

FILED FOR RECORD
R. B. SHORE

ORDINANCE NO. 08-70

2008 OCT 16 PM 1:09

CLERK OF THE CIRCUIT COURT
MANATEE CO. FLORIDA

AN ORDINANCE OF MANATEE COUNTY, FLORIDA, RELATING TO THE REGULATION OF UTILITY ENTITIES CONSTRUCTION, USE AND MAINTENANCE ACTIVITIES WITHIN THE COUNTY'S RIGHT-OF-WAY; REPEALING SECTIONS 2-7-30 THROUGH 2-7-32 AND 2-28-21 THROUGH 2-28-38 OF THE MANATEE COUNTY CODE; CREATING A NEW ARTICLE II OF CHAPTER 2-28 OF THE MANATEE COUNTY CODE; ADOPTING A REGULATORY SCHEME GOVERNING CONSTRUCTION, USE, RELOCATION, MAINTENANCE, AND REPAIR OF UTILITY FACILITIES IN COUNTY RIGHT-OF-WAY; CREATING LICENSING AND PERMITTING REQUIREMENTS; PROVIDING FOR REGISTRATION REQUIREMENTS OF COMMUNICATION SERVICE PROVIDERS; PROVIDING FOR ADMINISTRATION OF REGULATIONS AND DELEGATION OF RULEMAKING AUTHORITY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida law, including Florida Statutes § 125.42 and § 337.401, authorize Manatee County to license and adopt regulations related to the placement, construction, maintenance, repair, relocation or removal of utility facilities within its right-of-way, as well as require certain registration requirements by communication services providers; and

WHEREAS, pursuant to this authority, Manatee County adopted Ordinance 89-11, establishing certain regulations governing utility construction within County right-of-way, and Article II of Ordinance 05-50 governing registration of communication service providers; and

WHEREAS, the provisions of Ordinance 89-11 are no longer sufficient to address the various issues and problems which arise in modern utility facility construction activities, and more efficient and effective regulations would better serve both the County and utility providers and contractors; and

WHEREAS, the provisions of Article II of Chapter 2-7 of the Manatee County Code, related to registration of communications services providers using the right-of-way, more properly belongs within the County's right-of-way ordinance; and

WHEREAS, the Board of County Commissioners find that the provisions of this new Ordinance will better serve the health, safety and welfare of the users of the County's roadways, while also ensuring better coordination of utility uses of the County's limited right-of-way spaces.

NOW THEREFORE BE IT ORDAINED by the Board of County Commissioners of Manatee County:

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Section 1. Section 4 of Ordinance 05-50, as codified at Article II of Chapter 2-7, including § 2-7-30 through and including § 2-7-32, is hereby repealed.

Section 2. Ordinance 89-11, as codified at Sections 2-28-21 through and including 2-28-38 of the Manatee County Code, and including non-codified Appendices attached to said Ordinance, is hereby repealed in its entirety.

Section 3. A new Article II of Chapter 2-28 of the Manatee County Code is hereby created, and shall be entitled **Right of Way Management**.

Section 4. A new Division A of Article II of Chapter 2-28, initially consisting of Sections 2-28-21 through 2-28-36 of the Manatee County Code, is hereby created to read:

DIVISION A.

CONSTRUCTION IN AND UTILIZATION OF COUNTY RIGHT-OF-WAY

Sec. 2-28-21. Definitions.

For purposes of Article II of Chapter 2-28, the following words and terms shall have the meanings given in this section:

As-built plans means plans depicting the actual location of a facility, other than aerial facilities, after construction as determined by actual physical measurement in the horizontal and vertical plane. Copies of directional bore logs shall constitute an "as built" plan.

Emergency repairs means work which is necessary to immediately preserve life and/or property of inhabitants of the county. The term shall also be used to describe work which is needed to prevent the imminent loss of any utility service or to restore any utility service (including cable television service).

Erosion control means the practices used to minimize soil loss from rights-of-way and the discharge of turbid runoff in the manner set forth in the National Pollution Discharge Elimination System (NPDES) standards.

Manual on uniform traffic control devices means the Federal Highway Administration Manual on Uniform Traffic Control Devices, as incorporated by reference under Florida Department of Transportation rules.

Permittee means any person, firm, partnership or corporation who holds a currently valid right-of-way use permit, said permit having been granted by the county.

Permitting authority means the county's right of way manager or such other person, department or division assigned to administer the right of way permitting system.

Regulated essential utility company means any electric, telecommunications or natural gas utility so designated by the Florida Public Service Commission.

Right-of-way means land in which the county owns a fee simple interest or has an easement by virtue of dedication or by deed devoted to or required for use as a transportation facility.

Right-of-way manager means the county administrator or such county official delegated the duties and authority of the position, as provided in the county code or otherwise.

