

ORDINANCE NO. 2017-015

AN ORDINANCE OF SARASOTA COUNTY, FLORIDA, AMENDING CHAPTER 118, CREATING ARTICLE IV OF THE COUNTY CODE FOR THE PURPOSE OF ESTABLISHING REQUIREMENTS FOR COMMUNICATIONS FACILITIES IN THE COUNTY RIGHTS-OF-WAY; CREATING SECTION 118-102 DEFINITIONS; CREATING SECTION 118-103 GENERAL PERMITTING REQUIREMENTS; CREATING SECTION 118-104 REGISTRATION REQUIREMENTS; CREATING SECTION 118-105 PERMITTING REQUIREMENTS FOR SMALL WIRELESS FACILITIES; CREATING SECTION 118-106 PERMITTING REQUIREMENTS FOR NEW COMMUNICATIONS FACILITIES, WIRELESS FACILITIES, AND WIRELESS SUPPORT STRUCTURES; CREATING SECTION 118-107 ADMINISTRATIVE VARIANCES; CREATING SECTION 118-108 UNIFORM PERMIT CONDITIONS; CREATING SECTION 118-109 INSPECTIONS; CREATING SECTION 118-110 ABANDONMENT; CREATING SECTION 118-111 PERFORMANCE GUARANTEE; CREATING SECTION 118-112 INDEMNIFICATION; CREATING SECTION 118-113 MOVING, ALTERING, OR RELOCATING EQUIPMENT AND FACILITIES; CREATING SECTION 118-114 COMMUNICATION FACILITIES IN PREVIOUSLY IN EXISTENCE; CREATING SECTION 118-115 APPEALS; CREATING SECTION 118-116 SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Sarasota County owns, controls, and manages lands designated as rights-of-way; and

WHEREAS, Florida law recognizes that obstruction of the right-of-way constitutes a public nuisance; and

WHEREAS, Sarasota County has used its rights-of-way for the purpose of vehicular and pedestrian traffic, and the placement of public and private utility systems to facilitate the delivery of utility services and maintenance of utility services; and

WHEREAS, the County's rights-of-way are a limited resource which must be managed to handle both current uses and planned and expected future uses; and

WHEREAS, technological changes and advances have resulted in an alternative method of delivery of communications services known as "small cell" or "distributed antennae systems" ("DAS") which requires the placement of shorter, but more numerous poles and related infrastructure; and

WHEREAS, the County seeks to ensure adequate protection of the public's health, safety, and welfare and to minimize the impacts of communication facilities on surrounding areas by establishing standards for location, landscape screening and compatibility.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY:

SECTION 1. This Ordinance amends Chapter 118, creating Article IV, of the Code of Ordinances of Sarasota County, Florida (the "Code"), by creating Article IV relating to and entitled "Communications Facilities in the Public Right-of-Way."

SECTION 2. Section 118-102 of the Code is hereby created as follows:

Sec. 118-102. Definitions.

For purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them:

(1) *Telecommunications Tower Ordinance Administrator (Tower Administrator)* shall mean a tower review coordinator designated by the County as the point of contact for telecommunications information and new tower requests on public or private property. The administrator provides non-binding code interpretations, coordinates and facilitates applications, and maintains records.

(2) *Antenna* shall mean communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

(3) *Applicable Codes* shall mean uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, which have been adopted as part of the Sarasota County Code of Ordinances and which help implement the requirements of Section 337.401, Florida Statutes. The term includes objective design standards adopted in this Article that require a new Utility Pole that replaces an existing Utility Pole to be of substantially similar design, material, and color or that require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted in this Article that require a Small Wireless Facility to meet reasonable location context, color, stealth, and concealment requirements.

(4) *Applicant* shall mean a person who submits an application and is a wireless provider.

(5) *Application* shall mean a request submitted by an applicant to the Telecommunications Tower Ordinance Administrator for a permit.

(6) *Arterial Roadway* shall mean any street or roadway that constitutes the highest degree of mobility at the highest speed, for long, uninterrupted travel, and constitutes the largest proportion of total travel as per the Federal Functional Classification Map maintained by the State of Florida Department of Transportation District Office, as amended.

(7) *Authority* shall mean the County.

(8) *Authority Utility Pole* shall mean a utility pole owned by the Authority in the County Rights-of-Way. The term does not include a Utility Pole owned by a municipal electric utility, a Utility Pole used to support municipally owned or operated electric distribution facilities, or a Utility Pole located in the County Rights-of-Way within:

(a) a retirement community that:

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

(b) a municipality that:

1. has a land area of less than five (5) square miles;
2. has less than 10,000 residents; and
3. has, before July 1, 2017, received referendum approval to issue debt to finance municipal-wide undergrounding of its utilities for electric transmission or distribution.

(9) *Collector Roadway* shall mean any street or roadway that provides a mix of mobility and land access functions, linking major land uses to each other or to the arterial highway system as per the Federal Functional Classification Map maintained by the State of Florida Department of Transportation District Office, as amended.

(10) *Collocate or collocation* shall mean 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.

(11) *Common Side-Lot Lines* shall mean a line drawn parallel to the side lot line at the depth of a required side yard setback as delineated in the Zoning Regulations, Appendix A, Article 6 of the Code of Ordinances.

