

ORDINANCE NO. 2022-08

AN ORDINANCE ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, AMENDING CHAPTER 11, STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES, ARTICLE V, PLACEMENT OF COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY, SECTION 11-101, PLACEMENT OR MAINTENANCE OF A COMMUNICATIONS FACILITY IN PUBLIC RIGHTS-OF-WAY, TO ADDRESS THE REQUIREMENT FOR CITY CO-LOCATION OPPORTUNITIES ON MICRO TOWER INFRASTRUCTURE WITHIN CITY RIGHTS-OF-WAY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Greenacres has determined that a need exists to amend and clarify the regulations that govern the use of the City's streets, sidewalks, and certain other public places; and

WHEREAS, City staff has determined that preventive measures must be taken to protect the continuous functionality of the City's sidewalks, public rights-of-way, and other public property; and

WHEREAS, in the 2017 Legislative Session, the Florida Legislature enacted the Advanced Wireless Infrastructure Deployment Act, House Bill 687, which provides authorization for wireless carriers to install devices in public rights-of-way pursuant to a permit obtained from the local government authority; and

WHEREAS, the "Advanced Wireless Infrastructure Deployment Act" became effective on July 1, 2017, under Chapter 2017-136, Laws of Florida; and

WHEREAS, on December 18, 2017, the City Council adopted Ordinance 2017-31, establishing regulations consistent with Section 337.401, *Florida Statutes* that established a process by which wireless providers may place certain "small wireless facilities" in the local right-of-way and provided regulations for design standards, sight-lines, insurance coverage,

indemnification, performance bonds, security bonds, force majeure, abandonment, authority liability or authority warranties; and

WHEREAS, the Neighborhood and Development Services Department has submitted a request for a code text amendment to revise Chapter 11, Streets, Sidewalks and Other Public Places to require the ability for the city to co-locate on the towers for communication and technical equipment as required for city use; and,

WHEREAS, the City Council of Greenacres finds that the amendments contained within this ordinance will promote the health, safety and welfare of the citizens of Greenacres and the public at large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, THAT:

SECTION 1. Chapter 11, Article V, Section 11-101 is hereby amended as follows:

* * * * *

Article V. Placement of Communications Facilities in Public Rights-of-Way

Sec. 11-101. Placement or maintenance of a communications facility in public rights-of-way.

(a) A registrant shall at all times comply with and abide by all applicable provisions of the state and federal law and city ordinances, codes, and regulations in placing or maintaining a communications facility in public rights-of-way.

(b) A registrant shall not commence to place or maintain a communications facility in public rights-of-way until all applicable permits, if any have been issued by the city or other appropriate authority, except in the case of an emergency. The term "emergency" shall mean a condition that affects the public's health, safety, or welfare, which includes an unplanned out-of-service condition of a pre-existing service. The registrant shall provide prompt notice to the city of the placement or maintenance of a communications facility in public rights-of-way in the event of an emergency and shall be required to obtain an after-the-fact permit if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency. The registrant acknowledges that, as a condition of granting such permits, the city may impose reasonable rules or regulations governing the placement, relocation, or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the

areas of public rights-of-way specifically identified in the permit. The city may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities that may otherwise require individual permits.

(c) As part of any permit application to place a new or replace an existing communications facility in public rights-of-way, the registrant shall provide the following:

- (1) The location of the proposed facilities including a description of the facilities to be installed, where the facilities are to be located, and the approximate size of the facilities that will be located in public rights-of-way;
- (2) A description of the manner in which the facility will be installed (i.e. anticipated construction methods or techniques);
- (3) A maintenance of traffic plan for any disruption of the public rights-of-way, in accordance with the standards promulgated by the Florida Department of Transportation;
- (4) Information on the ability of the public rights-of-way to accommodate the proposed facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons);
- (5) If appropriate, given the facility proposed, a certified estimate of the cost of restoration to the public rights-of-way, subject to approval by the planning and engineering director and the public works director or designees(s);
- (6) The timetable for construction of the project, or each phase thereof, and the areas of the city which will be affected; and
- (7) Such additional information as the city finds reasonably necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application to review such permit application.

(d) To the extent not otherwise prohibited by state or federal law, the city shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of public rights-of-way.

(e) All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin any of the public rights-of-way. The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way, as well as joint trenching or the collocation of facilities in existing conduit, is strongly encouraged and should be employed wherever feasible. The building official, public works director and ~~city planning & engineering~~ neighborhood and development services director or their designees may promulgate reasonable rules and regulations concerning the placement or maintenance of a communications facility in

public rights-of-way consistent with this article and other applicable law.

(f) All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.

(g) After the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to their original condition before such work. If the registrant fails to make such restoration within thirty (30) days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the city may perform restoration and charge the costs of the restoration against the registrant in accordance with Section 337.402, Florida Statutes, as it may be amended. For twelve (12) months following the original completion of the work, the registrant shall guarantee its restoration work and shall correct, at its own expense, any restoration work that does not satisfy the requirements of this article.

(h) Removal or relocation at the direction of the city of a registrant's communications facility in public rights-of-way shall be governed by the provisions of Sections 337.403 and 337.404, Florida Statutes, as they may be amended.

(i) A permit from the city constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.

(j) A registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.

(k) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes, as it may be amended.

(l) The registrant shall use and exercise due caution, care, and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work-site areas.

(m) Upon the request of the city, and as notified by the city of the other work, construction, installation, or repairs referenced below, a registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation, or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject public rights-of-way, and the registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the public rights-of-way.

(n) A registrant shall not place or maintain its communications facilities so as to interfere with, displace, damage, or destroy any facilities including, but not limited to, sewers, gas or water mains, storm drains, pipes, cables, or conduits of the city or any other entity's facilities lawfully occupying the public rights-of-way of the city.

