RESOLUTION

NO. 2020-\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF PENSACOLA, FLORIDA URGING ALL MEMBERS OF CONGRESS TO OPPOSE SENATE BILL (SB) 1699, “STREAMLINING THE RAPID EVOLUTION AND MODERNIZAITON OF LEADING-EDGE INFRASTRUCTURE NECESSARY TO ENHANCE SMALL CELL DEPLOYMENT ACT” (“ACT”) INDRODUCED BY SENATORS JOHN THUNE (SD) AND BRIAN SCHATZ (HI), WHICH WILL FURTHER PREEMPT LOCAL AUTHORITY OVER “SMALL CELL” WIRELESS FACILITIES ON TAXPAYER-FUNDED PROPERTY; DIRECTING CITY ADMINISTRATION TO TRANSMIT COPIES OF THIS RESOLUTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, SB 1699 represents a direct affront to traditionally held local authority and will complicate, rather than simplify, national efforts to expedite infrastructure deployment by prolonging state and local processes; and

WHEREAS, SB 1699 will complicate the existing efforts by state and local governments to deploy small cell infrastructure. Roughly half of all US states have passed legislation specifically addressing the deployment of small cell wireless structures, and the local governments in those states are busy implementing new ordinances and procedures to comply with those changes, as well as negotiating with industry partners on deployments. Further, recent regulations from the Federal Communications Commission, FCC Order 18-133, are currently being challenged in court by dozens of local governments, including the City of Coconut Creek, Florida, and supported by, among others, the U.S. Conference of Mayors, and other government associations, who insist the Order oversteps the FCC’s legal authority. The Act introduces an unnecessary, one-size-fits-all preemption of those efforts, when little data exists to determine what is most effective or necessary; and

**WHEREAS**, the City of Pensacola was mentioned numerous times in FCC Order 18-133 for the proposition the City supports stripping cities of local authority and limiting fees cities can charge wireless companies for activities in public rights-of-way; and

**WHEREAS**, the City of Pensacola has since undergone a change of governance and now takes a different position than the position expressed at FCC Order 18-133; and

**WHEREAS**, the Act imposes unfair and inappropriate timelines on local governments. The shot clocks proposed by SB 1699 are considerably shorter than those the federal government applied to itself in the bipartisan MOBILE NOW Act. The reduced size per installation of small cell infrastructure does not directly translate to an accordingly reduced procedural burden on local governments. Cities must still review each site individually to ensure that it meets the jurisdiction’s requirements. Further, the limited extension for small jurisdictions and bulk requests of over fifty applications does not address these resource challenges for states and localities; and

WHEREAS, limiting fees and rates to direct and actual costs is an extreme overreach by the federal government. Cities negotiate with providers to ensure appropriate compensation to taxpayers for private, profit-generating use of public property and to incentivize development that benefits community residents. In some cases, state constitutions’ prohibition on gifts to private entities prohibit cities from assessing less than a fair market value for rental of public property. When cities are prohibited from controlling these rates, they are forced to subsidize private development, at the cost of other critical local services such as road maintenance and public safety; and

**WHEREAS**, there are substantiated reports of wireless carrier subcontractors trespassing on private property of Pensacola residents and three known incidents of wireless subcontractors erecting tall wooden “small cell” poles in Pensacola public rights-of-way in historic downtown Pensacola without permits, and, subcontracting practices in other cities have resulted gas explosions in Sun Prairie, Wisconsin, San Francisco, California and Durham, North Carolina causing substantial property damage, severe injuries and fatalities; and

**WHEREAS**, wireless industry trade associations are attempting to further erode local authority and local decision-making by submitting Petitions for Declaratory Rulings and a Petition for Rulemaking at FCC WT Docket WT 19-250, FCC WC Docket 17-84, etc., petitioning the FCC to (a) modify the “substantial change” test, (b) allow “compound expansion” collocation, (c) impose new procedural requirements on local governments, and (c) alter remedies for noncompliance; and

**WHEREAS**, the FCC Petitions are opposed by many cities, the U.S. Conference of Mayors, and the National League of Cities because they would “[short circuit] local regulatory oversight in the name of 5G deployment”, “put additional restrictions on local governments” and “negatively impact our communities”; and

**WHEREAS**, it is the responsibility of the City of Pensacola to actively manage the rights-of-way to protect its citizen’s and residents’ safety, preserve the character of our community, and maintain the availability of the rights-of-way for current and future uses. Stringently limiting those factors that we may consider in our own land use decisions, and restricting compensation only to the “actual costs” we incur to process applications, would limit our ability to serve and protect our residents; and

WHEREAS, the City Council of the City of Pensacola believes the opposition to SB 1699 is in the best interests of the residents and businesses of the City and State of Florida.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA THAT:**

**SECTION 1.** The foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are incorporated herein by this reference.

**SECTION 2.** The Pensacola City Council urges Senators Senators Marco Rubio and Rick Scott, and all members of Congress to oppose SB 1699.

**SECTION 3.** The Pensacola City Council directs City Administration to transmit a copy of this Resolution to Representative Matt Gaetz, the U.S. Congressional Legislative Delegation for Florida, the National League of Cities, the Florida League of Cities, and any other interested parties.

**SECTION 4.** All Resolutions or parts of Resolutions in conflict herewith, be and the same are repealed to the extent of such conflict.

**SECTION 5.** If any section, sentence, clause or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

**SECTION 6.** This Resolution shall become effective immediately upon its passage and adoption.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA, THIS \_\_\_ DAY of JANUARY, 2020.**

Adopted:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Approved:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

President of City Council

Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City Clerk