

**ORDINANCE NO. 17-48**

**AN ORDINANCE OF MANATEE COUNTY, FLORIDA, REGARDING USE OF COUNTY RIGHT-OF-WAY; AMENDING AND RESTATING ARTICLE II OF CHAPTER 2-28 OF THE MANATEE COUNTY CODE OF ORDINANCES; DEFINING CERTAIN TERMS; PROVIDING FOR WHEN A PERMIT IS REQUIRED; ESTABLISHING QUALIFICATIONS OF A PERMITTEE; ESTABLISHING THE AUTHORITY OF THE RIGHT-OF-WAY MANAGER AND THE COUNTY; ESTABLISHING A PERMIT APPLICATION PROCESS; ESTABLISHING THE TIME OF REVIEW FOR A PERMIT APPLICATION; SETTING FORTH THE CRITERIA FOR ISSUANCE OF A PERMIT; ESTABLISHING PERMIT CONDITIONS AND STANDARDS APPLICABLE TO A PERMITTEE; PROVIDING FOR INSPECTION AND ENFORCEMENT; ESTABLISHING WORKING HOURS; REQUIRING RESTORATION AND CLEANUP; REQUIRING WARRANTIES AND MAINTENANCE; ESTABLISHING FEES; ESTABLISHING BONDING REQUIREMENTS; REGULATING REVOCATION, SUSPENSION AND TERMINATION; ESTABLISHING APPELLATE PROCEDURES; REQUIRING REGISTRATION; PROVIDING FOR LICENSING AND LICENSEES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners (Board) of Manatee County, Florida, is empowered, pursuant to Section 337.401, Florida Statutes, to prescribe and enforce reasonable rules and regulations for the placing and maintaining of facilities within Manatee County (County) right-of-way; and

**WHEREAS**, the County previously adopted Ordinance 17-21 to amend and restate Article II of Chapter 2-28 of the Manatee County Code of Ordinances (Code) and adopt a regulatory scheme for construction, use, relocation, maintenance and repair of certain facilities in County right-of-way; and

**WHEREAS**, Section 337.401, Florida Statutes, was recently amended to provide certain criteria and standards for the processing of applications and permitting of the installation of utility poles and the collocation of small wireless facilities on County utility poles; and

**WHEREAS**, the County's policies and rules regarding the placement and maintenance of facilities within County right-of-way contained in Ordinance 17-21 must be revised consistent with the recent amendments to Section 337.401, Florida Statutes; and

**WHEREAS**, federal and state law require the nondiscriminatory treatment of providers of telecommunications services; and

**WHEREAS**, Section 337.401, Florida Statutes, requires the County to treat providers of communications services in a nondiscriminatory manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or right-of-way; and

**WHEREAS**, the Board finds that the public right-of-way is valuable public property acquired and maintained by the County at great expense to the taxpayers; and

**WHEREAS**, the Board finds that proper management of this limited resource is appropriate to maximize the long-term benefit to the public; and

**WHEREAS**, the Board finds that it is in the best interests of protecting the health, safety and welfare of the citizens of the County and its visitors, aesthetic concerns, and of properly managing the limited and valuable right-of-way within the County in a reasonable and nondiscriminatory manner, to amend and restate Article II of Chapter 2-28 of the Code as provided herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA:**

**Section 1. Purpose and Intent.** This Ordinance is enacted to carry out the purpose and intent of, and exercise the authority set forth in, Article VIII, Section 1 of the Florida Constitution and Chapter 125, Florida Statutes, as amended.

**Section 2. Findings.** The Board relies upon the following findings in the adoption of this Ordinance:

- A. Pursuant to Section 337.401, Florida Statutes, the Board is authorized to prescribe and enforce reasonable rules and regulations for the placing and maintaining of facilities within County right-of-way and to require that providers of communications services placing such facilities register with the County.
- B. The public right-of-way is valuable and limited public property, acquired and maintained by the County at great expense to the taxpayers.
- C. Chapter 2-28 of the Code sets forth the policies and rules regarding the placement and maintenance of facilities within County right-of-way.
- D. It is in the best interests of protecting the health, safety and welfare of the citizens of the County and its visitors, aesthetic concerns, and of properly managing the limited and valuable right-of-way within the County to adopt this restatement of Chapter 2-28 of the Code, as set forth in this Ordinance for the purposes of prescribing and enforcing reasonable rules and regulations for the placement and maintenance of facilities within County right-of-way.

