

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

ALACHUA COUNTY
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2019-__

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, AMENDING CHAPTER 367 OF THE ALACHUA COUNTY CODE OF ORDINANCES, ENTITLED "UTILITY INSTALLATION REGULATIONS," AMENDING ARTICLE II, ENTITLED "WIRELESS INFRASTRUCTURE," AMENDING SECTION 367.11, "DEFINITIONS"; AMENDING SECTION 367.12, "REGISTRATION"; AMENDING SECTION 367.14, "APPLICATION PROCESS"; AMENDING SECTION 367.18, "CONSTRUCTION BOND"; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR MODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES AND CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2019, Florida passed SB 1000, which amends Section § 202.20 and § 337.401, *Florida Statutes*, to address local government regulation of access to the public rights-of-way for wireless facilities and wireless support structures and to specify limitations and prohibitions on counties relating to registrations and renewals of communications service providers.

WHEREAS, the Act prevents local governments from prohibiting, regulating, or charging for the colocation of small wireless facilities in the rights-of-way, unless otherwise provided for in the Act; and

WHEREAS, Alachua County wishes to remain in compliance with Section § 202.20 and § 337.401 adopting regulations and fees for small wireless facility colocation to the full extent allowed by the Act; and

1 **WHEREAS**, it is the intent of this Ordinance to promote, protect, and improve the health,
2 safety, and welfare of the residents of Alachua County by amending Chapter 367 of the Alachua
3 County Code to regulate small wireless facilities in the rights-of-way.

4 **NOW, THEREFORE, BE IT DULY ORDAINED BY THE BOARD OF COUNTY**
5 **COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, AS FOLLOWS:**

6 SECTION 1. The Board of County Commissioners finds and declares that all statements
7 in the preamble of the ordinance are true and correct.

8 SECTION 2. Chapter 367 of the Alachua County Code, entitled "Utility Installation
9 Regulations," is hereby amended as follows:

10 **ARTICLE II. WIRELESS INFRASTRUCTURE**

11 **Sec. 367.10. – Purpose**

12 This ~~a~~Article provides a regulatory framework for placement or ~~collocation~~ collocation of
13 wireless infrastructure or facilities to the full extent allowed by State law.

14 **Sec. 367.11. – Definitions**

15 ~~Antenna means communications equipment that transmits or receives electromagnetic radio~~
16 frequency signals used in providing wireless services an apparatus designed for the purpose of
17 emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location
18 pursuant to Commission authorization, for the provision of personal wireless service and any
19 commingled information services. For purposes of this definition, the term antenna does not
20 include an unintentional radiator, mobile station, or device.

21 ~~Applicable codes means uniform building, fire, electrical, plumbing, or mechanical codes~~
22 adopted by a recognized national code organization or local amendments to those codes enacted
23 solely to address threats of destruction of property or injury to persons, and includes the National
24 Electric Safety Code and the 2017 edition of the Florida Department of Transportation Utility
25 Accommodation Manual. ~~or local codes or ordinances adopted to implement this subsection. The~~
26 ~~term includes objective design standards adopted by ordinance that may require a new utility~~
27 ~~pole that replaces an existing utility pole to be of substantially similar design, material, and color~~
28 ~~or that may require reasonable spacing requirements concerning the location of ground-mounted~~
29 ~~equipment. The term includes objective design standards adopted by ordinance that may require~~
30 ~~a small wireless facility to meet reasonable location context, color, stealth, and concealment~~
31 ~~requirements; however, such design standards may be waived by the authority upon a showing~~
32 ~~that the design standards are not reasonably compatible for the particular location of a small~~
33 ~~wireless facility or that the design standards impose an excessive expense. The waiver shall be~~
34 ~~granted or denied within 45 days after the date of the request.~~

1 *Applicant* means a person or entity that ~~who~~ submits an application and the agents, employees,
2 and contractors of such person or entity and is a wireless provider.

