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ORDINANCE
NUMBER 2021-009

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AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA; AMENDING AND RESTATING CHAPTER 3-6, ARTICLE II, CONSTRUCTION; IMPROVEMENTS, DIVISION 1 GENERALLY; REPEALING ORDINANCE NUMBER 85-43, ORDINANCE NUMBER 90-32, AND SECTIONS 3-6-21 THROUGH 3-6-25 OF THE CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA; CREATING A NEW ARTICLE II, DIVISION 1, SECTIONS 3-6-21(1) THROUGH 3-6-21(27) RELATING TO WORK WITHIN COUNTY RIGHTS OF WAY AND EASEMENTS; PROVIDING FOR PENALTIES FOR VIOLATION; PROVIDING FOR CONFLICTS AND CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, pursuant to the provisions of section 125.01, Florida Statutes, the Board has the power to adopt ordinances and resolutions necessary for the exercise of its powers and to prescribe fines and penalties for the violations of ordinances in accordance with law; and

WHEREAS, prior to 1985, the Board of County Commissioners of Charlotte County, Florida ("Board") adopted various ordinances regulating works in public rights of way and on county property; and

WHEREAS, on December 2, 1985, the Board adopted Ordinance Number 85-43 establishing new regulations relating to requirements for work in public rights of way and on county property; and

WHEREAS, on June 26, 1990, the Board adopted Ordinance Number 90-32 further modifying such regulations; and

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35 WHEREAS, from time to time it is necessary to update county codes to delete out
36 of date provisions of the code and to make other necessary changes to the code; and

37 WHEREAS, the Board intends to separate general processes and regulations from
38 technical engineering design and construction standards through a unified ordinance and
39 a unified resolution, respectively; and

40 WHEREAS, the Board finds it is in the interest of the public health, safety and
41 welfare of the residents of Charlotte County to adopt this ordinance for the above stated
42 reasons.

43 NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners
44 of Charlotte County, Florida:

45 Section 1. Ordinance Number 85-43 is hereby repealed.

46 Section 2. Ordinance Number 90-32 is hereby repealed.

47 Section 3. Sections 3-6-21 through 3-6-25 of the Code of Laws and Ordinances
48 of Charlotte County, Florida are hereby repealed.

49 Section 4. A new Article II. – CONSTRUCTION; IMPROVEMENTS, DIVISION 1.
50 – GENERALLY is created as follows:

51 **Sec. 3-6-21(1). Purpose.**

52
53 The purpose of this Article is to establish regulations governing activities taking place
54 in County rights-of-way or easements, including, but not limited to, the location, installation,
55 repair or modification of any facility. Such regulations are necessary in order to promote and
56 protect the public health, safety, and welfare of the citizens of Charlotte County.

57 **Sec. 3-6-21(2). Applicability.**

58
59 The regulations in this Article shall apply to all private contractors, private citizens,
60 utility companies, municipalities, and to any person or group proposing to install, construct,

61 maintain, or repair any facility or structure within any of the existing or planned County rights-
62 of-way or easements, whether created by dedication by plat or by recorded conveyance. This
63 Article shall apply to and be enforced in all areas of County jurisdiction, including County
64 rights-of-way or easements located in a municipality. Other provisions of this Code that may
65 also be applicable to activities in the right-of-way include, but are not limited to, Sections 1-
66 10-287(Roadside Peddling Prohibited); 1-10-288 (Conveyances Prohibited); and Section 3-
67 6, Article II, Division 2 (Communications Facilities in Public Rights-of-Way).

68 **Sec. 3-6-21(3). Definitions.**

69 The following words, terms and phrases, when used in this Article, shall have the
70 meanings ascribed to them in this section, except where the context clearly indicates a
71 different meaning.

72 *Clear Zone* shall mean the area that is ten (10) feet in width, as measured from the
73 edge of the pavement, or an area whose width is determined in accordance with the latest
74 edition of the State of Florida Department of Transportation (FDOT) Standard Design Manual,
75 whichever width area is greater.

76 *Dedicated, but not accepted for maintenance* shall mean a public roadway dedicated
77 by plat that has not been accepted by the County for maintenance, as authorized in Section
78 177.081(3), Florida Statutes, as may be amended from time to time.

79 *Developed property* shall mean property upon which any structure has been
80 constructed or placed regardless of whether such structure is used, completed, or occupied.
81 Lots located within community redevelopment areas ("CRAs") that no longer contain a
82 structure, but that contained a structure after the date the relevant community redevelopment
83 plan was adopted or last amended, whichever date is later, shall be considered developed
84 lots for purposes of this definition.

85 *Drainage easement* shall mean land in which the public or the County has an
86 easement devoted to, planned, proposed or required for use as a public drainage system.

