

Meeting Date
July 11, 2017



AGENDA	
Section	Public Hearing
Item No.	JVF

**AGENDA REPORT**  
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

SUBJECT:	House Bill 687 - Advanced Wireless Infrastructure Deployment Act
DEPT/OFFICE:	Public Works Department/County Attorney's Office

Requested Action:

It is requested that a public hearing be held by the Board of County Commissioners on an ordinance implementing the local governing authority provided in the Advanced Wireless Infrastructure Deployment Act.

Summary Explanation & Background:

In 2017, the Florida Legislature enacted HB 687 to create the Advanced Wireless Infrastructure Deployment Act (Act) and establish a uniform procedure by which wireless providers may collocate certain small wireless facilities on utility poles or wireless support structures within public rights-of-way under the jurisdiction of a county or municipality. The bill provides that a local government may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way, except as specified in the Act.

The Act includes stringent permitting requirements on local governments, including accelerated permitting timeframes, prohibition of permitting fees for charter counties already charging the local communications services tax at a rate of 0.12 percent, such as Brevard, and allowing applicants to combine up to 30 small wireless facilities into one application. The bill caps the rate for collocation on a county-owned utility pole at \$150 annually. If signed by the governor, the bill will become effective on July 1, 2017. On May 23, 2017, the Board granted permission to advertise a proposed ordinance for public hearing on July 11<sup>th</sup>. The LPA will hear the proposed ordinance on July 10<sup>th</sup>.

The proposed ordinance incorporates the local regulatory provisions authorized in the Act, including provisions for insurance coverage, indemnification, performance bonds, abandonment, liability and warranties. Additional requirements for collocation include plaques so structures or antenna can be identified, concealment and design criteria, application requirements and review criteria.

An amended rate resolution is included to establish permit fees for applicants not collecting communications services tax and fees for waivers and appeals.

Clerk to the Board Instructions:

Exhibits Attached: (1) Proposed ordinance (2) Proposed rate resolution amendment

Contract /Agreement (If attached): Reviewed by County Attorney    Yes  No     PR

Interim County Manager Frank Abbate	Assistant County Manager Venetta Valdengo	Department Director / Extension Andrew Holmes, Interim Public Works Director/ x55437
	Interim Assistant County Manager John Denninghoff	Scott L. Knox, County Attorney/ x52090



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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July 12, 2017

MEMORANDUM

TO: Andrew Holmes, Interim Public Works Director

RE: Item IV.F., Resolution and Ordinance for Amendment of Fee Schedule for Right-of-Way/Easement Applications and Permits, and Implementing the Local Governing Authority Provided in the Advanced Wireless Infrastructure Deployment Act (HB 687)

The Board of County Commissioners, in regular session on July 11, 2017, adopted Resolution No. 17-121, amending the schedule of fees for carrying out the responsibilities for processing right-of-way/easement applications; and adopted Ordinance No. 17-15, implementing the local governing authority provided in the Advanced Wireless Infrastructure Deployment Act. Enclosed are certified copies of the Resolution and Ordinance.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cmw

Encls. (2)

cc: County Attorney Knox  
Finance  
Budget



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

July 12, 2017

Honorable Scott Ellis  
Clerk  
Board of County Commissioners  
Brevard County  
Post Office Box 999  
Titusville, Florida 32781-0999

Attention: Ms. Deborah Thomas

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2017-15, which was filed in this office on July 12, 2017.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb

AD# 2238897

6/28/2017

**NOTICE OF PUBLIC HEARING  
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

Pursuant to the provisions of Section 125.66, Florida Statutes, notice is hereby given that the Brevard County Board of County Commissioners shall hold a public hearing at 5:00PM or as soon thereafter as the item may come up, on July 11, 2017, to consider adoption of an ordinance to implement the Advanced Wireless Infrastructure Deployment Act. The title of the Ordinance to be considered by the Board of County Commissioners of Brevard County, Florida, on that date reads as follows:

**ORDINANCE NO. 2017-\_\_\_\_\_**

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY FLORIDA, TO IMPLEMENT THE REGULATORY AUTHORITY PROVIDED IN 2017 HOUSE BILL 687, THE ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT, AMENDING CHAPTER 62, ARTICLE VI, DIVISION 7, SUBDIVISION IV, SEC. 62-2445 WIRELESS TELECOMMUNICATION FACILITIES ON COUNTY-OWNED PROPERTY; AMENDING CHAPTER 86 ROADS AND BRIDGES, ARTICLE III DRIVEWAY, UTILITY AND OTHER IMPROVEMENTS, SEC. 86-66. DEFINITIONS, EXHIBITS AND PURPOSE; AMENDING SEC. 86-67 PENALTY; AMENDING SEC. 86-68 EMERGENCY REPAIR OR REMOVAL; AMENDING SEC. 86-70 DRIVEWAYS; AMENDING SEC. 86-71 DRAINAGE FACILITIES; AMENDING 86-7. UTILITIES; CREATING SEC. 86-73 SMALL WIRELESS FACILITIES AND SUPPORT STRUCTURES; AMENDING SEC. 86-101 REQUIRED; CREATING SEC. 86-101.5 PERMIT APPLICATION FOR SMALL WIRELESS FACILITIES AND SUPPORT STRUCTURES; AMENDING SEC. 86-102 APPLICATION PROCEDURE; CREATING SEC. 86-102.5 APPLICATION AND REVIEW PROCEDURE FOR SMALL WIRELESS FACILITIES AND SUPPORT STRUCTURES AMENDING SEC. 86-103 ISSUANCE AND REVISIONS; AMENDING SEC. 86-105 BONDING REQUIREMENTS; CREATING SEC. 86-105.5 INDEMNIFICATION AND INSURANCE AMENDING SEC. 86-106 WAIVERS; AMENDING SEC. 86-107 APPEALS; CREATING SEC. 86-108 ABANDONMENT, TERMINATION AND REMOVAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR RESOLUTION OF CONFLICTING PROVISIONS; PROVIDING FOR AREA ENCOMPASSED; AND AN EFFECTIVE DATE.

Interested parties may appear at the July 11, 2017, meeting and be heard with respect to the proposed ordinance.

A copy of the ordinance may be inspected at the following locations:

Office of Clerk to the Board of County Commissioners, Titusville, Florida  
North Brevard Library, Titusville, Florida  
Central Brevard Library, Cocoa, Florida  
Melbourne Library, Melbourne, Florida  
Micco Library, Micco, Florida

A copy of the ordinance may also be viewed online at: <http://www.brevardcounty.us/CountyManager/DraftOrdinances>.

Pursuant to Section 286.0105 Florida Statutes, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that for such purpose, he or she will need to ensure that a verbatim record of the proceedings is made, at his or her own expense, which record includes the testimony and evidence upon which any such appeal is to be based. Such person may provide a court reporter, stenographer, or a tape recorder for such verbatim record.

In accordance with the Americans Disabilities Act, persons needing a special accommodation or an interpreter to participate in the proceedings, please notify the department sponsoring the meeting/hearing, or the County Manager's Office, (321) 633 2010, at least 48 hours in advance. TDD: 1-800-955-8771. Assisted Listening System receivers are available for the hearing impaired, & can be obtained from the Sound Technician at the meeting.

This meeting will be broadcast live on Space Coast Government Television (SCGTV) or Bright House Networks channel 499, Comcast Cable Communications channel 51 in North Brevard and channel 13 in South Brevard, and AT&T U-verse channel 99. SCGTV will also replay this meeting during the coming month. Check the SCGTV website for daily program updates <http://www.scgtv.org>.