3
4 *Application* means a request submitted by an applicant to an authority for a permit to ~~collocate~~
5 colocate small wireless facilities or place a new utility pole used to support a small wireless
6 facility.

7
8 *Authority* means Alachua County.

9
10 *County utility pole* means a utility pole owned by Alachua County in the right-of-way. The term
11 does not include a utility pole owned by a municipal electric utility, a utility pole used to support
12 municipally owned or operated electric distribution facilities, or a utility pole located in the right-
13 of-way within a retirement community that:

14
15 (a) Is deed restricted as housing for older persons as defined in section 760.29(4)(b), Florida
16 Statutes, as amended;

17
18 (b) Has more than 5,000 residents; and

19
20 (c) Has underground utilities for electric transmission or distribution.

21
22 ~~Collocate~~ Colocate or ~~collocation~~ colocation means to install, mount, maintain, modify, operate,
23 or replace one or more wireless facilities or antennae facilities on, under, within, or adjacent to a
24 wireless support structure or utility pole. The term does not include the installation of a new
25 utility pole or wireless support structure in the public rights-of-way.

26
27 ~~FCC means the Federal Communications Commission.~~

28
29 ~~Micro wireless facility~~ means a small wireless facility having dimensions no larger than 24
30 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no
31 longer than 11 inches.

32
33 Pass-through provider means any person who places or maintains a communications facility in
34 the roads or rights-of-way of the County that levies a tax pursuant to Florida Statutes Chapter
35 202 and who does not remit taxes imposed by Alachua County pursuant to Florida Statutes
36 Chapter 202. A person who does not remit taxes imposed by the County pursuant to Florida
37 Statute Chapter 202, but pursuant to s. 202.16(2) sells communications services for resale to a
38 person who sells such services at retail or who integrates such services into communications
39 services sold at retail in that County and who remits taxes imposed by that County pursuant to
40 Florida Statutes chapter 202, is not a pass-through provider.

41
42 *Registrant* means any wireless provider, or other person or entity, that registers with Alachua
43 County pursuant to this Article, or applies for a permit from Alachua County for purposes of
44 placing or collocating wireless facilities on, in, or within a ~~e~~County right-of-way, utility pole, or
45 wireless support structure.

1 *Small wireless facility* means a wireless facility that meets the following qualifications:

2
3 (a) Each antenna associated with the facility is located inside an enclosure of no more than 6
4 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all
5 of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
6

7 (b) All other wireless equipment associated with the facility is cumulatively no more than 28
8 cubic feet in volume. The following types of associated ancillary equipment are not included in
9 the calculation of equipment volume: electric meters, concealment elements, telecommunications
10 demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches,
11 cutoff switches, vertical cable runs for the connection of power and other services, and utility
12 poles or other support structures.
13

14 *Structure* means a pole, tower, base station, or other building, whether or not it has an existing
15 antenna facility, that is used or to be used for the provision of personal wireless service (whether
16 on its own or commingled with other types of service).
17

18 *Utility pole* means a pole or similar structure that is used in whole or in part to provide
19 communications services or for electric distribution, lighting, traffic control, signage, or a similar
20 function. The term includes the vertical support structure for traffic lights but does not include a
21 horizontal structure to which signal lights or other traffic control devices are attached and does
22 not include a pole or similar structure 15 feet in height or less unless the authority grants a
23 waiver for such pole.
24

25 *Wireless facility* means equipment at a fixed location which enables wireless communications
26 between user equipment and a communications network, including radio transceivers, antennas,
27 wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and
28 comparable equipment, regardless of technological configuration, and equipment associated with
29 wireless communications. The term includes small wireless facilities. The term does not include:
30

31 (a) The structure or improvements on, under, within, or adjacent to the structure on which
32 the equipment is ~~collocated~~ collocated;
33