87 *Emergency repairs* shall mean work necessary to protect and preserve life and
88 property of inhabitants of the County and are needed to be completed immediately.

89 *Facility*, for purposes of this Article, shall mean a structure which has been or is being
90 placed and maintained along, across, on or under any public right-of-way or public easement
91 within the jurisdiction of the County, including, but not limited to, any electric lines, telephone
92 lines, cables, poles, ditches, sewers, water lines, gas lines, wells, fences, gasoline tanks and
93 pumps, irrigation, landscaping, signage or specialty paving.

94 *Right-of-way* shall mean land in which the County owns the fee or has a platted or
95 conveyed easement devoted to or required for use by the public. Rights-of-way include, but
96 are not limited to, roads, canals, and drainage conveyances.

97 *Road* shall mean streets, sidewalks, alleys, highways and other ways opened or
98 unopened to travel by the public, including the roadbed, right-of-way, and all culverts, drains,
99 sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls,
100 bridges, tunnels and viaducts necessary for the maintenance of travel.

101 *Structure* shall mean any construction or any production or piece of work artificially
102 built up or composed of parts joined together in some definite manner. "Structure" includes
103 "building," as well as other things constructed or erected on the ground, attached to something
104 having location on the ground or requiring construction or erection on or under the ground.

105 **Sec. 3-6-21(4). Right-of-Way Permit Required.**

106 (a) Except as provided in Sec. 3-6-21(5), it shall be unlawful for any person, municipal
107 corporation, special district, or any other legal entity to construct, install, remove, revise, alter,
108 or modify any structure, facility, or topographic feature on any land, right-of-way or easement

109 owned by the County, or any right-of-way dedicated to the public, without first having obtained
110 a permit from the County. Activities requiring a permit include, but are not limited to:

111 (1) Installation, re-installation or resurfacing of driveways;

112 (2) Installation of culvert pipe;

113 (3) All activities requiring temporary access across the ROW, including, but not limited
114 to house moving, swimming pool construction, septic system installation;

115 (4) All storm water drainage facilities and associated work, including, but not limited
116 to, swale grading;

117 (5) All overhead or underground utility installation, including, but not limited to, sanitary
118 sewer, water lines, electric conductors, conduit, cable television, and communication devices;

119 (6) Sod and landscaping installation;

120 (7) Temporary material or equipment storage; and

121 (8) Pavement construction or repair.

122 **Sec. 3-6-21(5). Exemptions from Permitting Requirement.**

123 (a) No right-of-way permit is required for the following activities in County rights-of-
124 way or easements:

125 (1) Trimming, cutting, or maintenance of trees, shrubs, and other existing vegetation,
126 provided such activities comply with Section 3-9, Article IV of this Code.

127 (2) Mailboxes, provided said mailboxes comply with all federal, state and local
128 regulations.

129 **Sec. 3-6-21(6). Items and Activities Prohibited in the ROW and Clear Zone**

130 (a) The following items and activities are prohibited in County rights-of-way and
131 easements:

132 (1) Structures, facilities, landscaping, or any other item for which no ROW permit has
133 been issued;

134 (2) Irrigation pipes or sprinklers;

135 (3) Non-frangible structures, temporary or permanent, located in the clear zone
136 adjacent to the roadway; and

137 (4) Any other activity that, in the opinion of the County Engineer, is either unnecessary
138 or impedes drainage.

139 (b) Whenever the County becomes aware of unpermitted items in the right-of-way, the
140 owner, if known, will be provided a notice that the item must be removed by the date stated
141 in the notice, and such date shall not exceed 30 days. Upon failure of an owner to remove
142 the item by the date specified in the notice, or where the owner of the unpermitted item is
143 unknown, the County may remove the item and may pursue recovery of its costs by any legal
144 means.

145 **Sec. 3-6-21(7). Legal Status.**

146 (a) Permits issued by the County pursuant to this Article constitute a license for
147 permissive use only. The placing of facilities upon public rights-of-way pursuant to a permit
148 issued pursuant to this Code shall not operate to create or to vest any property rights in the
149 holder thereof. The issuance of a right-of-way permit does not relieve the permit holder of the
150 need for obtaining any other permits or approvals that may be required by the appropriate
151 authorities.

152 (b) The rights and privileges in this Article are granted to the permit holder only to the
153 extent of the County's right, title, and interest in the land to be entered upon and used by the
154 applicant, and the applicant at all times assumes all risks of, and agrees to defend the County
155 from and against, any and all loss, damage, costs, or expense arising in any manner on

156 account of the exercise or attempted exercise by the applicant of the rights granted under the
157 permit.

