

ORDINANCE NO. 2025-_____

AN ORDINANCE OF THE VILLAGE OF PINECREST, FLORIDA, COMPREHENSIVELY AMENDING ARTICLE III, “RIGHTS-OF-WAY-COMMUNICATION FACILITIES,” AND ARTICLE V, “ARTICLES IN THE PUBLIC RIGHT-OF-WAY AND OTHER PLACES,” OF CHAPTER 26, “STREETS, SIDEWALKS AND OTHER PUBLIC PLACES,” OF THE VILLAGE CODE OF ORDINANCES RELATING TO UNDERGROUNDING OF UTILITIES, PRIVATE PROPERTY OWNER UTILITY UNDERGROUNDING FOR NEW CONSTRUCTION AND RECONSTRUCTION, REMOVAL OF REDUNDANT UTILITY POLES, AND OTHER AMENDMENTS FOR CONSISTENCY WITH FLORIDA LAW; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Pinecrest (the “Village”) is responsible for promoting and protecting the public interests of the residents, visitors, and businesses of the Village by ensuring that safe and reliable utility services are available in the Village; and

WHEREAS, utility companies, including those providing electric power, telecommunications, video, cable television, internet, broadband, and similar services, have the fundamental responsibility and obligation to provide safe and reliable utility services, especially when utilizing publicly-owned rights-of-way for utility infrastructure; and

WHEREAS, the Village currently allows utility companies to use Village rights-of-way and other public properties for the installation and operation of the physical facilities by which they provide their services; and

WHEREAS, the Village is vulnerable to the impacts of weather, including hurricanes, tropical storms, and other weather events that can render utility facilities, particularly overhead and aerial facilities, inoperable for extended periods of time, resulting in significant economic losses and adverse impacts to the Village and the quality of life of the Village’s residents; and

WHEREAS, underground utility facilities are substantially and significantly more reliable and resilient than overhead facilities; and

WHEREAS, the costs of operating and maintaining underground facilities are generally less than the costs of operating and maintaining overhead facilities, in significant part because they are not subject to damage from vegetation and weather events, and because utilities avoid substantial vegetation management costs and other maintenance costs that are incurred with overhead facilities; and

WHEREAS, underground facilities are generally much safer than overhead facilities because they have no risks of poles or wires falling on people or property and because they have virtually no risks of being struck by vehicles; and

WHEREAS, underground utility facilities provide more aesthetically desirable experiences for residents, visitors, and businesses, and they also enhance the value of properties and the entire community; and

WHEREAS, since 2018, the Florida Power & Light Company (“FPL”) has been conducting the Storm Secure Underground Pilot Program (the “Program”) within the Village, and has already converted 31.5 miles of overhead utilities to underground utilities within the Village; and

WHEREAS, despite FPL undergrounding existing overhead electric utility facilities under the Program, various other utility providers have opted to remain on utility poles, often as the last remaining utility service provider on the utility pole; and

WHEREAS, the Village Council desires to adopt this Ordinance to require that all new utility facilities be installed using underground equipment and technologies to the maximum extent possible and practicable under certain circumstances; require private property owners to

underground utilities for new construction and reconstruction; and implement regulations governing the removal of redundant poles; and

WHEREAS, the Village intends to treat all suppliers, sellers, and providers of any and all utility services within the Village and all users of utility services within the Village in a nondiscriminatory manner in accordance with Section 337.401, Florida Statutes; and

WHEREAS, the Village Council finds it to be in the best interest of the public, health, safety, and welfare of the citizens to adopt this Ordinance amending the Village's Code.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF PINECREST, FLORIDA, AS FOLLOWS:¹

Section 1. **Recitals.** That the above stated recitals are hereby adopted and confirmed.

Section 2. **Village Code Amended.** The Code of Ordinances, Village of Pinecrest, Florida, is hereby amended as set forth in Exhibit "A" attached hereto and incorporated herein.

Section 3. **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. **Conflict.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

¹ Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with **yellow highlight** and ~~double-strikethrough~~ or double underline.

Section 5. **Codification.** It is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the Village of Pinecrest; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of _____, 2025.

PASSED AND ADOPTED on second reading this _ day of _____, 2025.

Joseph M. Corradino, Mayor

Attest:

Priscilla Torres, MMC
Village Clerk

Approved as to Form and Legal Sufficiency:

Mitchell Bierman
Village Attorney

Motion on Second Reading by:
Second on Second Reading by:

Vote:

EXHIBIT A

CHAPTER 26 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

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ARTICLE III. - RIGHTS-OF-WAY—COMMUNICATION FACILITIES

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Section 26-53. - Definitions.