34 (b) Wireline backhaul facilities; or
35

36 (c) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is
37 otherwise not immediately adjacent to or directly associated with a particular antenna.
38

39 *Wireless infrastructure provider* means a person or entity who has been certificated under
40 Florida Statutes Chapter 364 to provide telecommunications service in the state or under Florida
41 Statutes Chapter 610 to provide cable or video services in this state, or that person's affiliate, and
42 who builds or installs wireless communication transmission equipment, wireless facilities, or
43 wireless support structures but is not a wireless services provider.
44

45 *Wireless provider or provider* means a wireless infrastructure provider or a wireless services
46 provider.
47

1 ~~Wireless services means any services provided using licensed or unlicensed spectrum, whether at~~
2 ~~a fixed location or mobile, using wireless facilities.~~

3
4 *Wireless services provider* means a person or entity who provides wireless services.

5
6 *Wireless support structure* means a freestanding structure, such as a monopole, a guyed or self-
7 supporting tower, or another existing or proposed structure designed to support, or capable of
8 supporting, wireless facilities. The term does not include a utility pole, pedestal, or other support
9 structure for ground-based equipment not mounted on a utility pole and less than 5 feet in height.

10 11 **Sec. 367.12. – Registration**

12 (a) Any applicant that desires to ~~collocate~~ colocate, place, or maintain a wireless facility in or
13 on a ~~e~~County utility pole within public rights-of-way shall be required to first register with the
14 ~~e~~County's ~~p~~Public ~~w~~Works ~~d~~Department in accordance with the terms of this ~~a~~Article.

15 Registration shall include, as applicable, the following information:

- 16
17 (1) Identity of the applicant and name, address and telephone number of applicant's
18 primary contact person in connection with the registration;
19
20 (2) The number of the applicant's current certificate of authorization issued by the
21 Florida Public Service Commission, the Federal Communications Commission, or
22 the Department of State;
23
24 (3) A statement of whether the registrant is a pass-through provider;
25
26 (4) The registrant's federal employer identification number;
27
28 (35) Proof of insurance coverage or self-insuring status, in compliance with the
29 requirements of this Article and adequate to defend and cover claims;
30
31 (56) A security fund in accordance with this Article.

32
33 (b) The ~~e~~County will review the information submitted by the applicant. If the applicant
34 submits a complete registration with the information required in this Article, the registration shall
35 be effective and the ~~e~~County shall notify the applicant of the effectiveness of registration in
36 writing. If the ~~e~~County determines that the applicant has not followed the registration process
37 provided in this Article, then the registration is insufficient and not in effect. If the registration is
38 insufficient, the ~~e~~County shall notify the applicant of the non-effectiveness of registration or that
39 the application is materially incomplete, and reasons for the non-effectiveness or incompleteness,
40 in writing. The ~~e~~County shall so reply to an applicant within 30 calendar days after receipt of
41 registration information from the applicant or within such time frame as required by applicable
42 law. Upon notification of the non-effectiveness of the registration, nothing herein shall preclude
43 the applicant from filing a subsequent registration addressing the basis for the non-effectiveness
44 determination. An applicant may cancel a registration upon written notice to the ~~e~~County
45 noticing that it will no longer maintain facilities in the public rights-of-way and will no longer
46 need to obtain permits to perform work in public rights-of-way. If there is any change in the
47 information required to be submitted pursuant to this Article, a registrant shall provide updated

1 information to the eCounty's ~~p~~Public ~~w~~Works ~~d~~Department within 30 calendar days of the
2 change.

3
4 (c) A registration shall not convey title, equitable or legal, in the public right-of-way.
5 Registrants may only occupy public rights-of-way for wireless facilities. Registration does not
6 excuse a wireless provider from obtaining appropriate approval, access, or pole attachment
7 agreement with the eCounty before locating its facilities on eCounty utility poles or other
8 facilities.

