

ORDINANCE NO. 17-59

AN ORDINANCE IMPOSING A TEMPORARY MORATORIUM TO PROHIBIT THE ACCEPTANCE AND PROCESSING OF PERMIT APPLICATIONS, THE ISSUANCE OF DEVELOPMENT ORDERS, AND/OR ANY OTHER OFFICIAL ACTION OF THE CITY HAVING THE EFFECT OF PERMITTING OR ALLOWING THE CONSTRUCTION OF WIRELESS COMMUNICATION FACILITIES IN PUBLIC RIGHTS-OF-WAY WITHIN THE CITY LIMITS; PROVIDING A SEVERABILITY CLAUSE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, as provided in § 2(b), Article VIII of the Florida Constitution, and § 166.021(1), Florida Statutes, The City of Daytona Beach enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as expressly provided by law; and

WHEREAS, as provided in § 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state may act, except when expressly prohibited by law; and

WHEREAS, The City of Daytona Beach owns and/or controls and manages lands designated as rights-of-way; and

WHEREAS, governmental rights-of-way have traditionally been used for, among other things, the placement of public and private utility systems and structures so as to facilitate the delivery of utility services and maintenance of utility systems; and

WHEREAS, Article III of chapter 86 of the City Code of Ordinances, and § 6.3. of the City Land Development Code (“LDC”) regulate the placement, modification, and removal of equipment and facilities and other encroachments in public rights-of-way under the City’s jurisdiction and control; and

WHEREAS, § 5.2 of the LDC provides regulations and requirements specifically pertaining to telecommunication facilities, but was not written to specifically address the deployment of telecommunication facilities within public rights-of-way; and

WHEREAS, in response to heavy consumer demand for increased wireless connectivity and coverage, new technologies such as Distributed Antenna Systems and small cell systems, have recently emerged, and others are being developed, which may result in efforts to place smaller and numerous communication structures and/or facilities in public rights-of-way; and

WHEREAS, the City’s Code of Ordinances and LDC do not contemplate or specifically address these new technologies, as traditionally these types of structures and facilities have not been installed within public rights-of-way; and

WHEREAS, Section 704(a) of the Telecommunications Act of 1996, codified at 47 U.S.C. § 332(c)(7), preserves state and local authority over decisions concerning the placement, construction, and modification of personal wireless service facilities, provided the regulations do not unreasonably discriminate among providers of functionally equivalent services, and do not prohibit or have the effect of prohibiting the provision of personal wireless services; and

WHEREAS, § 337.401, Florida Statutes, grants local governments the authority to prescribe and enforce reasonable, non-discriminatory rules and regulations regarding placement of telephone, telegraph, and other communication service lines and poles within public rights-of-way;

WHEREAS, after the City's current regulations on encroachments in public rights-of-way went into effect, the Federal Communication Commission ("FCC") adopted regulations affecting the ability of local governments to regulate wireless communication facilities; and

WHEREAS, these new emerging technologies, new communications infrastructure, and the federal and state regulations, require a careful review by the City of its policies and ordinances associated with regulation of cell towers, antennae, and other wireless communication facilities within public rights-of-way; and

WHEREAS, a temporary moratorium on the acceptance of applications for, processing of, and issuance of rights-of-way use permits, development orders, site plan approvals, or any other official action of The City of Daytona Beach permitting or having the effect of allowing the construction of wireless communication facilities in public rights-of-way within the City, will allow time to properly review, study, hold any public hearing necessary, and prepare and adopt an amendment or amendments to the City's Comprehensive Plan, LDC, and Code of Ordinances, as necessary to address this use; and

WHEREAS, at least 10 days' notice was given by publication in a newspaper of general circulation, notifying the public of this proposed Ordinance and of a public hearing in the City Commission Chambers, City Hall, 301 South Ridgewood Avenue, Daytona Beach, Florida; and

WHEREAS, a public hearing was held pursuant to the published notice described, at which hearing the parties in interest and all others had an opportunity to be and were, in fact, heard.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF DAYTONA BEACH, FLORIDA:

SECTION 1. FINDINGS. The City Commission adopts the foregoing findings.

SECTION 2. PURPOSE.

