

Introduced by: Council Member Wilson

1<sup>st</sup> Reading: December 18, 2017

2<sup>nd</sup> Reading: January 16, 2018

**ORDINANCE NO. 2017-8101**

**AN ORDINANCE TO AMEND AN ORDINANCE ENACTING AND ESTABLISHING A COMPREHENSIVE LAND DEVELOPMENT REGULATION AND OFFICIAL ZONING MAP FOR THE INCORPORATED AREA OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AS AUTHORIZED BY CHAPTER 163.3202, FLORIDA STATUTES, TO ADD DEFINITIONS FOR “PERSONAL WIRELESS SERVICE,” “PERSONAL WIRELESS SERVICE FACILITY OR PERSONAL WIRELESS SERVICE FACILITIES” AND “PERSONAL WIRELESS SERVICE PROVIDER” TO ARTICLE IV, DEFINITIONS OF THE LAND DEVELOPMENT CODE OF THE CITY OF JACKSONVILLE BEACH; AND BY AMENDING ARTICLE VIII, DIVISION 2, SUPPLEMENTAL STANDARDS BY CREATING A NEW SECTION 34-409. PERSONAL WIRELESS SERVICE FACILITIES, AND A NEW SECTION 34-410. PERSONAL WIRELESS FACILITY DEVELOPMENT STANDARDS; TO REPEAL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith, AND FOR OTHER PURPOSES:**

**WHEREAS**, the demand for telecommunications services has grown exponentially in recent years, requiring the continual upgrading of telecommunications equipment and services to satisfy such demand; and

**WHEREAS**, in 2017, the Florida Legislature passed Chapter 2017-136, Laws of Florida, which inter alia, amends § 337.401, Florida Statutes, to create the new Subsection (7) known as the Advanced Wireless Infrastructure Deployment Act (“Wireless Deployment Act”), effective July 1, 2017, to address municipalities’ regulation of access to the public rights-of-way for wireless communications facilities and wireless support structures; and

**WHEREAS**, the Jacksonville Beach Land Development Code currently provides for communications facilities as permitted uses in certain zoning districts, and for the placement of communications antennae as accessory structures on buildings in certain other zoning districts, but needs to be updated to incorporate state law changes since the current communications facilities regulations were most recently amended in 2004, via Ordinance No. 2004-7880;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF JACKSONVILLE BEACH, FLORIDA:**

**SECTION 1.** For purposes of Land Development Code Sections 34-409 and 34-410, as created in Section 2. herein, the following terms, phrases, words, and their derivations shall have

the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and the word "may" is permissive. Words not otherwise defined shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. §§ 151 et seq., as amended (collectively the "Communications Act"), and, if not defined therein, as defined by Chapter 202, Florida Statutes, or Chapter 337, Florida Statutes, and, if not defined therein, be construed to mean the common and ordinary meaning. Neither personal wireless service nor personal wireless facilities constitute an essential public service as defined in Article IV of the Land Development Code. Accordingly, Article IV. Definitions of the Comprehensive Land Development Regulation of the City of Jacksonville Beach, Florida is hereby amended to add, in proper alphabetical order, new definitions as follows:

### **Section 34-41. General**

*Personal wireless service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access facilities and those defined by the Communications Act, including but not limited to, the transmission and reception of radio microwave signals used for communication, data, cellular phone, personal communication services, enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless services.

*Personal wireless service facility or personal wireless service facilities* means facilities used for the provision of personal wireless service including any freestanding facility, antennae, distributed antennae system, and/or small cell technology. Personal wireless service facilities include, but are not limited to, utility poles, towers, monopoles, communications facilities, and other facilities, equipment, and appurtenances that are used in the delivery or transmission of personal wireless services,

*Personal wireless service provider* means a company licensed by the Federal Communications Commission (FCC) that provides personal wireless service. A builder or owner of a personal wireless service facility is not a personal wireless service provider unless licensed to provide personal wireless services.

**SECTION 2.** That Division 2. Supplemental Standards of Article VIII of the Comprehensive Land Development Regulation of the City of Jacksonville Beach, Florida is hereby amended by adding new Sections 34-409 and 34-410, which shall read as follows:

#### **Section 34-409. - Personal wireless service facilities.**

- (a) Purpose and legislative intent. Federal and state laws recognize the City's authority to regulate the placement, construction, and modification of personal wireless service facilities. The City recognizes that personal wireless service facilities play

an important and complex role in the community. The intent of this section is to ensure that the placement, construction or modification of personal wireless service facilities is consistent with the City's land use policies and balances the community needs. This section strives to establish a fair and efficient application process, mitigate impacts of personal wireless service facilities, provide a high quality of service that is technically viable and meets the current industry standards of service, and protect the health, safety and welfare of the residents and visitors of the City.

- (b) Hierarchy of personal wireless service facility preferences. The City has established the hierarchy set forth below for personal wireless service facilities, with (1) being the most preferred and (3) being the least preferred. More preferred facilities require fewer approvals and are subject to fewer restrictions.
  - (1) An antenna located on or in an existing building, whether or not a co-location (see Sec. 34-410 (a)(2), (3) and (5)).
  - (2) The co-location of an antenna on an existing freestanding facility (see Sec. 34-410(a)(4)).
  - (3) Freestanding facilities (see Sec. 34-410(b)).
- (c) Prohibited personal wireless service facilities. Self-supporting lattice towers, guyed towers, and all freestanding facilities not meeting the requirements of Sec. 34-410(b) are prohibited.
- (d) Priority determination. If the proposed personal wireless service facility is not one of the two highest priorities listed, a detailed explanation and technical justification shall be provided as to why each of the higher priority facilities was not selected. This must include documentation that any existing personal wireless service facility (whether owned by the applicant or not) located within a two-mile radius of the proposed location is physically and/or technically unable to support collocation of additional personal wireless service equipment, that the existing facility is insufficient, or that the existing facility does not meet the engineering requirements of the applicant.
- (e) Generally applicable review procedures and timeframes.
  - (1) The Planning and Development Director shall notify the applicant for a personal wireless service facility within 20 days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and has been properly submitted in accordance with the requirements of the City Code and Land Development Code. An application for personal wireless service facility is deemed properly completed and properly submitted when it is verified that the information contained within the application is true, accurate, and contains all applicable information needed to make a determination as to the merits of the request. Such notification shall

indicate with specificity any deficiencies that, if cured, could make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the City shall again have 20 days to notify the applicant, in writing, of any remaining deficiencies that must be cured. If the applicant does not cure the deficiencies within 30 days, the application shall be considered withdrawn and closed.

- (2) An application is deemed submitted or resubmitted on the date the application is received by the City. If the City does not notify the applicant in writing that the application is not completed in compliance with this Zoning Code within 20 days after the date the application is initially submitted or resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted.
  - (3) Applications for a collocation of small wireless facilities shall be processed in accordance with Chapter 28, Section 28-76 of the Code of Ordinances of the City of Jacksonville Beach, Florida. Applications for new personal wireless service facilities, including freestanding facilities, shall be processed within 90 days after an application has been properly completed and properly submitted; provided, however, that applications for new utility poles that qualify under § said Chapter 28, Section 28-76 shall be processed in accordance with the time frames set forth in Section 28-76.
  - (4) The timeframes stated in this subsection may be extended or tolled by mutual agreement of the City and applicant.
  - (5) The final decision approving or denying an application shall be in writing and supported by "substantial evidence" pursuant to the Communications Act, 47 U.S.C. § 332(c)(7)(B)(iii) and shall comply with the provisions of Land Development Code Article VIII, Division 2, Section 34-410.
  - (6) Applications must demonstrate that no portion of any abutting, adjoining, or nearby residentially zoned property will be exposed to radio frequency (RF) emissions exceeding the federal safety limits for RF emissions. When installation has been completed for any personal wireless service facility, a post-construction RF energy testing study must be conducted by the applicant and submitted to the City within 30 days following receipt of a certificate of completion for the installation demonstrating that the personal wireless service facility complies with this provision and all federal safety standards for RF energy exposure.
- (f) Variances, waivers and departures. Variances, waivers, departures or other methods of relief from the provisions of the Code shall not be granted for personal wireless service facilities.