(12) *Communication Services* means the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance, as per Florida Statutes § 202.11, as amended. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

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

(13) *Communication Services Provider* shall mean a person who provides Communication Services and is chartered by the State of Florida, pursuant to section 362.01, Florida Statutes. A certificate to provide Competitive Local Exchange Telecommunications (CLEC) service or provide Alternative Access Vender (AAV) services granted by the Public Service Commission does not grant the right to provide Wireless Services.

(14) *Communications Facility* a facility that may be used to provide Communications Services, including Wireless Facilities, Small Wireless Facilities, Micro Wireless Facilities, and Utility Poles that contain communications elements. Multiple cables, conduits, strands, or fibers located within the same conduit shall be considered one Communications Facility for purposes of this Article.

(15) *County* means the County of Sarasota, including any agency of or any other entity acting on behalf of the County and any officer, official, employee, agent, representative, or designee of the county, agency, or entity.

(16) *County Rights-of-Way* means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, pier, easement, public easement, or similar property in the County, in which the County holds a property interest or over which the County exercises legal control, and for which the County may lawfully grant a right of use to any person for placement of any equipment or facility or similar use. The term, “County Rights-of-Way”, shall not include any other property owned or controlled by the County, including any building, fixture, structure, or other improvement, regardless of whether it is situated in the County Rights-of-Way.

(17) *Emergency* means a condition which poses clear and immediate danger to the life, safety, or health of one or more persons, or poses clear and immediate danger of significant damage to property.

(18) *Emergency Action* means any action in the public right-of-way, including repair, replacement, or maintenance of any existing equipment or facility, which is necessary to alleviate an emergency.

(19) *Equipment or Facility* means any a line, conduit or duct, utility pole, transmission or distribution equipment (e.g., an amplifier, power equipment, optical or electronic equipment, a transmission station, switching or routing equipment), cabinet or pedestal, handhole, manhole, vault, drain, location marker, appurtenance, or other equipment or facility associated with communications services located in the County Rights-of-Way.

(20) *FCC* shall mean the Federal Communications Commission.

(21) *Local Roadways* shall mean any street or roadway which primarily serves to provide access to adjacent land and service to travel over relatively short distances as compared to Collector Roadways or Arterial Roadways, as per the Federal Functional Classification Map maintained by the State of Florida Department of Transportation District Office, as amended.

(22) *Micro Wireless Facility* shall mean 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.

(23) *Person* means any natural person or any association, company, firm, partnership, joint venture, corporation, governmental entity, or other legal entity.

(24) *Routine Maintenance or Repair* shall mean:

(a) Ordinary upkeep, fixing, mending, replacement, or removal of any existing Wireless Facility, Wireless Support Structure, or Utility Pole; or

(b) Installation of a service connection to the premises of a customer.

However, routine maintenance or repair shall not include any work which involves:

- (a) Any excavation in the County Rights-of-Way or making any breaks or cut in the surface of the public right-of-way;
- (b) Any installation of a new Utility Pole or extension of an existing Utility Pole;
- (c) Any installation of a Communications Facility, Wireless Facility, or Wireless Support Structure on any paved surface or other ground-level location in the County Rights-of-Way;
- (d) Any modification, impairment, or disturbance of the normal flow of vehicular or pedestrian traffic or use of the County Rights-of-Way by any other person for 30 minutes or more; or
- (e) Any activity which may result in any damage to the County Rights-of-Way or any other County property.

(25) *Small Wireless Facility* shall mean a Wireless Facility that meets the following qualifications:

- (a) Each Antenna associated with the facility is located inside an enclosure of no more than six (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 six (6) cubic feet in volume; and
- (b) All other wireless equipment associated with the facility is cumulatively no more than twenty-eight (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.

(26) *Utility Pole* shall mean 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 fifteen (15) feet in height or less unless an Authority grants a waiver for such pole.

(27) *Wireless Facility* shall mean 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;

(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.

(28) *Wireless Infrastructure Provider* shall mean a person who has been certified to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, Wireless Facilities, or Wireless Support Structures but is not a Wireless Services Provider.

(29) *Wireless Services* shall mean any Communications Services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using Wireless Facilities.

(30) *Wireless Services Provider* shall mean a person who provides Wireless Services.

(31) *Wireless Support Structure* shall mean 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.

SECTION 3. Section 118-103 of the Code is hereby created as follows:

Sec. 118-103. General Permitting Requirements.

(1) *Applicability.* The provisions of this Article shall apply to County Rights-of-Way in both the unincorporated areas of the County and those locations where the County holds a proprietary interest in the County Rights-of-Way. It shall not apply in the incorporated areas where the County does not hold a proprietary interest.

(2) *Proprietary Interests of the County.* Because of the proprietary interests the County holds in the County Rights-of-Way, the placement of Communications Facilities within County Rights-of-Way shall in all cases be subject to the discretionary County Rights-of-Way permit process in accordance with the Sarasota County Land Development Regulations and subject to the requirements of this Article. Compliance with this section

shall be in lieu of the requirements in Section 118-35 of the Sarasota County Code of Ordinances.

(3) *Permits Required.* Except for those exempt activities specifically listed below and consistent with the Road Construction Technical Manual in Chapter 74 of this Code, it shall be unlawful for any person to make any excavation in the County Rights-of-Way, make any break or cut in any surface of the County Rights-of-Way, deposit any earth or other material in the County Rights-of-Way, place any Equipment or Facility in the County Rights-of-Way, modify or remove any Equipment or Facility, or perform any other work in the County Rights-of-Way, without first obtaining a written permit from the County.

