

ORDINANCE NO. 2018- 12

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2
3 AN ORDINANCE OF THE BOARD OF COUNTY
4 COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING,
5 CHAPTER 16 OF THE CODE OF LAWS ENTITLED “STREETS,
6 ROADS AND PUBLIC WAYS”; AMENDING ARTICLE V OF
7 CHAPTER 16 ENTITLED “COMMUNICATIONS FACILITIES
8 AND UTILITY POLES WITHIN THE PUBLIC RIGHTS-OF-WAY”;
9 AMENDING SECTION 16-113 ENTITLED “PERFORMANCE
10 BOND”; AMENDING SECTION 16-114 ENTITLED “SECURITY
11 FUND”; AMENDING SECTION 16-202 ENTITLED “AT-GRADE
12 FACILITY, BELOW-GRADE FACILITY, WIRELINE FACILITY,
13 AND UTILITY POLE PERMIT CONDITIONS”; AMENDING
14 SECTION 16-302 ENTITLED “PERMIT REQUIREMENTS;
15 APPLICATION; REVIEW TIMEFRAMES”; PROVIDING FOR
16 SEVERABILITY; PROVIDING FOR CONFLICTS; AND
17 PROVIDING AN EFFECTIVE DATE.

18
19 WHEREAS, this Ordinance promotes the public health, safety and general welfare by
20 regulating the siting of communications facilities and utility poles within the public rights-of-way;
21 and

22
23 WHEREAS, Section 337.401, *Florida Statutes*, addresses *inter alia*, the authority of local
24 governments to regulate the placement and maintenance of communications facilities in the public
25 rights-of-way; and

26
27 WHEREAS, Section 337.401(3)(g), *Florida Statutes*, provides that a local government may
28 not use its authority over the placement of facilities in its rights-of-way as a basis for asserting or
29 exercising regulatory control over a provider of communications services regarding matters within
30 the exclusive jurisdiction of the Florida Public Service Commission or Federal Communications
31 Commission, including, but not limited to, the operations, systems, qualifications, services, service
32 quality, service territory, and prices of a provider of communications services; and

33
34 WHEREAS, Section 337.401(7)(d)(12), *Florida Statutes*, provides that a local government
35 may adopt by ordinance provisions for placement of communications facilities in the rights-of-way
36 for insurance coverage, indemnification, performance bonds, security funds, force majeure,
37 abandonment, county liability, and county warranties provided such provisions are reasonable and
38 nondiscriminatory; and

39
40 WHEREAS, on December 12, 2017, the Board of County Commissioners adopted Ordinance
41 No. 2017-20, which created a new Article V of Chapter 16 of the Code of Laws of Leon County,
42 entitled “Communications Facilities and Utility Poles within the Public Rights-of-Way”; and

43
44 WHEREAS, during the 2018 Legislative Session, the Legislature passed and the Governor
45 approved CS/HB 7087 (Ch. 2018-118), amending Section 202.24, Florida Statutes, to preempt local
46 governments from levying or collecting any security fund required by ordinance from dealers of
47 communications services;

1
2 WHEREAS, the County's rights-of-way are essential for the travel of persons and the
3 transport of goods throughout the County and are a unique and physically limited resource requiring
4 proper management by the County in order to ensure public safety, maximize efficiency, minimize
5 costs to County taxpayers for the foregoing uses, reasonably balance the potential inconvenience to
6 and negative effects upon the public from the placement and maintenance of communications
7 facilities in the rights-of-way against the substantial benefits that accrue from such placement and
8 maintenance, and promote the public health, safety and general welfare; and
9

10 WHEREAS, adoption of the following Ordinance is necessary to satisfy the above objectives.
11

12 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
13 COMMISSIONERS OF LEON COUNTY, FLORIDA, that:
14

15 **SECTION 1.** Section 16-113 of Chapter 16, Article V, Division 1 of the Code of Laws of Leon
16 County, Florida, is hereby amended to read as follows:
17

