



CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTER-OFFICE MEMORANDUM

To: Adam Waldron, Council President
From: Matthew J. Deschler, Assistant Solicitor
Re: Proposed Ordinance Amending Article 721
Date: July 30, 2020

Enclosed is a draft ordinance amending Article 721 (Streets and Sidewalks) for Council's review and action as it deems appropriate. The proposed amendment is designed to address permit fees and other issues relating to small cell wireless installations in the City.

A handwritten signature in black ink that reads "Matt Deschler".

Matthew J. Deschler
Assistant Solicitor

Cc: Mayor Donchez
Eric Evans
Michael Alkhal
Matthew Dorner
Gregory Cryder

Bill No. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BETHLEHEM, COUNTIES OF LEHIGH AND NORTHAMPTON, COMMONWEALTH OF PENNSYLVANIA, AMENDING ARTICLE 721 OF THE CODIFIED ORDINANCES OF THE CITY OF BETHLEHEM, TITLED "STREETS AND SIDEWALKS"

THE COUNCIL OF THE CITY OF BETHLEHEM HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Article 721.01 of the Codified Ordinances of the City of Bethlehem shall be amended to add the following language immediately after the definition of "Vendor" (underlined text denotes additions, whereas ~~strikeouts~~ denote deletions):

"Wireless Installation" means a "small wireless facility" as that term is defined in 47 C.F.R. § 1.6002(l).

SECTION 2: Subsection A of Article 721.08 of the Codified Ordinances of the City of Bethlehem is hereby amended to read as follows (underlined text denotes additions, whereas ~~strikeouts~~ denote deletions):

A. Except as otherwise provided in this Article, all persons wishing to conduct non-vending activities or place temporary or permanent structures upon the streets, sidewalks, lanes, alleys, pavements, footways, or rights-of-way, or place any temporary or permanent fixtures upon any poles or other structures located within the streets, sidewalks, lanes, alleys, pavements, footways, or rights-of-way, shall make application to the Director of Public Works for a permit to conduct such activities or to place or affix such structures, which permit shall be issued upon the payment of a One Hundred Dollar (\$100.00) fee, where applicable, and compliance with the regulations established by the Director.

SECTION 3: Subsection B of Article 721.08 of the Codified Ordinances of the City of Bethlehem is hereby amended to read as follows (underlined text denotes additions, whereas ~~strikeouts~~ denote deletions):

B. Except as otherwise provided in Subsection G of Article 721.08, ~~t~~The application for permit shall:

- (I) describe the activity which is contemplated;
- (II) describe in detail the location, dimensions, and type of construction of any structure to be used;

(III) provide a Certificate of Insurance from a company acceptable to the Director providing liability coverage to the applicant and naming of the City as an additional insured. The amount of the insurance coverage shall be One Million Dollars (\$1,000,000);

(IV) be filed with the Director no later than Five (5) days nor more than Sixty (60) days prior to the commencement of the activity;

(V) be granted only to those persons who have legal title to the land directly abutting the area of the street, sidewalk, lane, alley, pavement, footway or right-of-way to be utilized or are lessees of such abutting land under a lease entered into at least Sixty (60) days prior to the day of application.

SECTION 4: Subsection G of Article 721.08 of the Codified Ordinances of the City of Bethlehem is hereby renumbered as Subsection H and is amended to read as follows (underlined text denotes additions, whereas ~~strikeouts~~ denote deletions):

H.G. Prohibited Acts

Except as otherwise provided in this Article:

(I) No person not a legal title owner, lessee or license or permit holder shall be permitted to conduct any activities set forth in this Section.

(II) No person shall conduct any covered activity unless first having obtained the permit provided for by this section.

~~(III)~~ (H) Each day that anyone continues to operate without a permit after having received notice of a violation either in person or by posting at the site of the violation shall be a separate violation punishable in accordance with Section 721.99.

(IV) No person shall dispense alcoholic beverages unless they have been issued a Restaurant or Liquor License by the Pennsylvania Liquor Control Board and have received Pennsylvania Liquor Control Board approval for sales outside their premises.

(V) No person shall place any container for construction waste materials or for any other reason in the public right-of-way without obtaining a Right-of-Way Permit from the Director or his designee.

(VI) No person shall place a sign in the street, sidewalk, lane, alley, pavement, footway or right-of-way without securing a permit from the Director.

SECTION 5: Article 721.08 of the Codified Ordinances of the City of Bethlehem is hereby amended to add a new Subsection G as follows (underlined text denotes additions, whereas ~~strikeouts~~ denote deletions):

G. For permits applicable to Wireless Installations which are mounted upon poles or other structures within or along the streets, sidewalks, lanes, alleys, pavements, footways or rights-of-way:

(I) The fee shall be one hundred dollars (\$100.00) for each permit application. A permittee shall submit a separate permit application for each proposed Wireless Installation. Separate permit applications for each proposed Wireless Installation are required even where multiple Wireless Installations are proposed to be affixed to the same pole or other structure.

(II) No permit shall be issued unless the permittee has executed a lease in a form acceptable to the City authorizing the proposed Wireless Installation; and

(III) Where a permittee seeks to install a new pole for the purpose of mounting a Wireless Installation to such pole, the permittee must comply with all permitting and fee requirements set forth in Article 907.

(IV) Subsection (B)(III) – (V) of Article 721.08 shall not apply to this Subsection (G) to the extent that a provision in Subsection (B) (III) – (V) is inconsistent with applicable state or federal law or is inconsistent with any provision in the lease executed by the permittee pursuant to Subsection (G)(II).

SECTION 6: That all ordinances and sections thereof that are inconsistent with this Ordinance are hereby repealed.

Sponsored by _____

Passed finally in Council this _____ day of _____, 2020.

President of Council

ATTEST:

City Clerk

This Ordinance approved this _____ day of _____, 2020.

Mayor