) Where there exists grounds for the revocation of a permit, until such person has
 333 corrected any such failure or default.
- 334 (h) The ~~public services or community sustainability~~ director may impose reasonable
 335 conditions, upon the issuance of the permit and the performance of the person requesting
 336 the permit thereunder in order to, protect the public health, safety and welfare, to ensure
 337 the structural integrity of the rights-of-way, to protect the property and safety of other users
 338 of the rights-of-way, and to minimize the disruption and inconvenience to the traveling
 339 public.
- 340 (i) All permits issued hereunder are independent of and not subject to the Florida Building
 341 Code or the City's Land Development Regulations.

342 343 **Sec. 19-23. - Appeals.**

- 344
- 345 (a) Final, written decisions of the ~~community sustainability~~ director, or his or her designee,
 346 suspending or denying a permit, denying an application for a registration or denying an
 347 application for renewal of a registration are subject to appeal. An appeal must be filed with
 348 the city clerk within thirty (30) days of the date of the final, written decision to be appealed.
 349 Any appeal not timely filed as set forth above shall be waived. The city manager shall hear
 350 the appeal. The hearing shall occur within thirty (30) days of the receipt of the appeal,
 351 unless waived by the registrant, and a written decision shall be rendered within twenty (20)
 352 days of the hearing. Upon correction of any grounds that gave rise to a suspension or
 353 denial, the suspension or denial shall be lifted. The fee for the appeal shall be as set forth
 354 by city resolution.
- 355
- 356 (b) Nothing in this section shall effect the remedies the city has available under applicable
 357 law.

358 359 **Sec. 19-24. - Rights-of-way permit fees.**

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- 361 (a) *Established.* Permit fees shall be established by resolution of the city commission or rules
 362 and regulations of the city.
- 363
- 364 (b) *Payment of permit fees.* No permit shall be issued without prior payment of permit fees,
 365 unless, at the discretion of the ~~public services~~ director, the city allows the person
 366 requesting the permit to pay such fees within thirty (30) calendar days of billing.
- 367
- 368 (c) *Non-refundable fees.* Permit fees that were paid for a permit that the ~~public services~~
 369 director has revoked for a breach are not refundable.
- 370
- 371 (d) *Joint submissions.* Persons requesting permits are encouraged to make joint submissions

for permits to work in the rights-of-way at the same place and time. Persons requesting permits who apply for permits for the same construction, which are not performed by the department, may share in the payment of the permit fee. Persons requesting permits must agree among themselves as to the portion each will pay and indicate the same on their submissions.

Sec. 19-25. - Work without a permit.

- (a) *Emergency situations.* Each registrant shall promptly notify the ~~public services~~ director of any event regarding its facilities which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary in order to respond to the emergency. In the event that the city becomes aware of an emergency regarding a registrant's facilities, the department shall, if circumstances warrant, attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the department may take whatever action it deems necessary in order to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency. Each registrant shall be responsible for the cost of repairing any facilities that it or its facilities damages at any time, or that are damaged during an emergency caused by the registrant or its facilities.
- (b) *Non-emergency situations.* Except in the case of an emergency, it shall be unlawful for any person to construct in rights-of-way without a permit.

Sec. 19-26. - Location of facilities.

- (b) The ~~public services~~ director shall have the power to prohibit or limit the placement of new or additional facilities within the rights-of-way if there is insufficient space to accommodate all of the requests of permittees to occupy and use the rights-of-way. In making such decisions, the ~~public services~~ director shall strive to the extent possible to accommodate all existing and potential users of the rights-of-way, but shall be guided primarily by the condition of the rights-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the rights-of-way, and future city plans for public improvements and development projects which have been determined by the city commission to be in the public interest.
- (c) The city makes no warranties or representations regarding the fitness or suitability of the city's rights-of-way for the installation of permittee's cables or conduits, and any performance of work or other costs incurred by permittee shall be at permittee's sole risk.

Sec. 19-27. - Least disruptive technology.

- (a) All construction or maintenance of facilities shall be accomplished in the manner resulting in the least amount of damage and disruption to the rights-of-way.
- (b) A permittee shall use all reasonable efforts not to disrupt the operation or maintenance of any other utilities or uses in the rights-of-way, including, but not limited to, sewers, storm drains, gas or water mains, or other underground cables or conduits, including, but not limited to, communication and power.

