

ORDINANCE NO. 17-__

AN ORDINANCE OF THE COUNTY OF PINELLAS AMENDING THE PINELLAS COUNTY LAND DEVELOPMENT CODE BY AMENDING SECTION 170-266 RELATING TO PLACEMENT OF VERTICAL STRUCTURES FOR THE MOUNTING OF ANTENNAE AND SECTION 170-267 RELATING TO UTILITY WORK DEFINITIONS; AND CREATING SECTION 170-277 RELATING TO WIRELESS COMMUNICATION FACILITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE PINELLAS COUNTY CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the intent of the Telecommunications Act of 1996 (the Act) was to make both public and private lands more accessible to telecommunication services; and

WHEREAS, the Act requires local governments to base decisions granting or denying the Placement of telecommunication facilities to be based on substantial competent evidence; and

WHEREAS, Florida Statute §337.401 states that any rules or regulations adopted by a county must be related to the placement or maintenance of communication facilities, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the county; and

WHEREAS, the County has the ability to regulate its rights-of-way pursuant to Florida Statutes §125.01(m) and §336.02, and Pinellas County Code section 170; and

WHEREAS, the Pinellas County Code currently bans the placement of towers, whose primary purpose is to serve as a mounting device for antennae, from being placed in County rights-of-way; and

WHEREAS, the Pinellas County Board of County Commissioners desire to amend the code to provide greater flexibility to telecommunication service organizations by allowing such facilities in the County rights-of-way if certain criteria are met.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA, that:

SECTION 1. Section 170-266 of the Pinellas County Land Development Code is hereby amended as follows:

Sec. 170-266. Generally.

(a) Nothing in this article is intended to supersede or conflict with state or federal law; or existing franchise; in the case of any conflict, the provisions of such state or federal law or franchise shall prevail.

(b) It is the intent of this article to impose reasonable regulations on the Placement and Maintenance of facilities within the Right-of-way, to promote cooperation between users thereof, to facilitate installation and relocation of facilities therein, and to create uniform procedures for issuance of Permits for utility work performed within the Right-of-way, in order to protect the public health, safety and general welfare of the residents of the County. This article also provides for recovery by the County of actual and projected costs from Persons Placing and Maintaining facilities in the Right-of-way.

(c) Any Permit issued prior to the effective date of the ordinance from which this article derives shall be valid on the terms under which it was issued, except that such Permit shall be subject to all prospective provisions of this article as they pertain to County Projects, and fees that may be adopted and revised by the Board of County Commissioners.

(d) The areas embraced by this article shall be all County Rights-of-way, whether or not within municipal boundaries.

(e) The issuance of a utility Permit shall not confer upon the Permittee any exclusive implied privileges, proprietary interests, or vested Rights in the location, alignment, or priority of the utility or installation.

(f) The issuance of a utility Permit under this article does not abrogate any legal requirement to comply with other County ordinances or with the regulations of any other governmental agency.

(g) If a Permittee transfers, sells, or assigns its assets located in the Right-of-way, the conditions of this article and any existing Permits are binding on such transferee, buyer or assignee.

(h) Vertical structures, such as towers, whose primary purpose is to serve as a mounting device for antennae, are expressly prohibited from being Placed in the Right-of-way, except as expressly permitted by Section 170-277 .

SECTION 2. Section 170-267 of the Pinellas County Land Development Code is hereby amended as follows:

Sec. 170-267. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandonment means the permanent cessation of all uses of a Utility facility; provided that this term shall not include cessation of all use of a Utility facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit, continues to be used, shall not be considered abandonment.

Annual General Permit means an annual Permit issued by the County for certain routine, repetitive work not requiring a specific utilization Permit, which may be issued or renewed for periods up to one year, in the discretion of the County.

Applicant, Owner, or Permittee means any Person requesting permission to Place or Maintain Facilities in a Right-of-way, or who has previously done so.

As-built Survey means a survey performed to obtain horizontal and vertical dimensional data so that constructed improvements may be located and delineated.