9
10 ~~(d) Unless specifically prohibited by applicable law, each registration shall be accompanied~~
11 ~~by a nonrefundable application fee in the amount established by the County. If the registration~~
12 ~~fee is insufficient to cover all costs or expenses incurred by the County in connection with~~
13 ~~processing the registration, the applicant shall reimburse the County for any such costs and~~
14 ~~expenses in excess of the application fee.~~

15
16 ~~(e)~~ Registration with the eCounty shall be nonexclusive. Registration does not establish a right
17 to place or maintain, or any priority for the placement or maintenance of, a wireless facility
18 ~~collocated~~ colocated on a eCounty utility pole within a public right-of-way.

19
20 ~~(f)~~ A registrant shall renew its registration with the eCounty every two years from the date of
21 the initial registration. If no information in the then-existing registration has changed, the
22 renewal may state that no information has changed. Failure to renew a registration may, at the
23 eCounty's discretion, result in the eCounty restricting the issuance of additional permits, and any
24 other remedies available to the eCounty, until the wireless provider has complied with the
25 registration requirements of this aArticle.

26
27 **Sec. 367.13. – Fees**

28 (a) An applicant that ~~collocates~~ collocates or places wireless facilities on a eCounty utility
29 pole shall pay to the eCounty all applicable fees annually, as allowed by law.

30
31 (b) Notwithstanding anything herein to the contrary, the eCounty shall at all times hereby
32 require the maximum compensation allowed per pole annually, pursuant to Section 337.401,
33 Florida Statutes, as amended, for collocation or use of a eCounty utility pole within the public
34 rights-of-way.

35
36 (c) Except to the extent prohibited by applicable law:

- 37
38 (1) The fee payments to be made pursuant to this aArticle shall not be deemed to be
39 in the nature of a tax;
40
41 (2) Such fee payments shall be in addition to any and all taxes of a general
42 applicability;
43
44 (3) An applicant, registrant, or provider shall not have or make any claim for any
45 deduction or other credit of all or any part of the amount of said fee payments
46 from or against any of said eCounty taxes or other fees or charges of general

applicability which applicant, registrant, or provider is required to pay to the eCounty, except as required by law; and

- (4) The fee specified herein is the consideration for use of the public rights-of-way, including all public easements, for the purpose of collocating and maintaining a wireless facility. An applicant, registrant, or provider shall pay applicable fees for collocation or maintenance of a wireless facility for so long as the applicant, registrant, or provider owns any such facility and such facility remains in the public rights-of-way.

Sec. 367.14. – Application Process

(a) As part of any permit application, with respect to new or existing wireless facilities, where applicable, in the public rights-of-way, the registrant shall furnish to the ~~director of public works and the county manager~~ County Engineer or designee a proposal for construction or collocation of the wireless facility that, if applicable and allowed by law, sets forth at least the following:

- (1) An engineering plan signed and sealed by a state registered professional engineer, or prepared by a person who is exempt from such registration requirements as provided in section 471.003, Florida Statutes, as amended, identifying the location of the proposed wireless facility, including a description of the wireless facilities to be installed, where it will be located, and the approximate size of the wireless facilities and equipment that will be located in, on, over, or above the public rights-of-way.
- (2) An engineering structural certification signed and sealed by a state registered professional engineer, to certify that the eCounty utility pole (existing or new) meets the structural requirements for collocation of the wireless facility in terms of wind loads, and appropriate engineering foundation. If the eCounty utility pole is not structurally sound, then the applicant shall upgrade it at the applicant's expense, prior to collocating a wireless facility on the eCounty utility pole in question.
- (3) Maps showing the routing of new construction that involves an alteration to the surface or subsurface of the public right-of-way. A registrant may not begin construction until the plans and drawings have been approved in writing by the ~~director of public works~~ County Engineer or a designee and a permit is issued.
- (4) A description of the manner in which the wireless facility will be installed (i.e. anticipated construction methods and/or techniques).
- (5) The time required to place the wireless facility.
- (6) A maintenance of traffic plan for any disruption of the public rights-of-way.
- (7) Information on the ability of the public rights-of-way to accommodate the proposed wireless facility, if available.

