

ORDINANCE NO. 1430

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AMENDING THE CITY'S LAND DEVELOPMENT CODE FOR CONSISTENCY WITH HOUSE BILL 687 REGARDING WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY; CREATING DEFINITIONS FOR SMALL WIRELESS FACILITY AND SMALL WIRELESS POLE; ESTABLISHING PERMISSIBLE DESIGN AND LOCATIONS FOR SMALL WIRELESS FACILITIES AND SMALL WIRELESS POLES IN RIGHTS-OF-WAY; REQUIRING LIGHT POLE STEALTH DESIGN; REQUIRING MINIMUM DISTANCE FROM DWELLINGS; REQUIRING MINIMUM DISTANCE FROM A BUSINESS'S PRIMARY PEDESTRIAN PUBLIC ENTRANCE; ESTABLISHING MINIMUM DISTANCE BETWEEN SMALL WIRELESS POLES; ESTABLISHING ADDITIONAL DISTANCE REQUIREMENTS FOR OTHER GROUND-MOUNTED EQUIPMENT; MAKING APPLICATIONS FOR SMALL WIRELESS FACILITIES AND SMALL WIRELESS POLES GOVERNED BY TYPE I PROCEDURES; AMENDING THE CITY CODE TO ESTABLISH MINIMUM SPACING OF SEVENTY-FIVE FEET BETWEEN FACILITIES THAT ARE OVER FIFTEEN FEET TALL; REPEALING ALL ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

WHEREAS, the City of Panama City Beach Land Development Code (the "LDC") regulates Telecommunications Towers including Telecommunications Towers in public rights-of-way; and

WHEREAS, applications to install Telecommunications Towers in rights-of-way have become prevalent in Florida, including by companies not generally considered to be communications services providers; and

WHEREAS, such applications include structures that range from modest heights to tall structures similar to the large monopole Telecommunications Towers that currently exist in the City; and

WHEREAS, the LDC does not define different categories of Telecommunications Towers based on height or location and generally provides uniform regulation of all Telecommunications Towers; and

WHEREAS, the City has interpreted its LDC to generally prohibit Telecommunications Towers from being constructed in a right-of-way; and

WHEREAS, the Legislature passed House Bill 687 regarding wireless facilities and collocation in public right-of-way during the 2017 regular legislative session, with the new law effective July 1, 2017; and

WHEREAS, House Bill 687 is unclear about the extent that certain local regulation is allowed, particularly regarding locations of new wireless poles and “wireless support structures,” (defined in Bill) but it is doubtful that a prohibition or effective prohibition of these structures in the right-of-way is still allowed; and

WHEREAS, the City wishes to create new categories for certain smaller wireless equipment and facilities located in the public right-of-way and regulate them differently than Telecommunications Towers and consistently with House Bill 687; and

WHEREAS, the primary complaint in other localities where wireless structures are prevalent in rights-of-way is the placement of structures in front of homes, particularly ground mounted boxes, generators, and other structures or equipment near the base of a pole; and

WHEREAS, House Bill 687 defines small wireless facility to generally mean the antennae and related small equipment, but not the structure on which it is mounted; and

WHEREAS, House Bill 687 does not allow the City to limit the placement of small wireless facilities by minimum separation distances, which are often placed by collocation on preexisting structures, but does allow the City to adopt reasonable spacing requirements by ordinance concerning the location of ground-mounted equipment; and

WHEREAS, the term “ground-mounted equipment” is not defined but likely includes poles and certainly includes other structures and equipment that are sometimes installed near the base of a pole; and

WHEREAS, it is uncertain how large of a distance separation between Small Wireless Poles (defined herein) may be required before being found unreasonable under House Bill 687 or before interfering with the effectiveness of types of current or future wireless technology; and

WHEREAS, House Bill 687 also permits a city to adopt objective design standards by ordinance that require a small wireless facility to meet reasonable location, context, color, stealth, and concealment requirements; and

WHEREAS, rather than attempting to minimize the number of new Small Wireless Poles, the City considers it more prudent to focus on preventing their placement in certain objectionable locations and requiring stealth and concealment requirements appropriate for

the right-of-way environment; and

WHEREAS, the LDC already requires Telecommunications Towers to be designed and painted to resemble natural objects, such as trees that are typical of the surrounding area and House Bill 687 allows color, stealth, and concealment requirements;

WHEREAS, trees are not prevalent in the right-of-way and it is unlikely that Small Wireless Poles in the right-of-way could be concealed effectively as trees or vegetation; and

