



City of Deltona

2345 Providence Blvd.
Deltona, FL 32725

Agenda

Planning and Zoning Board

Chair Andrea Cardo
Vice Chair Tara D'Errico
Secretary Rachel Amoroso.
Member Larry French
Member Pat Northey
Member David Stewart
Member Lori Warnicke
Alternate Christian O'Brien
Alternate Robert Hasson
Alternate Jeffrey Zlatos

Wednesday, April 29, 2026

6:00 PM

Deltona Commission Chambers

Rescheduled Meeting from April 15, 2026

1. CALL TO ORDER:

2. ROLL CALL:

3. APPROVAL OF MINUTES & AGENDA:

A. [Minutes of January 13, 2026](#)

Attachments: [Minutes of January 13, 2026](#)

4. PUBLIC FORUM: Public comments shall be limited to items on the agenda and shall not exceed three minutes. Please be courteous and respectful of the views of others. Personal attacks on Committee/Board members, City staff or members of the public are not allowed and will be ruled out of order by the Chair.

5. OLD BUSINESS:

6. NEW BUSINESS:

A. [Ordinance No. 06-2026 - Establishing a new Article III, "Small Wireless Facilities" of Chapter 82, "Communication, Antennas and Towers," within the Land Development Code of the City of Deltona's Code of Ordinances, in order to comply with Florida Statutes and best practices.](#)

Attachments: [Ordinance No. 06-2026 - Small Wireless Facilities](#)
[Chapter 82 Amendments Staff Report](#)
[HB 687](#)
[SB 1000](#)

7. PRESENTATIONS/AWARDS/REPORTS:

A. [Land Use Presentation](#)

Attachments: [Deltona - Land Use Presentation](#)

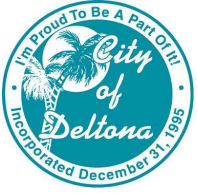
8. STAFF COMMENTS:

9. BOARD/COMMITTEE MEMBERS COMMENTS:

10. ADJOURNMENT:

NOTE: If any person decides to appeal any decision made by the Board/Body with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings, and for such purpose he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Manager in writing at CityManager@deltonafl.gov or to Deltona City Hall, 2345 Providence Blvd., Deltona, FL 32725 at least 48 hours prior to the meeting at which the person wishes to attend. The City is not permitted to provide the use of human physical assistance to physically handicapped persons in lieu of the construction or use of ramps or other mechanical devices in order to comply with Florida law. If proper accommodations for handicapped access cannot be made at a particular public meeting venue pursuant to a timely written request under Section 286.26 F.S., the City Manager shall change the venue of that meeting to a location where those accommodations can be provided.

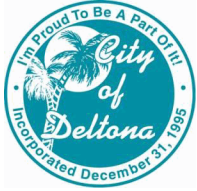


City of Deltona

2345 Providence Blvd.
Deltona, FL 32725

Agenda Memo

AGENDA ITEM: A.



City of Deltona

2345 Providence Blvd.
Deltona, FL 32725

Minutes

Planning and Zoning Board

Wednesday, January 21, 2026

6:00 PM

Deltona Commission Chambers

1. CALL TO ORDER:

Meeting was Called to Order at 6:00pm.

2. ROLL CALL:

Present: 7 - Chair Andrea Cardo
Vice Chair Tara D'Errico
Member Ron Gonzalez
Member David Stewart
Member Larry French
Alternate Lori Warnicke
Alternate Christian O'Brien

Excused: 2 - Secretary Rachel Amoroso
Member Pat Northey

Absent: 1 - Alternate Jeffrey Zlatos

3. APPROVAL OF MINUTES & AGENDA:

Minutes of December 17, 2025

Motion by Vice Chair D'Errico, seconded by Alternate Warnicke, to approve the Minutes of December 17, 2025, as presented.

4. PRESENTATIONS/AWARDS/REPORTS:

None.

5. PUBLIC FORUM: Time permitted, public comments shall be limited to items on the agenda and shall not exceed two minutes. Please be courteous and respectful of the views of others. Personal attacks on Committee/Board members, City staff or members of the public are not allowed and will be ruled out of order by the Chair.

Chair Cardo opened and closed public forum, as there were none.

6. OLD BUSINESS:

None.

7. NEW BUSINESS:

Resolution No. 2026-01 – Granting a Conditional Use to Permit a House of Worship within the R-1 Residential Zoning District for the Property Located at 590 Fort Smith Boulevard, within the City of Deltona.

City Attorney Good explained the quasi-judicial hearing process. He read Resolution No. 2026-01 into the record and swore in anyone wanting to speak on the subject.

Planning Manager Mr. West gave a presentation regarding the Conditional Use. He explained the original Conditional Use expired in 2020, and provided updates for the Conditions.

Chair Cardo opened public forum.

Pastor Henry, 1918 Demartin Dr. provided his background, as well as the services the church has provided the community. He explained the church is currently leasing a building and by having their own building they could better serve the community.

Ms. Rhodes, 2050 Dixie Bell Ave, stated she has been the bookkeeper for the food ministry for the last 15 years. She would like to do more for the community, and the new building would help.

Chair Card closed public forum.

Motion by Tara D'Errico, seconded by David Stewart, to approve Resolution No. 2026-01 - Granting a Conditional Use to Permit a House of Worship within the R-1, Residential Zoning District for the property located at 590 Fort Smith Boulevard, within the City of Deltona. The motion carried the following vote:

For: 7 - Chair Cardo, Vice Chair D'Errico, Member Gonzalez, Member Stewart, Member French, Alternate Warnicke and Alternate O'Brien

Ordinance No. 01-2026 – Amending the Official Zoning Map to rezone approximately 14.43 acres of land located at 2830, 2846, and 2855 Lake Helen Osteen Road from Residential Estate One (RE-1) to Mixed Use Planned Unit Development (MPUD).

City Attorney Good read Ordinance No. 01-2026 into the record.

Director Smith presented the rezone request for the New Hope MPUD. He provided information regarding traffic, flooding, density, and future land use.

The project attorney, Mark Watts with Cobb Cole, provided background information on the project. He explained that the Low Density Residential future land use category allows for churches and that the Comprehensive Plan includes an exception for affordable housing.

He discussed the two (2) neighborhood meetings that were held and stated that during the April 2024 Comprehensive Plan meeting, this area was suggested as a potential community hub.

The applicant, Pastor Bradley, provided his background and stated that the church received approval to locate within the R-1 zoning district in 1997. He explained the services the church currently provides to the community and their desire to expand those services by developing affordable housing and constructing a community center. Pastor Bradley stated that the church is committed to helping the local community.

Carol Gardner, CEO of TEDc in Miami, Florida, stated that many Deltona residents are cost-burdened due to current rental rates. She explained that the vision of the project is to help address this issue by providing affordable housing. Ms. Gardner presented statistics regarding median household incomes, area rental rates, and the projected rents for affordable units.

Chair Cardo opened the public forum.

Dr. Ronald Durham, 1036 Shepherd Ave., stated he supports the New Hope project. He expressed concern regarding the Deltona workforce being priced out of the area and stated the moderate density is responsible planning for this location.

Mike Williams stated he has been a Deltona resident since 1985 and a realtor for the past 40 years. He explained that the current average home price in Deltona is approximately \$350,000, which he believes is not affordable. He expressed concern about affordability, noting that multiple families are living in single homes, and stated that providing affordable housing would help address this issue.

Marion Diggs, 1201 Sterling Silver Blvd., stated she supports the affordable housing project, as there is limited workforce housing available and this development would support community growth.

Virgil Ford, 2470 Pinetree Acres Ln., stated he purchased his home in 1995 and does not believe this is the appropriate location for the project. While he supports the concept, he expressed concerns regarding traffic and flooding.

Loren King, 2770 Sadler Lane, stated he opposes the project due to its location, citing existing traffic and flooding concerns. He stated he believes it is a good project but should be located in a more compatible area.

Tim Blodgett, 2707 Timberlake Ave., expressed concerns that the Theresa Basin study was not discussed, noting flooding issues in the area. He stated that the project does not belong in this location.

Chair Cardo closed the public forum.

Chair Cardo then made an exception to reopen the public forum.

Gary Randolph, 2900 Regent Dr., expressed concerns regarding flooding, noting that Lake Helen Osteen Road has been closed multiple times due to flooding and stating that the project would worsen the issue. He stated he is opposed to the project.

Patricia Harkness, 1349 Freeport Dr., stated she attends church two (2) to three (3) times per week and does not experience traffic issues. She stated that residents in Deltona need assistance and support.

A resident living on Howland Boulevard stated her home has experienced flooding since homes were constructed in the new subdivision on Lake Helen Osteen Road. She expressed concerns regarding future flooding and the impact on wildlife located on the property. She stated that while the project is positive, it is not appropriate for this area.

Ron Washington, 1440 Daystar Lane, stated he attends New Hope Church and has lived in Deltona since 1996. He expressed concern for residents who need assistance and asked the Board to approve the project so the community can receive the necessary support.

Elizabeth Jeanniton, Deltona, stated the City needs affordable housing; but, flooding concerns must be addressed. She suggested the project may be better suited near other multifamily developments. She expressed concerns regarding potential property damage from flooding and increased traffic.

Chair Cardo closed the public forum.

Attorney Mark Watts discussed the traffic review conducted with Volusia County. He stated that traffic concerns were reviewed and acknowledged that flooding is an issue throughout the area. He noted that the Theresa Basin study is currently underway and that new

regulations will be required and followed. He discussed the average density for the overall project and stated that both the previous staff report and the Comprehensive Plan support affordable housing.

City Attorney Good explained that the Planning and Zoning Board is not required to follow the recommendations contained in either staff report.

Chair Cardo asked Board members whether they had any ex parte communications.

Member Stewart and Vice Chair D'Errico stated they had spoken with the applicant and residents regarding the project.

Member French, Member Gonzalez, Alternate Warnicke and Alternate O'Brien stated they had no ex parte communications.

Chair Cardo asked questions regarding the floodplains located at the rear of the property.

Attorney Watts stated that the Theresa Basin study may result in updates to regulations within the Land Development Code, and those updated regulations would be followed at the appropriate stage of review and submittal.

Chair Cardo asked Mr. Watts to address the failing segments identified in the traffic impact analysis.

Mr. Watts explained that, according to page 31 of the report, the failing segment is related to signal timing at the intersection of Howland Boulevard and Catalina Boulevard.

Chair Cardo asked about the anticipated project timeline.

Mr. Watts stated buildout is anticipated by 2029. He also stated that a crash analysis would be conducted during the Final Site Plan review.

Member French discussed TPO guidelines and standards. He spoke about Comprehensive Plan consistency, traffic concerns, environmental impacts, and economic considerations. He stated that while the City needs this type of project, he believes this is the wrong location. Member French thanked City staff for their work on the staff report.

Motion by Tara D'Errico, seconded by Larry French, to deny Ordinance No. 01-2026 - Amending the Official Zoning Map to rezone approximately 14.43 acres of land located at 2830, 2846, and 2855 Lake Helen Osteen

Road from Residential Estate One (RE-1) to Mixed Use Planned Unit Development (MPUD). The motion carried by the following vote:

For: 6 - Vice Chair D'Errico, Member Gonzalez, Member Stewart, Member French, Alternate Warnicke and Alternate O'Brien

Against: 1 - Chair Cardo

8. STAFF COMMENTS:

Mr. Smith discussed that Alternate Neher has resigned and reminded the Board of the Workshop on Monday January 26. He stated that staff would send a friendly reminder email and it would be posted it on social media.

+9. BOARD/COMMITTEE MEMBERS COMMENTS:

Alternate Warnicke asked if the members could be informed of neighborhood meetings for projects.

Mr. Smith explained that the applicant is not required to invite the Board per Section 74 of the Land Development Code, but are required to invite neighbors.

City Attorney Good mentioned to the Board to be aware any conversations they may have because the Sunshine Law.

Vice Chair D'Errico mentioned she is aware of neighborhood meetings due to social media.

Member French stated he appreciated the information provided on the staff report.

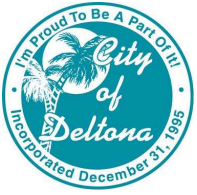
Mr. Smith complimented the staff.

10. ADJOURNMENT:

Meeting adjourned at 7:45 pm.

Andrea Cardo, Chairperson

Nelly Kerr, Board Secretary



City of Deltona

2345 Providence Blvd.
Deltona, FL 32725

Agenda Memo

AGENDA ITEM: A.