(o) The city makes no warranties or representations regarding the fitness, suitability, or availability of the city's public rights-of-way for the registrant's communications facilities, and any performance of work, costs incurred, or services provided by the registrant shall be at the registrant's sole risk. Nothing in this article shall affect the city's authority to add, vacate, or abandon public rights-of-way, and the city makes no warranties or representations regarding the availability of any added, vacated, or abandoned public rights-of-way for communications facilities.

(p) The city shall have the right to make such inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article.

(q) A permit application to place a new or replace an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the city, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the city.

(r) The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables, or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in public rights-of-way occupied by the registrant. The city further reserves, without limitation, the right to alter, change, or cause to be changed the grading, installation, relocation, or width of the public rights-of-way within the limits of the city and within said limits as same may from time to time be altered. Should the registrant be required to relocate its facilities in conjunction with such installation and alteration, the registrant shall be required to pay all costs associated with such relocation.

(s) A registrant shall, on the request of any person holding a permit issued by the city, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary relocation.

(t) A wireless facility that is a portion of a communication facility, such as an antenna ("wireless facility(ies)"), which is attached to a legally maintained vertical structure in the public rights-of-way, such as a light pole or utility pole ("vertical structure(s)"), shall be subject to the following criteria below and processed in accordance with the timeframes specified in Chapter 337.401, Florida Statutes:

- (1) Such Wireless facilities may not extend more than ten (10) feet above the highest point of the vertical structure (i.e., utility pole). The height of a new utility pole is

limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, measured from grade in place within 500 feet of the proposed location. If there is no utility pole within 500 feet, the height of the new utility pole shall be limited to 50 feet;

- (2) Such wireless facilities that are attached to a vertical structure located in public rights-of-way that is fifteen (15) feet or less in width and is located adjacent to real property used as a single-family residence shall be flush mounted to the vertical structure;
- (3) Such wireless facilities shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation, or law;
- (4) Such wireless facilities shall comply with any applicable Federal Communications Commission Emissions Standards;
- (5) The design, construction, and installation of such wireless facilities shall comply with any applicable local building codes;
- (6) No commercial advertising shall be allowed on such wireless facilities;
- (7) Any accessory equipment and related housing in the public rights-of-way that are used in conjunction with such a wireless facility shall comply with any applicable local rules, regulations, ordinances, or laws governing the placement and design of such equipment;
- (8) Any new or replacement poles shall be of similar design, material, and color to the utility poles within 250 feet in the same right-of-way, or as approved;
- (9) Wireless facilities, including ground-mounted equipment shall be placed so as to not interfere with the safe operation of traffic control equipment, sight lines or clear zones for transportation, pedestrians, public safety purposes, or the free flow of vehicular and pedestrian traffic;
- (10) The City may request that ground-mounted equipment use materials, colors, textures, screening, and landscape that will blend into the natural setting and surrounding built environment to minimize the visual impact as permitted by Section 337.401, Florida Statutes;
- (11) The City may request ground-mounted equipment be placed no closer than 500 feet from existing ground-mounted equipment servicing the same carrier, as permitted by Section 337.401, Florida Statutes;
- (12) Ground-mounted equipment shall be placed so as to not interfere with the intended purpose of the right-of-way, swales, or stormwater drainage features and appurtenances.

- (13) The City may deny a proposed collocation of a new small wireless facility in the public rights-of-way if the proposed collocation materially interferes with compliance with the Americans with Disabilities Act (ADA) or similar federal or state standards regarding pedestrian access or movement;
- (14) The City may deny a proposed collocation of a new small wireless facility the public rights-of-way if it materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.
- (u) Vertical structures, such as towers, having a sole purpose to serve as a mounting device for antennae, are expressly prohibited from being placed in the public rights of-way, except as permitted by Section 337.401, Florida Statutes.
- (v) Shared use. To discourage the proliferation of new small wireless facilities, shared use of structures is both permitted and encouraged.
- (w) Dedication of use to the City of Greenacres. During the permit review process and after, as a condition of approval, the City may require the dedication of space on the tower for communication and/or surveillance equipment as required for City use.

SECTION 2. Repeal of Conflicting Ordinances. All ordinances or parts thereof or parts of the Code conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

SECTION 3. Severability. If any section, part of a section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holdings of invalidity shall not affect the remaining portion of this Ordinance and it shall be construed to have been the legislative intent to pass the Ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this Ordinance after the exclusion of such part or parts shall be deemed to be held valid as if such part or parts had not been included therein, or if this Ordinance or any of the provisions thereof shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holdings shall not affect the applicability thereof to any other person, property or circumstances.

SECTION 4. **Inclusion in Code.** It is the intention of the City Council, entered as hereby ordained, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Greenacres, Florida; that the Section(s) of this Ordinance may be renumbered or re-lettered to accomplish such intention, and that the word “Ordinance” may be changed to “Section”, “Article” or another word.

SECTION 5. **Effective Date.** The provisions of this Ordinance shall become effective upon adoption.

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Passed on the first reading this 21st day of March, 2022.

PASSED AND ADOPTED on the second reading this ____ day of ____, 2022.

Voted:

Joel Flores, Mayor

John Tharp, Deputy Mayor

Attest:

Voted:

Quintella Moorer, City Clerk

Peter Noble, Council Member, *District II*

Voted:

Judith Dugo, Council Member, *District III*

Voted:

Susy Diaz, Council Member, *District IV*

Voted:

Paula Bousquet, Council Member, *District V*

Approved as to Form and Legal Sufficiency:

Glen J. Torcivia, City Attorney