(a) The purpose of this Ordinance is to provide The City of Daytona Beach sufficient time to review, study, hold any public hearings necessary, and prepare and adopt an amendment or amendments to the City's Comprehensive Plan, LDC, and Code of Ordinances, relating to the location, design, and operation of wireless communication facilities within public rights-of-way within the City.

(b) It is further the purpose of this Ordinance to fulfill the City's constitutional charge and statutory obligations to protect and preserve the public health, safety, and welfare of the citizens of The City of Daytona Beach, regarding whether wireless communication facilities should be permitted within public rights-of-way; and if permitted within public rights-of-way, the types of regulations to be imposed upon placement of wireless communication facilities; and thus defer official government action until the City has properly held any public hearing and adopted amendments to the City's Comprehensive Plan, LDC, and Code of Ordinances, as necessary.

(c) To fulfill the City’s obligations to continue uninterrupted provision of public works, fire safety, law enforcement, emergency management, emergency medical services, and municipal water, wastewater, gas, and electric utility operations, it is clarified that this moratorium will not apply to the construction, installation, maintenance, and replacement of facilities within public rights-of-way that are for governmental purposes.

### SECTION 3. DEFINITIONS.

“*Wireless communication facility*” means any equipment or facility used for the transmission or reception of wireless communications and located on public rights-of-way. This term includes but is not limited to wireless support structures, antennas, cabling, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and individual antenna or “Small Cells”) networks. For purposes of this Ordinance, the term shall include communication towers and all wireless communication facilities as defined in Section 365.172(3)(gg), Florida Statutes, and facilities to provide wireless communication services as listed at <https://www.fcc.gov/general/wireless-services>.

“*Communication Tower*” means a building or ground-mounted tower which as measured from the finished grade of the property (1) is greater than thirty-five feet in height, (2) does not exceed 300 feet in height (including antenna), and (3) is built for the sole or primary purpose of supporting any FCC-licensed antennas and their associated facilities. The term Communication Tower shall not include amateur radio operators’ equipment licensed by the FCC. Communication Towers are generally described as either Monopole (freestanding), Guyed (anchored with guy wires), or Self Supporting (square, triangular or pyramidal in plain view and constructed of steel lattice, tubular steel, reinforced concrete, or wood).

*“Governmental Purposes”* means, but is not limited to public works, fire safety, law enforcement, emergency management, emergency medical services, and municipal water, wastewater, gas, and electric utility operations.

SECTION 4. IMPOSITION OF TEMPORARY MORATORIUM. Beginning on the Effective Date of this Ordinance and continuing through August 27, 2017, or sooner if provided pursuant to Section 5 of this Ordinance, no permit, development order, authorization, or any other official action of the City having the effect of permitting or allowing the construction of wireless communication facilities in public rights-of-way within the City limits, may be filed, accepted, processed, or approved by The City of Daytona Beach, except as may be required by applicable law. To the extent such an application is submitted, City staff is authorized and directed to take action to deny such application during the term of this moratorium within such time frame as may be required by applicable law.

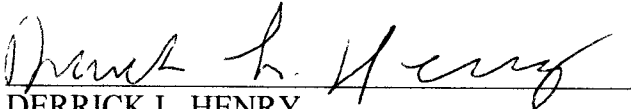
(b) The imposition of the moratorium is not intended to affect nor does it affect wireless communication facilities serving a governmental purpose.

SECTION 5. EXPIRATION OF MORATORIUM. The temporary moratorium imposed by Section 4 of this Ordinance expires on August 28, 2017; or a date before August 28, 2017, if provided by the Daytona Beach City Commission.

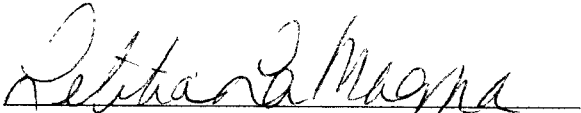
SECTION 6. If any word, phrase, clause, paragraph, section, or provision of this Ordinance or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or application of the Ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 7. All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 8. This Ordinance shall take effect immediately upon adoption.

  
DERRICK L. HENRY  
Mayor

ATTEST:

  
LETITIA LAMAGNA  
City Clerk

Passed: February 15, 2017  
Adopted: March 1, 2017