Sec. 19-28. - Removal and relocation of facilities.

- (a) The registrant must promptly, with due regard for seasonal working conditions, permanently remove or relocate or both, its facilities in the rights-of-way whenever the

~~public services~~ director, upon advance written notice to registrant, finds that the facilities are unreasonably interfering in any manner with the convenient, safe or continuous use or maintenance, improvement, extension, or expansion of such rights-of-way, and registrant shall restore the rights-of-way to the same condition it was in prior to said removal or relocation or both. Unless otherwise provided by statute, the costs associated therewith shall be borne by the registrant.

- (b) If a registrant fails to commence removal or relocation of its facilities as designated by the city, within thirty (30) calendar days of the issuance of the city's removal order, or if a registrant fails to substantially complete such removal or relocation, including all associated repair of the rights-of-way of the city, within twelve (12) months thereafter, the city shall have the right to authorize any work to be done to effect the removal or relocation or both of the facilities. Unless otherwise provided by statute, the costs associated therewith shall be borne by the registrant.
- (c) Before commencing construction, each registrant who has facilities located in the proposed construction area shall be responsible to mark the horizontal and where known, the approximate vertical placement of all its facilities in accordance with F.S., chapter 556.
- (d) When the City requires utilities owned or operated by a registrant or any other utility provider to be removed or relocated due to unreasonable interference in accordance with this section or by statute, the City may require that any utility facilities that are relocated be placed underground. The City may, in its sole discretion, install conduit underground to facilitate such underground relocation. Unless otherwise provided by statute, the costs associated with underground relocation, including conduit if not installed by the City, shall be borne by the registrant or other utility provider whose facilities are relocated.

Sec. 19-29. - Rights-of-way restoration.

- (a) The permittee shall restore the rights-of-way in the manner and to the condition required by the department.
- (b) If the permittee fails to restore the rights-of-way, and upon ten (10) days written notice to permittee, the city may restore the rights-of-way itself, and the permittee shall pay the costs thereof within thirty (30) calendar days of billing.
- (c) The permittee shall perform the work according to the standards and with the materials specified by the ~~public services~~ director. The ~~public services~~ director shall have the authority to prescribe the manner and extent of the restoration. The ~~public services~~ director in exercising this authority shall be guided by the following standards and considerations:
 - (1) The number, size, depth and duration of the excavations, disruptions or damage to the rights-of-way;
 - (2) The traffic volume carried by the rights-of-way;
 - (3) The character of the neighborhood surrounding the rights-of-way;
 - (4) The condition of the rights-of-way prior to the excavation;
 - (5) The remaining life-expectancy of the rights-of-way affected by the excavation;
 - (6) Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the rights-of-way that would otherwise result from the excavation, disturbance or damage to the rights-of-way; and
 - (7) The likelihood that the particular method of restoration would be effective in slowing the depreciation of the rights-of-way that would otherwise take place.

- 478
479 (d) The permittee shall guarantee its restoration work and shall maintain and correct any
480 improper construction at its cost for twelve (12) months following its completion. During
481 this twelve (12) month period, it shall, upon notification from the department, correct all
482 restoration work to the extent necessary using the method required by the office of the
483 ~~public services~~ director. Said work shall be completed within twenty-one (21) calendar
484 days of the receipt of the notice from the city.
485
486 (e) The permittee shall, at its own expense, repair or replace any other real or personal
487 property disturbed or damaged on account of its construction of facilities in the rights-of-
488 way.
489
490 (f) In the event permittee fails to comply with any part of this section, the registrant shall be
491 fully responsible to the extent provided by law.
492

493 **Sec. 19-30. - Protection of facilities.**
494

495 When the city performs work in the rights-of-way and such work affects a registrant's facilities,
496 in order to protect them, the registrant shall make such adjustments to its facilities as may be
497 required by the ~~public services~~ director. In the event that registrant fails to adjust its facilities as
498 required, the city may do such work as is necessary. Unless otherwise provided by statute, the
499 costs associated therewith will be billed to that registrant and must be paid within thirty (30)
500 calendar days from the date of billing. City shall give notice as required by law to a registrant of
501 any work that involves maintaining, supporting, or moving a registrant's facilities.
502

