

RESOLUTION NO. 2019-120

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, TO OPPOSE PROPOSED STATE LEGISLATION ON COMMUNICATIONS SERVICES FILED UNDER FLORIDA SENATE BILL 1000, AND ITS COMPANION FLORIDA HOUSE BILL 693, THAT SEEK, IN ALL RESPECTS, TO PREEMPT LOCAL REGULATION OF COMMUNICATIONS FACILITIES IN PUBLIC STREETS, PUBLIC RIGHTS-OF-WAY, AND UPON PUBLIC ASSETS THEREIN; PROVIDING FOR DISTRIBUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, at the conclusion of the 2017 State Legislative Session, the Florida Legislature passed House Bill 687, which amended Section 337.401, Florida Statutes, to create the “Advanced Wireless Infrastructure Deployment Act” effective on July 1, 2017; and

WHEREAS, for several months, local jurisdictions around the state worked tirelessly to comply with the state’s new legal framework, and only now there is a consensus on how local jurisdictions may proceed with certain regulations in the field; and

WHEREAS, in 2017, the Advanced Wireless Infrastructure Deployment Act preempted many aspects of local regulation regarding communications facilities in local rights-of-way, however, the Florida Legislature recognized that local governments have long been the stewards of local public streets and public assets in the rights-of-way in order to ensure the free and safe flow of people and goods, as well as to maintain vibrant communities; and

WHEREAS, as it stands, Section 337.401, Florida Statutes, allows local jurisdictions to enact reasonable regulations in the following areas: location of ground-mounted equipment; objective design standards including color, stealth, concealment, similar design and material of wireless facilities and structures; registration of certain entities prior to installation in the rights-of-way; maintenance, insurance, proscribe the

permit process for such installations; manage right-of-way operations; safeguard against threats of destruction of property or injury to persons; indemnification; limitation on local jurisdiction liability, warranties, surety bonds, security funds, force majeure provisions; and the treatment of abandonment of wireless facilities; and

WHEREAS, most, if not all, of those important areas of regulation will be explicitly preempted to the state if Florida Senate Bill 1000 and its companion Florida House Bill 693 are adopted during the 2019 State Legislative Session; and

WHEREAS, in addition to destabilizing the regulatory schematic for communications facilities in local rights-of-way, the proposed legislation creates a new civil cause of action, to be heard in state and federal courts, for any person aggrieved by a violation of the new law and grants the award of attorneys and costs to the prevailing party, this will result in one (1) of two (2) scenarios, either: local government action will be chilled for fear of expending tax dollars to defend its regulatory actions in court or the judicial system will become overburdened with unnecessary disputes that could have been handled administratively; and

WHEREAS, the proposed legislation not only eliminates the local jurisdictions' ability to set thresholds and conditions for the insurance policies carried by the communications services providers working and installing permanent structures within the public rights-of-way, but it creates an entirely new legal standard for local government liability in this state by materially limiting communications services providers' obligation to indemnify local governments; and

WHEREAS, furthermore, the proposed legislation creates several procedural blockades to local ordinance enactment, including the requirement that local government actors give communications services providers at least sixty (60) days' notice before making any changes to their rules or regulations, as well as adding the requirement that local government actors must provide notice of any proposed ordinance to the Florida Secretary of State as a mandatory prerequisite to its enactment; and

WHEREAS, the procedural components cited above are in addition to all of the traditional publication requirements and advertising the every ordinance must receive, which in essence translates to more cost and time spent serving the needs of the business participants of a particular industry, rather than the residents of the local governments affected thereby; and

WHEREAS, the majority of states within the United States have not enacted sweeping “small cell” legislation to streamline regulations in this arena because there is apparent value in local governments’ management of public streets and of other public assets in a manner that balances the competing interests and various needs of each community; and

WHEREAS, as demonstrated in recent months, local governments across the nation, on behalf of their constituents, are not willing to stand by while market participants overrun local streets and rights-of-way, and same is shown by the coalition of governmental entities (the City of Coconut Creek being one of them) filing a federal appeal of the Federal Communications Commission Declaratory Ruling and Third Report and Order which seeks to similarly abridge local government regulations in this arena; and

WHEREAS, the City Commission of the City of Coconut Creek finds and determines that it is in the best interest of its residents, business owners, and visitors to oppose the currently proposed legislation on communications services, Florida Senate Bill 1000 and its companion Florida House Bill 693, as it gives communications services facilities a superior place in the law above considerations for public safety, public utility services such as water, sewer and electricity, the traveling public, environmental concerns, aesthetic beauty of our communities, and its economic development.

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 directs the City Clerk to transmit this resolution to all of the municipalities in Broward County, the Broward County Commission, Florida Governor Ron DeSantis, every Senator and Representative currently serving in the State of Florida Legislature, every member of the Broward County Legislative Delegation, the Broward County League Cities, and Florida League of Cities to help mobilize opposition against the proposed legislation on communications services, Florida Senate Bill 1000 and its companion Florida House Bill 693.

Section 3: 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 4: That this resolution shall be in full force and effect immediately upon its adoption.

Adopted this 25th day of April _____, 2019.

Sandra L. Welch, Mayor

Attest:

Leslie Wallace May, City Clerk

Welch	<u>Aye</u> _____
Sarbone	<u>Aye</u> _____
Tooley	<u>Aye</u> _____
Belvedere	<u>Aye</u> _____
Rydell	<u>Aye</u> _____