



NEIGHBORHOOD DEVELOPMENT SERVICES DEPARTMENT

Planning Division

STAFF REPORT

Wireless Infrastructure Right-of-Way Utilization Ordinance 2017-37 (TXT-16-121)

Wireless Infrastructure Right-of-Way Utilization.

To: Planning & Zoning Advisory Board

Thru: Scott Williams, Neighborhood Development Services Director

Thru: Frank Miles, MPA, Planning Manager

From: Nicole Galehouse, Project Planner

Date: December 1, 2017

I. GENERAL INFORMATION

Project: Petition No. TXT-16-121, Ordinance No. 2017-37, Updating code language related to communication and wireless facilities to be consistent with Florida Statutes, Section 337.401 by creating Chapter 86 – Communication and Wireless Infrastructure Right-of-Way Utilization in the Administrative Code of the City of North Port, Florida and by amending Appendix A – Fee Structure.

Request: Approval of Ordinance No. 2017-37

Applicant: City of North Port

Owner(s): N/A

Location: Citywide Ordinance

Property Size: N/A

II. BACKGROUND

On July 26, 2016 the City Commission approved Resolution 2016-R-19, declaring the City's intent to adopt an ordinance relating to use of rights-of-way for above-ground communication facilities and provided that during the pendency of this consideration that the City would not process or approve permit applications that would not conform with the proposed amendments. This resolution followed multiple applications for the placement of new communications towers within City rights-of-way. The City's Code of Ordinances does not address new technologies as is related to above-ground telecommunications. It became quickly apparent that the Code of Ordinances needed to be updated to incorporate, regulate, and control these types of systems.

As staff moved forward in addressing legal questions related to the ability of certain companies to utilize the rights-of-way as utilities and began researching draft code language, a new bill was introduced during the 2017 Florida legislature session that created a delay in the process. The Florida Senate and House of Representatives adopted and enrolled the Advanced Wireless Infrastructure Deployment Act (Exhibit B), related to local governmental entities' authority to prescribe and enforce rules or regulations for wireless communications facilities in the rights-of-way. These changes were sweeping, and include preemptions for collocation of small wireless facilities, strict guidelines for the approval process time frame, stringent regulations for denial of a facility, and limits on the rates and fees a municipality can charge for use of their facilities. This bill was signed into law by the governor on June 23, 2017.

Because the changes to the State legislation changed so rapidly throughout the 2017 session and the final changes were so comprehensive, Staff requested that the deferral of processing and approving permits be extended. This was approved by City Commission on July 25, 2017 through Resolution 2017-R-26.

III. STAFF RECOMMENDATION

Staff recommends approval of the amendments to the Administrative Code of the City of North Port, Florida, creating Chapter 86 – Communication and Wireless Infrastructure Right-of-Way Utilization; amending Appendix A – City Fee Structure.

IV. SITE INFORMATION

Land Use

Adopted Future Land Use Map Designation: City-wide

Adopted Zoning Map Designation: City-wide

Existing Land Use(s): City-wide

Surrounding Land Uses: City-wide

Services and Facilities

Potable Water or Well: N/A

Sanitary Sewer or Septic: N/A

Transportation: N/A

Environmental

Conservation: N/A

Flood Zone: N/A

Fiscal Impact

☐ Not Applicable

☒ No Impact

☐ Fiscal Impact Confirmed

V. STAFF ANALYSIS

Due to the drastic changes from the State adoption of the Advanced Wireless Infrastructure Deployment Act, many of the regulatory considerations the City was considering are no longer viable. However, the State did leave the ability for municipalities to regulate certain aspects of these facilities by requiring that they comply with “applicable codes” (Exhibit B, p.5, Florida Statutes, Section 337.401(7)(d)2.). “Applicable codes” as defined in Florida Statutes, Section 337.401(7)(b) includes local codes or ordinances adopted to implement the Act and objective design standards.

The public rights-of-way in the City of North Port are a physically limited resource that are critical to the travel and transport of persons and property in the City. It is understood that recent advances in wireless communications technology have resulted in a new generation of cellular communication services. The demand for these services has grown exponentially in recent years, requiring the continual upgrading of telecommunications equipment and services to satisfy such demand. These antennae may be located on existing towers, utility poles, and other similar structures, but will frequently be located on poles constructed or enlarged within the City’s rights-of-way.