503 **Sec. 19-31. - General obligations of permittees.**
504

- 505 (a) The construction performed in the rights-of-way shall be done in conformance with
506 specifications as promulgated by the ~~public services~~ director and set forth in the ~~City of~~
507 ~~Lake Worth~~ Code.
508
509 (b) Within five (5) calendar days of the time the work under any permit hereunder is
510 completed, the permittee shall notify the ~~public services~~ director.
511
512 (c) The permittee shall make the work site available to the department inspector and to all
513 others as authorized by law for inspection at all reasonable times during the execution and
514 upon completion of the work.
515
516 (d) Obtaining a permit does not relieve permittee of its duty to obtain all other necessary
517 permits, licenses, and authority and to pay all fees required by any other city, county, state,
518 or federal rules, laws or regulations.
519
520 (e) Except in the case of an emergency, and with the approval of the ~~public services~~ director,
521 no rights-of-way construction may be performed when climatic conditions are
522 unreasonable for such work. If work has already started and climatic conditions require
523 the cessation of work, the permittee shall secure all equipment and material to the
524 satisfaction of the ~~public services~~ director.
525
526 (f) A permittee shall not so obstruct rights-of-way in a manner that will interfere with the
527 natural free and clear passage of water through the gutters or other waterways.
528
529 (g) Private personal vehicles of the employees or agents of a provider may not be parked
530 within or adjacent to a permit area. Construction equipment or the loading or unloading of

trucks adjacent to or in a permit area is prohibited unless specifically authorized by the permit.

- (h) A permittee or registrant shall belong to the sunshine state one-call notification system as required by F.S., chapter 556.

Sec. 19-32. - Enforcement of permit obligations.

- (a) The ~~public services~~ director may order the suspension of work under a permit and ultimately may revoke any permit, without refunding any fees, 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. The types of substantial breach by permittee may include, but are not limited to:

- (1) The violation of any material provision of the permit;
- (2) An evasion or attempt to evade any material provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the process of permittee's request for a permit or registration;
- (4) The failure to maintain the required construction bond or insurance;
- (5) The failure to properly restore the rights-of-way; or
- (6) The failure to correct within the specified time an order issued by the department inspector.
- (7) The failure to register, re-register, or provide notice of any transfer in accordance with this article.

- (b) If the ~~public services~~ director determines that the permittee has committed a substantial breach of a term or condition of the permit, the ~~public services~~ director shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. Further, a substantial breach, as stated above, will allow the ~~public services~~ director, at his or her discretion, to place additional or revised conditions on the permit.

- (b) Within five (5) calendar days of receiving notification of the breach, permittee shall contact the ~~public services~~ director with a plan, acceptable to the ~~public services~~ director, for its correction. Permittee's failure to so contact the ~~public services~~ director, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for revocation of the permit. Further, permittee's failure to so contact the ~~public services~~ director, or the permittee's failure to submit an acceptable plan, or permittee's failure to implement the approved plan, shall be cause for the permittee to be placed on probation for one (1) full year.

- (d) The ~~public services~~ director may establish a list of conditions of any permit which, if breached, will be cause for the permittee to be placed on probation for one (1) full year, such as, but not limited to, working out of the allotted time period or working on rights-of-way significantly outside of the permit. These conditions shall be stated on the permit.

- (e) If a permittee, while on probation, commits a breach as outlined above, permittee's permit may be revoked and not be allowed further permits for one (1) full year, except for emergency repairs and service requirements as mandated by state or federal regulations.

- (f) If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys'

fees incurred in connection with such revocation.

- (g) The department inspector may issue an immediate stop work order where the permittee's construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has abated.

Sec. 19-33. - Construction bond.

