

SUMMARY OF 5G ORDINANCE QUESTIONS AND MODIFICATIONS

The proposed 5G ordinance has been modified from its first publication as part of the December meeting agenda. AT&T comments as well as those submitted by Mr. Herron have been reviewed. The ordinance codifies a process that has been in place and that AT&T has accepted; however, AT&T's counsel may argue that our ordinance does not codify exactly what is in the state statute. The differences are variations that are believed to be consistent with our discretion as a City without violating legislative intent on preemption. If AT&T has further objections, I would suggest a meeting so that AT&T's concerns can be discussed.

Mr. Herron pointed out over the weekend the news that the 5G roll-out this week is raising questions among the airline industry. At least ten airlines have stated that a disruption to service will occur because of the roll out by AT&T and Verizon of 5G on Wednesday

Background:

- Item 50-21 was pulled and not heard in December
- Proposed 5-22 has been published for the January meeting and is the same ordinance initially published for December
- Comments from John Herron and AT&T were considered by staff and changes are proposed in the handout that is a revised proposed 5-22
- Ordinance codifies a process that providers have accepted without objection

Comments and changes:

- 11-4-182(c)(1) (AT&T comment accepted)

There is now a strikethrough of language requiring an outdated fee (which the city has not charged because we have been in compliance with state law) and insertion of a more detailed registration process that is not prohibited by the legislature

- 11-4-182(c)(4) (no change)

A question from Verizon about the inserted language about "city policies" is answered within the archaeological review procedure, which was adopted by prior city council members in the 1980s and reaffirmed at intervals, most recently in 2011. The archaeological review procedure informs the comments Gregg Harding makes in his review of applications.

- 11-4-182(c)(5) (AT&T comment accepted)

A typographical error has been corrected

- 11-4-182(c) (5)a. (AT&T comment accepted)

An edit was made to emphasize our internal review must be completed in 60 days. This restriction is already covered later in the ordinance (see subparagraph d), but I added the timeline to subparagraph a to reassure the providers this is understood.

- 11-4-182(c)(5)d. (no change)

AT&T questioned what sort of objections are allowed to be resolved; staff seeks guidance from the City Attorney's Office when objections are raised. If a provider has a concern, please encourage them to contact the City Attorney's Office.

- 11-4-182(c)(5)h. (no change)

AT&T's counsel has indicated changes should be made. The City Attorney's Office has reviewed the request and respectfully disagrees.

- 11-4-182(c)(5)i. (no change)

AT&T's counsel proposed a strikethrough of the codification of the process that is already in place to respect objective and competitively neutral standards that align with Pensacola's preservation district standards. Reasonable aesthetic concerns, applied in a nondiscriminatory manner, and with respect to what is available on the market, have been shared and respected by providers thus far.

- 11-4-182(c)(5)j. (no change)

AT&T's counsel objects, but the change respects Mr. Herron's concerns. This provision is not designed to do more than codify that if required by federal regulation, "if such notice is required by 49 United States Code Section 44718 or 14 Code of Federal Regulations, Part 77", then, during the 60-day review period, the city will inquire if a notice required by federal law to be made prior to the installation has been made or the party intends to complete that upon receiving the permit to install. Thus far, no locations proposed in applications have raised this question.

- 11-4-182(c)(5)k and l (no change)

AT&T has objected that this part should more closely track the language of the preemption statute; however, the city does not require underground utilities at this time. Should undergrounding become required in the future, Section 337.401(7)(i) or its successor statutory language will be carefully reviewed to determine whether an ordinance change is required or if developing a compliant process is all that is needed.

- 11-4-182(e) (comment accepted)

The attached revised proposed ordinance corrects the typographical error found by AT&T's counsel.