I. Staff Recommendation

Staff recommends that the Board of Commissioners review the attached draft language and provide staff with direction on proceeding with a proposed ordinance.

II. Background

At the Board of Commissioners’ Work Session held on April 21, 2020, a general discussion was held regarding the regulation of wireless facilities, such as the 5G facilities that have recently been installed around the City. The Board discussed standards that may be included in an update of Article XVI Wireless Telecommunications Facilities Siting, of the Land Development Code (LDC).

The current item provides draft LDC language for the Board’s consideration and discussion. Draft revisions of LDC Sections 264.00 and 265.00, the sections containing the standards, are attached to this agenda item. The memorandum provided to the BOC for their April 21, 2020 discussion is also attached.
§ 264.00 - LOCATION OF WCAS.

Unless otherwise specifically indicated, Sections 264.00 and 265.00 apply to WCAs and their accessory facilities and structures only.

(A) Antennas and supporting mechanical equipment may be placed installed on or attached to existing structures, such as wireless or water towers, buildings, light or power poles, electrical power poles, or other freestanding structures in all zoning districts (inclusive of rights-of-way) except; Single Family Residential (R-100, R-100A, R-70A), One and Two Family Residential (R-60 and R-70), Conditional Residential Mix (CRM), Residential Planned Development (RPD), and Land Conservation (LC). No WTWCFs will be permitted in the above -mentioned zoning districts unless such placement is compelled by the requirements of the Telecommunications Act. Such facilities shall add no more than 20 feet in height above the existing structure and shall be a neutral color similar to that of the supporting structure.

(B) Wireless communications facilities Stealth antennas may be installed on or attached to City Property if the provider or facility owner obtains a lease or license agreement with the City.

(C) Wireless small or microcell communications facilities Stealth antennas may be installed on or attached to existing structures in the rights-of-way of arterial roads if the provider or facility owner complies with all provisions of this article, Article IV of chapter 15 of the Tarpon Springs Code, and of Article IX of the Land Development Code regarding Development Standards.

(D) Equipment cabinets to service antennas placed in the rights-of-way of arterial roads may be placed in proximity to the pole within the rights-of-way, but must be no larger than three feet by three feet by six feet and must be designed, and/or screened to aesthetically conform to landscaping and building structures in the immediate vicinity of such installation and shall be partially buried or otherwise camouflaged in such a manner as the City Manager or designee may dictate and must be outside required sight triangles as outlined in Section 37.00 of the City Code. Equipment cabinets shall be placed underground if it is not commercially impracticable to do so. Mini-cellular technology shall be used to eliminate the need for equipment cabinets on the ground where it is not commercially impracticable to do so. The placement of equipment cabinets shall not cause a conflict with other public and private utilities in such right-of-way and shall be located in a manner that will allow public and private utilities to share such right-of-way with such equipment cabinets.

(E) WCAs shall require no personnel on the premises except as necessary for maintenance and repair.

(F) No accessory equipment cabinets or shelters greater in size than six feet by six feet by ten feet shall be allowed in any governmental rights-of-way and only if the placement of a cabinet or shelter of such size will not interfere with the use of said right-of-way by other utilities, public or private. The least visually distracting and
smallest size cabinet or shelter suitable for providing the necessary service to serve the WCA shall be the maximum allowed.

(G) A WCA proposed to be located on a historic landmark, or in a designated historic district, or in the community redevelopment future land use district (CRD), may be denied if the WCA creates a detrimental impact on the historic character of the historic landmark or the applicable district.

(H) Co-located antennas may not be placed on the following structures: street signs, street lights and lamps, sign poles, pedestrian crossings, traffic signals, traffic signal poles, traffic signal arms, or on any pole or structure that is less than 15 feet in height.

(I) New poles in rights-of-way must meet the following locational criteria:

(1) Shall be located no further than 250 feet from a roadway intersection or in an alley.

(2) Shall meet distance requirements as specified by the City Engineer, the City Building Official, the City Planning and Zoning Director, or the Fire Marshall for intersections, drives, sidewalks (existing and future), handicapped access in accordance with the Americans with Disabilities Act, protected trees (greater than four inches in diameter at breast height), traffic light poles, energized electric lines, hydrants, and other structures/features that have the potential to affect life/safety with new poles.

(3) In residential districts, location is restricted to where the shared property line between two residential parcels intersects the right-of-way, or otherwise in a manner that demonstrates the least impact to access to private property. Where the residential use occupies only one side of the street, the poles shall be placed on the opposite side of the street.

(4) In non-residential districts, location is restricted to the area between tenant spaces or adjoining properties where their shared property lines intersect the right-of-way, or otherwise in a manner that demonstrates the least impact to access to private property.

