

ORDINANCE NO. 2017-____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, AMENDING SECTION 312.11 (PERFORMANCE SECURITY), SECTION 312.13 (TERMINATION OF USE OR REMOVAL OF OBJECT) AND SECTION 312.14 (PUBLIC PROTECTION AND LIABILITY) OF CHAPTER 312 (RIGHTS-OF-WAY) OF THE CODE OF INDIAN RIVER COUNTY, FLORIDA IN ORDER TO PROVIDE ADDITIONAL REQUIREMENTS FOR INSTALLATION IN COUNTY RIGHTS-OF-WAY; AND PROVIDING FOR CODIFICATION, SEVERABILITY, REPEAL OF CONFLICTING PROVISIONS, AND AN EFFECTIVE DATE.

WHEREAS, per House Bill 687 (2017), local governments are allowed to adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties under the Advanced Wireless Infrastructure Deployment Act; and

WHEREAS, installations under the Advanced Wireless Infrastructure Deployment Act must comply with applicable codes including objective design standards adopted by ordinance; and

WHEREAS, the Indian River County Board of County Commissioners desires through this ordinance to adopt necessary ordinance provisions and objective design standards in order to ensure the protection of the health, safety and welfare of the public;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT:

Section 1. Enactment Authority.

Article VIII, section 1 of the Florida Constitution and chapter 125, Florida Statutes vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the county. The Board specifically determines that the enactment of this ordinance is necessary to protect the health, safety and welfare of the residents of Indian River County.

Section 2. Legislative Findings.

The Board finds that the "Whereas" clauses above are true and correct, and hereby incorporates such clauses as the legislative findings of the Board.

Section 3. Amendment of Section 312.11 (Performance Security), Section 312.13 (Termination of Use or Removal of Object) and Section 312.14 (Public Protection and Liability) of Chapter 312 (Rights-Of-Way).

New language indicated by underline, and deleted language indicated by ~~strikethrough~~.

Section 312.11 (Performance Security), Section 312.13 (Termination of Use and Removal of Object) and Section 312.14 (Public Protection and Liability) of Chapter 312 (Rights-Of-Way) of the Code of Indian River County, Florida is hereby amended to read as follows:

CHAPTER 312. RIGHTS-Of-WAY

* * *

Section 312.11. Performance Security.

A. Security bond shall be posted to secure completion of all construction or installation commenced, pursuant to a permit under this chapter, except for construction of driveways not requiring a roadway modification, for utility placement by utility companies having a valid franchise to operate in Indian River County, for drainage structures serving single family residences located in ditches parallel to the roadway, and pedestrian bikepath facilities. Security bond shall be posted in the amount of one hundred fifteen (115) percent of the estimated costs of the proposed improvements in the right-of-way. The estimate shall be prepared by an engineer registered in the State of Florida to practice professional engineering. Upon completion and approval by the public works director of all required improvements, ninety (90) percent of the posted security will be released by the public works director. A ten (10) percent warranty security will be held for an additional twelve (12) months, following which time, if all improvements are free of defects due to faulty field engineering, workmanship, or materials, this ten (10) percent security will be released by the public works director.

B. In lieu of the above security, the permittee may post in an escrow account one hundred fifteen (115) percent of the estimated cost of the improvements in the right-of-way. Partial release may be authorized (up to ninety (90) percent of the posted security) as work is approved. The remaining ten (10) percent will be held for an additional twelve (12) months, following such time, if all improvements are free of defects due to faulty field engineering, workmanship or materials, this ten (10) percent of the security will be released by the county public works director.

C. Any user placing or installing any structure or object on County utility poles or other equipment or structures within the right-of-way shall ensure that, at least thirty (30) days prior to the commencement of any work on County utility poles or equipment or structures, the user, provide the Public Works Director security, in the form of a letter of

credit, in a form deemed legally sufficient by the County Attorney's Office, or cash, posted in the amount of one hundred fifteen (115) percent of the estimated costs of all required improvements for each location. The estimate shall be prepared by an engineer registered in the State of Florida to practice professional engineering. Upon completion and approval by the Public Works Director of all required improvements, ninety (90) percent of the posted security will be released by the Public Works Director. Ten (10) percent security funds shall remain in place at all times the structure or object remains installed or placed on the County utility poles or other equipment or structures within the right of way. If at any time, the security funds are not in place, the structure or object shall be deemed abandoned and shall be subject to immediate removal per section 312.13.

D. Any user placing or installing any free standing poles or other equipment or structures within the right-of-way shall ensure that, at least thirty (30) days prior to the commencement of any work, the user, provide the Public Works Director security, in the form of a letter of credit, in a form deemed legally sufficient by the County Attorney's Office, or cash, posted in the amount of one hundred fifteen (115) percent of the estimated costs of all required improvements for each location. The estimate shall be prepared by an engineer registered in the State of Florida to practice professional engineering. Upon completion and approval by the Public Works Director of all required improvements, ninety (90) percent of the posted security will be released by the public works director. Ten (10) percent security funds shall remain in place at all times the free standing pole, structure or object remains installed or placed within the right of way. If at any time, the security funds are not in place, the free standing pole, structure or object shall be deemed abandoned and shall be subject to immediate removal per section 312.13.

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Section 312.13. Termination of use or removal of object.