**Section 3.** Article II of Chapter 2-28 of the Code is hereby restated as follows:

**Sec. 2-28-21. Definitions.**

For purposes of article II of chapter 2-28, the following words and terms shall have the following meanings:

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

*Applicant* means any person, firm, partnership or corporation who has submitted an application to the County for a right-of-way use permit, but has yet to be granted said permit.

*Collocate or collocation* means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

*Communications services* means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

- (a) Information services;
- (b) Installation or maintenance of wiring or equipment on a customer's premises;
- (c) The sale or rental of tangible personal property;
- (d) The sale of advertising, including, but not limited to, directory advertising;
- (e) Bad check charges;
- (f) Late payment charges;
- (g) Billing and collection services; or
- (h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

*County utility pole* means a utility pole owned by the County in the right-of-way. The term does not include a utility pole owned by a County electric utility, a utility pole used to support County owned or operated electric distribution facilities or a utility pole located in the right-of-way within a retirement community that (1) is deed restricted as housing for older persons as defined in Section 760.29(4)(b), Florida Statutes, (2) has more than 5,000 residents; and (3) has underground utilities for electric transmission or distribution.

*Dealer* means a person registered with the department as a provider of communications services in this state.

*Distributed antenna system ("DAS")* means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

*Eligible wireless support structure* means any tower or base station as defined herein which is existing at the time the relevant application is filed with the County.

*Emergency repairs* means work which is necessary to immediately preserve life or property of inhabitants of the County. The term shall also describe work which is needed to prevent the imminent loss of any service or to restore any service provided by a utility company.

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

*Facility* means any electric transmission, telephone, telegraph, or other communications service lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks or pumps; or other structures referred to in Sections 337.401, 337.402, 337.403 and 337.404, Florida Statutes.

*Licensee* means a person, firm, partnership or corporation who has been granted a right-of-way permit by the County regardless of whether that permit is still valid.

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

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

*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.

*Right-of-way* means land in which the state, the department, a County, or a municipality owns the fee or has an easement devoted to or required for use as a transportation facility.

*Right-of-way manager* means the staff person designated by the county administrator or his or her designee to administer this article.

*Road* means a way open to travel by the public, including, but not limited to, a street, highway, or alley. The term includes associated sidewalks, the roadbed, the 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 and all ferries used in connection therewith.

*Small wireless facility* means a wireless facility that meets the following qualifications:

- (a) Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- (b) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

*Substantial change* means a modification that changes the physical dimensions of an eligible wireless support structure in the right-of-way in any of the following ways:

- (a) It increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater;
- (b) It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;
- (c) It involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure;
- (d) It entails any excavation or deployment outside the current site;
- (e) It would defeat the concealment elements of the eligible wireless support structure;  
or
- (f) It does not comply with conditions associated with prior approval of the construction or modification of the eligible wireless support structure or equipment, unless the non-compliance does not exceed the thresholds identified in (a) through (e) of this definition.

*Tower* means any structure built for the sole or primary purpose of supporting any Federal Communications Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services, such services to include but not be limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

*Transmission equipment* means any equipment that facilitates transmission for any Federal Communications Commission-licensed or authorized wireless communication service, such services to include, but not be limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. Transmission equipment includes equipment associated with wireless communications services, such services to include, but not be limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

*Utility company* means any electric, natural gas, telecommunications, water or wastewater company or entity regulated by the Florida Public Service Commission or any cable or satellite television company or entity regulated by the Federal Communications Commission.

*Utility pole* means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless the County grants a waiver for such pole.

*Wireless facility* means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio

transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration and equipment associated with wireless communications. The term does not include:

- (a) The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- (b) Wireline backhaul facilities; or
- (c) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

*Wireless infrastructure provider* means a person who has been certified to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

*Wireless provider* means a wireless infrastructure provider or a wireless services provider.

*Wireless services* means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

*Wireless services provider* means a person who provides wireless services.

