

## ORDINANCE NO. 2016 – 8

AN ORDINANCE OF THE HERNANDO COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING CHAPTER 24, ARTICLE 1, SECTION 24 OF THE CODE OF ORDINANCES OF HERNANDO COUNTY BY PROVIDING REQUIREMENTS FOR THE ERECTION OF COMMUNICATION TOWERS/POLES WITHIN THE COUNTY RIGHT-OF-WAY; PROVIDING FOR REVIEW BY PUBLIC WORKS DIRECTOR; PROVIDING FOR REASONABLE REQUIREMENTS FOR APPROVAL; PROVIDING FOR A PERMIT FEE THAT IS COMMENSURATE WITH DIRECT COST OF REVIEW; PROVIDING FOR AN UPDATED RIGHT OF WAY UTILIZATION PERMIT FORM; PROVIDING FOR TERMINATION OF PERMIT BY BOARD OF COUNTY COMMISSIONERS UPON SHOWING OF A NEED AND DEMAND FOR THE PROPERTY FOR PUBLIC IMPROVEMENTS; PROVIDING FOR INCLUSION; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** there are currently no specific guidelines regarding applications/petitions to erect communication towers/poles on County right-of-way as that phrase is defined in Section 24-3, Hernando County Ordinances; and

**WHEREAS,** such large structures can interfere with future road construction plans, MPO plans or even transportation aspects of the Hernando County Comprehensive Land Use Plan. Additionally, a large communication tower may impact drainage projects, utility projects, planned sidewalks, bike paths/lanes, as well as current or existing pedestrian/bike trails or future signalization of roads; and

**WHEREAS,** Hernando County is authorized by Section 337.401, Florida Statutes to prescribe and enforce reasonable rules or regulations with reference to the placement and maintenance, along or on any road or publicly owned rail corridors under County jurisdiction, of any telephone, pole lines, poles or other communications service lines. Furthermore, Section 125.42, Florida Statutes authorizes the County to enter into a license with any person or private corporation where communication service lines are placed in the public right-of way.

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY:**

**Section 1.** Chapter 24 “Roads and Bridges,” Article 1 of the Code of Ordinances of Hernando County is hereby amended by removing Section 24-5 as “Reserved” and adding Section 24-5 “Right-of-Way Communication Tower” which contains the following language:

Sec. 24-5. – Right-of-Way Communication Tower

a) Purpose. The purpose of this section is to adopt specific regulations relating to the use of right-of-ways for the erection of communication towers within unincorporated Hernando County. Right-of-way shall be defined as set out in Section 24-3 of Chapter 24, Article 1. The Board of County Commissioners hereby finds that regulation of communication towers within the public right-of-way is not a land development regulation and should be placed under the Department of Public Works for administrative purposes.

b) Review. The Public Works Director will review exhibits presented by the applicant and determine whether the proposed communications tower will adversely interfere with future road improvements, traffic safety set back areas, residential safety set back areas, MPO plans, specific projects named in the Comprehensive Land Use Plan, drainage projects, utility projects, sidewalks, bike paths/lanes, future signalization, airport operation and/or planned and current pedestrian/bike trails. If a public project would be negatively impacted, the Public Works Director shall deny the application stating the reasons in writing. The following exhibits must be presented to the Public Works Department by the applicant:

1. Exact location of the proposed installation.
2. Type/Model of communications tower to be erected.
3. Method of installation (include direction of guy wires if utilized).
4. Proposed start time and completion time for installation.
5. Means of repairing right-of-way damage during installation.
6. Sketches and plans that depict exact nature of installation.
  - (a) ROW width and road pavement width.
  - (b) Location of all other utilities in ROW, including signals.
  - (c) Any sidewalks in or near ROW.
  - (d) Cross sections to reflect location of communications tower.
  - (e) Include an aerial map showing the location of the communications tower and any lines.
  - (f) Show area of work in relation to nearest road intersection, bridge or other physical feature.
7. Applicant's legal name, company mailing address, email address and phone number.

