

BEFORE THE BOARD OF COUNTY COMMISSIONERS

MARTIN COUNTY, FLORIDA

ORDINANCE NUMBER \_\_\_\_\_

**AN ORDINANCE OF MARTIN COUNTY, FLORIDA, REPEALING CHAPTER 25, CABLE COMMUNICATIONS AND AMENDING CHAPTER 155, STREETS, ROADS AND BRIDGES, ALL OF GENERAL ORDINANCES, MARTIN COUNTY CODE, RELATING TO ROAD OPENINGS AND RIGHT-OF-WAY IMPROVEMENTS; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; PROVIDING FOR AN EFFECTIVE DATE AND CODIFICATION.**

WHEREAS, the Board of County Commissioners of Martin County is authorized pursuant to Sections 1 and 6 of Article VIII, Constitution of the State of Florida, and Chapter 125, Florida Statutes, to adopt ordinances; and

WHEREAS, the County has responsibility for construction, maintenance, and safe and proper usage of County roads and rights-of-way and declares it to be in the public interest to regulate their use in order to establish control over the method and manner of said use to prevent damage to the roadbed and to any portion of the rights-of-way, including drainage facilities, driveways, sidewalks and other public facilities; and

WHEREAS, Chapter 25, Cable Communications, General Ordinances, Martin County Code provides the guidelines and procedures to be used for cable communications within the County's real property and road rights-of-way; and

WHEREAS, it is the intent of this ordinance to provide the guidelines and procedures to be used for the creation, installation, construction, or placement of any permanent improvement in a road right-of-way; and

WHEREAS, with the adoption of the guidelines and procedures in this ordinance that cover any permanent improvement in a street right-of-way, the guidelines and procedures in Chapter 25 specific to cable communications will no longer be needed.

**NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, FLORIDA, THAT:**

**PART ONE: REPEAL OF CHAPTER 25, CABLE COMMUNICATIONS, GENERAL ORDINANCES, MARTIN COUNTY CODE**

**Chapter 25, Cable Communications, General Ordinances, Martin County Code, is hereby repealed in its entirety.**

**PART TWO: AMENDMENT OF CHAPTER 155, STREETS, ROADS AND BRIDGES, GENERAL ORDINANCES, MARTIN COUNTY CODE**

**SUBPART 1: Article 1, In General, Chapter 155, Streets, Roads and Bridges, General Ordinances, Martin County Code, is hereby amended as follows:**

## ARTICLE 1. IN GENERAL

### **Sec. 155.1. Tax levy for operation and maintenance of road and bridge fund authorized; limitations.**

The Board of County Commissioners of Martin County, Florida, is hereby authorized and permitted to levy not to exceed 10 44 mills on the dollar on the assessed valuation of all real and personal property in Martin County for the operation and maintenance expenses of the road and bridge fund of such County.

### **Sec. 155.2. ~~Authority to construct roads outside of boundaries of County.~~ Establishment of minimum speed limit**

No public road, street, or thoroughfare in unincorporated Martin County shall have a posted speed limit less than 25 miles per hour.

~~In all counties in the State having a population of not less than 15,800 nor more than 17,000, according to the latest official decennial census, the county commissioners are hereby authorized and empowered, in their discretion, to expend the necessary funds to construct that portion of State secondary roads, outside their boundaries, to make them a connecting link and integral part of the State secondary road system, if the adjoining county does not have the funds.~~

### **Sec. 155.3. Closing roads giving access to navigable waters restricted.**

155.3.A. No public road, street, or public thoroughfare in unincorporated Martin County that gives giving direct access to any navigable waters in Martin County shall be closed, vacated, or abandoned without the approval of a majority of the electors participating in a referendum election, as provided, except in those instances wherein the person or persons petitioning the Board of County Commissioners for such closing, vacating, or abandoning of such public roads, streets, or public thoroughfares giving direct access to any navigable waters offers to trade or give to the County comparable land or lands for a public road, street, or public thoroughfare to give access to the same body of water, such access to be of such condition as not to work a hardship to the users thereof, the reasonableness of the distance being left to the discretion of the Board of County Commissioners; ~~provided, however, that any such road, street or public thoroughfare lying in or within the city limits of Stuart, Florida, shall be excluded from the provisions of this section.~~

155.3.B. Such question, wherein the person or persons petitioning the Board of County Commissioners for the closing, vacating, or abandoning of public roads, streets, or public thoroughfares in unincorporated Martin county that gives giving direct access to any navigable waters do not offer to trade or give to the County comparable land within a reasonable distance of the same body of water, shall be submitted by the Board of County Commissioners of Martin County to the qualified electors of said County after giving notice thereof in at least three weekly publications in a newspaper published in said County, three publications being sufficient. A special election may be called for such purpose or such referendum election may be held at the same time and may be conducted by the same election officials as any primary or general election.