Road means streets, sidewalks, alleys, highways and other ways open to travel by the public, including the roadbed, right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels and viaducts necessary for the maintenance of travel.

Sec. 2-28-22. Licensing of utility facilities using right-of-way.

(a) All non-governmental utilities, including water, sewage, gas, power and communications services, or any other legally authorized person or entity, seeking to construct, maintain or operate facilities under, on, over, across or along any county right-of-way including any highway or any public roadway acquired in any manner by the county located outside the corporate limits of any municipality, must first be granted a license by the county to do so. For purposes of this chapter, a communications services provider who complies with the registration requirements of section 2-28-37 shall automatically be issued a license under this section. Such licenses may contain such provisions as the county deems reasonably necessary to protect the county and the public, and shall, at a minimum, include adequate provisions to:

- (1) prevent the creation of any obstructions or conditions which are or may become dangerous to the traveling public;
- (2) require the licensee to repair any damage or injury to the public road or highway by reason of the exercise of the privileges granted by the license and to repair the road or highway promptly, restoring it to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury;
- (3) require that in the event of construction, widening, repair, or reconstruction of any such road by or at the order of the county, licensee shall move or remove such water, sewage, gas, power, communications service or other utility lines at no cost to the county;

(4) require the licensee to hold the county and its officers and agents harmless from the payment of any compensation or damages resulting from the exercise of the privileges granted in the license.

(b) For purposes of subsection (a)(3) above, an order of the county shall include the adoption by the county of a development order or agreement pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, regardless of whether the construction, widening, repair or reconstruction has the incidental result of benefiting a private development, so long as the road construction in question is mandated by the county to meet concurrency or similar planned growth requirements. In addition to the authority granted to the right-of-way manager in section 2-28-24(g), and to aid in resolving any dispute between a licensee and developer, contractor or similar interested party concerning financial responsibility for removal or relocation of facilities, the right-of-way manager is authorized to render a written determination concerning such issues.

(c) The right-of-way manager shall have the authority to issue licenses under this section in the name of the county, and may not deny a license to any requestor who has complied with the license application procedures established pursuant to section 2-28-40. A license so issued shall be non-exclusive and may be granted for a term of years, subject to termination by the licensor in the event the road or highway is closed, abandoned, vacated, discontinued or reconstructed. This provision shall not be interpreted to result in license termination where closures or vacations impact facilities of a licensee, where the licensee continues to maintain facilities in other county rights-of-way.

(d) The granting of a license under this section shall not be interpreted as granting authority to construct or maintain facilities in, over or along any particular portion of county right-of-way if, in the judgment of the county right-of-way manager, that portion cannot, because of safety, engineering or construction reasons, accept the addition of the facilities at issue. In such circumstances, all licensees are required to work with the right-of-way manager to identify alternative plans, routes or facility designs, including conversion to shared conduit or other facilities. The implementation of any such plans agreed to by the parties must be paid for at the expense of the licensee seeking entry into the portion of right-of-way in question. This section shall not be interpreted to require undergrounding of pre-existing aerial facilities, nor of any new facilities, for reasons not related to safety, engineering or construction issues. Aerial facilities shall not be required to be relocated underground where an alternative aerial design which addresses safety, engineering and construction concerns is available.

(e) Any governmental entity shall not be required to obtain a license under this section, but may be required to obtain individual construction permits and to otherwise comply with such other terms and requirements of this Article II of chapter 2-28, including permitting requirements, as in the judgment of the right-of-way manager are required to ensure the protection of existing utility facilities in the right-of-way, the financial or legal interests of the county, or the general public health, safety and welfare.

(f) The granting of a license under this section shall not excuse a licensee from compliance with any construction permitting requirements of the county. The granting of a license under this

section does not excuse a licensee from compliance with any state or federal law requirements or conditions related to engaging in the utility business in question.

Sec. 2-28-23. Permitting of utility construction activity in the right-of-way.

(a) Any licensed utilities, including water, sewage, gas, power and communications services provider seeking to construct, relocate, repair, replace or remove facilities under, on, over, across or along any county right-of-way including any highway or public roadway located outside the corporate limits of any municipality, must first be granted a permit by the right-of-way manager to do so. Permits may be requested by completion of an application form and the submission of any required supporting plans or documents and any applicable permit fee. Applications will not be deemed submitted until they are fully completed and contain required attachments and any fee due is paid. Once an application is deemed complete and submitted, the right-of-way management staff will review it and provide a response within thirty (30) days. More complex or extensive applications may require a longer review period. If so, the applicant will be contact and so informed. To the extent the application process requires the submission of all or any portion of the application in electronic form, an applicant must comply with that requirement in the format(s) established pursuant to section 2-28-40 unless waived by the right-of-way manager for good cause.