ORDINANCE NO. 06-2026

AN ORDINANCE OF THE CITY OF DELTONA, FLORIDA, ESTABLISHING A NEW ARTICLE III, "SMALL WIRELESS FACILITIES" OF CHAPTER 82, "COMMUNICATION, ANTENNAS AND TOWERS," WITHIN THE LAND DEVELOPMENT CODE OF THE CITY OF DELTONA'S CODE OF ORDINANCES, IN ORDER TO COMPLY WITH FLORIDA STATUTES AND BEST PRACTICES; PROVIDING FOR CONFLICTS, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City of Deltona as the governing body, pursuant to the authority vested in Chapter 163 and Chapter 166, Florida Statutes, is authorized and empowered to consider changes to its land development regulations; and

WHEREAS, the City of Deltona, Florida, adopted Chapter 96, "Improvements," and Article IV, "Use Permits," within its Land Development Code; and

WHEREAS, the City Commission for the City of Deltona, Florida deems it necessary to establish regulations for small wireless facilities within Chapter 82, "Communications, Antennas and Towers," in order to align with and complement the provisions of Section 337.401, Florida Statutes, and to protect the public health, safety and welfare; and

WHEREAS, the Planning and Zoning Board held a public hearing on April 29, 2026, and forwarded its recommendations to the City Commission; and

WHEREAS, the City Commission finds and determines that these modifications are in the best interest of the public health, safety, and welfare of the residents of the City of Deltona.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA, as follows:

Section 1. Recitals Adopted. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance upon adoption hereof.

Section 2. Amendment to the Code of Ordinances. The City Commission hereby approves and adopts Article III, "Small Wireless Facilities," of Chapter 82, "Communications, Antennas and Towers," of the Land Development Code, as set forth in "Exhibit A" attached hereto.

Section 3. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this ordinance which can be given effect without the invalid provision or application.

Section 5. Codification. The provisions of this Ordinance shall be codified as and be made part of the Code of Ordinances of the City of Deltona. The sections of this Ordinance may be renumbered to accomplish such intention.

Section 6. Effective Date. This Ordinance shall take effect immediately upon its final adoption by the City Commission.

PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA THIS _____ DAY OF _____, 2026.

First Reading: _____

Advertised: _____

Second Reading: _____

BY: _____

Santiago Avila, Jr., MAYOR

ATTEST:

Joyce Raftery, CMC, MMC, CITY CLERK

Approved as to form and legality
for use and reliance of the City of
Deltona, Florida

TG Law PLLC, CITY ATTORNEY

Name	Yes	No
Avila-Vazquez		
Colwell		
Heriot		
Howington		
Nabicht		
Santiago		
Avila		

EXHIBIT A

PART II - CODE OF ORDINANCES
Chapter 82 COMMUNICATION ANTENNAS AND TOWERS

1 **Chapter 82 COMMUNICATION ANTENNAS, ~~AND TOWERS~~ AND WIRELESS COMMUNICATION**
2 **FACILITIES**

3 I. Land Development Code, of the City of Deltona Code of Ordinances Section
4 82, shall be amended as follows:

5
6 ***

7 **Sec. 82-120. Small Wireless Facilities Permitted.**

8 (a) General. Small wireless facilities and associated equipment are permitted within the City,
9 subject to this article and applicable state and federal law.

10 (b) Public Rights-of-Way.

11 (1) Small wireless facilities are permitted uses within public rights of way.

12 (2) Such facilities shall be regulated in accordance with Florida Statute 337.401(7).

13 (3) Zoning regulations shall not apply to small wireless facilities in the public rights of
14 way.

15 **Sec. 82-121. Approvals and Denials.**

16 (a) Applications shall be reviewed on a nondiscriminatory and competitively neutral basis.

17 (b) The City shall approve an application unless it fails to comply with applicable codes.

18 (c) Any denial shall:

19 (1) Be in writing;

20 (2) Be supported by substantial competent evidence; and

21 (3) Identify the specific code provisions with which the application does not comply.

22 (d) A denial shall not be based on:

23 (1) Environmental or health effects of radio frequency emissions, if compliant with FCC
24 standards;

25 (2) Lack of demonstrated service need;

26 (3) Minimum separation distances; or

27 (4) A requirement to prove that co-location is not feasible.

28 **Sec. 82-122. Application Requirements and Processing.**

29 (a) Applications shall include sufficient information to demonstrate compliance with
30 applicable codes and this article.

31 (b) Applications shall be processed in accordance with the timeframes established in Florida
32 Statute 337.401(7).

33 (c) The City may require reasonable, cost based application and permit fees as allowed by law.

34 **Sec. 82-123. Structural and safety compliance.**

35 (a) All small wireless facilities shall:

36 (1) Comply with the Florida Building Code;

37 (2) Comply with the National Electrical Code;

38 (3) Be installed and maintained in accordance with applicable safety standards; and

39 (4) Be certified by a Florida-licensed professional engineer when required.

40 **Sec. 82-124. Placement standards.**

41 (a) Small wireless facilities shall be installed so as to:

42 (1) Maintain a minimum clear pedestrian path of five (5) feet for sidewalks;

43 (2) Comply with ADA accessibility requirements;

44 (3) Not obstruct intersections, traffic control devices, or sight lines;

45 (4) Maintain required clear zones for vehicular safety;

46 (5) Avoid placement within driveway aprons or curb ramps;

47 (b) To the extent technically feasible, small wireless facilities shall be located:

48 (1) On existing utility poles or structures;

49 (2) Within utility corridors or aligned with existing infrastructure.

50 (c) Placement directly in front of residential dwelling shall be avoided where an alternative
51 location within one hundred (100) feet is technically feasible.

52 **Sec. 82-125. Height.**

53 (a) A small wireless facility mounted on an existing pole or structure shall not extend more
54 than ten (10) feet above the structure.

55 (b) A new pole installed to support a small wireless facility shall not exceed:

56 (1) Fifty (50) feet in height; or

57 (2) The height of the tallest existing pole within five hundred (500) feet.

58 **Sec. 82-126. Design Standards.**

59 (a) All design standards shall be objective, reasonable, and nondiscriminatory.

60 (b) Small wireless facilities shall comply with the following:

-
- 61 (1) Stealth and concealment. Equipment shall be concealed, camouflaged, or integrated
62 into the supporting structure to the maximum extent technically feasible.
- 63 (2) Shrouding. Antennas and associated equipment mounted on poles shall be enclosed
64 within a shroud matching the supporting structure.
- 65 (3) Color and finish. All equipment shall be painted or finished to match the supporting
66 structure using non-reflective, neutral colors.
- 67 (4) Flush mounting. Equipment shall be flush mounted to the pole or structure and shall
68 not extend more than necessary for safe operation.
- 69 (5) Cabling. All wiring and cabling shall be fully concealed within the pole or conduit;
70 external cables are prohibited unless no technically feasible alternative exists.
- 71 (6) Equipment size. Equipment shall be limited to the smallest feasible size necessary for
72 operation.
- 73 (7) Consistency. Facilities along the same corridor shall maintain a consistent design,
74 color, and configuration where feasible.

75 **Sec. 82-127. Equipment and cabinets.**

- 76 (a) Equipment associated with a small wireless facility shall:
- 77 (1) Be located to minimize visual impact;
- 78 (2) Not impede pedestrian or vehicular movement;
- 79 (3) Not be placed in a manner that creates a safety hazard.
- 80 (b) Underground preference. To the extent technically feasible, ground mounted equipment
81 shall be placed underground.
- 82 (b) Ground equipment limitations.
- 83 (1) New freestanding ground equipment cabinets in the public rights-of-way are
84 prohibited unless no technically feasible alternative exists.
- 85 (2) When permitted, such equipment shall be:
- 86 a. Located outside pedestrian travel paths;
- 87 b. Screened or integrated with surrounding infrastructure.

88 **Sec. 82-128. Lighting.**

- 89 (a) Small wireless facilities shall not be illuminated except:
- 90 (1) As required by law; or
- 91 (2) For safety purposes.

92 **Sec. 82-129. Co-location.**

- 93 (a) Co-location is encouraged.

94 (b) Pole replacement. Replacement of an existing pole with a new pole to accommodate a
95 small wireless facility shall be permitted, provided the replacement pole is substantially
96 similar in design and location.

97 **Sec. 82-130. Prohibited requirements.**

98 (a) The City shall not require, for small wireless facilities in public rights-of-way:

- 99 (1) Minimum separation distances;
100 (2) Demonstration of service needs;
101 (3) Zoning approvals; or
102 (4) Proof that co-location is not feasible.

103 **Sec. 82-131. Modifications.**

104 (a) Modifications to existing small wireless facilities shall be permitted if compliant with
105 applicable codes.

106 (b) Eligible facilities requests shall be processed in accordance with federal law.

107 **Sec. 82-132. Abandonment.**

108 (a) In addition to removal requirements:

- 109 (1) The City may require a performance bond or other security to ensure removal of
110 abandoned facilities, where permitted by law.

111 **Sec. 82-133. State and Federal Law.**

112 (a) This article shall be interpreted and applied consistent with:

- 113 (1) Florida Statute §337.401; and
114 (2) The Federal Telecommunications Act of 1996.

115 (b) Any provision inconsistent with applicable law shall be deemed inapplicable to the extent
116 of the conflict.

31 (b) Applications shall be processed in accordance with the timeframes established in Florida
32 Statute 337.401(7).

33 (c) The City may require reasonable, cost based application and permit fees as allowed by law.

34 **Sec. 82-123. Structural and safety compliance.**

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46 (5) Avoid placement within driveway aprons or curb ramps;

47 (b) To the extent technically feasible, small wireless facilities shall be located:

48 (1) On existing utility poles or structures;

49 (2) Within utility corridors or aligned with existing infrastructure.

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51 location within one hundred (100) feet is technically feasible.

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- 93 (a) Co-location is encouraged.

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96 similar in design and location.

97 **Sec. 82-130. Prohibited requirements.**

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108 (a) In addition to removal requirements:

- 109 (1) The City may require a performance bond or other security to ensure removal of
110 abandoned facilities, where permitted by law.

111 **Sec. 82-133. State and Federal Law.**

112 (a) This article shall be interpreted and applied consistent with:

- 113 (1) Florida Statute §337.401; and
114 (2) The Federal Telecommunications Act of 1996.

115 (b) Any provision inconsistent with applicable law shall be deemed inapplicable to the extent
116 of the conflict.



MEMORANDUM

DATE: April 29, 2026

TO: Planning and Zoning Board

FROM: Jordan Smith, AICP, PP Planning and Development Services Director

THRU: Jordan Smith, AICP, PP Planning and Development Services Director

SUBJECT: Ordinance No. 06-2026, Amendment to Chapter 82 “Communication Antennas, Antennas and Towers” (Legislative – Public Hearing) (Jordan Smith, Project Manager)

REFERENCES: City Comprehensive Plan; Code of Ordinances; Section 337.401, Florida Statutes.

REQUEST: Consideration of amendments to Chapter 82, “Communication Antennas, Antennas and Towers,” of the Land Development Code to establish regulations for small wireless facilities consistent with Section 337,401(7), Florida Statutes, and applicable federal law.

BACKGROUND: The Florida Legislature adopted the “Advanced Wireless Infrastructure Deployment Act” in 2017 (HB 687), codified in Section 337,401(7), Florida Statutes, establishing a statewide regulatory framework for small wireless facilities within public rights-of-way and significantly preempting local government authority.

In 2019, the Legislature expanded this preemption (SB 1000), further limiting local control over the placement of wireless infrastructure, including allowing new poles in the rights-of-way and eliminating requirements for co-location among providers.

As a result, local governments are required to allow deployment of small wireless facilities, subject only to objective, reasonable, and nondiscriminatory standards.

DISCUSSION: The proposed amendments to Chapter 82, “Communication Antennas, Towers, and Wireless Communication Facilities,” update the City’s Land Development Code to address small wireless facilities and ensure compliance with current state law. The amendments also revise the title of Chapter 82 to reflect the inclusion of wireless communication facilities.

The amendments create Sections 82-120 through 82-133 and establish the following:

- Small wireless facilities are permitted within public rights-of-way and are not subject to zoning regulations, as required by state law.
- Applications must be reviewed on a nondiscriminatory and competitively neutral basis and approved if compliant with applicable codes. Denials are limited to documented code deficiencies and must be supported by competent substantial evidence.
- Review procedures and timelines are aligned with Section 337.401(7), Florida Statutes.
- Facilities must comply with applicable building, electrical, and safety standards.
- Placement standards are established to ensure pedestrian access, ADA compliance, traffic safety, and to minimize conflicts with existing infrastructure.

- Height and design standards are included to reduce visual impacts, including requirements for concealment, shrouding, neutral colors, and consistent corridor design.
- Equipment placement is regulated to avoid obstruction and limit visual clutter, with a preference for undergrounding where feasible and restrictions on freestanding equipment.
- Lighting is prohibited except where required by law or for safety purposes.
- Co-location is encouraged; however, the City cannot require it.
- The City is prohibited from imposing requirements preempted by state law, including separation distances, demonstration of service need, zoning approvals, and proof that co-location is not feasible.

These amendments are necessary to ensure the City remains compliant with state law while maintaining the ability to apply objectives standards that protect public safety and minimize visual impacts within the rights-of-way.

CONSISTENCY WITH THE COMPREHENSIVE PLAN: Staff has reviewed the proposed amendments and finds them consistent with the goals, objectives and policies of the Comprehensive Plan, including those related to infrastructure, public facilities, and community design. The amendments support the provision of modern communications infrastructure while maintaining standards to protect public safety and the visual character of the City.

RECOMMENDATION:

Section 163.3174, Florida Statutes requires the local planning agency to review proposed land development regulations and make recommendations to the City Commission as to the consistency of the changes with the adopted Comprehensive Plan.