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

* * *

Emergency shall mean a hurricane or tropical storm condition or other declared emergency that affects the public's health, safety or welfare, ~~which includes~~ and/or causes an unplanned out-of-service condition of a pre-existing service.

* * *

Section 26-54. - Registration for placing or maintaining communications facilities in public rights-of-way.

* * *

(g) A registrant shall renew its registration with the village every five years by April 1 ~~of even numbered years~~ in accordance with the registration requirements in this article, ~~except that a registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year. Each renewal shall include an inventory of the communications facilities, poles, towers, underground lines and equipment cabinets registrant installed in public rights of way in the village during the last term of the registration and an inventory of the wireless communications facilities, poles, towers, and equipment cabinets registrant abandoned in the public rights of way in the village during the last term of the registration.~~ Within 30 days of any change in the information required to be submitted pursuant to subsection (c), a registrant shall provide updated information to the village. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the village restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this article.

* * *

Section 26-55. - Notice of transfer, sale or assignment of assets in public rights-of-way.

A registrant shall not transfer, sell or assign all or any portion of its assets located in public rights-of-way except to a person holding a valid registration issued pursuant to section 26-54, hereof. Written notice of any such proposed transfer, sale, or assignment, along with assignee/transferee's signed and sworn certificate of its compliance with the requirements of this article, shall be provided by such registrant to the village at least five days prior to the effective date of the transfer, sale or assignment. If permit applications are pending in the name of the transferor/assignor, the transferee/assignee shall notify the village manager that the transferee/assignee is the new applicant. Violation of the requirements of this section 26-55 will subject the registrant to a fine of up to \$250.00 for a first time violation or \$500.00 for a repeat violation for each day the registrant fails to comply; provided however, village does not claim the right to approve or deny registrants' asset transfers or assignments to communications services providers operating at least one communications facility within the village, and the failure to comply with this section does not void any such asset transfer or assignment. The village reserves its right to exclude persons other than communications services providers from its right-of-way. Transfers or assignments of a communications facility to persons other than a communications services provider who will operate at least one communications facility within the village require compliance with this section to insure continued use of the public right-of-way. Successors in interest to a registrant shall provide notice to the village of any transfer, whether voluntary or involuntary, within 30 days of the transfer.

Section. 26-56. Placement or maintenance of a communications facility in public rights-of-way.

* * *

- (b) A registrant shall not commence to place or maintain a communications facility, including without limitation a collocation, in public rights-of-way until all applicable permits have been issued by the village or other appropriate authority, except in the case of an emergency, a registrant may restore its damaged facilities in the right-of-way to their pre-emergency condition or replace its destroyed facilities in the rights-of-way with facilities of the same size, character and quality, all without first applying for or receiving a permit. Registrant shall provide prompt notice to the village of the repair, placement or maintenance of a communications facility in public rights-of-way in the event of an emergency and shall be required to obtain an after-the-fact ROW permit if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency. ~~The term "emergency" shall mean a condition affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service.~~ Registrant acknowledges that as a condition of granting such permits, the village may impose reasonable rules or regulations governing the placement or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit, and comply with the requirements set forth in section 26-84. The village may issue blanket permits to cover

certain activities, such as routine maintenance and repair activities, which may otherwise require individual permits.

- (c) As part of any ROW permit application to place a new or replace an existing communications facility in public rights-of-way, including, without limitation, a collocation, the registrant shall provide the following:

- (1) Plans showing the location of the proposed facilities, including a description of the facilities to be installed, where the facilities are to be located, and the approximate size of facilities that will be located in public-rights-of-way;

* * *

- (5) For purposes of the village assessing impact on right-of-way resources, effects on neighboring properties and potential for collocations or repurposed structures, information on the ability of the public rights-of-way to accommodate the proposed facility, including information that identifies all above-ground and below ground structures (including light poles, power poles, equipment boxes and antenna), currently existing in the public rights-of-way in the village within a ~~750-foot~~ 50-foot radius of the proposed facility, if available (such information may be provided without certification as to correctness, to the extent obtained from other registrants with facilities in the public rights-of-way); however, if the applicable official or board determines that it either: (i) better serves the village's interests in safe, aesthetic, efficient and effective management of the public rights-of-way; (ii) is necessary to address a documented lack of capacity for one or more carriers; or (iii) will help minimize the total number of communication facilities necessary to serve a particular area, then the ~~750~~ 50-foot distance requirement may be modified. The applicant shall provide competent substantial evidence to reflect that the above conditions are met, in order to waive the ~~750~~ 50-foot distance requirements, and ensure compliance with all the other requirements of this article; ;

* * *

- (e) All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin any of the public rights-of-way.