(b) The individual completing the application form must be an authorized agent of the licensee and be actually authorized to make the application. Information provided in the application must be completely truthful and accurate. All paper copies must be legible. All electronic data files must be readable. A proposed plan drawing and/or description shall be attached to the application showing the planned work. At a minimum, the attachment shall be to scale and show the offset from the centerline of the right-of-way or road to the proposed utility installation, the road right-of-way and pavement width, the distance from edge of pavement to the utility, and the location, given the best information available, of all other known non-aerial utilities within the area of work. Such other utilities need not be drawn to scale. One or more typical cross sections as required to adequately reflect the location of the utility shall also be shown. The minimum vertical clearance above or below the parkway or pavement shall be shown. Additional information such as the location in relation to the nearest town, major road intersections, bridges, railroad crossings and other physical features shall be indicated on the sketch and identified. A simple key map showing the location of the proposed facility either on the sketch itself or as a separate sketch shall be included so as to assist with the general location of the installation, indicating the applicable section, township and range. Applicants/Permittees shall have a continuing obligation to provide the county with updated drawings in the event that installed facilities differ in type or location from the drawings as originally submitted, or other changes to the original proposal become necessary. Nothing herein shall be intended as requiring any utility to submit plans, drawings or specifications which are: 1) deemed proprietary, and 2) for which there is no current Florida Public Records Act disclosure exemption. Any records a utility submits which it deems subject to such an exemption shall be clearly marked as exempt, and the statutory reason for the asserted exemption.

(c) Notwithstanding the permitting requirements herein:

(1) To prevent danger to life, safety or property or to prevent a significant loss of service to end users, a licensee is authorized to make emergency repairs to facilities. The right-of-way manager may require additional or supplemental work be performed after the initial emergency repair so as to bring the facility or abutting spaces including ditches, roads and sidewalks, up to a standard at least equal to that which existed immediately prior to the repairs. The right-of-way manager is authorized to develop and publish emergency utility repair standards and procedures, including notification procedures, which shall, when published, be binding upon all licensees.

(2) Where construction of facilities within the right-of-way is done pursuant to an approved county capital improvement project, or where such construction is done pursuant to any requirement of the land development code or development order or agreement, the right-of-way manager is authorized to waive the permitting requirement if that official determines that the project has received or will receive full design and construction review and inspection approval meeting at least the minimum standards required within this Article II of chapter 2-28.

(3) Where a licensee's work in the right-of-way is related to an individual customer service connection (a drop), the right-of-way manager is authorized to consult with licensees and to thereafter establish and publish uniform maximum distance and/or construction standards within which a licensee may perform non-permitted work on a drop. However, where a licensee performs such work, it must provide notice of the work to the right-of-way manager in a form and manner prescribed by the right-of-way manager. To the extent work on a drop exceeds, by distance and/or construction technique, any maximum standards established, all permitting requirements shall apply, with the exception that where controlling customer service standards or other exigent circumstances dictate, the drop permit may be obtained after the fact. Additionally, permitting and notice requirements shall not apply to aerial drops, nor to underground drops where such drops do not cross or begin beneath any paved portion of the right-of-way and trenching is at a right angle to any such paving.

(4) Where a licensee maintains extensive facilities within the county's rights-of-way and as a result thereof regularly performs routine maintenance on such facilities on an ongoing, constant basis, the right-of-way manager is authorized to negotiate and enter a standard agreement with such licensee customizing and streamlining the county's review of such routine maintenance projects. Such agreements may, if necessary and not prohibited by law, provide for the payment of any actual, demonstrated added costs to the county to implement the agreement. The right-of-way manager is authorized to cancel any such agreement if at any time that official determines that the licensee has habitually breached the agreement's terms, has become technically or financially unable to perform under the agreement, or where public safety and security warrant cancellation.

(5) Where a licensee owns, controls or has earlier constructed a facility (such as poles, piping, conduit or sleeves) onto or into which the licensee desires to install additional or replacement facilities (such as by stringing additional lines on a series of poles, pulling fiber through a conduit, or internally re-lining piping to lengthen its lifespan), a permit

shall not be required unless such work will require disturbance of the right-of-way beyond accessing a pre-existing facility access point, or will result in a requirement to close a public road.

(6) Any similar or other instance where a permit is deemed not required by the most recent version of the Florida Department of Transportation's Utility Accommodations Manual shall not require a permit under this section.

Sec. 2-28-24. Standards applicable to permit issuance; expiration; revocation.