158 (c) The permittee's activities in the right-of-way shall not interfere with or encroach
159 upon the property or rights of a prior permitted occupant of the right-of-way and shall not
160 unnecessarily restrict the activities of the traveling public.

161 **Sec. 3-6-21(8). Permit and Other Fees.**

162 (a) All fees required by this Division shall be established by the Board of County
163 Commissioners by Resolution.

164 (b) If work in the ROW occurs without an approved, required permit, the violator(s)
165 shall be required to pay quadruple the regular fee for the application appropriate for that
166 activity, in addition to any code violation penalties. The County reserves the right to deny the
167 application and require the ROW to be restored to its previous condition.

168 **Sec. 3-6-21(9). Permit Application.**

169 (a) All permit applications shall be accompanied by the applicable permit fee and shall
170 be submitted to the Building Division of the Community Development Department, or
171 submitted electronically, on the approved County permit application form and shall include
172 the following information:

173 (1) The Applicant's and local agent's name, address, email address, telephone and
174 facsimile numbers, and license number.

175 (2) Scaled, dated drawings showing the type, location, and all dimensions of the
176 proposed project or installation and the location of all known existing and proposed facilities,
177 provided, however, that the County Engineer shall have the authority to waive this
178 requirement for minor work activities.

179 (3) A maintenance of traffic plan that is consistent with the County's Maintenance of
180 Traffic regulations, the Uniform Manual of Uniform Traffic Control Devices, and/or a specific
181 FDOT 600 Series for safety of the public and employees of the permittee.

182 (4) For any proposed underground installation, information in sufficient detail to
183 identify:

184 a. The type of the utility facility to be installed.

185 b. The proposed method of installation (for example, open cut or directional bore)

186 c. The location, depth, size and quantity of existing or proposed ducts or conduits that
187 will contain the facilities being installed.

188 d. A description of the construction methods or techniques that will be used for the
189 installation.

190 e. A construction schedule and anticipated completion date.

191 (5) A list of all subcontractors who will be performing work in the right-of-way, including
192 type of license held and license number.

193 (6) Where the permit activity involves connecting a private road to a County road,
194 drainage plans shall be prepared by a registered professional engineer. A set of signed and
195 sealed plans prepared by a professional engineer shall be submitted with the application for
196 review by the County.

197 (7) Where the proposed work includes pavement construction and/or intersection
198 improvements (except in connection with permits for new driveways or modifications to
199 existing driveways), detailed construction drawings must be submitted to the Engineering
200 Division of the Public Works Department for review and approval. Plans will need to be signed
201 and sealed by a professional engineer when appropriate.

202 **Sec. 3-6-21(10). Duration of Right-of-Way Permits.** Permits for work in County Rights-
203 of-Way or easements are valid only for the time period specified by the County in the permit.
204 The County reserves the right to limit the duration of a Right-of-Way permit to what is
205 reasonable and customary for the type of work being performed. If the work for which the
206 permit was issued is not completed within the specified time period, the permittee can request
207 one (1) permit extension, at the County's discretion and at no charge provided, however, that
208 permit extensions will not be granted where the permit has expired. Expired permits where
209 work has been performed but not completed shall be considered to be a violation of this Code.
210 Permit extensions will be considered on a case by case basis. Permits that are not activated
211 within a six (6) month period from the date of issuance will expire and a new permit application
212 must be submitted. No refunds of permit fees will be processed for permits that expire.

213 **Sec. 3-6-21(11). Permit Special Conditions.** For permits involving pavement construction
214 and/or intersection improvements a development agreement must be executed by the permit
215 applicant prior to construction. In addition, a surety or cash bond, in an amount that is equal
216 to 110% of the total cost of the work within the right-of-way, must be submitted to the Public
217 Works Department. The cash or surety bond must be in a form that is acceptable to the
218 County Attorney.

219 **Sec. 3-6-21(12). Permits Issued in Error.** The County Engineer reserves the right to
220 rescind any permit that was issued in error, including, but not limited to, permits issued based
221 on a misrepresentation in the permit application. Relevant factors for consideration include
222 but are not limited to the length of time that has passed since the permit issuance, the effect
223 on the permit applicant, and safety considerations.

224 **Sec. 3-6-21(13). Qualifications of permittee.**

225 (a) Right-of-way permits will only be issued to the following:

226 (1) Utility corporations or companies (including county and municipal utilities) that will
227 own and be servicing the installed facilities, provided, however, that communications services
228 providers, communications facility providers, and pass-through providers must be registered
229 as provided in Section 3-6-38 of this Code as it may be amended from time to time.

230 (2) Licensed contractors responsible for the installation of any utility facility or structure
231 that is subject to these regulations.

