

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE of the City of Pasco, Washington,  
Amending Ordinance No. 4416; and Amending PMC Chapter  
15.110 “Small Cell Tower Deployment Outside the Public Right-  
of-Way”**

**WHEREAS**, the City having adopted Ordinance No. 4416 to facilitate the implementation of broadband services within the City; and

**WHEREAS**, the enactment of Ordinance No. 4416 was done in haste to meet the Federal Communications Declaratory Ruling and Order effective on January 14, 2019; and

**WHEREAS**, since its adoption, corrections and other minor changes have been identified to clarify the application of this Ordinance. NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF PASCO, WASHINGTON, DO ORDAIN  
AS FOLLOWS:**

**Section 1.** That Chapter 15.110 entitled “Small Cell Tower Deployment Outside the Public Right-of-Way” of the Pasco Municipal Code shall be amended and shall read as follows:

Chapter 15.110

SMALL CELL TOWER DEPLOYMENT OUTSIDE THE PUBLIC RIGHT-OFWAY

Sections:

- 15.110.010 Purpose and Goal.
- 15.110.020 Permitted Communication Facility – Administrative Review.
- 15.110.030 Action on Administrative Review Applications.
- 15.110.040 Review Process.
- 15.110.050 Development Standards – Small Wireless Facilities.
- 15.110.060 Design Standards – Small Wireless Facilities.
- 15.110.070 Temporary and Emergency Installations.
- 15.110.080 “Dig Once” Requirements.
- 15.110.090 Duration.
- 15.110.100 Exceptions
- 15.110.110 Violations of this Chapter.

15.110.010 PURPOSE AND GOAL.

A) The purpose of this Chapter is to provide a process for permitting the deployment of small cell and microcell technology within the City of Pasco upon that property and structures that are not located within the public right-of-way by:

- 1) Providing a permitting system for service providers to acquire a permit to deploy small cell technology upon private properties and structures.
- 2) Establish design standards for facilities for independent, Collocation, and joint location upon private properties and structures.
- 3) Establish development standards to provide compatibility for the surrounding uses.
- 4) Provide for an expedited process of review and permitting.

15.110.020 PERMITTED COMMUNICATIONS FACILITY – ADMINISTRATIVE REVIEW.

A) Permit Required. No person shall place a communications facility or small wireless facility, or perform any construction activities without first filing an application for and obtaining a small cell permit.

B) Permitted Use. The following uses outside the public right-of-way , on privately-owned property (including within any utility easement, to the extent expressly set forth below), shall be a permitted use, subject to administrative review only and issuance of a permit, and subject to applicant's legal right to install and operate the communications facility on the property or structure:

- 1) Collocation of a small wireless facility or a Collocation that qualifies as an eligible facilities request on privately-owned property including, without limitation, within a utility easement, consistent with the height and other limitations set forth in PMC 15.100.050.
- 2) Modification of a pole, tower or support structure, or replacement of a pole or tower, for Collocation of a communications facility on privately-owned property (including within a utility easement that contains other existing poles) that qualifies as an eligible facilities request or involves a small wireless facility that does not exceed the limitations set forth in PMC 15.100.050. All other such modifications or replacements are subject to the provisions of PMC 25.86 “Special Permits”, and subject to the City’s design standards and regulations applicable to the construction or placement of such facilities.
- 3) Construction of a new pole (or monopole tower), within a utility easement on which there currently exist adjacent poles that are unavailable for joint or Collocation due to structural, accessibility or other reasons, to be used for joint or Collocation of a small wireless facility (that does not exceed the maximum height set forth in PMC 15.100.050), and the new pole (or monopole tower) is similar in design, size and scale to those of the existing, adjacent poles.

4) Construction of a communications facility, other than those set forth above in this section, involving the installation of coaxial, fiber-optic or other cabling, that is installed underground (direct buried or in conduit) or, aboveground between two or more poles or a pole and a tower and/or support structure, and related equipment and appurtenances.

5) All other types of communications facility under PMC Title 15, for which installation is permitted with administrative review alone.

6) Joint location of the ~~facility~~facilities within, or upon an existing communications facility within the pre-approved, or previously approved facility location, and meeting the design specifications provided herein.