(J) WCAs are prohibited from locating or co-locating on any bridge structure within the City.

§ 265.00 - DESIGN STANDARDS OF WCASs.

(A) Any antenna placed on an existing tower, building, pole, facility, or other structure shall not add more than 20 feet to the height of the existing structure, and shall not add more than two (2) feet to the diameter or cross-sectional area or the existing structure, provided all other applicable standards are met.

(B) Any antenna placed on a structure within the rights-of-way shall not cause the full height of the structure plus antenna to exceed 40 feet or the height of the
structure, whichever is larger. If the antenna is to be placed in the rights-of-way in any area zoned for residential use or in areas zoned General Business District (GB), Waterfront Development (WDI), and Waterfront Commercial Fishing Development (WDI-A), the antenna must be flush with the structure and not exceed its height.

(C) Any provider seeking to place an antenna in the rights-of-way shall abide by all applicable sections of this article, Article IV of chapter 15 the Tarpon Springs Code, and of Article IX of the Land Development Code regarding Development Standards. A provider seeking to place an antenna in the rights-of-way shall first obtain permission from the owner of the pre-existing structure to place the antenna on the structure.

(D) Except as to existing non-stealth towers, stealth antennas shall be required. To qualify as a stealth antenna, illustrations or pictures of facilities similar to that proposed must be presented at the time of application for a Permit. The City staff shall make the final determination as to whether the proposed facility complies with the intent of this article and qualifies as a stealth antenna. Such final determination may be appealed to the board of adjustment (BOA) and any appeal permitted by this Code or by applicable law may be pursued from the determination rendered by the BOA.

(E) WCAs must be placed in a location not visible from any street unless an acceptable signal cannot be obtained from that location. If an antenna must be placed where it is visible from the street, or, if it is proposed for placement within a right-of-way, it must be placed wholly on the subject property and must not obstruct the visibility triangle as outlined in Section 37.00 of the City Code. This restriction is a safety based one necessary to provide unobstructed sight distance in both directions on all approaches to an intersection, so that the vehicle operator is afforded an opportunity to avoid collisions and that pedestrians can observe approaching vehicles.

(F) If placed on an antennas support structure, the antenna and associated electrical and mechanical equipment shall be of neutral color that is identical to or compatible with the color of the supporting structure, so as to make the antenna and equipment as unobtrusive as possible. Additionally, the aesthetics of top-mounted antennas shall be consistent with the support structure on which the antenna is located.

(G) No lighting shall be permitted unless required by the FAA or FCC. At time of construction of an antenna, in cases where there are residential uses located within a distance, which is 300 percent of the height of the antenna, dual mode lighting shall be requested from the FAA and/or FCC.

(H) WCAs shall be constructed in compliance with all applicable local, state and federal construction codes.

(I) WCAs shall comply with all applicable FCC and FAA regulations.

(J) The WCA shall meet all requirements of the zoning district in which it is located which do not directly conflict with this article.
(K) All WCAs shall be designed to blend into or meet the architectural design character of the principal (primary) structure where possible.

(L) A new pole that is replacing an existing utility pole shall be of substantially similar design, material, and color as the utility pole being replaced.

(M) A new pole that is not replacing an existing utility pole in a right-of-way shall meet the following design standards, except within a designated scenic corridor:

   (1) Poles shall be powder coated and black or dark green in color.
   (2) Poles shall be either round or fluted in shape.
   (3) Poles shall have a decorative base.
   (4) Within the City’s CRA, shall include decorative street lighting meeting the City’s design standards for such lighting within the CRA.

(N) A new pole that is not replacing an existing utility pole in a right-of-way that is within a designated scenic corridor shall be camouflaged to resemble a native tree species.

(O) The height of a small wireless facility shall be limited to 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. The height for a new utility pole is limited to the tallest existing utility pole located in the same contiguous right-of-way as of July 1, 2017, measured from a grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the height of the utility pole shall be no greater than 50 feet, inclusive of the height of the small wireless facility attached thereto.

(P) A new utility pole or similar vertical structure to support a small wireless facility installed in public right-of-way must be designed to afford collocation of at least three antennae, and must be of a design which will limit the added visual blight the installation will cause, and/or which will provide alternative functionality to enhance public safety, such as by incorporation of decorative lighting elements.

(Q) Cabinets, grounding rods and other associated equipment located within a right-of-way, including connecting equipment shall be located underground and must meet the following criteria:

   (1) No exposed wiring or conduit is permitted.
   (2) All remaining equipment such as mounting fixtures, banding fixtures, pull boxes, and the like, shall match the color of the pole or structure.

(R) WCAs shall not include advertising of any kind.

