A. Statutory Intent – §365.172(12), Florida Statutes – “FACILITATING E911 SERVICE IMPLEMENTATION.—To balance the public need for reliable E911 services through reliable wireless systems and the public interest served by governmental zoning and land development regulations and notwithstanding any other law or local ordinance to the contrary, the following standards shall apply to a local government’s actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

B. Applicability of Statute
1. The term ‘local government’ as used in s 365.172(12), Florida Statutes does not include any airport, as defined by s. 330.27(2), even if it is owned or controlled by or through a municipality, county, or agency of a municipality or county.” (§365.172(12), Florida Statutes)
2. “This subsection shall not … be construed to waive or alter the provisions of s. 286.011 or s. 286.0115.” (§365.172(12), Florida Statutes)
3. “[N]otwithstanding anything in this section to the contrary, this subsection does not apply to or control a local government’s actions as a property or structure owner in the use of any property or structure owned by such entity for the placement, construction, or modification of wireless communications facilities.” (§365.172(12), Florida Statutes)
   a) “In the use of property or structures owned by the local government, however, a local government may not use its regulatory authority so as to avoid compliance with, or in a manner that does not advance, the provisions of this subsection.” (§365.172(12), Florida Statutes)

C. Definitions.
1. “Building permit review” means a review for compliance with building construction standards adopted by the local government under chapter 553 and does not include a review for compliance with land development regulations.” (§365.172(3)(f), Florida Statutes)
2. “Collocation” means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antennae.” (§365.172(3)(g), Florida Statutes)
3. “Designed service” means the configuration and manner of deployment of service the wireless provider has designed for an area as part of its network.” (§365.172(3)(h), Florida Statutes)
4. “Existing structure” means a structure that exists at the time an application for permission to place antennae on a structure is filed with a local government. The term includes any structure that can structurally support the attachment of antennae
5. “‘Historic building, structure, site, object, or district’ means any building, structure, site, object, or district that has been officially designated as a historic building, historic structure, historic site, historic object, or historic district through a federal, state, or local designation program.” (§365.172(3)(m), Florida Statutes)

6. “‘Land development regulations’ means any ordinance enacted by a local government for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, the local government’s comprehensive plan, or any other ordinance concerning any aspect of the development of land. The term does not include any building construction standard adopted under and in compliance with chapter 553. (§365.172(3)(n), Florida Statutes)

7. Local government means, for the purposes of subsection 365.172(12), Florida Statutes, “shall mean any municipality or county and any agency of a municipality or county only. The term ‘local government’ does not, however, include any airport, as defined by s. 330.27(2), even if it is owned or controlled by or through a municipality, county, or agency of a municipality or county.” §365.172(12), Florida Statutes

8. “‘Tower’ means any structure designed primarily to support a wireless provider’s antennae. (§365.172(3)(cc), Florida Statutes)

9. “‘Wireless communications facility’ means any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility. (§365.172(3)(dd), Florida Statutes)

10. “Wireless provider’ means a person who provides wireless service and:
   a) Is subject to the requirements of the order[, as defined by s. 365.172(3)(t), Florida Statutes]; or
   b) Elects to provide wireless 911 service or E911 service[, as defined by s. 365.172(3)(ee), Florida Statutes] in this state.” (§365.172(3)(v), Florida Statutes)

11. Wireless ‘‘service’ means ‘commercial mobile radio service’ as provided under ss. 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term includes service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration;
providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.” (§365.172(3)(z), Florida Statutes)