Accordingly, staff recommends that the Planning and Zoning Board recommend that the City Commission approve Ordinance No. 06-2026 amending the City’s Land Development Code related to Chapter 82 “Communication Antennas, Antennas and Towers”.

NEXT STEPS: The Mayor and City Commission will hear this item on May 1, 2026, at first reading.

ATTACHMENTS:

- Ordinance No. 06-2026
- HB 687
- SB 1000

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1
2 An act relating to utilities; amending s. 337.401,
3 F.S.; authorizing the Department of Transportation and
4 certain local governmental entities to prescribe and
5 enforce rules or regulations regarding the placing and
6 maintaining of certain voice or data communications
7 services lines or wireless facilities on certain
8 rights-of-way; providing a short title; providing
9 definitions; prohibiting an authority from
10 prohibiting, regulating, or charging for the
11 collocation of small wireless facilities in public
12 rights-of-way under certain circumstances; authorizing
13 an authority to require a registration process and
14 permit fees under certain circumstances; requiring an
15 authority to accept, process, and issue applications
16 for permits subject to specified requirements;
17 prohibiting an authority from requiring approval or
18 requiring fees or other charges for routine
19 maintenance, the replacement of certain wireless
20 facilities, or the installation, placement,
21 maintenance, or replacement of certain micro wireless
22 facilities; providing an exception; providing
23 requirements for the collocation of small wireless
24 facilities on authority utility poles; providing
25 requirements for rates, fees, and other terms related

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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26 | to authority utility poles; authorizing an authority
27 | to apply current ordinances regulating placement of
28 | communications facilities in the right-of-way for
29 | certain applications; requiring an authority to waive
30 | certain permit application requirements and small
31 | wireless facility placement requirements; prohibiting
32 | an authority from adopting or enforcing any regulation
33 | on the placement or operation of certain
34 | communications facilities and from regulating any
35 | communications services or imposing or collecting any
36 | tax, fee, or charge not specifically authorized under
37 | state law; providing construction; requiring a
38 | wireless provider to comply with certain
39 | nondiscriminatory undergrounding requirements of an
40 | authority; authorizing the authority to waive any such
41 | requirements; authorizing a wireless infrastructure
42 | provider to apply to an authority to place utility
43 | poles in the public rights-of-way to support the
44 | collocation of small wireless facilities; providing
45 | application requirements; requiring the authority to
46 | accept and process the application subject to certain
47 | requirements; providing construction; authorizing an
48 | authority to enforce certain local codes,
49 | administrative rules, or regulations; authorizing an
50 | authority to enforce certain pending local ordinances,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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51 administrative rules, or regulations under certain
 52 circumstances, subject to waiver by the authority;
 53 providing construction; providing an effective date.
 54

55 Be It Enacted by the Legislature of the State of Florida:
 56

57 Section 1. Paragraph (a) of subsection (1) of section
 58 337.401, Florida Statutes, is amended, and subsection (7) is
 59 added to that section, to read:

60 337.401 Use of right-of-way for utilities subject to
 61 regulation; permit; fees.—

62 (1)(a) The department and local governmental entities,
 63 referred to in this section and in ss. 337.402, 337.403, and
 64 337.404 as the "authority," that have jurisdiction and control
 65 of public roads or publicly owned rail corridors are authorized
 66 to prescribe and enforce reasonable rules or regulations with
 67 reference to the placing and maintaining across, on, or within
 68 the right-of-way limits of any road or publicly owned rail
 69 corridors under their respective jurisdictions any electric
 70 transmission, voice ~~telephone~~, telegraph, data, or other
 71 communications services lines or wireless facilities; pole
 72 lines; poles; railways; ditches; sewers; water, heat, or gas
 73 mains; pipelines; fences; gasoline tanks and pumps; or other
 74 structures referred to in this section and in ss. 337.402,
 75 337.403, and 337.404 as the "utility." The department may enter

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76 into a permit-delegation agreement with a governmental entity if
 77 issuance of a permit is based on requirements that the
 78 department finds will ensure the safety and integrity of
 79 facilities of the Department of Transportation; however, the
 80 permit-delegation agreement does not apply to facilities of
 81 electric utilities as defined in s. 366.02(2).

82 (7) (a) This subsection may be cited as the "Advanced
 83 Wireless Infrastructure Deployment Act."

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

85 1. "Antenna" means communications equipment that transmits
 86 or receives electromagnetic radio frequency signals used in
 87 providing wireless services.

88 2. "Applicable codes" means uniform building, fire,
 89 electrical, plumbing, or mechanical codes adopted by a
 90 recognized national code organization or local amendments to
 91 those codes enacted solely to address threats of destruction of
 92 property or injury to persons, or local codes or ordinances
 93 adopted to implement this subsection. The term includes
 94 objective design standards adopted by ordinance that may require
 95 a new utility pole that replaces an existing utility pole to be
 96 of substantially similar design, material, and color or that may
 97 require reasonable spacing requirements concerning the location
 98 of ground-mounted equipment. The term includes objective design
 99 standards adopted by ordinance that may require a small wireless
 100 facility to meet reasonable location context, color, stealth,

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101 and concealment requirements; however, such design standards may
 102 be waived by the authority upon a showing that the design
 103 standards are not reasonably compatible for the particular
 104 location of a small wireless facility or that the design
 105 standards impose an excessive expense. The waiver shall be
 106 granted or denied within 45 days after the date of the request.

107 3. "Applicant" means a person who submits an application
 108 and is a wireless provider.

109 4. "Application" means a request submitted by an applicant
 110 to an authority for a permit to collocate small wireless
 111 facilities.

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

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

123 a. A retirement community that:

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

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126 (II) Has more than 5,000 residents; and
 127 (III) Has underground utilities for electric transmission
 128 or distribution.

129 b. A municipality that:

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

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

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

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

137 7. "Collocate" or "collocation" means to install, mount,
 138 maintain, modify, operate, or replace one or more wireless
 139 facilities on, under, within, or adjacent to a wireless support
 140 structure or utility pole. The term does not include the
 141 installation of a new utility pole or wireless support structure
 142 in the public rights-of-way.

143 8. "FCC" means the Federal Communications Commission.

144 9. "Micro wireless facility" means a small wireless
 145 facility having dimensions no larger than 24 inches in length,
 146 15 inches in width, and 12 inches in height and an exterior
 147 antenna, if any, no longer than 11 inches.

148 10. "Small wireless facility" means a wireless facility
 149 that meets the following qualifications:

150 a. Each antenna associated with the facility is located

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151 inside an enclosure of no more than 6 cubic feet in volume or,
152 in the case of antennas that have exposed elements, each antenna
153 and all of its exposed elements could fit within an enclosure of
154 no more than 6 cubic feet in volume; and

155 b. All other wireless equipment associated with the
156 facility is cumulatively no more than 28 cubic feet in volume.
157 The following types of associated ancillary equipment are not
158 included in the calculation of equipment volume: electric
159 meters, concealment elements, telecommunications demarcation
160 boxes, ground-based enclosures, grounding equipment, power
161 transfer switches, cutoff switches, vertical cable runs for the
162 connection of power and other services, and utility poles or
163 other support structures.

164 11. "Utility pole" means a pole or similar structure that
165 is used in whole or in part to provide communications services
166 or for electric distribution, lighting, traffic control,
167 signage, or a similar function. The term includes the vertical
168 support structure for traffic lights but does not include a
169 horizontal structure to which signal lights or other traffic
170 control devices are attached and does not include a pole or
171 similar structure 15 feet in height or less unless an authority
172 grants a waiver for such pole.

173 12. "Wireless facility" means equipment at a fixed
174 location which enables wireless communications between user
175 equipment and a communications network, including radio

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176 transceivers, antennas, wires, coaxial or fiber-optic cable or
 177 other cables, regular and backup power supplies, and comparable
 178 equipment, regardless of technological configuration, and
 179 equipment associated with wireless communications. The term
 180 includes small wireless facilities. The term does not include:
 181 a. The structure or improvements on, under, within, or
 182 adjacent to the structure on which the equipment is collocated;
 183 b. Wireline backhaul facilities; or
 184 c. Coaxial or fiber-optic cable that is between wireless
 185 structures or utility poles or that is otherwise not immediately
 186 adjacent to or directly associated with a particular antenna.
 187 13. "Wireless infrastructure provider" means a person who
 188 has been certificated to provide telecommunications service in
 189 the state and who builds or installs wireless communication
 190 transmission equipment, wireless facilities, or wireless support
 191 structures but is not a wireless services provider.
 192 14. "Wireless provider" means a wireless infrastructure
 193 provider or a wireless services provider.
 194 15. "Wireless services" means any services provided using
 195 licensed or unlicensed spectrum, whether at a fixed location or
 196 mobile, using wireless facilities.
 197 16. "Wireless services provider" means a person who
 198 provides wireless services.
 199 17. "Wireless support structure" means a freestanding
 200 structure, such as a monopole, a guyed or self-supporting tower,

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201 or another existing or proposed structure designed to support or
 202 capable of supporting wireless facilities. The term does not
 203 include a utility pole.

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

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

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

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

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

225 4. An authority may not limit the placement of small

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226 wireless facilities by minimum separation distances. However,
227 within 14 days after the date of filing the application, an
228 authority may request that the proposed location of a small
229 wireless facility be moved to another location in the right-of-
230 way and placed on an alternative authority utility pole or
231 support structure or may place a new utility pole. The authority
232 and the applicant may negotiate the alternative location,
233 including any objective design standards and reasonable spacing
234 requirements for ground-based equipment, for 30 days after the
235 date of the request. At the conclusion of the negotiation
236 period, if the alternative location is accepted by the
237 applicant, the applicant must notify the authority of such
238 acceptance and the application shall be deemed granted for any
239 new location for which there is agreement and all other
240 locations in the application. If an agreement is not reached,
241 the applicant must notify the authority of such nonagreement and
242 the authority must grant or deny the original application within
243 90 days after the date the application was filed. A request for
244 an alternative location, an acceptance of an alternative
245 location, or a rejection of an alternative location must be in
246 writing and provided by electronic mail.

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

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

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

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

271 8. An application must be processed on a nondiscriminatory
272 basis. A complete application is deemed approved if an authority
273 fails to approve or deny the application within 60 days after
274 receipt of the application. If an authority does not use the 30-
275 day negotiation period provided in subparagraph 4., the parties

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276 may mutually agree to extend the 60-day application review
277 period. The authority shall grant or deny the application at the
278 end of the extended period. A permit issued pursuant to an
279 approved application shall remain effective for 1 year unless
280 extended by the authority.

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

295 10. An applicant seeking to collocate small wireless
296 facilities within the jurisdiction of a single authority may, at
297 the applicant's discretion, file a consolidated application and
298 receive a single permit for the collocation of up to 30 small
299 wireless facilities. If the application includes multiple small
300 wireless facilities, an authority may separately address small

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301 wireless facility collocations for which incomplete information
 302 has been received or which are denied.

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

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

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

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

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

316 e. Fails to comply with applicable codes.

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

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

325 14. An authority may reserve space on authority utility

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326 | poles for future public safety uses. However, a reservation of
 327 | space may not preclude collocation of a small wireless facility.
 328 | If replacement of the authority utility pole is necessary to
 329 | accommodate the collocation of the small wireless facility and
 330 | the future public safety use, the pole replacement is subject to
 331 | make-ready provisions and the replaced pole shall accommodate
 332 | the future public safety use.

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

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

338 | 1. Routine maintenance;

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

342 | 3. Installation, placement, maintenance, or replacement of
 343 | micro wireless facilities that are suspended on cables strung
 344 | between existing utility poles in compliance with applicable
 345 | codes by or for a communications services provider authorized to
 346 | occupy the rights-of-way and who is remitting taxes under
 347 | chapter 202.

348 |
 349 | Notwithstanding this paragraph, an authority may require a
 350 | right-of-way permit for work that involves excavation, closure

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351 of a sidewalk, or closure of a vehicular lane.

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

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

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

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

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

372 5. A person owning or controlling an authority utility
 373 pole shall offer rates, fees, and other terms that comply with
 374 this subsection. By the later of January 1, 2018, or 3 months
 375 after receiving a request to collocate its first small wireless

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376 facility on a utility pole owned or controlled by an authority,
377 the person owning or controlling the authority utility pole
378 shall make available, through ordinance or otherwise, rates,
379 fees, and terms for the collocation of small wireless facilities
380 on the authority utility pole which comply with this subsection.

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

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

391 c. For an authority utility pole that does not support an
392 aerial facility used to provide communications services or
393 electric service, the authority shall provide a good faith
394 estimate for any make-ready work necessary to enable the pole to
395 support the requested collocation, including necessary pole
396 replacement, within 60 days after receipt of a complete
397 application. Make-ready work, including any pole replacement,
398 must be completed within 60 days after written acceptance of the
399 good faith estimate by the applicant. Alternatively, an
400 authority may require the applicant seeking to collocate a small

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401 wireless facility to provide a make-ready estimate at the
402 applicant's expense for the work necessary to support the small
403 wireless facility, including pole replacement, and perform the
404 make-ready work. If pole replacement is required, the scope of
405 the make-ready estimate is limited to the design, fabrication,
406 and installation of a utility pole that is substantially similar
407 in color and composition. The authority may not condition or
408 restrict the manner in which the applicant obtains, develops, or
409 provides the estimate or conducts the make-ready work subject to
410 usual construction restoration standards for work in the right-
411 of-way. The replaced or altered utility pole shall remain the
412 property of the authority.