(a) The right-of-way manager is authorized to approve or deny a permit for right-of-way utilization/construction. Any decision on the part of the right-of-way manager to deny a permit shall be communicated to the applicant in writing and shall state with specificity the reason(s) for the denial. An applicant shall be permitted to remedy any defects in the application and resubmit it for consideration at no additional charge within thirty (30) days of the denial. Thereafter, any submission shall be treated as a new application and shall be accompanied by any applicable fee. The right-of-way manager's decision to deny a permit shall always be based upon one or more factual or legal reasons, articulated in the written denial decision. Such decisions shall be appealable to the construction codes appeals board, and thereafter by writ of certiorari to the circuit court pursuant to the Florida Rules of Appellate Procedure.

(b) If, in the professional judgment of the right-of-way manager, a particular project or portion thereof will create or contribute to undue safety conditions, or will infringe on the planned space allocations for future users of the right-of-way as may be established in a right-of-way future use plan developed pursuant to section 2-28-39, or to prevent repetitive and disruptive disturbance of the roadways associated with the right-of-way segment in question, or where there is inadequate available physical space within the right-of-way to construct the utility facility in question as initially submitted, the right-of-way manager may condition the granting of a permit on the applicant's attempting to co-locate its facilities with a like or similar utility facility currently in the right-of-way segment in question. The parties may agree among themselves as to the allocation of the costs associated with the co-location. Failure to so agree will result in the applicant bearing the related costs. To the extent the county owns or controls its own utility facilities within the right-of-way segment in question, including excess conduit or fiber capacity, the right-of-way manager may condition the applicant's permit on agreeing to utilize these facilities at commercially reasonable terms and conditions, to the extent such use creates no greater technical or financial burden on the utility than had the utility deployed its own conduit or fiber capacity.

(c) Once an application is approved, the right-of-way manager shall issue a permit to the applicant. A copy of the permit must be available for inspection at all times at the work site while work is being performed. Except as otherwise provided in this article, any work in or use of any right-of-way without a "sunshine state one-call" notification (for work requiring excavation) and a valid permit issued pursuant to this article is prohibited. Except as provided by this article, any work in progress in any right-of-way or use of any right-of-way without a valid permit shall be suspended until such time as a valid permit is produced on the site. Both the right-of-way manager and any county code enforcement officer shall have the right to order a

work site secured and closed until a proper permit copy is obtained and available on site. Persons or entities violating any site-securing order shall be in violation of this section and subject to maximum code enforcement fines and penalties allowed by law, and the right-of-way manager is authorized to revoke the permit(s) of any permittee failing to assist in ensuring its agents refrain from working in or on any site closed and secured under this section.

(d) A permit shall be valid for the period set by the right-of-way manager, which period shall not exceed one year. The expiration date must appear on the permit. No work may be performed pursuant to an expired permit. Prior to expiration, the permittee may apply to the right-of-way manager for an extension. Said application shall state good cause for the extension request and shall include all factual and legal reasons the permittee relies upon in seeking the extension, including all good faith efforts made to finish the work within the initial term. If, in the judgment of the right-of-way manager, the permittee has stated good cause, a single extension of a period not to exceed one year may be granted. The granting of the extension may be conditioned upon such additional terms and conditions as the right-of-way manager deems necessary to ensure the work is completed. If the permittee fails to complete the work in question within the extension period, all work must cease and a new permit application process must be initiated.

(e) The right-of-way manager may suspend or terminate a permit at any time, or may demand immediate repair or restoration work based on any violation of the requirements of this article or other ordinance, or for any condition within the permitted area which poses a threat to the health, safety, or welfare of the general public. If specific circumstances permit, the right-of-way manager shall afford a permittee an opportunity to cure non-safety-related violations within a set period of time prior to terminating any permit under this section. Where a permittee fails to adequately restore a site or otherwise fails to address site conditions posing a significant danger to the public health or safety, the county may also take all lawful measures, at its own initial expense, to effect the restoration or remediate the unsafe condition.

(f) From time to time, a utility may undertake a major right-of-way construction or replacement project which will entail significant construction work within many areas of the county within a short time frame. Inasmuch as such projects would cause an unusually high volume of individual permit requests and significant demands on staff time to accomplish plan review, location and inspection duties, and given the utility may likely desire to avoid the time and monetary costs associated with submitting applications for individual permits for each section of right-of-way at issue, the right-of-way manager is authorized to negotiate a blanket permit agreement with the licensee to authorize an entire project under one permit. This agreement shall contain terms and conditions supplemental to the county code's provisions concerning right-of-way construction, and may be conditioned upon the posting of a performance bond, and/or the pre-payment or reimbursement to the county of costs associated with plan reviews, locates and final inspections.