18 **Sec. 16-113. Performance Bond.**
19

20 (a) Prior to issuance of any Permit in accordance with this Article, the Registrant shall be
21 required to obtain, pay for, and file with the County a performance bond. The performance bond shall
22 serve to guarantee proper performance under the requirements of this Article and the Permit, the
23 timeliness and quality of the Construction and restoration of the County's Public Rights-of-way, and
24 to secure, and enable the County to recover, all costs related to the restoration of the Public Rights-of-
25 way in the event the Registrant fails to make such restoration to the County's satisfaction or causes
26 damage to the Public Rights-of-way during Construction. The performance bond must name the
27 County as Obligee and be conditioned upon the full and faithful compliance by the Registrant with all
28 requirements, duties, and obligations imposed by the Permit and provisions of this Article during and
29 through completion of the Placement or Maintenance project. The performance bond shall be in a
30 form acceptable to the County and must be issued by a surety having an A.M. Best A-VII rating or
31 better and duly authorized to do business in the State of Florida.
32

- 33 (1) The performance bond shall be in the face amount of the total estimated costs of the
34 restoration of the Public Rights-of-way. No performance bond is required if the
35 estimated costs of the restoration of the Public Rights-of-way is less than two thousand
36 five hundred dollars (\$2,500) provided the Registrant has a fully replenished security
37 fund with the County, if required pursuant to Section 16-114.
38

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40

41 **SECTION 2.** Section 16-114 of Chapter 16, Article V, Division 1 of the Code of Laws of Leon
42 County, Florida, is hereby amended to read as follows:
43

44 **Sec. 16-114. Security Fund.**
45

1 (a) Prior to occupying or using the Public Rights-of-way, the Registrant shall be required to file
2 with the County a security fund in the form of cash deposit or irrevocable letter of credit in the sum of
3 ten thousand dollars (\$10,000) conditioned on the full and faithful performance by the Registrant of
4 all requirements, duties and obligations imposed upon the Registrant by the provisions of this Article,
5 including requirements to restore the Public Rights-of-way, to remove any Abandoned
6 Communications Facilities, and to avoid damage to other Utilities and facilities within the Public
7 Rights-of-way. Any cash deposit shall be held in a separate, non-interest bearing account. The letter
8 of credit shall be issued by a financial institution with a location in Leon County and shall be in a
9 form and issued by a financial institution acceptable to the County. A security fund may be submitted
10 to the County at the time of Registration.

11
12 (b) Prior to drawing from the security fund, the County shall notify the Registrant of the reason
13 for such withdraw and provide the Registrant no less than thirty (30) days to make payment or to
14 object to such withdraw. If the Registrant objects, the Registrant may appeal the County's notice of
15 withdraw pursuant to Section 16-110.

16
17 (c) Should the County draw upon the security fund, it shall promptly notify Provider, and the
18 Provider shall promptly restore the cash deposit or letter of credit to the full amount. The security
19 fund shall be maintained until the later of: (a) the effective date of transfer, sale or assignment by the
20 Provider of all of its Communications Facilities in the Public Rights-of-way; (b) twelve (12) months
21 after the removal or Abandonment by the Provider of all of its Communications Facilities and/or
22 Utility Poles in the Public Rights-of-way; or (c) six (6) months after the termination of Registration,
23 including any appeals undertaken. Upon the later of these events the cash deposit will be returned
24 without interest or the letter of credit may be canceled.

25
26 (d) In the event a Provider fails to perform any requirement, duty or obligation imposed upon it
27 by the provisions of this Article, there shall be recoverable, jointly and severally from the security
28 fund, any damages or loss suffered by the County as a result, including the full amount of any
29 compensation, indemnification, or cost of removal, relocation or Abandonment of any
30 Communications Facilities in the Public Rights-of-Way, plus reasonable attorneys' fees, up to the full
31 amount of the security fund.

32
33 (e) This Section shall not apply to dealers of communications services, as defined in Chapter 202,
34 Florida Statutes.

35
36 **SECTION 3.** Section 16-202 of Chapter 16, Article V, Division 2 of the Code of Laws of Leon
37 County, Florida, is hereby amended to read as follows:

38
39 **Sec. 16-202. At-grade Facility, Below-grade Facility, Wireline Facility, and Utility Pole Permit**
40 **Conditions.**

41
42 ***

43
44 (b) A Permit for a proposed At-grade Facility, Below-grade Facility, Wireline Facility, or Utility
45 Pole shall remain effective for and Construction must be completed within ~~sixty (60)~~ninety (90) days.
46 The County Engineer may extend the expiration date of the Permit for good cause.

