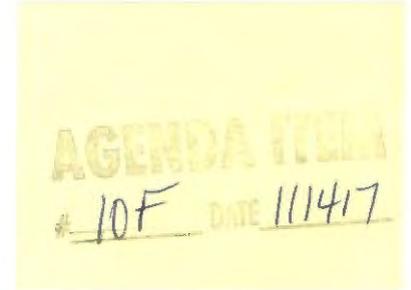


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TO: Mayor and Councilmembers
FROM: Scott E. Simpson, City Attorney
DATE: November 8, 2017
RE: Moratorium Ordinance for Wireless Communication Facilities in Right of Way

**** MEMORANDUM ****

A new law adopted by the Florida Legislature became effective July 1, 2017 which grants to telecommunication providers the right to locate communication facilities in the public right of way, including what is known as small wireless facilities. As you know we retained an expert in telecommunications law to assist with the City becoming the owner of the cell tower. This attorney is also advising the City on the implications of this new law and will assist the City is drafting amendments to the City's regulations. He has recommended that the City adopt this 6 month moratorium to allow the City time to review the new law and adopt the necessary amendments. It is recommended that the City Council approve this moratorium.

ORDINANCE NO. 17-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA ADOPTING A SIX (6) MONTH MORATORIUM ON LOCATING WIRELESS COMMUNICATIONS FACILITIES INCLUDING SMALL WIRELESS FACILITIES IN A PUBLIC RIGHT OF WAY WITHIN THE CITY LIMITS AND ESTABLISHING THE FEE FOR COLLOCATING ON CITY-OWNED UTILITY POLES AT THE MAXIMUM RATE ALLOWED BY LAW; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, effective July 1, 2017 Florida adopted a new law allowing wireless facilities including micro and small wireless facilities to be located within the public right of way.

WHEREAS, the City is in the process of undergrounding utility lines along US 1 and the implication of this new law on the undergrounding project are uncertain.

WHEREAS, the City needs time to evaluate the implications of the new law and consider what amendments to the City Code are needed and allowed to implement the new law and to protect the City's interest.

WHEREAS, the City believes that six (6) months may be sufficient time for this process and if additional time is required City staff shall request an extension to be approved by the City Council.

WHEREAS, also the Advanced Wireless Infrastructure Deployment Act, Florida Statutes § 337.401 (7) (5) requires the City to establish a rate for collocating small wireless facilities on City-owned utility poles by the later of January 1, 2018 or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by the City.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA:

Section 1. The City Council of the City of South Daytona hereby establishes a six (6) month moratorium on approving wireless facilities including small wireless facilities, micro wireless facilities and utility poles for collocation of small wireless facilities in any City public rights-of-way. If additional time is required City staff may request an extension of the six (6) month moratorium. Nothing in this Ordinance shall affect or waive the City's right to establish applicable regulations by Ordinance to implement the Advanced Wireless Infrastructure Deployment Act, consistent with applicable law.

Section 2. The City hereby establishes the rate for collocating small wireless facilities on City-owned utility poles at the maximum rate allowed by applicable law of \$150 annually, as authorized by Florida Statutes § 337.401 (7) (f) (3).

Section 3. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

Section 4. That all ordinances made in conflict with this Ordinance are hereby repealed.

Section 5. That this Ordinance shall become effective immediately upon its adoption.

PASSED upon first reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the 14th day of November, 2017.

PASSED AND ADOPTED upon second and final reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the _____ day of _____, 2017.

William C. Hall, Mayor

ATTEST:

Joseph W. Yarbrough, City Manager