(g) Any utility facility placed upon, under, over or along any existing or planned public road facility that is found by the right-of-way manager to be unreasonably interfering in any way with the improvement, extension or expansion of such road facility shall, after thirty (30) day written notice to the utility, be removed or relocated by such utility at its own expense. This requirement applies to all such improvements, extensions or expansions, whether constructed directly by the

county or through a public-private agreement, or by virtue of a duly-adopted development order or development agreement, so long as the purpose of the road facility is deemed by the county to be for the public benefit. In the event a notified utility fails to comply with the notice in the period required by the right-of-way manager, said official may issue a removal/relocation order, authorizing removal or relocation of the utility facility by the county. Such order may be appealed in court as provided by law. Additionally, to the extent the right-of-way manager finds that the reason(s) cited by a utility for failing to comply with a removal/relocation notice is/are false, or factually or legally unjustifiable, the right-of-way manager may issue an order suspending any or all current permits and the utility's ability to obtain any new permits until the required removal or relocation is completed. This authority shall be in addition to, and not exclusive of, any other authority the county may now or in the future, whether by contract, ordinance or general law, to enforce its right to require the temporary or permanent utility facility removal or relocation.

(h) Notwithstanding any of the foregoing, to the extent any county-owned utility facility is being constructed or relocated and the cooperation of any other governmental or non-governmental entity is required, the county may enter into a utility location/relocation agreement, the terms of which shall govern the construction or relocation of the county utility facilities at issue.

Sec. 2-28-25. Qualifications of permittee.

Subject to satisfaction of and compliance with the requirements of this article, permits will be issued to the following:

- (1) Utility companies (including governmental utilities) or their agents/contractors that will be installing, replacing, repairing, relocating, maintaining or removing a facility.
- (2) Contractors responsible for the installation of any utility facility or structure subject to these regulations related to an otherwise authorized project not related to the activities of a utility.
- (3) Other persons or entities with a legal and legitimate need to use the right-of-way, which use poses no threat to public health, safety or welfare, or the effective future use of the right-of-way. All tradespersons who require a state license to practice, including but not limited to electricians and plumbers, must possess a currently valid license at the time of application. Proof thereof will be required before approval of an application/permit. County employees or contractors who perform routine maintenance work in rights-of-way on behalf of the county are specifically exempt from the permit application process.

Sec. 2-28-26. Fees.

(a) The county commission may, from time to time, adopt, modify or rescind a fee schedule for any fees related to this article. Such action may be by resolution or otherwise. The right-of-way manager shall ensure the most current fee schedule is published to the utility provider and utility construction communities and shall, at a minimum, ensure same is posted in electronic form accessible to the public.

(b) Applicants who regularly or frequently perform work within county rights-of-way may establish accounts at the discretion of the right-of-way manager.

(c) County employees or contractors who perform work in rights-of-way on behalf of the county are specifically exempt from the payment of any application/permit fees.

Sec. 2-28-27. Bonding.

(a) Prior to the issuance of a permit pursuant to this chapter, the applicant may, at the discretion of the right-of-way manager and in light of factors such as the size or scope of the work, the likelihood of damages, and the applicant's work history, be required to obtain and deliver a surety bond, irrevocable letter of credit or similar instrument, in an amount deemed necessary to protect the county's interests, including timely completion of project and preservation of public safety. At the discretion of the right-of-way manager, the amount may be established separately for each permit, or for a large project or group of permits, or in an annual blanket amount, so that the county will be best protected against loss in the event of the failure of the permit holder to complete the work or make required maintenance, repairs or restoration of damages involving the work authorized by the permit(s). The instrument shall comply with all statutory requirements and shall be satisfactory to the County Attorney as to form and manner of execution.

(b) The instrument shall be released to or for the permittee upon the expiration of the guarantee period and the county shall execute any documents necessary to affect the release of any bond no longer needed. The guarantee period shall be for a minimum period of two (2) years following completion of all permitted work, unless a different period is required within an applicable development order or agreement, or provided for within a capital improvement project construction agreement. During the guarantee period, the permittee shall be responsible for the maintenance and pre-construction condition restoration/repair of the work, and permittee must agree as part of the permit conditions that failure to honor the guarantee shall entitle the county to proceed against the instrument and complete the work itself. To the extent permittee applies to conduct additional permitted work in the right-of-way during the guarantee period, the right-of-way manager may consider a request to allow any pre-existing bond or letter of credit to cover the newly-permitted work as well so long as it is determined that such instrument will be sufficient to cover all permitted work, and the financial instrument's terms permit such floating coverage.

(c) If the surety or banking establishment on any bond, letter of credit or other instrument furnished by the permittee is declared bankrupt or becomes insolvent or its right to do business is terminated by any regulatory authority, permittee shall, within a reasonable time thereafter, substitute another similar instrument, which must be acceptable to the right-of-way manager.

(d) Absent agreement to the contrary in a blanket permit agreement, the requirements of this section shall not apply to public service commission-regulated essential utility companies.

Sec. 2-28-28. Traffic related regulations.