### **Sec. 155.4. Acceptance of maintenance.**

Only public roads, streets, or thoroughfares that have been constructed and paved according to the Roadway Design standards, Article 4, Division 19, Land Development Regulations, Martin County Code, shall be accepted for maintenance by the County.

**Secs. 155.45—155.30. - Reserved.**

**SUBPART 2: Article 2, Street Openings, Chapter 155, Streets, Roads and Bridges, General Ordinances, Martin County Code, is hereby amended as follows:**

**ARTICLE 2. STREET OPENINGS ROAD RIGHT-OF-WAY IMPROVEMENTS**

**Sec. 155.31. – Definitions.**

For the purpose of this article, the following terms shall have the meanings ascribed to them in this section. ~~"street" shall be defined as any thoroughfare, road, avenue, highway, etc., excluding State roads, which affords access to more than one parcel of land.~~

Improvement means necessary or desirable infrastructure improvements relating to the road right-of-way, including, but not limited to, structures, roadway improvements, pedestrian improvements, landscaped areas, piers, foundations, and other similar work.

Facility means any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the general public.

Open Road means any road, street, or thoroughfare, excluding State-owned limited access highways, which affords access to more than one parcel and is listed in the County road inventory.

Road right-of-way means the right-of-way or easement for any road, street, or thoroughfare, which affords access to more than one parcel of land, whether listed in the County's Road Inventory as open or not.

Unopened platted road right-of-way means a road right-of-way or easement, whether dedicated to the public or not, that is shown on a recorded plat or an unrecorded plat that does not contain an open road.

Work means the creation, installation, construction, placement, replacement, maintenance, or removal of a permanent improvement or facility within a road right-of-way.

**Sec. 155.32. Permits required.**

155.32.A. It shall be unlawful for anyone to construct a new road, street, or thoroughfare in an unopened platted road right-of-way open a street in the unincorporated portion of Martin County without having obtained a Road Opening pPermit therefor in accordance with this article.155.32.B. It shall be unlawful for anyone to Work in a County-maintained road right-of-way, as listed in the County's Road Inventory, without having obtained a Right-of-way Use Permit in accordance with this article. All construction and maintenance Work by the County or its contractors in the County road right-of-way is exempt from the requirement of obtaining a Right-of-way Use Permit.

155.32.C. A Right-of-way Maintenance Agreement, which expressly defines the maintenance responsibilities being delegated and is recorded in the public records of Martin County, shall be required as a prerequisite to the issuance of a Right-of-way Use Permit for Work that is considered an enhancement as determined by the County Engineer, such as, but not limited to, landscape and irrigation, decorative streetlights, brick pavers, or neighborhood identification signs.

### **Sec. 155.33. Permit fees.**

The fee for such permits shall be ~~such fee as established by the Board of County Commissioners shall set from time to time by resolution.~~ Such fee is not applicable to entities regulated by the Florida Public Service Commission, the Federal Communications Commission, or to publicly owned utilities.

### **Sec. 155.34. ~~Growth Management Department~~ County Engineer to issue permits; compliance with ~~subdivision regulations~~ Roadway Design standards.**

~~The Growth Management Department shall issue permits for the opening of any street in the unincorporated portion of Martin County which has not been previously accepted by the Board of County Commissioners or which has not been previously opened in fact; provided, the applicant therefor shall comply with those sections of the subdivision regulations in force and effect at that time which pertain to streets, either public or private, as defined in said regulations. Except for roads opened pursuant to the approval of a plat, an application shall be submitted to the County Engineer for the opening of any road, street, or thoroughfare in an unopened platted road right-of-way or for Work proposed in any County road right-of-way. Upon demonstration of compliance with the Roadway Design standards, Article 4, Division 19, Land Development Regulations, and the requirements of this article the County Engineer shall issue a permit.~~