(4) *Exemptions.* The following activities are exempt from the requirements of this Article:

(a) Emergency Actions, but the County reserves authority to require an after-the-fact permit;

(b) Routine Maintenance and Repair of Communications Facilities, Wireless Facilities, Small Wireless Facilities, Micro Wireless Facilities, Wireless Support Structures, or Utility Poles authorized to be located within the County Rights-of-Way.

(c) Installation, construction, or modification of Communications Facilities, Wireless Facilities, Small Wireless Facilities, Micro Wireless Facilities, Wireless Support Structures, or Utility Poles by governmental entities or approved as part of a government-initiated project within the County Rights-of-Way.

(d) Placement or operation of Communications Facilities in the rights-of-way by a Communications Services Provider authorized by state law to operate in the rights-of-way. Under Section 362.01, Florida Statutes, any telegraph or telephone company chartered by this or another state, or any individual operating or desiring to operate a telegraph or telephone line, or lines, in this state, may erect posts, wires and other fixtures for telegraph or telephone purposes on or beside any public road or highway; provided, however, that the same shall not be set as to obstruct or interfere with the common uses of said roads or highways.

(5) *Emergency Action.* Any person who performs work in the County Rights-of-Way in connection with an Emergency Action without a permit shall immediately notify the County of the Emergency Action. The person shall cease all work immediately upon completion of Emergency Action. The person shall also cease all work immediately upon receipt of a County stop work order determining the situation does not involve an emergency or that the Emergency Action is no longer warranted.

(6) *Revocation.* The County may revoke any permit granted pursuant to this Article, without refunding any fees, if it finds that an Applicant has not complied with applicable law, including any provision of a permit, this Code, or any franchise, license, or other authorization, or that revocation is necessary to protect the public health, safety, or welfare.

SECTION 4. Section 118-104 of the Code of Ordinances of Sarasota County, Florida, is hereby created as follows:

Section 118-104. Registration Requirements.

(1) *Registration Required.* Any Communications Services Provider, Wireless Provider, or Wireless Infrastructure Provider that places or seeks to place Facilities in the County Rights-of-Way shall register with the Tower Administrator.

(2) *Registration Information.* Any Communications Services Provider, Wireless Provider, or Wireless Infrastructure Provider shall provide the following information to the Tower Administrator in a format acceptable to the Tower Administrator:

(a) name of the registrant;

(b) name, address, telephone number, and electronic mail address of a contact person for the registrant;

(c) the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission, the Federal Communications Commission, or the Department of State; and

(d) proof of insurance or self-insuring status adequate to defend and cover claims.

SECTION 5. Section 118-105 of the Code of Ordinances of Sarasota County, Florida, is hereby created as follows:

Section 118-105. Permitting Requirements for Small Wireless Facilities.

(1) *Alternate Location Review.* Upon receipt of a permit application to install a Small Wireless Facility, the Tower Administrator shall have thirty (30) days to review the application to determine whether the proposed Small Wireless Facility shall be placed on an alternative Authority Utility Pole or may place a new Utility Pole. In making such a determination, the Tower Administrator shall consider the following objective design standards and reasonable spacing requirements for ground-based equipment:

(a) All Small Wireless Facilities shall use camouflage techniques which incorporate architectural treatment to conceal or screen their presence

from public view through design to unobtrusively blend in aesthetically with the surrounding environment.

(b) New and replacement Wireless Support Structures and Utility Poles that support Small Wireless Facilities shall match the style, design, and color of the existing Utility Poles in the surrounding area. Further, all Wireless Support Structures and Utility Poles shall meet current safety standards in Applicable Codes.

(c) Ground-based equipment boxes for Small Wireless Facilities must be located in areas with existing foliage or another aesthetic feature to obscure the view of the equipment box. Additional plantings may be required to meet this condition. Any new landscaping in the County Rights-of-Way must be approved by the County's Landscape Architect, who may require a Landscape Maintenance Agreement to be executed prior to approval.

(d) With the exception of electric meters and disconnect switches, equipment such as back-haul components shall not be mounted on the exterior of the pole.

(e) No exposed wiring or conduit is permitted.

(f) The grounding rod may not extend above the top of sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit.

(g) All pull boxes must be vehicle load bearing, comply with FDOT Standard specification 635 and be listed on the FDOT Approved Products List. A concrete apron must be installed around all pull boxes not located in the sidewalk. No new pull boxes may be located in pedestrian ramps.

(2) *Alternate Location Negotiation.* The Tower Administrator shall negotiate any alternate location with the Applicant. If an agreement is not reached within thirty days after the date the Tower Administrator requests an alternate location, the Applicant must notify the Tower Administrator of such non-agreement and the Tower Administrator must grant or deny the original application within 90 days after the date the application was filed. A request for an alternate location, and acceptance of an alternate location, or a rejection of an alternate location must be in writing and provided by electronic mail. Additionally, the design standards may be waived by the Telecommunications Tower Administrator upon a showing by the Applicant 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 thirty days after the date of the request.

(3) *Height Limitations for Small Wireless Facilities.* The height of Small Wireless Facilities shall not exceed ten (10) feet above the Authority Utility Pole, Utility Pole, or Wireless Support Structure on which the Small Wireless Facility is to be Collocated.