**RESOLUTION 17 -121**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AMENDING THE SCHEDULE OF FEES FOR CARRYING OUT THE RESPONSIBILITIES FOR PROCESSING RIGHT-OF-WAY/EASEMENT APPLICATIONS AND PERMITS, AND FOR PERFORMING REVIEWS AND INSPECTIONS, AMENDING IN PART CERTAIN EXISTING RESOLUTIONS ESTABLISHING FEE SCHEDULES FOR DEVELOPMENT APPLICATION AND PERMIT RELATED ACTIVITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AND EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners previously established a reasonable schedule of fees and charges for services pertaining to carrying out the responsibilities for, and the costs incurred related to administering right-of-way/easement applications, permits, reviews and inspections provided for by Brevard County Code of Ordinances and Land Development Code, Florida Statutes, and other development laws, rules and regulations; and,

**WHEREAS**, the Board of County Commissioners has determined that the costs for development review and inspection services provided by the Public Works department and offices should be borne by the installers, providers and persons using such services; and,

**WHEREAS**, in 2017 the Florida Legislature enacted HB 687 to create the Advanced Wireless Infrastructure Deployment Act (Act) and establish a uniform procedure by which wireless communication providers may collocate certain small wireless facilities on, under, within, or adjacent to certain utilities poles or wireless support structures within public rights-of-way under the jurisdiction and control of a county or municipality; and

**WHEREAS**, the Board of County Commissioners has determined that it is necessary and beneficial to the public interest to add new fees for services provided or costs incurred for Right Of Way Improvements related to these new wireless services; and,

**WHEREAS**, Pursuant to F.S. 337.401, in lieu of collecting fees for right-of-way/easement permits from communication service providers, the Board of County Commissioners collects the additional, maximum tax rate of 0.12 percent for the Local Communications Service Tax; and,

**WHEREAS**, the Board of County Commissioners has determined that HB 687 allows for the assessment of an annual lease amount of \$150.00 for the collocation of small wireless facilities on county utility poles and structures located in the public right-of-way; and,

**WHEREAS**, the Board of County Commissioners has determined that it is necessary and beneficial to the public interest to make corrections to the Right-Of-Way Utilization Fee for services provided or costs incurred for Right Of Way Improvements; and

**WHEREAS**, the Board of County Commissioners has determined that it is necessary and beneficial to the public interest to include fees for waivers and appeals in the right-of-way/easement permitting process; and

**WHEREAS**, the Board of County Commissioners has determined that the schedule of fees herein are reasonable and necessary for providing the revenue to support and appropriately staff said County departments and offices; and,

**WHEREAS**, the Board of County Commissioners has determined that the schedule of fees are reasonable and necessary in order for County departments and offices to provide right-of-way permit review and inspection services in a timely manner.

**NOW, THEREFORE**, be it resolved by the Board of County Commissioners of Brevard County, Florida as follows:

**SECTION 1. Prior Fees and Charges.** Resolution 2016-189, previously adopted by the Board of County Commissioners, establishing a schedule of fees for review and inspection of land development, building permits, development inspections, site plans, subdivisions, final plats, right of way improvements and other related development administrative services is hereby amended in part. All established fees and charges as provided under Resolution 2016-189 remain in full force and effect except those that are added and/or changed with this resolution.

**SECTION 2. Establishment of a schedule of fees and charges.** A schedule of amended fees and charges as set forth in "Exhibit A – Schedule of Amended Development Fees and Charges" attached hereto and by reference incorporated into and made part of this resolution, is established and adopted for carrying out the responsibility of administering and enforcement of Brevard County Land Development Regulations and Code of Ordinances, and related laws, rules, and regulations of the State of Florida.

**Section 3.** There are instances in which a right-of-way/easement utilization permit applicant who does not collect and remit communications services taxes imposed by Brevard County pursuant to Ch. 202, Florida Statutes, may seek to install small wireless facilities or support structures for small wireless facilities in county right-of-way. These applicants are responsible for the full amount of all applicable fees.

**SECTION 4. Severability.** If any section, subsection, clause, phrase, or provision of this resolution is held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this resolution.

**SECTION 5. Effective Date.** This resolution shall take effect immediately.

**DONE, ORDERED AND ADOPTED,** in regular session, this 11<sup>th</sup> day of July 2017.

ATTEST



  
\_\_\_\_\_  
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Curt Smith, Chairman

As approved by the Board of County  
Commissioners on July 11, 2017

**Exhibit A – Schedule of Amended Development Fees and Charges**

<b>RIGHT OF WAY IMPROVEMENTS</b>		
<b>Agency/Department</b>	<b>Fee Description</b>	<b>Fee</b>
Public Works - Engineering	Utilization Fee - By Linear Ft	\$ 125.00 + <del>\$.030</del> <u>\$0.30</u> per Lineal foot
<u>Public Works - Engineering</u>	<u>Annual Lease Fee to Colocate Small Wireless Facility on County Owned Pole or Infrastructure</u>	<u>\$ 150.00</u>
<u>Public Works - Engineering</u>	<u>New Pole, Support Structure, or Small Wireless Facility Installation</u>	<u>\$ 445.00 EA Location*</u>
<u>Public Works - Engineering</u>	<u>Waiver Review</u>	<u>\$ 125.00</u>
<u>Public Works - Engineering</u>	<u>Appeal</u>	<u>\$ 100.00</u>

\* Applicants remitting Local Communications Services Taxes imposed by Brevard County pursuant to CH. 202, F.S. are not subject to right-of-way/utilization permitting fees, unless otherwise authorized by law.

ORDINANCE NO. 2017-015

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, TO IMPLEMENT THE REGULATORY AUTHORITY PROVIDED IN 2017 HOUSE BILL 687, THE ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT, AMENDING CHAPTER 62, ARTICLE VI, DIVISION 7, SUBDIVISION IV, SEC. 62-2445 WIRELESS TELECOMMUNICATION FACILITIES ON COUNTY-OWNED PROPERTY; AMENDING CHAPTER 86 ROADS AND BRIDGES, ARTICLE III DRIVEWAY, UTILITY AND OTHER IMPROVEMENTS, SEC. 86-66. DEFINITIONS, EXHIBITS AND PURPOSE; AMENDING SEC. 86-67. PENALTY; AMENDING SEC. 86-68 EMERGENCY REPAIR OR REMOVAL; AMENDING SEC. 86-70 DRIVEWAYS; AMENDING SEC. 86-71 DRAINAGE FACILITIES; AMENDING 86-72 UTILITIES; CREATING SEC. 86-73 SMALL WIRELESS FACILITIES AND SUPPORT STRUCTURES; AMENDING SEC. 86-101 REQUIRED; CREATING SEC. 86-101.5 PERMIT APPLICATION FOR SMALL WIRELESS FACILITIES AND SUPPORT STRUCTURES; AMENDING SEC. 86-102 APPLICATION PROCEDURE; CREATING SEC. 86-102.5 APPLICATION AND REVIEW PROCEDURE FOR SMALL WIRELESS FACILITIES AND SUPPORT STRUCTURES; AMENDING SEC. 86-103 ISSUANCE AND REVISIONS; AMENDING SEC. 86-105 BONDING REQUIREMENTS; CREATING SEC. 86-105.5 INDEMNIFICATION AND INSURANCE; AMENDING SEC. 86-106 WAIVERS; AMENDING SEC. 86-107 APPEALS; CREATING SEC. 86-108 ABANDONMENT, TERMINATION AND REMOVAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR RESOLUTION OF CONFLICTING PROVISIONS; PROVIDING FOR AREA ENCOMPASSED; AND AN EFFECTIVE DATE.