Co-location, Co-locate or Attach means the Placement or attachment of Telecommunications Antenna on any existing, lawfully permitted and active structure within the Right-of-way. Co-location upon an existing structure not providing telecommunication services does not convert the structure into a Telecommunications Tower.

Communications Services shall have the meaning found in Florida Statutes, Section 202.11, as may be amended.

County means Pinellas County, Florida.

County Project means work done by or for the County within public Right-of-way for County purposes, not for the benefit of private developer.

Department means the County Department of Public Works.

Director means the Director of the County Department of Public Works.

Emergency means a condition that poses a threat to life, health, or property, or may create an out-of-service condition.

Facilities mean any Utilities located in, over or under any Right-of-way, but shall not include plantings, driveways, or other non-utility installations in the Right-of-way.

FDOT means the Florida Department of Transportation.

Monopole means a single self-supporting structure which contains no guy wires and not more than one support column.

Permit means the Right-of-Way Utilization Permit which must be obtained before a Person may Place or Maintain any facility in a Right-of-way.

Permittee means any Person to whom a Permit to Place or Maintain a facility in a Right-of-way has been granted by the County.

Person means any natural or corporate Person, municipality, school, church, or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity which has or seeks to have Facilities located in any Right-of-way.

Place or Maintain, Placement and Maintenance, or Placing or Maintaining shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A Person that owns or exercises physical control over Facilities located in the public Right-of-way, such as physical control to maintain and repair, is "Placing or Maintaining" the Facilities. A Person providing service only through resale or the use of a third party's unbundled network elements is not "Placing or Maintaining" the Facilities through which such service is provided.

The transmission and receipt of radio frequency signals through the airspace of the public Rights-of-way does not constitute "Placing or Maintaining" Facilities within the public Rights-of-way.

Right-of-way means the surface and space above and below any real property in which the County has an interest in law or equity, open to travel by the public, including streets, easements and sidewalks, but excluding parks. Right-of-way means the public Right-of-way, not private Rights-of-way.

Structural Change means activities affecting the integrity of the public road surface, road base, curb, sidewalk or shoulder.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunication Antenna or Antenna, a mounted device used for the transmission of telecommunications services or Communications Services, including but not limited to traditional and small cell technology.

Telecommunication Tower or Tower means a self-supporting lattice, guyed or Monopole structure constructed from grade which supports telecommunications or Communications Services Facilities. The term Tower shall not include amateur radio operators' equipment, as licensed by the Federal Communications Commission.

Utilities means any water, sewer, gas, drainage, monitor well, sprinkler or culvert pipe and any electric power, telecommunication, signal, communication, or cable television conduit, fiber, wire, cable, or operator thereof, including Utilities operated by the County.

SECTION 3. Section 170-277 is hereby created and added to the Code as follows:

Sec. 170-277 Right-of-Way Telecommunication Antennae and Towers

(A) **Purpose.** The purpose of this section is to adopt specific regulations relating to the use of Rights-of-way for the erection of Telecommunication Antennae or Towers and any accessory equipment supporting the same within County Right-of-way, regardless of whether or not the Right-of-way is in an unincorporated or incorporated area. The Applicant shall obtain a Permit pursuant to Article IV of this Chapter prior to commencing any construction and shall thereafter comply with all applicable terms therein.

(B) **Review.** The County will review the application presented by the Applicant and determine whether the proposed Antenna or Tower will adversely interfere with public safety and usage, including but not limited to: future road improvements, traffic safety setback areas, residential safety setback areas, regional transportation plans, specific projects named in the comprehensive land use plan, drainage projects, utility projects, sidewalks, bike paths/lanes, future signalization, airport operation and/or planned and current pedestrian/bike trails. The County will also determine if the proposed

communications tower or antenna complies with this Article. If a public project included in a capital improvement plan approved by a governmental entity or otherwise anticipated by the County would be negatively impacted, or if the characteristics of the proposed tower do not comply with this Article, the County shall deny the application stating the reasons in writing.