232 (3) Private citizens, corporations, or organizations with a reasonable and legitimate
233 purpose in using the right-of-way, which purpose, in the sole opinion of the County Engineer,
234 poses no threat or danger to the public health, safety or welfare.

235 (4) Authorized representatives of any of the foregoing.

236 (b) In instances where the services to be provided are subject to County regulations
237 relating to underground utility pipelines, the applicant must be a holder of a current active
238 general contractor's license, a current active underground utility contractor license, a current
239 active plumbing contractor's license or, for fire protection systems only, a certificate issued
240 by the state fire marshal. Any subcontractors retained by the applicant must also be properly
241 licensed for the type of work being performed.

242 **Sec. 3-6-21(14). Design and Construction Standards.**

243 (a) *Sidewalks/Bike Facilities:* It is the expressed policy of the board of county
244 commissioners that sidewalks and bike facilities are an integral part of the county's
245 transportation system. Therefore, all site development projects located on arterials and
246 collector roadways will be required to install sidewalks and bike facilities as part of any site
247 development plan. If there are cases where connectivity of a sidewalk or bike network
248 requires that adequate facilities be provided along the frontage of a roadway classified as
249 local or residential, the county engineer may require that these facilities be provided. The

250 requirements of this section may be waived by the county engineer for developments of four
251 (4) standard size building lots or less, or if the county engineer determines that a sidewalk or
252 bike facility is not required because adequate facilities already exist. It is recognized that there
253 will be situations that exist which affect the ability of a developer to comply with the
254 requirements of this section. Therefore, the county engineer may alter or delete the
255 requirements of this section if, in the determination of the county engineer, some physical or
256 topographical feature prevents or seriously restricts the capability for the sidewalk or bike
257 facility to be included with the project.

258 (b) All facilities installed in the public right-of-way shall be designed and constructed
259 in accordance with the County's "Engineering Design and Construction Standards." Such
260 design and construction standards shall be adopted and amended by the Board of County
261 Commissioners by Resolution.

262 (c) "Open cut" installation is only permitted under special circumstances as determined
263 by County.

264 (d) Torpedoes, missiles and other similar underground tunneling devices are not
265 permitted in the right-of-way. Directional drilling and Jack and Bore are the only acceptable
266 methods of tunneling installation of underground facilities in the right-of-way. Bore logs must
267 be submitted by the permittee to the appropriate department(s) upon completion of the work.

268 **Sec. 3-6-21(15). Coordination of Work with County Roadway Construction.**

269 The County may require utility installation or maintenance activities in the right-of-way
270 to be coordinated with planned roadway construction or maintenance or to be delayed in
271 order to minimize disruption of use of the right-of-way.

272 **Sec. 3-6-21(16). Hours of Work.**

273 All work under a Right-of-Way permit shall only be performed **between the hours of**
274 **6:00 A.M. and 8:00 P.M. Monday through Friday, unless otherwise approved by the**
275 **County Engineer.**

276 **Sec. 3-6-21(17). Maintenance of Traffic.**

277 All roadways, sidewalks, and bike/multi-use paths within the limits of a right-of-way
278 permit shall be kept open to all traffic by the permittee. When approved by the County
279 Engineer, traffic may be temporarily bypassed over an approved detour route. Permittees
280 shall furnish, erect and maintain barricades, warning signs, delineators, flaggers, or pilot cars
281 in accordance with County maintenance of traffic regulations and the manual of Uniform
282 Traffic Control Devices published by the Florida Department of Transportation. The permittee
283 shall also provide and maintain, in a safe condition, temporary approaches or crossing and
284 intersections with trails, roads, streets, businesses, parking lots, residences, garages and
285 farms. The permittee shall bear all expenses for maintaining the traffic over the section of
286 road involved in the construction and for constructing and maintaining such approaches,
287 crossings, intersections and other features deemed necessary by the County Engineer.
288 Materials stored at the site of the work shall be stored outside the clear zone and shall be so
289 placed as to not obstruct vehicular or pedestrian traffic. All maintenance of traffic activities
290 shall be in compliance with the Americans with Disabilities Act (ADA).

291 **Sec. 3-6-21(18). Restoration of Right-of-Way.**

292 (a) Upon completion of construction, the County right-of-way shall be restored by the
293 permittee to the same or better condition than existed before the commencement of the work.
294 Failure of the permittee to promptly restore the right-of-way shall constitute consent for the
295 County to perform such restoration at the permittee's expense.

296 (b) Where any work performed by a permittee disturbs any area outside of the
297 roadway, the permittee shall ensure that the area is completely restored in a manner
298 acceptable to the County. Any sod that is removed shall be replaced with the same type of
299 sod. All areas must be sodded unless the County Engineer approves an alternative. Any trees
300 or shrubbery that were previously permitted and are damaged by permittee during
301 construction shall be replaced by permittee at permittee's sole expense. Any existing utilities
302 that are damaged, destroyed or temporarily removed by the permittee shall be replaced or
303 repaired by the permittee at permittee's sole expense.