(1) *Reconstruction of Existing Utilities.* To the extent not prohibited under federal, state, or local laws and regulations, when a communication facility provider relocates, refurbishes, upgrades, reconstructs, or restores its communication facilities or a substantial portion of its communication facilities, such communication facilities must be installed underground at the communication facility provider's expense. Any work for which a permit is sought involving (1) upgrades to the capacity, capability, or technology of overhead facilities, regardless of the length of such facilities or the number of poles involved in such upgrade, or (2) replacement of more than one pole or more than one span of wire, conductor, fiber optic cable, telecommunications wire, or the like shall be considered to be reconstruction subject to the undergrounding requirements contained herein. Nothing herein shall be interpreted to require undergrounding of

communication facilities in connection with (a) ordinary maintenance or repair of existing communication facilities, and (b) restoration of service under emergency conditions, as defined under Section 25-56(a).

(2) Use of Trenchless Technology. The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way as well as joint trenching or the collocation of facilities in existing conduit is strongly encouraged, and should be employed wherever feasible.

(3) New Communication Facilities. To the extent not prohibited under federal, state, or local laws and regulations, new communication facilities shall be placed underground to the maximum extent possible. To the extent not prohibited by federal and state law, the village shall require any registrant that does not have communications facilities in the village as of the date of adoption of this article to place any new cables, wires, fiber optics, splice boxes and similar communications facilities underground, unless such communications facilities can be collocated on existing or stealth design poles.

(4) Village Rules and Regulations. The village manager or designee may promulgate reasonable rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way consistent with this article and other applicable law.

(5) Underground Communication Facilities to Remain Underground. Wherever communication facilities are located underground, such facilities must remain underground unless they are removed, and may not thereafter be converted to overhead facilities.

* * *

- (h) Removal or relocation at the direction of the village of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, as amended. Subject to F.S. §§ 337.403 and 337.404 and other provisions of law, whenever existing overhead utility distribution facilities are converted to underground facilities, any registrant having communications facilities on poles that are to be removed shall arrange for the conversion to underground facilities on the same terms and conditions as the other utilities that are being converted to underground facilities.

* * *

- (q) ~~A ROW permit application to place a new or replace an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way.~~ If the ROW permit plans so provided pursuant to Section 26-56(c) herein require revision based upon actual installation, the registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the village, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the village. Upon completion of any communications facilities, the communications services provider shall furnish to the village, at no cost to the village, one complete set of sealed "as built" plans, or in the case of any

underground communications facilities, a sealed survey showing the exact location of such communications facilities, including their depth; or in either case, such other documentation describing the location (including height or depth, as the case may be), of communications facilities as the village manager or designee, may approve. This requirement shall be in addition to, and not in lieu of, any filings the registrant is required to make under the Underground Facility Damage Prevention and Safety Act set forth in F.S. Ch. 556, as amended from time to time. The fact that such plans or survey is on file with the village shall in no way abrogate the duty of any person to comply with the aforesaid Underground Facility Damage Prevention and Safety Act when performing work in the public rights-of-way. Any proprietary confidential business information obtained from a registrant in connection with a permit application or a permit shall be held confidential by the village to the extent provided in F.S. § 202.195, as amended from time to time. Such confidential proprietary business information shall be excluded from the evidentiary record of any public hearing held on an application for a ROW permit and registrant bears the risk that its claims of privilege protecting confidential proprietary business information may impair its ability to prevail at hearing on issues relevant to grant of a ROW permit.

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ARTICLE V. ARTICLES IN THE PUBLIC RIGHT-OF-WAY AND OTHER PLACES

Section 26-82. - Definitions.