### **Sec. 155.35. Adoption of regulations exempting paving requirements authorized. Permit Application.**

~~The Planning and Zoning Commission shall recommend and the Board of County Commissioners shall adopt regulations for the granting of exemption from the necessity of paving roads to County standards, when the public health, safety and welfare are not endangered thereby.~~

An application for the appropriate permit on forms provided by the County is required. It shall be signed by the applicant and shall be accompanied by the appropriate fee. At a minimum, such application shall include the applicant's full name, address, mailing address if different, electronic address, telephone number, and:

155.35.A. Engineered plan. The applicant shall provide an engineered plan that includes, at a minimum, the following:

1. The type, location, and the dimensions (including height, footprint, and concealment features) of the proposed Work;
2. The distance between the proposed Work and nearby pavement, sidewalks, driveways, ramps, trees, underground utilities, and other above-grade and below-grade structures and utilities located nearby;
3. Sufficient specificity demonstrating compliance with the Comprehensive Growth Management Plan, Land Development Regulations and General Ordinances of the Martin County Code; the Florida Building Code; the Florida Department of Transportation's Manual of Uniform Minimum Standards for Design, Construction and Maintenance (Florida Greenbook); the American's with Disabilities Act; the Utility Accommodation Guide; and the National Electric Safety Code, as amended and as applicable;
4. Attestation that the proposed Work is located within the right-of-way, however, the County Engineer may require the applicant provide a detailed survey, signed and sealed by a Professional Surveyor and Mapper licensed in the State of Florida if it appears the proposed Work may encroach outside the right-of-way; and

5. Identification of trees or landscaped areas that will be removed or impacted upon the placement of the proposed Work.

155.35.B. Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, if applicable, to accommodate the proposed Work.

155.35.C. Temporary maintenance of traffic (MOT) plan. The applicant shall provide a temporary traffic lane closure and maintenance of traffic (MOT) plan, if applicable, to accommodate the proposed Work. The MOT plan shall be prepared by an individual certified in FDOT's Advanced Work Zone Traffic Control.

155.35.D. Cost estimate for construction and/or restoration. The applicant shall provide an Engineer's Opinion of Probable Cost of the proposed Work. Such Opinion of Probable Cost shall be on a form provided by the County and shall be signed and sealed by a Professional Engineer licensed in the State of Florida and include, but not be limited to, costs to construct and/or restore the paving, curbs/gutters, sidewalks, multi-purpose trails, and landscaped areas. Such Opinion of Probable Cost shall be reviewed by the County Engineer. The requirement for an Engineer's Opinion of Probable Cost may be waived if the County Engineer establishes set rates for incidental Work. Once accepted by the County Engineer, the cost estimate becomes the basis for the security.

155.35.E. Security. The applicant shall provide security, in a form acceptable to the County Attorney that represents one hundred and ten percent (110%) of the cost of the proposed Work, as accepted by the County Engineer. The security shall be waived if the applicant is regulated by the Florida Public Services Commission, is regulated by the Federal Communications Commission, or is a municipally-owned and/or county-owned water or wastewater utility.

155.35.F. Timetable for installation or construction. The applicant shall provide a reasonable timetable for the proposed Work.

155.35.G. Insurance. The applicant shall provide a Certificate of Insurance showing that the applicant has secured general public liability insurance coverage naming Martin County, a political subdivision of the State of Florida, as an additional named insured and including a waiver of subrogation.

155.35.H. The applicant shall provide such additional information as the County Engineer finds reasonably necessary to demonstrate the applicant's compliance with applicable codes, local laws and regulations, and state and federal laws with respect to the placement or maintenance of the proposed improvement or facility that is the subject of the permit application. This may include the requirement for structural or other plans, signed and sealed by a Professional Engineer licensed in the State of Florida.

#### **Sec. 155.36. Permit Application Review.**

155.36.A. Application Sufficiency. Within ten (10) business days after the receipt of the permit fee and permit application, the County Engineer shall determine whether the application is complete. The parties may mutually agree to extend the ten (10) business day determination period. If an application is deemed incomplete, the County Engineer shall notify the applicant by electronic mail and specifically identify the missing documentation and information and the specific rule or regulation creating the obligation to submit such documentation or information.