In crafting Ordinance 2017-37, care was given to ensure compliance with Florida Statutes and to be inclusive to any type of current or potential future technology. Several model ordinances were used to inform the document to meet this goal. Federal and State law require the nondiscriminatory treatment of providers of telecommunications services. The intent of the Florida Legislature in adopting the Advance Wireless Infrastructure Deployment Act was to ensure that municipalities and counties treat providers of communications and wireless services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way.

With this in mind, it is crucial that the use and occupancy of the public rights-of-way by providers of communications and wireless services be subject to regulation which can ensure minimal inconvenience to the public, coordinate users, maximize available space, reduce maintenance costs to the public, and facilitate entry of an optimal number of providers of services in the public interest. In meeting these needs, Ordinance 2017-37 creates regulations that accomplish the following:

- (a) provides for the placement or maintenance of communications and wireless facilities in the public rights-of-way within the City limits;
- (b) adopts and administers reasonable rules, regulations and general conditions not inconsistent with applicable state and federal law;
- (c) manages the placement and maintenance of communications and wireless facilities in the public rights-of-way by all providers;
- (d) minimizes disruption to the public rights-of-way;

- (e) requires the restoration of the public rights-of-way to original condition; and
- (f) minimizes the impact on surrounding areas by establishing standards for location, aesthetics and compatibility.

The proposed creation of Chapter 86 to the Administrative Code and amendment to Appendix A would meet the following goals, objectives and policies:

Capital Improvements Element Goals, Objectives, and Policies:

GOAL 1: The City of North Port shall undertake actions to adequately provide needed public facilities for both existing and future residents in a timely and efficient manner consistent with available resources that will promote orderly growth.

VI. REVIEW PROCESS

Staff reviewed this petition for a Text Amendment and found this petition is consistent with the City's Comprehensive Plan. Ordinance 2017-37 has been reviewed by multiple staff within the Public Works, Building, Utilities, and Risk departments and all departments have provided their approval of the Ordinance. Risk sent this item to a risk consultant who reviewed with one question for legal, which has been resolved. The City Attorney reviewed and approved Ordinance 2017-37 as to form and correctness.

VII. PUBLIC NOTICE

The petition will be advertised in a newspaper of general circulation within the City of North Port on December 7, 2017 pursuant to the provisions of Section 166.041(3)(a), Florida Statutes and Section 9.01(b) of the Charter of the City of North Port, and Chapter 1 Article II, Section 1-12 of the City's Unified Land Development Code (ULDC) as amended (Exhibit A).

VIII. PUBLIC HEARING SCHEDULE

**City Commission 1st Reading
Public Hearing**

December 12, 2017
1:00 PM or as soon thereafter

**City Commission 2nd Reading
Public Hearing**

January 23, 2018
6:00 PM or soon thereafter

EXHIBIT A

PUBLIC NOTICE – CITY OF NORTH PORT NOTICE OF PUBLIC HEARING FOR ORDINANCE NO. 2017-37

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Section 166.041(3)(a), Florida Statutes and Section 9.01(h) of the Charter of the City of North Port, Florida that public hearings will be held before the North Port City Commission on **Tuesday, December 12, 2017 at 1:00 p.m.**, or as soon thereafter as the matter may be heard, and on **Tuesday, January 23, 2017 at 6:00 p.m.**, or as soon thereafter as the matter may be heard to consider proposed Ordinance No. 2017-37.

These public hearings will be held in the North Port City Commission Chambers, 4970 City Hall Boulevard, North Port, Florida 34286.

The City Commission may enact the following Ordinance at the second and final reading during the public hearing on **Tuesday, January 23, 2017**.

