

ORDINANCE NO. 22-____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 62. OF THE BREVARD COUNTY CODE OF ORDINANCES, LAND DEVELOPMENT REGULATIONS. AT ARTICLE VI. ZONING REGULATIONS. DIVISION 7. COMMUNICATIONS FACILITIES., SUBDIVISION I. GENERAL PROVISIONS. AT SECTION 62-2403 DEFINITIONS. TO AMEND THE DEFINITION OF WIRELESS TELECOMMUNICATIONS FACILITY. AND TO FURTHER AMEND SUBDIVISION II. PERMIT LEVELS AND GENERAL DEVELOPMENT STANDARDS. AT SECTION 62-2422. GENERAL DEVELOPMENT STANDARDS. IN ORDER TO AMEND THE STANDARDS AS TO MINIMUM SETBACKS AND TO PROVIDE A WAIVER PROVISION; AND CREATING A NEW SECTION 62-2425. COMMERCIAL SMALL WIRELESS FACILITY LOCATIONS. IN ORDER TO ADDRESS THE PLACEMENT OF COMMERCIAL SMALL WIRELESS FACILITIES IN RESIDENTIALLY ZONED CLASSIFICATIONS; PROVIDING FOR SEVERABILITY, CONFLICTS, AREA ENCOMPASSED, PROVIDING FOR AN EFFECTIVE DATE AND INCLUSION IN CODE.

WHEREAS, pursuant to Article VIII, Section (1)(g) of the Florida Constitution and Section 125.01, Florida Statutes, the Board of County Commissioners of Brevard County, Florida (hereinafter "Board"), has broad authority to enact ordinances not inconsistent with general law or with special laws approved by the vote of the electors; and

WHEREAS, the Board of County Commissioners wishes to clarify the definition of wireless telecommunications facilities; and

WHEREAS, the Board of County Commissioners desires to amend the residential setbacks as they pertain to wireless telecommunications facilities and limit commercial activities in residential zoning classifications; and

WHEREAS, the Board of County Commissioners has determined that the proposed amendment serves the public health, safety and welfare of the citizens of Brevard County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. Chapter 62., Article VI., Division. 7., Subdivision I., at Section 62-2403., entitled, “Definitions,” of the Code of Ordinances of Brevard County, Florida, is hereby amended in order to amend the definition of Wireless telecommunications facility (WTCF) to read as follows:

Sec. 62-2403. -Definitions.

Wireless telecommunications facility (WTCF) means any staffed or unstaffed location for the transmission and/or reception of radio frequency signals, or other wireless communications, and usually consisting of an antenna or group of antennas, transmission cables fiber optic cables, DC power cables, and equipment cabinets, and may include a tower. The following shall be deemed a wireless communications facility: new, mitigated, or existing towers, public towers, replacement towers, antenna co-location on existing towers, attached wireless communications facilities, concealed wireless communication facilities, non-concealed wireless communication facilities and all small wireless facilities installed and operated by a wireless provider as defined in Chapter 337, Florida Statutes, that meet the following qualifications (1) any antenna associated with the facility that is located inside an enclosure of no more than six cubic feet in volume or, in the case of antennas that have exposed elements, any antenna and all of its exposed elements that could fit within an enclosure of no more than six cubic feet in volume; and (2) all other wireless equipment associated with the facility that is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment shall not be included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

SECTION 2. Chapter 62, Article IV., Division. 7., Subdivision II., at Section 62-2422., entitled, “General Development Standards.” of the Code of Ordinances of Brevard County, Florida, is hereby amended to read as follows:

Sec. 62-2422. - General development standards.

The following design standards apply generally to all WTCF antenna, antenna support structures and towers unless a different design standard is identified in the specific permit level requirements.

(1) *Minimum setbacks.*

- a. Setbacks from residential, child care facility, public and nonpublic school structures. All WTCFs shall have a minimum setback of a distance equal to twice the height of the proposed tower except if no tower is being utilized then the setback shall be a minimum of 100 feet from a residential, child care facility, public, or nonpublic school structures, as defined in Chapter 402, Florida Statutes. The requirements of this section shall not apply to the installation of small wireless facilities and support structures located within county public rights-of-way as governed by the regulations of Section 86-73 of the Brevard County Code of Ordinances. Furthermore, the requirements of this section shall apply to new WTCFs only and shall not apply to the installation or modification of antennas or equipment on existing WTCFs.

- b. [This subsection shall remain as previously adopted.]

(2)-(9) [These sections shall remain as previously adopted.]

(10) These general design standards may be waived by the Board of County Commissioners upon a showing that said general design standards will result in either a significant diminution or a significant gap in a wireless provider's service. Any waiver shall be granted or denied within 45 days after the date of a hearing on the request.

SECTION 3. Chapter 62, Article IV., Division. 7., Subdivision II., is hereby amended to include a new section 62-2425. entitled "Commercial small wireless facility locations." and said new section 62-2425 of the Code of Ordinances of Brevard County, Florida shall read as follows:

Sec. 62-2425. - Commercial small wireless facility locations.

No commercial wireless providers as defined in Chapter 337, Florida Statutes shall be allowed to install commercial small wireless facilities in residential zoning classifications.

Secs. 62-2426-62-2429. – Reserved.

SECTION 4. Severability. If any section, subsection, sentence, clause or provision of this Ordinance shall be declared invalid, the remainder of this Ordinance shall be construed as not having contained said section, subsection, sentence, clause or provision and shall not be affected by such holding.

SECTION 5. Conflict. All resolutions, ordinances, and agreements or parts thereof that may be determined to be in conflict with this ordinance are repealed.

SECTION 6. Area Encompassed. This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION 7. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This Ordinance shall take effect upon adoption and filing pursuant to law.

SECTION 8. Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED AND ADOPTED, in Regular Session, this _____ day of _____, 2022.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk
(SEAL)

Kristine Zonka, Chair

As approved by the Board on _____

Reviewed for legal form and content:

County Attorney