

**SPONSORED BY:**

**MAYOR BROWN**



**ORDINANCE NO. 2017-28**

**A BILL TO BE ENTITLED**

**ORDINANCE NO. 2017-28**

**AN EMERGENCY ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA, ENACTING A TEMPORARY MORATORIUM TO PROHIBIT THE ACCEPTANCE OR PROCESSING OF ANY APPLICATION FOR A PERMIT, DEVELOPMENT ORDER, OR ANY OTHER OFFICIAL ACTION OF THE CITY HAVING THE EFFECT OF PERMITTING OR ALLOWING THE CONSTRUCTION OF WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY CONTROLLED BY THE CITY; PROVIDING FOR A SIX-MONTH TERM TO BE EXTENDED IF NECESSARY BY THE CITY COUNCIL; PROVIDING FOR EARLY TERMINATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 2(b), Article VIII of the Florida Constitution and Chapter 166 of the Florida Statutes, the City of Neptune Beach possesses the powers to enact ordinances in order to protect the health, safety, and welfare of the City's citizens and residents; and

**WHEREAS**, the City Council of the City of Neptune Beach, Florida determines that it is in the best interest of its residents, businesses and visitors to enact sufficient land use regulations to ensure their health, safety and welfare; and

**WHEREAS**, to protect the public health, safety and welfare of its citizens, the City of Neptune Beach has adopted several ordinances, including regulation of the location, design and operation of wireless communication facilities (Chapter 29, Code of Ordinances); and

**WHEREAS**, Section 337.401, Florida Statutes, addresses the authority of municipalities to regulate the placement and maintenance of communication facilities, and utilities, in the public rights-of-way; and

**WHEREAS**, the communication industry is in a constant state of emerging technology that includes the infrastructure required to support the increased demand and capacity to receive and to transmit larger data and voice communications; and

**WHEREAS**, a new network of wireless communications infrastructure has emerged comprised of a series of localized antennas ("Small Cells"), or nodes ("Distributed Antenna Systems" or "DAS"), with wireline and/or wireless backhaul networks (together referred to as "wireless communication facilities") that are linked to a larger hub or tower site; and

**WHEREAS**, the City has been contacted by several companies requesting permission to place wireless communication facilities and infrastructure or to collocate facilities on poles owned by the City or on new utility poles within the public rights-of-way controlled by the City; and

**WHEREAS**, the current City ordinances do not address expressly the placement of small wireless communication facilities and infrastructure or collocation of facilities within the public rights-of-way; and

**WHEREAS**, additionally since the adoption of the City's codes, the Federal Communication Commission has adopted new rules addressing municipal processing of applications for certain wireless communication facilities; and

**WHEREAS**, these changes in federal regulations, the emerging technology, and the new communication infrastructure require a careful review by the City of its policies and ordinances associated with regulation of cell towers, antennae, and other wireless communication facilities; and

**WHEREAS**, the City Council determines that it is in the best interest of its residents, businesses and visitors to enact sufficient regulations to protect the public health, safety and welfare; and

**WHEREAS**, a temporary moratorium on the processing of applications for, and the issuance of right-of-way use permits, development permits, site plan approvals or any other official action of the City of Neptune Beach permitting or having the effect of allowing the construction of wireless communication facilities in the public rights-of-way within the City's control will allow time to review, study, hold public hearings, and prepare and adopt an amendment or amendments to the City of Neptune Beach Unified Land Development Code and/or Code of Ordinances; and

**WHEREAS**, proper notice has been given of the public hearing of this proposed ordinance and of a public hearing in the City Council Chambers; and

**WHEREAS**, the public hearings were held pursuant to the published notice described at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard; and

**WHEREAS**, the City Council for the City of Neptune Beach, Florida finds and declares that this ordinance is in the best interest of the public health, safety and welfare of the citizens and residents of the City of Neptune Beach, Florida and that it advances a significant and important governmental interest;