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

421 (g) For any applications filed before the effective date
422 of ordinances implementing this subsection, an authority may
423 apply current ordinances relating to placement of communications
424 facilities in the right-of-way related to registration,
425 permitting, insurance coverage, indemnification, performance

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426 bonds, security funds, force majeure, abandonment, authority
 427 liability, or authority warranties. Permit application
 428 requirements and small wireless facility placement requirements,
 429 including utility pole height limits, that conflict with this
 430 subsection shall be waived by the authority.

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

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

446 (j) A wireless infrastructure provider may apply to an
 447 authority to place utility poles in the public rights-of-way to
 448 support the collocation of small wireless facilities. The
 449 application must include an attestation that small wireless
 450 facilities will be collocated on the utility pole or structure

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451 and will be used by a wireless services provider to provide
452 service within 9 months after the date the application is
453 approved. The authority shall accept and process the application
454 in accordance with subparagraph (d)6. and any applicable codes
455 and other local codes governing the placement of utility poles
456 in the public rights-of-way.

457 (k) This subsection does not limit a local government's
458 authority to enforce historic preservation zoning regulations
459 consistent with the preservation of local zoning authority under
460 47 U.S.C. s. 332(c)(7), the requirements for facility
461 modifications under 47 U.S.C. s. 1455(a), or the National
462 Historic Preservation Act of 1966, as amended, and the
463 regulations adopted to implement such laws. An authority may
464 enforce local codes, administrative rules, or regulations
465 adopted by ordinance in effect on April 1, 2017, which are
466 applicable to a historic area designated by the state or
467 authority. An authority may enforce pending local ordinances,
468 administrative rules, or regulations applicable to a historic
469 area designated by the state if the intent to adopt such changes
470 has been publicly declared on or before April 1, 2017. An
471 authority may waive any ordinances or other requirements that
472 are subject to this paragraph.

473 (l) This subsection does not authorize a person to
474 collocate or attach wireless facilities, including any antenna,
475 micro wireless facility, or small wireless facility, on a

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476 privately owned utility pole, a utility pole owned by an
 477 electric cooperative or a municipal electric utility, a
 478 privately owned wireless support structure, or other private
 479 property without the consent of the property owner.

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

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

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

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

496 2. Has more than 5,000 residents; and

497 3. Has underground utilities for electric transmission or
 498 distribution.

499
 500 This paragraph does not apply to the installation, placement,

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501 maintenance, or replacement of micro wireless facilities on any
 502 existing and duly authorized aerial communications facilities,
 503 provided that once aerial facilities are converted to
 504 underground facilities, any such collocation or construction
 505 shall be only as provided by the municipality's underground
 506 utilities ordinance.

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

512 1. Is located on a coastal barrier island as defined in s.
 513 161.053(1)(b)3.;

514 2. Has a land area of less than 5 square miles;

515 3. Has fewer than 10,000 residents; and

516 4. Has, before July 1, 2017, received referendum approval
 517 to issue debt to finance municipal-wide undergrounding of its
 518 utilities for electric transmission or distribution.

519
 520 This paragraph does not apply to the installation, placement,
 521 maintenance, or replacement of micro wireless facilities on any
 522 existing and duly authorized aerial communications facilities,
 523 provided that once aerial facilities are converted to
 524 underground facilities, any such collocation or construction
 525 shall be only as provided by the municipality's underground

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526 | utilities ordinance.

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

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

20191000er

1
2 An act relating to communications services; amending
3 s. 202.20, F.S.; conforming a cross-reference;
4 amending s. 337.401, F.S.; revising legislative
5 intent; specifying limitations and prohibitions on
6 municipalities and counties relating to registrations
7 and renewals of communications service providers;
8 authorizing municipalities and counties to require
9 certain information as part of a registration;
10 prohibiting municipalities and counties from requiring
11 a payment of fees, costs, or charges for provider
12 registration or renewal; prohibiting municipalities
13 and counties from adopting or enforcing certain
14 ordinances, regulations, or requirements; specifying
15 limitations on municipal and county authority to
16 regulate and manage municipal and county roads or
17 rights-of-way; prohibiting certain municipalities and
18 counties from electing to impose permit fees;
19 providing retroactive applicability; authorizing
20 certain municipalities and counties to continue to
21 require and collect such fees; deleting obsolete
22 provisions; specifying activities for which permit
23 fees may not be imposed; deleting certain provisions
24 relating to municipality, charter county, and
25 noncharter county elections to impose, or not to
26 impose, permit fees; requiring that enforcement of
27 certain ordinances must be suspended until certain
28 conditions are met; revising legislative intent
29 relating to the imposition of certain fees, costs, and

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30 exactions on providers; specifying a condition for
31 certain in-kind compensation; revising items over
32 which municipalities and counties may not exercise
33 regulatory control; authorizing municipalities and
34 counties to require a right-of-way permit for certain
35 purposes; providing requirements for processing
36 certain permit applications; prohibiting
37 municipalities and counties from certain actions
38 relating to certain aerial or underground
39 communications facilities; specifying limitations and
40 requirements for certain municipal and county rules
41 and regulations; revising definitions for the Advanced
42 Wireless Infrastructure Deployment Act; prohibiting
43 certain actions by an authority relating to certain
44 utility poles; prohibiting authorities from requiring
45 permit applicants to provide certain information,
46 except under certain circumstances; adding prohibited
47 acts by authorities relating to small wireless
48 facilities, application requirements, public
49 notification and public meetings, and the placement of
50 certain facilities; revising applicability of
51 authority rules and regulations governing the
52 placement of utility poles in the public rights-of-
53 way; providing construction relating to judicial
54 review of certain application denials; specifying
55 grounds for an authority's denial of a proposed
56 collocation of a small wireless facility or placement
57 of a utility pole in the public rights-of-way;
58 deleting an authority's authorization to adopt

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59 ordinances for performance bonds and security funds;
60 authorizing an authority to require a construction
61 bond, subject to certain conditions; requiring
62 authorities to accept certain financial instruments
63 for certain financial obligations; authorizing
64 providers to add authorities to certain financial
65 instruments; prohibiting an authority from requiring a
66 provider to indemnify an authority for certain
67 liabilities; prohibiting an authority from requiring a
68 permit, approval, fees, charges, costs, or exactions
69 for certain activities; authorizing and limiting
70 filings an authority may require relating to micro
71 wireless facility equipment; providing an exception to
72 a certain right-of-way permit for certain service
73 restoration work; providing conditions under which a
74 wireless provider must comply with certain
75 requirements of an authority which prohibit new
76 utility poles used to support small wireless
77 facilities in certain areas; providing that an
78 authority may require wireless providers to comply
79 with certain objective design standards adopted by
80 ordinance; authorizing an authority to waive such
81 design standards under certain circumstances;
82 providing a requirement for the waiver; revising an
83 authority's authorization to apply certain ordinances
84 to applications filed before a certain timeframe;
85 authorizing a civil action for violations; providing
86 actions a court may take; requiring that work in
87 certain authority rights-of-way must comply with a

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88 specified document; providing for statutory
89 construction; providing an effective date.

90

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

92

93 Section 1. Paragraph (b) of subsection (2) of section
94 202.20, Florida Statutes, is amended to read:

95 202.20 Local communications services tax conversion rates.—
96 (2)

97 (b) Except as otherwise provided in this subsection,
98 “replaced revenue sources,” as used in this section, means the
99 following taxes, charges, fees, or other impositions to the
100 extent that the respective local taxing jurisdictions were
101 authorized to impose them prior to July 1, 2000.

102 1. With respect to municipalities and charter counties and
103 the taxes authorized by s. 202.19(1):

104 a. The public service tax on telecommunications authorized
105 by former s. 166.231(9).

106 b. Franchise fees on cable service providers as authorized
107 by 47 U.S.C. s. 542.

108 c. The public service tax on prepaid calling arrangements.

109 d. Franchise fees on dealers of communications services
110 which use the public roads or rights-of-way, up to the limit set
111 forth in s. 337.401. For purposes of calculating rates under
112 this section, it is the legislative intent that charter counties
113 be treated as having had the same authority as municipalities to
114 impose franchise fees on recurring local telecommunication
115 service revenues prior to July 1, 2000. However, the Legislature
116 recognizes that the authority of charter counties to impose such

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117 fees is in dispute, and the treatment provided in this section
118 is not an expression of legislative intent that charter counties
119 actually do or do not possess such authority.

120 e. Actual permit fees relating to placing or maintaining
121 facilities in or on public roads or rights-of-way, collected
122 from providers of long-distance, cable, and mobile
123 communications services for the fiscal year ending September 30,
124 1999; however, if a municipality or charter county elects the
125 option to charge permit fees pursuant to s. 337.401(3)(c)
126 ~~337.401(3)(c)1.a.~~, such fees shall not be included as a replaced
127 revenue source.

128 2. With respect to all other counties and the taxes
129 authorized in s. 202.19(1), franchise fees on cable service
130 providers as authorized by 47 U.S.C. s. 542.

131 Section 2. Subsection (3), paragraphs (d), (e), and (f) of
132 subsection (6), and paragraphs (b), (c), (d), (e), (f), (g), and
133 (i) of subsection (7) of section 337.401, Florida Statutes, are
134 amended, paragraph (r) is added to subsection (7), and
135 subsections (8) and (9) are added to that section, to read:

136 337.401 Use of right-of-way for utilities subject to
137 regulation; permit; fees.—

138 (3) (a) Because of the unique circumstances applicable to
139 providers of communications services, including, but not limited
140 to, the circumstances described in paragraph (e) and the fact
141 that federal and state law require the nondiscriminatory
142 treatment of providers of telecommunications services, and
143 because of the desire to promote competition among providers of
144 communications services, it is the intent of the Legislature
145 that municipalities and counties treat providers of

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146 communications services in a nondiscriminatory and competitively
147 neutral manner when imposing rules or regulations governing the
148 placement or maintenance of communications facilities in the
149 public roads or rights-of-way. Rules or regulations imposed by a
150 municipality or county relating to providers of communications
151 services placing or maintaining communications facilities in its
152 roads or rights-of-way must be generally applicable to all
153 providers of communications services, taking into account the
154 distinct engineering, construction, operation, maintenance,
155 public works, and safety requirements of the provider's
156 facilities, and, notwithstanding any other law, may not require
157 a provider of communications services to apply for or enter into
158 an individual license, franchise, or other agreement with the
159 municipality or county as a condition of placing or maintaining
160 communications facilities in its roads or rights-of-way. In
161 addition to other reasonable rules or regulations that a
162 municipality or county may adopt relating to the placement or
163 maintenance of communications facilities in its roads or rights-
164 of-way under this subsection or subsection (7), a municipality
165 or county may require a provider of communications services that
166 places or seeks to place facilities in its roads or rights-of-
167 way to register with the municipality or county. To register, a
168 provider of communications services may be required only to
169 provide its name ~~and to provide the name of the registrant;~~ the
170 name, address, and telephone number of a contact person for the
171 registrant; the number of the registrant's current certificate
172 of authorization issued by the Florida Public Service
173 Commission, the Federal Communications Commission, or the
174 Department of State; a statement of whether the registrant is a

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175 pass-through provider as defined in s. 337.401(6)(a)1.; the
176 registrant's federal employer identification number; and any
177 required proof of insurance or self-insuring status adequate to
178 defend and cover claims. A municipality or county may not
179 require a registrant to renew a registration more frequently
180 than every 5 years but may require during this period that a
181 registrant update the registration information provided under
182 this subsection within 90 days after a change in such
183 information. A municipality or county may not require the
184 registrant to provide an inventory of communications facilities,
185 maps, locations of such facilities, or other information by a
186 registrant as a condition of registration, renewal, or for any
187 other purpose; provided, however, that a municipality or county
188 may require as part of a permit application that the applicant
189 identify at-grade communications facilities within 50 feet of
190 the proposed installation location for the placement of at-grade
191 communications facilities. A municipality or county may not
192 require a provider to pay any fee, cost, or other charge for
193 registration or renewal thereof. It is the intent of the
194 Legislature that the placement, operation, maintenance,
195 upgrading, and extension of communications facilities not be
196 unreasonably interrupted or delayed through the permitting or
197 other local regulatory process. Except as provided in this
198 chapter or otherwise expressly authorized by chapter 202,
199 chapter 364, or chapter 610, a municipality or county may not
200 adopt or enforce any ordinance, regulation, or requirement as to
201 the placement or operation of communications facilities in a
202 right-of-way by a communications services provider authorized by
203 state or local law to operate in a right-of-way; regulate any

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204 communications services; or impose or collect any tax, fee,
205 cost, charge, or exaction for the provision of communications
206 services over the communications services provider's
207 communications facilities in a right-of-way.

