



Cover Memorandum/Staff Report

File #: 20-123

Agenda Date: 3/3/2020

Item #: 9.D.

TO: Mayor and Commissioners
FROM: Anthea Gianniotis, Development Services Director
THROUGH: George Gretsas, City Manager
DATE: March 3, 2020

ORDINANCE NO. 16-20: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES, BY AMENDING CHAPTER 57. RIGHT-OF-WAY APPLICATION PROCESS FOR COMMUNICATIONS FACILITIES BY AMENDING SUB-SECTION Q OF SECTION 57.05; UPDATING SECTION 57.02 DEFINITIONS; AMENDING SECTION 57.12 CONSTRUCTION BOND; REPEALING SECTION 57.13 SECURITY FUND; AND AMENDING THE CODE OF ORDINANCES BY ADOPTING AN ENTIRELY NEW CHAPTER 58. TO BE ENTITLED "RIGHT-OF-WAY APPLICATION PROCESS FOR SMALL WIRELESS FACILITIES" TO IMPLEMENT REGULATIONS SET FORTH IN THE "ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT", CODIFIED AT SECTION 337.401(7), FLORIDA STATUTES; PROVIDING FOR A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (FIRST READING)

Recommended Action:

Review and consider Ordinance No. 16-20 on First Reading.

Background:

The Advanced Wireless Infrastructure Deployment Act (the "Act") was adopted by the Florida Legislature on June 23, 2017, and became effective on July 1, 2017. The changes codified at Section 337.401 Florida Statutes, place certain limitations on local government authority to regulate wireless communications facilities within the public rights-of-way. The Act authorizes local governments to adopt various types of regulations governing wireless facilities in the rights-of-way, including but not limited to "objective design standards" that may require wireless facilities to "meet reasonable location context, color, stealth, and concealment requirements," and "reasonable spacing and location requirements concerning the location of ground-mounted equipment". The Act authorizes a municipality to adopt by ordinance reasonable and non-discriminatory provisions for insurance coverage, indemnification, performance bonds, force majeure, abandonment, authority liability, or authority warranties.

The City currently has regulations pertaining to communications facilities within its Code of Ordinances, specifically codified within Chapter 57. The existing regulations need to be amended to be consistent with the new law concerning wireless facilities, to reflect the definition of communications services as now reflected in state law, and the removal of a requirement for security fund as a condition of registration pursuant to recent legislation on this topic.

The proposed Ordinance No. 16-20 amends the existing regulations to be consistent with the new

laws with the intent to promote the City's public health, safety and welfare. Ordinance No. 16-20 amends Section 57.02, Definitions, Section 57.05, Placement or Maintenance of a Communication Facilities in Public Rights-of-Way", Section 57.12, Construction Bond, of the Code of Ordinances of the City of Delray Beach. In addition, Ordinance No. 16-20 proposes the adoption of an entirely new Chapter, Chapter 58, entitled "Right-of-Way Application Process for Small Wireless Facilities and Wireless Facilities". Each section in the proposed new Chapter addresses the following:

- Section "58.01 Intent and Purpose; Applicability To State-Controlled Right-of-Way"; identifies the intent of the City in adopting the subject provisions and applicability of the Chapter.
- Section "58.02 Definitions;" defines terms, phrases and words included in the Chapter.
- Section "58.03 Application for Placing And Maintaining Small Wireless Facilities in The Public Right-of-Way" sets the reviewing process, procedures, terms and conditions for application submittal.
- Section "58.04 Application Notification; Consolidated Applications; Alternative Locations; Stealth Design; Permit Duration; Collocation Fees" identifies the determination and notification process of applications, alternative collocations provisions, stealth design requirements, and applicable fees.
- Section "58.05 City-Owned Structures, Facilities, and Real Property" provides provisions to allow the use, placement, or maintenance of antenna or other wireless facility in a City-owned structure, facility or real property.
- Section "58.06 Prohibitions and Supplemental Requirements" lists restrictions and prohibitions regarding the installment of small facilities or other communication facilities in the City's right-of-way, enforcement of historic preservation zoning regulations, and other requirements.
- Section "58.07 Insurance; Indemnity, Construction Bonds; Abandonment; And Force Majeure" refers to supplemental regulations required per Chapter 57.
- Section " 58.08 Suspension of Permits" defines the conditions to suspend a granted permit.
- Section "58.09 Appeals" identifies the process to appeal a permit decision.
- Section "58.10 - 58.20 Reserved" is reserved for future code amendments and additions.

City Attorney Review:

Approved as to form and legal sufficiency.

Funding Source/Financial Impact:

N/A

Timing of Request:

Second Reading is anticipated in April 2020.