WHEREAS, the Board has acquired, built and maintained rights-of-way throughout the county to promote the general health, safety and welfare of its citizens and the travelling public; and

WHEREAS, utilities and communication services locate their facilities in the rights-of-way to ensure all citizens receive adequate service; and

WHEREAS, in 2017 the Florida Legislature enacted HB 687 to create the Advanced Wireless Infrastructure Deployment Act (Act) and establish a uniform procedure by which wireless communication providers may collocate certain small wireless facilities on, under, within, or adjacent to certain utilities poles or wireless support structures within public rights-of-way under the jurisdiction and control of a county or municipality; and  
Officially filed with Secretary of State July 12, 2017

WHEREAS, connectivity demands have driven exponential growth in the wireless communications industry and are anticipated to grow at an accelerated rate as new technology becomes available and demand for data increases; and

WHEREAS, the Board recognizes that wireless connectivity is a vital component of the daily lives of Brevard County's citizens and visitors; and

WHEREAS, proper management by the County is necessary to reasonably balance the potential inconvenience to and negative effects upon the public from such facilities' placement and maintenance in the public rights-of-way against the benefits that accrue from such placement and maintenance of wireless facilities; and

WHEREAS, it is the intent of the Board to exercise its authority to adopt reasonable rules and regulations pertaining to wireless communication facilities to the fullest extent allowed by federal and state law; and

WHEREAS, the Board has determined it is in the best interest of the public health, safety and welfare to adopt this Ordinance.

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

**SECTION 1. Sec. 62-2445. Wireless telecommunication facilities on county-owned property.** Code of Ordinances of Brevard County, Florida, is amended to include the following:

**Sec. 62-2445. Wireless telecommunication facilities on county-owned property.**

(g) Applications for the collocation of wireless facilities in county public rights-of-way, as authorized by Section 337.401(7), Florida Statutes, are processed through the public works department pursuant to Chapter 86.

**SECTION 2. Sec. 86-66. Definitions, exhibits and purpose.** Code of Ordinances of Brevard County, Florida, is amended as follows:

**Sec. 86-66. Definitions, exhibits and purpose.**

(a) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Further definitions which apply to this article can be found in chapter 62, article VI, division 7 and article VII of this Code.

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

*Applicant* means the record owner or an owner's representative of a tract of land that is applying for a permit under this section.

*Board* means the board of county commissioners of the county.

*Certified boundary survey* means a survey, sketch, plan, map or other exhibit and is said to be certified when a written statement regarding its accuracy or conformity to specified standards is signed and sealed by a registered surveyor licensed by the state. The date of the field survey must be less than 180 days prior to the date of the initial submittal. The survey must meet the minimum technical standards as set forth in Chapter 61G17-6, Florida Administrative Code pursuant to F.S. ch. 472.

*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.

*Commercial driveway*, for the purpose of this article, includes connections to a publicly controlled right-of-way or easement within a municipality which provides access for subdivision or site plan development.

*County* means the unincorporated areas of Brevard County, Florida.

*County road* means all roads designated as county roads by F.S. §§ 334.03(7), 336.01 and other applicable state statutes and this Code.

*Cross access, drainage, or utility agreement* means a document recorded in the public records which allows property owners to share driveways, drainage or utility easements.

*Drainage* means but not limited to: swales, ditches, storm sewers, seepage basin, culverts, side drains, retention or detention basins, streets, cross drains and canals.

*Driveway* means a private path for a vehicle giving access from abutting property to a road.

*Easement* means the right, privilege, or interest that one party has in the land of another. This may include utilities, drainage, ingress and egress, or other public or private uses subject to the right of use designated in the reservation of the servitude. For the purpose of this article, easement permitting pertains to publicly controlled easements.

*Emergency* means a failure of a public or private driveway/drainage improvement within the county right-of-way or dedicated easement that threatens life or property.

*FCC* means the Federal Communications Commission.

*FDOT* means Florida Department of Transportation.

*FEMA* means the Federal Emergency Management Agency.

*Hauling* means operations associated with the on or off-site transport of land alteration materials, earth materials, dredge materials, land clearing debris, vehicle disposal, and other heavy materials.

*Improvement* means any item of construction under this article.

*Joint access agreements* means an agreement executed by two or more property owners for use of a joint driveway.

~~*Land development section* means the coordinating agency for all review, approval and permitting improvements under this article, the director or his/her designee.~~

*Licensed contractor* means a contractor licensed by the State of Florida or Brevard County to perform general construction contracting, underground construction or electrical work.

*Maintenance security* means 25 percent of the construction cost of public improvements to be posted with the county by the applicant for a minimum of two years upon the construction being accepted by the county. Posting of maintenance security shall follow the requirements as adopted in article VII, chapter 62 of this Code.

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.

*Performance security* means 125 percent of the construction cost of improvements to be posted with the county by the applicant for all improvements made within county controlled rights-of-ways and/or easements. Posting of performance security shall follow the requirements as adopted in article VII, chapter 62 of this Code.

*Permit* means the official written approval to begin construction of improvements according to the application, plans and specifications approved under this article.

~~*Permitting and enforcement department* is the department under which the land development section reports.~~

*Person* means any person, firm, partnership, association, corporation, company or organization of any kind.

*Public works department* means the coordinating agency for all review, approval and permitting improvements under this article.

*Private improvements* means those improvements required, but not limited to: driveways, driveway culverts, headwalls, streets, sidewalks, drainage, and other easements and rights-of-way, street signs and signals or water and sewer facilities privately owned and maintained.

*Public improvements* means those improvements required to be dedicated to the county for use by the public including, but not limited to streets, sidewalks, drainage, street signs traffic signals or utilities.

*Public rights-of-way or Rights-of-way* means property or any interest therein, which is acquired for or devoted to a public road, including but not limited to, roadways, highway, street, or bridge for which the county is the jurisdictional authority and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface.

*Public works director* means the Brevard County Public Works Director or designee.

*Reviewing agencies* means those agencies required by the public works department land development section to review, comment and subsequently approve or disapprove projects per their respective ordinances, articles and/or regulations.

*Right-of-way use agreement* an agreement executed by the board of county commissioners and an applicant which grants permission for a private party to use or construct an improvement within a county controlled right-of-way or easement.

*Road and bridge department* means the director of road and bridge or his/her designated representatives.

*Road or street* means a road which affords the principal means of access by vehicles to abutting property. streets, sidewalks, alleys, highways, and other ways open to travel to the public or private residents and includes all areas within the rights-of-ways or easements in which such ways are located. Any roads submitted for review, approval and permitting shall be processed and designed in accordance with article VII, chapter 62 of this Code.

*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.

*Support structure* means a wireless support structure or utility pole proposed for utilization for the collocation of small wireless facilities.

*Substantial modification* means the mounting of a small wireless facility on a utility pole or wireless support structure in a manner that: (a) increases the height of the utility pole or wireless support structure by ten percent (10%) of the original height of the utility pole wireless support

structure or greater; or (b) adds an appurtenance to the utility pole or wireless support structure that protrudes horizontally from the utility pole or wireless support structure more than the width of the utility pole or wireless support structure and existing appurtenances. A modification that defeats the purpose of any exiting concealment elements is also considered a substantial modification. A substantial modification is not a waiver to the maximum allowable height.

*Utility* means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water steam, waste, stormwater, and other similar commodities, including fire and police signal systems and street lighting systems. The term utility shall also include utility companies and their wholly owned or controlled subsidiaries.

*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 public works director 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 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.

*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.

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.

(b) *Exhibits.* Any exhibits referred to in this article or adopted by reference are incorporated herein as part of this article. The language of this article shall control in the event of conflict between the language of this article and any figure contained in an exhibit to this article.

(c) *Purpose.*

- (1) To insure that a proposed improvement within a county-controlled right-of-way or easement is non-injurious to the public use or any contiguous and/or other directly affected properties.
- (2) To provide guidelines and procedures to ensure that the permitted improvements contain the essential information and data, both graphic and written, necessary for the applicable county sections and departments, and the board of county commissioners to reach fair and equitable decisions.
- (3) To provide the applicant with a specific set of procedures and exhibit requirements which, if followed as directed, will substantially reduce the applicant's probability of encountering unnecessary delays.
- (4) To set out and fully describe the policies and conditions under which the review of a site development plan will be evaluated.
- (5) To implement the local government regulatory authority granted in the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), Florida Statutes, and establish reasonable development standards for the location of small wireless facilities

on county-owned utility poles, infrastructure or improvements in the public rights-of-way, while minimizing the potential negative impacts of such facilities. The wireless facilities and associated support structures permitted in this article include only such small wireless facilities and structures as defined herein. Conventional, taller, wireless communications facilities are regulated in Ch. 62, article VI, division 7 of this Code.