208 (b) Registration described in paragraph (a) does not
209 establish a right to place or maintain, or priority for the
210 placement or maintenance of, a communications facility in roads
211 or rights-of-way of a municipality or county. Each municipality
212 and county retains the authority to regulate and manage
213 municipal and county roads or rights-of-way in exercising its
214 police power, subject to the limitations imposed in this section
215 and chapters 202 and 610. Any rules or regulations adopted by a
216 municipality or county which govern the occupation of its roads
217 or rights-of-way by providers of communications services must be
218 related to the placement or maintenance of facilities in such
219 roads or rights-of-way, must be reasonable and
220 nondiscriminatory, and may include only those matters necessary
221 to manage the roads or rights-of-way of the municipality or
222 county.

223 (c) Any municipality or county that, as of January 1, 2019,
224 elected to require permit fees from any provider of
225 communications services that uses or occupies municipal or
226 county roads or rights-of-way pursuant to former paragraph (c)
227 or paragraph (j), Florida Statutes 2018, may continue to require
228 and collect such fees. A municipality or county that elected as
229 of January 1, 2019, to require permit fees may elect to forego
230 such fees as provided herein. A municipality or county that
231 elected as of January 1, 2019, not to require permit fees may
232 not elect to impose permit fees.

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233 ~~1. It is the intention of the state to treat all providers~~
234 ~~of communications services that use or occupy municipal or~~
235 ~~charter county roads or rights-of-way for the provision of~~
236 ~~communications services in a nondiscriminatory and competitively~~
237 ~~neutral manner with respect to the payment of permit fees.~~
238 ~~Certain providers of communications services have been granted~~
239 ~~by general law the authority to offset permit fees against~~
240 ~~franchise or other fees while other providers of communications~~
241 ~~services have not been granted this authority. In order to treat~~
242 ~~all providers of communications services in a nondiscriminatory~~
243 ~~and competitively neutral manner with respect to the payment of~~
244 ~~permit fees, each municipality and charter county shall make an~~
245 ~~election under either sub-subparagraph a. or sub-subparagraph b.~~
246 ~~and must inform the Department of Revenue of the election by~~
247 ~~certified mail by July 16, 2001. Such election shall take effect~~
248 ~~October 1, 2001.~~

249 ~~a.(I) The municipality or charter county may require and~~
250 ~~collect permit fees from any providers of communications~~
251 ~~services that use or occupy municipal or county roads or rights-~~
252 ~~of-way. All fees authorized ~~permitted~~ under this paragraph ~~sub-~~~~

253 ~~subparagraph~~ must be reasonable and commensurate with the direct
254 and actual cost of the regulatory activity, including issuing
255 and processing permits, plan reviews, physical inspection, and
256 direct administrative costs; must be demonstrable; and must be
257 equitable among users of the roads or rights-of-way. A fee
258 authorized ~~permitted~~ under this paragraph ~~sub-subparagraph~~ may
259 ~~not~~ be offset against the tax imposed under chapter 202;
260 include the costs of roads or rights-of-way acquisition or roads
261 or rights-of-way rental; include any general administrative,

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262 management, or maintenance costs of the roads or rights-of-way;
263 or be based on a percentage of the value or costs associated
264 with the work to be performed on the roads or rights-of-way. In
265 an action to recover amounts due for a fee not authorized
266 ~~permitted~~ under this paragraph ~~sub-subparagraph~~, the prevailing
267 party may recover court costs and attorney ~~attorney's~~ fees at
268 trial and on appeal. In addition to the limitations set forth in
269 this section, a fee levied by a municipality or charter county
270 under this paragraph ~~sub-subparagraph~~ may not exceed \$100.
271 However, permit fees may not be imposed with respect to permits
272 that may be required for service drop lines not required to be
273 noticed under s. 556.108(5) ~~s. 556.108(5)(a)2.~~ or for any
274 activity that does not require the physical disturbance of the
275 roads or rights-of-way or does not impair access to or full use
276 of the roads or rights-of-way, including, but not limited to,
277 the performance of service restoration work on existing
278 facilities, extensions of such facilities for providing
279 communications services to customers, and the placement of micro
280 wireless facilities in accordance with subparagraph (7)(e)3.

281 ~~(II) To ensure competitive neutrality among providers of~~
282 ~~communications services, for any municipality or charter county~~
283 ~~that elects to exercise its authority to require and collect~~
284 ~~permit fees under this sub-subparagraph, the rate of the local~~
285 ~~communications services tax imposed by such jurisdiction, as~~
286 ~~computed under s. 202.20, shall automatically be reduced by a~~
287 ~~rate of 0.12 percent.~~

288 ~~b. Alternatively, the municipality or charter county may~~
289 ~~elect not to require and collect permit fees from any provider~~
290 ~~of communications services that uses or occupies municipal or~~

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291 ~~charter county roads or rights-of-way for the provision of~~
292 ~~communications services; however, each municipality or charter~~
293 ~~county that elects to operate under this sub-subparagraph~~
294 ~~retains all authority to establish rules and regulations for~~
295 ~~providers of communications services to use or occupy roads or~~
296 ~~rights-of-way as provided in this section.~~

297 1. ~~If a municipality or charter county elects to not~~
298 ~~require permit fees operate under this sub-subparagraph, the~~
299 ~~total rate for the local communications services tax as computed~~
300 ~~under s. 202.20 for that municipality or charter county may be~~
301 ~~increased by ordinance or resolution by an amount not to exceed~~
302 ~~a rate of 0.12 percent. If a municipality or charter county~~
303 ~~elects to increase its rate effective October 1, 2001, the~~
304 ~~municipality or charter county shall inform the department of~~
305 ~~such increased rate by certified mail postmarked on or before~~
306 ~~July 16, 2001.~~

307 ~~e. A municipality or charter county that does not make an~~
308 ~~election as provided for in this subparagraph shall be presumed~~
309 ~~to have elected to operate under the provisions of sub-~~
310 ~~subparagraph b.~~

311 2. ~~Each noncharter county shall make an election under~~
312 ~~either sub-subparagraph a. or sub-subparagraph b. and shall~~
313 ~~inform the Department of Revenue of the election by certified~~
314 ~~mail by July 16, 2001. Such election shall take effect October~~
315 ~~1, 2001.~~

316 a. ~~The noncharter county may elect to require and collect~~
317 ~~permit fees from any providers of communications services that~~
318 ~~use or occupy noncharter county roads or rights-of-way. All fees~~
319 ~~permitted under this sub-subparagraph must be reasonable and~~

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320 ~~commensurate with the direct and actual cost of the regulatory~~
321 ~~activity, including issuing and processing permits, plan~~
322 ~~reviews, physical inspection, and direct administrative costs;~~
323 ~~must be demonstrable; and must be equitable among users of the~~
324 ~~roads or rights-of-way. A fee permitted under this sub-~~
325 ~~subparagraph may not: be offset against the tax imposed under~~
326 ~~chapter 202; include the costs of roads or rights-of-way~~
327 ~~acquisition or roads or rights-of-way rental; include any~~
328 ~~general administrative, management, or maintenance costs of the~~
329 ~~roads or rights-of-way; or be based on a percentage of the value~~
330 ~~or costs associated with the work to be performed on the roads~~
331 ~~or rights-of-way. In an action to recover amounts due for a fee~~
332 ~~not permitted under this sub-subparagraph, the prevailing party~~
333 ~~may recover court costs and attorney's fees at trial and on~~
334 ~~appeal. In addition to the limitations set forth in this~~
335 ~~section, a fee levied by a noncharter county under this sub-~~
336 ~~subparagraph may not exceed \$100. However, permit fees may not~~
337 ~~be imposed with respect to permits that may be required for~~
338 ~~service drop lines not required to be noticed under s.~~
339 ~~556.108(5)(a)2. or for any activity that does not require the~~
340 ~~physical disturbance of the roads or rights-of-way or does not~~
341 ~~impair access to or full use of the roads or rights-of-way.~~

342 ~~b. Alternatively, the noncharter county may elect not to~~
343 ~~require and collect permit fees from any provider of~~
344 ~~communications services that uses or occupies noncharter county~~
345 ~~roads or rights-of-way for the provision of communications~~
346 ~~services; however, each noncharter county that elects to operate~~
347 ~~under this sub-subparagraph shall retain all authority to~~
348 ~~establish rules and regulations for providers of communications~~

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349 ~~services to use or occupy roads or rights-of-way as provided in~~
350 ~~this section.~~

351 2. If a noncharter county elects to not require permit fees
352 ~~operate under this sub-subparagraph~~, the total rate for the
353 local communications services tax as computed under s. 202.20
354 for that noncharter county may be increased by ordinance or
355 resolution by an amount not to exceed a rate of 0.24 percent, to
356 replace the revenue the noncharter county would otherwise have
357 received from permit fees for providers of communications
358 services. ~~If a noncharter county elects to increase its rate~~
359 ~~effective October 1, 2001, the noncharter county shall inform~~
360 ~~the department of such increased rate by certified mail~~
361 ~~postmarked on or before July 16, 2001.~~

362 ~~e. A noncharter county that does not make an election as~~
363 ~~provided for in this subparagraph shall be presumed to have~~
364 ~~elected to operate under the provisions of sub-subparagraph b.~~

365 ~~3. Except as provided in this paragraph, municipalities and~~
366 ~~counties retain all existing authority to require and collect~~
367 ~~permit fees from users or occupants of municipal or county roads~~
368 ~~or rights-of-way and to set appropriate permit fee amounts.~~

369 ~~(d) After January 1, 2001,~~ In addition to any other notice
370 requirements, a municipality must provide to the Secretary of
371 State, at least 10 days prior to consideration on first reading,
372 notice of a proposed ordinance governing a telecommunications
373 company placing or maintaining telecommunications facilities in
374 its roads or rights-of-way. ~~After January 1, 2001,~~ In addition
375 to any other notice requirements, a county must provide to the
376 Secretary of State, at least 15 days prior to consideration at a
377 public hearing, notice of a proposed ordinance governing a

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378 telecommunications company placing or maintaining
379 telecommunications facilities in its roads or rights-of-way. The
380 notice required by this paragraph must be published by the
381 Secretary of State on a designated Internet website. The failure
382 of a municipality or county to provide such notice does not
383 render the ordinance invalid, provided that enforcement of such
384 ordinance must be suspended until 30 days after the municipality
385 or county provides the required notice.

386 (e) The authority of municipalities and counties to require
387 franchise fees from providers of communications services, with
388 respect to the provision of communications services, is
389 specifically preempted by the state because of unique
390 circumstances applicable to providers of communications services
391 when compared to other utilities occupying municipal or county
392 roads or rights-of-way. Providers of communications services may
393 provide similar services in a manner that requires the placement
394 of facilities in municipal or county roads or rights-of-way or
395 in a manner that does not require the placement of facilities in
396 such roads or rights-of-way. Although similar communications
397 services may be provided by different means, the state desires
398 to treat providers of communications services in a
399 nondiscriminatory manner and to have the taxes, franchise fees,
400 and other fees, costs, and financial or regulatory exactions
401 paid by or imposed on providers of communications services be
402 competitively neutral. Municipalities and counties retain all
403 existing authority, if any, to collect franchise fees from users
404 or occupants of municipal or county roads or rights-of-way other
405 than providers of communications services, and the provisions of
406 this subsection shall have no effect upon this authority. The

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407 provisions of this subsection do not restrict the authority, if
408 any, of municipalities or counties or other governmental
409 entities to receive reasonable rental fees based on fair market
410 value for the use of public lands and buildings on property
411 outside the public roads or rights-of-way for the placement of
412 communications antennas and towers.

413 (f) Except as expressly allowed or authorized by general
414 law and except for the rights-of-way permit fees subject to
415 paragraph (c), a municipality or county may not levy on a
416 provider of communications services a tax, fee, or other charge
417 or imposition for operating as a provider of communications
418 services within the jurisdiction of the municipality or county
419 which is in any way related to using its roads or rights-of-way.
420 A municipality or county may not require or solicit in-kind
421 compensation, except as otherwise provided in s. 202.24(2)(c)8.,
422 provided that the in-kind compensation is not a franchise fee
423 under federal law. Nothing in this paragraph impairs the
424 authority of a municipality or county to request public,
425 educational, or governmental access channels pursuant to ~~or~~ s.
426 610.109. Nothing in this paragraph shall impair any ordinance or
427 agreement in effect on May 22, 1998, or any voluntary agreement
428 entered into subsequent to that date, which provides for or
429 allows in-kind compensation by a telecommunications company.

430 (g) A municipality or county may not use its authority over
431 the placement of facilities in its roads and rights-of-way as a
432 basis for asserting or exercising regulatory control over a
433 provider of communications services regarding matters within the
434 exclusive jurisdiction of the Florida Public Service Commission
435 or the Federal Communications Commission, including, but not

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436 limited to, the operations, systems, equipment, technology,
437 qualifications, services, service quality, service territory,
438 and prices of a provider of communications services. A
439 municipality or county may not require any permit for the
440 maintenance, repair, replacement, extension, or upgrade of
441 existing aerial wireline communications facilities on utility
442 poles or for aerial wireline facilities between existing
443 wireline communications facility attachments on utility poles by
444 a communications services provider. However, a municipality or
445 county may require a right-of-way permit for work that involves
446 excavation, closure of a sidewalk, or closure of a vehicular
447 lane or parking lane, unless the provider is performing service
448 restoration to existing facilities. A permit application
449 required by an authority under this section for the placement of
450 communications facilities must be processed and acted upon
451 consistent with the timeframes provided in subparagraphs
452 (7) (d) 7., 8., and 9. In addition, a municipality or county may
453 not require any permit or other approval, fee, charge, or cost,
454 or other exaction for the maintenance, repair, replacement,
455 extension, or upgrade of existing aerial lines or underground
456 communications facilities located on private property outside of
457 the public rights-of-way. As used in this section, the term
458 "extension of existing facilities" includes those extensions
459 from the rights of way into a customer's private property for
460 purposes of placing a service drop or those extensions from the
461 rights of way into a utility easement to provide service to a
462 discrete identifiable customer or group of customers.