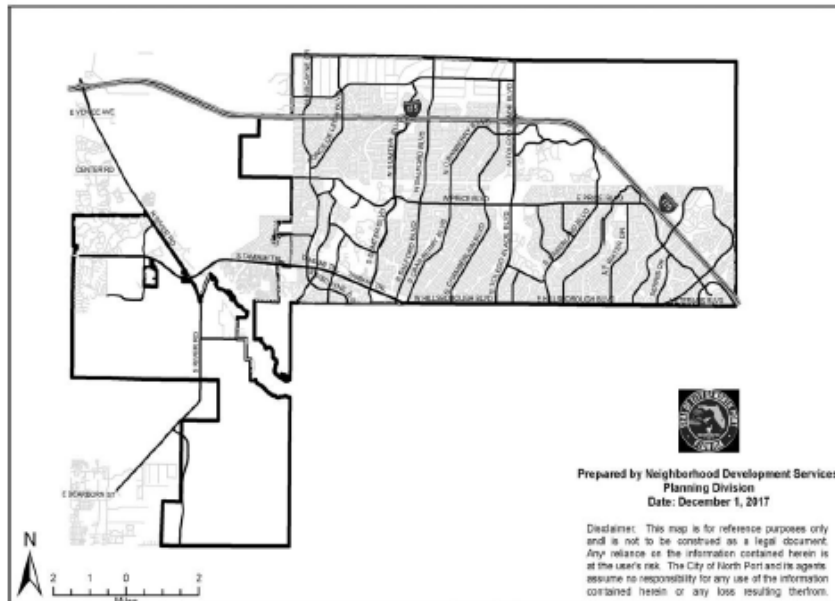
ORDINANCE NO. 2017-37

(Updating code language related to communication and wireless facilities to be consistent with Florida Statutes Section 337.401 by creating Chapter 86 – Communication and Wireless Infrastructure Right-of-Way Utilization in the Code of the City of North Port, Florida and by amending Appendix A – City Fee Structure)

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, AMENDING THE CODE OF THE CITY OF NORTH PORT, FLORIDA, RELATING TO COMMUNICATION AND WIRELESS FACILITIES TO BE CONSISTENT WITH FLORIDA STATUTES SECTION 337.401, ESTABLISHING NEW REGULATIONS FOR COMMUNICATION AND WIRELESS INFRASTRUCTURE IN THE RIGHTS-OF-WAY; CREATING CHAPTER 86 – COMMUNICATION AND WIRELESS INFRASTRUCTURE RIGHT-OF-WAY UTILIZATION; AMENDING APPENDIX A – CITY FEE STRUCTURE; PROVIDING FOR FINDINGS; PROVIDING FOR ADOPTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODING OF AMENDMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

City of North Port

Petition Number TXT-16-121
Ordinance No. 2017-37



Note: This map covers all of the incorporated areas of the City of North Port, Florida. The proposed Ordinance 2017-37, (Amending the City of North Port Administrative Code) applies to the entire City of North Port as depicted on this map.

All interested parties are invited to appear and be heard in respect to the proposed Ordinance 2017-37, at these public hearings in the City Hall Commission Chambers. Written comments filed with the City Commission will be heard and considered and will be made a matter of public record at these meetings. These public hearings may be continued from time to time as announced at the hearings, as may be found necessary. The file pertinent to this Ordinance is TXT-16-121 and may be inspected and obtained by the public at the Neighborhood Development Services Department, Planning Division, 4970 City Hall Boulevard, North Port, Florida 34286, during regular business hours.

No stenographic record by a certified court reporter is made of these meetings. Accordingly, anyone seeking to appeal any of the decisions involving the matters herein will be responsible for making a verbatim record of the meeting/testimony and evidence upon which any appeal is to be based (SEE: F.S. 286.0105). Copies of the cd's are available (for a fee) at the City Clerk's Office.

Note: Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's office 48 hours in advance of the meeting (SEE FS. 286.26).

NONDISCRIMINATION: The City of North Port does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities or services.

AMERICAN WITH DISABILITIES ACT OF 1990 - The North Port City Hall is wheelchair accessible. Special parking is available on the west side of City Hall and the building may be accessed from the parking area. Persons with hearing difficulties should contact the City Clerk to obtain a hearing device for use during meetings.

