



Legislation Text

File #: 2018-08, **Version:** 1

MOTION TO ADOPT PROPOSED ORDINANCE NO. 2018-08 (REVISION 1) ON SECOND AND FINAL READING.

PROPOSED ORDINANCE NO. 2018-08 IS AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PEMBROKE PINES, FLORIDA, AMENDING CHAPTER 121, "COMMUNICATIONS RIGHTS-OF-WAY" OF THE CITY OF PEMBROKE PINES CODE OF ORDINANCES TO AMEND DEFINITIONS RELATED TO COMMUNICATIONS FACILITIES LOCATED IN THE RIGHTS-OF-WAY WITHIN THE CITY OF PEMBROKE PINES; AND ENACTING A NEW SECTION 121.35, "SMALL AND MICRO WIRELESS FACILITIES" TO PROVIDE FOR THE REGULATION OF SMALL AND MICRO WIRELESS FACILITIES INSTALLED AND MAINTAINED WITHIN PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF PEMBROKE PINES, CONSISTENT WITH SECTION 337.401(7), FLORIDA STATUTES, AS MAY BE AMENDED FROM TIME TO TIME; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

SUMMARY EXPLANATION AND BACKGROUND:

1. During the 2017 legislative session, the Florida Legislature adopted Chapter 2017-42, Laws of Florida, known as the Advanced Wireless Infrastructure Deployment Act (the "Act"). The Act took effect on July 1, 2017. In order to provide uniformity between the City's Code of Ordinances and the relevant statutory provisions contained in the Act, the proposed ordinance provides for a new Section 121.35, entitled "Small and Micro Wireless Facilities".

2. Currently, Section 121.03, of the City's Code of Ordinances defines Personal Wireless Service Facilities as follows:

Facilities for the provision of personal wireless services, and, for the purposes of this section, it shall include all of those "wireless communications facilities" as defined in F.S. § 365.172, as it may be amended, that are not also telecommunications towers as defined in this section. A power, light or other utility pole used exclusively as such prior to attachment of a personal wireless service facility shall not be considered a personal wireless service facility because of such attachment.

3. The proposed Ordinance creates a new Section 121.35, and is intended to regulate those Personal Wireless Service Facilities that meet the definition of either a Small, or Micro Wireless Facilities, which are defined as follows:

Micro Wireless Facility means a Small Wireless Facility having dimensions no larger than 24

inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

Small Wireless Facility means a wireless facility that meets the following qualifications:

- (1) Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- (2) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

4. While the City currently regulates Personal Wireless Service Facilities placed in the public rights-of-way, this ordinance would provide regulations related specifically to Small and Micro Wireless Facilities. The ordinance includes provisions to encourage the placement of Small and Micro Wireless Facilities on existing Utility Poles, which include electric poles, light poles, and traffic poles, as well as Wireless Support Structures within public rights-of-way in the City. The Ordinance will regulate the placement of the Small and Micro Wireless Facilities on City owned utility poles, as well as other Utility Poles located within rights-of-way in the City.

5. In addition, the Ordinance will provide uniformity with respect to the submittal and review of applications for the installation of Small and Micro Wireless Facilities within rights-of-way in the City. The ordinance will provide for uniform application information in order to confirm compliance with Applicable Codes, allow for placement of Small Wireless Facilities on any Utility Pole, and process for negotiating with an Applicant for alternative location to the originally applied for location.

6. The Act also provides timeframes for processing and acting on Applications, and the specific grounds permitted by state law for denying an Application. Finally, the Act authorizes some regulations, such as insurance, indemnification, force majeure, and abandonment so long as these regulations are reasonable and do not discriminate.

7. The proposed Ordinance now contains a new Section 121.35(H), "Exemptions". This language is consistent with the applicable State law and the City Attorney's Office recommends that it be included in the proposed ordinance:

- (H) Exemptions: The following shall not require permit approval, fees, or other charges:
 - (1) Routine maintenance;
 - (2) Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or
 - (3) Installation, placement, maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Utility Poles

in compliance with Applicable Codes by or for a Communications Services Provider authorized to occupy the Rights-of-Way and who is remitting taxes under Chapter 202, Florida Statutes.

8. Revision 1 of this Ordinance reflects comments made by industry attorneys between readings. The following items have been revised as a result of comments:

- ☐ Definition for "Pass-Through Provider" has been revised to make it consistent with state statutory provision.
- ☐ Removed provision from Section 121.10(A) related to compliance with registration requirements, as language is outdated.
- ☐ Remove reference to Pass-Through Providers paying a fee in Section 121.10(I), as the payment of additional fee is inconsistent with state law requirements.
- ☐ Remove reference to application fee in Section 121.12(D)(2)(a)1, as application fee is not permitted for placement of wireless communication facilities.
- ☐ Clarified title of Section 121.21 to reflect that the appeals are for Suspension of Permits or Denial of Registrations. An appeal of a decision related to applications for facilities would be processed pursuant to state law requirements.
- ☐ Added language at end of Section 121.24 to reflect that removal of facilities is not required for facilities that have received permits prior to the effective date of the Ordinance being considered.
- ☐ Eliminated imprisonment as a possible penalty under Section 121.29(A).

9. Staff recommends approval of this application and approving the revised ordinance on second and final reading.

FINANCIAL IMPACT DETAIL:

- a) **Initial Cost:** None.
- b) **Amount budgeted for this item in Account No:** Not Applicable.
- c) **Source of funding for difference, if not fully budgeted:** Not Applicable.
- d) **5 year projection of the operational cost of the project:** Not Applicable.
- e) **Detail of additional staff requirements:** Not Applicable.