C) Proprietary or Confidential Information of Applicant. The City shall make accepted applications publicly available to the extent required by RCW 42.56 (Public Records Act). City Applicant shall designate portions of its application materials that it reasonably believes contains proprietary or confidential information as “proprietary” or “confidential” by clearly marking each portion of such materials accordingly. In the event of a public records request for such marked materials, the City shall provide the applicant notice to seek Court protection of such records pursuant to RCW 42.56.540.

D) Administrative Review Application Requirements. The application shall be made by the applicable service provider or its duly authorized representative and shall contain the following:

1) The applicant’s name, address, telephone number, and e-mail address including emergency contact information for the applicant.

2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the City Applicant with respect to the filing of the application.

3) Specific location information including GIS coordinates for all facilities, and a general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work performed.

4) Detailed construction drawings regarding the proposed facility.

5) Conduit and/or ground-mounted equipment necessary for and intended for use in the deployment shall also be specified regardless of whether the additional facilities are to be constructed by the applicant or leased from an infrastructure provider.

6) To the extent the proposed facility involves Collocation on a pole, tower, or support structure, a structural report performed by a duly licensed engineer evidencing that the pole, tower, or support structure will structurally support the Collocation (or that the pole, tower, or support structure will be modified to meet the structural requirements) in accordance with applicable codes.

7) For any aboveground facilities, visual depictions or representations, if not included in the construction drawings, and for new aboveground facilities before and after photo simulations.

8) If a preapproved facility for joint location exists within, or within 300 feet of the specific location information identified in subsection 3) above, whether space is available for the applicant's small wireless facility and demonstrated technical evidence justifying the applicant's failure to utilize such site.

E) Ordinary Maintenance and Replacement. An application shall not be required for ordinary maintenance, repair, and replacement, other than to the extent required for applicable permits required under this Code.

F) Information Updates. Any material change to information contained in an application shall be submitted in writing to the City within thirty (30) days after the change necessitating the amendment.

G) Applicable Fees. Unless otherwise provided by applicable laws, all applications for a facility shall be accompanied by the fees as provided in PMC 3.07.105.

#### 15.110.030 ACTION ON ADMINISTRATIVE REVIEW APPLICATIONS.

A) Review of Applications for Administrative Review. The City shall review the application in light of its conformity with the applicable provisions of this Chapter, and shall issue a permit on nondiscriminatory terms and conditions subject to the following review:

1) The Director may approve Small Cell Permit application submitted in compliance with this Chapter. The Director may approve batched applications of up to twenty (20) sites specified in one Small Cell Permit application for processing. The Director may approve up to ten (10) additional sites in order to consider small cell sites within one logical service area in one application.

2) If more than one application for a Small Cell Permit is submitted by an applicant, they shall be considered in the order received. If multiple applications are submitted on the same date, the applicant shall indicate which application should be considered first. Any element of a deployment which qualifies as either an Eligible Facilities Request or a Collocation shall be specifically designated by the applicant and may be addressed separately by the Director in order to comply with the shot clocks established by Federal law.

3) The Director may approve, deny, or conditionally approve all or any portion of the sites proposed in the Small Cell Permit application.

4) Any application for a Small Cell Permit which contains an element which is not exempt from SEPA review shall comply with the mitigation conditions of any applicable Mitigated Declaration of Nonsignificance (MDNS) or shall simultaneously apply with the requirements of Chapter 43.21C RCW and PMC Title 23.

5) RF Certification. The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small cell deployment will be compliant with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the small cell facility will operate. If facilities necessary to the Small Cell Deployment are to be provided by another Franchisee, ~~then the Small Cell Deployment are to be provided by another Franchises,~~ then the Small Cell Deployment in the initial Franchise or in a subsequent Small Cell Permit shall be conditioned on an RF Certification showing the cumulative impact of the RF emissions on the entire installation.

6) Regulatory Authorization. Issuance of the Use Permit for the facilities shall also be contingent upon the applicant's provision of proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

15.110.040 REVIEW PROCESS. The following provisions relate to applications for a Small Cell Permit for non-public right-of-way location:

A) Timing for Review.

