

**CORRECTED VERSION**  
**ORDINANCE NO. 17-018**

**AN ORDINANCE OF ST. LUCIE COUNTY, FLORIDA (THE "COUNTY"), PROVIDING FOR POSTPONEMENT ON THE ACCEPTANCE OF APPLICATIONS FOR, OR THE APPROVAL OF, PERMITS OR DEVELOPMENT ORDERS FOR CERTAIN WIRELESS COMMUNICATIONS FACILITIES DURING A SPECIFIED TERM; PROVIDING FOR WAIVER, VESTED RIGHTS, APPEALS, EXHAUSTION OF ADMINISTRATIVE REMEDIES; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; PROVIDING FOR AN EFFECTIVE DATE AND ADOPTION**

**WHEREAS**, pursuant to Section 125.01, Florida Statutes, the Board of County Commissioners is authorized to adopt ordinances necessary for the exercise of its powers; and

**WHEREAS**, the Board of County Commissioners ("Board") has adopted the St. Lucie County Comprehensive Plan within which are included goals, objectives, and policies related to zoning and land development; and

**WHEREAS**, Chapter 163, Part II, Florida Statutes, requires the implementation of these goals, objectives and policies through the adoption of consistent Land Development Regulations; and

**WHEREAS**, the Federal Communications Commission has adopted two Notices of Proposed Rulemakings/Notices of Inquiry addressing wireless infrastructure deployment in public rights-of-way, and previously adopted an Order providing regulations that apply to local governments' processing requests to collocate equipment on existing wireless towers and base stations, pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012; and

**WHEREAS**, CS/CS/HB 687 is a bill signed by the Governor, which creates the Advanced Wireless Infrastructure Deployment Act, that will regulate local government processing of applications to construct certain wireless facilities in the public rights-of-way and to collocate certain wireless facilities on government owned utility poles; and

**WHEREAS**, public rights-of-way have traditionally been utilized for, among other uses, the placement of public and private utility systems and structures so as to facilitate the delivery of utility services and maintenance of utility systems; and

**WHEREAS**, it is important to provide time to undertake a comprehensive review of the County's regulations of wireless communications facilities; and

**WHEREAS**, a postponement on application for, or approval of, any permits or development orders for wireless communications facilities within public rights-of-way or on private property, subject to applicable law, will maintain the status quo during the course of the study and planning process; and

**WHEREAS**, the Board intends to limit the duration of this postponement to no more than six (6) months with the ability to extend by ninety (90) days by Resolution; and

**WHEREAS**, the Board of County Commissioners ("Board") of St. Lucie County ("County"), Florida, presently is working with its staff and professional consultants to prepare comprehensive plan amendments and land development regulations that will govern the location and development of wireless communications facilities; and

**WHEREAS**, the Board finds that the regulation of wireless communications facilities is necessary and appropriate to guide the future use and development of land in the unincorporated County, and to protect the public health, welfare and safety, including but not limited to the environmental resources of the County and surrounding areas; and

**WHEREAS**, the Board finds it is in the best interest of the citizens of St. Lucie County to adopt the proposed postponement; and

**WHEREAS**, the Board finds the proposed ordinance consistent with goals, objectives and policies of the Comprehensive Plan.

**NOW THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of St. Lucie County, Florida as follows:

**Section 1. RECITALS ADOPTED.**

Each of the recitals set forth above is hereby adopted and confirmed.

**Section 2. TEMPORARY POSTPONEMENT OF CERTAIN COUNTY ACTIONS; APPLICABILITY.**

A. For six (6) months following the adoption of this ordinance, or until an amendment to the Land Development Code is approved or denied, whichever occurs first, except as required by applicable law, no application for any permit or development order for a wireless communications facility shall be accepted, nor shall any permit or development order be issued

for a wireless communications facility within the public right-of-way or on private property except as provided in this Ordinance. Notwithstanding this provision, to fulfill the county's obligations to continue uninterrupted provision of public works, fire safety, law enforcement, emergency management, emergency medical services, and county utilities, it is clarified that this postponement will not apply to the construction, installation, maintenance and replacement of wireless communications facilities within the public rights-of-way or on private property that are strictly for governmental purposes. Notwithstanding the above, in the event the Board approves an amendment to the Land Development Code, the postponement shall remain in effect until such time as the amendment becomes effective. The Board may extend the term of this Ordinance for up to an additional ninety (90) days by resolution, if the Board finds that the extension is necessary and in the public's interest.

**Commented [GR1]:** FY I—moratorium cannot postpone timeframe under regs per Section 6409

B. This ordinance shall not restrict, prohibit or otherwise prevent a property owner from the reasonable use of their land or from developing their land in accordance with the St. Lucie County Comprehensive Plan.

C. The adoption of this ordinance is undertaken by the County in good faith and is intended to further the goals of the St. Lucie County Comprehensive Plan and Chapter 163, Florida Statutes, and is not intended to discriminate against those landowners which may be subject to this ordinance.

D. The limited duration of this postponement has been established in order to accomplish appropriate planning for future development through the St. Lucie County Comprehensive Plan amendment process as described in Chapter 163, Part II, Florida Statutes, and the Comprehensive Plan. To the extent not prohibited by applicable law, this Ordinance applies to any applications pending on effective date.

