

ORDINANCE NO. 1490

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AMENDING CHAPTER 19 OF THE CITY CODE RELATING TO RIGHT-OF-WAY USE TO ELIMINATE THE 75 FOOT SPACING REQUIREMENT BETWEEN UTILITY POLES AND OTHER FACILITIES TO ENSURE CONSISTENCY WITH STATE LAW; TO PROVIDE AN EXCEPTION TO THE PROHIBITION AGAINST UTILITY POLES ON THE SOUTH SIDE OF GULF FRONT ROADS FOR POLES DESIGNED AND SPACED LIKE CRA-STYLE LIGHT POLES WITH CERTAIN CONDITIONS; ALLOWING SUCH UTILITY POLES DESPITE APPLICABLE UNDERGROUND UTILITY RULES; AMENDING THE LAND DEVELOPMENT CODE TO ELIMINATE THE SPACING REQUIREMENT BETWEEN SMALL WIRELESS POLES TO ENSURE CONSISTENCY WITH STATE LAW; WAIVING LAND DEVELOPMENT CODE LOCATION REQUIREMENTS FOR SMALL WIRELESS POLES THAT ARE DESIGNED AND SPACED LIKE CRA-STYLE LIGHT POLES WITH CERTAIN CONDITIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

WHEREAS, the City of Panama City Beach (the "City") regulates the use of Rights-of-way through its City Code and Land Development Regulations and requires any person who will place or maintain a utility pole or other Facility in a Right-of-way to obtain a permit or development order from the City; and

WHEREAS, Florida Statute 337.401 provides that the City retains the authority to regulate and manage Rights-of-way in exercising its police power, but that all rules which govern providers of communications services must be reasonable and nondiscriminatory; and

WHEREAS, this ordinance applies equally not only to all communications service providers, but to all persons who request to install Facilities in a Right-of-way; and

WHEREAS, the City has various requirements on the placement and design of Small Wireless Poles and other utility poles to improve aesthetics, safety, and efficient use of right-of-way, and to otherwise improve the character of the community and advance health, safety, and welfare; and

WHEREAS, within the boundaries of the Front Beach Road Community Redevelopment Area (including the north-south connector streets and sometimes collectively referred to as the "CRA"), there is a partially constructed plan for underground utilities and uniform placement of identical, high quality light poles on both sides of the streets; and

WHEREAS, strict underground utility requirements exist for the areas where the CRA

project has been constructed and these strict rules go into effect in the rest of the CRA as the time for construction approaches for a given area; and

WHEREAS, even before a CRA project has been constructed, limited underground utility requirements apply to all Scenic Corridors and utility poles and any other Facilities are prohibited within a Right-of-way south of the centerline of Front Beach Road, South Thomas Drive, or the portion of Thomas Drive east of South Thomas Drive if such Facility would be three (3) or more feet above grade; and

WHEREAS, the City and Community Development Agency are devoting massive effort and expenditures toward this CRA project and it is one of the City's highest priorities; and

WHEREAS, the placement of utility poles and other Facilities that conflict with the CRA project goals and the current and future underground requirements would significantly undercut the project and make much of the City's efforts and expenditures go to waste; and

WHEREAS, utility companies have successfully begun designing and disguising their equipment and poles to mimic structures and objects that are generally considered normal and desirable along streets, such as the CRA light poles; and

WHEREAS, if the community considers CRA light poles to be desirable and if a utility pole is difficult to distinguish from those light poles and does not have overhead wires and readily visible equipment, then allowing this style of utility pole or Facility does not detract from the goals of the City's underground utilities efforts; and

WHEREAS, locations in the City with strict underground utility requirements have high population density and providing additional options to wireless companies and other utilities to expand their service in these areas is beneficial to the community and will increase convenience and safety; and

WHEREAS, if a utility pole closely resembles a CRA-style light pole and replaces an existing CRA-style light pole or is placed where a CRA-style light pole would be placed in the future, the City's otherwise applicable placement and design requirements provide minimal benefit and sometimes will result in reduced service and unintended negative consequences, and therefore, are appropriate for waiver pursuant to this ordinance; and

WHEREAS, the City recognizes that matching the design of CRA-style light poles creates increased cost and effort for utility companies, but also that the City's waiver of various location requirements provides value to the utility companies which may exceed this increased cost and effort; and

WHEREAS, the Florida Legislature's 2019 amendments to the Florida Statute 337.401 Advanced Wireless Infrastructure Deployment Act do not allow the City to limit the placement,

by minimum separation distances, of small wireless facilities, associated poles, and other at-grade communications facilities; and

WHEREAS, this ordinance eliminates the City minimum separation distance rules that are likely to be inconsistent with the amended legislation in many instances; and

WHEREAS, the amended legislation recognizes the City's right to adopt and enforce underground utility requirements and to require that a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color; and

WHEREAS, this ordinance is consistent with that amended legislation and goes further by providing locations and an efficient process to place utility poles with a specified design in areas where they would otherwise be prohibited by the City's underground utility requirements; and

WHEREAS, this ordinance similarly allows utility poles with a specified design to be installed in areas where they would otherwise be prohibited by other Land Development Code requirements; and

WHEREAS, when an applicant can meet the regular rules for placement of a Small Wireless Pole or other utility pole in a particular location, that applicant has no obligation to utilize the CRA-style light pole design.

