

PROPOSED
ORDINANCE NO. 40-17

ORDINANCE NO. _____

AN ORDINANCE DECLARING, ESTABLISHING AND IMPOSING A TEMPORARY MORATORIUM WITHIN THE CITY OF PENSACOLA, FLORIDA ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS, AND ISSUANCE OF ANY PERMITS PERTAINING TO COLLOCATION ON EXISTING OR THE INSTALLATION OF NEW UTILITY POLES AND OTHER WIRELESS SUPPORT STRUCTURES IN THE RIGHT-OF-WAY TO SUPPORT SMALL WIRELESS FACILITIES OR MICRO WIRELESS FACILITIES FOR A PERIOD OF 120 DAYS, IN ORDER TO ALLOW AN OPPORTUNITY FOR THE CITY TO DEVELOP REGULATIONS CONSISTENT WITH CHAPTER 2017-136, LAWS OF FLORIDA, WHICH BECAME EFFECTIVE JULY 1, 2017; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Pensacola as set forth at Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes and other applicable controlling law; and

WHEREAS, during the 2017 Legislative Session, the state legislature passed House Bill 687 amending Florida Statutes Section 337.401, creating what is known as the "Advanced Wireless Infrastructure Deployment Act"; and

WHEREAS, such legislation was approved by the Governor on June 23, 2017, and became effective on July 1, 2017 under Chapter 2017-136, Laws of Florida (referred to herein as the "Law"); and

WHEREAS, the Law establishes a process by which wireless providers may place certain "small wireless facilities" and "micro wireless facilities" (as such terms are defined in the Law) on, under, within, or adjacent to certain utility poles or wireless support structures within public rights-of-way that are under the jurisdiction and control of an "authority" (i.e., a county or municipality having jurisdiction and control of the rights-of-way of any public road); and

WHEREAS, the law further provides that local government entities are authorized to prescribe and enforce reasonable rules or regulations with reference to placing and maintaining across, on, or within the right-of-way limits of any road under their respective jurisdictions any wireless facilities; and

WHEREAS, the City currently has regulations pertaining to wireless facilities within its Code of Ordinances, specifically codified within Chapter 12 of the City's Land Development Code which need to be evaluated in light of the Law; and

WHEREAS, City staff has not had adequate time to evaluate the impacts or address local issues that are presented by the Law and take action accordingly; and

WHEREAS, City staff has been directed to analyze the effects of the Law and existing zoning regulations to analyze criteria for issuance of permits for small wireless facilities and micro wireless facilities in the public rights-of-way in compliance with the new legislation and to make recommendations that will better promote the health, safety, morals and general welfare of the City; and

WHEREAS, the City has determined that it is in the best interest of the residents of the City to protect the general public health, safety, and welfare by studying and planning for this new technology, including how to best support this new technology as provided in the Law and address potential impacts on the quality of life and the surrounding community within the parameters of authority granted in the new Law; and

WHEREAS, the City Council finds and declares a need to temporarily suspend the further acceptance and processing of applications, and issuance of any permits or approvals pertaining to collocation on existing or the installation of new utility poles and other wireless support structures in the public rights-of-way to support small wireless facilities or micro wireless facilities for a period of 120 days, NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1: Findings of Fact: The City Council finds and declares that:

(1) All of the statements set forth in the foregoing recitals to this Ordinance are true and correct and are hereby ratified, affirmed and made a part of this Ordinance.

(2) For the purposes set forth herein, it is in the best interest of the general public and there exists a need to declare a moratorium on the issuance of permits or approvals for small wireless facilities or micro wireless facilities in the public rights-of-way in order for City staff to study controlling law regarding Chapter 2017-136, Laws of Florida and make recommendations to the City Council as to the modifications of City regulations that should be considered by it.

(3) The City of Pensacola has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

SECTION 2. That a temporary moratorium is hereby imposed on the submission and processing of applications and any issuance of permits pertaining to collocation on existing or the installation of new utility poles or other wireless support structures in the right-of-way to support small wireless facilities or micro wireless facilities (as referenced in Section 337.401, Florida Statutes) within the corporate limits of the City of Pensacola. While the temporary moratorium is in effect, the City shall temporarily suspend all activities relating to accepting, processing or approving any application relating to the establishment or operation of a small wireless facility or micro wireless facility (as referenced in Section 337.401, Florida Statutes) in order for the City to have the time and opportunity necessary to implement a framework of authorized regulation and fee structure as provided in the newly enacted portions of Section 337.401, Florida Statutes.

SECTION 3. Duration of moratorium/extension.

a) The temporary moratorium set forth in this Ordinance shall take effect immediately upon the effective date of this Ordinance and shall be terminated one hundred twenty (120) days after said effective date.

b) No applications for approvals subject to the moratorium will be accepted by the City until the moratorium has expired, unless this Ordinance is superseded by a subsequent duly enacted Ordinance of the City of Pensacola governing the same subject matter herein.

c) The City Council may extend the temporary moratorium established in this Ordinance by enactment of an ordinance upon a finding by the City Council set forth in the ordinance that the

problems giving rise to the need for the temporary moratorium established herein continue to exist.

SECTION 4. Boundaries. This Ordinance shall be applicable to all properties within the boundaries of the City of Pensacola.

SECTION 5. 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, phrase, word, or portion of this Ordinance not otherwise to be invalid, unlawful, or unconstitutional.

SECTION 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6. 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.

Passed: _____

Approved: _____
President of City Council

Attest:

City Clerk