- 1
- 2 (8) If appropriate, given the wireless facility proposed, an estimate of the cost of
- 3 restoration to the public rights-of-way.
- 4
- 5 (9) If appropriate, given the wireless facility proposed, an estimate of the timetable
- 6 necessary for construction for each proposed wireless facility and the areas of the
- 7 eCounty which will be affected.
- 8
- 9 (10) A fully executed waiver and release of liability and indemnification agreement, in
- 10 a form acceptable to the eCounty aAttorney, agreeing to protect, defend,
- 11 indemnify and hold harmless Alachua County, its bBoard of eCounty
- 12 eCommissioners, constitutional officers, employees, volunteers, representatives,
- 13 attorneys, agents, and assigns from and against any and all claims, demands,
- 14 actions, or causes of action of any and every description, and damages, including
- 15 attorneys' fees, brought against Alachua County, its bBoard of eCounty
- 16 eCommissioners, constitutional officers, employees, volunteers, representative,
- 17 attorneys, agents, and assigns, resulting from any accident, incident or occurrence
- 18 arising out of, incidental to or in any way resulting from or in connection with the
- 19 execution, performance, or exercise of any right, privileges, or uses allowed or
- 20 granted by the permit for the collocation of wireless facilities or use of a eCounty
- 21 right-of-way.
- 22
- 23 (11) The eCounty may request such additional information as it finds reasonably
- 24 necessary to review an application for a permit to perform work in the public
- 25 rights-of-way.
- 26
- 27 (b) The eCounty shall review and process applications for permits to ~~collocate~~ colocate
- 28 wireless facilities on eCounty utility poles in accordance with section 337.401(7)(d), Florida
- 29 Statutes, as amended.
- 30
- 31 (c) The eCounty may deny a ~~proposed collocation~~ an application to colocate of a small
- 32 wireless facility or place a utility pole used to support a small wireless facility in the public
- 33 rights-of-way if the proposed ~~collocated~~ colocated wireless facility:
- 34
- 35 (1) Materially interferes with the safe operation of traffic control equipment.
- 36
- 37 (2) Materially interferes with sight lines or clear zones for transportation, pedestrians,
- 38 or public safety purposes.
- 39
- 40 (3) Materially interferes with compliance with the Americans with Disabilities Act or
- 41 similar federal or state standards regarding pedestrian access or movement.
- 42
- 43 (4) Materially fails to comply with the ~~2010~~ 2017 edition of the Florida Department of
- 44 Transportation Utility Accommodation Manual.
- 45
- 46

(5) Materially fails to provide that the proposed wireless facility is structurally compliant with the structural loading requirements for the utility pole on which the wireless facility will be ~~collocated~~ colocated.

(6) Fails to comply with applicable codes.

(7) Fails to comply with objective design standards authorized under F.S. 337.401(7)(r).

(d) The ~~e~~County may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed ~~collocated~~ colocated wireless facility fails to satisfy the following design standards:

(1) The height of a ground-mounted component of a small wireless facility shall not exceed ~~ten~~ fifteen feet above the utility pole or structure upon which the small wireless facility is to be ~~collocated~~ colocated.

(2) If a new utility pole is required for purposes of ~~collocating~~ colocating a wireless facility, the new utility pole that replaces the existing utility pole must be of substantially similar design, material, and color compared to the existing utility pole that is being replaced.

(3) Wireless facilities must match the context and color of the utility poles on which they are ~~collocated~~ colocated.

(4) ~~To the extent possible, wireless facilities must be concealed from view from the ground level of the right-of-way in which the wireless facility is collocated.~~

(e) The County may require a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane or parking lane if the provider is performing service restoration to existing facilities.