WHEREAS, concealing Small Wireless Poles as light poles occurs already in some communities, is a more convincing approach, and should make the new Small Wireless Poles less objectionable to nearby owners, citizens, and visitors; and

WHEREAS, in addition to the LDC rules for Telecommunications Towers, the Code of Ordinances regulates utilities and utility poles in the right-of-way more generally; and

WHEREAS, the City wishes to adopt a seventy-five-foot spacing requirement generally applicable to all new utility poles and other Facilities that are over fifteen feet tall, regardless of the type of utility that uses the Facility; and

WHEREAS, House Bill 687 requires the City to adopt rates, fees, and terms for the collocation of small wireless facilities on the City's utility pole which comply with House Bill 687 by the later of January 1, 2018, or three months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority; and

WHEREAS, despite this timeframe allowed by House Bill 687, the City finds that certain issues must be addressed immediately since one or more of the City's location rules may be inconsistent with the new legislation as to certain facilities in rights-of-ways and if found invalid could result in very minimal restrictions on the locations of Small Wireless Poles within the ROW; and

WHEREAS, House Bill 687 states that "permit application requirements and small wireless facility placement requirements, including utility pole height limits, that conflict with this [Bill] shall be waived" by the City but for any applications filed before the effective date of ordinances implementing House Bill 687, the City "may apply current ordinances relating to placement of communications facilities in the right-of-way related to registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, [City] liability, or [City] warranties;" and

WHEREAS, until such time the City has adopted a subsequent ordinance to implement House Bill 687's administrative and procedural rules, the City intends to apply the location and distance requirement provided herein, the height requirements provided

by House Bill 687, and the review times provided by House Bill 687, and not require more information for any application involving right-of-way than what is allowed by House Bill 687 regardless of any ordinance or Code to the contrary; and

WHEREAS, House Bill 687 does not cover equipment and activities outside of a right-of-way, so this ordinance only applies to equipment and activities within a public right-of-way; and

WHEREAS, House Bill 687 has limited applicability to collocations on privately owned or State-owned structures within a right-of-way, so this ordinance is not intended to apply to those situations except as provided below; and

WHEREAS, the City may consider uniform processes for all types of collocations, regardless of location or ownership, when the City adopts a subsequent ordinance to implement House Bill 687's administrative and procedural rules, but until then the City's existing rules regarding Collocations of Antennas will continue to apply to locations outside of a public right-of-way.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH:

SECTION 1. From and after the effective date of this ordinance, the following definitions in Section 1.07.00 of the Land Development Code of the City of Panama City Beach related to Acronyms and Definitions are amended or created to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

Small Wireless Facility – Means equipment generally used for wireless communications that (1) is located in a public right-of-way and (2) meets the definition of “small wireless facility” under Florida Statute 337.401. The term Small Wireless Facility does not include the term Wireless Support Structure, as defined by Florida Statute 337.401, or the pole, structure, or improvement on which an Antennae and associated wireless equipment are mounted, supported, or Collocated.

Small Wireless Pole means (1) a Wireless Support Structure as defined by Florida Statute 373.401 that is located in a public right-of-way or (2) a utility pole in the public rights-of-way that was designed and constructed to support the Collocation of Small Wireless Facilities within nine months following the approval of an application to construct. A structure not originally intended to support a Small Wireless Facility or Antennae, but on which a Small Wireless Facility or Antennae is later collocated is not a Small Wireless Pole.

Telecommunications Tower - Means any structure designed and constructed for the purpose of supporting one or more communication **Antennas**, including camouflaged towers, conventional wireless towers, and low impact or stealth towers. The term includes towers to support **Antennas** for transmitting or receiving personal wireless services and cellular telephone communications towers. The term includes equipment fundamental to the operations of the tower. The term does not include commercial radio and television broadcast towers, amateur short-wave radio towers or those towers used solely for private use dispatch services. **The term does not include Small Wireless Facility or Small Wireless Pole.**

SECTION 2. From and after the effective date of this ordinance, Section 5.05.00 of the Land Development Code of the City of Panama City Beach related to Telecommunications Towers and Antennas is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

