

PROPOSED
ORDINANCE NO. 05-22

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING SECTION 11-4-182, OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA, USE OF RIGHTS-OF-WAY BY WIRELESS COMMUNICATIONS FACILITIES; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 11-4-182, of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

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 12-13, with the exception that the following terms shall be defined as provided in F.S. § 337.401(7)(b):

- (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 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 ten 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 maintaining 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 \$100.00 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 shall be \$150.00 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 this Code and policies of the City Council, pertaining to historic preservation and the historic districts regulated by the city, which have not been preempted or superseded by F.S. § 337.401(7), shall continue to be enforced and shall not be repealed, abated or waived by this section.

- (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 F.S. § 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, including but not limited to the following:
- a. applications by communication services providers shall be submitted through My Government Online for consideration by the city, which includes review by staff with expertise in engineering, planning, inspection services (including electrical permitting), information technology, transportation, and historic preservation, and which also includes a notification, at the city's expense, to adjacent property owners, and further includes review by any potentially impacted city enterprises, such as Pensacola Energy, Pensacola International Airport, and the Port of Pensacola;
 - b. after review of an application by the city engineer or designee, within fourteen days a notification in writing through My Government Online will be made to the applicant concerning whether the application is considered complete; provided, the application shall be considered incomplete if a lack of compliance with this section is evident from the submission;
 - c. an application by a communications services provider to install a small wireless facility in the public right-of-way is deemed incomplete if the engineering drawings depict an installation without specifying the location by latitude and longitude for the placement;
 - d. applications will be processed on a nondiscriminatory basis within sixty days after receipt of the application, unless the city has communicated in writing through My Government Online that a thirty-day negotiation period is required to resolve objections to the application;
 - e. permits issued pursuant to this process are effective for one year unless the city provides in writing an extension of time for the installation;
 - f. the city will communicate denials by electronic mail to the applicant with reference to the provisions of law with which the application fails to demonstrate compliance; therefore, all applications must include electronic mail contact information for the agent of the communications services provider;
 - g. the applicant may cure the deficiencies identified in the denial and resubmit its application within thirty days of the denial;
 - h. thirty days after submission of the revised application to cure deficiencies, the city will approve or deny the revised application based on whether those deficiencies are considered cured; reasons for denial may include that the installation of the proposed small wireless facility or utility pole used to support that small wireless facility is more than ten feet above any existing utility pole in the same right-of-way within five hundred feet of the

proposed location; jeopardizes the safe operation of traffic control equipment; conflicts with sight lines or clear zones for transportation, pedestrians, or public safety purposes; violates or contributes to a potential violation of the Americans with Disability Act or any similar state or federal standards regarding pedestrian access or movement; conflicts with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual; violates Chapter 333, Florida Statutes or federal regulations pertaining to airport airspace protections; jeopardizes preservation of historic or archaeological resources as reviewed by the Historic Preservation Planner; or fails to comply with the city standards as set forth in the Code of Ordinances of the City of Pensacola;

- i. applications should take into account the following policies of the city: collocation of small wireless facilities is preferred; the pole location should be situated adjacent to the property line of neighboring private property parcels to avoid compromising views from within residential and event venue commercial properties; an acceptable plan for prompt removal of any pole made obsolete by the application should be included; the color and style of new structures should correspond to existing structures, including but not limited to using a clamshell base on a metal pole; preservation of archaeological resources; preservation of historic character of neighborhoods and streetscapes where improvements to structures are subject to aesthetic review by any of the city's boards, including the Architectural Review Board and Planning Board, such that location context (including tree canopy), color, camouflage, and concealment requirements are met;
- i. applications for installation of small wireless facilities must demonstrate compliance with FAA guidelines, including but not limited to the filing of Form 7460-1 or Form 7460-2 at least 45 days in advance of construction, if such notice is required by 49 United States Code Section 44718 or 14 Code of Federal Regulations, Part 77;
- k. applications filed more than ninety days after the city determines that all public utility lines shall be placed underground are due to be denied within the limitations set forth by the state legislature, including that the applicant has an alternative collocation option on a structure above ground that the city permits in the right-of-way;
- l. where the city requires underground utility lines, the city will allow previously installed small wireless facilities to be relocated on a permitted above-ground structure.

(d) *Prohibited collocations, attachments, installations and services.* The provisions of this section do 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 and contained in F.S. § 337.401(6).
- (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 subsection does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities.

(e) Insurance, Indemnification, and Liability. An application to install a small wireless facility or a utility pole to support a small wireless facility may be denied if the applicant has not demonstrated compliance with nondiscriminatory requirements of a construction bond to restore the right-of-way to its preconstruction condition as provided by F.S. § 337.401(6)(d)12.

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

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

SECTION 4. This ordinance shall take effect 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.

Adopted: _____

Approved: _____

President of City Council

Attest:

City Clerk