(4) *Height of Utility Poles.* The height of a new Utility Pole is limited to the tallest existing Utility Pole as of July 1, 2017, located in the same right-of-way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Utility Pole within 500 feet, the height of the new Utility Pole shall be limited to 50 feet.

(5) *Time for Completing Completeness Review of Applications.* For applications in which the Tower Administrator does not request use of an alternate location, the Tower Administrator must make a determination as to whether an application is complete within 14 days. If an application is deemed incomplete, the Tower Administrator must specifically identify the missing information. An application is deemed complete if the Tower Administrator fails to provide notification to the Applicant within 14 days.

(6) *Applications Processed on a Nondiscriminatory Basis.* The Tower Administrator shall process applications on a nondiscriminatory basis. Thus, applications shall be processed on a first-come, first-served basis.

(7) *Time for Completing Approval or Denial.* The Tower Administrator shall grant or deny an application within sixty days after receipt of the application. If the Tower Administrator fails to take action on a complete application within 60 days, the application shall be deemed approved. If the Tower Administrator elects not to negotiate an alternate location, the Applicant and Tower Administrator may mutually agree to extend the review period. The Tower Administrator shall grant or deny the application at the end of the extended period.

(8) *Effective Life of Approved Permit Application.* A permit issued pursuant to an approved application shall remain effective for one year unless extended by the Tower Administrator for an additional year. The Tower Administrator may only grant a single extension.

(9) *Notification of Approval or Denial.* The Tower Administrator shall notify an Applicant of any approval or denial by electronic mail on the same day a decision is made. If the Tower Administrator denies an application, the denial must state in writing the basis for the denial, including the specific code provisions on which the denial was based. In the event of a denial, the Applicant may cure the deficiencies identified by the Tower Administrator and resubmit the application within 30 days after notice of the denial. The Tower Administrator shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

(10) *Consolidated Applications.* An Applicant who seeks 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 Tower Administrator may separately address Small Wireless Facility Collocations for which incomplete information has been received or which are denied.

(11) *Permitting Criteria.* The Tower Administrator may deny a proposed Collocation of a Small Wireless Facility in the County Rights-of-Way if the proposed Collocation:

- (a) materially interferes with the safe operation of traffic control equipment;
- (b) materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
- (c) materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
- (d) materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual; and
- (e) materially fails to comply with any Applicable Codes.

(12) *Collocation on Authority Utility Poles.* Collocation of Small Wireless Facilities on Authority Utility Poles shall meet the following requirements:

- (a) The Authority may not enter into an exclusive arrangement with any person for the right to attach equipment to Authority Utility Poles.
- (b) The rates and fees for Collocations on Authority Utility Poles must be nondiscriminatory, regardless of services provided by the Collocating person.
- (c) The rate to Collocate a Small Wireless Facility on an Authority Utility Pole shall be \$150 per pole annually.
- (d) Agreements between the Authority and Wireless Providers that are in effect on July 1, 2017, and that relate to the Collocation of Small Wireless Facilities in the County Rights-of-Way, including the Collocation of Small Wireless Facilities on Authority Utility Poles, remain in effect, subject to application of termination provisions. The Wireless Provider may accept the rates, fees, and terms established under this subsection for Small Wireless Facilities and Utility Poles that are the subject of an application submitted after the rates, fees, and terms become effective.

(e) A person owning or controlling an Authority Utility Pole shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to Collocate its first Small Wireless Facility on a Utility Pole owned or controlled by the Authority, the person owning or controlling the Authority Utility Pole shall make available the rates, fees, and terms for the Collocation of Small Wireless Facilities on the Authority Utility Pole which comply with this subsection.

1. The rates, fees, and terms must be nondiscriminatory and competitively neutral and must comply with this subsection.
2. For an Authority Utility Pole that supports and aerial facility used to provide Communications Services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested Collocation must include pole replacement if necessary.
3. For an Authority Utility Pole that does not support an aerial facility used to provide Communications Services or electric service, the Authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested Collocation, including necessary pole replacement, within 60 days after written acceptance of the good faith estimate by the Applicant. Alternatively, the Authority may require the Applicant seeking to Collocate a Small Wireless Facility to provide a make-ready estimate at the Applicant's expense for the work necessary to support the Small Wireless Facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a Utility Pole that is substantially similar in color and composition. The Authority may not condition or restrict the manner in which the Applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the County Rights-of-Way. The replaced or altered Utility Pole shall remain the property of the Authority.
4. An Authority may not require more make-ready work than is required to meet applicable code or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the

amount charged to Communications Services Providers other than Wireless Services Providers for similar work and may not include any consultant fee or expense.

(13) *Attestation of Wireless Services.* A Wireless Infrastructure Provider must include within its Application to place a Utility Pole in the County Rights-of-Way an attestation that the Small Wireless Facility will be used by a Wireless Services Provider for the provision of Communications Services within 9 months of the date the application is approved. In the event a Wireless Services Provider fails to provide Communications Services within the 9 months, the Authority may begin proceedings for revocation.

(14) *Historic Preservation.* The Authority may require an Applicant to obtain a Certificate of Appropriateness from the Historic Preservation Board under Chapter 66, Article IV of this Code where an application may impact a Historic Resource, as that term is defined under that Article.