1) Application. The Director shall within ten (10) days of receiving an application determine and notify the applicant whether the application is complete; or if an application is incomplete, the City must specifically identify the missing information, and may toll the approval as provided below. The applicant may resubmit the completed application within twenty (20) days without additional charge, and the subsequent review will be limited to the specifically identified missing information subsequently completed, except to the extent material changes to the proposed facility have been made by the applicant (other than those requested or required by the City). In which case, a new application and application fee must be submitted.

2) Completion for Review. Within sixty (60) days of the date of determination of the completed application, the Director shall approve, approve with modifications, or deny an application for joint or Collocation, and ninety (90) days for an application for a new communications facility structure.

3) Tolling. Other than tolling the time for review resulting from an incomplete application, review may only be tolled by mutual agreement between the applicant and the City.

4) The Director must advise the applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions and/or regulations on which the denial was based. The decision to deny the application shall be in writing and supported by substantial evidence contained in a written record, publicly released, and sent to the applicant. The written decision, supported by such substantial evidence, shall constitute final action by the City. The review period or “shot clock” shall run until the written decision, supported by substantial evidence, is released and sent to the applicant contemporaneously. The applicant may cure the deficiencies identified by the Director and resubmit the application within thirty (30) days of the denial without paying an additional application fee unless denial was issued due to noncompliance with design guidelines or other requirements under this Chapter (in which case, a new application fee must be paid). The Director shall approve or deny the revised application within thirty (30) days of receipt of the revised application. The subsequent review by the Director shall be limited to the deficiency cited in the original denial and any material changes to the application made to cure any identified deficiencies.

5) If the Director fails to act on an application within the review period provided in subsection 4) above, the applicant shall immediately provide the Director written notice that the time period for acting has lapsed, and the Director then has twenty (20) days after receipt of such notice ~~when~~ within which to render ~~it's a~~ written decision. If the Director fails to do so, the application is then deemed approved by passage of time and operation of law. The applicant shall provide notice to the Director at least seven (7) days prior to beginning construction or Collocation pursuant to a permit issued to a deemed approved application, and such notice shall not be construed as an additional opportunity for objection by the Director or other entity to the deployment.

6) Any party with standing aggrieved by decision of the Director, may appeal the decision pursuant to PMC Chapter 2.19.

B) Review of Facilities.

1) Review of the site locations proposed by the applicant shall be governed by the provisions of this Chapter, State law, and Federal statutes and regulations, as well as applicable case law. Applicants for Small Cell Permits shall be treated in a competitively neutral and non-discriminatory manner with other service providers utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement or cumulative impacts. Small Cell Permit review under this Chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

2) Review of eligible facilities requests. Notwithstanding any of the provisions of this Chapter, the City shall approve within sixty (60) days of the determination of a completed application and may not deny applications for eligible facilities requests according to the procedures established under 47 CFR 1.40001(c).

C) **Underground Utility Requirements.** Compliance with nondiscriminatory undergrounding requirements that prohibit electric, telecommunications, and cable providers from installation ~~a~~ of vertical or pole structures in the public right-of-way without prior discretionary review and approval in areas zoned for single-family residential and downtown commercial, provided, however, such requirement shall not prohibit the replacement of existing structures. Horizontal runs shall be placed underground in all areas where electric, telecommunications, and cable lines are underground, unless otherwise approved by the Director, or designee, in connection with temporary installations. The above requirements are supplementary to those requirements for undergrounding as provided in Chapter 15.70.

D) **Expedited Review.** An applicant that has an existing Franchise, or a pending Franchise application electing to seek expedited review for the location of one or more small wireless facility on a previously approved communications facility having the joint location capacity to house multiple wireless providers meeting the development standards provided in PMC 15.100.050 and PMC 15.100.060, and provided the RF certification and the regulatory authorization as required by PMC 15.100.030(6) and PMC 15.100.030(7) shall be granted a small cell permit within thirty (30) days of a completed application and proof of compliance with the requirements above.