**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF NEPTUNE BEACH, FLORIDA, THAT:**

**ARTICLE II. - WIRELESS TELECOMMUNICATIONS FACILITY**

**SEC. 29-25.**

**(a) Purpose.**

- (1) The purpose of this ordinance is to enable the City of Neptune Beach sufficient time to review, hold public hearings and adopt an amendment or amendments to the City of Neptune Beach Unified Land Development Code and/or Code of Ordinances, relating to the location, design and operation of wireless communication facilities within the public rights-of-way within the City. The City will not approve any application or issue any permits authorizing the construction of wireless communication facilities within the public rights-of-way, except as provided in this ordinance, or as may otherwise be required by applicable law.
- (2) It is further the purpose of this Ordinance to fulfill the City's constitutional charge and statutory obligations to protect and preserve the public health, safety and welfare of the citizens of the City of Neptune Beach, regarding whether wireless communications facilities should be permitted within the public rights-of-way; and if permitted within the public rights-of-way, the types of regulations to be imposed upon placement of wireless communication facilities; and thus defer official government action until the City of Neptune Beach has properly held public hearings and adopted amendments to the City of Neptune Beach Unified Land Development Code and/or Code of Ordinances, as necessary.
- (3) To fulfill the City's obligations to continue uninterrupted provision of public works, fire safety, law enforcement, emergency management, emergency medical services, and city utilities, it is clarified that this moratorium will not apply to the construction, installation, maintenance and replacement of facilities within the public rights-of-way that are strictly for governmental purposes.
- (4) It is further the purpose of this Ordinance to set forth the rate for collocating small wireless facilities on City owned rights-of-way at the maximum rate allowed by law, currently established at \$150.00 per pole per year, pursuant to Section 337.401(7)(f)(3).

**(b) Definitions.**

*"Small Wireless Communication Facility"* means any equipment or facility used for the transmission or reception of wireless communications and located in public rights-of-way as defined in Section 365.172(3)(gg), Florida Statutes, or facilities to provide wireless communication services as listed at <https://www.fcc.gov/general/wireless-services>.

*"Governmental Purposes"* means, but is not limited to public works, fire safety, law enforcement, emergency management, emergency medical services or municipal utility operations.

**(c) Imposition of Temporary Moratorium.**

- (1) No application for permit, authorization or any other official action of the City having the effect of permitting or allowing the construction of small wireless communication facilities in the public rights-of-way within the city limits, may be accepted or processed or approved by the City, except as may be required by applicable law. To the extent such an application is submitted, the City staff is authorized to take action to deny such application during the term of this moratorium within such time frame as may be required by applicable law.
- (2) No Zoning Compliance Permit may be issued by the City which would authorize the construction of a small wireless communication facility within the public rights-of-way.
- (3) The imposition of the moratorium is not intended to affect nor does it affect wireless communication facilities serving strictly Governmental Purposes.

**(c) Term.**

The moratorium imposed by this ordinance is temporary and, unless dissolved earlier by the City, shall automatically dissolve in six (6) months from the effective date of this ordinance, unless extended in accordance with applicable law. This moratorium may be reasonably extended, if necessary, by ordinance of the City Council.]

**(d) Early Termination.**

The moratorium imposed by this ordinance may terminate prior to its six (6) month period upon the passage of ordinances regulating permitting or allowing the construction of wireless communications facilities in the public rights-of-way controlled by the City, provided:

- (1) Specific language terminating the moratorium is contained within said enacted ordinance; or by
- (2) Passage of another ordinance providing for termination by the City Council.

(e) **Repeal of Laws in Conflict.**

All local laws and ordinances in conflict with any provision of this ordinance are hereby repealed to the extent of any conflict.

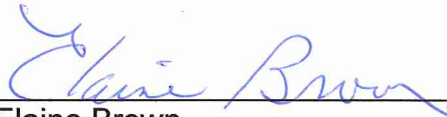
(f) **Effective Date.**

This ordinance shall take effect immediately upon passage after second reading/public hearing.

**VOTE RESULTS OF FIRST AND FINAL READING:**

Mayor Elaine Brown.	YES
Vice Mayor Scott Wiley	YES
Councilor Richard Arthur	YES
Councilor Rory Diamond	YES
Councilor Fred Jones	YES

Passed on First and Final Reading this 6<sup>th</sup> day November, 2017.



Elaine Brown  
Mayor

ATTEST:



Catherine Ponson  
City Clerk

Approved as to form and  
correctness:



Patrick Krechowski  
City Attorney