*Wireless support structure* means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

#### **Sec. 2-28-22. Permit required.**

- (a) Before any person, corporation, partnership, association, or other entity constructs, installs, removes, relocates, or performs any work activities within, on, under or above a right-of-way, a right-of-way use permit shall first be obtained, unless such activity is specifically exempted by federal or state law or other applicable rules or codes or this article.
- (b) Permittees and licensees shall not be required to obtain separate permits for:
  - (1) Routine maintenance provided such work does not involve excavation, closure of a sidewalk, or closure of a vehicular lane;
  - (2) Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size provided such work does not involve excavation, closure of a sidewalk or closure of a vehicular lane; or
  - (3) Installation, placement, maintenance or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way and who is remitting taxes under Chapter 202, Florida Statutes,

provided such work does not involve excavation, closure of a sidewalk or closure of a vehicular lane.

- (c) No permit is required for a utility company to perform emergency repairs.

**Sec. 2-28-23. Qualifications of permittee.**

- (a) Subject to satisfaction of and compliance with the requirements of this article, permits shall be issued to the following:
  - (1) Utility companies, their agents and their contractors that apply to install, replace, repair, relocate, maintain or remove a facility;
  - (2) Contractors responsible for the installation of any facility or structure subject to these regulations;
  - (3) Dealers and providers of communications services and wireless providers; and
  - (4) 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.
- (b) At the time of the application, all tradespersons performing any work related to the application on behalf of the applicant who are required to possess a state license to practice, including but not limited to electricians and plumbers, shall possess a current and valid license. Proof thereof shall be required before approval of an application and issuance of any permit. County employees or contractors who perform routine maintenance work in right-of-way on behalf of the County are specifically exempt from the permit application process.

**Sec. 2-28-24. Authority of right-of-way manager and County.**

- (a) To the extent not otherwise prohibited by state or federal law, the County may impose reasonable rules, conditions or regulations governing the placement or maintenance of a facility in a right-of-way and shall have the power to prohibit or limit the placement of new or additional facilities within a particular area of right-of-way.
- (b) 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. The right-of-way manager is authorized to issue, deny, modify, revoke, suspend or issue with conditions a permit for right-of-way utilization or construction subject to the terms of this article. Other than a decision to grant the permit as requested by the applicant, any decision on the part of the right-of-way manager shall be communicated to the applicant in writing and shall state with specificity the reason(s) for the decision.
- (c) The right-of-way manager is hereby authorized to establish 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 deemed necessary to effectively implement the provisions of this article.

- (d) Where construction of facilities within the right-of-way is done pursuant to (1) an approved County capital improvement project, (2) any requirement of the County's Land Development Code, (3) a development order, or (4) an agreement with the County, the right-of-way manager is authorized to waive the permitting requirement if the right-of-way manager determines that the construction project has received or shall receive full design and construction review and inspection approval that meets the minimum standards required within this article.
- (e) To the extent any County-owned facility is being constructed or relocated and the cooperation of any other governmental or nongovernmental entity is required, the County may enter into a facility location or relocation agreement, the terms of which shall govern the construction or relocation of the County facility at issue.

**Sec. 2-28-25. Permit application.**

- (a) A permit may be requested by:
  - (1) Completing an application form;
  - (2) Submitting any required supporting plans or documents; and
  - (3) Paying any applicable permit fee.
- (b) A permit application shall not be deemed submitted until:
  - (1) It has been fully completed by the applicant in accordance with the requirements of this article;
  - (2) It contains all required attachments; and
  - (3) Any fee(s) due have been paid.
- (c) As part of any permit application to install, maintain or place a new facility in right-of-way or to collocate on or maintain, modify or replace an existing facility in right-of-way, the applicant shall provide the following:
  - (1) Engineering drawings signed and sealed by a Florida licensed professional engineer showing the location of the proposed installation of facilities in the right-of-way shall be to scale and show:
    - a. The offset from the centerline of the right-of-way or road to the proposed facility installation;
    - b. The road right-of-way and pavement width;
    - c. The distance from edge of pavement to the facility;
    - d. The location of all other facilities within the area of work;
    - e. The facilities to be installed and their size;
    - f. The means and methods in which the facilities shall be installed;

