

ORDINANCE NO. 17-22

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTER 6 AND CHAPTER 34, TO PROVIDE FOR REASONABLE RULES AND REGULATIONS FOR THE PLACING AND MAINTAINING OF WIRELESS FACILITIES WITHIN LEE COUNTY RIGHTS-OF-WAY CONSISTENT WITH FLORIDA STATUTES SECTION 337.401; PROVIDING FOR CONFLICTS OF LAW; SEVERABILITY; CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; and

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code which contains regulations applicable to the development of land in Lee County; and

WHEREAS, the Board of County Commissioners of Lee County, Florida, has adopted a comprehensive Land Development Code (LDC); and

WHEREAS, Goal 24 of the Lee County Comprehensive Land Use Plan (Lee Plan) mandates that the County maintain clear, concise, and enforceable development regulations that fully address on-site and off-site development impacts, yet function in a streamlined manner; and

WHEREAS, federal and state law require the nondiscriminatory treatment of providers of communications services when imposing rules or regulations governing the placement or maintenance of communications facilities in the public rights-of-way; and

WHEREAS, Florida Statutes Section 337.401, as recently amended, authorizes counties to prescribe and enforce reasonable rules and regulations for the placing and maintaining of wireless facilities within Lee County rights-of-way; and

WHEREAS, the Board of County Commissioners of Lee County, Florida, has adopted a comprehensive Land Development Code (LDC) which contains regulations applicable to the development of land in Lee County; and

WHEREAS, the Board of County Commissioners of Lee County, Florida, finds that in order to protect the health, safety and welfare of the citizens of Lee County and its visitors, and minimize any adverse impacts of communications facilities, it is necessary to establish certain standards within the limitations imposed by federal and state law;

WHEREAS, the Land Development Code Advisory Committee (LDCAC) was created by the Board of County Commissioners to explore amendments to the LDC; and

WHEREAS, the LDCAC has reviewed the proposed amendments to the LDC on October 13, 2017, and recommended approval of the proposed amendments as modified; and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on October 11, 2017, and recommended their adoption; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on October 23, 2017, and found them consistent with the Lee Plan, as indicated.

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

SECTION ONE: AMENDMENT TO LDC CHAPTER 6

Lee County Land Development Code Chapter 6 is amended as follows with strike through identifying deleted text and underline identifying new text.

Chapter 6 BUILDINGS AND BUILDING REGULATIONS ARTICLE II. CODES AND STANDARDS

DIVISION 3. BUILDING CODE

Section 6-117. Improvements or repairs not requiring a permit.

FBC Section 105.2 pertaining to work exempt from permit is amended to include the following:

(a) The following individual improvements or repairs performed within a 12-month period to a single individual dwelling unit do not require a permit. This exemption does not apply to any combination of items that exceed \$500.00 or improvements undertaken as part of a larger project or work being performed on multiple dwelling units:

(1)~~(a)~~ Replacement of windows, doors or garage doors, within any 12-month period, when less than 25 percent of the total glazed area.

(2)~~(b)~~ Replacement of a water heater.

(3)~~(c)~~ Replacement of plumbing or electric fixtures.

(4)~~(d)~~ Installation, replacement or repair of low voltage systems for the following:

(1) (i) Telephones;

(2) (ii) Data transmission;

~~(3)~~ (iii) Fire and security systems;

(4) (iv) Closed circuit and cable TV paging systems and speakers;

~~(5)~~ (v) Landscaping and pool lighting.

(5)~~(e)~~ Roof repair, including replacement of wood, within any 12-month period, when less than 25 percent of the total roof area.

(6)~~(f)~~ One hundred square feet or less of drywall, within any 12-month period, where no fire separation is involved.

~~(7)(g)~~ A building permit is not required for the following non-commercial accessory structures when placed on a residentially zoned property:

- ~~(1)~~ (i) Car cover. Must be less than 200 square feet in size and less than ten feet in height, with a wood, metal or plastic frame and covered with canvas, plastic or vinyl covering.
- ~~(2)~~ (ii) Garden or yard trellis. Must be less than 200 square feet in size and less than 12 feet in height.

Accessory building or structure setbacks must be observed and may not include electrical or plumbing.

~~(8)(h)~~ A wireless alarm system as defined in F.S. § 553.793, as in effect, including any ancillary components or equipment attached to the system.

(b) The replacement or modification of antennas, ancillary appurtenances, or other equipment located on a wireless communication facility, as defined in F.S. § 337.401, with facilities that are substantially similar, or of the same or smaller size, and that does not substantially change the physical dimensions of the wireless communications facility when viewed from ground level from surrounding properties does not require the issuance of a building permit.

(1) For purposes of this subsection (b), equipment modification or replacement will be considered to create a substantial change if any of the following criteria apply:

(i) Other than for towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station.

(ii) Other than for towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with

the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

- (iv) It entails any excavation or deployment outside the current site;
- (v) It would defeat the concealment elements of the eligible support structure;
or
- (vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in this subsection (b).

(2) Although issuance of a building permit is not required, an affidavit detailing the equipment being modified or replaced and any equipment being installed on the wireless communication facility, along with an attestation that the modification or replacement meets the requirements of this subsection (b), must be filed with the Building Official prior to commencement of work.

Sections 6-118 through 6-559 remain unchanged.

