

ORDINANCE 36-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, ESTABLISHING AND IMPOSING A TEMPORARY MORATORIUM WITHIN THE CITY OF DELRAY BEACH ON THE SUBMITTAL AND PROCESSING OF APPLICATIONS, AND ISSUANCE OF ANY PERMITS PERTAINING TO COLLOCATION ON EXISTING OR THE CREATION OF NEW UTILITY POLES IN THE RIGHT-OF-WAY TO SUPPORT SMALL WIRELESS FACILITIES OR MICRO WIRELESS FACILITIES UNTIL DECEMBER 31, 2017, TO ALLOW AN OPPORTUNITY TO DEVELOP REGULATIONS CONSISTENT WITH CHAPTER 2017-136, REGULATIONS LAWS OF FLORIDA, WHICH BECAME EFFECTIVE JULY 1, 2017; PROVIDING FOR CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, during the 2017 Legislative Session, the state legislature passed House Bill 687 amending Section 337.401, *Florida Statutes*, creating what is known as the "Advanced Wireless Infrastructure Deployment Act"; and

WHEREAS, such legislation was approved by the Governor on June 23, 2017, and became effective on July 1, 2017 under Chapter 2017-136, Laws of Florida; and

WHEREAS, the law establishes a process by which wireless providers may place certain "small wireless facilities" on, under, within, or adjacent to certain utility poles or wireless support structures within public rights-of-way that are under the jurisdiction and control of an "authority" including the City of Delray Beach; and

WHEREAS, thus, the law provides that the City may not prohibit, regulate, or charge for the collocation of small wireless facilities or micro wireless facilities in the public rights-of-way, except as specified in the statute; and

WHEREAS, the City currently has regulations pertaining to such facilities within its Code of Ordinances, specifically codified within Chapter 57, "Right-of-Way Application Process for Communication Facilities," which need to be evaluated in light of the new law; and

WHEREAS, City staff has not had adequate time to evaluate the impacts or address local issues that are presented by the new law and take action accordingly; and

WHEREAS, the City has determined that it is in the best interest of the residents of the City to protect the general public health, safety, and welfare by studying and planning for this new technology, including how to best support this new technology and address potential impacts on the quality of life for the surrounding community; and

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Delray Beach as set forth at Article VIII, Section 2, of the Constitution of the State of Florida, Chapter 166, *Florida Statutes*, and other applicable controlling law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, that:

SECTION 1. Ratification. That the foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance.

SECTION 2. Temporary Moratorium. That a temporary moratorium is hereby imposed on the submission and processing of applications and any issuance of permits pertaining to collocation on existing utility poles or the creation of new utility poles in the right-of-way to support small wireless facilities or micro wireless facilities as referenced in Section 337.401, *Florida Statutes*, within the corporate limits of the City of Delray Beach. While the temporary moratorium is in effect, the City shall temporarily suspend all activities relating to accepting, processing, or approving any application relating to the establishment or operation of a small wireless facility or micro wireless facility as referenced in Section 337.401, *Florida Statutes*, for the City to have the time and opportunity necessary to implement a framework of authorized regulation and fee structure as provided in the newly enacted portions of Section 337.401, *Florida Statutes*.

SECTION 3. City Commission Direction. That the City Commission directs the City Manager to have the Planning, Zoning and Building Department, Public Works Department, and the City Attorney’s Office initiate a review of the City’s Code of Ordinances, Chapter 57, “Right-of-Way Application Process for Communication Facilities”, to prepare a staff report containing recommendations as to the appropriate steps forward to best support and regulate this new technology and address potential impacts on the quality of life for the surrounding community, and to present such report to the City Commission.

SECTION 4. Duration of moratorium.

a) The temporary moratorium set forth in this Ordinance shall take effect immediately upon the effective date of this Ordinance and shall be terminated on December 31, 2017.

b) No applications for approvals subject to the moratorium will be accepted by the City until the moratorium has expired.

SECTION 5. Geographic area covered. That the temporary moratorium established in this Ordinance shall be effective in the corporate and municipal boundaries of the City of Delray Beach.

SECTION 6. Conflicts. That all ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 7. Severability. That should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, clause or word be declared by a court of competent

jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part hereof other than the part declared invalid.

SECTION 8. Effective Date. That this Ordinance shall become effective upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2017.

ATTEST:

M A Y O R

City Clerk

First Reading_____

Second Reading_____

Approved as to form and legal sufficiency:

R. Max Lohman, City Attorney