5.05.00 TELECOMMUNICATIONS TOWERS AND ANTENNAS

5.05.01 Generally

- A. It is the intent of the **City** to allow **Telecommunications Towers** and/or **Antennas** in compliance with State and federal regulations. It is further the intent of the **City** to protect the public health, safety and welfare through regulating the placement and design of allowable **Telecommunications Towers**. The regulations in this section are designed to meet the following purposes:
1. To protect **Residentially** zoned areas and **Residential Development** from potential adverse impacts of **Telecommunications Towers** that are placed in inappropriate locations;
 2. To minimize visual impacts of **Telecommunications Towers** through site design requirements, location requirements and innovative camouflage techniques, in accordance with acceptable engineering and planning principles; and
 3. To allow **Telecommunications Towers** that meet State, federal and local requirements for location, site design and appearance.
- B. **Telecommunications Towers** proposed within the **City** shall provide for **Collocation** consistent with State and federal regulations.
- C. **Telecommunications Towers** proposed within the **City** shall provide for **Collocation** consistent with State and federal regulations.
- D. **Small Wireless Facilities and Small Wireless Poles located in public rights-of-way shall not be subject to the rules for Telecommunications Towers and Antennas, but will instead be subject to different rules as provided herein, which shall always be read in a manner consistent with state and federal law.**

5.05.02 Applicability

All **Telecommunications Towers** and **Antennas** proposed to be located in the **City** shall be subject to the regulations in this section. **Small Wireless Facilities and Small Wireless Poles located in public rights-of-way are not subject to Sections 5.05.03 through 5.05.06.**

5.05.07 Allowable Locations for Small Wireless Poles and associated Ground-Mounted Equipment Located in Public Right-of-Way

- A. **Applications to place Small Wireless Facilities and Small Wireless Poles in a public right-of-way shall be reviewed according to the procedures of Chapter 10 except as preempted**

and provided for by Florida Statute 337.401 (2017) and are may permissible not be denied solely based on without regard to the Comprehensive Plan future land use categories and zoning categories of adjacent parcels.

- B. Small Wireless Poles in public right-of-way (as opposed to a Collocation on a preexisting structure) are not permissible within 250 feet of the footprint of any Dwelling, including attached garages, porches, and balconies, except Dwellings that front on the Front Beach Road or South Thomas Drive rights-of-way, in which case the minimum distance shall be 100 feet. In addition, Small Wireless Poles in public right-of-way (as opposed to a collocation on a preexisting structure) shall not be permissible within 50 feet of the primary public pedestrian entrance to any business.
- C. A new Small Wireless Pole is not permitted within 200 feet of an existing Small Wireless Pole.
- D. It is preferable for all equipment to be integrated into or mounted on the Wireless Support Structure or utility pole. Ground-mounted equipment that is in addition to a Wireless Support Structure or utility pole or associated with a Collocation shall not be permissible within 500 feet of the footprint of any Dwelling, including attached garages, porches, and balconies, except Dwellings that front on the Front Beach Road or South Thomas Drive rights-of-way, in which case the minimum distance shall be 150 feet. This restriction does not apply to equipment installed entirely underground consistent with existing grade. In addition, ground mounted equipment associated with or installed because of a Small Wireless Pole or a Small Wireless Facility, including the Collocation of a Small Wireless Facility, may not be placed on a sidewalk, bike path, or multi-use trail. Ground-mounted equipment includes, but is not limited to, any of the following associated with a Small Wireless Facility or installed due to a Small Wireless Facility: electric generators or meters, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and guy wires or other secondary supports.
- E. Small Wireless Facilities, Small Wireless Poles, and associated equipment are not exempt from the City's applicable undergrounding requirements that prohibit above-ground structures in certain public right-of-way, except that Collocations on existing above-ground structures are not subject to undergrounding requirements that are applicable to a location. At such time an existing above-ground structure is transitioned to underground, any right to Collocate above ground on it is lost.
- F. Applications for Small Wireless Poles or Collocations of Small Wireless Facilities in locations subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association are governed by the more stringent rules provided for Telecommunications Towers and Antennas unless the Homeowner Association is a co-applicant, in which case the more lenient rules for Small Wireless Facilities and Small Wireless Poles will apply. 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 as provided by Florida law.