- g. One or more typical cross sections to adequately reflect the location of the facility;
  - (2) A simple key map showing the location of the proposed facility;
  - (3) Information on the ability of right-of-way to accommodate the proposed facility;
  - (4) An engineer's cost estimate;
  - (5) The timetable for construction of the project or each phase thereof, and the areas of the County which shall be affected;
  - (6) If applicable, a make-ready work estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement. (If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition.)
  - (7) Such additional information as the right-of-way manager deems reasonably necessary with respect to the costs, placement, maintenance or replacement of the facility that is the subject of the permit application to review such permit application, including but not limited to a maintenance of traffic plan to address any disruption of right-of-way.
- (d) 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 traffic control and management plan shall comply with the standards of the Florida Department of Transportation (FDOT) Series 600 Maintenance of Traffic (MOT) or the MUTCD Typical Applications. Any proposed nonstandard MOT that does not comply with FDOT Series 600 MOT standards or MUTCD Typical Applications shall be developed and signed by a certified International Municipal Signal Association or American Traffic Safety Services Association (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.
- (e) Permit application forms that have been completed by anyone other than the applicant or the applicant's authorized agent shall not be accepted or reviewed. Information provided in the application, including electronic data files, shall be accurate, legible and readable.
- (f) Nothing herein shall be intended as requiring any applicant or permittee to submit plans, drawings or specifications which are deemed proprietary and for which there is no current Florida Public Records Act disclosure exemption. The applicant or permittee shall clearly mark any record it deems to be exempt from disclosure as such and shall provide with specificity the statutory provision supporting the exemption asserted.
- (g) Each applicant for a permit shall submit a nonrefundable application fee in conjunction with the submission of the permit application.
- (h) An applicant seeking to collocate small wireless facilities may file a consolidated application for a single permit for the collocation of up to thirty (30) small wireless

facilities. Fees for these consolidated applications shall be calculated based on the sum of the fees which would have been applicable for individual applications and permits covering each location.

**Sec. 2-28-26. Time of review for permit application.**

- (a) The County's action on proposals to place, construct or modify a wireless facility shall be subject to the standards and time frames set out in Sections 365.172 and 337.401, Florida Statutes, 47 U.S.C. 332, 47 U.S.C. 1455 and orders issued by the Federal Communications Commission, as amended.

**Sec. 2-28-27. Criteria for permit issuance.**

- (a) All permit applications shall comply with County Public Works Standards. Any permit applications which are non-compliant with County Public Works Standards may be denied.
- (b) The following shall apply to wireless facilities and wireless support structures:
  - (1) Upon compliance with the procedures outlined in this article, an application for the construction of a new wireless support structure or utility pole in the right-of-way shall be permitted as long as:
    - a. The applicant is a wireless provider.
    - b. The proposed location for the new wireless support structure or utility pole is:
      - i. Set back sufficiently for public safety purposes to ensure proper sight distance within sight triangles;
      - ii. Not in a location that will interfere with facilities currently in the right-of-way;
      - iii. If practicable, set back a minimum of twenty-five (25) feet from all traffic signal poles;
      - iv. If practicable, set back a minimum of fifteen (15) feet from any pedestrian ramps;
      - v. If practicable, set back a minimum of five hundred (500) feet from any existing or proposed Advanced Traffic Management Systems field device;
      - vi. If practicable, not in a location that is anticipated, intended or reserved for future use by the County;
      - vii. If practicable, not located directly in front of a dwelling or residential structure; and
      - viii. If practicable, located on the legal boundary line between two adjacent lots.
    - c. In the case of a new wireless support structure:
      - i. The new wireless support structure is not taller than fifty (50) feet tall if there is no existing wireless support structure located in the same right-of-way within five hundred (500) feet of the new wireless support structure; or