- (a) Prior to the commencement of any construction, a permittee shall deposit with the ~~public services~~ director a construction bond in an amount determined by the ~~public services~~ director based on the type of facilities, the extent of the project, rights-of-way restoration work required and the past performance of the permittee on other work for which the city issued a permit. The construction bond shall not be released until the rights-of-way have been restored and inspected pursuant to the specifications provided in this article.
- (b) The construction bond shall serve as security for:
- (1) The faithful performance by the permittee or registrant of all terms, conditions and obligations, including restoration of the rights-of-way and permit fees, of this article;
 - (2) Any expenditure, damage, or loss incurred by the city occasioned by the permittee or registrant's violation of this article or its failure to comply with all rules, regulations, orders, permits and other directives of the city issued pursuant to this article;
 - (3) The payment of premiums for the liability insurance required pursuant to this article;
 - (4) The submission to the city of accurate record drawings showing at a minimum correct horizontal and vertical locations of new facilities placed in the rights-of-way in a CAD format approved by the department. Record drawings shall be certified by a professional engineer or land surveyor registered by the State of Florida, except for such engineers or surveyors who may be exempt from registration by Florida Statutes.
- (c) The construction bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until ninety (90) calendar days after completion of construction of the facilities and, notwithstanding the foregoing, shall in no case be canceled or not renewed by the surety until at least ninety (90) calendar days' written notice to the City of Lake Worth Beach of surety's intention to cancel or not renew this bond."

Sec. 19-34. - Insurance.

- (a) A registrant shall not commence construction, operation or maintenance of the facility without obtaining all insurance required under this section and approval of such insurance by risk management of the city, nor shall a registrant allow any contractor or subcontractor to commence work on its contract or subcontract until all similar such insurance required of the same has been obtained and approved. The required insurance must be obtained and maintained for the entire period the registrant has facilities in the public rights-of-way, and for a period thereafter as specified in the minimum coverages described below. If the registrant, its contractors or subcontractors do not have the required insurance, the village may order such entities to stop operations until the insurance is obtained and approved.
- (b) Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the risk manager. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage. For entities that have facilities in the public

rights-of-way as of the effective date of this article, the certificate shall be filed within sixty (60) calendar days of the adoption of this article, annually thereafter, and as provided below in the event of a lapse in coverage.

(c) These certificates of insurance shall contain a provision that coverages afforded under these policies will not be canceled until at least forty-five (45) calendar days prior written notice has been given to the city. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial ratings must be no less than "A-VP" in the latest edition of Best's Key Rating Guide, published by A.M. Best Guide. A registrant may self-insure. Self-insured status must be confirmed with certification of same by presentation of financial statements which are not more than one-year old and signed by the registrant's chief financial officer or designee. Information contained therein is subject to review and approval by city's risk manager.

(d) In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of that the facilities are permitted this contract, then in that event, the registrant shall furnish, at least thirty (30) calendar days prior to the expiration of the date of such insurance, a renewed certificate of insurance of equal and like coverage.

(e) A registrant and its contractors or subcontractors engaged in work on the operator's behalf in, on, under or over public rights-of-way, shall maintain the following minimum insurance:

(1) *Comprehensive general liability insurance*. To cover liability, bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

Bodily injury:

Each occurrence—\$1,000,000

Annual aggregate—\$3,000,000

Property damage:

Each occurrence—\$1,000,000

Annual aggregate—\$3,000,000

Personal injury:

Annual aggregate—\$3,000,000

Completed operations and products liability shall be maintained for two (2) years after the abandonment of the facility by the registrant (in the case of the registrant) or completion of the work for the registrant (in the case of a contractor or subcontractor).

Property damage liability insurance shall include coverage for the following hazards: X—explosion, C—collapse, U—underground.

(2) *Workers' compensation insurance*. Shall be maintained to comply with statutory limits for all employees, and in the case any work is sublet, each registrant shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each registrant. Each registrant and its contractors and subcontractors shall maintain employers' liability insurance. The following limits must be maintained:

Workers' compensation—Statutory

Employers' liability—\$500,000 per occurrence

(3) *Comprehensive auto liability.*

Bodily injury:

Each occurrence—\$1,000,000

Annual aggregate—\$3,000,000

Property damage:

Each occurrence—\$1,000,000

Annual aggregate—\$3,000,000

Coverage shall include owned, hired and non-owned vehicles.

- (f) Each provider shall hold the city, its agents, and employees, harmless on account of claims for damages to persons, property or premises arising out of its construction, operation or repair of its facilities and name the city as an additional insured. All policy coverage shall be applied as primary and non-contributory and include a waiver of subrogation.