304 (c) All restoration work shall be warranted by the permittee for a period of one year.
305 Permittee shall be obligated to make all warranty repairs at no cost to the County.

306 **Sec. 3-6-21(19). Insurance Requirements.**

307 (a) Prior to commencement of any work under a right-of-way permit, the permittee
308 shall provide the County's Risk Management Division with proof of insurance as described
309 below. Such proof shall be contained in a Certificate of Insurance issued by the permittee's
310 insurer, listing coverages and limits, expiration dates, terms of the policy, and all
311 endorsements. If requested by Risk Management, a certified copy of each policy, including
312 all endorsements, shall be provided.

313 (b) Required insurance shall remain in effect during the term of any permitted use of
314 the right-of-way. The certificate of insurance shall verify that the insurance policy(ies) has
315 (have) been issued to the permittee, covering claims for personal/bodily injury, including
316 death, and property damage arising from the construction, placement, and maintenance of
317 the facilities in the right-of-way.

318 (c) Required insurance coverages are: comprehensive general liability insurance,
319 including, but not limited to, independent contractor, contractual, premises/ operations,

320 products and personal injury covering the liability assumed by the permittee. Limits of liability
321 for personal injury and/or bodily injury, including death, and property damage may have
322 combined limits of \$300,000 per occurrence; coverage shall be on an "occurrence" basis.

323 (d) If a permittee is self-insured or maintains a policy deductible of \$100,000 or more,
324 the permittee shall provide a current certified financial statement. If, in County's sole
325 discretion, the permittee's financial status would make it difficult for permittee to pay any claim
326 that may arise from permittee's activities in the right-of-way, County may require permittee to
327 purchase a specific policy of insurance for the proposed work.

328 (e) The Charlotte County Board of County Commissioners shall be designated as an
329 additional insured on all required insurance policies.

330 (f) The County shall be designated as a Certificate Holder and shall be provided with
331 thirty (30) days' prior notice of any expiration, cancellation, non-renewal, or any material
332 change in coverage or limits. Notice shall be furnished by certified mail to the County's Risk
333 Management Division.

334 (g) Companies issuing insurance policies to permittees shall have no recourse against
335 the County for payment of premiums, assessments, or deductibles. Payment of same shall
336 be the sole responsibility and risk of the permittee.

337 (h) The requirements of this Section may be waived, in whole or in part, by the County
338 Engineer.

339 **Sec. 3-6-21(20). Indemnification.**

340 The permittee, in consideration of the benefits derived by the granting of a permit for
341 use of the County right-of-way, shall, at all times and for itself and its employees, agents and
342 invitees, assume all risks and shall indemnify, defend, and save Charlotte County, its officers
343 and employees, harmless from all loss, damages, costs or expense arising in any manner

344 out of the exercise or attempted exercise of permittees acts or omissions when locating its
345 facilities in the county right-of-way pursuant to a right-of-way permit.

346 **Sec. 3-6-21(21). Relocation.**

347 (a) Any permitted facility heretofore or hereafter placed upon, under, over, or along
348 any public road right-of-way or easement that, in the opinion of the County, unreasonably
349 interferes in any way with the convenient, safe, or continuous use, or the maintenance,
350 improvement, extension or expansion of such public road or appurtenant structures thereto
351 shall, upon ninety (90) days' written notice to the owner of the facility or its agent, be removed
352 or relocated, and the right-of-way shall be restored to its original condition by, and at the sole
353 expense of, such facility owner or its agent. The failure of a utility owner or its agent to remove
354 or relocate such facility shall result in the removal or relocation of the facility and the owner
355 or agent shall be liable for the cost of such removal or relocation.

356 (b) If the permittee or owner of any utility fails to commence removal or relocation of
357 its facilities within the time specified by the County, or if the permittee or owner fails to timely
358 complete such removal, including all associated restoration of the right-of-way, the County
359 shall have all rights of action specified in Section 337.403, Florida Statutes, as it may be
360 amended from time to time, including, but not limited to, removal of the facilities at the
361 permittee's or owner's costs and expense, by another entity, County forces or its contractor.

362 **Sec. 3-6-21(22). Abandoned Facilities.**

363 (a) A permittee may not abandon a facility located in the public right-of-way without
364 the prior approval of the County Engineer. The permittee will be required to remove all or any
365 portion of such abandoned facility, at the permittee's sole expense.

366 (b) If a permittee fails, within a reasonable period of time, to remove all or any portion of an
367 abandoned facility after notification by the County, the County may perform such removal and
368 recover the costs of removal from the permittee.