D. Land development regulation provisions and review of applications for wireless facilities.  

1. Only to address land development or zoning issues.
   a) “A local government’s land development and construction regulations for wireless communications facilities and the local government’s review of an application for the placement, construction, or modification of a wireless communications facility shall only address land development or zoning issues.” (§365.172(12)(b)1., Florida Statutes)
   b) “In such local government regulations or review, the local government may not require information on or evaluate a wireless provider’s business decisions about its service, customer demand for its service, or quality of its service to or from a particular area or site, unless the wireless provider voluntarily offers this information to the local government.” (§365.172(12)(b)1., Florida Statutes)
   c) “In such local government regulations or review, a local government may not require information on or evaluate the wireless provider’s designed service unless the information or materials are directly related to an identified land development or zoning issue or unless the wireless provider voluntarily offers the information.” (§365.172(12)(b)1., Florida Statutes)
   1) “Information or materials directly related to an identified land development or zoning issue may include, but are not limited to, evidence that no existing structure can reasonably be used for the antennae placement instead of the construction of a new tower, that residential areas cannot be served from outside the residential area, as addressed in subparagraph 3., or that the proposed height of a new tower or initial antennae placement or a proposed height increase of a modified tower, replacement tower, or collocation is necessary to provide the provider’s designed service. Nothing in this paragraph shall limit the local government from reviewing any applicable land development or zoning issue addressed in its adopted regulations that does not conflict with this section, including, but not limited to, aesthetics, landscaping, land use based location priorities, structural design, and setbacks.” (§365.172(12)(b)1., Florida Statutes)

2. Wireless facilities may be excluded from residential areas, but with limitations.
   a) “A local government may exclude the placement of wireless communications facilities in a residential area or residential zoning district but only in a manner that does not constitute an actual or effective prohibition of the provider’s service in that residential area or zoning district.” (§365.172(12)(b)3., Florida Statutes)
b) “If a wireless provider demonstrates to the satisfaction of the local government that the provider cannot reasonably provide its service to the residential area or zone from outside the residential area or zone, the municipality or county and provider shall cooperate to determine an appropriate location for a wireless communications facility of an appropriate design within the residential area or zone.” (§365.172(12)(b)3., Florida Statutes)

c) “The local government may require that the wireless provider reimburse the reasonable costs incurred by the local government for this cooperative determination.” (§365.172(12)(b)1., Florida Statutes)

d) “An application for such cooperative determination shall not be considered an application under [the timeframes of] paragraph [s. 365.172(12)(d), F.S.].”

3. Fees.

a) Application fees must be consistent with other application fees. “A local government may impose a reasonable fee on applications to place, construct, or modify a wireless communications facility only if a similar fee is imposed on applicants seeking other similar types of zoning, land use, or building permit review.” (§365.172(12)(b)4., Florida Statutes)

b) Review fees. “A local government may impose fees for the review of applications for wireless communications facilities by consultants or experts who conduct code compliance review for the local government but any fee is limited to specifically identified reasonable expenses incurred in the review.” (§365.172(12)(b)4., Florida Statutes)

c) Abandonment surety. “A local government may impose reasonable surety requirements to ensure the removal of wireless communications facilities that are no longer being used.” (§365.172(12)(b)4., Florida Statutes)

4. Design requirements cannot include construction code requirements. “A local government may impose design requirements, such as requirements for designing towers to support collocation or aesthetic requirements, except as otherwise limited in this section, but shall not impose or require information on compliance with building code type standards for the construction or modification of wireless communications facilities beyond those adopted by the local government under chapter 553 and that apply to all similar types of construction.” (§365.172(12)(b)5., Florida Statutes)

5. “Local governments may not require wireless providers to provide evidence of a wireless communications facility’s compliance with federal regulations, except evidence of compliance with applicable Federal Aviation Administration requirements under 14 C.F.R. s. 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use, but may request the Federal Communications Commission to provide information as to a wireless provider’s compliance with federal regulations, as authorized by federal law. (§365.172(12)(c),
6. "The replacement of or modification to a wireless communications facility, except a tower, that results in a wireless communications facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the local government, are subject to no more than applicable building permit review.” (§365.172(12)(e), Florida Statutes)

E. Antenna Collocations.

1. “Collocation among wireless providers is encouraged by the state.” (§365.172(12)(a), Florida Statutes)

2. Collocations on towers. (§365.172(12)(a)1.b., Florida Statutes) “Collocations on towers, including nonconforming towers, that meet the requirements in sub-sub-subparagraphs (I), (II), and (III), are subject to only building permit review, which may include a review for compliance with this subparagraph. Such collocations are not subject to any design or placement requirements of the local government’s land development regulations in effect at the time of the collocation that are more restrictive than those in effect at the time of the initial antennae placement approval, to any other portion of the land development regulations, or to public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.

I. The collocation does not increase the height of the tower to which the antennae are to be attached, measured to the highest point of any part of the tower or any existing antenna attached to the tower;

II. The collocation does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment enclosures and ancillary facilities; and

III. The collocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennae placed on the tower and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the tower supporting the antennae. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the local government’s land development regulations in effect at the time the initial antennae placement was approved.”

3. Collocations on other, non-historic, structures. (§365.172(12)(a)1.b., Florida Statutes) “Except for a historic building, structure, site, object, or district, or a tower included in sub-subparagraph a., collocations on all other existing structures that meet the requirements in sub-sub-subparagraphs (I)-(IV) shall be subject to no more than building permit review, and an administrative review for compliance with this
subsection. Such collocations are not subject to any portion of the local government’s land development regulations not addressed herein, or to public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.

I. The collocation does not increase the height of the existing structure to which the antennae are to be attached, measured to the highest point of any part of the structure or any existing antenna attached to the structure;

II. The collocation does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;

III. The collocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional collocations on the existing structure or procedural requirements, other than those authorized by this section, of the local government’s land development regulations in effect at the time of the collocation application; and

IV. The collocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with sub-sub-subparagraph (III) and were applied to the initial antennae placed on the structure and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the antennae.”

4. “Regulations, restrictions, conditions, or permits of the local government, acting in its regulatory capacity, that limit the number of collocations or require review processes inconsistent with this subsection shall not apply to collocations addressed in this subparagraph.” (§365.172(12)(a)1.c., Florida Statutes)

5. “If only a portion of the collocation does not meet the requirements of this subparagraph, such as an increase in the height of the proposed antennae over the existing structure height or a proposal to expand the ground space approved in the site plan for the equipment enclosure, where all other portions of the collocation meet the requirements of this subparagraph, that portion of the collocation only may be reviewed under the local government’s regulations applicable to an initial placement of that portion of the facility, including, but not limited to, its land development regulations, and within the review timeframes of subparagraph (d)2., and the rest of the collocation shall be reviewed in accordance with this subparagraph. A collocation proposal under this subparagraph that increases the ground space area, otherwise known as the compound, approved in the original site plan for equipment enclosures and ancillary facilities by no more than a cumulative amount of 400 square feet or 50 percent of the original compound size, whichever is greater, shall, however, require no more than administrative review for compliance
with the local government’s regulations, including, but not limited to, land development regulations review, and building permit review, with no public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.” (§365.172(12)(a)1.d., Florida Statutes)

6. “If a collocation does not meet the requirements of subparagraph 1., the local government may review the application under the local government’s regulations, including, but not limited to, land development regulations, applicable to the placement of initial antennae and their accompanying equipment enclosure and ancillary facilities.” (§365.172(12)(a)2., Florida Statutes)

7. “If a collocation meets the requirements of subparagraph 1., the collocation shall not be considered a modification to an existing structure or an impermissible modification of a nonconforming structure.” (§365.172(12)(a)3., Florida Statutes)

8. “The owner of the existing tower on which the proposed antennae are to be collocated shall remain responsible for compliance with any applicable condition or requirement of a permit or agreement, or any applicable condition or requirement of the land development regulations to which the existing tower had to comply at the time the tower was permitted, including any aesthetic requirements, provided the condition or requirement is not inconsistent with this paragraph.” (§365.172(12)(a)4., Florida Statutes)

F. Towers

1. Setbacks. “Any setback or distance separation required of a tower may not exceed the minimum distance necessary, as determined by the local government, to satisfy the structural safety or aesthetic concerns that are to be protected by the setback or distance separation.” (§365.172(12)(b)2., Florida Statutes)

2. Modification or replacement of existing towers. “An existing tower, including a nonconforming tower, may be structurally modified in order to permit collocation or may be replaced through no more than administrative review and building permit review, and is not subject to public hearing review, if the overall height of the tower is not increased and, if a replacement, the replacement tower is a monopole tower or, if the existing tower is a camouflaged tower, the replacement tower is a like-camouflaged tower. This subparagraph shall not preclude a public hearing for any appeal of the decision on the application.” (§365.172(12)(a)5., Florida Statutes)

G. Review Timeframes

1. 45 business days for collocations. “A local government shall grant or deny each properly completed application for a collocation under subparagraph (a)1. based on the application’s compliance with the local government’s applicable regulations, as provided for in subparagraph (a)1. and consistent with this subsection, and within the normal timeframe for a similar building permit review but in no case later than 45 business days after the date the application is determined to be properly completed in accordance with this paragraph.” (§365.172(12)(c)1., Florida Statutes)

2. 90 business days for all other reviews. “A local government shall grant or deny each
properly completed application for any other wireless communications facility based on the application’s compliance with the local government’s applicable regulations, including but not limited to land development regulations, consistent with this subsection and within the normal timeframe for a similar type review but in no case later than 90 business days after the date the application is determined to be properly completed in accordance with this paragraph.” (§365.172(12)(c)2., Florida Statutes)

3. Automatic approval if timeframes are not met. “If the local government fails to grant or deny a properly completed application for a wireless communications facility within the timeframes set forth in this paragraph, the application shall be deemed automatically approved and the applicant may proceed with placement of the facilities without interference or penalty.” (§365.172(12)(c)3.b., Florida Statutes)
   a) “The [90 business day] timeframe … may be extended only to the extent that the application has not been granted or denied because the local government’s procedures generally applicable to all other similar types of applications require action by the governing body and such action has not taken place within the [90 business day] timeframe …. Under such circumstances, the local government must act to either grant or deny the application at its next regularly scheduled meeting or, otherwise, the application is deemed to be automatically approved.” (§365.172(12)(c)3.b., Florida Statutes)
   b) “To be effective, a waiver of the timeframes set forth in this paragraph must be voluntarily agreed to by the applicant and the local government.” (§365.172(12)(c)3.c., Florida Statutes)
   c) “A local government may request, but not require, a waiver of the timeframes by the applicant, except that, with respect to a specific application, a one-time waiver may be required in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government.” (§365.172(12)(c)3.c., Florida Statutes)

4. Application Completeness.
   a) “An application is deemed submitted or resubmitted on the date the application is received by the local government.” (§365.172(12)(c)3.a., Florida Statutes)
   b) “If the local government does not notify the applicant in writing that the application is not completed in compliance with the local government’s regulations within 20 business days after the date the application is initially submitted or additional information resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination shall not be deemed as an approval of the application. (§365.172(12)(c)3.a., Florida Statutes)
   c) “If the application is not completed in compliance with the local government’s regulations, the local government shall so notify the applicant in writing and the notification must indicate with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if
cured, make the application properly completed.” (§365.172(12)(c)3.a., Florida Statutes)

d) “Upon resubmission of information to cure the stated deficiencies, the local government shall notify the applicant, in writing, within the normal timeframes of review, but in no case longer than 20 business days after the additional information is submitted, of any remaining deficiencies that must be cured.” (§365.172(12)(c)3.a., Florida Statutes)

e) “Deficiencies in document type or content not specified by the local government do not make the application incomplete.” (§365.172(12)(c)3.a., Florida Statutes)

f) “Notwithstanding this sub-subparagraph, if a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the local government may continue to request the information until such time as the specified deficiency is cured.” (§365.172(12)(c)3.a., Florida Statutes)

g) “The local government may establish reasonable timeframes within which the required information to cure the application deficiency is to be provided or the application will be considered withdrawn or closed. (§365.172(12)(c)3.a., Florida Statutes)

H. “If any person adversely affected by any action, or failure to act, or regulation, or requirement of a local government in the review or regulation of the wireless communication facilities files an appeal or brings an appropriate action in a court or venue of competent jurisdiction, following the exhaustion of all administrative remedies, the matter shall be considered on an expedited basis.” (§365.172(12)(g), Florida Statutes).