- (g) This section shall not be construed to affect in any way the city's rights, privileges and immunities as set forth in F.S. section 768.28. Insurance under this section shall run continuously with the presence of the registrant's facilities in the public rights-of-way and any termination or lapse of such insurance shall be a violation of this section and subject to the remedies as set forth herein. Notwithstanding the foregoing, the city may, in its sole discretion, require increased or decreased levels of insurance for any other object placed in the city's public rights-of-way by way of individual local business tax receipt agreements.

Sec. 19-35. - Indemnification and liability.

- (a) By reason of the acceptance of a registration or the grant of a permit, the city does not assume any liability:
- (1) For injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the city;
 - (2) For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by registrants or activities of registrants.
- (b) By registering with the department a registrant agrees, or by accepting a permit a permittee is required, to defend, indemnify, and hold the city whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its facilities, whether any act or omission complained of is authorized, allowed, or prohibited by a permit. The foregoing does not indemnify the city for its own negligence or intentional acts, provided, however, that the city's right to indemnification shall not be affected by the issuance of permits and inspection of plans or work by the city. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant or to the city; and the registrant, in defending any action on behalf of the city, shall be entitled to assert in any action every defense or immunity that the city could assert in its own behalf. Nothing herein shall be construed as a waiver of the protections, limitations and immunities provided in F.S. section 768.28.
- (c) This indemnification obligation is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for the registrant under workers'

compensation, disability or other employee benefit acts, or the acceptance of insurance certificates required under this article, or the terms, applicability or limitations of any insurance held by the registrant.

(d) The city does not and shall not waive any rights against the registrant which it may have by reason of this indemnification, or because of the acceptance by, or the registrant's deposit with the city of any of the insurance policies required by this article for registration.

(e) This indemnification by the registrant shall apply to all damages and claims for damages of any kind suffered by reason regardless of whether such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

Sec. 19-36. - Security fund.

(a) In the ~~public services~~ director's discretion and prior to the registrant receiving its first permit to place or maintain facilities in the rights-of-way, the registrant shall provide an annual surety bond in an amount set by the ~~public services~~ director. The bond or guaranty shall be issued by a surety qualified to do business in the State of Florida, and acceptable to the finance director, and shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by this Code. The bond shall be furnished annually to provide a continuing guaranty of the registrant's full and faithful performance, until such time as the ~~public services~~ director may remove the requirement for the security fund.

(b) In the event registrant fails to perform the duties and obligations imposed upon registrant, there shall be recoverable, jointly and severally from the principal and surety of the bond any damages or loss suffered by city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of registrant, plus reasonable attorneys' fees, up to the full amount of the security fund.

(c) The ~~public services~~ director may accept a corporate guaranty, under the same terms and conditions as (a) and (b) above, of the registrant or its parent company in lieu of a bond, provided the registrant is a publicly traded company and maintains an insurance rating of no less than A-.

(d) The provision of a security fund, if required, shall not waive any claims or remedies a registrant may have under applicable law with respect to provisions of the Code or application thereof.

Sec. 19-37. - Waivers.

Waivers to the requirements of this article may be granted by the ~~public services~~ director as provided in this subsection. Nothing in this article shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of rights-of-way within the city limits by utility service providers, in violation of state or federal law. The waiver provisions listed in this subsection apply only where a registrant's application for the placement or relocation of a facility in a right-of-way does not meet the criteria for approval as required by this article. A request for a waiver shall include all information described in this subsection and any other reasonable information the city may require. The ~~public services~~ director may deny the request for a waiver if it does not comply with the requirements of this subsection. The following provisions shall govern the issuance of a waiver from the requirements of this article:

(a) The ~~public services~~ director shall consider the following factors in determining whether to

grant a waiver:

- (1) A detailed explanation, with supporting data, as to why a waiver from the requirements of this article is required in order to allow the registrant/applicant to have nondiscriminatory and competitively neutral use of the rights-of-way. This may include, as appropriate, evidence that a waiver is required to avoid an undue burden/hardship on the applicant and that a waiver is necessary in order to close a significant gap in the applicant's service to the affected area, evidence that the application of the requirements of this article is contrary to the public health, safety or welfare; or evidence that the application of the requirements of this article creates a result that is inconsistent with the intent of this article. The foregoing examples are not intended to be exhaustive of the items that an applicant may present to the city when requesting a waiver under this subsection.
- (2) Availability of co-location opportunities, which are a preferred solution in the granting of a waiver;
- (3) Size and height of the proposed facilities;
- (4) Location and separation distances of the proposed facilities;
- (5) Location of the nearest residential units or residentially zoned properties;
- (6) Adjacent and nearby topography, tree coverage and foliage;
- (7) Design of the proposed facilities with particular reference to elimination of visual impacts of such facilities through stealth design or adequate screening, which are a preferred solution in the granting of a waiver;
- (8) Whether the City desires the utilities be located or relocated underground in the proposed location:
- (9) Any other factors the public services director determines to be relevant.