8. Signed indemnity agreement.
9. Proof of insurance adequate to defend and cover claims.
10. Distance from top of tower to collapsible point(s) and fall radius depicted on aerial photograph or survey.
11. Feasibility statement discussing use of camouflage techniques if possible and possibility of placing equipment within or against tower.

c) *Permit Conditions.* If application is approved, and prior to installation, applicant shall provide written notice to all property owners adjacent to the project. Notice shall include anticipated installation schedule, MOT plan, and any impacts to adjacent property, temporary or permanent. The notice must provide a contact number for the contractor or project manager. A copy of the permit shall be on site at all times during installation.

1. If necessary for the construction, maintenance, operation or alteration of the right-of-way, as determined by the Board of County Commissioners, the communication tower/pole shall be immediately removed or relocated from the right-of-way at the expense of the permit holder unless reimbursement is authorized by the County or required otherwise by law.
2. All work, materials and equipment shall meet all County codes and standards and shall be subject to inspection by the County. All disturbed areas must be restored to its original condition or better and in accordance with applicable County codes.
3. The installation, maintenance and operation of the tower/pole shall not interfere with the prior rights of a permit holder or interfere with the convenient, safe or continuous use of the right-of-way. Interference requires that the tower/pole be relocated or removed at permit holder's expense or as required by Section 337.403(1), Florida Statutes as amended from time to time.
4. Written approval from the County Engineer shall be required before any alterations to existing traffic signal equipment. This includes, but is not limited to, vehicle detection loops and signal timing.
5. The County shall not be responsible for damages to any structure placed within the right-of-way or any structure/vehicle outside of the right-of-way as a result of granting a permit. Normal

maintenance of the right-of-way must not be impaired by the actions/omissions of the permit holder.

6. Final inspection and acceptance of work by the County must be obtained. All work shall be subject to the installation requirements of the County Building Department.
7. In the case of the noncompliance with any of the County's requirements, the permit will be void and the installation will be brought into compliance or removed from the right-of-way at no cost to the County.
8. The County may issue a *Stop Work* order upon a permit holder committing or creating an unsafe act which may create a public hazard, failing to comply with the permit, or not complying with applicable County Ordinances.
9. The permit holder shall be responsible for all repair costs incurred due to damages to existing utilities by failure to use due care, including mistakes in locating improvements placed in the right-of-way, or failure of permit holder's installation work.
10. It is expressly stipulated that the permit represents a non-exclusive permissive use only and that the placing of a tower/pole or lines upon public property pursuant to the permit does not create a property right in the permit holder.
11. The permit fee, payable upon application, is established by Section 337.401(3)(c)2.a., Florida Statutes, as amended from time to time. In the event no maximum fee is established by the State of Florida, the amount will be determined by the Hernando County Board of Commissioners.
12. A right-of-way utilization permit for a communication tower/pole is effective for two years from its approval date unless otherwise rescinded by the County. Futhermore, upon inspection and review, the Public Works Director may, thereafter, grant extensions of the permit every two years.

**Section 2. Severability.** If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Ordinance.

**Section 3. Conflicting Provisions Repealed.** All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

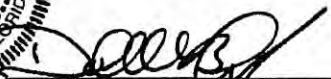


**Section 4. Inclusion in the Code.** It is the intention of the Board of County Commissioners of Hernando County, Florida and it is hereby provided that the provisions of this Ordinance shall become a part of the Code of Ordinances of Hernando County, Florida. As such, Section 24-5 of this Ordinance may be renumbered or relettered, and the word "Ordinance" may be changed to "Section," "Article," or other appropriate designation.

**Section 5. Effective Date.** This Ordinance shall become effective immediately upon receipt of the official acknowledgment from the Office of the Secretary of State of Florida that this Ordinance has been filed with said office.

**ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, FLORIDA** in Regular Session this 10<sup>th</sup> day of MAY, 2016.

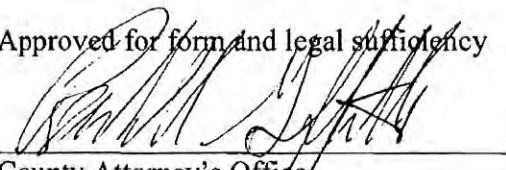


  
\_\_\_\_\_  
**Donald C. Barbee, Jr.**  
Clerk of the Court

**BOARD OF COUNTY COMMISSIONERS  
HERNANDO COUNTY, FLORIDA**

By:   
\_\_\_\_\_  
**James E. Adkins**  
Chairman

Approved for form and legal sufficiency

  
\_\_\_\_\_  
County Attorney's Office