Sec. 367.15. – Removal of Wireless Facilities from County Utility Poles

(a) If a wireless facility heretofore or hereafter placed upon, under, over, or along any public rights-of-way is found by the ~~e~~County to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way the responsible wireless provider shall, upon written notice to the wireless provider or its agent, initiate the work necessary to alleviate the interference, within 30 days of such notice, at its own expense in accordance with section 337.403, Florida Statutes, as amended. Upon a showing of good cause, the ~~e~~County ~~m~~Manager may extend the time within which the applicant shall alleviate the interference caused by the wireless facility in question.

(b) Pursuant to section 337.403, Florida Statutes, as amended, whenever an order of the ~~e~~County requires such removal or change in the location of any wireless facility from the public rights-of-way, and the facility owner fails to remove or change the same at its own expense to conform to the directive within the time stated in the notice, the ~~e~~County may proceed to cause the wireless facility to be removed. The expense thereby incurred by the ~~e~~County, except as

provided in section 337.403(1), Florida Statutes, as amended, shall be charged against the owner of the wireless facility and levied, collected, and paid to the eCounty.

(c) If the eCounty declares an emergency and requests the removal or abatement of wireless facilities, by written notice, the wireless provider shall remove or abate the wireless facilities by the deadline provided by the eCounty ~~m~~Manager. If the wireless provider, after notice, fails or refuses to act, the eCounty may remove or abate the facility, at the sole cost and expense of the wireless provider, without paying compensation to the wireless provider and without the eCounty incurring liability for damages.

(d) Upon abandonment of a wireless facility within the public rights-of-way of the eCounty, the owner of the facility shall notify the eCounty within 90 calendar days. The eCounty may provide notice of abandonment of a facility in the public rights-of-way. If the facility owner does not respond to such notice and provide information to demonstrate that the facility is not abandoned within 30 calendar days, the facility shall be deemed abandoned. The eCounty may require that the owner of an abandoned wireless facility shall remove all or any portion of the facility, or the eCounty may determine that such non-removal will be in the best interest of the public health, safety and welfare. Failure of the eCounty to require removal of the abandoned wireless facility shall not be deemed a waiver of the eCounty's right to require removal at a later date, as allowed by law.

Sec. 367.16. – Damage Caused by Wireless Provider

Pursuant to section 337.402, Florida Statutes, as amended, when any public road is damaged or impaired in any way because of the installation, inspection, or repair of a utility located on such road or publicly owned rail corridor, the owner of the utility shall, at his or her own expense, restore the road to its original condition before such damage. If the owner fails to make such restoration, the authority is authorized to do so and charge the cost thereof against the owner.

Sec. 367.17. – Insurance Requirements

As a condition of permit approval for use of eCounty right-of-way, each applicant or wireless provider shall provide proof of liability insurance, with the eCounty as an additional insured on the coverages below, excluding worker's compensation and employer's liability, in an amount and form adequate to defend and cover all claims. The liability insurance shall meet the following minimum requirements:

(a) Worker's Compensation and Employer's Liability Insurance

(1) Worker's Compensation Florida Statutory Requirements, and in addition:

- a. Employer's Liability \$100,000.00 limit each accident.
- b. \$500,000.00/disease policy limit.
- c. \$100,000.00.00/disease each employee.

(2) Comprehensive General Liability

- a. Bodily Injury and Property Damage—\$1,000,000.00 combined single limit each occurrence and \$2,000,000.00 in the aggregate.