SECTION 3. Sec. 86-67. Penalty. Code of Ordinances of Brevard County, Florida, is amended as follows:

**Sec. 86-67. Penalty.**

(a) It shall be unlawful for any person to construct any improvement or any part of an improvement within a right-of-way or easement dedicated to the county without a valid ~~construction right-of-way/easement~~ permit issued for such construction or providing the appropriate ~~hauling-maintenance~~ bond for ~~hauling~~ activities under the provision of this article. Any person found guilty of violating this ~~article or guilty of section~~ by constructing an improvement or any part of an improvement without a valid ~~construction right-of-way/easement~~ permit shall be punished as provided pursuant in section 1-7 of this Code. Each day a person constructs any improvement or part of an improvement without a valid permit constitutes a separate offense under this article.

(b) Any person damaging any county road or easement shall be required to either restore the road or easement to its condition prior to the damage, or shall pay to the board of county commissioners the sum of money determined by the road and bridge department to be necessary to restore the road or easement to its condition prior to the damage.

(c) No person shall knowingly affix, install, place, attach, maintain, or fail to remove an ~~unauthorized attachment to county-owned infrastructure or other property of the county on demand by the county or any authorized representative thereof.~~

(d) No person shall use an attachment on county-owned infrastructure or other property of the county to provide a service not authorized by a right-of-way/easement permit.

(e) It is a violation of this article to fail to pay the costs to remove abandoned improvements from the right-of-way as required in Sec. 86-108.

(f) Each unauthorized attachment or use is a separate offense. Each day a violation of this article continues is a separate offense.

**SECTION 4. Sec. 86-68. Emergency repair or removal.** Code of Ordinances of Brevard County, Florida, is amended as follows:

**Sec. 86-68. Emergency repair or removal.**

Nothing in this article shall prohibit any utility company or owner of said improvement from repairing or removing improvements in a county road in the event of an emergency which threatens life or property. The person performing, or at whose direction the emergency repair, replacement, or removal is performed, shall, within 72 hours, apply for a permit from the public works department ~~land development section~~ of what emergency repairs, removal have taken place and shall repair and replace any damage to county improvements as directed by the public works department ~~land development section~~ caused by emergency repair or removal.

Nothing in this article shall prohibit the emergency removal of public or private improvements within a right-of-way or easement dedicated to the county by the road and bridge department in the event of an emergency. In the event of such removal, the owner of the improvement shall be responsible for the cost of permitting and replacement of the improvement in accordance with this article.

**SECTION 5. Sec. 86-70. Driveways.** Code of Ordinances of Brevard County, Florida, is amended as follows:

**Sec. 86-70. Driveways.**

- (a) *Driveways associated with building permits.* An owner of property who desires to construct a single-family residence and accompanying driveway on that property may apply for the ~~roadway and easement improvement~~ right-of-way/easement permit simultaneously with the application for the residential building permit. If a driveway is necessary to provide access to the property, no certificates of occupancy can be obtained until the owner completes the driveway improvements as stipulated on the permit and the construction of the driveway has passed a final inspection.

Where a private culvert is required for construction of a private driveway on a county road, the applicant must provide pipe size, material and inverts for the proposed pipe installation along with spot elevation of edge of pavement at approximately 50-foot intervals. Inverts, sizes and distances to the next pipe(s) located upstream and downstream within 500 feet of the proposed new installation site must be submitted on the plot plan. If the culvert installation is part of a building permit application, such information must be furnished with that application and be part of the review and submittal process.

- (1) Upon issuance of the permit, the property owner, or his representative, shall install all improvements as determined by the public works department land development section to be necessary as part of the permit requirements and specifications.
  - (2) The property owner, or his representative, shall install the culvert, all catch basins, headwalls, rip rap and other work determined by the public works department land development section to be necessary as part of the permit requirements and specifications.
  - (3) The driveway permit is applied for as part of a building permit through the building code office and the driveway permit will expire the same date as the building permit. If the building permit is extended, the driveway permit will also be extended for the same period of time. When a final certificate of occupancy is issued, the driveway permit will be retired and become null and void.
  - (4) Maintenance of all private improvements within the right-of-way associated with a driveway permit is the responsibility of the property owner.
- (b) *Driveways unassociated with building permits.* An owner of property who desires to construct a driveway, utility connection or roadway right-of-way improvements to his/her property located on a county maintained right-of-way roadway for a residential, vacant, agricultural, ancillary or temporary use, he/she shall apply for the roadway and easement improvement right-of-way/easement permit in the public works department land development section.
- (1) When an application for review and all required information is received by the public works department land development, the review by all affected agencies will be

conducted within a 15-day period. If there are comments or revisions to be made, the applicant will be advised and the revisions will be submitted to the public works department land development for an additional 15-day review.

- (2) The driveway permit is applied for and issued separately without a building permit through the building code office, therefore, the expiration date of the driveway permit will be 12 months from the date of issuance. A driveway permit may be extended for an additional six months if an extension request is received prior to the expiration date. If a request to extend the permit is received after the expiration date, the applicant must request the issuance of a new permit with additional review fees due.
- (c) *Commercial and industrial driveways.* An owner of property who desires to construct a driveway, temporary driveway, replacement driveway, utility connection, or right-of-way roadway improvements to his/her property located on a county-maintained right-of-way roadway for a commercial or industrial development, he or she shall apply for the ~~roadway and easement improvement~~ right-of-way/easement permit in the public works department land development section.
- (1) When an application for review and all required information is received by the public works department land development, including copies of the contractor's licenses who will be performing the work, the review by all affected agencies will be conducted within a 15-day period. If there are comments or revisions to be made, the applicant will be advised and the revisions will be submitted to the public works department land development for an additional 15-day review.
  - (2) Upon issuance of the permit, the licensed contractor shall install all improvements as determined by the public works department land development section to be necessary as part of the permit requirements and specifications.
  - (3) A permit for commercial improvements is valid for a period of 12 months from the date of issuance. If an extension request is received prior to the expiration date of the existing permit, the permit may be extended for an additional six months. If a request to extend the permit is received after the expiration date, the applicant must request the issuance of a new permit with additional review fees due.

(4) Three surveyed and certified as-built drawings are required to be submitted five working days in advance of scheduling a final inspection for all permitted work. A certificate of completion shall accompany the as-builts. The certificate shall be signed and sealed by the engineer of record.

(5) Project bonding shall be in accordance with section 86-105 and article VII, chapter 62.

SECTION 6. Sec. 86-71. Drainage facilities. Code of Ordinances of Brevard County, Florida, is amended as follows:

**Sec. 86-71. Drainage facilities.**

(a) Individual property owners may request that they be allowed to install storm sewers within county roads or drainage easements. Such request shall be submitted on an application for a right-of-way/easement roadway and easement permit. The public works department ~~land development section~~ shall coordinate the evaluation of each application including:

(1) The overall drainage needs in the general area where the installation is requested as well as the specific site where the installation is requested.

(2) The design and materials required for installations, in light of the physical characteristics of the area.

(3) Such other factors the public works department ~~land development section~~ deems material.

(b) Based on the results of the evaluation, a permit, valid for 12 months will be issued with certain criteria, as determined by the county, for installation.

(c) The road and bridge department is responsible for maintaining public drainage within the road right-of-way and in dedicated easements that conveys stormwater from the public right-of-ways. Public utility and drainage easements on side and rear lot lines that do not convey drainage from a public right-of-way are considered to convey private property drainage. The road and bridge department does not enter onto private property to alleviate private property drainage issues due to new or existing conditions, i.e. property erosion, mowing, vegetation removal, etc.

