

RESOLUTION NO. 2018-257

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING AND DIRECTING THE CITY ATTORNEY, ON BEHALF OF THE CITY, TO ENGAGE THE SERVICES OF OUTSIDE COUNSEL TO FILE AN APPEAL REGARDING THE FEDERAL COMMUNICATIONS COMMISSION'S DECLARATORY RULING AND THIRD REPORT AND ORDER IN WIRELESS AND WIRELINE INFRASTRUCTURE DOCKET NUMBERS 17-79 AND 17-84, RESPECTIVELY, AND TO JOIN THE COALITION OF CITIES AND COUNTIES NATIONWIDE SEEKING RELIEF FROM THE OVERREACHING AND BURDENSOME REGULATIONS ENACTED THEREBY IN ORDER TO PRESERVE THE CITY'S RIGHTS AND REMEDIES THEREUNDER; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Federal Communications Commission's ("FCC") Declaratory Ruling and 3rd Report & Order in the Wireless/Wireline Infrastructure proceedings ("Small Cell Preemption Order") was approved by the FCC on September 26, 2018; and

WHEREAS, the Small Cell Preemption Order seeks to significantly undercut every local jurisdictions' authority on the deployment of wireless infrastructure by making wholesale presumptions that local laws prohibit or have the effect of prohibiting interstate or intrastate telecommunications service in violation of the Telecommunications Act of 1996; and

WHEREAS, cities and counties across the nation, as well as legal experts following the issues, have called the interpretations and actions of the FCC an existential threat to home rule power and an overall endorsement of the telecommunications industry's agenda; and

WHEREAS, if the FCC's Small Cell Preemption Order is not challenged through an appeal, the City will be hamstrung between two sets of regulations (those in the Small Cell Preemption Order, as well as those existing in Section 337.401, Fla. Stat.), and it is unclear how they will interact since the Small Cell Preemption Order does not explicitly

preempt local laws—it is believed that the telecommunications industry will argue that the City is bound by the most restrictive of the two provisions (in the event of a conflict); and

WHEREAS, there is reason to believe that the current climate now created through the adoption of Small Cell Preemption Order will bring about more litigation, rather than hasten deployment of the technology; and

WHEREAS, most importantly, the Small Cell Preemption Order eliminates the City's ability to separate wireless deployment processing from traditional building/engineering permit processes, which means that a deployment application (which may be batch-filed in large quantities) must go through review by all City disciplines within the short 60 or 90 day shot-clock depending on the type of deployment, making it nearly impossible to thoroughly review the matter without setting aside all other permits currently in process; and

WHEREAS, not only will the City be stripped of its ability to manage permit workflow, the Small Cell Preemption Order states that the City is not authorized to charge any traditional building/engineering permit fees associated with the process, and therefore, the City will lose millions of dollars in permit review revenue; and

WHEREAS, several national law firms are working cooperatively to represent the interests of local governments with the goal of appealing the Small Cell Preemption Order within ten (10) days of its publication in the Federal Register; and

WHEREAS, after conducting due diligence into the City's options for legal representation, City staff recommends Kenneth S. Fellman, Esq., of Kissinger and Fellman, P.C. (the "Firm"), located in Denver, Colorado, as a nationally recognized legal expert in the field of telecommunications laws and someone who is uniquely situated to be the best legal representative of the City, as he has assembled a coalition of large and small cities and counties, among them are localities that also face a stringent state statute with complex application issues in light of the FCC's latest actions; and

WHEREAS, Kenneth S. Fellman, Esq., of Kissinger and Fellman, P.C., as the lead attorney, has assembled a coalition that is comprised of the Cities of Seattle and Tacoma, Washington, King County, Washington, the Rainier Communications Commission in Pierce County, Washington, and the Colorado Communications & Utility Alliance, which is comprised of about 55 jurisdictions statewide and is the Colorado Chapter of the National Association of Telecommunications Officers and Advisors, and other jurisdictions may also join before the appeal is filed; and

WHEREAS, the Firm has offered to represent the City, as part of the coalition, through the conclusion of the appeal process for a not-to-exceed \$5,000 fee, including costs, which is anticipated to include, at a minimum, the notice of appeal, initial brief, reply brief, various motions, and potentially oral arguments; and

WHEREAS, the City Commission believes it is in the best interest of the residents of the City to pursue its legal remedies by engaging the services of outside counsel to file an appeal of the Small Cell Preemption Order and join local jurisdictions across the nation in the fight to preserve its home rule powers.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:

Section 1: That the foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution.

Section 2: That the City Commission hereby authorizes and directs the City Attorney, or her designee, to engage the services of outside counsel to file an appeal of the Small Cell Preemption Order, and naming the City as a party.

Section 3: That the City Manager, or designee, is authorized to execute legal representation agreement(s) and any other necessary documents pertaining to the appeal, subject to review and approval by the City Attorney, to effectuate the intent of this Resolution.

Section 4: That if any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or in application, it shall not affect the validity of the remaining portion or applications of this Resolution.

Section 5: That this Resolution shall be in full force and effect immediately upon its adoption.

Adopted this _____ day of _____, 2018.

Joshua Rydell, Mayor

Attest:

Leslie Wallace May, City Clerk

Rydell _____
Welch _____
Tooley _____
Sarbone _____
Belvedere _____