1 (3) Automobile Liability

2 a. Bodily Injury and Property Damage—\$1,000,000.00 combined single limit
3 each accident.
4

5 (b) Certificate of insurance shall indicate policy renewal on an annual basis. Certificate must
6 be signed by the authorized representative of a responsible company, duly authorized to do
7 business in the State of Florida, and having a minimum rating of A-VII. Thirty calendar days'
8 advance written notice must be provided to the eCounty of any cancellation, non-renewal, lapse,
9 or reduction in coverage. Insurance requirements may be satisfied by evidence of self-insurance
10 or other types of insurance acceptable to the eCounty.
11

12 (c) Existing wireless providers with facilities within the eCounty right-of-way shall provide
13 evidence of the required liability insurance within 60 calendar days of the effective date of this
14 aArticle.
15

16 **Sec. 367.18. – Security FundConstruction Bond**

17 Alachua County may require a construction bond to secure restoration of the postconstruction
18 rights-of-way to the preconstruction condition. Such bond must be time-limited to not more than
19 18 months after the construction to which the bond applies is completed. For any financial
20 obligation required by Alachua County under this section, the County shall accept a letter of
21 credit or similar financial instrument issued by any financial institution that is authorized to do
22 business within the United States, provided that a claim against the financial instrument may be
23 made by electronic means, including by facsimile. A provider of communications services may
24 add an authority to any existing bond, insurance policy, or other relevant financial instrument,
25 and the authority must accept such proof of coverage without any conditions other than consent
26 to venue for purposes of any litigation to which the County is a part. The County may not require
27 a communications services provider to indemnify it for liabilities not caused by the provider,
28 including liabilities arising from the County's negligence, gross negligence, or willful conduct.
29 At the time of registration, the applicant shall file with the County a cash security, a bond, or
30 irrevocable letter of credit, in the sum of \$50,000.00, in a form reasonably acceptable to the
31 County Manager. For purposes of the bond and irrevocable letter of credit, the applicant must
32 utilize a surety company qualified to do business in Florida. The cash security, bond, or
33 irrevocable letter of credit, shall be to secure the full and faithful performance by the applicant of
34 all requirements, duties and obligations imposed upon applicant by the provisions of this Article.
35 The bond or irrevocable letter of credit shall be furnished annually, or as frequently as necessary,
36 and shall provide a continuing guarantee of the applicant's full and faithful performance at all
37 times. Should the County draw upon the cash security, bond, or irrevocable letter of credit, the
38 County shall promptly notify the applicant, and the applicant shall, within 30 calendar days,
39 restore the cash security, annual bond, or irrevocable letter of credit, to the full required amount.
40 In the event that an applicant fails to perform its duties and obligations imposed upon them by
41 the provisions of this Article, there shall be recoverable, jointly and severally from the principal
42 and surety of the bond, any damages or loss suffered by the County as a result, including the full
43 amount of any compensation or indemnification, plus a reasonable allowance for attorneys' fees,
44 up to the full amount of the fund. The cash security, bond or letter of credit may be waived by
45 the County where the County determines in its sole discretion that the security fund is not
46 necessary to secure the required performance under this Article. The County may from time to

1 ~~time increase the amount of the security fund to reflect the increased risks to the County and to~~
2 ~~the public.~~

3
4 **Sec. 367.19. – Indemnification**

5 (a) The wireless provider, in consideration of the benefits derived by the granting of a permit
6 for use of a eCounty right-of-way, hereby waives and releases, and agrees to protect, defend,
7 indemnify and hold harmless Alachua eCounty, its ~~b~~Board of eCounty eCommissioners,
8 constitutional officers, employees, volunteers, representatives, attorneys, agents, and assigns
9 from and against any and all claims, demands, actions, or causes of action of any and every
10 description, and damages, including attorneys' fees, brought against Alachua eCounty, its
11 ~~b~~Board of eCounty eCommissioners, constitutional officers, employees, volunteers,
12 representative, attorneys, agents, and assigns, resulting from any accident, incident or occurrence
13 arising out of, incidental to or in any way resulting from or in connection with the execution,
14 performance, or exercise of any right, privileges, or uses allowed or granted by the permit for the
15 collocation of wireless facilities or use of a eCounty right-of-way.