SECTION 7. Sec. 86-72. Utilities. Code of Ordinances of Brevard County, Florida, is amended as follows:

**Sec. 86-72. Utilities.**

An owner of property or utility company who desires to construct a utility, utility connection or associated improvements to his/her property located on a county-maintained right-of-way roadway, may apply for the ~~roadway and easement improvement~~ right-of-way/easement permit in the ~~land development~~ section.

- (1) When an application for review and all required information is received by the public works department ~~land development~~, including copies of the contractor's licenses who will be performing the work, the review by all affected agencies will be conducted within a 15-day period. If there are comments or revisions to be made, the applicant will be advised and the revisions will be submitted to the public works department ~~land development~~ for an additional 15-day review.
- (2) Upon issuance of the permit, the licensed contractor shall install all improvements as determined by the public works department ~~land development section~~ to be necessary as part of the permit requirements and specifications.
- (3) A permit for utility construction is valid for a period of 12 months from the date of issuance. The permit may be extended for an additional six months if an extension request is received prior to the expiration date of the existing permit. If a request to extend the permit is received after the expiration date, the applicant must request the issuance of a new permit with additional review fees due.
- (4) Three surveyed and certified as-built drawings are required to be submitted five working days in advance of scheduling a final inspection for all permitted work. A certificate of completion shall accompany the as-builts. The certificate shall be signed and sealed by the engineer of record.
- (5) Project bonding shall be in accordance with section 86-105 and article VII, chapter 62.

SECTION 8. Sec. 86-73 Small wireless facilities and support structures. is created as follows:

**Sec. 86-73 Small wireless facilities and support structures.**

(a) General.

(1) Small wireless facilities and support structures that comply with the requirements of this article maybe installed and located within county public rights-of-way through the right-of-way/easement permitting process. The cost of maintaining such collocated facilities is the responsibility of the permittee.

(2) A person is not authorized 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.

(3) Approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this division 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.

(4) Collocation of small wireless facilities or micro wireless facilities on a utility pole, unless otherwise permitted by federal law, is prohibited in the public right-of-way located within a retirement community that:

- a. Is deed restricted as housing for older persons as defined in s. 760.29(4)(b), Fla. Stat.;
- b. Has more than 5,000 residents; and
- c. Has underground utilities for electric transmission or distribution.
- d. This limitation 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 county's underground utilities ordinance.

(5) Collocation of small wireless facilities or micro wireless facilities on a county utility pole or placement of a wireless support structure is prohibited in a location subject to

covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association. This limitation does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities.

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

(b) Standards

(1) Height. The height of a small wireless facility is limited to 10 feet above the utility pole or wireless support structure upon which the small wireless facility is to be collocated. Unless waived by the county, the height for a new utility pole or wireless support structure is limited to the tallest existing utility pole or wireless support structure as of July 1, 2017, located in the same right-of-way, other than a utility pole or wireless support structure for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location. If there is no utility pole or wireless support structure within 500 feet, the height is limited to 50 feet. A structure granted a permit and installed pursuant to this subsection shall comply with state and federal regulations pertaining to airport airspace protections.

(2) If more than 220 volts are necessary for the operation of the small wireless facility and are utilized in the utility pole or wireless support structure, a sign shall be attached to the utility pole or wireless support structure stating in large, bold, high contrast letters (minimum height of each letter 4 inches): "HIGH VOLTAGE – DANGER."

(3) All small wireless facilities and support structures shall have a plaque placed upon it for the purpose of identification (either by the ASR registration number or other identifying information) including the party responsible for the operation and maintenance of the facility or structure. The plaque shall not exceed 0.25 square feet. No other signage, other than a "high voltage – danger sign," if applicable, or any signage required by the FCC, is allowed on a small wireless facility, utility pole or wireless support structure.

(4) All wiring and fiber shall be concealed within the support structure and all conduit, wiring and fiber shall be buried between structures and/or structures and ground mounted cabinets. All service lines (e.g. electric lines) to the support structure must also be buried unless service lines in the area of the support structure are aerial. In that event, service lines to the utility pole or wireless support structure may also be aerial, except for any service drop crossing a street or right-of-way which would need to be bored and placed under such street or right-of-way.

(5) New support structures and small wireless facilities shall be designed to blend into the surrounding environment and complement existing streetscape elements through the use of color, camouflaging and architectural treatment. Any equipment mounted to the support structures shall also match the support structure in color and general design. These design standards may be waived by the public works director 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.

(6) Any proposed new support structure shall be designed and engineered structurally, electrically and in all other respects, to accommodate both the initial small cell facility and one or more additional small wireless facilities.

(7) Small wireless facilities shall be flush-mounted onto support structures, unless it is demonstrated through RF propagation analysis that flush-mounted antennas will not meet the network objectives of the desired coverage area.

(8) All small wireless facilities and support structures shall be designed and constructed to conform to all applicable provisions of this article, the Florida Building Code, as amended, the Florida Department of Transportation Manual, as amended.

(9) All wireless facilities in the public rights-of-way shall comply with current radio frequency emissions standards of the Federal Communications Commission (FCC) and any other applicable FCC rules.

(10) All proposed collocations and ancillary equipment shall comply with the ANSI/EIA/TIA-222 (as amended) code for the county.

(11) All small wireless facilities and support structures shall be constructed to conform with the requirements of the Occupational Safety and Health Administration (OSHA).

(12) All small wireless facilities, utility poles and wireless support structures shall be designed and constructed to conform to all applicable standards of the American National Standards Institute (ANSI) manual, as amended.

(13) All small wireless facilities and support structures must be located to avoid any physical or visual obstruction to pedestrian, bicycle, or vehicular traffic, or to otherwise create safety hazards to pedestrians bicyclists or motorists.

(14) The placement of small wireless facilities on existing support structures in public rights-of-way is encouraged and preferred over the installation of new support structures. An applicant must provide satisfactory evidence to the county that no existing support structures can be reasonably used or replaced for use for the proposed collocation.

(15) All new support structures must be constructed to permit collocation by other wireless service providers where feasible. The term "where feasible," as it applies to collocation, means that utilization of a support structure by another party would, at the time of such utilization, comply with sound engineering principles, would not materially degrade or impair the support structure's utilization by existing users, would not unduly burden the structural integrity of the support structure, and would not otherwise materially and adversely impact existing users. Reasonable terms for use of a support structure that may be imposed by the owner include a requirement for reasonable rent or fees, taking into consideration the capitalized cost of the support structure and land, the incremental cost of designing and constructing the support structure so as to accommodate additional users, increases in maintenance expenses relating to the support structure and a fair return on investment, provided such amount is also consistent with rates paid by other providers at comparable support structure sites.

**SECTION 9. Sec. 86-101. Required.** Code of Ordinances of Brevard County, Florida, is amended as follows:

**Sec. 86-101. Required.**

No person shall construct, remove, alter, reconstruct or relocate any curb, sidewalk, driveway, gutter, pavement, utility installation or other improvement in any county road or easement without obtaining a right-of-way/easement roadway and easement improvement permit from the public works department land development section. When a driveway or other existing improvement is relocated, changed, or abandoned, making any portion or all of the driveway or other improvement unnecessary, the owner of the abutting property shall obtain a permit and shall remove the driveway or other improvement and shall, at his own expense, install or replace all necessary curbs, gutters and sidewalks.

SECTION 10. **Sec. 86-101.5. Permit application for small wireless facilities and support structures.** is created as follows:

**Sec. 86-101.5. Permit application for small wireless facilities and support structures.**

(a) A right-of-way/easement permit is required to (1) collocate a small wireless facility on a support structure; (2) install a new support structure for collocation; or (3) perform a substantial modification to an existing small wireless facility or support structure.

(b) Consolidated Application. An applicant seeking to collocate small wireless facilities 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, the county may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

(c) A permit is not required for:

(1) Routine maintenance;

(2) Replacement of existing small wireless facilities with small wireless facilities that are substantially similar or of the same or smaller size or same color and concealment;

(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, Fla Stat.