ARTICLE VII. SMALL WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Sec. 6-601. Intent and Purpose

It is the intent and purpose of the County to promote the public health, safety, and welfare by providing for the placement and maintenance of communications facilities in the public rights-of-way within the County; adopting and administering reasonable rules and regulations not inconsistent with State and Federal law, including, but not limited to, F.S. § 337.401, as may be amended from time to time; the Communications Act of 1934, as amended; and other state and federal laws; establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities in public rights-of-way by communications services providers; and minimizing disruption to the public rights-of-way. In regulating the County right-of-way, the County shall be governed by and shall comply with all applicable Federal and State laws.

Sec. 6-602. Definitions

For purposes of this Article, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined shall be construed to have the common and ordinary meaning.

Abandonment means the permanent cessation of the use of a Communications Facility; provided that this term shall not include cessation of all use of a Facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of

all use of a cable within a conduit, where the conduit continues to be used, shall not be "Abandonment" of a Facility in Public Rights-of-Way. It may also mean the discontinued use of obsolete technology in favor of new technology, which would require the removal of the discontinued, abandoned technology.

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

Applicant means any person, firm, partnership or corporation who submits an application to the County for a permit to locate a communications facility in the right-of-way and is a wireless provider.

Applicable codes means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction or property or injury to persons, and the regulations and design standards contained in this Article.

Colocate or colocation 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.

Communications Facility or Communications System means any permanent or temporary plant, equipment and property, including, but not limited to, cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathways placed or maintained, or to be placed or maintained, upon, under, over, or along any public rights-of-way of the County and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer Communications Services. This includes any facility that may be used to provide Communications Services. Multiple cables, conduits, strands, or fibers located within the same conduit shall be considered one Communications Facility.

Communications Facility Provider means a person who is engaged, directly or indirectly, in the business of leasing, licensing, subleasing, subletting or hiring, to one or more Communications Service Providers, all or a portion of the tangible personal property used in a Communications Facility, including, but not limited to, towers, poles, tower space, antennas, transmitters, and transmission lines placed or maintained upon, under, over, or along any public rights-of-way of the County. Provisions of this Article that apply only to Communications Facility Providers shall not apply to Communications Services Providers, even if the Communication Services Provider also operates, licenses, leases, subleases, or sublets Communications Facilities.

Communications Services shall be as defined in F.S. § 202.11(1).

Communications Services Provider means any person, including a municipality or county, providing Communications Services through the placement or maintenance of a Communications Facility in Public Rights-of-Way. Communications Services Provider shall also include any person, including a municipality or county that places or maintains a Communications Facility in Public Rights-of-Way but does not provide Communications Services.

Communications Services Tax means the local communications services tax authorized to be levied and collected by counties and municipalities upon charges for Communications Services pursuant to F.S. § 202.19.

County means Lee County, Florida.

Dealer means a person registered with the Florida Department of Revenue as a provider of communications services in this state.

FCC means the Federal Communications Commission.

In Public Rights-of-Way or in the Public Rights-of-Way means in, on over, under or across the Public Rights-of-Way.

Micro wireless facility means a small wireless facility having dimensions not larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, no longer than eleven (11) inches.

Pass-through Provider includes any person (other than a Communications Services Provider) who places or maintains a Communications Facility in the road or rights-of-way of a municipality or county that levies a tax pursuant to F.S. Ch. 202, and who does not remit taxes imposed by that municipality or county pursuant to F.S. Ch. 202, as per F.S. § 337.401, as may be amended from time to time. A pass-through provider does not provide communications services to retail customers in the County. Provisions in this Article that apply only to pass-through providers shall not apply to Communications Services Providers that provide the services identical or similar to those provided by Pass-through Providers.

Person includes any individual, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include the County to the extent the County acts as a Communications Services Provider.

Place or maintain or placement or maintenance or placing or maintaining means to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate, or relocate under, over, or along any public rights-of-way of the County. A person that owns or exercises physical control over Communications Facilities in Public rights-of-way, such as the physical control to maintain and repair, is "placing or maintaining" the Facilities. A Person providing service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" facilities in the Public Rights-of-Way.

Public Rights-of-Way means a public right-of-way, highway, street, bridge, tunnel or alley for which the County is the authority that has jurisdiction and control 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 Rights-of-Way" shall not include private property or easements over private property. "Public Rights-of-Way" shall not include any real or personal County-owned property except as described above and shall not include County buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the Public Right-of-Way.

Registrant means any person that has registered with the County in accordance with the provisions of section 6-603 and holds an effective registration.

Registration or Register means the process described in this Article whereby a Communications Services Provider, Communications Facilities Provider or Pass-through Provider submits certain information to the County as more fully described herein.

Small wireless facility means a wireless facility that meets both 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, cut-off switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

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 fifteen (15) feet in height or less unless the County 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 certificated by the Florida Public Service Commission (FPSC) 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.

Sec. 6-603. Registration for placing or maintaining small wireless facilities in public rights-of-way.

(a) A Communications Services Provider, Communications Facility Provider, or Pass-through Provider that desires to place or maintain a Communications Facility in public rights-of-way in the County shall first register with the County in accordance with this Article. This Article provides no right of access to the public rights-of-way for (i) persons other than Communications Services Providers, or (ii) businesses other than those providing Communications Services. Other uses of the public rights-of-way reasonably related to the provision of Communications Services may be allowed in the reasonable discretion of the County. Subject to the terms and conditions prescribed in this Article, a registrant may place or maintain a Communications Facility in public rights-of-way.

(b) A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Registration under this Article governs only the placement or maintenance of Communications Facilities in public rights-of-way. Other ordinances, codes, or regulations may apply to the placement or maintenance of Communications Facilities other than those located in public rights-of-way. Registration does not excuse a registrant from obtaining appropriate access or pole attachment agreements before locating its facilities on the County's or another person's or business's facilities. Registration does not excuse a registrant from complying with all applicable County ordinances, codes or regulations, including this Article.

