

ORDINANCE NO. _____

**AN ORDINANCE of the City of Pasco, Washington,
Amending Ordinance No. 4415; and Amending PMC Chapter
15.100 “Small Cell Tower Deployment Within the Public Right-
of-Way”**

WHEREAS, the having adopted Ordinance No. 4415 to facilitate the implementation of broadband services within the City; and

WHEREAS, the enactment of Ordinance No. 4415 was done in haste to met 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 15.100 entitled “Small Cell Tower Deployment Within the Public Right-of-Way” of the Pasco Municipal Code shall be amended and shall read as follows:

Chapter 15.100

SMALL CELL TOWER DEPLOYMENT WITHIN THE PUBLIC RIGHT-OFWAY

Sections:

- 15.100.010 Purpose and Goal.
- 15.100.020 Permitted Communications Facility – Administrative Review.
- 15.100.030 Action on Administrative Review Applications.
- 15.100.040 Review Process.
- 15.100.050 Development Standards – Small Wireless Facilities.
- 15.100.060 Design Standards – Small Wireless Facilitates.
- 15.100.070 Target Areas.
- 15.100.080 Grant of Permit.
- 15.100.090 Exceptions.
- 15.100.100 Violations of this Chapter.

15.100.010 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. The goals of this Chapter are:

1) To provide a permitting system for service providers to acquire a Franchise to utilize the public right-of-way and a permit to deploy small cell technology within the City's right-of-ways.

2) Establish target areas within which specific design standards are applicable to preserve the historic and aesthetic nature of the neighborhoods.

3) Establish design standards for facilities in both target areas and non-target areas within the City.

4) Secure for the City the opportunity for utilization of smart city initiative platforms to enhance municipal purposes.

5) Provide for an expedited process of review and permitting.

B) Service providers who seek to utilize the public right-of-way for small cell deployment in order to provide wireless communication, data transmission, or other related services to the citizens of the City must have a valid Franchise as required by PMC 15.40 and a Small Cell Permit to deploy the technology. Entities with Franchises who wish to utilize small cell deployment to upgrade or expand their services shall utilize the process set forth in this Chapter ~~and~~ for implementing Small Cell Permits to deploy their technology and obtain design approval of specific installations. The Small Cell Permit process administers deployment under the Franchise. The Franchise application, and application for small cell permit, shall be processed concurrently, together with any required State Environmental Policy Act (SEPA) review concurrently as one Master Permit within the meaning of RCW 35.99.010(3) and RCW 35.99.030.

15.100.020 PERMITTED COMMUNICATIONS FACILITY - - ADMINISTRATIVE REVIEW.

A) Permitted Uses. The following uses within the public right-of-way shall be a permitted use, subject to administrative review only and issuance of a Small Cell Permit. All such uses shall be in accordance with all other applicable revisions of this Chapter:

1) Collocation of a small wireless facility or a Collocation that qualifies as an eligible facilities request;

2) Modification of a pole, tower, or support structure, or replacement of a pole, for Collocation of a communications facility that qualifies as an eligible facilities request, or involves a small wireless facility that does not exceed the maximum size limitations as provided in Section ~~15.400.030~~100.050. All other modifications or replacements that exceed these limitations are subject to securing a Special Use Permit as required by PMC 25.86.

3) Construction of a new pole or a monopole tower (but no other type of tower) to be used for Collocation of small wireless facilities that does not exceed the maximum height set forth in PMC ~~15.400.030~~100.050.

4) Construction of a communications facility, other than those set forth above, 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) Joint location within or upon an existing communications facility within the pre-approved, or previously approved facility location or target areas as defined by this Chapter and meeting the design specifications provided herein.

B) Permit Required. No person shall place a facility described above in the public right-of-way without first filing an application for same and obtain a permit therefor, except as otherwise expressly provided in this Chapter.

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). 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 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 location capable of 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 and replacement, other than to the extent required for such work within the right-of-way, including but not limited to, street opening permit, right-of-way permit, electrical permit, and street closure permit.

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 and Rates. All applications required by this Chapter shall be accompanied by the fees which shall include:

- 1) Application fee.
- 2) Make-ready fees and rates including annual right-of-way occupancy rate,
- 3) Annual attachment rate as defined under PMC 3.07.105.

15.100.030 ACTION ON ADMINISTRATIVE REVIEW APPLICATIONS.

A) Review of Applications for Administrative Review. The rights granted under a Franchise are implemented through the issuance of Small Cell Permits which, when in conformance with the applicable provisions of this Chapter, shall be issued on nondiscriminatory terms and conditions. The Franchise application may be accompanied by one or more applications for a Small Cell Permit to deploy small cells. An initial Franchise and all related Small Cells Permit applications shall be processed concurrently as one Master Permit. See RCW 35.99.010(3) for the definition of "Master Permit."