(15) *Privately-Owned Utility Poles.* Nothing in this section authorizes a person to Collocate or attach Wireless Facilities, including any Antenna, Micro Wireless Facility, or Small Wireless Facility, on a privately-owned Utility Pole, a Utility Pole owned by an electric cooperative or a municipal electric utility, a privately-owned Wireless Support Structure, or other private property within the consent of the property owner.

(16) *Limitation on Permitting of Small Wireless Facilities.* Any permit approval by the Authority for the installation, placement, maintenance, or operation of a Small Wireless Facility under this section does not authority 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 County Rights-of-Way.

SECTION 6. Section 118-106 of the Code is hereby created as follows:

Section 118-106. Permitting Requirements for New Communications Facilities, Wireless Facilities, and Wireless Support Structures.

(1) *Permits Required.* Unless otherwise governed by the exemptions in Section 118-103(3) or the permitting requirements for Small Wireless Facilities outlined in Section 118-105, new Communications Facilities, Wireless Facilities, and Wireless Support Structures in County Rights-of-Way shall meet the following permitting requirements, as determined by the Tower Administrator using best professional judgment, which may include consultation with the County Engineer, Enterprise Information Technology, or other appropriate County staff:

(a) All new Communications Facilities, Wireless Facilities, and Wireless Support Structures shall be located to avoid any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians, bicyclists, or motorists.

(b) The separation distance between new and existing Communication Facilities, Wireless Facilities, and Wireless Support Structures shall be a minimum of 120 feet.

(c) New Communications Facilities, Wireless Facilities, and Wireless Support Structures shall avoid being placed in a County Rights-of-Way of an Open Use (OUA, OUC, OUM, OUR, or OUE) or Residential (RE, RSF, RMF, or RMH) zone district, as defined in the Zoning Regulations found in Appendix A of the Code of Ordinances, to the greatest extent possible. An Applicant shall demonstrate through an engineering analysis why it is unable to locate new Communications Facilities, Wireless Facilities, and Wireless Support Structures outside an Open Use or Residential zone district.

(d) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall be located on Collector Roadways and Arterial Roadways to the greatest extent possible. An Applicant shall demonstrate through an engineering analysis why it is unable to locate the proposed Communication Facilities, Wireless Facilities, and Wireless Support Structures in such areas instead of on Local Roadways.

(d) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall maintain a clear zone from the back-of-curb to the inward edge of a Communication Facility, Wireless Facility, or Wireless Support Structure. Unless otherwise determined by the Tower Administrator, a minimum six (6) foot wide pedestrian clear zone between the back-of-curb and the outward edge of a Communications Facility, Wireless Facility, or Wireless Support Structure.

(e) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall be located at least ten (10) feet from a driveway and at least thirty (30) feet from the center of existing trees with matured diameter of eight (8) inches or greater.

(f) The size and height of new Communication Facilities, Wireless Facilities, and Wireless Support Structures in the County Rights-of-Way shall be no greater than the maximum size and height of any other Utility Pole, Communications Facility, Wireless Facility or Wireless Support Structure located in the County Rights-of-Way within 250 feet of the proposed structure.

(g) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall be placed along Common Side-Lot Lines and not in front of residences, buildings, or places of business.

(h) Any new proposal to construct a new Communication Facility, Wireless Facility, or Wireless Support Structure must first demonstrate why the services cannot be Collocated on an existing Communication Facility, Wireless Facility, Wireless Support Structure, or Utility Pole in the County Rights-of-Way.

(2) *Design Requirements.* New Communications Facilities, Wireless Facilities, and Wireless Support Structures shall meet the following design requirements:

(a) All Communication Facilities shall use camouflage techniques which incorporate architectural treatment to conceal or screen their presence from public view through design to unobtrusively blend in aesthetically with the surrounding environment.

(b) New and replacement poles that support Communication Facilities shall match the style, design, and color of the existing poles in the surrounding area. Further, all poles shall meet current safety standards such as using breakaway connections and the like.

(c) Ground-based equipment boxes must be located in areas with existing foliage or another aesthetic feature to obscure the view of the equipment box. Additional plantings may be required to meet this condition. Any new landscaping in the County Rights-of-Way must be approved by the County's Landscape Architect, who may require a Landscape Maintenance Agreement to be executed prior to approval.

(d) With the exception of electric meters and disconnect switches, equipment such as back-haul components shall not be mounted on the exterior of the pole.

(e) No exposed wiring or conduit is permitted.

(f) The grounding rod may not extend above the top of sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit.

(g) All pull boxes must be vehicle load bearing, comply with FDOT Standard specification 635 and be listed on the FDOT Approved Products List. A concrete apron must be installed around all pull boxes not located in the sidewalk. No new pull boxes may be located in pedestrian ramps.