#### 15.110.050 DEVELOPMENT STANDARDS – SMALL WIRELESS FACILITIES.

A) **Maximum Size of Permitted Use.** Small wireless facilities and new, modified, or replacement poles, towers, and support structures (subject to the further limitation for replacement of support structures as defined in PMC 15.10.025(AD)) to be used for Collocation of small wireless facilities may be placed upon private properties or structures as a permitted use in accordance with Section 15.110.020 subject to the following requirements:

1) Each new, modified, or replaced pole, tower, or support structure installed shall not:

(a) Exceed five (5) feet above the tallest existing structure, pole, tower, or support structure (not exceeding fifty (50) feet) as of the effective date of this Chapter, and located within five hundred (500) feet of the new proposed pole, support structure.

(b) Exceed ten (10) feet on any utility distribution pole where required by the electrical utility separation requirements.

(c) Exceed the maximum height limitation as permitted in the zone, or zones, on which the facility is to be located.

(d) Be no closer than three hundred (300) feet from an existing communications facility within any residential zone, target area, or the location where, due to the nature and character of the neighborhood, such saturation would be incompatible with nearby land uses; impact traffic safety and other uses of the right-of-way; and not unreasonably burdensome to the applicant.

B) Minor Deviations.

1) The Director may authorize minor deviations in the Small Cell Permit from the dimensional design and concealment technologies referenced in the Franchise or design standard.

2) A deviation in height of the pole up to ten (10) above the height of the existing pole may be permitted.

3) Deviations in the dimensions or volume of small cell facilities which do not exceed the cumulative total provided by the definition of a small cell facility in RCW 80.36.375 may be considered a minor deviation when an applicant replaces components of an existing, approved small cell facility. Similarly, the addition of antennae on a pole, not to exceed a cumulative total of six (6) cubic feet shall be considered a minor deviation. Provided, however, that in each instance the new or revised facilities shall not defeat the concealment features set by the City's generally applicable pole design standards.

4) Small Cell Permits seeking to install facilities with the approval of minor deviations shall be processed within ninety (90) days of receipt of a complete application ~~and~~ or final approval of a permit, whichever occurs last.

5) The decision of the Director to approve a Small Cell Permit with a minor deviation, if any, shall be final.

C) Significant Deviations. Any request for significant deviations from the approved small cell facilities design, Small Cell Permit or City's design standards shall be considered under the provisions of PMC 25.86 "Special Permits", and if applicable, pursuant to the ~~timeliness~~timelines established by Chapter 15.100. An applicant seeking approval of a new pole or a replacement pole in a ~~restricted zone~~ Target Area or undergrounded areas, shall be subject to the same review process pursuant to Chapter 25.86 PMC.

D) Subject to the City's rights to additional ducts or conduits provided by RCW 35.99.070, leasing of excess space in ducts, conduits, and on a pole is a matter between interested parties (subject to any applicable pole attachment regulations and any other applicable statutory, regulatory or contractual obligations); however, lessees of such physical facilities must still comply with the terms of this Chapter, unless otherwise expressly exempted by the City.



E) Discretionary Review Requirements. Unless an applicant seeks to install a communication facility that conforms to the specific uses, size, height, and separation limitations as set forth above, or involves ordinary maintenance, repairs and replacement, the application shall be subject to the provisions of PMC 25.86 “Special Permits”, and subject to the City’s design standards and regulations applicable to the construction or placement of such facilities.

F) Site Development Requirements. The site, consistent with the zoning requirements of the district in which the facility shall be located, shall include:

1) Default setbacks.

(a) Ground-mounted equipment for wireless facilities, including any buildings, cabins or shelters, shall be used only to house equipment and other supplies in support of the operation of the wireless facility or tower. Any equipment not used in direct support of such operation shall not be stored on the site.

(b) Ground-mounted equipment for wireless facilities must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the City

2) Lighting and marking.

(a) Towers shall not be lighted or marked unless required by, and compatible with requirements of, the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).

(b) In all districts, appropriate security lighting meeting generally applicable standards for security lighting for the district shall be permitted.

3) Fencing/landscaping/signage.

(a) Fencing.

(1) Towers shall be secured and enclosed within a fence not less than six (6) feet in height or as permitted within the zoning designation for the site.

(2) The City may waive the requirements of subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location.