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4 **SECTION 4.** Section 16-302 of Chapter 16, Article V, Division 3 of the Code of Laws of Leon
5 County, Florida, is hereby amended to read as follows:
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7 **Sec. 16-302. Permit Requirements; Application; Review Timeframes.**
8

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10
11 (d) *Permit Application.* As part of any Permit application to Place or Maintain a Small Wireless
12 Facility or in the Public Rights-of-way, the Registrant shall provide a Permit application or
13 Consolidated Permit Application that sets forth, at a minimum, the following:
14

- 15 (1) *Engineering plan.* An engineering plan signed and sealed by a Florida licensed
16 professional engineer, that includes:
17
- 18 a. The type of proposed Wireless Facility including the dimensions, volume,
19 height, footprint, and stealth design and concealment features of the proposed
20 Small Wireless Facility, and location of the proposed Small Wireless Facility,
21 including whether the proposed Small Wireless Facility is proposed within a
22 location subject to restrictions pursuant to Section 16-304(e)(1);
 - 23 b. The type of structure intended to support the Small Wireless Facility, such as
24 an Existing Structure, Repurposed Structure, or new Utility Pole intended to
25 support the Collocation of the Small Wireless Facility, including supporting
26 documentation that the structure can support the additional load of the
27 proposed Small Wireless Facility, if applicable;
 - 28 c. The distance of the proposed Small Wireless Facility, including ground-
29 mounted equipment, and nearby pavement, sidewalks, driveways, ramps, trees,
30 underground Utilities and other above-grade and below-grade structures and
31 Utilities located nearby within the Public Rights-of-way;
 - 32 d. The Global Positioning System (GPS) coordinates of the proposed Small
33 Wireless Facility. The GPS coordinates shall be based on the reading from a
34 handheld mobile GPS unit set to Datum NAD 83 or WGS84. GPS coordinates
35 based on Google Earth or similar application may be used where areas of
36 shading occur due to overhead canopy. GPS Coordinates shall be provided in
37 decimal degrees at a six (6) decimal point precision;
 - 38 e. Sufficient specificity demonstrating compliance with the Florida Building
39 Code and other Applicable Codes, including but not limited to sight lines or
40 clear zone standards and specifications for transportation, pedestrians, and
41 public safety as provided in the Florida Department of Transportation Plans
42 Preparation Manual, Florida Department of Transportation Manual of Uniform
43 Minimum Standards for Design, Construction and Maintenance for Streets and
44 Highways (the Florida Greenbook), and the Florida Department of
45 Transportation Design Standards, as amended, and the National Electric Safety
46 Code;

- 1 f. Trees and landscaping to be removed or impacted upon the Placement or
2 Maintenance of the proposed Small Wireless Facility. The Placement or
3 Maintenance of a Small Wireless Facility that results in the Tree Removal of a
4 Protected Tree within the Canopy Road Tree Protection Zones shall provide
5 additional information and documentation in accordance with Sections 10-
6 4.206(b)(2) and 10-4.206(c)(1). The Placement or Maintenance of a Small
7 Wireless Facility that results in the Tree Removal of a Protected Tree outside
8 of the Canopy Road Tree Protection Zone shall provide additional information
9 and documentation in accordance with Section 10-4.206(c)(1); and
10 g. Attestation that the proposed Small Wireless Facility is to be located within the
11 Public Rights-of-way, except that if the County Engineer reasonably disagrees
12 the Applicant shall submit a survey.