In addition to the provisions of Section 170-268, with this section controlling in case of conflict, the application must include the following or it will be denied as incomplete:

- (1) Applicant's legal name, company mailing address, email address and phone number, contact Person's name and telephone number, the number of the Applicant's current certificate of authorization issued by the Florida Public Service Commission, the Federal Communications Commission (FCC) and/or the Department of State;
- (2) Exact location of the proposed installation(s);
- (3) Type/model of Antenna(e) or Tower(s) to be erected;
- (4) Method of installation (include direction of guy wires if utilized);
- (5) Proposed start time and completion time for installation;
- (6) Means of repairing Right-of-way damage during installation;
- (7) Subject to the requirements of paragraph 13, scaled sketches and plans that depict the exact nature of installation including, but not limited to:
 - a. Right-of-way width and road pavement width;
 - b. Location of all other Utilities in Right-of-way, including signals;
 - c. Any sidewalks in or near Right-of-way;
 - d. Cross sections to reflect location of Tower or Antenna;
 - e. Include an aerial map showing the location of the Tower and any lines; and
 - f. Show area of work in relation to nearest road intersection, bridge or other physical feature.
- (8) Applications shall include a non-expiring \$25,000 bond for each new Tower. In lieu of individual bonds for each Tower, the County may approve a higher-cost, one-time, non-expiring bond per application in an amount commensurate with the work proposed in the application.
- (9) Proof of insurance adequate to defend and cover claims, in accordance with the provisions of Section 170-269, based upon the installation for which the Permit is sought, and with the County listed as an additional insured;
- (10) Distance from top of Tower(s) to collapsible point(s), if any, and fall radius depicted on aerial photograph or survey;
- (11) Feasibility statement discussing use of camouflage techniques, if possible, and possibility of Placing equipment within or against Tower(s);
- (12) Demarcation of adjacent zoning designations and description of how the proposed Tower(s) conforms to adjacent zoning restrictions;
- (13) Items 1-7 and 10 listed above must be signed and sealed by a professional structural engineer certified in the State of Florida (unless permittee is using

exempt employees pursuant to F.S. §471.003(2)(b)2(d), as may be amended) and, where the Antenna(e) is not being co-located on a currently permitted pole, or on the replacement of a currently permitted pole, must include accurate depiction of topographic improvements and the relationship to the actual Right-of-way line.

(C) ***Permit conditions.*** Any Permit issued pursuant to this Section, must contain the following conditions, in addition to any other appropriate conditions authorized by the Pinellas County Land Development Code:

(1) If necessary for the construction, Maintenance, operation or alteration of the Right-of-way, the Tower shall be immediately removed or relocated from the Right-of-way at the expense of the Permittee unless reimbursement is authorized by the County or otherwise required by law. Unless the removal and relocation is required as a result of an Emergency, the County shall provide at least 90 days' notice to the Permittee and shall cooperate with the Permittee to relocate the Tower, at the Permittee's expense, in the Right-of-way.

(2) All work, materials and equipment shall meet all County codes and standards and shall be subject to inspection by the County. All disturbed areas must be restored to the original condition or better and in accordance with applicable County codes.

(3) The installation, Maintenance and operation of the tower shall not interfere with the prior rights of a Permittee or interfere with the convenient, safe or continuous use of the Right-of-way. Interference that requires the Tower be relocated or removed pursuant to Section 170-271 shall be done so within 90 days and at Permittee's expense or as otherwise required by section 337.403, Florida Statutes as may be amended.

(4) The County shall not be responsible for damage to any structure Placed within the Right-of-way or any structure/vehicle outside of the Right-of-way as a result of granting a Permit. Normal maintenance of the Right-of-way must not be impaired by the actions/omissions of the Permittee.

(5) Final inspection and acceptance of work by the County must be obtained. All work shall be subject to the installation requirements of the County.

(6) In the case of noncompliance with any of the County's requirements, the Permit will be void and the installation shall be brought into compliance or removed from the Right-of-way at no cost to the County.

(7) The County may issue a stop work order upon a Permittee committing or creating an unsafe act which may create a public hazard, failing to comply with the Permit, or not complying with applicable County requirements.

