

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRYAN, TEXAS IMPLEMENTING A TEMPORARY MORATORIUM ON THE SUBMISSION, ACCEPTANCE, PROCESSING, AND APPROVAL OF ANY APPLICATION FOR A PERMIT OR LICENSE FOR THE INSTALLATION OF ABOVE-GROUND WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY OR ON PUBLIC OR PRIVATE PROPERTY; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE WAS PASSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, Section 332 of Title 47 of the United States Code, the City may regulate the placement, construction, and modification of wireless telecommunication facilities, subject to specified limitations.

WHEREAS, the Bryan City Code is silent with respect to the development, siting, installation, and operation of above-ground Wireless Communications Facilities, including but not limited to antennae, poles, and other support structures in City rights-of-way and on other public property.

WHEREAS, the City has recently received applications from a DAS infrastructure provider for the installation of wireless communications facilities, consisting of 7 separate permits for 200 foot antennae poles and 13 separate permits for 45 foot antennae poles to be installed in the public rights-of-way within the City of Bryan; and

WHEREAS, the City anticipates receiving additional requests by small cell and DAS infrastructure providers to install above-ground Wireless Communications Facilities in the public rights-of-way and on public and private property within the City of Bryan; and

WHEREAS, the City does not currently allow the placement of above-ground Wireless Communications Facilities, including but not limited to antennae, poles and other support structures within the City rights-of-way. The existing provisions of the City Code are inadequate and time is needed to review, study, and revise the City Code to fully take into account the impacts related to the timing, location, and manner of construction of above-ground Wireless Communication Facilities by multiple telecommunication, small cell and DAS providers within the public rights-of-way as well as other public and private property, including the public health, safety, and welfare concerns of pedestrian and vehicular traffic.

WHEREAS, The City wireless telecommunication facility regulations are administered through the zoning and site development review ordinances. Conditional use permits are required in certain zoning districts; and

WHEREAS, the Bryan City Code is in need of updating to protect the public against the potential health, safety, and welfare dangers caused by multiple telecommunication providers and small cell and DAS infrastructure providers constructing above-ground Wireless Communications Facilities throughout the City; and

WHEREAS, the City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the use of the public rights-of-way and other public and private property within the City for Wireless Communications Facilities; and

WHEREAS, the absence of this ordinance would impair the orderly and effective implementation of contemplated amendments to the Bryan City Code, and any further authorization to construct Wireless Facilities in the City's rights-of-way or on other public within the City during the period of this moratorium may be in conflict with or may frustrate the contemplated updates and revisions to the Bryan City Code; and

WHEREAS, without the enactment of this ordinance, multiple telecommunication, small cell and DAS infrastructure providers could quickly receive permits to install Wireless Communications Facilities that pose a threat to the public health, safety, and welfare. For example, without this ordinance, above-ground Wireless Communications Facilities could:

- i. Create land use conflicts and incompatibilities including excessive height of poles and towers;
- ii. Create visual and aesthetics blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of above-ground Wireless Communications Facilities including the associated pedestals, meters, equipment boxes, and power generators;
- iii. Create unnecessary visual and aesthetic blight by failing to utilize alternative technologies or capitalize on co-location opportunities;
- iv. Cause substantial disturbances to rights-of-way through the installation and maintenance of above-ground Wireless Communications Facilities;
- v. Create traffic and pedestrian safety hazards due to the unsafe location of above-ground Wireless Communications Facilities; and
- vi. Negatively impact the predominantly residential quality and character of the City.

WHEREAS, the City Council further finds that this moratorium is a matter of local and City-wide importance and is not directed towards any particular telecommunications provider or small cell or DAS infrastructure provider that currently seeks to establish an above-ground Wireless Communication Facility but is necessary to ensure that the provision of such services and facilities are addressed in a uniform and non-discriminatory manner; and

WHEREAS, the City Council finds that there is a current and immediate threat to the public health, safety, and welfare based on the above findings, and upon that basis has determined that an urgency ordinance prohibiting the issuance of new permits or approvals for above-ground Wireless Communications Facilities in public rights-of-way or other public or private property within the City is warranted; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace or order of the City of Bryan to implement a Temporary Moratorium on the submission, acceptance processing and approval of any new or pending applications for the installation of above-ground wireless communications facilities within the City of Bryan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:

SECTION 1.

The findings and recitations set out in the recitals to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2.

The City Council of the City of Bryan hereby places a moratorium on the submission, acceptance, processing and approval of any new or pending applications for the installation of above-ground wireless communications facilities, effective immediately upon passage of this Ordinance, for a period of one hundred twenty (120) days or until the adoption and implementation of regulations as described in the above recitals, whichever may occur earlier.

SECTION 3.

This Temporary Moratorium applies to all public rights-of-way and other public and private property located within the City of Bryan;

SECTION 4.

Waivers for relief of hardship caused by this Temporary Moratorium may be made in writing to the City Council. Waivers may be granted by the City Council when the City Council in its discretion determines the applicant shall suffer undue hardship if the moratorium is not waived, that being something beyond or in addition to financial hardship and that it is in the public interest to allow a limited exception to the moratorium.

SECTION 5.

In the case of any conflict between the provisions of this ordinance and any existing ordinances of the City the provision of this ordinance will control during the moratorium period.

SECTION 6.

If any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

SECTION 7.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001, et seq., of the Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given, pursuant to all applicable law.

SECTION 8.

That this ordinance shall take effect immediately upon second and final reading.

PRESENTED AND GIVEN first reading on the 6th day of September, 2016, at a meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the 13th day of September 2016, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN, TEXAS

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney