

ORDINANCE NO. 17-269

AN ORDINANCE AMENDING ORDINANCE NO. 17-59, WHICH ADOPTED A MORATORIUM PROHIBITING 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; EXTENDING THE MORATORIUM PREVIOUSLY IMPOSED FOR 90 DAYS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 1, 2017, the City Commission adopted Ordinance No. 17-59, imposing 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 City action permitting or having the effect of allowing the placement or construction of wireless communication facilities in public rights-of-way within the City; and

WHEREAS, Section 2(a) of Ordinance No. 17-59 states that a purpose of the moratorium was to provide the City sufficient time to review, study, hold any public hearings necessary, and prepare and adopt any amendments needed to the City's Comprehensive Plan, Land Development Code, and Code of Ordinances, relating to the location, design, and operation of wireless communication facilities within City rights-of-way; and

WHEREAS, following the adoption of Ordinance No. 17-59, City staff engaged in necessary review and study, and are in the process of drafting ordinances that may be helpful or necessary to address the deployment of wireless communications facilities within City rights-of-way; and

WHEREAS, on April 28, 2017, after Ordinance No. 17-59 was adopted, the Florida Legislature adopted CS/CS/HB 687, which was signed into law by Governor Scott on June 23, 2017 (see Chapter 2017-136, Laws of Florida), amending § 337.401, Florida Statutes, in a manner that substantially affects the authority of municipalities to regulate the deployment of wireless communications facilities within public rights-of-way; and

WHEREAS, the State's adoption of the new law has required City staff to engage in further study and review, in order to ensure that the ordinances currently under development comply with the new law; and

WHEREAS, the Deputy Public Works Director recommends that the moratorium adopted by Ord. No. 17-59 be extended for an additional 90 days, to give City staff sufficient time to complete the drafting of any ordinances that are necessary or helpful in addressing such wireless communication facilities in compliance with applicable federal and state law, including the recent substantial revisions to § 337.401, Florida Statutes; 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. The City Commission re-adopts the findings of Ordinance No. 17-59, and also adopts the findings contained in the recitals above.

SECTION 2. Section 4 of Ordinance No. 17-59 is hereby amended to read as follows (*additions underlined; deletions struck through*):

SECTION 4. IMPOSITION OF TEMPORARY MORATORIUM.

Beginning on the Effective Date of this Ordinance and continuing through November 25, 2017 ~~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 3. Section 5 of Ordinance No. 17-59 is hereby amended to read as follows (*additions underlined; deletions struck through*):

SECTION 5. EXPIRATION OF MORATORIUM. The temporary moratorium imposed by Section 4 of this Ordinance expires on November 25, 2017 ~~August 28, 2017~~; or a date before November 25, 2017 ~~August 28, 2017~~, if provided by the Daytona Beach City Commission.

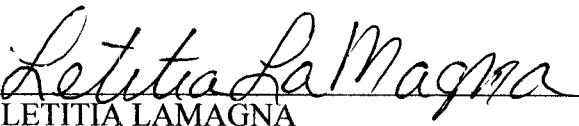
SECTION 4. Hereafter, all references in Ordinance No. 17-59 to “this Ordinance” shall be deemed to refer to Ordinance No. 17-59 as amended herein.

SECTION 5. All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 6. This Ordinance shall take effect immediately upon adoption.


DERRICK L. HENRY
Mayor

ATTEST:


LETITIA LAMAGNA
City Clerk

Passed: August 2, 2017
Adopted: August 16, 2017