369 **Sec. 3-6-21(23). Responsibilities of Adjacent Property Owners.**

370 (a) Property owners shall be responsible for mowing of all grassy areas of the right-
371 of-way adjacent to their developed property. Property owners shall keep all shrubbery and
372 other foliage on their property trimmed and pruned so that it does not encroach on the right-
373 of-way and cause a traffic or safety hazard as determined by the County Engineer or
374 designee. Adjacent property owners shall not place any items in the right-of-way adjacent to
375 their property without first obtaining a permit or a determination by the County that a permit
376 is not required. There is a rebuttable presumption that any plantings or other items located in
377 the right-of-way have been put there by the adjacent property owner. This presumption shall
378 run with the land and be binding on subsequent owners of the adjacent property. Additionally,
379 property owners shall be responsible for perpetual, safe maintenance as necessary of any
380 item within the right of way adjacent to their property that the County has not installed and for
381 which there is no valid written agreement stating otherwise, and property owners assume all
382 responsibility for any damages that occur as a result of the property owner's negligence or
383 failure to comply with the provisions of this Article.

384 (b) Property owners shall be responsible to keep their driveways, including
385 portions of driveways within the County right of way or easement, in a proper state of repair
386 and maintain such areas to be free from hazardous conditions. Property owners shall
387 maintain their driveways in such a manner as to provide safe conditions for vehicles, bicycles,
388 and pedestrians. If a property owner fails to meet the requirements of this section, the County
389 may take appropriate action and may assess the owner of the property for costs incurred by

390 the County for the action taken. If the owner fails to reimburse the County within thirty (30)
391 days after being notified of the costs, the County may take any legal action against the owner
392 to recover the sums expended by the County in addition to any other remedies available by
393 law.

394 (c) A property owner shall immediately notify the County of any observed unsafe
395 condition of a sidewalk, or other object in the right-of-way adjacent to their property. If an
396 owner's actions or inactions caused the unsafe condition, the owner shall take appropriate
397 action to remedy the unsafe condition. If the owner's actions or inactions caused the unsafe
398 condition and the owner fails to take corrective action, the County shall take appropriate
399 action and may assess the owner of the property for costs incurred by the County for the
400 action taken. If the owner fails to reimburse the County within thirty (30) days after being
401 notified of the costs, the County may take any legal action against the owner to recover the
402 sums expended by the County in addition to any other remedies available by law.

403 **Sec. 3-6-21(24). Emergency work**

404 (a) The County's ROW division shall be notified, as soon as practicable under the
405 circumstances, of any event involving facilities in the right-of-way that necessitates immediate
406 emergency repair work. The facility's owner may proceed to take whatever action is
407 necessary in order to respond to the emergency. The owner will be required to obtain an
408 "after-the-fact" permit within five (5) business days after the emergency work was begun, and
409 the owner must submit revised "as-built" drawings, if applicable.

410 (b) In the event that the County becomes aware of an emergency regarding an owner's
411 facilities located in the right-of-way, an attempt to contact the owner will be made. The County
412 may take whatever reasonable action it deems necessary in order to respond to the

413 emergency, the cost of which shall be borne by the owner whose facilities necessitated the
414 emergency actions.

415 **Sec. 3-6-21(25). Inspections.**

416 (a) Required inspections, as indicated in the right-of-way permit, shall be scheduled
417 by notifying the Engineering Division and/or permit office. There is no right to an immediate
418 inspection. The following inspections are required in all instances, as applicable:

419 (1) Line and grade inspection for driveway.

420 (2) Driveway pre-pour footer inspection. (Clear pictures submitted to inspector can
421 alleviate this inspection.)

422 (3) Pipe inspection, including outfall, while being installed and before cover, catch
423 basin (pre-pour).

424 (4) Inspection of Utility placement in their mandated corridors as shown in Detail Sheet
425 R-17.1 sheets 1,2, and 3 as incorporated into the Engineering Design and Construction
426 Standards as they may be amended from time to time.

427 (5) Inspection of temporary erosion control placements in the right of way. (This
428 inspection can be done at any time and at multiple times during a project.)

429 (6) Inspection to ensure no drainage is being blocked within the right of way.

430 (7) Inspection of backfill compaction reports, base material Limerock Bearing Ratio
431 (LBR) reports, concrete mix designs and break reports, asphaltic concrete mix designs, and
432 proper signing and striping may be required.

433 (8) Final inspection.

434 (b) Any inspections required and/or requested in addition to those listed above will be
435 scheduled and performed only after payment of an additional inspection fee. No final
436 inspections or release of bond will be approved until all re-inspection fees have been paid.

