



## Agenda Item Summary

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**File ID:** 19-0863

**PH-3**

**Meeting Date:** 8/27/2019

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**PLACEMENT:** Public Hearings

**TITLE:**

**PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE REGARDING STREETS, ROADS, AND BRIDGES**

**EXECUTIVE SUMMARY:**

This is a public hearing to consider adoption of an Ordinance repealing Chapter 25, Cable Communications, and amending Chapter 155, Streets, Roads, and Bridges, to: establish a minimum speed limit; eliminate conflicts with state statutes; require permits in County rights-of-way; and prohibit obstructions of County rights-of-way.

**DEPARTMENT:** Public Works

**PREPARED BY:** **Name:** Lisa A. Wichser, P.E., CFM  
**Title:** County Engineer

**REQUESTED BY:**

**PRESET:** **9:30 AM**

**PROCEDURES:** None

**BACKGROUND/RELATED STRATEGIC GOAL:**

Article 1. In General

Pursuant to Section 316.189, Florida Statutes, the Board of County Commissioners (Board) may establish speed zones on County roads. Historically, the Martin County Sheriff has not enforced posted speeds of less than 25 MPH. Staff is proposing the Board formalize the historic enforcement by establishing 25 MPH as the minimum posted speed limit on any County road.

Article 2. Road Right-of-way Improvements

Presently, the only requirement for the issuance of a permit to do work in the County's rights-of-way is found in Chapter 25, Code of Ordinances, related to Cable Communication. Chapter 25 was created in 1986 when cable television and cable communications were being developed as modern systems. It is specific to one type of communication facility that has evolved significantly over the past 33 years. Staff is proposing the Board repeal Chapter 25 and expand Chapter 155 related to Streets, Roads, and Bridges to provide for the issuance of permits in the County's rights-of-way. The proposed changes to Article 2 of Chapter 155 address Right-of-way Use Permits for work associated with permanent improvements or facilities in County right-of-way as well as Road Opening Permits

that were previously under the purview of the Growth Management Director. The Article provides for an application fee, which can only be waived if the applicant is regulated by the Florida Public Service Commission, the Federal Communications Commission or is a municipally- or city-owned water and wastewater utility. The application must be accompanied with an engineered plan, maintenance of traffic plans(s), a cost estimate, security, a schedule, and insurance. The applicant must coordinate with other activities in the area. Article 2 also proposes the County Engineer issue Road Opening Permits, with the discretion to seek input from the Board and to request the Board acknowledge, by resolution, newly opened roads twice per year. Finally, Article 2 proposes a way for the applicant to appeal the County Engineer's denial of a permit consistent with Article 10 of the Land Development Regulations.

### Article 3. Obstructions

The last substantive amendment to Chapter 155, Code of Ordinances, related to Streets, Roads, and Bridges was made in 1986 when the Board of County Commissioners adopted Ordinance 274 to establish policies and procedures for assessable paving projects. This became Article 3, Street Improvements. In 1996, the Board of County Commissioners adopted the Special Assessment Ordinance that provided, in short, the creation of Municipal Service Benefit Units (MSBUs) and the imposition and collection of special assessments to fund the cost of capital improvements providing a special benefit to local areas. When the Special Assessment Ordinance was adopted, Chapter 155 became obsolete, but was not repealed.

For many years, staff has been challenged on how to deal with obstructions or encroachments in the County's unopened platted rights-of-way. In many cases, the adjacent property owner is unaware of the obstruction or encroachment and in many of these cases, the obstruction or encroachment of these unopened platted rights-of-way does not affect how the County's tasks are performed. There are cases, however, when the County staff need to gain access to these unopened rights-of-way to perform some type of maintenance, such as clearing a drainage swale or ditch. Other times, a neighbor or interested third party may report an obstruction or encroachment to the County. In these cases, staff has sent letters to the property owner abutting the right-of-way requesting the removal of the obstruction or encroachment. Sometimes the request is honored, but many times it is not. The Code does not address unpermitted or unauthorized right-of-way encroachments or obstructions.

Staff is proposing the obsolete Article 3 (Street Improvements) be replaced with a new article addressing Obstructions. This new article will prohibit the obstruction or encroachment of any road right-of-way, unless the County has issued a permit and a written agreement is in place that provides for the obstruction or encroachment. The new Article will provide for a way for the County's Code Enforcement procedures be used to seek the removal of the obstruction or encroachment. If a violation has been identified, the violator will be given the opportunity to: prove the obstruction or encroachment is not a result of the violator's actions; remove the obstruction or encroachment; request a permit for the placement of the obstruction or encroachment and execute a written agreement with the County; or request the right-of-way be abandoned by the County. The permit and agreement will be the same as is used for other work performed in County right-of-way and the abandonment would follow the statutory procedures currently in place. Each has an associated fee.

### **ISSUES:**

There is current litigation regarding obstructions across unimproved rights-of-way to which the County is a party. The application of the obstructions provision will have effects throughout unincorporated Martin County which will be discussed during the presentation of this item.

The draft Ordinance will be provided via Supplemental Memorandum.

**LEGAL SUFFICIENCY REVIEW:**

This is a legislative matter. Legislative decisions are those in which the local government formulates policy rather than applying specific rules to a particular situation. A local government's approval or denial of an issue in its legislative capacity is typically subject to a fairly debatable standard of review. Fairly debatable means that the government's action must be upheld if reasonable minds could differ as to the propriety of the decision reached. Decisions subject to the fairly debatable standard of review need only be rationally related to a legitimate public purpose, such as the health, safety, and welfare of the public, to be valid. Given this broad discretion, only decisions that arbitrary and capricious or illegal are subject to serious legal challenge.

**RECOMMENDED ACTION:**

**RECOMMENDATION**

Move that the Board of County Commissioners adopt the Ordinance as presented.

**ALTERNATIVE RECOMMENDATIONS**

1. Move that the Board of County Commissioners adopt the Ordinance with the removal of Article 3, Obstructions.
2. Provide staff direction.

**FISCAL IMPACT:**

**RECOMMENDATION**

None

Funding Source	County Funds	Non-County Funds
Subtotal		
Project Total		

**ALTERNATIVE RECOMMENDATIONS**

None

**DOCUMENT(S) REQUIRING ACTION:**

- ☐ Budget Transfer / Amendment   ☐ Chair Letter   ☐ Contract / Agreement  
☐ Grant / Application   ☐ Notice   ☒ Ordinance   ☐ Resolution  
☐ Other:

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