(3) *Written Application Requirements.* No permit shall be issued unless an Applicant submits a written application to the County in accordance with this Article. An application for a permit shall be filed in the form and manner specified by the County (e.g., the County may require that any or all parts of such requests be filed in an electronic form of the County's choosing) and contain such information as may be

required by the County, including, at a minimum, the information contained in this section. The County may require the Applicant to provide such additional information as the County deems necessary to complete its review of a requested permit. At a minimum, the Applicant shall submit the following information in its permit application:

- (a) The name and address of the Applicant who is requesting the permit and written evidence that such Applicant has legal authority to place, maintain, or remove the Equipment or Facilities covered by the requested permit in the County Rights-of-Way and will own and control all such Equipment and Facilities after completion of construction;
- (b) A description of the functions, dimensions, and proposed locations of all Equipment and Facilities covered by the requested permit;
- (c) The specific location, depth, dimensions, and length of each proposed new or replacement duct, conduit, or other underground facility and the specific location, depth, dimensions, and height of any utility pole covered by the requested permit;
- (d) A description of the manner in which the work covered by the requested permit is to be undertaken (i.e., proposed construction methods and techniques) and a proposed date for commencement of work and an estimate of the time required to complete all such work;
- (e) A County-approved traffic control plan for vehicular and pedestrian traffic in the area to be affected by the proposed work;
- (f) Proof of insurance;
- (g) Identification and description of any utility or other distribution or transmission system to which any Equipment or Facility covered by the requested permit is to be connected or attached;
- (h) Drawings (in such detail and form as may be specified by the County) which show: (i) County Rights-of-Way in the area of the proposed construction; (ii) locations of all existing Equipment and Facilities in the area of proposed construction; (iii) all Equipment and Facilities to be installed or removed; and (iv) the routes of all transmission and distribution lines to be installed or removed; and (v) the sites of all other Equipment and Facilities to be installed or removed in the County Rights-of-Way; and
- (i) Construction and/or engineering drawings signed and sealed by a structural engineer (in sufficient detail and form as may be specified by the County to demonstrate structural stability of the Communications Facilities) which show the locations of all new Equipment and Facilities in

the County which the applicant plans to place in the County Rights-of-Way in the next 12 months or such other time period as may be specified by the County.

(j) Photographic or video documentation of the condition of the County Rights-of-Way in the area to be affected by the proposed work pre construction.

(4) *Fees.* To the extent allowed by state law, the Board is authorized to set reasonable fees and charges for the implementation of this article. Such fees shall be set by resolution. Fees charged will substantially finance the expenditures of administering this Article. No permit shall be granted until such time as all applicable fees are paid to the County.

SECTION 7. Section 118-107 of the Code is hereby created as follows:

Section 118-107. Administrative Variances.

(1) *Authority to Grant Administrative Variances.* The Planning and Development Services Department Director, or their designee, has the authority to grant an administrative variance up to ten (10) percent of the separation requirements contained herein for replacement of existing or new Communication Facilities, Wireless Facilities, or Wireless Support Structures. In making such a determination, the Planning and Development Services Director shall consider the following:

- (a) The permitting standards outlined in this Article.
- (b) Any hardship associated with the land, including the size, shape, and dimensions of lots, and the presence of protected native habitats as specified by the Comprehensive Plan that affect the configuration of roads on the property.
- (c) The risk of creating unfavorable precedent.
- (d) The technology currently in use for Communications Facilities.
- (e) The current available technology for Communications Facilities.
- (f) Any costs associated with upgrading Communications Facilities.
- (g) The risk of confusion that may cause or create delay in response time.
- (h) All applicable county, state, and federal regulations.

(2) *Fees.* To the extent allowed by state law, the Board is authorized to set reasonable fees and to process an administrative variance application. Such fees shall be set by

Board resolution. Fees charged will substantially finance the expenditures of administering this Article. No administrative variance shall be granted until such time as all applicable fees are paid to the County.

SECTION 8. Section 118-108 of the Code is hereby created as follows:

Section 118-107. Uniform Permit Conditions.

(1) *Discretion to Include Conditions.* The County may include conditions on permits to ensure adherence to the County Code of Ordinances and adequate protection of the public's health, safety and welfare. These conditions may include, but are not limited to, interim or temporary restoration, patching, or resurfacing of the County Rights-of-Way during the construction period.

(2) *Uniform Permit Conditions.* All permits issued pursuant to this Article shall contain the following conditions:

(a) The Applicant shall remove any rubbish, excess earth, rock, or other debris arising from or associated with any work performed in the County Rights-of-Way and any other property affected by such work on a frequent and regular basis (or as specifically directed by the County), to the satisfaction of the County, and at the expense of Applicant.

(b) Unless otherwise specified by the County, the Applicant shall illuminate through use of red lanterns, red lights, or red torches any building material, machinery, motor vehicle, equipment, facility, or other object placed in the County Rights-of-Way in connection with any work performed in the County Rights-of-Way, between sunset and sunrise. The permittee shall place such illumination at a distance of not more than five feet from each other along the width of any affected portion of the County Rights-of-Way (or as may otherwise be specified by the County) and not more than 15 feet from each other along the length of the affected portion of the County Rights-of-Way (or as may otherwise be specified by the County).

(c) Any work performed by an Applicant in the County Rights-of-Way, including restoration, shall be completed by the completion date specified in the permit or as otherwise specified or provided by the County. Upon completion of work (or at such time as may be specified by the County if construction is not completed by the completion date or construction is terminated for any reason, including revocation of the permit), the Applicant shall restore the County Rights-of-Way to a condition which is at least as good as its condition prior to commencement of work. The Applicant shall perform restoration of the County Rights-of-Way in accordance with any specifications or standards regarding materials or any other matter specified by the County. The County may establish generally

applicable restoration standards, which apply unless the County specifies other standards in a particular situation or may establish restoration standards on a case-by-case basis.

