



City of North Port

RESOLUTION NO. 2017-R-13

(Notice of Intent to Adopt Regulations Relating to the Use of the City's Rights-of-Way for Above-Ground Communications Facilities)

A RESOLUTION OF THE CITY OF NORTH PORT, FLORIDA, DECLARING THE INTENTION OF THE CITY TO CONSIDER ADOPTION OF AN ORDINANCE AMENDING THE CITY'S UNIFIED LAND DEVELOPMENT CODE RELATING TO USE OF THE RIGHT-OF-WAY FOR ABOVE-GROUND COMMUNICATIONS FACILITIES; PROVIDING THAT FROM THE DATE OF ADOPTION OF THIS RESOLUTION AND DURING THE PENDENCY OF CONSIDERATION OF SUCH ORDINANCE BY THE CITY, THE CITY WILL NOT PROCESS OR APPROVE PERMIT APPLICATIONS THAT WOULD NOT CONFORM WITH THE PROPOSED AMENDMENTS; DIRECTING STAFF TO PUBLISH A NOTICE OF INTENT TO ADOPT SUCH ORDINANCE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of North Port controls and maintains rights-of-way within the municipal limits of the City; and

WHEREAS, Florida Statute Section 337.401 "Use of rights-of-way for utilities subject to regulation; permit, fees," allows cities to regulate and manage municipal roads or rights-of-way related to the placement or maintenance of facilities in such roads or rights-of-way provided that the regulations are nondiscriminatory and competitively neutral; and

WHEREAS, the City has received several applications for the placement of new communications towers within rights-of-way in the City, including rights-of-way in residential districts; and

WHEREAS, the City's Code of Ordinances does not address new state of the art technologies as is related to above-ground telecommunications like the Distributed Antenna System and the Code of Ordinances needs to be updated to incorporate, regulate and control the location of these types of systems; and

WHEREAS, the City adopted Resolution 2016-R-19 on July 26, 2016 establishing an intent to regulate above-ground telecommunications and deferring processing and approval of any permit applications related to such activities; and

WHEREAS, the aforementioned resolution will "automatically dissolve upon the passage of one (1) year from the effective date" at which time the City would be required to process permit applications for telecommunications activities; and

WHEREAS, the Florida Senate and House of Representatives recently enrolled the Advanced Wireless Infrastructure Deployment Act, related to local governmental entities' authority to prescribe and enforce rule or regulations for wireless communications facilities in the right-of-way, which will have a direct impact on any ordinance that the City may draft related to above-ground telecommunications; and

WHEREAS, the Federal Communications Commission (FCC) has been reviewing a petition for declaratory ruling from a telecommunications company for streamlining deployment of small cell infrastructure by improving wireless facilities siting policies; and

WHEREAS, the FCC has issued two Notices of Proposed Rulemakings addressing local governments' wireless siting rules and changes in localities' rights-of-way and pole attachments deployment rules; and

WHEREAS, the City has determined that it would be prudent to wait until the State and the FCC have completed rulemaking on above-ground telecommunications activities prior to drafting regulations for these activities within City boundaries; and

WHEREAS, the City is actively pursuing a change to the Unified Land Development Code and intends to bring an ordinance back before the City Commission for consideration and approval, but due to developments at the State and Federal levels staff needs additional time to draft said ordinance; and

WHEREAS, the City wishes to definitively place all parties on notice that it is considering amending the City of North Port Unified Land Development Code to create the regulations and additional standards for the placement and maintenance of above-ground communications facilities within the City's rights-of-way, and to evaluate the process for issuance of permits, as well as other approval processes regulating the location of utility providers' equipment and that all providers of communication services that are considering permit applications in the City will be reviewed for compliance with such changes as of the adoption date of this resolution; and

WHEREAS, the City Commission has determined that the adoption of this Resolution is for a proper municipal purpose and protects the health, safety and welfare of the public.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA, AS FOLLOWS:

SECTION 1- FINDINGS:

The City Commission hereby makes the following findings:

1.01 The recitals outlined above are incorporated by reference as findings of fact as if expressly set forth herein.

1.02 The City of North Port has broad home rule powers granted by the Florida Constitution to enact ordinances which are not inconsistent with general or special law for the purposes of protecting the public health, safety, and welfare of its citizens.

1.03 It is the purpose and intent of this Resolution to promote the health, safety and general welfare of the residents and businesses of the City through the study and analysis of the regulations to create additional standards for the placement and maintenance of above-ground communications facilities within the City's rights-of-way, and incorporate those regulations into the City's land development regulations within the City.

1.04 This Resolution shall apply to all City controlled roads and rights-of-way located within the municipal boundaries of the City of North Port.

SECTION 2 - DECLARATION OF INTENT:

2.01 The North Port City Commission hereby declares its intention to consider adoption of an ordinance amending the Unified Land Development Code relating to placement or maintenance of above-ground communications facilities within the City's rights-of-way.

SECTION 3 – NOTICE:

3.01 Pursuant to the pending legislation doctrine set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2d DCA 1980), all persons and entities that plan to seek a right-of-way permit within the City shall be deemed to be on notice that:

- a) The City is considering the adoption of regulations relating to placement and maintenance of above-ground communications facilities in the City's rights-of-way;
- b) The rules and regulations are considered pending or "in progress"; and
- c) Any reliance upon current regulations or expenditure of funds or efforts in reliance on current regulations, until the regulations are considered by the North Port City Commission and adopted and effective, or determined that they will not be adopted, is not reasonable and is at the risk of the applicant.

SECTION 4 – PROCESSING OF RIGHT-OF-WAY PERMITS:

4.01 City staff shall defer the processing of right-of-way permit applications relating to placement and maintenance of above-ground communications facilities within the City's rights-of-way and the issuance of right-of-way permits relating to the placement and maintenance of above-ground communication facilities in the City's rights-of-way as follows.

4.02 Such deferral in processing right-of-way permit applications is temporary and shall automatically dissolve on January 1, 2018, or until the City Commission of the City of North Port adopts new code language, whichever occurs first.

SECTION 5 – PUBLICATION:

5.01 City staff is hereby directed to publish a Notice of Intention to consider adoption of an ordinance in a newspaper of general circulation in the City.

SECTION 6 – SEVERABILITY:

6.01 If any section, subsection, sentence, clause, phrase, or provision of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such

provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 7 – EFFECTIVE DATE:

7.01 This Resolution shall take effect immediately upon adoption by the City of North Port Commission.

PASSED and DULY ADOPTED by the City Commission of the City of North Port, on the second and final reading in public session this _____ day of _____, 2017.

CITY OF NORTH PORT, FLORIDA

LINDA M. YATES
MAYOR

ATTEST:

PATSY C. ADKINS, MMC
CITY CLERK

APPROVED AS TO FORM AND
CORRECTNESS:

MARK MORIARTY
CITY ATTORNEY