437 Upon satisfactory final inspection, the Engineering Department shall transmit a release to the
438 Charlotte County Building Department. No permanent power hookups or Certificate of
439 Occupancy shall be issued by the Building Department until the appropriate release is
440 obtained from the Engineering Division.

441 (c) Layout of Work -Utilizing the control points furnished, all horizontal and vertical
442 controls shall be established by the permittee as necessary to construct the work in
443 conformance with the plans and specifications. The work shall include performing all
444 calculations required and setting all stakes needed, such as grade stakes, offset stakes,
445 reference point stakes, slope stakes, and other reference marks or points necessary to
446 provide lines and grades for construction of all roadway, bridge, and miscellaneous items.

447 (d) At any time during construction, the County shall have the right to inspect a
448 permittee's work in the right-of-way to ensure that it conforms to applicable County standards
449 for such construction. If, at any time during construction, the County observes that the
450 construction does not conform to County standards and any additional requirements of the
451 right-of-way permit, the County Engineer may issue an order to the permittee to correct any
452 non-conforming work, and shall have the authority and power to suspend or stop work until it
453 is corrected. After an order to suspend or stop work has been issued, it shall be unlawful for
454 the permittee, its employees or agents, to proceed with the construction until the County
455 Engineer authorizes same. Failure to correct any deficient work may result in revocation of
456 the permit.

457 (e) Work within the right-of-way that does not comply with the approved plans and
458 permit, may be *immediately* stopped by the County in the following instances:

459 (1) In an emergency situation that may have a serious effect on health, safety or
460 welfare; or

461 (2) When, in the reasonable opinion of the County Engineer or designee, irreversible
462 or irreparable harm may result and immediate cessation of the work is necessary to protect
463 the public or the right-of-way. In such instance, notice shall be given, in writing, to the owner,
464 permittee, or agent by the County Engineer or designee, stating the conditions under which
465 work may be resumed. Verbal notice shall be sufficient in emergency situations but shall be
466 followed up by written notice.

467 **Sec. 3-6-21(26). Surety Bond.**

468 (a) If the Building Department approves a Certificate of Occupancy prior to completion
469 of work in the right-of-way or easement, a CASH bond is required for any uncompleted work
470 in the right-of-way or easement.

471 (b) The posting of a bond does not relieve the permit holder from the responsibility of
472 completing the required work.

473 (c) The amount of the bond must be 110% of the estimated cost of the work to be
474 completed in the ROW, as approved by the Engineering Division. The bond shall specify the
475 maximum time limit, as established by the Engineering Division, for completion of the work.
476 Upon completion of all work in the right-of-way or easement, the permit holder shall notify the
477 Engineering Division. The Engineering Division will then perform a final inspection and, if
478 said inspections are satisfactory, the Engineering Division will authorize release of the bond.

479 (d) When the permit holder fails to complete the work in the right-of-way or easement
480 within the prescribed time period, the Engineering Division will make inspections to determine
481 the amount of work remaining to be completed, and notify the permit holder that the work in
482 the right-of-way or easement must be completed within seven (7) days or the bond will be
483 forfeited. If the work in the right-of-way or easement is not completed in the seven (7) day
484 period, the permittee forfeits the bond and work in the right-of-way or easement maybe

485 completed by the County, or its agent. Any surplus amount remaining after the work is
486 completed will be returned to the permit holder or individual who posted the bond.

487 **Sec. 3-6-21(27). Variances and Appeals.**

488 (a) Variances. A variance from the requirements of this Article may be granted by the
489 County Engineer when the granting of a variance will not be contrary to the public interest
490 and when a literal enforcement of the provisions of this Article will result in unnecessary and
491 undue hardship. A variance will not be granted to serve as a convenience or based solely on
492 economic hardship, or when the applicant caused the condition leading to the request for a
493 variance. When determining whether to grant a variance, the County Engineer shall consider
494 the following, where applicable:

495 a. The extent to which a proposed alternate design meets specific adopted design
496 standards.

497 b. The extent to which the proposed design meets the spirit and intent of the adopted
498 design manual through the use of materials, design criteria, and engineering, that protects
499 the health, safety, and general welfare of the public.

500 c. The positive or negative impact of the proposed design on surrounding property
501 uses and property values, in comparison to the expected impact of the facilities if same were
502 built in strict conformity with the standards of the design manual.

503 d. The extent to which the proposed design accomplishes the purpose of this Article.

504 (b) Appeals. Any person adversely affected by a decision of the County Engineer in
505 the permitting, enforcement, or interpretation of any of the terms or provisions of this Article
506 may appeal such decision to the County Administrator. Such appeal shall be taken by filing a
507 written notice with the County Engineer within twenty (20) days after the decision of the

508 County Engineer. Such written notice shall state, with particularity, the factual and/or legal
509 basis for the appeal.