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 Chapter 12 of the Code of Ordinances of the City of Panama City Beach, related to Right of way use and permitting is amended to read as follows (new text **bold and underlined**, deleted text ~~struck through~~):

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 fifteen (15) feet in height from grade may be constructed within seventy five (75) feet of any other Facility that is over fifteen (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. No person shall be granted a permit or otherwise be allowed to install any utility pole or any other Facility if such Facility would be three (3) or more feet above grade within a Right-of-way south of the centerline of Front Beach Road, South Thomas Drive, or the portion of Thomas Drive east of South Thomas Drive. This

prohibition shall not apply to light poles owned by the City. This prohibition does not apply to a utility pole or other Facility, regardless of ownership, if it complies with the Community Redevelopment Area-style light pole design and specifications and it either replaces an existing Community Redevelopment Area-style light pole or is installed in the location of a planned future Community Redevelopment Area-style light pole according to the best available Community Redevelopment Agency plans and Planning Department staff approval. Unless the Front Beach Road Community Redevelopment Agency adopts new light pole design and specifications for a portion of the City, complying with Community Redevelopment Area-style light pole design and specifications means following standards provided by the Front Beach Road Segment 2 Ornamental Aluminum Roadway Lighting and Banner Standard and the construction documents for Front Beach Road Segment 2 for the pole and light fixture, which are on file City Hall. Compliance with these requirements also means all wiring and equipment must be contained underground or inside the pole so that it is not visible or distinguishes the pole and equipment from the Community Redevelopment Area-style light poles. Each such pole may have one box on the ground in the immediate vicinity of the pole for electrical or other equipment so long as it is not taller than three-feet from grade and matches the color and style of other utility boxes located in the Community Redevelopment Area right of way. Planning staff may approve minor deviations in design, brands, and materials that do not result in easily noticeable differences between the pole, fixture, and any visible equipment relative to the actual Community Redevelopment Area-style light poles. Applicants for the waiver under this paragraph must apply to the Planning Department using the procedures applicable to Small Wireless Poles provided by the Panama City Beach Land Development Code. Applicable underground utility requirements of the City Code and Land Development Code are waived for utility poles and other Facilities that strictly comply with this section and which are approved by the City Planning Department, in recognition that such poles do not provide greater negative impacts to the community than the City's own light poles. Any existing utility poles or Facilities that would not be permissible under this rule shall not be permitted to be replaced, but may be maintained used and repaired, provided repairs do not exceed 50% of the value of the utility pole or Facility.

SECTION 2. From and after the effective date of this ordinance Section 5.05.07 of the Panama City Beach Land Development Code, related to Small Wireless Poles is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

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 may not be denied solely based on 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.

- G. The requirements of B. through E. of this Section are waived for Small Wireless Poles located within the boundaries of the Front Beach Road Community Redevelopment Area and that meet the standards for the exception available under Panama City Beach Code Sec. 19-154 B for complying with Community Redevelopment Agency-style light pole placement, design, and specifications. This waiver is available for Small Wireless Poles proposed on either side of any street within the Front Beach Road Community Redevelopment Area. Applicants agree that in return for the waiver of these requirements and any applicable undergrounding requirement, they will comply with Planning Staff conditions on shielding, stealthing, and limiting the visibility of antennas on the pole to minimize visual differences between the Small Wireless Pole and an actual Community Redevelopment Agency light pole.

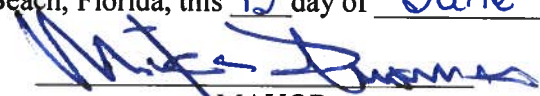
When a Community Redevelopment Agency-style light pole is replaced under this paragraph, the applicant must bear the full cost of the replacement and installation and shall perform the work. Pole replacement under this Section may qualify as a collocation pursuant to Section 5.05.08(g) except that the design requirements of this section must be followed, including that the height of the new Small Wireless Pole must comply with the Community Redevelopment Agency-style light pole design and specifications. The new pole shall be owned and maintained by the applicant, unless otherwise agreed by City and applicant in writing.

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

SECTION 4. 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 Code and Land Development Code, 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 4. 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 13th day of June, 2019.


MAYOR

ATTEST:


CITY CLERK

EXAMINED AND APPROVED by me this 18th day of June, 2019.


MAYOR

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Posted on pcbgov.com on the 18th day of June, 2019.

Notice provided to the Secretary of State on the 29th day of April, 2019, which is at least 10 days prior to consideration on first reading.