Notwithstanding any section of this chapter to the contrary, the county may terminate any certain use allowable or under permit, or require the owner or permittee to remove any object allowable or under permit, if it is determined that it is in the public interest to have such use terminated or object removed. Such objects shall be removed as soon as practicable with a time limit to be established by the director of public works. Failure to comply will result in the permittee being subject to penalties as described in section 312.15. The County may immediately remove any free standing pole, structure or object that is deemed abandoned per section 312.11 or 312.14 or for lack of payment of any annual fee.

Section 312.14. Public protection and liability.

1. Whenever any of the public rights-of-way are used under the terms of this chapter the person so using them shall take necessary precautions, including illumination, for protection of the public with particular emphasis on the period from sunset to sunrise. The persons so using the public rights-of-way as a condition of that use agree to hold and save the county harmless from any and all liability that may arise out of the use of any public rights-of-way as provided in this chapter or by permit.

2. The user agrees and is bound to hold Indian River County whole and harmless against any and all claims for damages, costs, and expenses to persons or property that may arise out of, or be occasioned by the use, occupancy, and maintenance of the public right-of-way, or from any act or omission of any representative, agent, customer, and/or employee of the user. This user shall also be responsible for any claim for damage that any utility, whether publicly or privately owned, may sustain or receive by reason of user's use of the public right-of-way and improvements and equipment located thereon. User shall not make any claim of any kind or character whatsoever against Indian River County for damages that it may suffer by reason of installation, construction, reconstruction, operation, and/or maintenance of any public improvement, or utility, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water and/or sewer mains and/or storm sewer facilities fiber optic cables, and whether such damage is due to flooding, infiltration, natural causes, or from any other cause of whatsoever kind or nature. It is the intention of this section, and a condition of any permit, that it shall be full and total indemnity against any kind or character of claim whatsoever that may be asserted against Indian River County by reason of, or as a consequence of having granted permission to a user to use and/or maintain a public right-of-way. User is required to defend any and all suits, claims, or causes of action brought against Indian River County on behalf of the county and pay any judgment or judgments that may be rendered against county in connection therewith.

3. Any user placing or installing any structure or object on County utility poles or other equipment or structures within the right-of-way shall ensure that, at least thirty (30) days prior to the commencement of any work on County utility poles or equipment or structures, the user provides to the Indian River County Risk Management Division a certificate or certificates issued by an insurer or insurers authorized to conduct business in Florida that is rated not less than category A-: VII by A.M. Best, subject to approval by Indian River County's Risk Manager, of Commercial general liability insurance with a combined single limit of \$1,000,000.00 per occurrence. The County shall be named as an additional insured for each of these policies. The Indian River County Risk Management Division has the authority to require additional insurance based upon the structure or object to be installed or placed.

4. Any user placing or installing any structure or object on County utility poles or other equipment or structures within the right-of-way shall ensure that such structure or object has a plaque identifying the structure or object, the owner and the owner's contact information, and said plaque shall not exceed 0.25 square feet. No signage shall be allowed.

5. All wiring and fiber for any structure or object on County utility poles or other equipment or structures within the right-of-way shall be concealed within the support structure and all conduit, wiring and fiber shall be buried between structures and/or structures and ground mounted cabinets. All service lines (e.g. electric lines) to the support structure must also be buried unless service lines in the area of the support structure are aerial. In that event, service lines to the structure or object may also be aerial, except for any service drop crossing a street or roadway which would need to be bored and placed under such street or roadway.

6. Structures or object on County utility poles or other equipment or structures within the right-of-way shall be designed to blend into the surrounding environment and complement existing streetscape elements through the use of color, camouflaging and architectural treatment.

7. Any user submitting documentation for placing or installing any structure or object on County utility poles or other equipment or structures within the right-of-way, must include in the submitted documentation structural analysis and wind load calculations prepared by an engineer registered in the State of Florida to practice professional structural engineering.

8. If at any time, any user placing or installing any structure or object on County utility poles or other equipment or structures within the right-of-way, or any structure or object on County utility poles or other equipment or structures within the right-of-way, is not in compliance with the provisions of this section, the structure or object shall be deemed abandoned and shall be subject to immediate removal per section 312.13.

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Section 3. Codification. It is the intention of the Board of County Commissioners that the provision of this ordinance shall become and be made part of the Indian River County Code, and that the sections of this ordinance may be renumbered or re-lettered and the word ordinance may be changed to section, article or such other appropriate word or phrase in order to accomplish such intention.

Section 4. Severability. If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

Section 5. Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. Effective Date. This ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State.

This ordinance was advertised in the Indian River Press Journal on the ____ day of _____, 2016, for a public hearing to be held on the ____ day of June, 2017, at which time it was moved for adoption by Commissioner _____, seconded by Commissioner _____, and adopted by the following vote:

Chairman Joseph E. Flescher	_____
Vice-Chairman Peter D. O'Bryan	_____
Commissioner Susan Adams	_____
Commissioner Bob Solari	_____
Commissioner Tim Zorc	_____

The Chairman thereupon declared the ordinance duly passed and adopted this ____ day of June, 2017.

**BOARD OF COUNTY COMMISSIONERS OF
INDIAN RIVER COUNTY, FLORIDA**

By: _____
Joseph E. Flescher, Chairman

**ATTEST: Jeffrey R. Smith, Clerk
and Comptroller**

By: _____
Deputy Clerk

EFFECTIVE DATE: This Ordinance was filed with the Department of State on the ____ day of June, 2017.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY _____
DYLAN REINGOLD
COUNTY ATTORNEY