(c) Each Communications Services Provider, Communications Facility Provider, or Pass-through Provider that desires to place or maintain a Communications Facility, including without limitation, a colocation, in public rights-of-way in the County, shall file an application for a single registration with the County which shall include the following information:

(1) Name of the registrant;

(2) Name, address and telephone number of the registrant's primary contact person and the person to contact in case of an emergency;

(3) Evidence of the insurance coverage required under this Article and acknowledgement that the registrant has received and reviewed a copy of this Article, which acknowledgment shall not be deemed an agreement; and

(4) The number of the registrant's certificate of authorization or license to provide Communications Services issued by the Florida Public Service Commission (PSC) or the Federal Communications Commission (FCC). A registrant proposing to place or maintain a wireless communications facility operating on a spectrum licensed by the FCC shall supply the file number of the FCC license authorizing such wireless service.

(d) Registration application fees: \$100, or the maximum amount allowed under F.S. § 337.401, whichever is lower.

(e) The County shall review the information submitted by the applicant. Such review shall be by the Director or his or her designee. If the applicant submits information in accordance with subsection (c) above, the registration shall be effective and the County shall notify the applicant of the effectiveness of the registration in writing. If the County determines that the information has not been submitted in accordance with subsection (c) above, the County shall notify the applicant, in writing, of the non-effectiveness of registration, and reasons for the non-effectiveness. The County shall respond to an application for registration within thirty (30) days after receipt of registration information. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration under the provision of this Article. An applicant has thirty (30) days after receipt of the notice of non-effectiveness of registration to appeal the decision as provided in section 6-609.

(f) A registrant may cancel a registration upon written notice to the County stating that it will no longer place or maintain any Communications Facilities in public rights-of-way within the County and will no longer need to obtain permits to perform work in public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any Communications Facilities in public rights-of-way.

(g) Registration does not in and of itself establish a right to place or maintain, or the priority for the placement or maintenance of a Communications Facility in public rights-of-way within the County but shall provide the registrant with the right to apply for a permit. Registrations are expressly subject to any future amendment to or replacement of this Article and are further subject to any additional County ordinances, as well as any state or federal laws that may be enacted.

(h) A registrant shall renew its registration with the County by April 1 of even numbered years in accordance with the registration requirements in this section, except that a registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (c), a registrant shall provide updated information to the County. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the County restricting the issuance of additional permits until the Communications Services Provider has complied with the registration requirements of this Article.

(i) An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.

Sec. 6-604. Notice of transfer, sale, or assignment of assets in public rights-of-way.

(a) If a registrant transfers, sells, or assigns its assets located in public rights-of-way incident to a transfer, sale, or assignment of the registrant's assets, the transferee, buyer, or assignee shall be obligated to comply with the terms of this Article. Written notice of any such transfer, sale, or assignment shall be provided by such registrant to the County within twenty (20) days after the effective date of the transfer, sale, or assignment. If the transferee, buyer, or assignee is a current registrant, then the transferee, buyer, or assignee is not required to re-register. If the transferee, buyer, or assignee is not a current registrant, then the transferee, buyer, or assignee shall register as provided in section 6-603 within sixty (60) days of the transfer, sale, or assignment. If permit applications are pending in the registrant's name, the transferee, buyer, or assignee shall notify

the County that the transferee, buyer, or assignee is the new applicant after the requirements of this section have been satisfied.

(b) The County does not have the right to approve or deny registrants' asset transfers or assignments to Communications Services Providers operating at least one (1) Communications Facility within the County, and the failure to comply with this section does not void any such asset transfer or assignment. The County reserves the right to exclude persons or entities other than Communications Services Providers or Pass-through Providers from its rights-of-way. Transfers or assignments of a Communications Facility to persons or entities other than a Communications Services Provider or Pass-through Provider who will operate at least one Communications Facility within the County requires compliance with this section to insure continued use of the public rights-of-way.

Sec. 6-605. Permit Application.

(a) A permit application to place a new or replace an existing communications facility in public rights-of-way shall include the following:

(1) The location of the proposed communications facility, including a description of the facilities to be installed, where the facilities are to be located, and the approximate size of the facilities that will be located in public rights-of-way;

(2) Proposals to locate a new utility pole in the right-of-way shall include engineering documentation demonstrating why an existing utility pole is not better suited or feasible;

(3) A description of the manner in which the proposed communications facility will be installed (i.e. anticipated construction methods or techniques);

(4) If applicable, a statement indicating whether the proposed communications facility will permit colocation;

(5) A maintenance of traffic plan for any disruption of the public rights-of-way, in accordance with the standards promulgated by the Florida Department of Transportation;

(6) In order to assess the impact on right-of-way resources, effects on neighboring properties, and potential for colocations or repurposed structures, a permit application for construction of a new utility pole in the public rights-of-way shall include information on the ability of the public rights-of-way to accommodate the proposed facility, including information that identifies all above-ground and below ground structures including, but not limited to, light poles, power poles, equipment boxes, antennae, and underground water, sewer, electric and gas lines currently existing in the public rights-of-way in the County within a five hundred (500) foot radius of the proposed facility, if available (such information may be provided without certification as to accuracy, to the extent obtained from other registrants with facilities in the public rights-of-way). The five hundred (500) foot distance requirement may be modified if the County Administrator, or designee, determines that the proposed location: (i) better serves the County's interests in safe, aesthetic, efficient and effective management of the public rights-of-way; (ii) is necessary to address a documented lack of capacity for one or more carriers; or (iii) will help minimize the total number of communication facilities necessary to serve a particular area;

(7) A timetable for construction of the project or each phase thereof, and the areas of the County that will be affected;

(8) Whether all or any portion of the proposed facilities will be rented, hired, leased, sublet, or licensed from or to any third party and, if so, the identity, and contact information of the third party;

(9) If appropriate, given the facility proposed, a certified estimate of the cost of restoration for the public rights-of-way, subject to approval by the County Engineer or designee;

(10) Such additional information as the County finds reasonably necessary, with respect to the placement or maintenance of the communications facility that is the subject of the permit application, to review such permit application.