(3) For locations where decorative fencing is otherwise required, the City may allow chain link fence if decorative fence poses a risk for security or vandalism.

(4) For towers located within a floodplain where the ground equipment will be elevated on platforms, the City may waive any decorative fencing requirements in favor of chain link.

(b) Landscaping. In all zoning districts, the City shall have the authority to impose reasonable landscaping requirements surrounding any ground-mounted equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The City may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the City, landscaping is not appropriate or necessary.

(c) Signage. Signs located upon or about the wireless facility shall be limited to ownership and contact information, FCC antenna registration number (if required), and any other information as required by government regulation. Commercial advertising is strictly prohibited.

(d) Other decision factors.

(1) Collocation analysis.

(2) Alternative site analysis.

15.110.060 DESIGN STANDARDS – SMALL WIRELESS FACILITIES. In addition to those standards defined by PMC 15.10.025(AG) and PMC 15.100.050, small wireless facility structures, communications facilities and wireless facilities shall conform to the design standards for small cell tower deployment adopted by the City and incorporated here by this reference as Exhibit A.

15.110.070 TEMPORARY AND EMERGENCY INSTALLATIONS.

A) A deployable may be operated for a period of not more than one hundred twenty (120 days), when operated in connection with a special event after issuance by the City of a permit based upon a discretionary review only. Deployables operated in conjunction with a special event shall meet reasonable setbacks determined by the Director; shall be subject to receipt of a valid building permit, if applicable; shall meet uniform fire code requirements; and shall be removed within 72 hours of completion of the event.

B) Deployables may be operated in any zoning district after a declaration of an emergency or a disaster by an authority executive.

15.110.080 “DIG ONCE” REQUIREMENTS. Requirements for New Developments.

A) For all new commercial, residential, mixed use and other significant planned developments within the City, the Community Development Department and the Public Works

Department may require that the project developer make sufficient accommodation for the deployment of a small wireless facility within the development as a condition of permitting, and coordinate with providers who operate, or have applied for, facilities in the City either through the Community Development and the Public Works Departments or ensure the public right-of-way and any planned utility easements are adequate to accommodate the deployment of both aboveground and underground communications facilities. Specifically, planned utility easements should allow for an adequate number of huts, utility poles and other structures, as well as below-ground conduit, to adequately serve current and anticipated communications facilities. Access to easements should be provided to providers on a nondiscriminatory basis and at a reasonable cost, or pursuant to applicable laws.

B) For instances where a project developer chooses to install conduit for below-ground communications facilities, the developer should be encouraged or required to provide, on a nondiscriminatory basis and reasonable cost access to the planned utility easement areas. In addition, access to easements and trenches should be made available to providers as early in the development cycle as possible to minimize installation costs and disruption to residents, businesses, institutions and governments, and their property. The project developer should be encouraged to promote coordination among providers and other utilities so that each can benefit from the other's construction activities to allow timely and efficient access.

C) The City may request additional conduits and ducts to accommodate future development as provided by RCW 35.99.070.

15.110.090 DURATION. No permit for construction issued under this Chapter shall be valid for a period longer than twelve (12) months unless construction has been commenced within twelve (12) months of issuance of the permit, and is thereafter diligently pursued to completion.

15.110.100 EXCEPTIONS. Notwithstanding anything to the contrary in this Chapter, the following facilities are not subject to the provisions of this Chapter:

- A) Antennas used by residential households solely for broadcast radio and television receptions.
- B) Satellite antennas used solely for residential or household purposes.
- C) Television and AM/FM radio broadcast towers and associated facilities.

15.110.110 VIOLATIONS OF THIS CHAPTER. Violations of this Chapter shall constitute a Class 1 civil infraction which each day of violation constituting a separate offense. In addition to the remedy provided herein, the City may seek all remedies available in law or equity including injunctive relief and damages, including reasonable attorney fees and costs.

**Section 2.** This Ordinance shall take full force and effect five (5) days after its approval, passage and publication as required by law.

**PASSED** by the City Council of the City of Pasco, Washington, and approved as provided by law this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Matt Watkins, Mayor

ATTEST:

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Angela Pashon, Interim City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kerr Ferguson Law, PLLC, City Attorney