

ORDINANCE NO. 2017-2120

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA ESTABLISHING AND IMPOSING A TEMPORARY MORATORIUM WITHIN THE CITY ON UPON THE ACCEPTANCE AND/OR PROCESSING OF APPLICATIONS FOR COLLOCATION ON EXISTING, OR CREATION OF NEW, UTILITY POLES IN THE RIGHTS-OF-WAY TO SUPPORT SMALL WIRELESS FACILITIES OR MICRO WIRELESS FACILITIES, UNTIL JANUARY 3, 2018; PROHIBITING ANY AND ALL APPROVALS DURING THE MORATORIUM PERIOD FOR ANY RIGHT-OF-WAY LOCATED WITHIN THE CITY IN ORDER TO ALLOW AN OPPORTUNITY FOR THE CITY TO DEVELOP AN ORDINANCE, AS APPROPRIATE, RELATING TO THE IMPACTS OF RECENT LEGISLATION; PROVIDING FOR NON-CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 2017-136 Laws of Florida creates the "Advanced Wireless Infrastructure Deployment Act" (which legislation has also been referred to by local government advocates as the "Wireless Giveaway"); and

WHEREAS, the legislation 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" (i.e., a county or municipality); and

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

WHEREAS, the legislation became effective on July 1, 2017; and

WHEREAS, City staff has not had adequate time to evaluate the impacts or address local issues that are presented by the legislation; and

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City 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; and

WHEREAS, the City has determined that it is in the best interest of the citizens 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.

NOW, THEREFORE, THE CITY OF NEW PORT RICHEY, FLORIDA HEREBY ORDAINS:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.

- a. The City has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.
- b. The foregoing recitals (whereas clauses) are hereby ratified, affirmed and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2. STUDY AND REVIEW PROCESS.

- a. During the temporary moratorium period designated in Section 3 of this Ordinance, the City staff, are hereby directed to study Section 2017-136 Laws of Florida.
- b. The essential purpose of such a review and study by the City staff is to develop and propose to the City Council amendments to the City's codes and ordinances as may be necessary and appropriate to provide a framework of authorized regulation and fee structure as to implementing the legislation.

SECTION 3. IMPOSITION OF TEMPORARY MORATORIUM.

- a. All activity relating to the acceptance of applications for, the processing of, and the issuance of permits, orders or any other official action of the City permitting or having the effect of permitting, in the rights-of-way, the siting of utility poles and collocation with existing utility poles to support small wireless facilities and micro wireless facilities, as defined in Section 2017-136 Laws of Florida is temporarily suspended in order for the City to have the time and opportunity necessary to provide a framework of authorized regulation and fee structure as to implementing said legislation.
- b. Based upon the legislative findings, purpose, and intent set forth herein, there is hereby imposed a temporary moratorium on all matters regulated by Section 2017-136 Laws of Florida.
- c. During the time that the moratorium imposed by this Ordinance is in effect, no applications will be accepted with regard to the matters regulated by the provisions of Section 2017-136 Laws of Florida that pertain to activities proposed to occur within the City Limits of the City.

SECTION 4. GEOGRAPHIC AREA COVERED.

This Ordinance applies to all areas within the City Limits of the City of New Port Richey.

SECTION 5. DURATION OF MORATORIUM.

- a. The temporary moratorium established by this Ordinance has taken effect upon first reading of this Ordinance (under the zoning in progress doctrine) and shall terminate on January 3, 2018.
- b. No applications for approvals subject to the moratorium will be accepted by the City until the moratorium has expired.
- c. The temporary moratorium set forth in this Ordinance shall expire prior to the termination date set forth herein if the City Council enacts an ordinance addressing the matters regulated by the provisions of Section 2017-136 Laws of Florida.

SECTION 6. IMPLEMENTING ADMINISTRATIVE ACTIONS.

- a. The City Manager is hereby authorized and directed to implement the provisions of this Ordinance and with regard to the implementation of the matters regulated by the provisions of Section 2017-136 Laws of Florida by the promulgation of rules and the development and usage of forms and processes all as may be deemed necessary or appropriate by the City Manager.
- b. The City Manager and City Attorney are also hereby authorized and directed to generally implement the provisions of this Ordinance and to take any and all necessary administrative actions to bring into effect the provisions of this Ordinance in accordance with controlling law as such officers may deem appropriate in their respective roles and functions under the City Charter.

SECTION 7. SAVINGS.

The prior actions of the City in terms of the matters relating to the regulation of rights-of-way, as well as any and all related matters, are hereby ratified and affirmed.

SECTION 8. CONFLICTS.

All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 9. SEVERABILITY.

If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate

or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise to be invalid, unlawful, or unconstitutional.

SECTION 10. NON-CODIFICATION.

- a. The provisions of this Ordinance shall not be included and incorporated within the Code of Ordinances or Land Development Code of the City, and neither the Land Development Code nor the Code of Ordinances of the City shall be revised to accommodate such inclusion.
- b. Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

SECTION 11. EFFECTIVE DATE.

This Ordinance shall take effect immediately upon passage and adoption.

The foregoing Ordinance was duly read and approved on first reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this 5th day of July, 2017, and read and adopted on second reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this 18th day of July, 2017.

ATTEST:

By: _____
Judy Meyers, City Clerk

By: _____
Robert Marlowe, Mayor-Council Member

(Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE
SOLE USE AND RELIANCE OF THE CITY OF NEW
PORT RICHEY, FLORIDA:

Timothy P. Driscoll, City Attorney