(b) Within fourteen (14) days after the date of filing an application, 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. The County and the applicant may, for up to thirty (30) days after the date of the request, negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment. If the alternative location cannot be agreed upon by the parties, the applicant must notify the County and the County must grant or deny the application within ninety (90) days after the date the application was filed. The 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. If the County does not request an alternative location, the County must grant or deny the application within sixty (60) days after the date the application was filed.

Sec. 6-606. Standards for placement or maintenance of a communications facility in public rights-of-way.

(a) A registrant shall at all times comply with and abide by all applicable provisions of state and federal law and county ordinances, codes, and regulations in placing or maintaining a Communications Facility in public rights-of-way.

(b) A registrant shall not commence to place or maintain a communications facility in public rights-of-way, including, without limitation a colocation, until all applicable permits, if any, have been issued by the County or other appropriate authority, provided, however, that in the event of an emergency, a registrant may restore its damaged facilities in the right-of-way with facilities of the same size, character and quality, without first applying for or receiving a permit. 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 thirty (30) small wireless facilities.

(c) The term "emergency" means a condition that affects the public's health, safety, or welfare, which includes an unplanned out-of-service condition of a pre-existing service. The registrant shall provide prompt notice to the County of the placement or maintenance of a Communications Facility in public rights-of-way in the event of an emergency and shall be required to obtain an after-the-fact permit if a permit would have originally been required to perform the work undertaken in public rights-of-way due to an emergency. The registrant acknowledges that, as a condition of granting such permits, the County may impose all Applicable

Codes governing the placement, relocation, or maintenance of a Communications Facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The County may issue a blanket permit to cover certain activities that may otherwise require individual permits.

(d) Communications Facilities Providers and Pass-through Providers understand and acknowledge that the County strongly favors strengthening utility infrastructure, in particular as it relates to flooding and hurricane-related events. Subject to any applicable regulatory approval, Communications Facility Providers and Pass-through Providers will adopt and implement an infrastructure hardening plan for any facilities located within the County.

(e) To the extent not otherwise prohibited by state or federal law, the County shall have the power to prohibit or limit the placement of new or additional Wireless Support Structures within a particular area of public rights-of-way.

(f) All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin any of the public rights-of-way. The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way, as well as joint trenching or the colocation of facilities in existing conduit, is required. The County Engineer or designee may promulgate reasonable rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way consistent with this Article and other applicable law.

(g) All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.

(h) The registrant shall notify the County prior to commencement of construction in the right-of-way and upon completion of the work.

(i) After the completion of any placement or maintenance of a communications facility in public rights-of-way, or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to their original condition before such work. If the registrant fails to make such restoration within thirty (30) days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the County may perform restoration and charge the costs of the restoration against the registrant in accordance with F.S. § 337.402, as it may be amended. For twelve (12) months following the original completion of the work, the registrant shall guarantee its restoration work and shall correct, at its own expense, any restoration work that does not satisfy the requirements of this Article.

(j) Removal or relocation, at the direction of the County, of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, as they may be amended.

(k) A permit from the County constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this Article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.

(l) A registrant shall maintain its Communications Facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.

(m) For installations involving excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. Ch. 556, as it may be amended.

(n) The registrant shall use and exercise due caution, care, and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard worksite areas.

(o) Upon the request of the County, and as notified by the County of the other work, construction, installation, or repairs referenced below, a registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation, or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject public rights-of-way, and the registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the public rights-of-way.

(p) A registrant shall not place or maintain its communications facilities so that they interfere with, displace, damage, or destroy any facilities, including, but not limited to, sewers, gas or water mains, storm drains, pipes, cables, or conduits of the County or any other entity's facilities lawfully occupying the public rights- of-way.

(q) The County makes no warranties or representations regarding the fitness, suitability, or availability of the County's public rights-of-way for the registrant's Communications Facilities, and any performance of work, costs incurred, or services provided by the registrant shall be at the registrant's sole risk. Nothing in this Article shall affect the County's authority to add, vacate, or abandon public rights-of-way, and the County makes no warranties or representations regarding the availability of any added, vacated, or abandoned public rights-of-way for communications facilities.

(r) The County shall have the right to make such inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Article.

(s) A permit application to place a new or replace an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised "as built" plans. The plans shall be in a hard copy format or an electronic format specified by the County, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the County.

(t) The County reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables, or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the County in public rights-of-way occupied by the registrant. The County further reserves, without limitation, the right to alter, change, or cause to be changed the grading, installation, relocation, or width of the public rights-of-way within the limits of the County and within said limits as same may, from time to time.

be altered. Should the registrant be required to relocate its facilities in conjunction with such installation and alteration, the registrant shall be required to pay all costs associated with such relocation.

(u) A registrant shall, on the request of any person holding a permit issued by the county, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than thirty (30) days' advance written notice to arrange for such temporary relocation.