For the purposes of this section:

- (1) *Storage bin* shall mean any container used for the collection, storage or distribution of personal property.
- (2) *Vehicle* shall mean functioning automobiles, trucks, buses or trailers.
- (3) *Public right-of-way* shall mean rights-of-way in the Village of Pinecrest.
- (4) *Article* shall mean any personal property, including but not limited to storage bins, utility facilities and trees, except newsracks and vehicles temporarily parked in the public right-of-way.
- (5) *Utility facility* shall mean any pole line, pole, railway, ditch, sewer, waterline, gas main, pipeline, fence, gasoline tank or pump within the village, ~~which is not a~~ The term "Utility Facility" shall not include a "communications facility," as defined in section 26-53, unless the context dictates otherwise.
- (6) *Director*, as used in this article, shall mean the Village's Public Works Director, or designee.
- (7) *Redundant Pole*, as used in this article, shall mean ~~a utility facility within 50 feet of a newer utility facility. With respect to utility poles installed to support utility lines, the transfer of any pole line or any equipment otherwise fixed to the utility pole to another utility pole shall create a presumption that the utility pole from which equipment is transferred is redundant. a pole used~~

for electric distribution service, streetlights, communications services, local exchange services, or cable television services owned or controlled by a pole owner which is:

(a) Near or adjacent to a new pole that is intended to replace the old pole from which some or all of the pole attachments have not been removed and transferred to the new pole;

(b) Left standing after the pole owner has relocated its facilities to underground but on which pole attachments of other attaching entities remain; or

(c) Left standing after a pole owner's attachments have been removed from that route or location to accommodate a new route or design for the delivery of service.

(8) Pole attachment means any attachment (including, but not limited to equipment, facilities, or co-located equipment or facilities) by a public utility, local exchange carrier, communications services provider, broadband provider, cable television operator, or other entity other than a pole owner to a pole, duct, conduit, or right-of-way owned or controlled by a pole owner.

Section 26-84. - Issuance of permit.

The department of public works shall have the authority to issue permits for the placement of articles and utility facilities in the public right-of-way in accordance with standards established by the public works department. In establishing standards for the placement of articles and utility facilities in the public right-of-way, the department shall take into consideration:

- (1) Pedestrian and driving safety and convenience;
- (2) Public and property safety during hurricane conditions;
- (3) Access for the use and maintenance of poles, traffic signs or signals, hydrants, and access to locations used for public transportation purposes;
- (4) Uniformity in the treatment of similar articles and utility facilities.

In addition to foregoing considerations, the village may impose conditions upon the issuance of a permit, including, but not limited to, the removal of utility facilities, and specifically utility poles, deemed by the village to be abandoned ~~or redundant~~ as well as requiring the transfer of existing utility facilities, including but not limited to pole lines, cables, or fibers, to the new pole, for purposes of co-location with newer utility facilities. Wherever a utility facility is located underground, such facility(ies) must remain underground or be removed. No permit shall be issued to convert the utility facility(ies) located underground to overhead facilities.

~~It shall be the sole responsibility of the permittee to relocate any equipment from a redundant facility to a new facility and to remove and dispose of any redundant utility facility.~~

If the director finds that a permittee has failed to comply with a permit condition requiring the removal of a utility facility deemed by the village to be abandoned ~~or redundant~~, or requiring the transfer of an existing utility facility to a newer utility facility to achieve joint trenching or co-location of utility facilities, the director may issue an order requiring compliance within a reasonable period of time. In addition, the Director may condition the issuance of a new permit upon compliance with a condition imposed for a prior permit or payment of previously imposed fines.

Should code enforcement proceedings ensue, the permittee shall have the initial burden of demonstrating, by clear and convincing evidence, any engineering or legal preclusions preventing compliance with the imposed conditions.

* * *

Section 26-88. Private property owner's responsibility to underground utility facilities.

(a) All utility facilities, including communication facilities as defined under Section 26-53, located on private property for all new construction and for reconstruction shall be required to be placed underground. In addition, such utility facilities for private properties subdivided subsequent to the adoption of this article shall be placed underground, including all distribution lines; communication facilities (as defined under Section 26-53); fiber optic cable; service laterals, wiring, and cables; and other appurtenances associated with connecting the property owner's property to the utility's facilities. The property owner is also required to arrange for the service entrances for all such utility services to be constructed so as to accept and be fully compatible with underground service.

(b) Within six (6) months after written notice is given by the village or by the applicable utility provider that service is available from underground utility facilities, all owners of property where service is available from such facilities shall connect to the underground facilities and terminate all service from the respective overhead facilities.

Section 26-89. Redundant Pole Removal.