(d) If an Applicant fails to restore the County Rights-of-Way, including any paved surface, curbs, or fixtures, to a condition at least as good as its condition prior to commencement of construction or to complete such restoration work by the completion date specified in the permit or as otherwise specified or provided by the County, the County may perform any work or undertake any other activity which it deems necessary to complete such work and/or restore the County Rights-of-Way. The Applicant shall reimburse the County for any such costs in an amount equal to the sum of the actual cost of any work or other activity undertaken by the County plus 25 percent of such cost as compensation to the County for general overhead and administrative expenses associated with such work and shall pay such costs as directed by the County and not later than 20 calendar days after receipt of a bill.

(e) An Applicant shall guarantee and maintain any County Rights-of-Way which the County determines has been affected or altered by any excavation in the County Rights-of-Way or any break or cut in any surface of the County Rights-of-Way made by such Applicant for the 24 months following the date of completion of restoration of the affected or altered County Rights-of-Way either by the Applicant or by the County. Such Applicant shall take such action as the County deems necessary to correct any deficiencies in such restoration work within such 24-month period, shall commence such action not later than five calendar days after receipt of notice from the County or such other date as may be specified by the County, and complete such action promptly but not later than the date or any other deadline established by the County. The County may elect to perform any such work itself or undertake any other activity, which it deems necessary to correct any such deficiency during such 24-month period. Such Applicant or person shall be liable to the County for any costs incurred in connection with any such corrective action in an amount equal to the sum of the actual cost of any work or other activity undertaken by the County and shall make pay such costs as directed by the County and not later than 20 calendar days after receipt of a bill.

(f) An Applicant must provide photographic or video documentation of the condition of the County Rights-of-Way in the area affected by the proposed work post construction.

(g) An Applicant must provide as-built drawings (in such detail and form as may be specified by the County) which show the locations of all the Applicant's existing equipment and facilities in the County.

(h) No Applicant may permanently activate or place in service any Equipment or Facility in the County Rights-of-Way until such time as the County has approved such activation from the County. The Applicant shall provide notice of completion of construction of such Equipment or Facility.

(i) Indemnification as identified in Section 118-112 of this Code.

SECTION 9. Section 118-109 of the Code is hereby created as follows:

Section 118-109. Inspections.

The County may conduct any inspection it deems necessary to administer and enforce this Article or any other County Codes, ordinances, or regulations, or to enforce the conditions of any permit granted, or to enforce related regulations or policies. The County may order a work stoppage or revoke a permit, as it deems necessary in the case of a failure to comply with the provisions of this Article or the conditions of any permit, or to otherwise protect the public health, safety, and welfare.

SECTION 10. Section 118-110 of the Code is hereby created as follows:

Section 118-110. Abandonment.

(1) *Discontinuance of Use.* In the event that an Applicant discontinues the use of any Communications Facility, Wireless Facility, Small Wireless Facility, Micro Wireless Facility, or Utility Pole for a period of one hundred eighty (180) consecutive days, the County shall deem it to be abandoned. The Tower Administrator shall determine the date of abandonment. In reaching such determination, the Tower Administrator may request documentation and/or affidavits from the Applicant regarding the active use of the tower. If the Applicant fails to provide the requested documentation, a rebuttable presumption shall exist that the Applicant has abandoned the Communications Facility. The Applicant shall have ninety (90) days from the date of the notice of the Tower Administrator's determination of abandonment to do one of the following:

- (a) reactivate the use;
- (b) transfer ownership to another Applicant who makes actual use; or
- (c) dismantle and remove the use.

(2) *Expiration of Permit or Administrative Variance upon Removal.* After the expiration of the ninety (90) day period, or upon completion of dismantling and removal, any permit or administrative variance shall expire.

SECTION 11. Section 118-111 of the Code is hereby created as follows:

Section 118-111. Performance Guarantee.

(1) *Form of Surety.* An Applicant shall provide an executed County Rights-of-Way Use Bond or other form of surety acceptable to Land Development Services and the Office of the County Attorney in an amount of not less than \$15,000.00 or as established in the County Procurement Insurance Matrix, whichever is greater, to ensure against any damage that may take place within rights-of-way and easements. Surety in an amount less than \$15,000.00 is permissible if accompanied by a registered professional engineer's estimate that any cost of restoration will be less than \$15,000.00. All restoration shall leave the County Rights-of-Way or easement in a condition which is as good as or better than that which existed prior to construction.

(2) *Discretion to Waive or Reduce Surety.* The County may, in its sole discretion, waive or reduce the amount of the guarantee otherwise required pursuant to this section for a small project which involves minimal use of the County Rights-of-Way and is not likely to result in any damage to the County Rights-of-Way, any other property, or any person. Any such waiver must be in writing.

SECTION 12. Section 118-112 of the Code is hereby created as follows:

Section 118-112. Indemnification.

Any Applicant who makes any excavation in the County Rights-of-Way, makes any break or cut in any surface of the County Rights-of-Way, deposits any earth or other material in the County Rights-of-Way, places any equipment or facility in the County Rights-of-Way, modifies any Equipment or Facility, or performs any other work in the County Rights-of-Way shall defend, indemnify, and hold harmless the County from and against any liability or claim for damages or any other relief, including reasonable costs and expenses arising from or in connection with any act or failure to act by such Applicant in the County Rights-of-Way. Issuance of a permit or inspection of work shall not affect the County's right to indemnification. This section does not constitute a waiver of any defense or immunity as to any third party, which would otherwise be available to the County.