(v) A small wireless facility that is a portion of a communication facility, such as an antenna which is attached to a legally maintained vertical structure in the public rights-of-way shall be subject to the following regulations:

(1) Such small wireless facilities may not extend more than ten (10) feet above the highest point of the vertical structure;

(2) Small wireless facilities located on new or existing utility poles may be required to locate equipment other than the antenna (such as meter boxes) at a location separate from the utility pole. This requirement may be waived by the County upon a showing that such a requirement is not reasonably compatible for the particular location or that the requirement imposes an excessive expense to the applicant.

(3) The County may require stealth design and color matching of small wireless facilities in areas where the County has provided facilities such as decorative light poles and other streetscape enhancements. This requirement may be waived by the County upon a showing that such a requirement is not reasonably compatible for the particular location or that the requirement imposes an excessive expense to the applicant.

(4) The height for a new utility pole erected to support a small wireless facility is limited to the tallest utility pole located in the same right-of-way and that existed on July 1, 2017 measured from grade in place within five hundred (500) feet of the proposed location of the new utility pole. If there is not a utility pole within five hundred (500) feet of the proposed location, the height of the new utility pole shall not exceed fifty (50) feet.

(5) Such wireless facilities shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation, or law.

(6) Such wireless facilities shall comply with any applicable Federal Communications Commission Emissions Standards.

(7) The design, construction, and installation of wireless facilities shall comply with any applicable local building codes.

(8) No commercial advertising shall be allowed on wireless facilities.

(9) Any accessory equipment and related housing in the public rights-of-way that are used in conjunction with such a wireless facility shall comply with any applicable local

rules, regulations, ordinances, or laws governing the placement and design of such equipment.

(10) The rate to collocate small wireless facilities on a County utility pole shall be \$150 per pole annually.

(w) Vertical structures other than Utility Poles, such as towers, whose sole purpose is to serve as a mounting device for antennae, are expressly prohibited from being located in any public rights-of-way unless applicable zoning and land use laws or regulations allow such structures to be placed within the zoning district in which such public rights-of-way are located or to which they are adjacent.

Sec. 6-607. Permit Review.

(a) Within fourteen (14) days after receiving an application, the County will determine and notify the applicant by electronic mail whether the application is complete. If an application is deemed incomplete, the County will specifically identify the missing information and allow the applicant to submit the missing information. If the County fails to notify the applicant of deficiencies within fourteen (14) days after receiving the application, the application will be deemed complete.

(b) The County will process all applications in the same manner. A complete application will be deemed approved if the county fails to approve or deny the application within sixty (60) days of receipt. The application review period may be extended upon mutual agreement of the parties.

(c) A permit issued pursuant to an approved application shall remain effective for one (1) year unless extended by the County.

(d) The County will notify the applicant of approval or denial by electronic mail. If the application is denied, the County shall specify in writing the basis for denial, including the specific code provisions on which the denial was based. An applicant may cure the deficiencies and resubmit the application within thirty (30) days after notice of the denial is sent to the applicant. The County shall approve or deny the revised application within thirty (30) days after receipt of the application, or the application shall be deemed approved.

(e) The County may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:

(1) Materially interferes with the safe operation of traffic control equipment.

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

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

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

(5) Fails to comply with applicable codes.

Sec. 6-608. Suspension of Permits.

(a) The County may suspend a permit for work in the public rights-of-way for one (1) or more of the following reasons:

(1) Violation of permit conditions, including conditions set forth in the permit, this Article, or other applicable County ordinances, codes, or regulations governing placement or maintenance of communications facilities in public rights-of-way;

(2) Misrepresentation or fraud by registrant in a registration or permit application to the county;

(3) Failure to properly renew or ineffectiveness of the registration; or

(4) Failure to relocate or remove facilities as may be lawfully required by the County.

(b) The County shall provide notice and an opportunity to cure any violation of subsections (1) through (4) above, each of which shall be reasonable under the circumstances.

Sec. 6-609. Appeals.

Final, written decisions of the County or designee suspending or denying a permit, denying an application for a registration, or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the County within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The County Administrator shall hear the appeal. The hearing shall occur within forty-five (45) days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within twenty (20) days of the hearing. Upon correction of the grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.

Sec. 6-610. Involuntary termination of registration.

(a) The County may terminate a registration if:

(1) A federal or state authority suspends, denies, or revokes a registrant's certification or license to provide communications services;

(2) The registrant's placement or maintenance of a Communications Facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way, and the registrant fails to remedy the danger promptly after receipt of written notice; or

(3) The registrant ceases to use all of its Communications Facilities in public rights-of-way and has not complied with section 6-615 of this Article.

(b) Prior to termination, the registrant shall be notified, in writing, by the County Engineer or designee. Said notice shall set forth all matters pertinent to the proposed termination action, including which of subsections (1) through (3) above is applicable as the reason therefor, and describing the proposed action of the County with respect thereto. The registrant shall have sixty (60) days after receipt of such notice within which to address or eliminate the reason or within

which to present a plan satisfactory to the County Engineer or designee to accomplish same. If the plan is rejected, the County Engineer or designee shall provide written notice of such rejection to the registrant and shall make a recommendation to the County Administrator regarding a decision as to termination of registration. A registrant shall be notified in writing of a decision by the County Administrator to terminate its registration. Such written notice shall be sent within seven (7) days after the decision.