- (g) During a declared emergency within the City, the City manager is authorized to allow the placement and operation of temporary personal wireless service facilities within any zoning district for a period not to exceed 90 days. Placement and operation of temporary personal wireless service facilities beyond the 90-day limit may be granted by the City Council if deemed necessary for the health, safety, and welfare of the public due to extended disruption in services after a declared emergency.

**Section 34-410. - Personal wireless service facility development standards.**

(a) Antennas.

- (1) An application for an antenna, whether or not a collocation, shall include the following information:

- a. The name of the applicant;
- b. Whether the applicant is an individual, partnership, limited partnership, limited liability corporation, professional corporation, professional association, governmental entity, or some other type of legal group or association;
- c. A complete, thorough and accurate description of the proposed antenna, including an elevation drawing of the proposed antenna showing the view from north, east, west and south;
- d. The type of existing building or structure on which the antenna is proposed to be located;
- e. Certification that the proposed antenna will comply with applicable Federal Aviation Administration requirements under 14 C.F.R. s. 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use;
- f. The proposed use of the antenna;
- g. The proposed location of the antenna with a map in sufficient detail to indicate the location with precision;
- h. Written, notarized authorization from the property owner, if different from applicant, that authorizes the installation of the facilities;
- i. The zoning/land use designation of the site for the proposed antenna;

- j. The height of the proposed antenna;
  - k. Where applicable, a lighting plan, that is consistent with all federal, state and local requirements;
  - l. Documentation that the proposed antenna and any appurtenances will withstand wind speeds as set forth in the Florida Building Code;
  - m. A plan detailing the steps to visually blend the proposed antenna with surrounding buildings, facilities and features;
  - n. The estimated timeframe for constructing and/or locating the antenna, and any ancillary equipment.
- (2) An antenna classified as an initial (rather than collocation) antenna, located on a rooftop, a rooftop antenna platform, or the exterior of a building shall meet the following minimum criteria:
- a. It is located in a building with a height in excess of four (4) stories in a C-1, C-2, CBD, or RM-2 zoning district.
  - b. It is located on a rooftop of an existing building in excess of 40 feet in height, a rooftop antenna platform located on a roof of an existing building in excess of 40 feet in height, or the exterior of an existing building in excess of 40 feet in height.
  - c. The height of the antenna shall not exceed 20 feet above the highest point of the building; and
  - d. The antenna shall be camouflaged. An antenna shall be deemed to be camouflaged if the antenna and any ancillary equipment are concealed from view by way of enclosure or through a blending of the antenna and ancillary equipment with the architectural design and appearance, color and scale of the building to which it is attached.
- (3) An antenna located inside a building is permitted provided it is not visible from any surrounding properties or roadways and no portion of the antennae is recognizable or discernible from the exterior of the building. Architectural features concealing the antennae must be consistent with the architecture of the building to which they are attached. The architectural features shall not exceed the height restrictions for the zoning district in which they are located, except as allowed by this Code. The setback for any architectural features concealing an antenna from any residentially zoned property must be at least one foot for every foot in height of the architectural features (dwellings located on the same parcel as the antenna are excluded).

- (4) An antenna classified as a collocation located on an existing freestanding facility not owned by the City shall meet the following minimum criteria:
  - a. The antenna does not increase the height of the freestanding facility to which it is to be attached, except as allowed in Section 34-410(b), as measured to the highest point of any part of the freestanding facility or any existing antenna attached to the freestanding facility;
  - b. The applicant shall include proof of consent of the owner of the freestanding facility for inclusion of the antenna on the freestanding facility.
  - c. The ground space area, if any, previously approved for equipment enclosures and ancillary facilities is not increased; and
  - d. The antenna and its ancillary facilities meet all requirements as established in § Section 34-410(b).
- (5) An antenna classified as a collocation located on an existing building shall meet the following minimum criteria:
  - a. The height of the antenna does not exceed 20 feet above the highest point of the building;
  - b. The ground space area, otherwise known as the compound, if any, previously approved for equipment enclosures and ancillary facilities is not increased;
  - c. The antenna and its ancillary facilities are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the building for initial antennas;
- (6) If only a portion of an application for a personal wireless service facility classified as a collocation does not meet the requirements of subsections (4) or (5) above, the noncompliant portion of the collocation application shall be reviewed as an initial antenna, under subsection (2) and the compliant remainder of the collocation application shall be reviewed in accordance with subsections (4) or (5), as applicable. A collocation application that complies with subsections (4) or (5), except that it is proposing to increase the equipment ground compound approved in the original site plan for equipment enclosure and ancillary facilities by no more than a cumulative amount of 400 square feet or 50 percent of the original ground equipment enclosure size, whichever is greater, may continue to be reviewed as a collocation.
- (7) Standards applicable to all antennas.