SECTION 13. Section 118-113 of the Code is hereby created as follows:

Section 118-113. Moving, altering, or relocating equipment and facilities.

(1) *Demand by County.* Upon demand by the County, an Applicant at their own costs shall move, alter, relocate, or remove equipment or facilities and restore any affected County Rights-of-Way as may be required by the County and shall complete any such work promptly or by such date as may be specified by the County.

(2) *Emergency Actions.* In the event of an emergency, the County may in its sole discretion, move, alter, relocate, or remove any equipment or facility and restore the affected County Rights-of-Way. The Applicant shall be responsible for repairing or

replacing any affected equipment or facility at its own cost and shall reimburse the County for any costs incurred by the County in moving, altering, relocating, or removing any equipment or facility and in restoring the affected County Rights-of-Way in an amount equal to the sum of the actual cost of moving, altering, relocating, or removing any equipment or facility and restoring the affected County Rights-of-Way associated with such work and shall make any payment due as directed by the County and not later than 20 calendar days after receipt of a bill.

(3) *Failure to Timely Comply with Demand.* If an Applicant fails to fully comply with a demand by the County pursuant to this section promptly or by the date specified by the County, the County shall have the right to:

(a) declare that all rights and title to and interest in the affected equipment or facilities are the property of the County; and/or

(b) move, alter, relocate, or remove any such equipment or facilities and restore the affected County Rights-of-Way as it deems necessary. The Applicant shall reimburse the County for any costs incurred in moving, altering, relocating, or removing any equipment or facilities and restoring the affected County Rights-of-Way in an amount equal to the sum of the actual cost of moving, altering, relocating, or removing any equipment or facilities and restoring the affected County Rights-of-Way associated with such work and shall make any payment due as directed by the County and not later than 20 calendar days after receipt of a bill.

SECTION 14. Section 118-114 of the Code is hereby created as follows:

Section 118-114. Communication Facilities Previously in Existence.

Communication Facilities in County Rights-of-Way legally permitted or installed on or before the effective date this Article was enacted shall be considered a permitted and lawful use. In the event that such Communication Facilities are destroyed or voluntarily removed, any new Communication Facility shall meet the requirements of this Article.

SECTION 15. Section 118-115 of the Code is hereby created as follows:

Section 118-115. Appeals.

(1) *Right to Appeal.* Any person adversely affected by the final decision of the Tower Administrator of this Code shall have the right to appeal that decision. An appeal shall be made in writing through an Appeal Form to the Tower Administrator within thirty calendar days of the final decision.

(2) *Comments and Recommendation from Direct of Planning and Development Services.* Upon receipt of an Appeal Form, the Tower Administrator shall forward it to the Sarasota County Director of Planning and Development Services for review within five business

days receipt thereof. The Sarasota County Director of Planning and Development Services shall provide written comments and recommendations to the County Administrator, with copies furnished to the appellant, within ten business days of receipt of the Appeal Form.

(3) *Response to Comments and Recommendations.* Appellant shall have ten business days to respond to the comments and recommendations of the Sarasota County Director of Planning and Development Services. The response should be directed to the County Administrator.

(4) *Ruling by County Administrator.* The County Administrator shall rule on the administrative appeal within fifteen business days of receipt of the comments and recommendations of the Sarasota County Director of Planning and Development Services. In considering whether to affirm, reverse, or modify the decision of the Tower Administrator, the County Administrator shall consider the comments and recommendations of the Sarasota County Director of Planning and Development Services and any comments from Appellant. In reaching a decision to affirm, reverse, or modify the decision of the Tower Administrator, the County Administrator shall consider the following factors:

- (a) The findings expressed by the Sarasota County Director of Planning and Development Services;
- (b) The permitting standards outlined in this Article;
- (c) Any hardship associated with the land, including the size, shape, and dimensions of lots, and the presence of protected native habitats as specified by the Comprehensive Plan that affect the configuration of roads on the property;
- (d) The risk of creating unfavorable precedent;
- (e) The technology currently in use for telecommunications facilities;
- (f) The current available technology for telecommunications facilities;
- (g) Any costs associated with upgrading telecommunications facilities;
- (h) The risk of confusion that may cause or create delay in response time;
- (i) All applicable county, state, and federal regulations

(5) The County Administrator's decision shall be provided to Appellant in writing.

SECTION 16. Section 118-116 of the Code is hereby created as follows:

Sec. 118-116. Severability.

If any section, sentence, clause or phrase of this Article is held to be invalid or unconstitutional by any court of competent jurisdiction, then such a ruling shall in no way affect the validity of the remaining portions of this Article.

Sections 118-117, 118-118, 118-119, and 118-120. Reserved.

SECTION 17. EFFECTIVE DATE.

This Ordinance shall take effect immediately upon filing with the office of the Florida Secretary of State.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, this day of 2017.

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

By: _____
Chairman

ATTEST:

KAREN E. RUSHING, Clerk of Circuit
Court and Ex-Officio Clerk of the Board of
County Commissioners of Sarasota County,
Florida

By: _____
Deputy Clerk