(a) When the right-of-way manager determines that the scope of work for any right-of-way work permit includes encroaching or impacting automobile, bicycle or pedestrian traffic, the applicant shall submit a traffic control and management plan along with the permit application. This plan must comply with Florida Department of Transportation Series 600 Maintenance of Traffic (MOT) standards or MUTCD Typical Applications. Any proposed non-standard MOT that does not comply with Florida Department of Transportation Series 600 Maintenance of Traffic (MOT) standards or MUTCD Typical Applications shall be developed and signed by a certified IMSA or ATSSA (or other professional deemed qualified by the right-of-way manager) traffic control specialist. Specific plan requirements may be determined by the right-of-way manager, who shall have the authority to grant amendments to the plan as changing conditions of the site, project or traffic patterns may require.

(b) When approved by the right-of-way manager, traffic may be bypassed over an approved detour route. The permittee shall keep the portion of the project being used by the public traffic, whether it is through or local traffic, in such condition that traffic will be adequately accommodated. The permittee shall furnish, erect and maintain barricades, warning signs, delineators, flagmen and/or pilot cars in accordance with the MUTCD, FDOT Design Standards, FDOT Standard Specifications for Road and Bridge Construction, and any county rules issued pursuant to this article. The permittee shall also provide and maintain in a safe condition temporary approaches or crossings and intersections with trails, roads, streets, businesses, parking lots, residences, garages and farms. No roadway shall be closed or opened except by express permission of the right-of-way manager or other authorized public agency having jurisdiction. Any permitted road closures will be in accordance with the prevailing county highway and drainage standards.

(c) Unless otherwise provided, all roads within the limits of the permit shall be kept open to all traffic by the permittee. Materials stored at the site of the work shall be so placed as to cause no obstruction to vehicular or pedestrian traffic. The permittee shall bear all expense of maintaining the traffic over the section of road undergoing construction and of constructing and maintaining such approaches, crossings, intersections and other features as may be necessary.

(d) Notwithstanding the foregoing, all permittees and their contractors must at all times obey any lawful order of the right-of-way manager or law enforcement officer related to permittee's presence on or activities within or along public roads. Failure to do so may result in the suspension or revocation of the permit and/or fines for violation of this section.

Sec. 2-28-29. Stormwater runoff maintenance.

During the time the permittee is actively engaged in construction, installation or maintenance, the permittee shall be solely responsible for erosion control and stormwater runoff maintenance in accordance with applicable NPDES guidelines, so as not to adversely affect the flow of stormwater through existing drainage facilities, the health and safety of the general public, and the use or enjoyment of any real property.

Sec. 2-28-30. Quality and inspection of work.

(a) For all permitted work, the permittee shall notify the permitting authority no less than twenty-four (24) hours prior to beginning work, and within that same period or sooner if possible upon completion of work. For emergency repairs requiring a permit, the right-of-way manager may establish and if so permittee must use, a 24 hour emergency reporting line to report any emergencies and emergency repair work to the right-of-way manager. Upon final inspection of work, any and/or all items found not to be in compliance with this article or the terms of the permit must, as soon as operationally possible, be corrected by the permittee.

(b) Underground facilities need not be left exposed pending inspection. However, the permittee may be required to re-excavate or take other reasonable measures necessary to allow for the inspection of work.

(c) A copy of the permit shall be available at the site and the inspector shall date and initial the permit during inspection visits. The inspector's signature on the completion line on the permit terminates that permit and no further work may be done under the permit except emergency repairs or repairs as authorized in this article. To the extent the county utilizes an electronic permit processing system, final inspection approval may be accomplished electronically, with electronic verification available to permittee on line.

(d) The construction, installation, quality and placement of all installations in county rights-of-way shall be in accordance with the most current Manatee County Highway and Engineering Standards and the most current Florida Department of Transportation Utility Accommodation Guide, insofar as those publications are not inconsistent with any other requirement of this article. All work within the rights-of-way shall be performed in compliance with all applicable construction standards and laws, including but not limited to, Article III of Florida Statutes Chapter 553, the Trench Safety Act.

Sec. 2-28-31. Working hours.

Unless otherwise noted in the permit, operations permitted by a permit shall be conducted between 7:00 a.m. and 7:00 p.m., Monday through Saturday. Any deviation from these hours requires prior approval from the right-of-way manager. Emergency repairs are excluded from any working hours restriction. Notwithstanding the foregoing, water tie-ins shall be permitted to be conducted during nighttime hours whenever possible.

Sec. 2-28-32. Restoration and cleanup.

(a) The permittee shall insure that all monuments, section corners, and property marks, shall be protected and perpetuated.

(b) Where any work disturbs the area outside the roadway, the permittee shall insure that the area is completely restored, at least to the condition which existed at the time work began. Sod and shrubbery that is removed or destroyed shall be replaced with equal types and sizes.