- ii. The new wireless support structure is not taller than the tallest existing wireless support structure located in the same right-of-way, measured from grade in place within five hundred (500) feet of the proposed location of the new wireless support structure.
  - d. In the case of a new utility pole:
    - i. The new utility pole is not taller than fifty (50) feet tall if there is no existing utility pole located in the same right-of-way within five hundred (500) feet of the new utility pole; or
    - ii. The new utility pole is not taller than the tallest existing utility pole located in the same right-of-way, measured from grade in place within five hundred (500) feet of the proposed location of the new utility pole.
  - e. The height of any collocated wireless facility is no more than ten (10) feet above the wireless support structure or utility pole.
  - f. Any collocated wireless facilities are micro wireless facilities or small wireless facilities and the applicant is also a wireless provider.
  - g. The combination of all associated antennas, including any exposed elements, could fit within an imaginary enclosure or do fit within an actual enclosure of no more than six (6) cubic feet in volume.
  - h. All accessory equipment, auxiliary equipment, equipment boxes and equipment cabinets are mounted on the structure at least seven (7) feet above ground unless another minimum height restriction is required by other codes, rules or statutes.
  - i. For a new utility pole, the application must include an attestation from the wireless infrastructure provider that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within nine (9) months after the date the application is approved.
- (2) Upon compliance with the procedures outlined in this article, an application to install, mount, or operate a wireless facility on an existing permitted and legally maintained utility pole in the right-of-way shall be permitted as long as:
  - a. The applicant is a wireless provider.
  - b. The utility pole is:
    - i. Set back sufficiently for public safety purposes to ensure proper sight lines or clear zones for transportation, pedestrians, or public safety purposes;
    - ii. If practicable, set back a minimum of twenty-five (25) feet from all traffic signal poles;
    - iii. If practicable, set back a minimum of fifteen (15) feet from any pedestrian ramps;
    - iv. If practicable, set back a minimum of five hundred (500) feet from any existing or proposed Advanced Traffic Management Systems field device;
    - v. If practicable, not located directly in front of a dwelling or residential structure; and

- vi. If practicable, located on the legal boundary line between two adjacent lots.
  - c. The combination of all attached antennas, including any exposed elements, could fit within an imaginary enclosure of no more than six (6) cubic feet, not exceeding two (2) feet in any horizontal direction.
  - d. All accessory equipment, auxiliary equipment, equipment boxes and equipment cabinets are mounted on the pole at least seven (7) feet above ground unless another minimum height restriction is required by other codes, rules or statutes.
  - e. The wireless facility does not have any type of lighted signal, lights or illuminations unless required by an applicable federal, state, or local law, regulation or rule;
  - f. The wireless facility and pole comply with any applicable County building codes in terms of design construction and installation;
  - g. Wireless facilities do not utilize traffic signal fiber communication lines;
  - h. The wireless facility does not materially interfere with the safe operation of traffic control equipment;
  - i. The wireless facility does not materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement; and
  - j. The wireless facility complies with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.
- (3) Upon compliance with the application procedures outlined in this article, any request for modification of an existing wireless facility that involves collocation of new transmission equipment or removal or replacement of transmission equipment shall be approved as long:
- a. The applicant is a wireless provider.
  - b. The modification:
    - i. Does not substantially change the physical dimensions of such existing wireless facility;
    - ii. Does not materially interfere with the safe operation of traffic control equipment;
    - iii. Does not materially interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
    - iv. Does not materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement; and
    - v. Complies with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

**Sec. 2-28-28. Permit conditions and standards applicable to permittees.**

- (a) The construction, installation, quality and placement of all installations in County right-of-way shall be in accordance with the most current County Public Works Standards and the most current FDOT Utility Accommodation Guide, insofar as those publications are not

inconsistent with any other requirement of this article. All work within the right-of-way shall be performed in compliance with all applicable construction standards and laws, including but not limited to, the Trench Safety Act, Sections 553.60-553.64, Florida Statutes.

