

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ENACTING A TEMPORARY MORATORIUM TO PROHIBIT THE ACCEPTANCE OR PROCESSING OF ANY APPLICATION FOR A PERMIT, DEVELOPMENT ORDER, OR ANY OTHER OFFICIAL ACTION OF THE CITY HAVING THE EFFECT OF PERMITTING OR ALLOWING THE CONSTRUCTION OF WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY CONTROLLED BY THE CITY; PROVIDING FOR A SIX MONTH TERM TO BE EXTENDED IF NECESSARY BY THE CITY COMMISSION; PROVIDING FOR EARLY TERMINATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, to protect the public health, safety and welfare of its citizens, the City has adopted several ordinances, including regulation of the location, design and operation of wireless communication facilities (Section 155.4204 of the Zoning Code) and the registration of communications providers within the rights-of-way (City Code Section 100.46); and

WHEREAS, Section 337.401, Florida Statutes, addresses the authority of municipalities to regulate the placement and maintenance of communication facilities, and utilities, in the public rights-of-way; and

WHEREAS, the communication industry is in a constant state of emerging technology that includes the infrastructure required to support the increased demand and capacity to receive and to transmit larger data and voice communications; and

WHEREAS, a new network of wireless communications infrastructure has emerged comprised of a series of localized antennas (“Small Cells”), or nodes (“Distributed Antenna

Systems” or “DAS”), with wireline and/or wireless backhaul networks (together referred to as “wireless communication facilities”) that are linked to a larger hub or tower site; and

WHEREAS, the City has been contacted by several companies requesting permission to place wireless communication facilities and infrastructure or to collocate facilities on poles owned by the City within the public rights-of-way controlled by the City; and

WHEREAS, the current City ordinances do not address expressly the placement of wireless communication facilities and infrastructure or collocation of facilities on City-owned poles within the public rights-of-way; and

WHEREAS, additionally since the adoption of the City’s codes, the Federal Communication Commission has adopted new rules addressing municipal processing of applications for certain wireless communication facilities; and

WHEREAS, these changes in federal regulations, the emerging technology, and the new communication infrastructure require a careful review by the City of its policies and ordinances associated with regulation of cell towers, antennae, and other wireless communication facilities; and

WHEREAS, the City Commission determines that it is in the best interest of its residents, businesses and visitors to enact sufficient regulations to protect the public health, safety and welfare; and

WHEREAS, a temporary moratorium on the processing of applications for, and the issuance of right-of-way use permits, development permits, site plan approvals or any other official action of the City of Pompano Beach permitting or having the effect of allowing the construction of wireless communication facilities in the public rights-of-way within the City’s control will allow time to review, study, hold public hearings, and prepare and adopt an amendment or amendments to the City of Pompano Beach Zoning Code and/or Code of Ordinances; and

WHEREAS, at least 10 days' notice has been given of the public hearing once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a public hearing in the City Commission meeting room, first floor, City Hall in the City of Pompano Beach; and

WHEREAS, the public hearings were held pursuant to the published notice described at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. Purpose.

A. The purpose of this ordinance is to enable the City of Pompano Beach sufficient time to review, hold public hearings and adopt an amendment or amendments to the City of Pompano Beach Code of Ordinances and/or Zoning Code, relating to the location, design and operation of wireless communication facilities within the public rights-of-way within the City. The City will not approve any application or issue any permits authorizing the construction of wireless communication facilities within the public rights-of-way, except as provided in this ordinance, or as may otherwise be required by applicable law.

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 Pompano Beach, regarding whether wireless communications facilities should be permitted within the public rights-of-way; and if permitted within the 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 of Pompano Beach has properly held public

hearings and adopted amendments to the City of Pompano Beach Code of Ordinances and Zoning Code, 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 city utilities, it is clarified that this moratorium will not apply to the construction, installation, maintenance and replacement of facilities within the public rights-of-way that are strictly for governmental purposes.

SECTION 2. Definitions.

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

"*Governmental Purposes*" means, but is not limited to public works, fire safety, law enforcement, emergency management, emergency medical services or municipal utility operations.

SECTION 3. Imposition of Moratorium.

A. No application for permit, authorization or any other official action of the City having the effect of permitting or allowing the construction of wireless communication facilities in the public rights-of-way within the city limits, may be accepted or processed or approved by the City of Pompano Beach, except as may be required by applicable law. To the extent such an

application is submitted, the City staff is authorized 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. No Zoning Compliance Permit may be issued by the City of Pompano Beach which would authorize the construction of a wireless communication facility within the public rights-of-way.

C. The imposition of the moratorium is not intended to affect nor does it affect wireless communication facilities serving strictly Governmental Purposes.

SECTION 4. Term.

The moratorium imposed by this ordinance is temporary and, unless dissolved earlier by the City, shall automatically dissolve in six (6) months from the effective date of this ordinance, unless extended in accordance with applicable law. This moratorium may be reasonably extended, if necessary, by ordinance of the City Commission.

SECTION 5. Early Termination.

The moratorium imposed by this ordinance may terminate prior to its six (6) month period upon the passage of ordinances regulating permitting or allowing the construction of wireless communications facilities in the public rights-of-way controlled by the city, provided:

1. specific language terminating the moratorium is contained within said enacted ordinance; or by
2. passage of another ordinance providing for termination by the City Commission.

SECTION 6. All ordinances or parts of ordinances in conflict herewith be and the same are hereby revoked.

SECTION 7. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any provisions or applications of

this ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 8. This ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2017.

PASSED SECOND READING this _____ day of _____, 2017.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

MEB/jrm
4/7/17
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