(8) The Permittee shall be responsible for all repair costs incurred due to damage to existing Utilities in accordance with the Underground Facility Damage Prevention and Safety Act, Florida Statutes, Chapter 556, as may be amended.

(9) It is expressly stipulated that the Permit represents a nonexclusive permissive use only and that the Placing of a Tower, Antenna or any Attached or related equipment, or lines upon public property pursuant to the Permit does not create a property right in the Permittee.

(10) All Antennae and Towers must meet or exceed current standards and regulations of the Federal Aviation Administration (FAA), the FCC and any other agency of the federal government with the authority to regulate Antennae and/or Towers, as well as all requirements of the Americans with Disabilities Act (ADA) as amended and as may be amended. If such standards and regulations are changed, then the Owners of the Antennae and Towers governed by this Chapter shall bring such Antennae and Towers into compliance with such revised standards and regulations in accordance with the compliance deadline requirements of such standards and regulations. Failure to bring Antennae and Towers into compliance with such revised standards and regulations shall constitute grounds for the removal of the Antenna or Tower at the Owner's expense.

(D) **Design parameters:** The Placement of Antennae and Towers anywhere in County Right-of-way is subject to the provisions of the Pinellas County Code and Land Development Code. Co-located Antenna are required unless the Applicant demonstrates Co-location is not feasible.

(1) Co-located Antenna shall comply with the following criteria:

- a. not extend more than 10 feet above the highest point of the structure upon which the Antenna is Co-located and in no case shall the total height exceed the maximum height allowable pursuant to the adjacent zoning designation;
- b. not be artificially lighted except as required by the FAA. In cases where there are residential uses located within a distance that is 300% of the height of the Tower, authorization for dual mode lighting must be requested from the FAA;
- c. comply with any applicable local building codes in terms of design, construction and installation. All construction or maintenance of facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the Right-of-way, subject to economic and technical feasibility;
- d. all Antenna and accessory equipment shall be located to avoid any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians or motorists, including clear zone and sight-line requirements;
- e. comply with the Maximum Height Requirements set forth in this Section;
- f. not be installed on wooden poles unless located in an existing corridor where wooden utility poles are the predominant poles in the Right-of-way;

- g. not include signs or advertising or other form of communication on an Antenna or structure upon which an Antenna is Co-located unless otherwise required by law;
 - h. Telecommunication Facilities shall not be installed on traffic signal poles or mast arms inside the County's public Right-of-way; unless pre-approved by the County's Traffic Engineering Division based upon evidence submitted in the application establishing that there will be no negative impact to the traffic infrastructure; and
 - i. New and replacement Utility poles that support Antenna shall match the style, design, and color of the Utility poles in the surrounding area, unless otherwise approved in writing in the Permit.
- (2) Towers shall comply with the following criteria and are prohibited absent documentation submitted with an application demonstrating that Co-location was sought and denied or is not otherwise feasible:
- a. Siting requirements:
 - 1. where possible, be located in public utility easements within or immediately adjacent to the Right-of-way;
 - 2. all Towers and accessory equipment shall be located to avoid any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians or motorists, including clear zone and sight-line requirements per Florida Department of Transportation (FDOT)'s "Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways" commonly known as "Florida Greenbook" as may be amended;
 - 3. minimum setbacks:
 - i. must be separated from adjacent buildings by at least 125% of the Tower height;
 - ii. must be separated from other Towers by 500 feet;
 - iii. must be located at least 6 feet from a driveway and at least 10 feet from the edge of existing trees 12 inches or greater in diameter;
 - iv. distance from sidewalks and pedestrian ramps must be such so as to satisfy the requirements of the ADA, as may be amended;
 - v. Notwithstanding the above, the County may require greater setbacks from these and other fixtures in the Right-of-way to ensure proper sight lines for public safety purposes.
 - vi. In residential zoning districts, Facilities must be located within the Right-of-way where the shared

property line between two residential parcels intersects the Right-of way, or otherwise in a manner that demonstrates the least impact to access to private property.