- (b) Permits may contain such provisions as the County deems reasonably necessary to protect the County and the public right-of-way.
- (c) Unless modified by the right-of-way manager, a permit shall be valid until the date set by the right-of-way manager, which date shall appear on the permit and shall not be more than one (1) year after the date of permit issuance, and apply only to the area(s) of right-of-way specifically identified in the permit. A permit shall be deemed expired after the date set by the right-of-way manager. Unless otherwise authorized by this article, permittees and their agents are expressly prohibited from performing any work upon the expiration of a permit. Prior to expiration, a permittee may request an extension of the permit. The right-of-way manager is authorized to extend a permit once for a period of no more than one (1) year. A permit from the County constitutes authorization to undertake only certain activities in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the right-of-way.
- (d) A copy of the permit shall 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.
- (e) A permittee shall at all times comply with and abide by all applicable provisions of the state and federal law and County codes and regulations in placing or maintaining a facility in right-of-way. Obtaining a permit pursuant to the terms of this article does not excuse a permittee from complying with all applicable County codes and standards.
- (f) A permittee shall be required by the County to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur in the subject right-of-way, and permittee shall be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the right-of-way.
- (g) A permittee is authorized to make emergency repairs to facilities and must notify the right-of-way manager of same within forty-eight (48) hours of completing said repairs. 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 emergency repairs.

- (h) Unless otherwise provided, all roads within the limits of the permit shall be kept open to all traffic by the permittee. When approved by the right-of-way manager, traffic may be routed to an approved detour. 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 shall be adequately accommodated. The permittee shall furnish, erect and maintain any barricades, warning signs, delineators, flagmen and 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. 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. Materials stored at the site of the work shall be so placed as to cause no obstruction to vehicular or pedestrian traffic. 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 shall be in accordance with the prevailing County highway and drainage standards.
- (i) 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, 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.
- (j) All permittees and their contractors shall at all times obey any lawful order of either the right-of-way manager or any law enforcement officer related to permittee's presence on or activities within or along public roads. Failure to do so may result in the revocation or suspension of the permit for violation of this section.
- (k) All wireless facilities shall be placed and maintained so as not to:
  - (1) Interfere unreasonably with the public's use of the right-of-way;
  - (2) Cause unreasonable interference with the rights and convenience of property owners who adjoin any of the public rights-of-way;
  - (3) Interfere, displace, damage or destroy any other utilities, including but not limited to, water mains, sanitary sewers, storm drains, electrical equipment, gas mains, pipes, cables or conduits of the County or any other utility lawfully occupying the public right-of-way; and
  - (4) Create interference with the operations of public safety wireless services.
- (l) All owners of facilities in the right-of-way shall provide an annual "system certification" to the right-of-way manager which certifies and identifies whether each facility is currently being used ("active facility") or not currently being used or has no current tenant or client ("dark facility").

- (m) Any County utility pole altered or replaced pursuant to this article shall remain the property of the County.
- (n) The permittee shall perform all make-ready work.

**Sec. 2-28-29. Inspection and enforcement.**

- (a) At least forty-eight (48) hours prior to beginning any maintenance or permitted work, the permittee shall notify the right-of-way manager as to when the work shall commence. Within forty-eight (48) hours after completion of any maintenance or permitted work, the permittee shall notify the right-of-way manager that maintenance or the permitted work has ended. Upon final inspection of work, any and all items found not to be in compliance with this article or the terms of the permit shall be promptly corrected by the permittee.
- (b) A permittee may be required to re-excavate, expose or take other reasonable measures necessary to allow for inspection of work.
- (c) Completed work shall be accepted by the County as complying with the permit provided all conditions are met including the submittal of as-built drawings signed and sealed by a Florida licensed engineer or surveyor. As-built information shall include vertical and horizontal data, in state plane coordinates, of all underground facilities constructed or adjusted. In the event pneumatic missiling or air forced drilling is employed excavation shall be done to locate the vertical and horizontal location of underground facilities constructed or adjusted at least every five (5) feet longitudinally along said facility. Directional drill logs are an acceptable form of as-built location data submittal. If the engineering drawings provided require revision based upon actual installation, the permittee shall promptly provide revised engineering drawings. As-built plans shall depict 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 provided by a Florida licensed engineer, surveyor or contractor including relocatable horizontal and vertical plane data shall constitute an as-built plan.
- (d) Pursuant to Section 162.21(2), Florida Statutes, the right-of-way manager is designated as a code enforcement officer 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, shall have the authority to issue citations for violations of this article to the full extent permitted by law. Personnel so designated shall not begin exercising this citation authority prior to the completion of any training or qualification requirements established by the County or as 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. 2-28-30. Working hours.**

- (a) Unless otherwise noted in the permit, work authorized 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. 2-28-31. Restoration and cleanup.**