Patsy C. Adams, MMC
City Clerk

Publish on Thursday, December 7, 2017

adms-7-10307

CHAPTER 2017-136

Committee Substitute for
Committee Substitute for House Bill No. 687

An act relating to utilities; amending s. 337.401, F.S.; authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce rules or regulations regarding the placing and maintaining of certain voice or data communications services lines or wireless facilities on certain rights-of-way; providing a short title; providing definitions; prohibiting an authority from prohibiting, regulating, or charging for the collocation of small wireless facilities in public rights-of-way under certain circumstances; authorizing an authority to require a registration process and permit fees under certain circumstances; requiring an authority to accept, process, and issue applications for permits subject to specified requirements; prohibiting an authority from requiring approval or requiring fees or other charges for routine maintenance, the replacement of certain wireless facilities, or the installation, placement, maintenance, or replacement of certain micro wireless facilities; providing an exception; providing requirements for the collocation of small wireless facilities on authority utility poles; providing requirements for rates, fees, and other terms related to authority utility poles; authorizing an authority to apply current ordinances regulating placement of communications facilities in the right-of-way for certain applications; requiring an authority to waive certain permit application requirements and small wireless facility placement requirements; prohibiting an authority from adopting or enforcing any regulation on the placement or operation of certain communications facilities and from regulating any communications services or imposing or collecting any tax, fee, or charge not specifically authorized under state law; providing construction; requiring a wireless provider to comply with certain nondiscriminatory undergrounding requirements of an authority; authorizing the authority to waive any such requirements; authorizing a wireless infrastructure provider to apply to an authority to place utility poles in the public rights-of-way to support the collocation of small wireless facilities; providing application requirements; requiring the authority to accept and process the application subject to certain requirements; providing construction; authorizing an authority to enforce certain local codes, administrative rules, or regulations; authorizing an authority to enforce certain pending local ordinances, administrative rules, or regulations under certain circumstances, subject to waiver by the authority; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 337.401, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(1)(a) The department and local governmental entities, referred to in this section and in ss. 337.402, 337.403, and 337.404 as the “authority,” that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, voice telephone, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the “utility.” The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation; however, the permit-delegation agreement does not apply to facilities of electric utilities as defined in s. 366.02(2).

(7)(a) This subsection may be cited as the “Advanced Wireless Infrastructure Deployment Act.”

(b) As used in this subsection, the term:

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

2. “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this subsection. The term includes objective design standards adopted by ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived by the authority upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within 45 days after the date of the request.

3. “Applicant” means a person who submits an application and is a wireless provider.

4. “Application” means a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.

5. “Authority” means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include the Department of Transportation. Rights-of-way under the jurisdiction and control of the department are excluded from this subsection.

6. “Authority utility pole” means a utility pole owned by an authority in the right-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within:

a. A retirement community that:

(I) Is deed restricted as housing for older persons as defined in s. 760.29(4)(b);

(II) Has more than 5,000 residents; and

(III) Has underground utilities for electric transmission or distribution.

b. A municipality that:

(I) Is located on a coastal barrier island as defined in s. 161.053(1)(b)3.;

(II) Has a land area of less than 5 square miles;

(III) Has less than 10,000 residents; and

(IV) Has, before July 1, 2017, received referendum approval to issue debt to finance municipal-wide undergrounding of its utilities for electric transmission or distribution.

7. “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.

8. “FCC” means the Federal Communications Commission.

9. “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.

10. “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.

11. "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 an authority grants a waiver for such pole.

12. "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 includes small wireless facilities. 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.

13. "Wireless infrastructure provider" means a person who has been certificated 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.

14. "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

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

16. "Wireless services provider" means a person who provides wireless services.

17. “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.

(c) Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way.

(d) An authority may require a registration process and permit fees in accordance with subsection (3). An authority shall accept applications for permits and shall process and issue permits subject to the following requirements:

1. An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.

2. An applicant may not be required to provide more information to obtain a permit than is necessary to demonstrate the applicant’s compliance with applicable codes for the placement of small wireless facilities in the locations identified the application.

3. An authority may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.

4. An authority may not limit the placement of small wireless facilities by minimum separation distances. However, within 14 days after the date of filing the application, an authority may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative authority utility pole or support structure or may place a new utility pole. The authority and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the authority of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If an agreement is not reached, the applicant must notify the authority of such nonagreement and the authority must grant or deny the original application within 90 days after the date the application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

5. An authority shall limit the height of a small wireless facility to 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. Unless waived by an authority, the height for a new utility pole

is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority shall limit the height of the utility pole to 50 feet.

6. Except as provided in subparagraphs 4. and 5., the installation of a utility pole in the public rights-of-way designed to support a small wireless facility shall be subject to authority rules or regulations governing the placement of utility poles in the public rights-of-way and shall be subject to the application review timeframes in this subsection.

7. Within 14 days after receiving an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to provide notification to the applicant within 14 days.

8. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application. If an authority does not use the 30-day negotiation period provided in subparagraph 4., the parties may mutually agree to extend the 60-day application review period. The authority shall grant or deny the application at the end of the extended period. A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the authority.