463 (h) A provider of communications services that has obtained
464 permission to occupy the roads or rights-of-way of an

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465 incorporated municipality pursuant to s. 362.01 or that is
466 otherwise lawfully occupying the roads or rights-of-way of a
467 municipality or county shall not be required to obtain consent
468 to continue such lawful occupation of those roads or rights-of-
469 way; however, nothing in this paragraph shall be interpreted to
470 limit the power of a municipality or county to adopt or enforce
471 reasonable rules or regulations as provided in this section and
472 consistent with chapters 202, 364, and 610. Any such rules or
473 regulations must be in writing, and registered providers of
474 communications services in the municipality or county must be
475 given at least 60 days advance written notice of any changes to
476 the rules and regulations.

477 (i) Except as expressly provided in this section, this
478 section does not modify the authority of municipalities and
479 counties to levy the tax authorized in chapter 202 or the duties
480 of providers of communications services under ss. 337.402-
481 337.404. This section does not apply to building permits, pole
482 attachments, or private roads, private easements, and private
483 rights-of-way.

484 ~~(j) Pursuant to this paragraph, any county or municipality~~
485 ~~may by ordinance change either its election made on or before~~
486 ~~July 16, 2001, under paragraph (c) or an election made under~~
487 ~~this paragraph.~~

488 ~~1.a. If a municipality or charter county changes its~~
489 ~~election under this paragraph in order to exercise its authority~~
490 ~~to require and collect permit fees in accordance with this~~
491 ~~subsection, the rate of the local communications services tax~~
492 ~~imposed by such jurisdiction pursuant to ss. 202.19 and 202.20~~
493 ~~shall automatically be reduced by the sum of 0.12 percent plus~~

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494 ~~the percentage, if any, by which such rate was increased~~
495 ~~pursuant to sub-subparagraph (c)1.b.~~

496 ~~b. If a municipality or charter county changes its election~~
497 ~~under this paragraph in order to discontinue requiring and~~
498 ~~collecting permit fees, the rate of the local communications~~
499 ~~services tax imposed by such jurisdiction pursuant to ss. 202.19~~
500 ~~and 202.20 may be increased by ordinance or resolution by an~~
501 ~~amount not to exceed 0.24 percent.~~

502 ~~2.a. If a noncharter county changes its election under this~~
503 ~~paragraph in order to exercise its authority to require and~~
504 ~~collect permit fees in accordance with this subsection, the rate~~
505 ~~of the local communications services tax imposed by such~~
506 ~~jurisdiction pursuant to ss. 202.19 and 202.20 shall~~
507 ~~automatically be reduced by the percentage, if any, by which~~
508 ~~such rate was increased pursuant to sub-subparagraph (c)2.b.~~

509 ~~b. If a noncharter county changes its election under this~~
510 ~~paragraph in order to discontinue requiring and collecting~~
511 ~~permit fees, the rate of the local communications services tax~~
512 ~~imposed by such jurisdiction pursuant to ss. 202.19 and 202.20~~
513 ~~may be increased by ordinance or resolution by an amount not to~~
514 ~~exceed 0.24 percent.~~

515 ~~3.a. Any change of election pursuant to this paragraph and~~
516 ~~any tax rate change resulting from such change of election shall~~
517 ~~be subject to the notice requirements of s. 202.21; however, no~~
518 ~~such change of election shall become effective prior to January~~
519 ~~1, 2003.~~

520 ~~b. Any county or municipality changing its election under~~
521 ~~this paragraph in order to exercise its authority to require and~~
522 ~~collect permit fees shall, in addition to complying with the~~

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523 ~~notice requirements under s. 202.21, provide to all dealers~~
524 ~~providing communications services in such jurisdiction written~~
525 ~~notice of such change of election by September 1 immediately~~
526 ~~preceding the January 1 on which such change of election becomes~~
527 ~~effective. For purposes of this sub-subparagraph, dealers~~
528 ~~providing communications services in such jurisdiction shall~~
529 ~~include every dealer reporting tax to such jurisdiction pursuant~~
530 ~~to s. 202.37 on the return required under s. 202.27 to be filed~~
531 ~~on or before the 20th day of May immediately preceding the~~
532 ~~January 1 on which such change of election becomes effective.~~

533 ~~(k)~~ Notwithstanding the provisions of s. 202.19, when a
534 local communications services tax rate is changed as a result of
535 an election made or changed under this subsection, such rate may
536 ~~shall~~ not be rounded to tenths.

537 (6)

538 (d) The amounts charged pursuant to this subsection shall
539 be based on the linear miles of roads or rights-of-way where a
540 communications facility is placed, not based on a summation of
541 the lengths of individual cables, conduits, strands, or fibers.
542 The amounts referenced in this subsection may be charged only
543 once annually and only to one person annually for any
544 communications facility. A municipality or county shall
545 discontinue charging such amounts to a person that has ceased to
546 be a pass-through provider. Any annual amounts charged shall be
547 reduced for a prorated portion of any 12-month period during
548 which the person remits taxes imposed by the municipality or
549 county pursuant to chapter 202. Any excess amounts paid to a
550 municipality or county shall be refunded to the person upon
551 written notice of the excess to the municipality or county. A

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552 municipality or county may require a pass-through provider to
553 provide an annual notarized statement identifying the total
554 number of linear miles of pass-through facilities in the
555 municipality's or county's rights-of-way. Upon request from a
556 municipality or county, a pass-through provider must provide
557 reasonable access to maps of pass-through facilities located in
558 the rights-of-way of the municipality or county making the
559 request. The scope of the request must be limited to only those
560 maps of pass-through facilities from which the calculation of
561 the linear miles of pass-through facilities in the rights-of-way
562 can be determined. The request must be accompanied by an
563 affidavit that the person making the request is authorized by
564 the municipality or county to review tax information related to
565 the revenue and mileage calculations for pass-through providers.
566 A request may not be made more than once annually to a pass-
567 through provider.

568 (e) This subsection does not alter any provision of this
569 section or s. 202.24 relating to taxes, fees, or other charges
570 or impositions by a municipality or county on a dealer of
571 communications services or authorize that any charges be
572 assessed on a dealer of communications services, except as
573 specifically set forth herein. A municipality or county may not
574 charge a pass-through provider any amounts other than the
575 charges under this subsection as a condition to the placement or
576 maintenance of a communications facility in the roads or rights-
577 of-way of a municipality or county by a pass-through provider,
578 except that a municipality or county may impose permit fees on a
579 pass-through provider consistent with paragraph (3)(c) ~~if the~~
580 ~~municipality or county elects to exercise its authority to~~

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581 ~~collect permit fees under paragraph (3)(c).~~

582 (f) The charges under this subsection do not apply to
583 communications facilities placed in a municipality's or county's
584 rights-of-way prior to the effective date of this subsection
585 with permission from the municipality or county, if any was
586 required, except to the extent the facilities of a pass-through
587 provider were subject to per linear foot or mile charges in
588 effect as of October 1, 2001, in which case the municipality or
589 county may only impose on a pass-through provider charges
590 consistent with paragraph (b) or paragraph (c) for such
591 facilities. Notwithstanding the foregoing, this subsection does
592 not impair any written agreement between a pass-through provider
593 and a municipality or county imposing per linear foot or mile
594 charges for communications facilities placed in municipal or
595 county roads or rights-of-way that is in effect prior to the
596 effective date of this subsection. Upon the termination or
597 expiration of any such written agreement, any charges imposed
598 must ~~shall~~ be consistent with this section ~~paragraph (b) or~~
599 ~~paragraph (c). Notwithstanding the foregoing, until October 1,~~
600 ~~2005, this subsection shall not affect a municipality or county~~
601 ~~continuing to impose charges in excess of the charges authorized~~
602 ~~in this subsection on facilities of a pass-through provider that~~
603 ~~is not a dealer of communications services in the state under~~
604 ~~chapter 202, but only to the extent such charges were imposed by~~
605 ~~municipal or county ordinance or resolution adopted prior to~~
606 ~~February 1, 2002. Effective October 1, 2005, any charges imposed~~
607 ~~shall be consistent with paragraph (b) or paragraph (c).~~

608 (7)

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

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610 1. "Antenna" means communications equipment that transmits
611 or receives electromagnetic radio frequency signals used in
612 providing wireless services.

613 2. "Applicable codes" means uniform building, fire,
614 electrical, plumbing, or mechanical codes adopted by a
615 recognized national code organization or local amendments to
616 those codes enacted solely to address threats of destruction of
617 property or injury to persons, and includes the National
618 Electric Safety Code and the 2017 edition of the Florida
619 Department of Transportation Utility Accommodation Manual ~~or~~
620 ~~local codes or ordinances adopted to implement this subsection.~~
621 ~~The term includes objective design standards adopted by~~
622 ~~ordinance that may require a new utility pole that replaces an~~
623 ~~existing utility pole to be of substantially similar design,~~
624 ~~material, and color or that may require reasonable spacing~~
625 ~~requirements concerning the location of ground-mounted~~
626 ~~equipment. The term includes objective design standards adopted~~
627 ~~by ordinance that may require a small wireless facility to meet~~
628 ~~reasonable location context, color, stealth, and concealment~~
629 ~~requirements; however, such design standards may be waived by~~
630 ~~the authority upon a showing that the design standards are not~~
631 ~~reasonably compatible for the particular location of a small~~
632 ~~wireless facility or that the design standards impose an~~
633 ~~excessive expense. The waiver shall be granted or denied within~~
634 ~~45 days after the date of the request.~~

635 3. "Applicant" means a person who submits an application
636 and is a wireless provider.

637 4. "Application" means a request submitted by an applicant
638 to an authority for a permit to collocate small wireless

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639 facilities or to place a new utility pole used to support a
640 small wireless facility.

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

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

652 a. A retirement community that:

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

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

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

658 b. A municipality that:

659 (I) Is located on a coastal barrier island as defined in s.
660 161.053(1) (b) 3.;

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

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

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

666 7. "Collocate" or "collocation" means to install, mount,
667 maintain, modify, operate, or replace one or more wireless

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668 facilities on, under, within, or adjacent to a wireless support
669 structure or utility pole. The term does not include the
670 installation of a new utility pole or wireless support structure
671 in the public rights-of-way.

672 8. "FCC" means the Federal Communications Commission.

673 9. "Micro wireless facility" means a small wireless
674 facility having dimensions no larger than 24 inches in length,
675 15 inches in width, and 12 inches in height and an exterior
676 antenna, if any, no longer than 11 inches.

677 10. "Small wireless facility" means a wireless facility
678 that meets the following qualifications:

679 a. Each antenna associated with the facility is located
680 inside an enclosure of no more than 6 cubic feet in volume or,
681 in the case of antennas that have exposed elements, each antenna
682 and all of its exposed elements could fit within an enclosure of
683 no more than 6 cubic feet in volume; and

684 b. All other wireless equipment associated with the
685 facility is cumulatively no more than 28 cubic feet in volume.
686 The following types of associated ancillary equipment are not
687 included in the calculation of equipment volume: electric
688 meters, concealment elements, telecommunications demarcation
689 boxes, ground-based enclosures, grounding equipment, power
690 transfer switches, cutoff switches, vertical cable runs for the
691 connection of power and other services, and utility poles or
692 other support structures.

693 11. "Utility pole" means a pole or similar structure that
694 is used in whole or in part to provide communications services
695 or for electric distribution, lighting, traffic control,
696 signage, or a similar function. The term includes the vertical

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697 support structure for traffic lights but does not include a
698 horizontal structure to which signal lights or other traffic
699 control devices are attached and does not include a pole or
700 similar structure 15 feet in height or less unless an authority
701 grants a waiver for such pole.

702 12. "Wireless facility" means equipment at a fixed location
703 which enables wireless communications between user equipment and
704 a communications network, including radio transceivers,
705 antennas, wires, coaxial or fiber-optic cable or other cables,
706 regular and backup power supplies, and comparable equipment,
707 regardless of technological configuration, and equipment
708 associated with wireless communications. The term includes small
709 wireless facilities. The term does not include:

710 a. The structure or improvements on, under, within, or
711 adjacent to the structure on which the equipment is collocated;

712 b. Wireline backhaul facilities; or

713 c. Coaxial or fiber-optic cable that is between wireless
714 structures or utility poles or that is otherwise not immediately
715 adjacent to or directly associated with a particular antenna.

716 13. "Wireless infrastructure provider" means a person who
717 has been certificated under chapter 364 to provide
718 telecommunications service ~~in the state~~ or under chapter 610 to
719 provide cable or video services in this state, or that person's
720 affiliate, and who builds or installs wireless communication
721 transmission equipment, wireless facilities, or wireless support
722 structures but is not a wireless services provider.