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) Issuance of a Small Cell Permit to install a small cell deployment shall be contingent upon approval of a Franchise or the possession of a valid Franchise.

3) 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. All Small Cell Permits which are submitted in conjunction with a Franchise application shall be considered as one Master Permit.

(a) PROVIDED, HOWEVER, that an applicant with an existing Franchisee may, at the applicant's sole discretion, elect to utilize the expedited review process set forth in PMC 15.100.040(E).

(b) 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.

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

5) Any application for a Franchise or 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.

6) 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 Franchisees,~~ 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.

7) 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.

15.100.040 REVIEW PROCESS. The following provisions relate to applications for a Franchise and/or Small Cell Permit for small cell deployments:

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 a 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 ~~6)~~ 2) 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 its 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 Franchises and the Small Cell Permits (Master Permits) which implement the Franchise 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. Franchise and 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 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) Sufficient Available Right-of-Way. The City shall have the power to establish reasonable limitations on the placement of new or additional facilities within specific congested segments of the public right-of-way if there is insufficient space to accommodate all of the requests of applicants to safely and efficiently occupy the right-of-way. The City shall strive to the extent possible to accommodate all existing users and potential users of the public right-of-way, but shall be guided primarily by considerations of the public interest, the public's need for the particular utility or other service, the width and physical condition of the public right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the public right-of-way, and future plans for public improvements (including right-of-way widening), and development projects which have been determined to be in the public's interest.

E) 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 facilities on a previously approved communications facility having the capacity to house joint location of 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.

15.100.050 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 structure as defined in PMC 15.10.025(AD)) to be used for Collocation of small wireless facilities may be placed in the public right-of-way as a permitted use in accordance with Section 15.100.020 subject to the following requirements:

1) Each new, modified, or replaced pole, tower, or support structure installed in the public right-of-way shall not:

(a) Exceed five (5) feet above the tallest existing 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; or

(c) Exceed fifty (50) feet above ground level, whichever is greater.

(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) feet above the height of the existing pole, by the Franchise 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 standard adopted pursuant to the Franchise.

4) Small Cell Permits to install facilities seeking approval of minor deviations shall be processed within ninety (90) days of receipt of a complete application ~~and~~ or final approval of a Franchise, 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 designated in the Franchise, 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 or underground 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) Additional Right-of-Way Franchise Standards. In addition to the standards provided in this Chapter, any permit issued under this Chapter shall be subject to the requirements of PMC 15.70.

G) Limitations on Location. No small wireless facility may be located upon any traffic control device, traffic signal poles, poles supporting traffic or pedestrian flashers, beacons or signs, or any wireless facility which would impede the visibility of a traffic control device or create a hazard to other users of the right-of-way.

15.100.060 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 herein by this reference as Exhibit A.

15.100.070 TARGET AREAS: ~~The following areas are designated as "target areas" where the City has identified the areas having historic value, expended significant public~~

~~investment to promote development, requiring the placement of all utilities underground and developed in aesthetic design, or where adding new structures in the right-of-way can present significant risk to vehicle, safety and pedestrian access requiring a consistent aesthetic structure.~~
The target areas are designated as follows:

A) Downtown Target Area: including that area west of the west side of Tacoma Street; east of the west side of 10th Avenue; north of the south side of Columbia Street and south of the south side of Bonneville Street;

B) Court Street/Sylvester Streets Target Area: Including from west of the west side of 1st Avenue and to east of the west side of Road 40;

C) 20th Avenue Target Area: Including both side of Pearl Street and north of Lewis Street and also south of Lewis Street and north of “A” Street;

D) 3rd Avenue Target Are: Including both sides from south of the roundabout and to the north of Columbia Street;

E) 4th Avenue Target Area: Including both sides from south of the SR 12 Overpass and to the north of “A” Street;

F) Lewis Street Target Area: Including both sides from west of 20th Avenue and to east of the US 395 off-ramp; and

G) The I-182 Corridor Target Area: As defined in PMC 25.130.020.

15.100.080 GRANT OF PERMIT.

A) Authority Granted - - No Property Right or Other Interest Created. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Chapter, and does not create a public right or grant authority to the applicant to impinge on the rights of others who may already have an interest in the public right-of-way.

B) 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.

C) No Master Permits, Franchise, or Small Cell Permit may be assigned, transferred, sublet or licensed for the use of any other entity without the prior written consent of the City which will not be unreasonably denied, conditioned, or withheld subject to those transfers as may be permitted by PMC 15.70.320.

15.100.090 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.

15.100.100 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:

Angela Pashon, Interim City Clerk

APPROVED AS TO FORM:

Kerr Ferguson Law PLLC, City Attorney