- (a) The permittee shall ensure that all monuments, section corners and property marks shall be protected and perpetuated.
- (b) Where any work disturbs the area the permittee shall insure that the area is completely restored, at least to the condition which existed at the time before work began, regardless of whether the area disturbed is within or outside of the right-of-way. Sod and shrubbery that is removed or destroyed shall be replaced with equal types and sizes. Grassing and mulching operations shall begin immediately after construction or installation, or as soon as reasonably possible. All trees and shrubbery within the right-of-way damaged or disturbed during construction shall be replaced by the permittee at its expense, as directed by the right-of-way manager. Any plantings outside the right-of-way damaged or disturbed during construction shall be replaced to the reasonable satisfaction of the property owner. All debris and waste material 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 facilities 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 ensure that work site cleanup and property restoration follows construction and installation operations as soon as reasonably possible. 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.

**Sec. 2-28-32. Warranty and maintenance.**

- (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 inspector.
- (b) Any failure of repair or restoration shall be remedied by the permittee within five (5) 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.

- (c) Any failure of or damage to any facility in any County right-of-way which, in the opinion of the right-of-way manager, poses a hazard to the traveling public or an impediment to other work in the right-of-way, shall be repaired by the permittee or licensee of said facility, at the direction of the right-of-way manager.
- (d) Permittees and licensees shall perpetually maintain their installed facilities in accordance with applicable industry standards.

**Sec. 2-28-33. Fees.**

- (a) The Board of County Commissioners may adopt, modify or rescind a fee schedule for application fees, permit fees, and any other 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 and shall, at a minimum, ensure same is posted in electronic form accessible to the public.
- (b) County employees or contractors performing work in right-of-way on behalf of the County are specifically exempt from the payment of any application fees or permit fees for such work.
- (c) Any plans submitted by applicants and permittees under this article shall be provided at no cost to the County.
- (d) Fees for permit extensions granted by the right-of-way manager shall be half the fee of the original permit.

**Sec. 2-28-34. Bonding.**

- (a) Prior to the issuance of a permit pursuant to this article, the applicant shall post with the County, a surety bond in an amount as shall be determined by the right-of-way manager, so as to protect the County against loss in the event of failure of the permittee to complete the work or make required repairs or restoration. The bond amount will normally be determined based on a licensed engineer's or contractor's estimate of the market value of the work to be performed and the materials to be installed, and copies of such estimates shall be provided to the County by the applicant. Except as set forth in subsection (c) below, a separate bond will be required for each permit issued. The content, form and manner of execution of each such bond is subject to the approval of the right-of-way manager. The County may, in its discretion, promulgate a standard form of acceptable bond.
- (b) The bond shall be released to the permittee upon the expiration of the guarantee period. The guarantee period shall be for two (2) years following completion of the initial installation. The release of the bond shall not relieve the permittee of its perpetual maintenance and upkeep obligations as set forth in this article.

- (c) For those applicants who routinely perform work in County rights-of-way, an annual blanket surety bond, in an amount to be negotiated by the applicant and the right-of-way manager, may be posted to avoid the inconvenience and expense of obtaining individual bonds for each permit application.
- (d) On all bonds posted pursuant to this section, the surety shall be rated A or better by Best's Key Guide, latest edition. If the surety on any bond furnished is declared bankrupt or becomes insolvent or its right to do business in the State of Florida is terminated, the permittee shall, within five (5) days thereafter, substitute another bond and surety, both of which must be acceptable to the right-of-way manager.
- (e) In lieu of the bond required by this section, an applicant may deposit with the County an alternative form of security in the form of cash, a money order, a certified check, a cashier's check or an irrevocable letter of credit. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond required by this section. The determination of the appropriateness of and the value of an alternative form of security shall be made by the right-of-way manager.

**Sec. 2-28-35. Revocation, suspension and termination.**

- (a) 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 article and subject to maximum code enforcement fines and penalties allowed by law. The right-of-way manager is authorized to revoke or suspend 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 article.
- (b) Unless otherwise prohibited by law, the right-of-way manager may revoke or suspend a permit at any time, or may demand immediate repair or restoration work for 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. 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 affect the restoration or remediate the unsafe condition.
- (c) In the event a facility owner fails to initiate the work necessary to alleviate interference after receipt of written notice from the right-of-way manager pursuant to Section 337.403, Florida Statutes, the right-of-way manager may issue an order authorizing removal, relocation or both of the facility by the County.
- (d) An applicant's or permittee's failure to comply with provisions of this article shall constitute a violation of this article and shall subject the applicant or permittee to the penalties provided by this article and any other applicable law or regulation and revocation or suspension of the permit.