510 Section 2. Violations of this ordinance, and the penalties therefor, shall be as
511 provided by general law.

512 Section 3. Any portion of the Charlotte County Codes or any ordinances or parts
513 thereof in conflict with this Ordinance are hereby superseded to the extent of such conflict.

514 Section 4. If any provision of this ordinance or the application thereof to any
515 person or circumstance is held invalid, the invalidity shall not affect other provisions or
516 applications of this ordinance which can be given effect without the invalid provision or
517 applications. To this end, the provisions of this ordinance are declared severable.

518 Section 5. This Ordinance shall take effect as provided by law.

519 PASSED AND DULY ADOPTED this 9th day of March, 2021.

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527 ATTEST:
528 Roger D. Eaton, Clerk of the Circuit
529 Court and Ex-Officio Clerk to the
530 Board of County Commissioners

531
532
533 By: *Daniel Devalh*
534 Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA
By: *William G. Truex*
William G. Truex, Chairman

535
536 APPROVED AS TO FORM AND LEGAL
537 SUFFICIENCY:

538
539 By: *Janette S. Knowlton*
540 Janette S. Knowlton, County Attorney
541 LR16-0269 PSP PSP



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

March 10, 2021

Mr. Roger D. Eaton
Clerk of the Circuit Court
County Comptroller
Charlotte County
18500 Murdock Circle, Room 416
Port Charlotte, Florida 33948

Attention: Ms. Dawn Smoleski

Dear Mr. Eaton:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Charlotte County Ordinance No. 2021-009, which was filed in this office on March 10, 2021.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb



PUBLISHER'S AFFIDAVIT OF PUBLICATION STATE OF FLORIDA COUNTY OF CHARLOTTE:

Before the undersigned authority personally appeared Melinda Prescott, who on oath says that she is the Legal Advertising Representative of the Sun Newspapers, a newspaper published at Charlotte Harbor in Charlotte County, Florida; that the attached copy of advertisement, being a Legal Notice that was published in said newspaper in the issue(s)

02/26/2021

as well as being posted online at www.yoursun.com and www.floridapublicnotices.com. Affiant further says that the said newspaper is a newspaper published at Charlotte Harbor, in said Charlotte County, Florida, and that the said newspaper has heretofore been continuously published in said Charlotte County, Florida, Sarasota County, Florida and DeSoto County, Florida, each day and has been entered as periodicals matter at the post office in Punta Gorda, in said Charlotte County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Melinda Prescott (Signature of Affiant)

Sworn and subscribed before me this 26th day of February, 2021.

Laura M Robins (Signature of Notary Public)

Personally known X OR Produced Identification

The Board of County Commissioners of Charlotte County proposes to adopt the following ordinance:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA; AMENDING AND RESTATING CHAPTER 3-6, ARTICLE II, CONSTRUCTION IMPROVEMENTS, DIVISION I GENERALLY; REPEALING ORDINANCE NUMBER 85-43, ORDINANCE NUMBER 90-32, AND SECTIONS 3-6-21 THROUGH 3-6-25 OF THE CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA; CREATING A NEW ARTICLE II, DIVISION 1, SECTIONS 3-6-21(1) THROUGH 3-6-21(27) RELATING TO WORK WITHIN COUNTY RIGHTS OF WAY AND EASEMENTS; PROVIDING FOR PENALTIES FOR VIOLATION; PROVIDING FOR CONFLICTS AND CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

A public hearing on this ordinance will be held at 10:00 AM, or as soon thereafter as it may be heard, on the 9th day of March, 2021, in Room 119 of the Charlotte County Administration Center, 18500 Murdock Circle, Port Charlotte, Florida.

Copies of the proposed ordinance and the economic impact estimate, if applicable, are available for inspection by the general public in the Charlotte County Attorney's Office, 18500 Murdock Circle, Port Charlotte, Florida. Interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

Should any agency or person decide to appeal any decision made by the Board with respect to any matter considered at such meeting, he will need a record of the proceeding, and for such purpose, he 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. BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA

Charlotte County Board of County Commissioners does not discriminate on the basis of disability. This nondiscrimination policy involves every aspect of the County's functions, including access to and participation in meetings, programs and activities. FM Sound Enhancement Units for the Hearing Impaired are available at the Front Security Desk, Building A of the Murdock Administration Complex. Anyone needing other reasonable accommodation or auxiliary aids and services please contact our office at 941.743.1381, TDD/TTY 941.743.1234, or by email to David.Lyles@CharlotteCountyFL.gov. Reference No: 030921-B Publish: February 26, 2021 163352 3786944

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