16
17 (b) The wireless provider will hold harmless and indemnify Alachua eCounty, its ~~b~~Board of
18 eCounty eCommissioners, constitutional officers, employees, volunteers, representatives,
19 attorneys, agents, and assigns against all loss and damage to the wireless provider's wireless
20 facilities and property, including loss of use, and loss of revenue, caused by the wireless
21 provider's acts or omissions or the acts or omissions of the wireless provider's employees, agents,
22 or invitees.

23
24 **Sec. 367.20. – Enforcement**

25 Violation of any provision of this Article shall be subject to penalties as provided in Section
26 10.08 of the Alachua County Code or any other remedy available at law or equity. ~~Violations of~~
27 ~~this Article may be enforced and subject to penalties as provided in Chapter 24, Alachua County~~
28 ~~Code, or any other remedy available at law or equity.~~

29
30 **Sec. 367.21. – Force Majeure**

31 In the event an applicant's or wireless provider's performance of or compliance with any of the
32 provisions of this aArticle is prevented by a cause or event not within the applicant's or wireless
33 provider's control, such inability to perform or comply shall be deemed excused and no penalties
34 or sanctions shall be imposed as a result thereof, provided, however, that such applicant or
35 wireless provider uses all practicable means to expeditiously cure or correct any such inability to
36 perform or comply. For purposes of this aArticle, causes or events not within an applicant's or
37 wireless provider's control shall include, without limitation, acts of God, floods, earthquakes,
38 landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil
39 disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or
40 court. Causes or events within applicant's or wireless provider's control, and thus not falling
41 within this aArticle, shall include, without limitation, financial inability to perform or comply,
42 economic hardship, and misfeasance, malfeasance or nonfeasance by any of applicant's or
43 wireless provider's directors, officers, employees, contractors or agents.

1 SECTION 4. Repealing Clause. All ordinances or portions thereof in conflict herewith
2 are, to the extent of such conflict, hereby repealed.

3 SECTION 5. Modification. It is the intent of the Board of County Commissioners that
4 the provisions of this ordinance may be modified as a result of considerations that may arise
5 during public hearings. Such modifications shall be incorporated into the final version of the
6 ordinance adopted by the Board and filed by the Clerk to the Board.

7 SECTION 6. Severability. If any word, phrase, clause, paragraph, section or provision of
8 this ordinance or the application hereof to any person or circumstance is held invalid or
9 unconstitutional, such finding shall not affect the other provisions or applications of the
10 ordinance which can be given effect without the invalid or unconstitutional provisions or
11 application, and to this end the provisions of this ordinance are declared severable.

12 SECTION 7. Inclusion in the Code, Scrivener's Error. It is the intention of the Board of
13 County Commissioners of Alachua County, Florida, and it is hereby provided that the
14 provisions of this ordinance shall become and be made a part of the Code of Ordinances of
15 Alachua County, Florida; that the section of this ordinance may be renumbered or re-lettered to
16 accomplish such intent and that the word "ordinance" may be changed to "section", "article", or
17 other appropriate designation. The correction of typographical errors that do not affect the intent
18 of the ordinance may be authorized by the County Manager or designee, without public hearing,
19 by filing a corrected or re-codified copy of the same with the Clerk of the Circuit Court.

20 SECTION 8. Effective Date. A certified copy of this ordinance shall be filed with the
21 Department of State by the Clerk of the Board within ten (10) days after enactment by the
22 Board and shall take effect upon filing with the Department of State.
23

1 **DULY ADOPTED** in regular session, this ____ day of _____, 2019.
2

3 **BOARD OF COUNTY COMMISSIONERS OF**
4 **ALACHUA COUNTY, FLORIDA**
5

6 ATTEST:

7 By: _____
8 Charles Chestnut, IV, Chair
9 Board of County Commissioners

10 _____
11 Jesse K. Irby, II
12 Clerk of Court

13 APPROVED AS TO FORM

14 _____
15 County Attorney

16 (SEAL)