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16 (e) *Application review timeframes.* An application for a Permit for a Small Wireless Facility,
17 Repurposed Structure, and Utility Pole intended to support the Collocation of Small Wireless
18 Facilities within the Public Rights-of-way shall be reviewed by the County as follows:

- 19
20 (1) *Notice of application deficiency.* Within fourteen (14) days after the date of filing an
21 application, unless the timeframe is mutually extended, for the Collocation of a Small
22 Wireless Facility, Repurposed Structure, or Utility Pole intended to support the
23 Collocation of Small Wireless Facilities the County Engineer shall determine whether
24 the application is complete. If an application is deemed incomplete, the County
25 Engineer shall notify the Applicant by electronic mail and specifically identify the
26 missing information. An application shall be deemed complete if the County Engineer
27 fails to notify the Applicant otherwise within fourteen (14) days after the date of filing
28 the application.
29
30 (2) *Request for alternative location.* Within fourteen (14) days after the date of filing the
31 application for Collocation of a Small Wireless Facility, the County Engineer may
32 request that the proposed location of the Small Wireless Facility be moved to another
33 location and be placed on another Existing Structure or by placing a new Utility Pole
34 intended to support the Collocation of Small Wireless Facilities. The County and
35 Applicant may negotiate the alternative location, including objective design standards
36 and reasonable spacing requirements for ground-mounted equipment for thirty (30)
37 days after the County submits the request. The Applicant shall notify the County of its
38 acceptance or rejection within this thirty (30) day negotiating period. If the Applicant
39 accepts the alternative location, the application shall be deemed granted for the
40 agreed-upon alternative location and all other locations in the application. If the
41 requested alternative location is rejected by the Applicant, the County Engineer shall
42 approve or deny the original application within ninety (90) days after the date the
43 complete application was filed.
44
45 (3) *Application review period.* Within sixty (60) days after the date of filing an complete
46 application for the Collocation of a Small Wireless Facility, the County Engineer shall

1 approve or deny the application. If the County Engineer does not submit a request for
2 an alternate location as provided in subsection (2), the County Engineer and the
3 Applicant may mutually agree to extend the sixty (60) day application review period.
4

- 5 (4) *Notice of denial; resubmission.* Should the application be denied, the County Engineer
6 shall notify the Applicant by electronic mail on the day the application is denied and
7 specify in writing the basis for denial, including the specific Code provisions on which
8 the denial is based. The Applicant may cure the deficiencies identified by the County
9 Engineer and resubmit the application within thirty (30) days after the notice of denial
10 is sent. The County Engineer shall approve or deny the revised application within
11 thirty (30) days after the date of filing the revised application. Any subsequent review
12 shall be limited to the deficiencies cited in the notice of denial. A denial of a Permit
13 may be appealed pursuant to Section 16-110.
14
- 15 (5) *Consolidated Permit Applications.* The County may separately address each proposed
16 Collocated Small Wireless Facility for which incomplete information has been
17 received or which are denied.
18
- 19 (6) *Deemed approved.* Prior to commencing Construction, a Person with a deemed
20 approved Permit must be registered pursuant to Section 16-103, and must file a
21 performance bond and security fund with the County pursuant to this Article.
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23 **SECTION 5. Severability.** If any provisions or portion of this Ordinance is declared by any court
24 of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions
25 and portions of this Ordinance shall remain in full force and effect.
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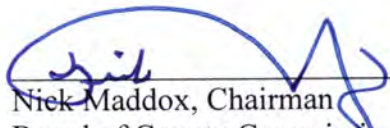
27 **SECTION 6. Conflicts.** All ordinances or parts of ordinances in conflict with the provisions of this
28 ordinance are hereby repealed to the extent of such conflict, except to the extent of any conflicts with
29 the Tallahassee-Leon County 2030 Comprehensive Plan as amended, which provisions shall prevail
30 over any parts of this ordinance which are inconsistent, either in whole or in part, with the said
31 Comprehensive Plan.
32

33 **SECTION 7. Effective Date.** This ordinance shall be effective according to law.
34

35 DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon County,
36 Florida, this 19 day of June, 2018.
37

38
39 LEON COUNTY, FLORIDA

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41
42 By:


43 Nick Maddox, Chairman
44 Board of County Commissioners
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46

1 ATTESTED BY:
2 Gwendolyn Marshall, Clerk of
3 & Comptroller
4 Leon County, Florida



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6
7 By: *Darlan Green for Gwendolyn Marshall*

10 APPROVED AS TO FORM:
11 Leon County Attorney's Office

12
13
14 By: *Herbert W. A. Thiele*
15 Herbert W. A. Thiele, Esq.
16 County Attorney

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18 A16-0644