

SMALL WIRELESS COMMUNICATIONS FACILITIES DEPLOYMENT ACT (EXCERPT)
Act 365 of 2018

***** 460.1317.new THIS NEW SECTION IS EFFECTIVE MARCH 12, 2019 *****

460.1317.new Zoning review and approval; application; approval or denial requirements; fees; moratorium prohibited; revocation.

Sec. 17. (1) The activities set forth in section 15(5) are exempt from zoning review. Subsections (2) to (4) apply to zoning reviews for the following activities that are subject to zoning review and approval, that are not a permitted use under section 13(5), and that take place within or outside the public right-of-way:

(a) The modification of existing or installation of new small cell wireless facilities.

(b) The modification of existing or installation of new wireless support structures used for such small cell wireless facilities.

(2) The processing of an application for a zoning approval is subject to all of the following requirements:

(a) Within 30 days after receiving an application under this section, an authority shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall clearly and specifically delineate all missing documents or information. The notice tolls the running of the 30-day period.

(b) The running of the time period tolled under subdivision (a) resumes when the applicant makes a supplemental submission in response to the authority's notice of incompleteness. If a supplemental submission is inadequate, the authority shall notify the applicant not later than 10 days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in subdivision (a). Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(c) The application shall be processed on a nondiscriminatory basis.

(d) The authority shall approve or deny the application and notify the applicant in writing within 90 days after an application for a modification of a wireless support structure or installation of a small cell wireless facility is received or 150 days after an application for a new wireless support structure is received. The time period for approval may be extended by mutual agreement between the applicant and authority. If the authority fails to comply with this subdivision, the application is considered to be approved subject to the condition that the applicant provide the authority not less than 15 days' advance written notice that the applicant will be proceeding with the work pursuant to this automatic approval.

(e) An authority shall not deny an application unless all of the following apply:

(i) The denial is supported by substantial evidence contained in a written record that is publicly released contemporaneously.

(ii) There is a reasonable basis for the denial.

(iii) The denial would not discriminate against the applicant with respect to the placement of the facilities of other wireless providers.

(3) An authority's review of an application for a zoning approval is subject to all of the following requirements:

(a) An applicant's business decision on the type and location of small cell wireless facilities, wireless support structures, or technology to be used is presumed to be reasonable. This presumption does not apply with respect to the height of wireless facilities or wireless support structures. An authority may consider the height of such structures in its zoning review, but shall not discriminate between the applicant and other communications service providers.

(b) An authority shall not evaluate or require an applicant to submit information about an applicant's business decisions with respect to any of the following:

(i) The need for a wireless support structure or small cell wireless facilities.

(ii) The applicant's service, customer demand for the service, or the quality of service.

(c) Any requirements regarding the appearance of facilities, including those relating to materials used or arranging, screening, or landscaping, shall be reasonable.

(d) Any spacing, setback, or fall zone requirement shall be substantially similar to a spacing, setback, or fall zone requirement imposed on other types of commercial structures of a similar height.

(4) An application fee for a zoning approval shall not exceed the following:

(a) \$1,000.00 for a new wireless support structure or modification of an existing wireless support structure.

(b) \$500.00 for a new small cell wireless facility or modification of an existing small cell wireless facility.

(5) Within 1 year after a zoning approval is granted, a wireless provider shall commence construction of

the approved structure or facilities that are to be operational for use by a wireless services provider, unless the authority and the applicant agree to extend this period or the delay is caused by a lack of commercial power or communications facilities at the site. If the wireless provider fails to commence the construction of the approved structure or facilities within the time required pursuant to section 15(2)(I), the zoning approval is void, and the wireless provider may reapply for a zoning approval. However, the wireless provider may voluntarily request that the zoning approval be terminated.

(6) An authority shall not institute a moratorium on either of the following:

(a) Filing, receiving, or processing applications for zoning approval.

(b) Issuing approvals for installations that are not a permitted use.

(7) An authority may revoke a zoning approval, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated wireless support structure fail to meet the requirements of the approval, applicable codes, or applicable zoning requirements.

History: 2018, Act 365, Eff. Mar. 12, 2019.