- (e) Upon termination of a permit, no further work may be performed.
- (f) Failure of the County or right-of-way manager to enforce any requirement of this article or of any permit on one or more occasions shall not constitute a waiver of the County's right to otherwise enforce that requirement or to seek compliance with that requirement.

**Sec. 2-28-36. Appeal.**

- (a) Decisions rendered by the right-of-way manager shall be appealable first to the County engineer or deputy director of engineering services, and then by requesting a hearing before a special magistrate, and thereafter as permitted by Florida law.

**Sec. 2-28-37. Registration.**

- (a) Any wireless provider or provider of communications services that places or seeks to place facilities in County roads or right-of-way is required to register with the right-of-way manager and to provide the following information:
  - (1) The name of the registrant;
  - (2) The name, address, and telephone number of a contact person for the registrant;
  - (3) The number of the registrant's current certificate of authorization issued by the Florida Public Service Commission or the Federal Communications Commission; and
  - (4) Proof of insurance or self-insuring status adequate to defend and cover claims.
- (b) Upon registering and providing the above information, a provider of communications services shall be deemed licensed pursuant to this article and Section 125.42, Florida Statutes. If the certificate of registration issued by the Department of Revenue to a provider of communications services that has registered with the County is revoked for any reason, the right-of-way manager shall be notified of same within thirty (30) days by the registered provider of communications services.

**Sec. 2-28-38. Licensing and licensees.**

- (a) The right-of-way manager shall have the authority to issue licenses on behalf of the County pursuant to Section 125.42, Florida Statutes. Providers of communications services shall be automatically issued a license upon compliance with the registration requirement of this article.
- (b) Licensees shall be governed by the provisions of Section 125.42, Florida Statutes.
- (c) Pursuant to Section 337.403, Florida Statutes, if a facility that is placed upon, under, over or within the right-of-way limits of any public road is found by the right-of-way manager to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension, or expansion of such public road, the facility owner shall upon thirty (30) days' written notice from the right-of-way manager initiate

the work necessary to alleviate the interference at the facility owner's expense unless otherwise permitted by law. The work shall be completed within such reasonable time as stated in the notice or such time as agreed to by the right-of-way manager and the facility owner. 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.

- (d) A licensee is authorized to make emergency repairs to facilities and must notify the right-of-way manager of same within forty-eight (48) hours of completing said repairs. 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 emergency repairs.
- (e) 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 the licensee and to thereafter establish and publish uniform maximum distance and construction standards within which a licensee may perform non-permitted work on a drop. However, where a licensee performs such work, the licensee shall 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, construction technique, or both, 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 (1) such drops do not cross or begin beneath any paved portion of the right-of-way and (2) trenching is at a right angle to any such paving.

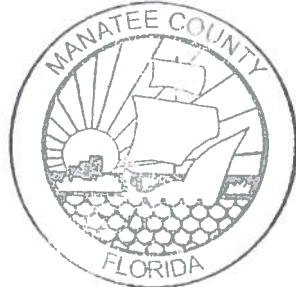
**Section 4.** The publisher of this County's Code, the Municipal Code Corporation, is directed to incorporate the amendments in Section 3 into the Code.

**Section 5.** If any clause, phrase, provision, section or sentence of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

**Section 6.** This Ordinance shall take effect immediately upon filing with the Department of State.

**DULY ADOPTED** with a quorum present and voting this 7<sup>th</sup> day of November,

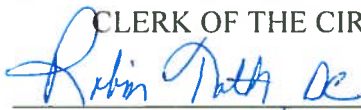
2017.



**BOARD OF COUNTY COMMISSIONERS  
OF MANATEE COUNTY, FLORIDA**

By:   
Chairperson

ATTEST: ANGELINA COLONNESO  
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By:   
Deputy Clerk