- (b) In granting any waiver, the ~~public services~~ director may impose conditions to the extent the ~~public services~~ director concludes such conditions are necessary to minimize any adverse effects of the proposed facility on adjoining properties or to protect the health, safety and welfare of the city and the residents.

Sec. 19-38. - Statutory exceptions.

No requirement set forth in this article shall apply to any utility that is exempted from complying with such a requirement under state or federal law or regulation.

Sec. 19-39. - City of Lake Worth utilities excused.

Utilities owned by the City of Lake Worth shall be excused from all parts of this article.

Section 4: Chapter 19 "Streets and Sidewalks," Article III "Revocable Permits," is hereby amended as follows (deletions in ~~strike through~~ text and additions in underline text):

Article III. - Revocable Permits

Sec. 19-40. – Definitions.

Property; city property: Any land, water or air rights owned or maintained by the city.

Revocable permit. Permission granted in writing for any use of real property owned or maintained by the City of Lake Worth Beach or in which the city holds an interest by a person or entity, establishing conditions for such use, providing for revocation by the city and establishing requirements for return of the property upon termination/revocation.

Sec. 19-41. - Application requirements.

Applicants for revocable permits shall submit the following application requirements prior to city commission consideration of the request:

- (a) A completed application obtained from the city's building, planning and zoning department and approved by the city attorney's office.
- (b) Proof of ownership of the adjacent property, as approved by the city attorney. This is not required if the application is for a sign.
- (c) A statement explaining the reason for the applicant's request and showing the need for a revocable permit in connection with use of the applicant's property and/or for purposes of preservation or protection of life, limb or property. If the application is for a sign, the statement must include the public purpose for the sign.
- (d) A drawing done to scale depicting the public property which is the subject of the request and the improvement(s) proposed by the applicant and indicating the exact dimensions of the improvement(s) and materials from which the improvement(s) will be constructed.
- (e) A nonrefundable application fee in the amount established by resolution of the city commission ~~of two hundred fifty dollars (\$250.00)~~ shall be submitted with an application.

Sec. 19-42. – Procedures for ~~city commission~~ consideration of the request.

- (a) ~~Application; resolution for public hearing. An application for a revocable permit shall be on the form provided by the City, clearly set forth the description of the property proposed for use by the applicant, the reason for the applicant's desired use, and proof of the applicant's ownership of the adjacent property. Upon receipt of a completed application, the city's building, planning and zoning department shall transmit the application to the city attorney's office. The city attorney's office shall prepare a resolution setting a date for a public hearing on the request and shall submit the resolution for city commission consideration.~~
- (b) Administrative consideration
 - (1) Applications for revocable permit for driveway aprons constructed with materials other than concrete or asphalt shall be reviewed and approved with conditions or denied by the public works director.
 - (2) The applicant shall be notified in writing of the administrative determination and if it is for denial the notice shall include the basis for denial.
 - (3) Administrative determinations are subject to appeal. An appeal must be filed with the city clerk within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The city manager shall hear the appeal. The hearing shall occur within thirty (30) days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within twenty (20) days of the hearing. Upon correction of any grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted. The fee for the appeal shall be as set forth by city resolution.
- (c) City commission consideration

1. Applications for revocable permit for any purpose other than identified in (b) shall be reviewed and approved with conditions for denied by the city commission at a noticed public hearing.
2. *Notice of public hearing.* The city shall provide mail notice of the public hearing at least seven (7) days prior to the hearing to owners of land lying within three hundred seventy-five (375) feet of the subject property. The notice shall indicate the date, time and place of the hearing and the nature of the request and shall invite written comments and/or participation at the hearing.
3. Approvals with conditions shall be adopted by resolution which shall state that the request for revocable permit under consideration is granted and the conditions of such approval. Said resolution shall state the finding of the city commission that the public property or right-of-way under consideration for revocable permit is not currently needed by the public but may be at some time and the same may therefore be utilized by a private party. Any denial of a revocable permit must be in writing.