155.36.B. Application review. Within sixty (60) days after the date the permit application is deemed complete, the County Engineer shall approve, approve with conditions, or deny the application. The parties may mutually agree to extend the sixty (60) day application review period. The County Engineer shall notify the applicant by electronic mail on the day the application is approved, approved with conditions, or denied, but no later than the end of the application review period. If the application is not approved, approved with conditions, or denied within the sixty (60) day application review period, the

application shall be deemed approved. If the application is denied, the County Engineer shall notify the applicant by electronic mail on the day the application is denied and specify in writing the basis for denial, including the specific Code provisions on which the denial is based. The applicant may cure the deficiencies identified by the County Engineer and resubmit the application within thirty (30) days after the notice of denial is sent. The County Engineer shall approve or deny the revised application within thirty (30) days after the date of resubmittal of the application. Any subsequent review shall be limited to the deficiencies cited in the notice of denial and new Work not previously proposed in the original application.

**Sec. 155.37. Non-interference of use; coordination with other activities.**

155.37.A. Prior to establishing a schedule or initiating any of the proposed Work, the applicant shall, through Martin County, coordinate the proposed Work with all other work, construction, installation or repairs that may be occurring or scheduled to occur in the subject road rights-of-way, and the applicant shall be reasonably required to alter its proposed Work schedule as necessary so as to minimize disruptions and disturbance in road rights-of-way, as determined by the County Engineer.

155.37.B. For the collocation of facilities on utility poles that are intended to support the facility, the applicant shall provide an attestation by an officer of the owner of the utility pole that the applicant's facility may be collocated on the utility pole.

**Sec. 155.38. Open Roads.**

155.38.A. After the effective date of this Article, roads, streets, or thoroughfares, whether public or private, shown on a plat approved by the Board of County Commissioners will be added to the County's Road Inventory as open roads.

155.38.B. Upon acceptance by the County Engineer of the completed construction of an open road pursuant to a Road Opening Permit the road will be added to the County's Road Inventory as an open road.

155.38.C. The County Engineer will request the Board of County Commissioners adopt a resolution acknowledging the roads that were opened by recorded plat or Road Opening Permits on or before June 30<sup>th</sup> and December 31<sup>st</sup> of each year. The resolution will include the road name, classification, length, limits, pavement width, material, stormwater management technique, right-of-way width, sidewalk width and location, maintenance responsibility, and other factors that the County Engineer feels suitable for the road inventory.

**Sec. 155.3639. Review of denial of permit Appeal of Final Action.**

The action of the ~~Growth Management Department~~ County Engineer in denying an application for such a permit may be reviewed by the Board of County Commissioners at a public hearing for that purpose, provided the notice of such hearing has been published at least 15 days prior thereto in accordance with the procedures established in Section 10.12 Appeal of Final Action, Land Development Regulations, Martin County, Florida.

Secs. 155.3740—155.60. - Reserved.

**SUBPART 3: Article 3, Street Improvements, Chapter 155, Streets, Roads and Bridges, General Ordinances, Martin County Code, is hereby repealed in its entirety.**

**PART THREE: CONFLICTING PROVISIONS.**

Special acts of the Florida legislature applicable only to unincorporated areas of Martin 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.

**PART FOUR: 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 other person, property or circumstances, such holding shall not affect its applicability to any other person, property or circumstances.

**PART FIVE: APPLICABILITY.**

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

**PART SIX: FILING WITH THE DEPARTMENT OF STATE.**

The Clerk shall be and is hereby directed forthwith to scan this ordinance in accordance with Rule 1B-26.003, Florida Administrative Code, and file same with the Florida Department of State via electronic transmission.

**PART SEVEN: EFFECTIVE DATE.**

This ordinance is effective upon filing with the Department of State.

**PART EIGHT: CODIFICATION.**

Provisions of this ordinance shall be incorporated in the County Code and the word "ordinance" may be changed to "section," "article" or other appropriate word, and the sections of this ordinance may be renumbered or relettered to accomplish such intention; provided, however, that parts three through eight shall not be codified.

**DULY PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.**

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
MARTIN COUNTY, FLORIDA

\_\_\_\_\_  
CAROLYN TIMMANN, CLERK OF THE  
CIRCUIT COURT AND COMPTROLLER

\_\_\_\_\_  
HAROLD JENKINS, II, CHAIRMAN

APPROVED AS TO FORM & LEGAL  
SUFFICIENCY:

SARAH W. WOODS, COUNTY ATTORNEY

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