

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRYAN, TEXAS AMENDING THE 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; and

WHEREAS, the City Council previously adopted Ordinance Number 2168, effective September 13, 2016, imposing 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; and

WHEREAS, the City has since determined that there was an unintended consequence of prohibiting minor modifications to existing above-ground wireless communications facilities that do not involve a substantial change to the physical dimensions of the tower or base station; and further that additional time is needed to prepare, evaluate, and adopt reasonable regulations regarding the use of public rights of way and other public and private property within the City for wireless communications facilities; 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 amend the 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 to allow.

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 amends the Temporary Moratorium Ordinance Number 2168 to extend the moratorium period from one hundred twenty (120) days to one hundred eighty (180) days, ending on March 12, 2017, or until the adoption and implementation of regulations as described in the recitals to Ordinance Number 2168, whichever may occur earlier.

SECTION 3.

The Temporary Moratorium imposed by Ordinance Number 2168 shall not apply to an application for modification of an existing wireless facility tower or base station which is determined by Staff not to be a substantial change to the physical dimensions of such tower or base station as such terms are defined by the Code of Federal Regulations, 47 C.F.R. § 1.40001. Such an application shall be reviewed under the City's existing applicable requirements and review process and may be approved if in compliance with all such requirements.

SECTION 4.

Except as amended herein, the provisions of Ordinance Number 2168 shall remain in full force and effect.

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 the ___ day of _____, 2016 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the ___ day of _____, 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