(d) An applicant shall demonstrate that the proposed small wireless facility, support structure or substantial modification complies with all applicable laws and ordinances.

(e) One hard copy and a digital copy of the application, plans and supporting documents shall be submitted to the public works department. In addition to the standard permit submittal requirements, applications for small wireless facilities, support structures or substantial modifications shall submit plans which include the following:

(1) Name, address, phone number and email address of the applicant's primary contact person in connection with the application and the person to contact in case of an emergency.

(2) Evidence of and proof of insurance or self-insuring status adequate to defend and cover claims insurance coverage, if required by the county.

(3) A copy of federal or state certification authorizing the applicant to provide wireless services as a wireless services provider or telecommunications services as a wireless infrastructure provider.

(4) If the applicant is a corporation or limited liability company, proof of authority to do business in the State of Florida.

(5) For utilization of support structures not owned by the county, a notarized affidavit signed by an authorized representative of the support structure owner verifying consent to collocate on their support structure.

(6) An applicant for a new support structure must demonstrate that an existing structure is not reasonably available for collocation. A report and supporting technical data shall be submitted, demonstrating the following:

a. All antenna attachments and collocations, including all potentially useable cross country utility distribution towers, existing support structures and other elevated structures within the proposed service area and alternative antenna configurations have been examined, and found unacceptable.

b. Reasoning as to why existing facilities such as cross country utility distribution and other elevated structures or existing structures are not acceptable alternatives to a new support structure.

c. Reasoning as to why the adequacy of existing support structures or the mitigation of existing support structures are not acceptable in meeting the applicant's need or the needs of service providers shall consist of any of the following:

i. No existing support structures located within the geographic area meet the applicant's engineering requirements, and why.

ii. Existing support structures do not have sufficient structural integrity to support a small wireless facility and the existing support structures cannot be sufficiently improved.

iii. Other limiting factors that render existing support structures unsuitable.

(7) Signed statement from a qualified person, together with their qualifications, shall be included that warrants radio frequency emissions from the antenna array(s) comply with FCC standards. The statement shall also certify that both individually and cumulatively, and with any other facilities located on or immediately adjacent to the proposed facility, the replacement antenna complies with FCC standards. A copy of the radio frequency emissions report verifying compliance with FCC standards shall be included with the signed statement. Any signage required or recommended by the FCC to warn of RF emissions associated with the small wireless facility shall be posted by the applicant on the support structure.

(8) A stamped or sealed structural analysis of the proposed tower prepared by a registered professional engineer licensed by the State of Florida indicating the proposed and future loading capacity of the utility pole is compliant with the Florida Building Code, as amended, or other applicable requirements.

(9) Title report or American Land Title Association (A.L.T.A.) survey showing all easements on the subject property.

(10) Simulated photographic depiction of the proposed and/or appearance from vantage points approved by public works director, including the facility types the applicant has considered including:

- a. Overall height.
- b. Configuration.
- c. Physical location.
- d. Mass and scale.
- e. Materials and color.
- f. Illumination, if applicable.

(11) Proof of FAA compliance with Subpart C of the Federal Aviation Regulations, Part 77, and "Objects Affecting Navigable Airspace," if applicable.

(12) Signal propagation map for the purposes of determining potential interference with traffic control devices.

(13) All other documentation, evidence, or materials necessary to demonstrate compliance with the applicable approval criteria set forth in this article.

(14) Site Plan. Signed and sealed site plans shall include the following:

- a. Name of project and date
- b. The limits of right-of-way and limits of work where work shall be performed.
- c. The state plane coordinates and GIS coordinates of the proposed location.
- d. Deed book, survey book, road plat or official records book and page reference
- e. Scale, north arrow, and vicinity map

- f. Maximum height of the proposed structure and proposed and future mounting elevations of future antenna, including individual measurement of the base, support structure, and lightning rod.
- g. Location and size of all major public or private streets and rights-of-way.
- h. Depict and identify within a minimum of 50 feet of work all above ground infrastructure and improvements, including without limitation, pavement, curb, sidewalks, landscaping and vegetation, buildings, utility poles, etc. and all below ground infrastructure and utilities, including without limitation foundations, tanks, utilities, etc. within limits of work.
- i. Depict and identify all existing easements within limits of work and any additional easement(s) acquired (e.g., access easement, temporary construction easement or other easement) for construction of work. Easements must denote recording information.
- j. For new support structures, the location of existing support structures within a 100 foot radius and the height of existing support structures within 500 feet of the proposed structure in either direction on the same side of the right-of-way.
- k. A statement or statements certifying that the construction of wireless communication facilities proposed to be located in the public rights-of-way will comply with all applicable standards, codes, rules and regulations referenced in this article.
- l. A statement describing the proposed support structure's capacity to permit multiple users, including an example of the number and type of antennas or other attachments that can be accommodated on support structures.
- m. Compliance with American National Standards Institute (ANSI) standards for electromagnetic radiation. In order to protect the public

from excessive exposure to electromagnetic radiation, the facility applicant shall certify through a written statement that the facility meets or exceeds current ANSI standards as adopted by the FCC.

**SECTION 11. Sec. 86-102. Application procedure.** Code of Ordinances of Brevard County, Florida, is amended as follows:

**Sec. 86-102. Application procedure.**

Application for a ~~roadway and easement~~ right-of-way/easement permit shall be made to the public works department land development section. Each applicant shall provide the information and drawings specified on the permit application for the particular type of improvement. Signed and sealed engineering drawings shall be required on any improvement which affects the traveling surface of any county maintained right-of-way ~~roadway~~ including but not limited to open cuts, the addition of acceleration or deceleration lanes and traffic signalization. Additionally, by accepting a permit for construction, each applicant shall be required to agree to maintain the constructed improvements and to hold the board harmless for any liability arising from failing to maintain or from improperly maintaining the improvement.

**SECTION 12. Sec. 86-102.5. Application and review procedure for small wireless facilities and support structures.** is created as follows:

**Sec. 86-102.5. Application and review procedure for small wireless facilities and support structures.**

(a) A right-of-way/easement permit application for collocation of small wireless facilities, installation of a new support structure or substantial modification is subject to the application review timeframes in this section.

(b) Permit applications for new support structures must include an attestation that small wireless facilities will be collocated on the utility pole or wireless support structure and will be used by a wireless services provider to provide service within nine (9) months after the date the application is approved. A permit application for the collocation of small wireless facilities may be included with an application to install a new support structure.

(c) Determination of Completion/Defects. Within 14 calendar days after receiving an application, the county must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the county must specifically identify the missing information. An application is deemed complete if the county fails to provide notification to the applicant within 14 calendar days. If the permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. An applicant that receives a written notice of incompleteness may cure the defects and resubmit the corrected application within thirty (30) calendar days of receiving the notice. If an applicant is unable to cure the defects within the thirty (30) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.

(d) A complete application is deemed approved if the county fails to approve or deny the application within 60 calendar days after receipt of the application. If the county does not use the 30-day negotiation period provided in below, the parties may mutually agree in writing to extend the 60-day application review period. The county shall grant or deny the application at the end of the extended period

(e) Alternative location. The county 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 county utility pole or support structure or may place a new utility pole. The county 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 county 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 county of such nonagreement and the county 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.

(f) The county must notify the applicant of approval or denial by electronic mail. The county shall approve a complete application unless it does not meet the applicable codes. If the application is denied, the county 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 county denies the application. The applicant may cure the deficiencies identified by the county and resubmit the application within 30 days after notice of the denial is sent to the applicant. The county 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.