Grassing and mulching operations are to begin immediately after construction/installation, or as soon as reasonably possible. All trees and/or shrubbery damaged or disturbed during construction shall be replaced by the permittee at its expense, as directed by the right-of-way manager. Any plantings by private property owners shall be removed and replaced to the reasonable satisfaction of the right-of-way manager. All debris shall be removed daily by the permittee at its expense.

(c) Any damage or injury to any road, street, or highway by reason of the exercise of the privileges granted pursuant to a right-of-way permit shall be repaired to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury.

(d) Existing known utilities that are damaged, destroyed or temporarily removed by the permittee shall be replaced or repaired at the sole expense of the permittee, at the direction of the owner, in the manner prescribed in Chapter 556, Florida Statutes.

(e) The permittee shall insure that work site cleanup and property restoration follows construction/installation operations as soon as reasonably possible. In order to maintain an acceptable site, debris and waste material shall be removed from the site daily. Daily trenching shall be coordinated to provide a minimum overnight trench opening. Site maintenance, along with ongoing cleanup and final property restoration, shall be subject to the direction and approval of the right-of-way manager.

(f) The requirements of this section shall apply equally to emergency repairs, except at times of natural disasters, in which event restoration and cleanup shall be undertaken as soon thereafter as practicable.

Sec. 2-28-33. Warranty.

(a) Permits shall be issued on the condition that the permittee shall guarantee all repair and restoration work performed under the terms of the permit for a period of two (2) years from the date of completion of final work as certified on the permit by the county.

(b) Any failure of repair or restoration shall be remedied by the permittee within five (5) working days (or such longer period the right-of-way manager may approve given the scale and scope of work) unless, in the opinion of the right-of-way manager, the urgency of the failure requires immediate action to protect public health or safety.

Sec. 2-28-34. Waiver of requirements.

The right-of-way manager may, in his or her sole discretion, waive a requirement of this article for an applicant or permittee, but only for good cause shown and only to the extent public safety and continuity of utility services are not jeopardized thereby. Where the county is the permittee on a given project, the right-of-way manager may grant a waiver of any physical inspection requirement where the county department conducting the work satisfies the right-of-way manager that the project will have adequate independent engineering and construction oversight through qualified county staff or authorized supervisory contractors.

Sec. 2-28-35. Applicability; conflicts.

- (a) This article shall apply to rights-of-way in unincorporated areas of the county.
- (b) The Florida Department of Transportation Utility Accommodation Manual (as amended or revised) shall govern as to types of work in county rights-of-way which will require a right-of-way utilization permit.
- (c) In the event that the right-of-way manager or a utility believes there to be a clear conflict between any provision or requirement of this article, as amended or revised, and a provision or requirement of any county cable television ordinance or franchise, and the conflict cannot be resolved between the right-of-way manager and utility, the right-of-way manager shall seek an opinion from the county attorney as to which authority should be applied.

Sec. 2-28-36. Authorization to implement and adopt rules and forms.

The right-of-way manager is hereby authorized to make adopt and publish all rules and regulations necessary for the interpretation, clarification and administration of this article, to the extent same are not inconsistent with the provisions of this article. The right-of-way manager is further authorized to design and publish any and all forms, including applications for licensure and construction permits, as is deemed necessary to effectively implement the provisions of this article. Any such rules, regulations or forms shall be deemed effective upon their being published to the utility community in all reasonable manners including direct communications, information brochures, and posting on the county web site. Licensees and their contractors should therefore inquire with the right-of-way manager concerning such matters to ensure a complete understanding of all requirements.

Section 5. A new Division B of Article II of Chapter 2-28, initially consisting of Sections 2-28-37 through 2-28-38 of the Manatee County Code, is hereby created to read:

DIVISION B.

**USE OF RIGHTS-OF-WAY FOR THE PROVISION OF
COMMUNICATION SERVICES, INCLUDING TELEPHONE,
CABLE TELEVISION, AND OPEN VIDEO SERVICES**

Sec. 2-28-37. Registration required for communication services providers.

- (a) Pursuant to the authority provided in Florida Statutes section 337.401(3)(a)(1), any communications services dealer placing or seeking to place facilities in county roads or rights-of-way is required to register in writing with the county administrator, and to provide with said registration:

- (1) The name of the registrant;
- (2) The name, address, and telephone number of a contact person for the registrant and, if different than the foregoing, the name address and telephone number of the person authorized by the registrant to speak for the registrant concerning the placement and maintenance of its facilities within the county's right-of-way;
- (3) The number of the registrant's current certificate of authorization issued by the Florida Public Service Commission, Florida Department of State, or the Federal Communications Commission;
- (4) Proof of insurance or self-insuring status adequate to defend and cover claims; and
- (5) A copy of the current Certificate of Registration as a communications services provider issued by the Florida Department of Revenue.

