



CLIENT ALERT

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MUNICIPAL

MICHIGAN SMALL WIRELESS COMMUNICATIONS FACILITIES DEPLOYMENT ACT SIGNED INTO LAW AND FCC SMALL CELL ORDER BECOMES EFFECTIVE SOON

by *Thomas H. Forshee*

On December 12, 2018, Governor Snyder signed the small wireless communications facilities deployment act, Act No. 365 of the Public Acts of 2018 (the "Act"). The Act's purpose, in large part, is to accelerate and encourage deployment of small wireless infrastructure in the public right-of-way and provide a framework for review by municipalities. A companion act was also enacted, Act No. 366 of the Public Acts of 2018 which amends the Michigan Zoning Enabling Act to incorporate PA 365.

Small wireless communications facilities are wireless service antennas, no larger than 6 cubic feet in volume, and associated equipment which are cumulatively no larger than 25 cubic feet in volume. The antennas are typically attached to utility or other types of poles in the public right-of-way or on other existing structures. The theory is that creating a dense network of smaller cells provides better signal coverage, penetration, and capacity, ultimately eliminating the need for more traditional macro cell towers. It is also posited that the use of small cell wireless technology is essential for the deployment of more advanced, so-called 5G networks, as well as for the development and implementation of autonomous vehicles and the development of "smart cities" technology.

Municipalities, of course, have a vested interest in protecting the function and safety of the right-of-way. To that end, the Act provides a regulatory framework for municipalities to process applications by wireless providers. With significant restrictions, the Act allows for municipal regulation through both a regulatory permitting and a zoning ordinance. The Act also allows for some design criteria requirements, although a municipality must make such criteria publicly known prior to submittal of an individual application. The Act institutes deadlines and limits fees for municipal review of these applications. With limited exceptions that can be explored on a case-by-case basis, a municipality will have to conform their existing regulatory structure to the Act or comply with the Act in the first instance.

The Act takes effect on March 12, 2019. It is highly recommended that a municipality enact ordinances in conformance with the Act before the Act becomes effective in preparation of reviewing and processing applications. Ideally, a municipality would enact such ordinances as soon as possible in order to also be prepared for applications submitted pursuant to an FCC Declaratory Ruling and Order as discussed below. Municipalities will want to be prepared to complete any and all reviews of applications within the timelines set by the Act. This may also prompt the employment of a consultant to review technical specifications and track approvals.

As referenced above, the FCC recently enacted a Declaratory Ruling and Order (WT Docket No. 17-79) addressing, among other things, fees and

timelines for review. The Declaratory Ruling and Order takes effect on January 14, 2019. The Michigan statute and the FCC Ruling must ultimately be reconciled and read consistently incorporating all mandates into a local ordinance. Municipalities should consult with their legal counsel if an application for a small cell installation is submitted.

Dickinson Wright is preparing a model ordinance in order to assist communities to comply with the Act and FCC Order.

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