(g) Denial. The public works director may deny a permit application for a small wireless facility, support structure or substantial modification where:

- (1) the applicant fails to submit a complete application;
- (2) the applicant fails to supplement its application with additional information as requested in the evaluation of the application;
- (3) the applicant fails to pay the filing fee, if applicable;
- (4) the proposed installation or modification materially interferes with the safe operation of traffic control equipment.
- (5) the proposed installation or modification materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
- (6) the proposed installation or modification materially interferes with compliance with the Americans with Disabilities Act, as amended, or similar federal or state standards regarding pedestrian access or movement.
- (7) the proposed installation or modification materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual, as amended.
- (8) the proposed installation or modification is not in compliance with the provisions of this article.

SECTION 13. **Sec. 86-103. Issuance and revisions.** Code of Ordinances of Brevard County, Florida is amended as follows:

**Sec. 86-103. Issuance and revisions.**

Upon receipt of the application and drawings, the public works department land development section shall review the application and coordinate compliance with location, drainage, construction and traffic engineering requirements established by the board of county commissioners and whether it is consistent with future development of the area and any plans for future expansion of the existing road. The applicant shall be promptly notified of any problems or defects with his application which have arisen. If the application meets the applicable requirements, the public works department land development section shall issue a permit to the applicant. The public works department land development section may impose such conditions on permits as it deems necessary to ensure that the above described requirements are met. By acceptance of the permit, the applicant agrees to abide by all the terms and conditions contained in the permit and in this article.

If a revision is required to any approved permit issued under this article, the applicant must submit five sets of the plans with the appropriate fees and documentation to the public works department land development division for a 15 calendar-day review by the appropriate agencies. Upon approval by staff, the approved revision sheets will be forwarded to the public works department land development for distribution to the applicant and affected agencies. A revised permit will be issued, if applicable.

SECTION 14. Sec. 86-105. Bonding requirements. Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

**Sec. 86-105. Bonding requirements.**

- (a) Bonds shall be required on any commercial or industrial improvement which affects the traveling surface of any county-maintained rights-of-way roadway including but not limited to open cuts, the addition of acceleration or deceleration lanes and traffic signalization. This also applies to any rights-of-way roadways within the jurisdiction of municipalities.

Bonding shall follow the requirements of article VII, chapter 62.

- (b) Performance. No permit for installation, repair or maintenance of improvements shall be issued unless the applicant posts performance security in an amount not less than 125 percent of the cost of improvements to the county right-of-way or easement, as estimated by the engineer of record, in a signed and sealed cost estimate or two written quotes from a licensed general contractor. Each bond will be for a period of time to coincide with the valid dates of the issued permit. Such permit shall act as the performance contract, thereby securing the bond. If a permit extension is granted, the bond may be extended for the same period of time. When the work has been inspected as complete, the bond shall be returned to the applicant.
- (c) Maintenance bonding. If the improvements made to publicly controlled rights-of-ways and easements are to be maintained by the county and may include, but not be limited to, utility lines, public drainage structures, traffic signals and rights-of-way roadway improvements, the applicant shall be required to post a 25 percent maintenance bond for the cost of construction of the improvements. Such value shall be estimated by the engineer of record in a signed and sealed cost estimate or two written quotes from a general contractor.
- (1) *Utility project bonding.* Will be required in cases where the improvements that were permitted require the restoration of public land including, but not limited to, traveling lanes of rights-of-way roadways, sidewalks, and underground drainage structures. An additional maintenance bond may be required by the agency which provides utility service for the work that has been completed to the public system.
- (2) *Commercial project bonding.* A maintenance bond shall be required for public improvements which include travel lanes, signalization, drainage structures, etc. In addition, a maintenance bond may be required in cases where the improvements that were permitted require the restoration of public land including, but not limited to, traveling lanes of rights-of-way roadways, sidewalks and underground drainage structures.
- (3) *Residential project bonding.* A maintenance bond will not be required for any private residential driveway or utility connection with public rights-of-ways and easements. All improvements must be completed prior to the issuance of a final certificate of

occupancy (C.O.). The county considers the improvement to be private and privately maintained.

- (4) *Hauling maintenance bond.* A cash performance security for hauling operations shall be calculated on a per acre basis up, to a maximum of 50 acres, utilizing the per acre fee set forth in accordance with section 86-104. The maintenance security shall be used to pay for any necessary repairs to the existing county maintained rights-of-way roadways measured in a linear distance within one-half of a mile from the site entrance as determined by the road and bridge department. The amount of the maintenance bond shall be determined by the road and bridge department.

- (4) Any permittee placing or installing any structure or object on county-owned utility poles, equipment or structures within the right-of-way shall ensure that, at least thirty (30) days prior to the commencement of any work on county utility poles, equipment or structures, security is provided to the public works department, in the form of a letter of credit, in a form deemed legally sufficient by the county attorney's office, or cash, posted in the amount of one hundred twenty five (125) percent of the estimated costs of replacing the utility pole or equipment or structure. Ten percent of that amount shall be provided as a cash bond. The estimate shall be prepared by an engineer registered in the State of Florida to practice professional engineering. Upon completion and approval of all permitted improvements, ninety (90) percent of the posted security will be released by the public works director. Ten (10) percent of the security funds, the cash bond, shall remain in place at all times the attachment, structure or object remains installed or placed on county utility poles or other county-owned equipment within the public right-of-way. If at any time the security funds are not in place, the structure or object shall be deemed abandoned and shall be subject to removal pursuant to section 86-108.

**SECTION 15. Sec. 86-105.5 Indemnification and insurance.** Code of Ordinances of Brevard County, Florida, is amended as follows:

**Sec. 86-105.5 Indemnification and insurance.**

- (a) As a condition of a permittee having its improvements or equipment located in county public right-of-way or attached to county-owned utility poles, equipment or structures placed

within the public right-of-way, the permittee agrees to and shall, to the extent permitted by law, defend, indemnify and hold harmless the county, its employees, officers, agents and contractors against any claim of liability or loss of any kind, including administrative orders and regulations, and specifically including, without limitation, any claim of liability or loss from personal injury or property damage resulting from or arising out of the presence of the permittee's equipment in county right of way or attached to county-owned utility poles, equipment or structures placed within the right-of-way and also as to any willful misconduct of the user, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the willful misconduct of the county, or its employees, officers, contractors or agents.

(b) The permittee agrees as a condition of permit issuance to indemnify the county and pay the cost of the county's legal defenses, including fees of attorneys as may be selected by the county, for all claims described in the hold harmless clause above. Such payment on behalf of the county shall be in addition to any and all other legal remedies available to the county and shall not be considered to be the county's exclusive remedy.

(c) Any permittee placing or installing any structure or object on a county-owned utility pole, equipment or structure located within the public right-of-way shall ensure that, at least thirty (30) days prior to the commencement of any work the permittee provides to the public works department a certificate or certificates issued by an insurer or insurers authorized to conduct business in Florida that is rated not less than category A-VII by A.M. Best, subject to approval by the county risk manager, verifying the following minimum policy coverage amounts:

General Liability Insurance policy with a \$ 1,000,000 combined single limit for each occurrence to include the following coverage: Operations, Products and Completed Operations, Personal Injury, Contractual Liability covering the right-of-way/easement permit, "X-C-U" hazards, and Errors & Omissions.

Auto Liability Insurance which includes coverage for all owned, non-owned and rented vehicles with a \$ 1,000,000 combined single limit for each occurrence.

Workers' Compensation and Employers Liability Insurance covering all employees of the permittee and subcontractors, as required by law.

In the event the permit activity involves professional or consulting services, in addition to the aforementioned insurance requirements, the permittee shall also procure and maintain a Professional Liability Insurance Policy in the amount of \$1,000,000 per claim.

In the event the permit activity involves services related to building construction projects the permittee shall also procure and maintain a Builders Risk Insurance Policy with loss limits equal to the value of the construction project.

(b) In addition to the above, Specialty Insurance policies covering specific risks of loss (including but not limited to, for example; Longshore coverage, Crane and Rigging, Inland Marine, etc.) may be required by the county risk manager. Any additional specialty insurance coverage requirement will be dictated by the specific activity proposed under the right-of-way/easement permit and insurance underwriting standards, practices, procedures or products available in the commercial insurance market at the time of the contract inception. The permittee is required to procure and maintain all such specialty coverage in accordance with prudent business practices within the permittee's industry.