- vii. In nonresidential districts wireless communication Facilities shall be located within the Right-of-way between tenant spaces or adjoining properties where their shared property lines intersect the Right-of-way, or otherwise in a manner that demonstrates the least impact to access to private property.
4. Towers in designated scenic corridors, residential, or historic districts must, to the greatest extent possible, use camouflaging techniques to blend in with the surrounding area. The application must include a depiction of such camouflaging for approval by the County.
- b. Towers shall not be artificially lighted except as required by the FAA. At the time of construction of a tower, in cases where there are residential uses located within a distance that is 300% of the height of the tower, dual mode lighting must be requested from the FAA.
 - c. Towers shall have an exterior finish which blends with the surrounding area to the greatest extent possible as approved by the County.
 - d. No signs or advertising or other form of communication shall be Placed on a Tower, unless otherwise required by law.
- (3) Maximum Height. The maximum height of a Facility must not exceed the height of the nearest pre-existing street light or utility pole not installed pursuant to this section, plus (the greater of) 20 percent of the height of the existing pole or 10 feet, but in no case shall the total height exceed the lesser of the maximum height allowable pursuant to the adjacent zoning designation or the following:
- a. On arterial roads: 75 feet in total height as measured from grade.
 - b. On collector roads: 55 feet in total height as measured from grade.
 - c. On local streets: 40 feet in total height as measured from grade.
- (4) Towers shall not be constructed of wood unless located in an existing corridor where wooden utility poles are the predominant poles in the Right-of-way.

(E) Accessory Equipment: All equipment attached to or connected with a Co-located Antenna or Tower must comply with the following standards:

- (1) Equipment boxes located at grade must be located in areas with existing foliage or another aesthetic feature to obscure it from the view, to the greatest extent possible, use camouflaging techniques to blend in with the surrounding area. The application must include a depiction of such camouflaging for approval by the County.
- (2) Equipment boxes at the base of the Tower must not exceed 25 cubic feet of volume;
- (3) Equipment mounted to the exterior of a pole shall be a minimum of 12 feet above finished grade, excluding the electric meter and disconnect switch. Each pole mounted equipment component shall be no more than 15 cubic feet in area. The external finish of the equipment cases shall generally match the color of the pole. All mounting and banding fixtures shall also match the color of the pole;
- (4) No exposed wiring or conduit is permitted. Above the electric meter and disconnect switch, all conduit and wiring shall be located inside the pole;
- (5) Electric meters and disconnect switches shall not be located on the side of the pole that faces the sidewalk, or if there is not currently a sidewalk, the area identified by County staff for the preferred Placement of any future sidewalk. Conduit leading to the electric meter box and disconnect switch shall generally match the color of the utility pole;
- (6) The grounding rod may not extend above the top of sidewalk and must be Placed in a pull box; and the ground wire between the pole and ground rod must be inside an underground conduit;
- (7) Where feasible, all pull boxes shall be located outside of the sidewalk or pedestrian ramp. A concrete apron must be installed around all pull boxes not located in the sidewalk;
- (8) All pull boxes must be vehicle load bearing, comply with FDOT Standard Specifications and be listed on the FDOT Approved Products List;
- (9) Every 5 years from County Permit issuance date, inspection reports must be submitted to the County by the Applicant. These inspection reports must certify that the tower has not had any structural degradation and/or that any structural degradation has been rectified. Failure to submit an inspection report within 60 days after the due date will result in the revocation of the Permit for non-compliance. The actual inspection must be physically performed within 6 months prior to the due date.

SECTION 4. Area Embraced. The areas embraced by this article shall be all County Rights-of-way, whether or not within municipal boundaries.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance, or the particular application thereof, shall be held invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 6. Codification. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pinellas County Code and that the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be changed to section, article or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 7. Filing of Ordinance; Effective Date. Pursuant to Section 125.66, Florida Statutes (2016), a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective upon filing with the Department of State.

APPROVED AS TO FORM

By: Christy Doreen Pembert
Office of the County Attorney