9. An authority must notify the applicant of approval or denial by electronic mail. An authority shall approve a complete application unless it does not meet the authority's applicable codes. If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days after notice of the denial is sent to the applicant. The authority shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

10. An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of up to 30 small wireless facilities. If the application includes multiple small wireless facilities, an authority may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

11. An authority may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:

a. Materially interferes with the safe operation of traffic control equipment.

b. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

c. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

d. Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

e. Fails to comply with applicable codes.

12. An authority may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Such provisions must be reasonable and nondiscriminatory.

13. Collocation of a small wireless facility on an authority utility pole does not provide the basis for the imposition of an ad valorem tax on the authority utility pole.

14. An authority may reserve space on authority utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the authority utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.

15. A structure granted a permit and installed pursuant to this subsection shall comply with chapter 333 and federal regulations pertaining to airport airspace protections.

(e) An authority may not require approval or require fees or other charges for:

1. Routine maintenance;

2. Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; 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.

Notwithstanding this paragraph, an authority may require a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane.

(f) Collocation of small wireless facilities on authority utility poles is subject to the following requirements:

1. An authority may not enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.

2. The rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person.

3. The rate to collocate small wireless facilities on an authority utility pole may not exceed \$150 per pole annually.

4. Agreements between authorities and wireless providers that are in effect on July 1, 2017, and that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this subsection for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.

5. A person owning or controlling an authority utility pole shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

a. The rates, fees, and terms must be nondiscriminatory and competitively neutral and must comply with this subsection.

b. For an authority utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

c. For an authority utility pole that does not support an aerial facility used to provide communications services or electric service, the authority

shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, an authority may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. 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. The authority may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the authority.

d. An authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications services providers other than wireless services providers for similar work and may not include any consultant fee or expense.

(g) For any applications filed before the effective date of ordinances implementing this subsection, an authority may apply current ordinances relating to placement of communications facilities in the right-of-way related to registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Permit application requirements and small wireless facility placement requirements, including utility pole height limits, that conflict with this subsection shall be waived by the authority.

(h) Except as provided in this section or specifically required by state law, an authority may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by state law to operate in the rights-of-way and may not regulate any communications services or impose or collect any tax, fee, or charge not specifically authorized under state law. This paragraph does not alter any law regarding an authority's ability to regulate the relocation of facilities.

(i) A wireless provider shall, in relation to a small wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of an authority that prohibit above-ground structures in public rights-of-way. Any such requirements may be waived by the authority.

(j) A wireless infrastructure provider may apply to an authority to place utility poles in the public rights-of-way to support the collocation of small

wireless facilities. The application must include an attestation 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 9 months after the date the application is approved. The authority shall accept and process the application in accordance with subparagraph (d)6. and any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way.

(k) This subsection does not limit a local government's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such laws. An authority may enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017, which are applicable to a historic area designated by the state or authority. An authority may enforce pending local ordinances, administrative rules, or regulations applicable to a historic area designated by the state if the intent to adopt such changes has been publicly declared on or before April 1, 2017. An authority may waive any ordinances or other requirements that are subject to this paragraph.

(l) This subsection does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

(m) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this subsection does not authorize the provision of any voice, data, or video communications services or the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the right-of-way.

(n) This subsection does not affect provisions relating to pass-through providers in subsection (6).

(o) This subsection does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole, unless otherwise permitted by federal law, or erect a wireless support structure in the right-of-way located within a retirement community that:

1. Is deed restricted as housing for older persons as defined in s. 760.29(4)(b);
2. Has more than 5,000 residents; and
3. Has underground utilities for electric transmission or distribution.

This paragraph does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground facilities, any such collocation or construction shall be only as provided by the municipality's underground utilities ordinance.

(p) This subsection does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole, unless otherwise permitted by federal law, or erect a wireless support structure in the right-of-way located within a municipality that:

1. Is located on a coastal barrier island as defined in s. 161.053(1)(b)3.;
2. Has a land area of less than 5 square miles;
3. Has fewer than 10,000 residents; and
4. Has, before July 1, 2017, received referendum approval to issue debt to finance municipal-wide undergrounding of its utilities for electric transmission or distribution.

This paragraph does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground facilities, any such collocation or construction shall be only as provided by the municipality's underground utilities ordinance.

(q) This subsection does not authorize a person to collocate small wireless facilities or micro wireless facilities on an authority utility pole or erect a wireless support structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association. This paragraph does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities.

Section 2. This act shall take effect July 1, 2017.

Approved by the Governor June 23, 2017.

Filed in Office Secretary of State June 23, 2017.