~~(d) *Staff evaluation and report.* At the close of the public hearing, the city commission will refer the matter to staff for a staff evaluation and report.~~

~~(e) *Staff recommendation.* The city staff shall review the request and prepare a recommendation based upon the factors set forth in [section 19-43](#), which report shall be transmitted to the city commission.~~

~~(f) *Preparation of permit and resolution.* The city attorney's office shall prepare the proposed revocable permit and an appropriate resolution granting the revocable permit for consideration by the city commission.~~

(g) (d) *Time limit for reapplication.* If the request is denied, no application may be made based upon the same request for a period of six (6) months from the date of the denial.

Sec. 19-43. – Criteria for granting/denying revocable permits.

Revocable permits shall be granted or denied based upon consideration of the following criteria:

- (a) Importance or public purpose of the applicant's need.
- (b) Whether the applicant holds title to an abutting property or the application is for a sign.
- (c) Potential effect(s) on persons having an interest in surrounding properties, welfare of the public and economic impact on the city.
- (d) Compliance of the proposed improvements with applicable codes, ordinances, regulations, neighborhood plans and laws.
- (e) Effect(s) on governmental/utility easements and uses on the property.
- (f) No revocable permits shall be issued for any real property owned or maintained by the City of Lake Worth Beach and public rights-of-way accessible to public waterways.

Sec. 19-44. – Conditions, termination/revocation of revocable permits.

- (a) *Conditions for issuance.* Each revocable permit shall state conditions for its issuance, including, but not limited to:
 - (1) Use which the permittee shall be permitted to make of the premises.

- (2) The nature of the improvements permitted.
- (3) Requirements for maintenance of the premises by the permittee.
- (4) Requirements for indemnification of the city by the permittee.
- (5) Requirements for condition of the premises when it is returned to the city upon termination or revocation of the revocable permit.
- (6) Nonassignability of the permit, except upon approval by the city commission.
- (7) City's right of entry to repair utilities within any city easement or to remove unauthorized improvements, including the right to remove authorized improvements when necessary to gain access to the city easement under any circumstances. The city shall not be responsible for replacement or repair of such improvements.
- (8) Revocable permit shall be recorded in the public records of Palm Beach County.
- (c) *Termination.* Unless otherwise stated in the revocable permit, the permit shall terminate after the expiration of twenty (20) years, unless surrendered or revoked at an earlier date.
- (d) *Revocation at commission's discretion.* All revocable permits shall be revocable at the sole discretion of the city commission upon ten (10) days' prior written notice to the permittee.
- (e) *Notice of violations; report to city manager.* The building, planning and zoning department shall notify permittees of violations of the permit conditions. Any violations which remain uncorrected after ten (10) days from receipt of such notice shall be reported to the city manager and to the city commission.
- (f) *Revocation by resolution.* Revocation shall be by resolution of the city commission. No public hearing shall be required; however, the permittee or his/her representative shall be heard upon request prior to a commission vote on the resolution.
- (f) *No prescriptive rights.* These parties specifically agree that the ~~above-described right-of-way~~ property subject to the revocable permit shall at all times remain public right-of-way ~~property~~ unless formally abandoned by the city and that no prescriptive rights shall ever vest in permittee for use of any property under a revocable permit.

Section 5: Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 6: Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 7: Codification. The sections of the ordinance may be made a part of the City Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 8: Effective Date. This ordinance shall become effective 10 days after passage.

The passage of this ordinance on first reading was moved by _____,
seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Sarah Malega

Commissioner Christopher McVoy
Commissioner Mimi May
Commissioner Anthony Segrich

The Mayor thereupon declared this ordinance duly passed on first reading on the ____ day
of _____, 2025.

The passage of this ordinance on second reading was moved by _____,
seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Sarah Malega
Commissioner Christopher McVoy
Commissioner Mimi May
Commissioner Anthony Segrich

The Mayor thereupon declared this ordinance duly passed on the ____ day of
_____, 2025.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, MMC, City Clerk