(S) WCAs shall not interfere with any water view or any designated scenic corridor and to the greatest extent possible use camouflaging techniques to blend in with the surrounding area. Any WCA proposed for a navigation marker, dock, or other in-water structure where the structure owner has given permission must be flush with the structure and not exceed its height.
The City of Tarpon Springs, like most communities throughout the country, has recently experienced an increase in the construction of small or micro wireless communications facilities within its public rights-of-way. These facilities are the result of the nationwide rollout of 5G cellular service. As these facilities have become more prominent, the City has received inquiries regarding its ability to regulate them. We have provided information in this report for your review regarding the City’s options for addressing the concerns regarding these facilities.

I. Background

In 2017, the Florida Legislature adopted the Advanced Wireless Infrastructure Deployment Act which placed certain limits on local government authority to regulate small or micro wireless communications facilities within public rights-of-way, and required local governments to expedite the review of permit applications for such facilities. In November of 2017, the City placed a 120-day moratorium on the installation of wireless facilities in City rights-of-way. The moratorium was extended in March of 2018 and July of 2018. The City’s moratorium expired in November of 2018. In 2019, the Florida Legislature established additional limitations on local governments to regulate these facilities.

II. What the City My Not Regulate

According to Section 337.401(7) of Florida Statutes, local governments may not:

1. Charge applicants to register or renew small wireless facilities in the right-of-way.
2. Prohibit, regulate, or charge for the collocation of facilities in the right-of-way or for the installation, maintenance, modification, operation, or replacement of utility poles used for the collocation of small wireless facilities in the public right-of-way.
3. Require the placement of small wireless facilities on any specific utility pole or category of poles, or require multiple antenna systems on a single utility pole.
4. Directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the City, including reserving fiber, conduit, or pole space for the City.
5. Require an applicant to provide more information to obtain a permit than is necessary to demonstrate the applicant’s compliance with applicable codes for placement of small wireless facilities in the locations identified by the application.
6. Limit the placement of small wireless facilities by minimum separation distances.
7. Require a demonstration that collocation of a small wireless facility on an existing structure is not legally or technically possible as a condition for granting a permit for the collocating of a small wireless facility on a new utility pole except as provided for below.
8. Require compliance with the City’s regulations regarding placement of small wireless facilities or a new utility pole used to support a small wireless facility in rights-of-way under the control of the Florida Department of Transportation unless the authority has received a delegation from the department for the location of the small wireless facility or utility pole, or require such compliance as a condition to receive a permit that is ancillary to the permit for collocation of a small wireless facility, including an electrical permit.
9. Require a meeting before filing an application.
10. Require direct or indirect public notification or a public meeting for the placement of communication facilities in the right-of-way.
11. Limit the size or configuration of a small wireless facility or any of its components, if the small wireless facility complies with the size limits allowed by Florida Statutes (See Paragraph III below).
12. Prohibit the installation of a new utility pole used to support the collocation of a small wireless facility if the installation otherwise meets the requirements of Section 337.401(7)(d), Florida Statutes.
13. Require that any component of a small wireless facility be placed underground except in areas where all utilities in the right-of-way are required to be placed underground.
14. Institute, either expressly or de facto, a moratorium, zoning-in-progress, or other mechanism that would prohibit or delay the filing, receiving, or processing of registrations, applications, or issuing of permits or other approvals for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles used to support the collocation of small wireless facilities.

**III. What the City May Regulate**

According to Section 337.401(7)(r) of Florida Statutes, local governments may only require that:

1. A new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color;
2. Reasonable spacing requirements concerning the location of a ground-mounted component of a small wireless facility which does not exceed 15 feet from the associated support structure; or
3. A small wireless facility to meet reasonable location context, color, camouflage, and concealment requirements, subject to the limitations in Section 337.401(7), Florida Statutes; and
4. A new utility pole used to support a small wireless facility to meet reasonable location context, color, and material of the predominant utility pole type at the proposed location of the new utility pole.

Section 337.401(7)(d) of Florida Statutes, further states that local governments shall limit the height of small wireless facilities to 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. Unless waived by the local government, the height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than utility poles for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority shall limit the height of the utility pole to 50 feet.

IV. Summary

Florida law does not allow the City to prohibit the location of small wireless facilities in its rights-of-way, and limits the ability of the City to establish review processes and location or design requirements for such facilities. Note that such limitations of Florida Statutes would also prohibit requiring applicants to address any health and safety concerns of electromagnetic radiation from such facilities. Note, however, that Florida Statutes does allow the City to establish “reasonable location context, color, camouflage, and concealment requirements” within the limitations addressed above.

The above information is provided for you consideration. We are available to address questions and provide any follow-up action requested by the Board.

Exhibit:
Photographs of small wireless facilities located in Tarpon Springs.