(a) *Attaching Entities.* When a pole owner engages in undergrounding its utility facilities, including communication facilities as defined under Section 26-53, and equipment that will result in a redundant pole, the pole owner shall be required to provide notice to attaching entities and to the village. Attaching entities shall be required to underground their utility facilities and equipment or remove all pole attachments from a redundant pole in coordination with the pole owner. The village may, at its discretion but without obligation of any kind, provide a courtesy notice to the attaching entity of the planned or intended overhead to underground conversion project being performed or affecting any area of the village rendering the pole unused for electrical distribution purposes.

(b) *Removal of Redundant Poles.* Redundant poles serving any area or property must be removed by the pole owner within 90 days of the conversion of overhead utility facilities,

including communication facilities as defined in Section 26-53, to underground serving said area or property.

To the extent permitted under federal, state, and local law, in the event that a redundant pole whose ownership cannot be determined remains in an area where overhead utility facilities, including communication facilities as defined in Section 26-53, have been converted to underground facilities and such utility poles are not promptly removed as part of an underground project or pursuant to a separate agreement, it shall be the responsibility of the utility whose utility facilities last occupy a position on such poles to remove such poles. If the responsible utility does not remove such poles within ninety (90) days following notice from the village, the village may arrange for removal and bill the utility for the cost of such removal.

(c) *Major Hardening Projects.* In the event a pole owner is engaging in a major hardening project as provided in Section 366.97, Florida Statutes, the procedures for redundant poles contained in Section 366.97, Florida Statutes, and orders of the Florida Public Service Commission shall apply and shall control in the event of a conflict with the procedures contained in this section. To the extent not inconsistent with applicable law, the pole owner shall provide the village with copies of notices issued to attaching entities. The village may, in its discretion, issue orders consistent with such procedures contained in Section 366.97, Florida Statutes, and orders of the Florida Public Service Commission to address the removal of redundant poles.

(d) *Enforcement.* Failure by any attaching entity or a pole owner to comply with the requirements of this Section shall constitute a violation of this Article pursuant to Section 26-89. Fines for violations of this section shall accrue on a per pole basis, as applicable, and shall continue to accrue, as applicable, for each day the violation continues past the date set for compliance. Failure by an attaching entity or pole owner to comply with the requirements of this Section shall constitute grounds for the village to deny issuance of future permits pursuant to this Chapter until compliance is obtained.

Section 26-88 90. Order of removal.

The director shall have the authority to order the removal of any article and utility facility from the public right-of-way which does not comply with this article or is otherwise determined by the director to be ~~redundant~~, abandoned or a hazard to the public.

(a) Unless otherwise permitted by the village in writing, it shall be unlawful to maintain an abandoned article or an abandoned ~~or redundant~~ utility facility within the village.

(b) If an article or utility facility is deemed by the director to be abandoned ~~or redundant~~, the owner of the article or utility facility shall, upon 30 days written notice by the director, initiate the work necessary to remove the article or utility facility at its own expense. Thereafter, all remedial work must be completed within a reasonable time unless otherwise provided by the director.

(c) The village may proceed to cause the work necessary to remove the article or utility facility at issue if the owner of the article or utility facility fails to perform the work at their own

expense within the time contemplated by this section. The expense incurred by the village shall be charged against the owner of the article or utility facility.

Section ~~26-89~~ 91. Enforcement.

In addition to all other legal remedies, the director shall have the authority to initiate enforcement proceedings, pursuant to chapter 2, article V of the code, as amended, against any person or legal entity who has not complied with the provisions of this chapter. Should such proceedings be initiated, a per diem fine of up to \$250.00 (or \$500.00 for repeat violations) may be levied against the violator until the violation is complied. The resulting per diem fines pursuant to this section shall be levied per article, pole or utility facility.

ARTICLE VI. MAINTENANCE OF THE PUBLIC RIGHT-OF-WAY

Section ~~26-90~~ 26-100. - Maintenance.

The issuance of a building permit by the village shall be conditioned upon maintenance of the adjoining right-of-way and street pavement in its existing condition from the commencement of construction through the issuance of a certificate of occupancy. The property owner and permittee shall be responsible for maintenance of the condition of the pavement and right-of-way during the period of construction. All street, sidewalk, and driveway apron restorations, including temporary and permanent work shall be performed by and at the permittee's sole expense and in accordance with the village's pavement standards. All repairs and restoration work shall be completed by the permittee to village standard details and specifications in a manner and to the extent deemed acceptable to the village public works director.