- a. All antennas must be at least 30 feet from ground level.
  - b. An antenna and its ancillary facilities must meet all applicable requirements of the Florida Building Code.
  - c. The antenna equipment shelter/cabinet must have a sign in close proximity which is readable from a distance of at least five feet, in accordance with FCC regulations, which notes the owner of the equipment and the name and telephone number of the person to contact to report an emergency or situation when notification is warranted.
  - d. All additional requirements of state, federal and local law must be adhered to.
- (8) The review and approval of an application for an antenna under this section is by building permit review, except as an initial installation where existing buildings are proposed to be architecturally modified to conceal an antennae. Existing buildings that are proposed to be architecturally modified to conceal antennae must follow the development plan approval process.

(b) Freestanding facilities.

(1) Freestanding facilities and their ancillary equipment shall be approved by development plan review and building permit granted by the Planning and Development Department only on property owned by the City of Jacksonville Beach or the Duval County School Board, with a contract approved by the respective owner, on City energy substation properties (active or inactive), in City parks and facilities, including the golf course and cemeteries, on public school properties, and in public rights-of-way in commercial or industrial zoning districts, provided the following criteria are met:

- a. The freestanding facility shall be designed so as to mimic a structure or natural feature that could reasonably be found and/or blend with the surrounding area, such as a light fixture or tree.
- b. Ancillary equipment must meet the following criteria:
  1. Shall be no wider than seven feet;
  2. Shall be no longer than 13 feet;
  3. Shall not exceed the height limitations for mechanical equipment as provided by this Zoning Code;
  4. May be located within a required side or required rear yard, provided, that it shall be no closer than ten feet to any lot line;

5. Shall be included in lot coverage and non-open space calculations for the site, including the pad;
  6. Shall be located on a concrete pad, unless required to be elevated due to FEMA regulations;
  7. Shall be screened from view by landscaping, architectural features, or a combination of both, and designed in a manner which minimizes nuisance impacts, such as noise and odor. Screening shall be at least equal to the height of the ancillary equipment on all sides and shall be maintained in good order; and
  8. Shall be set back from any existing residential dwelling at least one foot for every foot in height of the facility (dwellings located on the same parcel as the structure are excluded), as measured from the base of the structure containing the antennae to nearest property line of the residential dwelling(s).
- c. The top of any freestanding facility and ancillary equipment shall not exceed 50 feet in height.
  - d. For any freestanding facility that utilizes lighting, the lights must meet all applicable federal, state, and local regulations regarding shielding of lighting to protect sea turtles.
  - e. The freestanding facility, its components, ancillary equipment, and screening must be maintained in good order. Failure to maintain the freestanding facility, its components, ancillary equipment, and screening shall constitute a violation of this chapter.
- (2) The development plan application for a freestanding facility shall include the following information:
- a. The name of the applicant(s) and whether each applicant is an individual, partnership, limited partnership, limited liability corporation, professional corporation, professional association, governmental entity, or some other type of legal group or association;
  - b. A complete and accurate description of the proposed freestanding facility, including scale elevation drawings of the proposed freestanding facility;
  - c. If applicable, documentation of any contract, license, lease, letter of understanding, agreement in principle, or other type of agreement with a personal wireless service provider for use of the freestanding facility and a summary of the agreement or arrangement;