E. “*Wireless Communications Facility*” means any equipment or facility used for the transmission or reception of wireless communications and located in public rights-of-way or on private property. This term includes but is not limited to wireless support structures, equipment facilities, antennas, cabling, regular and backup power supplies, and comparable equipment, regardless of technological configuration including DAS and small cell networks. For purposes of this Ordinance, the term shall include communication towers and all wireless communications facilities as defined in Section 365.172(3)(gg), Florida Statutes, or facilities to provide wireless communication services as listed at <https://www.fcc.gov/general/wireless-services>.

F. “*Governmental Purposes*” means, but is not limited to public works, fire safety, law enforcement, emergency management, emergency medical services or county utility operations.

### **Section 3. TERM OF THIS ORDINANCE.**

The County shall move forward expeditiously with the development, adoption, and implementation of the Regulations concerning wireless communication facilities. This Ordinance shall remain in effect only for so long as is reasonably necessary for the Board to adopt such Regulations and for those Regulations to take effect. Accordingly, the term of this Ordinance shall expire, and this Ordinance shall have no further force or effect, after the date when the Regulations take effect, or six (6) months after the date of the adoption of this Ordinance, whichever occurs first, unless the term of this Ordinance is extended by the Board. The Board may extend the term of this Ordinance for up to an additional ninety (90) days by resolution, if the Board finds that the extension is necessary and in the public interest.

**Commented [GR2]:** Indicated 6 months above in section 2 A.

**Commented [GR3]:** Provided 90 days above.

#### **Section 4. WAIVERS.**

Notwithstanding the provisions in Section 2 above, an applicant for the development of property within the unincorporated County may apply to the Board for a waiver of the requirements in Section 2, above, so that the applicant's application may be reviewed without delay. In such cases, the Board shall consider the request for a waiver at a public meeting, which shall be held within 45 days after the County receives the applicant's request. At the public meeting, the applicant shall have the burden of demonstrating to the Board's satisfaction that: (a) granting the applicant's request for a waiver will not detrimentally affect the preparation and implementation of the Regulations; (b) the proposed project will be compatible with surrounding land uses; and (c) the proposed project will not adversely affect the public health, safety or welfare. If the applicant carries its burden of proof, the Board may grant a waiver and thus allow the applicant's application to be submitted, reviewed and processed concurrently with the Regulations. However, a development order shall not be issued for such application until the necessary comprehensive plan amendments are in effect and the application is found to be consistent with adopted land development regulations.

#### **Section 5. VESTED RIGHTS.**

A. Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development where the property owner demonstrates each of the following:

1. A government act of development approval was obtained prior to the effective date of this Ordinance; and
2. The property owner has detrimentally relied, in good faith, on the governmental approval by making a substantial change in position or incurring extensive obligations and expenses; and

3. It would be highly inequitable to deny the property owner the right to complete the development.

B. Any property owner claiming to have vested rights under this Section 5 must file an application with the Board for a vested rights determination within 30 days after the effective date of this Ordinance. The application shall be accompanied by a fee of \$1,500.00 and shall contain a sworn statement as to the facts upon which the vested rights are asserted, together with any documentary evidence supporting the claim. The Board shall hold a public hearing on the application and, based upon the evidence submitted, shall make a determination as to whether or not the property owner has established vested rights. To the extent that a property owner demonstrates vested rights, the prohibitions established in Section 2 of this Ordinance shall not apply.

**Section 6. APPEALS.**

Any appeal from a final decision by the Board under Section 4 or Section 5 of this Ordinance shall be pursued by filing a Petition for Certiorari in the Circuit Court of the 19<sup>th</sup> Judicial Circuit, in and for St. Lucie County, in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial rulings of local government agencies.

**Section 7. EXHAUSTION OF ADMINISTRATIVE REMEDIES.**

A property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights shall not pursue such claim in court unless he or she has first exhausted the administrative remedies provided in this Ordinance.

**Section 8. CONFLICTING PROVISIONS.**

Special acts of the Florida legislature applicable only to unincorporated areas of St. Lucie County, County ordinances and County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict.

**Section 9. SEVERABILITY.**

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative, or void, such holding shall not affect the remaining portions of this ordinance. If this ordinance or any provision thereof shall be held to be inapplicable to any person, property, or circumstance, such holding shall not affect its applicability to any other person, property, or circumstance.

**Section 10. APPLICABILITY OF ORDINANCE.**

This ordinance shall be applicable in the unincorporated area of St. Lucie County.

**Section 11. FILING WITH THE DEPARTMENT OF STATE.**

The Clerk is hereby directed forthwith to send a certified copy of this ordinance to the Bureau of Administrative Code and Laws, Department of State, The Capitol, Tallahassee, Florida 32304.

**Section 12. EFFECTIVE DATE.**

This Ordinance shall be effective upon filing with the Department of State.

**Section 13. ADOPTION.**

After motion and second, the vote on this ordinance was as follows:

Commissioner Chris Dzadoovsky, Chairman	AYE
Commissioner Tod Mowery, Vice Chairman	AYE
Commissioner Linda Bartz	AYE
Commissioner Frannie Hutchinson	AYE
Commissioner Cathy Townsend	ABSENT

**PASSED AND DULY ADOPTED** this 15<sup>TH</sup> day of August, 2017.

**ATTEST:**

\_\_\_\_\_  
**Deputy Clerk**

**BOARD OF COUNTY COMMISSIONERS  
ST. LUCIE COUNTY, FLORIDA**

**BY:** \_\_\_\_\_  
**Chairman**

**APPROVED AS TO FORM AND  
CORRECTNESS:**

**BY:** \_\_\_\_\_  
**County Attorney**