(b) Registration with the county is required of all communications services dealers, as that term is defined in Florida Statutes section 202.11. As provided in Florida Statutes section 202.17(1), registration with the Florida Department of Revenue does not constitute compliance with the county registration requirement. To the extent the county establishes an on line licensee registration process for right-of-way licensees pursuant to section 2-28-22, completion of that process, which shall not entail the payment of any additional fee, shall be deemed a part of the registration process required in this section.

Sec. 2-28-38. Effect of county registration and notice of revocation required.

(a) A provider registered pursuant to section 2-28-37 shall be deemed a licensee for purposes of this chapter. Pursuant to Florida Statutes section 337.401(3), registration as a dealer of communications services does not constitute authorization to provide cable television service without first obtaining a state franchise certificate under Florida Statutes section 610.104; nor does registration establish a right to place or maintain any communications facility in county roads or rights-of-way. Dealers of communications services seeking to place or maintain communications facilities must comply with all applicable right-of-way construction regulations, including those contained in this chapter.

(b) Should any communications services provider registered with the county have its state department of revenue certificate of registration as a communications services provider revoked, as provided for in Florida Statutes section 202.17(7), said provider shall immediately, and no longer than sixty (60) days, notify the county.

Section 6. A new Division C of Article II of Chapter 2-7, initially consisting of Sections 2-28-39 through 2-28-40 of the Manatee County Code, is hereby created to read:

DIVISION C.

ADMINISTRATION OF RIGHT-OF-WAY REGULATIONS

Sec. 2-28-39. Unified administration of regulations, inspections and enforcement.

(a) There shall be one designated right-of-way manager with plenary oversight over all matters related to the county's management of its right-of-way, including administering the county's right-of-way construction permitting and inspection functions and inclusive of work by private utilities, government utilities, or builders/developers installing new infrastructure in new development areas. As part of the duties of the right-of-way manager, a county-wide right-of-way inventory and future use plan shall be compiled and periodically updated so as to ensure the county's vitally important but limited right-of-way assets are most effectively utilized for the long term utility needs of the businesses and communities of the county.

(b) Pursuant to Florida Statutes § 162.21(2), the right-of-way manager is designated, and is authorized to designate subordinate right-of-way inspectors as code enforcement officers. Such designated personnel, in addition to the authority provided to them under this Article II of chapter 2-28, shall have the authority to issue citations for violations of this Article II of chapter 2-28 to the full extent permitted by law. Personnel so designated may not begin exercising this citation authority prior to the completion of any training or qualification requirements established by the director or otherwise required by law. Enforcement procedures and sanctions for such citations shall be as provided by county code and permitted under Chapter 162, Florida Statutes.

Sec. 2-28-40. Licensing, permitting and billing automation; e filing.

To facilitate the efficient and effective submission and review of applications made under this article, and to ensure more effective integration of utility construction data into the county's utilities location databases, the right-of-way manager shall, as budget authorizations permit, make full use of the latest information technologies to enable applicants to make electronic/internet-based applications, make electronic fee payments, receive electronic licenses, permits, reviews or approvals, submit inspection/locate requests, and submit electronic files including any required design plans or as-builts. In selecting the electronic file format(s) to be accepted for supporting documents such as drawings, photographs, or the like, the right-of-way manager shall make a reasonable survey of common utility users of the right-of-way to ascertain which formats and software are generally accepted and currently used, and shall endeavor to set standards to accommodate these prevailing industry standards whenever reasonable. The right-of-way manager is authorized to promulgate administrative rules and policies requiring right-of-way users to submit applications and supporting plans or drawings, requests for inspections or locates, and/or payments of applicable fees, in a format chosen by the county, in consultation with utilities and contractors regularly performing utility work in right-of-ways.

Section 7. If any section, subsection, sentence, clause, provision or word of this Ordinance is held invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity. The Manatee County Board of County Commissioners expressly indicates that it desires any remainder of the Ordinance to withstand any severed provision, as it would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 8. This Ordinance shall take effect upon being filed with the Department of State.

PASSED AND DULY ADOPTED in open session, with a quorum present and voting this 7th day of October, 2008.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

ATTEST: R.B. SHORE

By: *Susan B. Shore*
Clerk of the Circuit Court

By: *Jane vonHahmann*
Jane vonHahmann—Chairman



STATE OF FLORIDA, COUNTY OF MANATEE
This is to certify that the foregoing is a true and correct copy of the documents on file in my office.

Witness my hand and official seal this 8th day of

OCTOBER, 20 08
R.B. SHORE
Clerk of Circuit Court

By: *Dorothy Harris* D.C.