5.05.08 Requirements for Small Wireless Poles and Collocations Located in a Right-of-Way

- A. All wireless facilities, as defined by Florida Statute 337.401, located within a right-of-way must meet the definition of a Small Wireless Facility.
- B. All requirements of Chapter 19, Article VIII of the Code of Ordinances, entitled Right-of-Way Permitting, apply unless a more specific requirement is provided hereunder.
- C. The City may deny a proposed Small Wireless Pole or Collocation of a Small Wireless Facility in the public rights-of-way if it:
 - 1. Materially interferes with the safe operation of traffic control equipment.
 - 2. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
 - 3. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
 - 4. Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.
 - 5. Fails to comply with this LDC, or any uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons.
- D. All Small Wireless Facilities and Small Wireless Poles shall be maintained in good condition and in accordance with all standards in this section. No Additions, changes or modifications shall be made except in conformity with the standards of this section.
- E. In the event that a Small Wireless Facility or Small Wireless Pole is Abandoned, the owner of the Small Wireless Facility or Small Wireless Pole shall restore the property to its condition prior to the installation of the Small Wireless Facility or Small Wireless Pole. Restoration shall be completed not later than six (6) months after Abandonment.
- F. Applications to Collocate Small Wireless Facilities within a right-of-way that do not increase the height of the existing structure shall be reviewed under the expedited procedure provide by Section 10.09.04 of the LDC. Application for all other Small Wireless Poles and

Collocations located in a Right-of-Way shall be reviewed and processed according to the Type I Procedures provided by Section 10.06.00 of the LDC, except to the extent preempted by Florida Statute 337.401 (2017).

- G. Consistent with Florida Statute 337.401, a Collocation may include the replacement of an existing utility pole. If no portion of the replacement utility pole or the Small Wireless Facility would extend more than ten feet above the height of the existing utility pole, then the rules and procedures herein governing Collocations apply. If any portion of the replacement utility pole or the Small Wireless Facility would extend more than ten feet above the existing utility pole, then the project will be considered a new Small Wireless Pole and will not be approved unless it meets all requirements for Small Wireless Poles, including light pole Stealth Facility design, location requirements, and any applicable undergrounding requirements.
- H. Ground mounted-equipment and other equipment not detailed and drawn on an approved application may not be installed. In the event that a permittee wishes to install additional or different equipment not shown on the original approved application, the permittee must file a new application.

5.05.09 Additional Requirements for Collocations Located in a Right-of-Way

- A. Collocations are allowed on a City owned pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function, but not on a horizontal structure to which signal lights or other traffic control devices are attached or any pole or structure 15 feet in height or less.
- B. Collocations on utility poles or other structures that are owned by private parties or the State of Florida shall require written proof of the owner's consent to the Collocation.
- C. The height of a Small Wireless Facility may only extend 10 feet above the utility pole or structure upon which the Small Wireless Facility is to be Collocated.

5.05.10 Additional Requirements for Small Wireless Poles Located in a Right-of-Way

- A. The height for a new Small Wireless Pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than a utility pole for which a height waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no utility pole within 500 feet, the Small Wireless Pole shall be no taller than 50 feet.

- B. New Small Wireless Poles must be Stealth Facilities designed to look and function like light poles. If there are multiple existing light poles within 500 feet of the proposed location in the same right-of-way that have a consistent design, then the new Small Wireless Pole must look substantially like the existing light poles and be the same color as the existing light poles, except for its height, which is controlled by 1. above. Minor design deviations that maintain the same or better aesthetic quality may be approved by City staff.
- C. New Small Wireless Poles in right-of-way under the jurisdiction of the Florida Department of Transportation requires the consent of the Florida Department of Transportation, but still shall comply with the City's placement and design requirements.

SECTION 3. From and after the effective date of this ordinance, Section 19-154 of the Code of Ordinances of the City of Panama City Beach related to Permittee Obligations in Right-of-Way Permitting is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

Sec. 19-154. - Permittee obligations.

- A. Telecommunications Towers, Small Wireless Poles, Collocations, and other wireless communications Facilities are governed additionally by the more specific requirements of the Panama City Beach Land Development Code.
- B. No new Facility that is over 15 feet in height from grade may be constructed within 75 feet of any another Facility that is over 15 feet in height from grade, unless granted a variance due to unique circumstances. This restriction shall not prohibit the City from installing new Facilities for public safety and welfare reasons, including light poles.
- C. A Permittee shall place or maintain all Facilities in the Right-of-way so as not to unreasonably interfere with the drainage of all lands lying within the City, the travel and use of the Right-of-way by the public and with the rights and convenience of property owners who adjoin any portion of the Right-of-way, and in a manner consistent with accepted industry practice and applicable law.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 5. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the Panama City Beach Land Development Code and Code of Ordinances, and unless a contrary ordinance is adopted within ninety (90) days following such publication, the codification of this Ordinance shall become the final and official record of the matters herein ordained. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 6. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this 12th day of October, 2017.

CITY OF PANAMA CITY BEACH

ATTEST:

By


MIKE THOMAS, MAYOR


CITY CLERK

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CITY CLERK