(c) In the event of termination, the former registrant shall:

(1) Notify the County of the assumption or anticipated assumption by another registrant of ownership of the registrant's Communications Facilities in public rights-of-way; or

(2) Provide the County with an acceptable plan for disposition of its Communications Facilities in public rights-of-way. If a registrant fails to comply with this subsection (c), which determination of non-compliance is subject to appeal as provided in section 6-609, the County may exercise any remedies or rights it has at law or in equity, including, but not limited to, taking possession of the facilities where another person has not assumed the ownership or physical control of the facilities or requiring the registrant, within ninety (90) days of the termination, or such longer period as may be agreed to by the registrant, to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to their original condition before the removal.

(d) In any event, a terminated registrant shall take such steps as are necessary to render every portion of the Communications Facilities remaining in the public rights-of-way of the County safe.

(e) In the event of termination of a registration, this section does not authorize the County to cause the removal of Communications Facilities used to provide another service for which the registrant or another entity that owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is registered with the county, if required.

Sec. 6-611. Existing communication facilities in public rights-of-way.

Any Communications Services Provider, Pass-through Provider, or Communications Facility Provider, with an existing Communications Facility in the public rights-of-way of the County has sixty (60) days from the effective date of this Article to comply with the terms of this Article, including, but not limited to, registration, or be in violation thereof.

Sec. 6-612. Insurance.

(a) A registrant shall provide, pay for, and maintain, satisfactory to the County, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having a rating reasonably acceptable to the County. All liability policies shall provide that the County is an additional insured as to the activities under this Article. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by an authorized representative of the insurance company and shall be filed and maintained with the County annually. Thirty (30) days' advance written notice by registered, certified mail, or facsimile must be given to the County of any

cancellation, intent not to renew, or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the County.

(b) The limits of coverage of insurance required shall be not less than the following:

(1) Workers' Compensation and Employer's Liability Insurance: Workers' Compensation – Florida Statutory Requirements; Employer's Liability – \$1,000,000.00 limit each accident.

(2) Comprehensive general liability bodily injury and property damage: \$1,000,000.00 combined single limit each occurrence.

(3) Automobile liability bodily injury and property damage: \$1,000,000.00 combined single limit each accident.

Sec. 6-613. Indemnification.

(a) A registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the County, its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the County arising out of the placement or maintenance of its Communications Facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Article, provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or wilful acts of the County. This provision includes, but is not limited to, the County's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. The County agrees to notify the registrant, in writing, within a reasonable time of the County receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the County from participating in the defense of any litigation utilizing its own counsel at its own cost if in the County's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted: (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or (2) as a waiver of sovereign immunity beyond the waiver provided in §768.28, Florida Statutes, as it may be amended from time to time.

(b) The indemnification requirements shall survive and be in effect after the termination or cancellation of a registration.

Sec. 28-6-614. Surety Bond.

(a) Prior to issuing a permit where the work under the permit will require restoration of public rights-of-way, the County may require a surety bond to secure proper performance under the requirements of any permits and the restoration of the public rights-of-way. Twelve (12) months after the completion of the restoration in public rights-of-way in accordance with the bond, the registrant may eliminate the bond. The County, however, may subsequently require a new bond for any subsequent work in the public rights-of-way. The surety bond shall be issued by a surety having a rating reasonably acceptable to the County; shall be subject to the approval of the County Attorney; and shall provide that: "For twelve (12) months after issuance of this bond, this bond may not be cancelled, or allowed to lapse, until sixty (60) days after receipt by the County, by

certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(b) The rights reserved by the County with respect to any surety bond established pursuant to this section are in addition to all other rights and remedies the County may have under this Article, or at law or equity.

(c) The rights reserved to the County under this section are in addition to all other rights of the County, whether reserved in this Article, or authorized by other law, and no action, proceeding or exercise of a right with respect to the surety bond will affect any other right the County may have.

Sec. 6-615. Abandonment of communications facility.

(a) Upon abandonment of a registrant's Communications Facility in the public right-of-way, the registrant shall notify the County, in writing, within ninety (90) days. Additionally, registrants shall comply with the provisions of section 6-603 relating to bi-annual registration and updating of facilities.

(b) The County may, at its discretion, direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's sole expense if the County determines that the abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but not be limited to, a determination that such facility: (1) compromises safety at any time for any public rights-of-way user or during construction or maintenance activities in public rights-of-way; (2) prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available; or (3) creates a maintenance condition that is disruptive to the public rights-of-way's use. In the event of (2) above, the County may require the third person to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.

(c) In the event that the County does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the County, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the County or another person at such third party's cost.

(d) If the registrant fails to remove all or any portion of an abandoned facility within a reasonable period of time, as directed by the County, but not to exceed sixty (60) days, the County may perform such removal and charge the cost of the removal against the registrant.

Sec. 6-616. Pass-through provider and communications facility provider fees and charges.

(a) Pass-through Providers and Communications Facility Providers that place or maintain one or more Communications Facilities upon, under, over, or along any public rights-of-way of the County shall pay the County an annual fee not to exceed the maximum annual amount allowed under F.S. § 337.401, as amended. For purposes of calculating payments hereunder, each separate pole or tower installed or maintained by a Pass-through Provider of Communications Facility Provider for purposes of supporting antennas for other over-the-air radio transmission or reception equipment in the public rights-of-way shall comprise a separate Communications Facility subject to assessment of a separate permit fee in the amount of \$500.00 per linear mile.

or portion thereof, up to the maximum amount allowed under F.S. § 337.401, whichever is greater, to the extent that F.S. § 337.401 is applicable.

(b) The annual amount referenced in subsection (a) above shall be due and payable on October 1 of every year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one percent per month from the date due until paid. The acceptance of any payment required by the County hereunder shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the County may have for additional sums due and payable or authorization to install any facilities in the County's right-of-way.

SECTION TWO: AMENDMENT TO LDC CHAPTER 34

Lee County Land Development Code Chapter 34 is amended as follows with strike through identifying deleted text and underline identifying new text.

Chapter 34 ZONING ARTICLE VIII. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 11. WIRELESS COMMUNICATION FACILITIES

Section 34-1442. Definitions

For purposes of this division, certain terms are defined as follows:

Amateur radio antenna will have the meaning set forth in section 34-1175.

Ancillary appurtenances means equipment associated with a wireless communications facility including, but not limited to: Antennas, antenna concealment screening, attaching devices, transmission lines, and other equipment associated with a wireless communications facility. Ancillary appurtenances do not include equipment enclosures.

Antenna means any apparatus, or group of apparatus, designed for the transmitting and receiving of electromagnetic waves that includes, but is not limited to, telephonic, radio, or television communications. Antennas include omni-directional (whip) antennas, sectorized (panel) antennas, microwave dish antennas, multi or single bay (FM & TV), yaggie, or parabolic (dish) antennas, but do not include satellite earth stations.

Antenna concealment screening means panels, covers, or other methods that screen the visibility of antennas.

Antenna, dish means a parabolic, spherical, or elliptical antenna intended to receive wireless communications.

Antenna, flush-mounted means a dual-polarization antenna that is attached flush to an antenna-supporting structure, without the use of sidearms or other extension devices.

Antenna, panel means a directional antenna, with more than one panel per sector, designed to transmit and/or receive signals in a directional pattern that is less than 360 degrees.

Antenna, roof-mounted means an antenna mounted on the roof of a building, that extends above the roofline by 20 feet or less. An antenna, mounted on the roof of a building, that extends more than 20 feet above the roofline is an antenna-supporting structure.

Antenna, surface-mounted means an antenna that is attached to the surface or facade of a building or structure other than an antenna-supporting structure including, without limitation, billboards, utility poles and water towers.

Antenna, whip means a cylindrical, omni-directional antenna designed to transmit and/or receive signals in a 360-degree pattern.

Antenna-supporting structure means a vertically projecting structure, including any foundation, designed and primarily used to support one or more antennas or which constitutes an antenna itself. Antenna-supporting structures include roof-mounted antennas that extend above a roofline by more than 20 feet. For purposes of this division, a utility pole not exceeding 40 feet in height will not be construed to be an antenna-supporting structure.

Antenna-supporting structure, broadcast means an antenna-supporting structure, including replacements, which contains antennas that transmit signals for broadcast radio and television communications.

Antenna-supporting structure, guyed means a style of antenna-supporting structure supported by a series of guy wires that are connected to anchors placed in the ground or on a building.

Antenna-supporting structure, lattice means a style of stand-alone antenna-supporting structure, not supported by guy wires, which consists of vertical and horizontal supports with multiple legs and cross-bracing.

Antenna-supporting structure, monopole means a style of stand-alone antenna-supporting structure that is composed of a single shaft attached to a foundation with external antennas. This type of antenna-supporting structure is designed to support itself without the use of guy wires or other stabilization devices.

Antenna-supporting structure, replacement means an antenna-supporting structure intended to replace an antenna-supporting structure in existence at the time of application.

Available space means the space on an antenna-supporting structure or other structure to which antennas are both structurally and electromagnetically able to be attached.

Balloon test means an event in which the applicant arranges to fly, or raise upon a temporary mast, for four consecutive days, a brightly colored balloon not less than three feet in diameter, at the maximum height and at the location of the proposed antenna-supporting structure.

Base station means a primary sending and receiving site in a wireless communication network. A wireless communication facility may support base stations for more than one provider.

Broadcast facility means a wireless communications facility used for the transmission and reception of commercial radio or television signals.

Collocated or collocation means the addition or replacement of an antenna on an existing structure that has been previously approved for the placement of antenna. The term collocated includes the ground, platform or roof installation of equipment enclosures and ancillary accessories associated with the location and operation of the antenna.

Combined antenna means an antenna designed and utilized to provide services by more than one provider.

Equipment enclosure means an enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communications signals and support of a wireless communications facility, but not used primarily to store unrelated equipment or used as habitable space.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Geographic search area means the area in which an antenna is proposed to be located in order to provide the provider's designed service.

Letters of coordination means documentation provided by the applicant that the following notice was mailed, via certified mail, to all providers or, where applicable, owners of existing antenna-supporting structures, and that the applicant was unable to secure a lease agreement to allow the placement of the proposed antenna on an existing structure or building within the geographic search area:

Text of required notice:

"Pursuant to the requirements of the Lee County Land Development Code, (name of applicant) is hereby providing you with notice of our intent to meet with the Lee County Department of Community Development in a pre-application conference to discuss the location of a freestanding wireless communications facility that would be located at (location). We plan to construct an antenna-supporting structure of (number of) feet in height for the purpose of providing (type of wireless service). Please inform the County and us if either of the following applies:

- a. You intend to place additional wireless communications facilities within two miles of our proposed facility; or
- b. You know of an existing building or structure that might accommodate the antennas associated with our proposed facility.

Please provide us with this information within ten days following the receipt of this letter.

Sincerely, (applicant, wireless provider)"

The Department will maintain a list of known service providers and owners. Letters of coordination must be mailed at least 15 days prior to the pre-application conference required by this division and must request a response from the recipient within ten days of receipt.

Overall height means the height of a wireless communications facility measured as set forth in section 34-2171, but without any adjustment for minimum required flood elevation. Overall height includes all antennas and other ancillary appurtenances.