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

725 15. "Wireless services" means any services provided using

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726 licensed or unlicensed spectrum, whether at a fixed location or
727 mobile, using wireless facilities.

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

730 17. "Wireless support structure" means a freestanding
731 structure, such as a monopole, a guyed or self-supporting tower,
732 or another existing or proposed structure designed to support or
733 capable of supporting wireless facilities. The term does not
734 include a utility pole, pedestal, or other support structure for
735 ground-based equipment not mounted on a utility pole and less
736 than 5 feet in height.

737 (c) Except as provided in this subsection, an authority may
738 not prohibit, regulate, or charge for the collocation of small
739 wireless facilities in the public rights-of-way or for the
740 installation, maintenance, modification, operation, or
741 replacement of utility poles used for the collocation of small
742 wireless facilities in the public rights-of-way.

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

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

752 2. An applicant may not be required to provide more
753 information to obtain a permit than is necessary to demonstrate
754 the applicant's compliance with applicable codes for the

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755 placement of small wireless facilities in the locations
756 identified in the application. An applicant may not be required
757 to provide inventories, maps, or locations of communications
758 facilities in the right-of-way other than as necessary to avoid
759 interference with other at-grade or aerial facilities located at
760 the specific location proposed for a small wireless facility or
761 within 50 feet of such location.

762 3. An authority may not:

763 a. Require the placement of small wireless facilities on
764 any specific utility pole or category of poles; ~~or~~

765 b. Require the placement of multiple antenna systems on a
766 single utility pole;

767 c. Require a demonstration that collocation of a small
768 wireless facility on an existing structure is not legally or
769 technically possible as a condition for granting a permit for
770 the collocation of a small wireless facility on a new utility
771 pole except as provided in paragraph (i);

772 d. Require compliance with an authority's provisions
773 regarding placement of small wireless facilities or a new
774 utility pole used to support a small wireless facility in
775 rights-of-way under the control of the department unless the
776 authority has received a delegation from the department for the
777 location of the small wireless facility or utility pole, or
778 require such compliance as a condition to receive a permit that
779 is ancillary to the permit for collocation of a small wireless
780 facility, including an electrical permit;

781 e. Require a meeting before filing an application;

782 f. Require direct or indirect public notification or a
783 public meeting for the placement of communication facilities in

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784 the right-of-way;

785 g. Limit the size or configuration of a small wireless
786 facility or any of its components, if the small wireless
787 facility complies with the size limits in this subsection;

788 h. Prohibit the installation of a new utility pole used to
789 support the collocation of a small wireless facility if the
790 installation otherwise meets the requirements of this
791 subsection; or

792 i. Require that any component of a small wireless facility
793 be placed underground except as provided in paragraph (i).

794 4. Subject to paragraph (r), an authority may not limit the
795 placement, by minimum separation distances, of small wireless
796 facilities, utility poles on which small wireless facilities are
797 or will be collocated, or other at-grade communications
798 facilities ~~by minimum separation distances.~~ However, within 14
799 days after the date of filing the application, an authority may
800 request that the proposed location of a small wireless facility
801 be moved to another location in the right-of-way and placed on
802 an alternative authority utility pole or support structure or
803 placed on ~~may place~~ a new utility pole. The authority and the
804 applicant may negotiate the alternative location, including any
805 objective design standards and reasonable spacing requirements
806 for ground-based equipment, for 30 days after the date of the
807 request. At the conclusion of the negotiation period, if the
808 alternative location is accepted by the applicant, the applicant
809 must notify the authority of such acceptance and the application
810 shall be deemed granted for any new location for which there is
811 agreement and all other locations in the application. If an
812 agreement is not reached, the applicant must notify the

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813 authority of such nonagreement and the authority must grant or
814 deny the original application within 90 days after the date the
815 application was filed. A request for an alternative location, an
816 acceptance of an alternative location, or a rejection of an
817 alternative location must be in writing and provided by
818 electronic mail.

819 5. An authority shall limit the height of a small wireless
820 facility to 10 feet above the utility pole or structure upon
821 which the small wireless facility is to be collocated. Unless
822 waived by an authority, the height for a new utility pole is
823 limited to the tallest existing utility pole as of July 1, 2017,
824 located in the same right-of-way, other than a utility pole for
825 which a waiver has previously been granted, measured from grade
826 in place within 500 feet of the proposed location of the small
827 wireless facility. If there is no utility pole within 500 feet,
828 the authority shall limit the height of the utility pole to 50
829 feet.

830 6. ~~Except as provided in subparagraphs 4. and 5.,~~ The
831 installation by a communications services provider of a utility
832 pole in the public rights-of-way, other than a utility pole used
833 ~~designed~~ to support a small wireless facility, is shall be
834 subject to authority rules or regulations governing the
835 placement of utility poles in the public rights-of-way ~~and shall~~
836 ~~be subject to the application review timeframes in this~~
837 ~~subsection.~~

838 7. Within 14 days after receiving an application, an
839 authority must determine and notify the applicant by electronic
840 mail as to whether the application is complete. If an
841 application is deemed incomplete, the authority must

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842 specifically identify the missing information. An application is
843 deemed complete if the authority fails to provide notification
844 to the applicant within 14 days.

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

855 9. An authority must notify the applicant of approval or
856 denial by electronic mail. An authority shall approve a complete
857 application unless it does not meet the authority's applicable
858 codes. If the application is denied, the authority must specify
859 in writing the basis for denial, including the specific code
860 provisions on which the denial was based, and send the
861 documentation to the applicant by electronic mail on the day the
862 authority denies the application. The applicant may cure the
863 deficiencies identified by the authority and resubmit the
864 application within 30 days after notice of the denial is sent to
865 the applicant. The authority shall approve or deny the revised
866 application within 30 days after receipt or the application is
867 deemed approved. The review of a revised application is Any
868 ~~subsequent review shall be~~ limited to the deficiencies cited in
869 the denial. If an authority provides for administrative review
870 of the denial of an application, the review must be complete and

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871 a written decision issued within 45 days after a written request
872 for review is made. A denial must identify the specific code
873 provisions on which the denial is based. If the administrative
874 review is not complete within 45 days, the authority waives any
875 claim regarding failure to exhaust administrative remedies in
876 any judicial review of the denial of an application.

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

885 11. An authority may deny an application to collocate a
886 ~~proposed collocation of~~ a small wireless facility or place a
887 utility pole used to support a small wireless facility in the
888 public rights-of-way if the proposed small wireless facility or
889 utility pole used to support a small wireless facility
890 collocation:

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

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

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

898 d. Materially fails to comply with the 2017 ~~2010~~ edition of
899 the Florida Department of Transportation Utility Accommodation

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900 Manual.

901 e. Fails to comply with applicable codes.

902 f. Fails to comply with objective design standards
903 authorized under paragraph (r).

904 12. An authority may adopt by ordinance provisions for
905 insurance coverage, indemnification, ~~performance bonds, security~~
906 ~~funds,~~ force majeure, abandonment, authority liability, or
907 authority warranties. Such provisions must be reasonable and
908 nondiscriminatory. An authority may require a construction bond
909 to secure restoration of the postconstruction rights-of-way to
910 the preconstruction condition. However, such bond must be time-
911 limited to not more than 18 months after the construction to
912 which the bond applies is completed. For any financial
913 obligation required by an authority allowed under this section,
914 the authority shall accept a letter of credit or similar
915 financial instrument issued by any financial institution that is
916 authorized to do business within the United States, provided
917 that a claim against the financial instrument may be made by
918 electronic means, including by facsimile. A provider of
919 communications services may add an authority to any existing
920 bond, insurance policy, or other relevant financial instrument,
921 and the authority must accept such proof of coverage without any
922 conditions other than consent to venue for purposes of any
923 litigation to which the authority is a party. An authority may
924 not require a communications services provider to indemnify it
925 for liabilities not caused by the provider, including
926 liabilities arising from the authority's negligence, gross
927 negligence, or willful conduct.

928 13. Collocation of a small wireless facility on an

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929 authority utility pole does not provide the basis for the
930 imposition of an ad valorem tax on the authority utility pole.

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

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

942 (e) An authority may not require any permit or other
943 approval or require fees, or other charges, costs, or other
944 exactions for:

945 1. Routine maintenance, the performance of service
946 restoration work on existing facilities, or repair work,
947 including, but not limited to, emergency repairs of existing
948 facilities or extensions of such facilities for providing
949 communications services to customers;

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

953 3. Installation, placement, maintenance, or replacement of
954 micro wireless facilities that are suspended on cables strung
955 between existing utility poles in compliance with applicable
956 codes by or for a communications services provider authorized to
957 occupy the rights-of-way and who is remitting taxes under

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958 chapter 202. An authority may require an initial letter from or
959 on behalf of such provider, which is effective upon filing,
960 attesting that the micro wireless facility dimensions comply
961 with the limits of this subsection. The authority may not
962 require any additional filing or other information as long as
963 the provider is deploying the same, a substantially similar, or
964 a smaller size micro wireless facility equipment.

965
966 Notwithstanding this paragraph, an authority may require a
967 right-of-way permit for work that involves excavation, closure
968 of a sidewalk, or closure of a vehicular lane or parking lane,
969 unless the provider is performing service restoration on an
970 existing facility and the work is done in compliance with the
971 2017 edition of the Florida Department of Transportation Utility
972 Accommodation Manual. An authority may require notice of such
973 work within 30 days after restoration and may require an after-
974 the-fact permit for work which would otherwise have required a
975 permit.

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

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

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

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

986 4. Agreements between authorities and wireless providers

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987 that are in effect on July 1, 2017, and that relate to the
988 collocation of small wireless facilities in the right-of-way,
989 including the collocation of small wireless facilities on
990 authority utility poles, remain in effect, subject to applicable
991 termination provisions. The wireless provider may accept the
992 rates, fees, and terms established under this subsection for
993 small wireless facilities and utility poles that are the subject
994 of an application submitted after the rates, fees, and terms
995 become effective.

996 5. A person owning or controlling an authority utility pole
997 shall offer rates, fees, and other terms that comply with this
998 subsection. By the later of January 1, 2018, or 3 months after
999 receiving a request to collocate its first small wireless
1000 facility on a utility pole owned or controlled by an authority,
1001 the person owning or controlling the authority utility pole
1002 shall make available, through ordinance or otherwise, rates,
1003 fees, and terms for the collocation of small wireless facilities
1004 on the authority utility pole which comply with this subsection.

1005 a. The rates, fees, and terms must be nondiscriminatory and
1006 competitively neutral and must comply with this subsection.

1007 b. For an authority utility pole that supports an aerial
1008 facility used to provide communications services or electric
1009 service, the parties shall comply with the process for make-
1010 ready work under 47 U.S.C. s. 224 and implementing regulations.
1011 The good faith estimate of the person owning or controlling the
1012 pole for any make-ready work necessary to enable the pole to
1013 support the requested collocation must include pole replacement
1014 if necessary.

1015 c. For an authority utility pole that does not support an

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1016 aerial facility used to provide communications services or
1017 electric service, the authority shall provide a good faith
1018 estimate for any make-ready work necessary to enable the pole to
1019 support the requested collocation, including necessary pole
1020 replacement, within 60 days after receipt of a complete
1021 application. Make-ready work, including any pole replacement,
1022 must be completed within 60 days after written acceptance of the
1023 good faith estimate by the applicant. Alternatively, an
1024 authority may require the applicant seeking to collocate a small
1025 wireless facility to provide a make-ready estimate at the
1026 applicant's expense for the work necessary to support the small
1027 wireless facility, including pole replacement, and perform the
1028 make-ready work. If pole replacement is required, the scope of
1029 the make-ready estimate is limited to the design, fabrication,
1030 and installation of a utility pole that is substantially similar
1031 in color and composition. The authority may not condition or
1032 restrict the manner in which the applicant obtains, develops, or
1033 provides the estimate or conducts the make-ready work subject to
1034 usual construction restoration standards for work in the right-
1035 of-way. The replaced or altered utility pole shall remain the
1036 property of the authority.

1037 d. An authority may not require more make-ready work than
1038 is required to meet applicable codes or industry standards. Fees
1039 for make-ready work may not include costs related to preexisting
1040 damage or prior noncompliance. Fees for make-ready work,
1041 including any pole replacement, may not exceed actual costs or
1042 the amount charged to communications services providers other
1043 than wireless services providers for similar work and may not
1044 include any consultant fee or expense.

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1045 (g) For any applications filed before the effective date of
1046 ordinances implementing this subsection, an authority may apply
1047 current ordinances relating to placement of communications
1048 facilities in the right-of-way related to registration,
1049 permitting, insurance coverage, indemnification, ~~performance~~
1050 ~~bonds, security funds,~~ force majeure, abandonment, authority
1051 liability, or authority warranties. Permit application
1052 requirements and small wireless facility placement requirements,
1053 including utility pole height limits, that conflict with this
1054 subsection must shall be waived by the authority. An authority
1055 may not institute, either expressly or de facto, a moratorium,
1056 zoning-in-progress, or other mechanism that would prohibit or
1057 delay the filing, receiving, or processing of registrations,
1058 applications, or issuing of permits or other approvals for the
1059 collocation of small wireless facilities or the installation,
1060 modification, or replacement of utility poles used to support
1061 the collocation of small wireless facilities.