(c) The permittee shall provide certificates of insurance to the public works department demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under the right-of-way/easement permit. The certificates of insurance shall indicate that the policies have been endorsed to cover the county as an additional insured (a waiver of subrogation in lieu of additional insured status on the workers compensation policy is acceptable) and that these policies may not be canceled or modified without thirty (30) days prior written notice to the county. The policies shall remain effective until all wireless facilities are removed from county-owned utility poles, infrastructure or other improvements.

(d) The insurance coverage enumerated above constitutes the minimum requirements and shall in no way lessen or limit the liability of the permittee unless against any and all claims for bodily injury, sickness, disease, death, personal injury, damage to property or loss of use of any property or assets is caused in whole or in part by any negligent act or omission of the county.

(e) The county shall not be liable to a permittee, or any of its respective agents, representatives, or employees for any lost revenue, lost profits, loss of technology, use of rights

or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if the county has been advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise that is related to, arises out of, flows from or is, in some part, caused by permittee's attachment to or use of county-owned infrastructure.

(f) A permittee may not construe a permit, correspondence, or other communication as affecting a right, privilege or duty previously conferred or imposed by the county to or on another person. The county reserves the right to continue or extend a right, privilege, or duty or to contract with additional users of county-owned rights-of-way without regard to resulting economic competition.

(g) A permittee is solely responsible for the risk and expense of installation, operation, and maintenance of the permittee's attachments, structures or improvements. The county does not warrant or represent that county-owned utility poles, equipment or structures are suitable for placement of a permittee's attachments. A permittee must accept the county-owned infrastructure "as is" and "where is" and assumes all risks related to the use. The county is not liable for any damage to attachment(s) due to an event of damage to the pole or premises.

(h) A permittee may not transfer, assign, convey, or sublet a permit to collocate on county-owned utility poles, equipment or structures without the public works director's prior written consent. A transfer, assignment, conveyance, or subletting of a collocation permit without the public works director's prior written consent is not binding on the county. A written request to approve such a change shall be submitted to the public works department. A written response will be provided within 30 days of receipt of the request.

**SECTION 16. Sec. 86-106. - Waivers.** Code of Ordinances of Brevard County, Florida, is amended as follows:

**Sec. 86-106. - Waivers.**

- (a) Where the county manager and/or his designees, and affected agencies find that undue hardship or unreasonable practical difficulty may result from strict compliance with this article, the county manager shall approve a waiver to the requirements of this article if the waiver serves the public interest.

However, if in the opinion of the ~~county manager land development section~~, the intensity and location of the development warrants an evaluation by the board, the county manager may require that the applicant obtain board approval. The applicant shall be advised by the county manager, when it is determined that board action will be required.

(b) Conditions. An applicant seeking a waiver shall submit a written request to the ~~county manager public works department~~ for the waiver stating the reasons for the waiver and the facts which support such waiver. All requests for waivers must be submitted prior to or in conjunction with a right-of-way/casement permit application, preliminary plat, final engineering, or final plat approval, or other applicable land development application. The county manager and affected agencies shall not approve a waiver, unless they determine the following:

- (1) The particular physical conditions, shape or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of the code is carried out.
- (2) The granting of the waiver will not be injurious to the other adjacent property;
- (3) The conditions, upon which a request for waiver are based, are peculiar to the property for which the waiver is sought and are not generally applicable to other property and do not result from actions of the applicant; and
- (4) The waiver is consistent with the intent and purpose of the county zoning regulations, the county land use plan of the county and the requirements of this article.
- (5) Delays attributed to state or federal permits.
- (6) Natural disasters.
- (7) Public works director ~~County development engineer~~ and affected agencies concur that an undue hardship was placed on the applicant.

If the county manager and affected agencies approves a waiver, the county development engineer may attach such conditions to the waiver to assure that the waiver will comply with the intent and purpose of this Code.

SECTION 17. Sec. 86-107. Appeals. Code of Ordinances of Brevard County, Florida, is amended as follows:

**Sec. 86-107. Appeals.**

The board of county commissioners shall hear appeals relating to any administrative decision or determination concerning implementation or application of these provisions, and shall make the final decision approving or disapproving the decision or interpretation. Any request for appeal shall be submitted to the public works department ~~land development section~~ within 30 calendar days of any decision or determination. The public works department ~~Land development~~ shall schedule a hearing before the board of county commissioners within 30 calendar days of receipt of the written request. The request shall contain the basis for the appeal and appropriate fees.

SECTION 18. Sec. 86-108. Abandonment, termination and removal. is created as follows:

**Sec. 86-108. Abandonment, termination and removal.**

(a) A person does not have the right to place any object, structure or improvement in the public right-of-way or place an attachment or object on county-owned utility poles, equipment or structures located in the public right-of-way except as authorized in this article. If an unauthorized object, structure, improvement or attachment is discovered, the public works director may immediately remove it without incurring liability to the owner, and at the owner's sole expense, if the owner of the unauthorized attachment does not (1) remove the unauthorized structure or attachment within 3 business days of notification; or (2) apply for permission to have the attachment on county-owned infrastructure within 3 business days of notification, including payment of applicable charges or penalties.

(b) Any object, structure, improvement or attachment located in the public right-of-way may be removed immediately by the public works department if necessary to protect public safety or prevent imminent damage to county-owned utility poles, equipment or structures.

(c) Notwithstanding any section of this article to the contrary, the county may terminate any permit or authorization to locate utilities and associated infrastructure or attachments thereto in

the public right-of-way, when determined by the public works director as necessary to accommodate a county right-of-way or traffic safety improvement project. Such utilities, associated infrastructure or attachments shall be removed as soon as practicable with a time frame coordinated by the public works director. The permittee or utility is responsible for any removal and relocation costs.

(d) Any permitted attachment to a county-owned utility pole, infrastructure or other improvement that is not operated for a continuous period of three (3) months shall be considered abandoned. The failure to pay any required fee adopted by the Board for the location of an attachment on a county-owned utility pole, infrastructure or other other improvement is also deemed abandonment. The owner of such facility shall remove the same, including any antennas, attachments, other related appurtenances, and equipment enclosure, within 30 days of receipt of notice from the county notifying the owner of such abandonment. Any new support structure that does not collocate a small wireless facility to provide service within nine months after the date the support structure permit is approved is considered abandoned.

(1) If there are two or more service providers using a single utility pole or wireless support structure, then the abandonment period for the structure shall not begin until all such service providers have ceased operation.

(2) If, within the 30-day notice period, the abandoned small wireless facility or support structure is not removed the public works department county shall have the authority to remove said facility.

(e) The failure to comply with this section will result in immediate removal of the object, structure, improvement or attachment by the public works department and the imposition of penalties as described in section 86-67 above. The public right-of-way shall be restored to its original condition prior to the construction of the structure or improvement at the expense of the owner or permittee. The public works department will invoice the owner or permittee for all costs associated with removal and restoration, plus a 10 percent penalty fee.

**SECTION 19. Severability.** If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such

holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

**SECTION 20. Inclusion in Code.** It is intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida, and that the sections of this ordinances may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

**SECTION 21. Conflicting Provisions.** In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or county law, rule, code or regulations, the more restrictive shall apply.

**SECTION 22. Area Encompassed.** This ordinance shall take effect throughout the unincorporated areas of Brevard County, Florida.

**SECTION 23. Effective Date.** This ordinance shall take effect upon adoption and filing as required by law. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment.

**DONE, ORDERED AND ADOPTED,** in regular session, this 11th day of July, 2017.

ATTEST:

A blue ink signature of Scott Ellis, written over a faint circular seal of Brevard County, Florida.

Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

By: 

Curt Smith, Chairman  
As approved by Board 7/11/17