Personal wireless service means commercial mobile services (which include cellular, personal communication services, specialized mobile radio, enhanced specialized mobile radio, and paging), unlicensed wireless services, and common carrier wireless exchange access services, as defined in the Telecommunications Act of 1996.

Provider means a business, corporation, partnership, or other entity licensed by the FCC to provide wireless services in Lee County, Florida.

Repeater means a small receiver or relay transmitter of low power output relative to a base station output, designed to provide service to areas that are not able to receive adequate coverage directly from a base station.

Roofline means the uppermost line of the roof or parapet, whichever is lower.

Satellite earth station will have the meaning set forth in section 34-1175.

Shared use plan means a plan that includes the following:

- (1) A signed statement from the antenna-supporting structure owner agreeing to allow multiple providers to collocate on the structure, where reasonable and structurally feasible; and
- (2) A written evaluation of the feasibility of accommodating future collocations. Such evaluation must address the following, as appropriate:
 - a. Structural capacity of the proposed antenna-supporting structure;
 - b. Radio frequency limitations impacting the ability to accommodate collocations;
 - c. Geographical search area requirements;
 - d. Mechanical or electrical compatibility;
 - e. Any restrictions imposed upon the facility by the FCC that would preclude future collocations; and
 - f. Additional relevant information as required by the County.

Sight lines means a graphic representation consisting of:

- (1) Using the U.S.G.S. Quadrangle map, at a scale of 1:25,000 as a base map, a minimum of eight view lines, shown beginning at True North and continuing clockwise at 45-degree intervals in a two-mile radius from the site; and
- (2) A plan map of a circle of two miles radius of the communication facility site on which any areas from which the proposed communication facility will be visible must be indicated.

Small wireless facility means a wireless facility that meets both the following qualifications:

- (1) 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
- (2) 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, cut-off switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

Utility pole means a vertical structure used primarily by publicly regulated utilities or for street lighting and located within a street right-of-way, road easement or public utility easement.

Utility pole, replacement means a vertical structure used primarily by publicly regulated utilities or for street lighting and located within a street right-of-way, road easement or public utility easement limited to 40 feet in height to accommodate wireless communication facilities.

Wireless communications means any personal wireless service, radio and television broadcast services, and any other radio frequency signals, including amateur radio.

Wireless communications facility means any facility used for the transmission and reception of wireless communications, usually consisting of an antenna or group of antennas, base station, transmission lines, ancillary appurtenances, equipment enclosures, or repeaters, and may include an antenna-supporting structure. Any of the following will be considered a wireless communications facility: Antennas, antenna-supporting structures (including replacement and

broadcast), base stations, equipment enclosure, roof-mounted antennas, surface-mounted antennas, repeaters, and amateur radio facilities.

Wireless communications facility site means a property, or any part thereof, owned or leased by one or more providers and upon which one or more wireless communications facility(s) and required landscaping are located.

Section 34-1443. Applicability and exemptions.

(a) Except as provided in subsection (b) below, this division applies to the installation, construction, or modification of wireless communications facilities.

(b) The following items are exempt from the provisions of this division:

(1) Amateur radio antenna with an overall height of 50 feet or less. Any such structure may be developed only in accordance with the provisions of section 34-1175;

(2) Satellite earth stations, other than broadcast, may only be developed in accordance with section 34-1175;

(3) Maintenance of existing wireless communications facilities that does not include the placement or replacement of a wireless communications facility.

(4) Replacement or modification of antennas, ancillary appurtenances or other equipment enclosures with facilities that are substantially similar of the same design, or narrower profile, of the same or smaller size, or smaller, or otherwise not discernibly different in appearance, and that does not substantially change the physical dimensions of the wireless communications facility when viewed from ground level from surrounding properties, as the facilities being replaced;

(5) Wireless communications facilities erected as a temporary use, that receives a temporary use permit pursuant to the provisions of section 34-3041;

(6) Wireless communications facilities erected upon the declaration of a state of emergency by a federal, state, or local government. However, no wireless communications facility will be exempt pursuant to this paragraph unless the Director of Public Safety makes a determination of public necessity for the facility. The written determination must be submitted to the Director. No wireless communications facility will be exempt from the provisions of this division beyond the duration of the state of emergency, and such facility must be removed within 90 days of the termination of the state of emergency.

(7) Collocation of antennas on existing antenna-supporting structures that:
a. Do not increase the height of the existing structure, as measured to the highest point of any part of the structure or any existing antenna attached to the structure;
b. Do not increase the approved ground wireless communication facility site; and
c. Are of a design and configuration consistent with all of the applicable design and aesthetic regulations, restrictions or conditions, if any, applied to the first antenna placed on the structure or applied to the structure itself.

(8) Placement of a small wireless facility in the public rights-of-way. The placement is small wireless facilities in the public rights-of-way shall be subject to the provisions of LDC Ch. 6, Art. VII.

SECTION THREE: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION FOUR: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FIVE: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code. Sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article," or other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION SIX: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION SEVEN: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the development order application for such project is complete or the zoning request is found sufficient before the effective date.

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Commissioner Manning made a motion to adopt the foregoing ordinance, seconded by Commissioner Hamman. The vote was as follows:

John Manning	Aye
Cecil Pendergrass	Aye
Larry Kiker	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 5th day of December, 2017.

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *Theresa King*
Deputy Clerk

BY: *Cecil Pendergrass*
Cecil Pendergrass, Chair



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: *Quada S. C.*
Office of the County Attorney



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

December 6, 2017

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Ms. Theresa King

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Ordinance No. 17-22, which was filed in this office on December 6, 2017.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb