

PROPOSED ORDINANCE NO. 01-18

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE  
TO BE ENTITLED:

AN ORDINANCE CREATING ARTICLE VII OF TITLE XI, SECTION 11-4-182 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; REGULATING THE USE OF THE PUBLIC RIGHTS-OF-WAY BY WIRELESS COMMUNICATIONS FACILITIES AND INFRASTRUCTURE BY SERVICE PROVIDERS; AUTHORIZING THE ADMINISTRATIVE PROMULGATION OF IMPLEMENTING RULES AND REGULATIONS CONFORMING TO THE PROVISIONS OF THE ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT OF 2017; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature has adopted the Advanced Wireless Infrastructure Deployment Act, sec. 337.401 (7), Florida Statutes, allowing local governments to adopt objective design standards for the placement of certain wireless facilities in the public rights-of-way; and

WHEREAS, state legislation allows local governments to promulgate rules and regulations governing the placement of utility poles in the public rights-of-way consistent with the provisions of the legislation; and

WHEREAS, it is the intent of the City of Pensacola, Florida, to develop applicable rules and regulations pertaining to the placement of wireless facilities and infrastructure and to implement the regulatory procedures provided by state law; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Article VII of Title XI, Section 11-4-182 of the Code of the City of Pensacola, Florida, is hereby created to read:

TITLE XI. TRAFFIC AND VEHICLES.

ARTICLE VII. RIGHTS-OF-WAY.

Sec. 11-4-182. Use of Rights-of-Way by Wireless Communications Facilities.

(a) Definitions.

The definitions of all applicable terms shall be as provided in Chapter 12-14 of the Code of the City of Pensacola, Florida, with the exception that the following terms shall be defined as provided in sec. 337.401 (7) (b), Florida Statutes:

1. Antenna
2. Applicable Codes
3. Applicant
4. Application
5. Authority
6. Authority utility pole
7. Collocate or collocation
8. FCC
9. Micro wireless facility
10. Small wireless facility
11. Utility pole
12. Wireless facility
13. Wireless infrastructure provider
14. Wireless provider
15. Wireless services
16. Wireless service provider
17. Wireless support structure

(b) Generally.

The placement of telecommunication towers and antennae anywhere in the corporate limits of the City of Pensacola shall in all cases be subject to the City's zoning and land use regulations, including those set forth in Title XII, the Land Development Code. Where placement of a wireless antenna in the public right-of-way has been approved by the City and to the extent not inconsistent with any City zoning and land use regulations, a wireless antenna attached to a permitted and legally maintained vertical structure in the public right-of-way, such as a utility pole, shall, unless otherwise agreed to by the City in writing:

1. not extend more than 10 feet above the highest point of the vertical structure;
2. not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law;

3. comply with any applicable Federal Communications Commission Emissions Standards;
4. comply with any applicable local building codes in terms of design, construction and installation; and
5. not contain any commercial advertising thereon.

(c) Rules and Regulations.

The Mayor is authorized to administratively promulgate such rules and regulations as may be necessary and appropriate to regulate the placement of wireless facilities and infrastructure in the public right-of-way in conformity with applicable provisions of state law, and to designate such staff as necessary to receive, process and make determinations with respect to applications for the placement of wireless facilities and infrastructure. Such rules and regulations shall be subject to the following criteria:

1. The registration fee required of applicants for the placement of wireless facilities and infrastructure shall be reasonably calculated to equal the City's cost of receiving, assessing, determining, awarding and maintain records with respect to each application, whether for an individual facility or for multiple facilities covered by a single application, but such fee shall not exceed \$100 per placement of each wireless facility.
2. The permit fee for the placement of wireless facilities on poles or other structures owned by the City of Pensacola shall be \$150 per facility per year.
3. All fees imposed shall be reasonable and nondiscriminatory and not based upon any services provided by the applicant.
4. All provisions of federal and state statutes, rules and regulations, and the provisions of the Code of the City of Pensacola, Florida, pertaining to historic preservation and the historic districts regulated by the City, which have not been preempted or superseded by sec. 337.401 (7), Florida Statutes, shall continue to be

enforced and shall not be repealed, abated or waived by this ordinance.

5. All applications by small and micro wireless facilities providers and installers to place utility poles and other supporting structures in the public rights-of-way shall be processed in accordance with sec. 337.401 (6), and shall be subject to the codes, policies, practices, and rules and regulations of the City with respect to the placement of such poles and other supporting structures in the public rights-of-way.

(d) Prohibited Collocations, Attachments, Installations and Services.

The provisions of this sec. 11-4-182 of the Code of the City of Pensacola, Florida, does not authorize, and the City hereby prohibits, the following:

1. This section does not authorize a person or entity to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.
2. The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this section does not authorize the provision of any voice, data, or video services or the installation, placement, maintenance, or operation of any communication facilities other than small wireless facilities in the public right-of-way.
3. This section does not affect any provisions relating to pass-through providers contained in this Code of Ordinances and contained in Section 337.401 (6), Florida Statutes.
4. This section does not authorize a person or entity to collocate small wireless facilities or micro wireless facilities on a City utility pole or erect a wireless support structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association. This paragraph does

not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities.

SECTION 2. Severability. If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or unconstitutional.

SECTION 3. Repealer. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. Effective Date. This Ordinance shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola, Florida.

Passed: \_\_\_\_\_

Approved: \_\_\_\_\_  
President of City Council

Attest:

\_\_\_\_\_  
City Clerk