1062 (i) 1. In an area where an authority has required all public
1063 utility lines in the rights-of-way to be placed underground, a
1064 wireless provider must comply with written, objective,
1065 reasonable, and nondiscriminatory requirements that prohibit new
1066 utility poles used to support small wireless facilities if:

1067 a. The authority, at least 90 days prior to the submission
1068 of an application, has required all public utility lines to be
1069 placed underground;

1070 b. Structures that the authority allows to remain above
1071 ground are reasonably available to wireless providers for the
1072 collocation of small wireless facilities and may be replaced by
1073 a wireless provider to accommodate the collocation of small

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1074 wireless facilities; and

1075 c. A wireless provider may install a new utility pole in
1076 the designated area in the right-of-way that otherwise complies
1077 with this subsection and it is not reasonably able to provide
1078 wireless service by collocating on a remaining utility pole or
1079 other structure in the right-of-way.

1080 2. For small wireless facilities installed before an
1081 authority adopts requirements that public utility lines be
1082 placed underground, an authority adopting such requirements
1083 must:

1084 a. Allow a wireless provider to maintain the small wireless
1085 facilities in place subject to any applicable pole attachment
1086 agreement with the pole owner; or

1087 b. Allow the wireless provider to replace the associated
1088 pole within 50 feet of the prior location in accordance with
1089 paragraph (r). ~~A wireless provider shall, in relation to a small~~
1090 ~~wireless facility, utility pole, or wireless support structure~~
1091 ~~in the public rights-of-way, comply with nondiscriminatory~~
1092 ~~undergrounding requirements of an authority that prohibit above-~~
1093 ~~ground structures in public rights-of-way. Any such requirements~~
1094 ~~may be waived by the authority.~~

1095 (r) An authority may require wireless providers to comply
1096 with objective design standards adopted by ordinance. The
1097 ordinance may only require:

1098 1. A new utility pole that replaces an existing utility
1099 pole to be of substantially similar design, material, and color;

1100 2. Reasonable spacing requirements concerning the location
1101 of a ground-mounted component of a small wireless facility which
1102 does not exceed 15 feet from the associated support structure;

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1103 or

1104 3. A small wireless facility to meet reasonable location
1105 context, color, camouflage, and concealment requirements,
1106 subject to the limitations in this subsection; and

1107 4. A new utility pole used to support a small wireless
1108 facility to meet reasonable location context, color, and
1109 material of the predominant utility pole type at the proposed
1110 location of the new utility pole.

1111

1112 Such design standards under this paragraph may be waived by the
1113 authority upon a showing that the design standards are not
1114 reasonably compatible for the particular location of a small
1115 wireless facility or utility pole or are technically infeasible
1116 or that the design standards impose an excessive expense. The
1117 waiver must be granted or denied within 45 days after the date
1118 of the request.

1119 (8) (a) Any person aggrieved by a violation of this section
1120 may bring a civil action in a United States District Court or in
1121 any other court of competent jurisdiction.

1122 (b) The court may:

1123 1. Grant temporary or permanent injunctions on terms as it
1124 may deem reasonable to prevent or restrain violations of this
1125 section; and

1126 2. Direct the recovery of full costs, including awarding
1127 reasonable attorney fees, to the party who prevails.

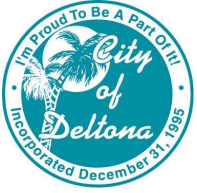
1128 (9) All work in the authority's rights-of-way under this
1129 section must comply with the 2017 edition of the Florida
1130 Department of Transportation Utility Accommodation Manual.

1131 Section 3. Nothing in this act shall be construed to delay

20191000er

1132 the issuance of permits for other utility work, including, but
1133 not limited to, permits related to electricity or gas work in
1134 the rights-of-way.

1135 Section 4. This act shall take effect July 1, 2019.



City of Deltona

2345 Providence Blvd.
Deltona, FL 32725

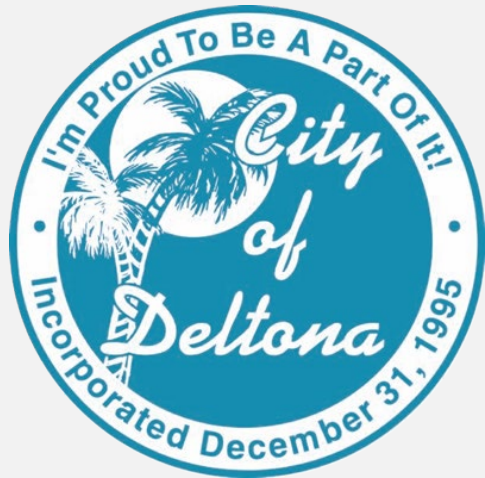
Agenda Memo

AGENDA ITEM: A.

CONDUCT OF HEARINGS ON LAND USE MATTERS

PREPARED FOR
THE CITY OF DELTONA, FLORIDA
BY TG LAW PLLC





AGENDA

- ❖ Legislative Matters
- ❖ Quasi-Judicial Matters
- ❖ Ex Parte Communications and Quasi-Judicial Bias
- ❖ Findings of Fact
- ❖ Best Practices

LEGISLATIVE MATTERS

- **Legislative Matters involve setting POLICY**
- Adopting or amending the Comprehensive Plan
- Adopting or amending Land Development Regulations

LEGISLATIVE HEARINGS

- Broad/general notice
- Wide-ranging public hearing, including consideration of pure preferences and opinions, conjecture and assumptions
- Presentation of evidence: anything relevant
- Substantial discretion: Board Members as policy-makers

REVIEW OF LEGISLATIVE DECISIONS

- “Fairly Debatable” Standard of Review
- There must be a reasonable basis to support the action
- Upon review, a Court:
 - may not second guess the wisdom of the local government’s action; and
 - must affirm if there is any reasonable basis for the decision and that there are no constitutional violations

REVIEW OF LEGISLATIVE DECISIONS

- Legislative findings may be based on rational speculation unsupported by evidence or empirical data
- Can legislate as an experiment, with no proof of efficacy
- If the decision is challenged, the City has the opportunity to create additional evidence to support it – additional studies, expert testimony, etc.
- *Membreno v. City of Hialeah*, 188 So.3d 13 (Fla.3rd DCA 2016)

QUASI-JUDICIAL MATTERS

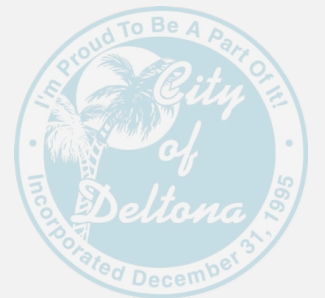
- Application of the general policies and rules (the City Code or the Comprehensive Plan) to specific properties
- Cannot create new policies to govern the decision without first going through a legislative process
- Examples: Rezoning, Conditional Uses, Variances, Special Exceptions,

QUASI-JUDICIAL HEARINGS

- Notice to owner and affected persons – entitled to participation because of their uniquely impacted rights
- Two key elements:
 - the finding of facts regarding the specific proposal
 - the exercise of judgment and discretion in applying adopted policies to the specific situation
- Board acts as “judges”

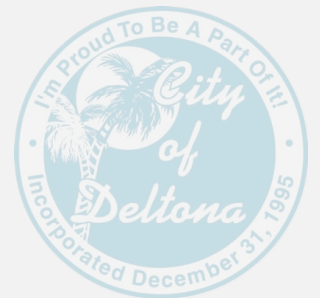
QUASI-JUDICIAL HEARINGS

- Where conflicting evidence is presented, the Board has the responsibility of deciding how much weight to accord each piece of evidence
- Continued hearings: must be present for all or must review the complete record of portions missed
- All exhibits and materials presented must be kept as part of the record
- Review is based on the record: No ability to create additional evidence after decision is made
- Board should give due consideration to the professional judgement of City Staff, but the question of what the Code/Plan means is a question of law for the Board to decide



REVIEW OF QUASI-JUDICIAL DECISIONS

- Decisions by the City in a quasi-judicial capacity are subject to narrow and limited review by certiorari on the record in Circuit Court:
 - Whether procedural due process was accorded;
 - Whether the essential requirements of the law have been observed; and
 - Whether the decision is supported by competent substantive evidence
- Petitions for writ of certiorari must be filed within 30 days of rendition of the development order to be reviewed. It cannot be extended
- Denials must cite to the legal authority for the decision – see Section 166.033, Florida Statutes
- *Bd. of Cnty. Comm'rs of Brevard Co. v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993)

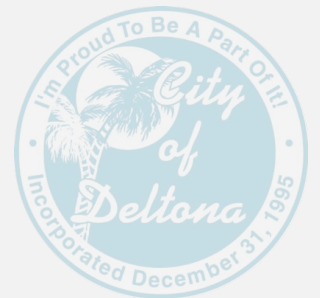


COMPETENT SUBSTANTIAL EVIDENCE

- Whether the decision is supported by competent, substantial evidence means evidence that a reasonable mind would accept as adequate to support a conclusion
- Substantial Competent Evidence from lay witnesses/residents must be “fact-based”
- Subjective preferences (“love it”/“hate it”) are not fact based and do not constitute competent, substantial evidence
- Conjecture or assumptions are irrelevant to the issues

COMPETENT SUBSTANTIAL EVIDENCE - EXAMPLE

- If you want to find that property values in the neighborhood will be harmed by a proposed project, you must base your conclusion on record evidence rather than your gut
 - Testimony from an appraiser about the impacts of a similar project
 - Is it truly similar? Does the record reflect that, or are you just relying on your knowledge of the area? Need to state/show what may be obvious to local citizens, so that a reviewing court can see that evidence supports your conclusion
- Presentation of facts that would allow a reasonable person to conclude property values would go down
 - property owners testifying in detail about personal knowledge of the appraisals or sales prices or cancelled sales contracts resulting from similar development or from the pending application
- Relevant personal knowledge must be explained if it is to form the basis of your motion or vote

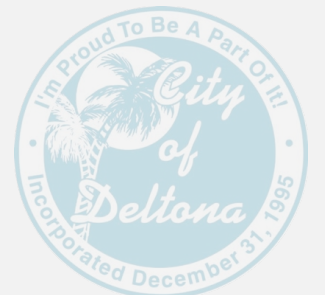


EX PARTE COMMUNICATIONS

- Communications outside hearings are presumed prejudicial and must be disclosed publicly before decision-making
- “A county or municipality may adopt an ordinance or resolution removing the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose ex parte communications with such officials pursuant to this subsection or by adopting an alternative process for such disclosure....”
Section 286.0115(1)(a), Florida Statutes
- When this procedure is followed, the presumption of prejudice is removed
- Disclosure is required at the time of consideration by the board

QUASI-JUDICIAL BIAS

- Bias, undisclosed ex parte communications, and close family or business ties can disqualify Board Members from participating or voting as a matter of due process – even if there is no statutory conflict of interest
- Those participating in quasi-judicial proceedings have a right to expect impartial decision-making on the basis of the evidence presented.
- Decision-makers should not take a position on a quasi-judicial application until each party has made its presentation at the hearing.
- Board Members should not actively involve themselves in efforts to support proponents or opponents of a quasi-judicial land development action to reduce risk of litigation



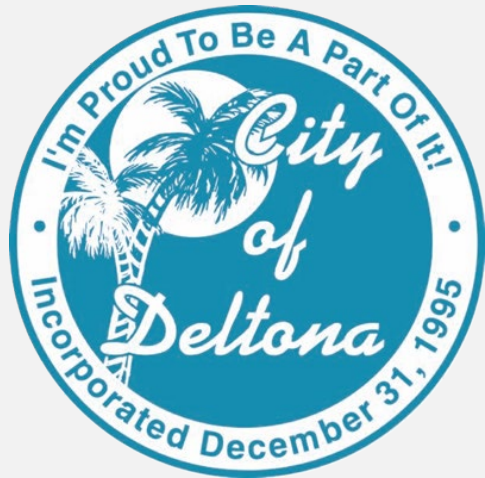
CASES RELATED TO QUASI-JUDICIAL BIAS

- *Huntley's Jiffy Stores, Inc. v. Brevard County*, Case No. 90-12261-AP (18th Cir. Ct. 1991) (denial of rezoning based on resident opposition)
- *Edelstein v. City of Miami Beach*, 3 Fla. L. Weekly Supp. 89 (Fla. 11th Cir. Ct. April 7, 1995) (campaign promises to support a downzoning in advance of the hearing)

FINDINGS OF FACT

- The Florida Supreme Court in *Bd. of Cnty. Comm'rs of Brevard Co. v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993) ruled that the local government “will NOT be required to make findings of fact” to support its decision on an application for rezoning
- However, written findings of fact can aid in case of appeal to support the local government’s quasi-judicial decisions

* NOTE – HB 399 takes effect January 1, 2027, and impacts denials; requiring certain findings be issued



BEST PRACTICES

- ❖ Be an objective decisionmaker
- ❖ Make decisions based on the information presented
- ❖ Be an effective and prepared Board Member
- ❖ Make sound decisions and defensible motions
- ❖ Added conditions should be rational and not overlap or conflict with staff