- d. The proposed location of the freestanding facility together with both a legal description of the location, and a map in sufficient detail to indicate the location with precision;
- e. Proof that the property owner, if different from applicant, authorizes the installation of the facilities.
- f. The zoning/land use designation for the proposed freestanding facility;
- g. The height of the proposed freestanding facility;
- h. The projected collapse zone certification that in the event of fall or collapse of the freestanding facility, said freestanding facility would not damage or negatively impact the real or personal property of the surrounding property owners;
- i. Documentation demonstrating compliance with the provisions of state statute and City Codes;
- j. A detailed plan for landscaping any ancillary ground equipment, in such a manner that the landscaping will shield the equipment from the view of adjoining parcels and/or public rights-of-way, noting that the landscaping shall be native, xeriscape plants only;
- k. A detailed preventive maintenance program that meets minimum maintenance program standards for which the applicant is to remain solely responsible. The City will not be responsible for monitoring the maintenance program;
- l. Certification that the proposed equipment will comply with applicable Federal Aviation Administration requirements under 14 C.F.R. § 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use;
- m. The estimated timeframe for completion for the location and/or construction or modification of each of the freestanding facilities and any ancillary equipment;
- n. The identity and location of any landline backhaul network to each freestanding facility location, if applicable;
- o. Whether the applicant, within a two-mile radius of the proposed location, has ever had any permit (or similar or equivalent authorization) revoked, rescinded, canceled or terminated which authorized the placement, construction, and/or modification of personal wireless service facilities, and, if so, what were the reasons surrounding such revocation;

p. The proposed equipment shall not interfere with or obstruct public safety telecommunications facilities in accordance with the applicable rules of the Federal Communications Commission; and

q. All applicable provisions of the City Code, the Land Development Code and the Florida Building Code shall be met.

(3) In evaluating development plan and building permit applications for a freestanding facility, in addition to compliance with Section 34-259, Standards (1) through (7), the Planning and Development Division shall consider and evaluate the above application criteria and the following, with the intent of balancing the reasonable allowance of a freestanding facility to provide personal wireless service in the area with the protection of the aesthetics of the area from adverse visual impacts:

a. The proposed location of the freestanding facility, including the zoning/land use designation of the site and abutting properties;

b. The proposed height of the freestanding facility;

c. The number and location of freestanding facilities and structures over 40 feet in height already existing within a 500-foot radius of the proposed freestanding facility;

d. The distance of the proposed freestanding facility to the nearest single-family residence measured from the freestanding facility to the boundary of the nearest single-family residence;

e. The proposed aesthetics of the freestanding facility and whether it visually blends in with surrounding buildings, structures and existing vegetation;

f. The potential impacts on property values of nearby or surrounding single-family properties.

(4) Upon granting development plan and building permit approval for the construction of a freestanding facility, the City reserves the right to inspect placement, construction and modification of such freestanding facility and ancillary equipment for the life of the facility. Any modification, relocation, rebuilding, repairing, in any way without the issuance of all applicable approvals and permits will be deemed a violation of the permit and result in the removal of the freestanding facility and ancillary equipment.

(5) Removal of a freestanding facility and ancillary equipment. The City may require, upon notice with a reasonable opportunity to cure, the immediate removal of a freestanding facility and ancillary equipment if:

a. It has been abandoned for a period in excess of six months;

b. It falls into such a state of disrepair that it becomes an unsafe structure or becomes a public nuisance;

c. It is modified, relocated, or rebuilt without the issuance of all applicable approvals and permits;

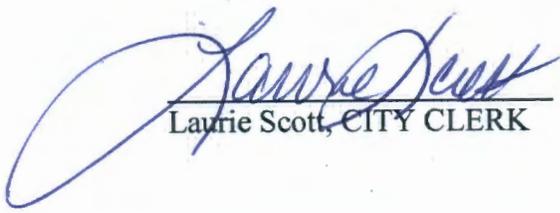
**SECTION 3. SEVERABILITY.** It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

**SECTION 4. CONFLICTING ORDINANCES.** All ordinances or parts of ordinances in conflict with this ordinance are, to the extent that the same may conflict, hereby repealed.

**SECTION 5. EFFECTIVE DATE.** This ordinance shall take effect upon its adoption in accordance with applicable law.

AUTHENTICATED THIS 16 DAY OF January, A.D. 2018

  
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William C. Latham, MAYOR

  
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Laurie Scott, CITY CLERK