

**RESOLUTION NO. 2019-094**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING AN INCREASE IN FUNDING FOR OUTSIDE COUNSEL TO CONTINUE THE APPEAL OF 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, 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 became effective January 14, 2019; 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**, on October 25, 2018, the City Commission via Resolution 2018-257 took an active role in challenging the Small Cell Preemption Order by hiring outside counsel, 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, to appeal the Small Cell Preemption Order; and

**WHEREAS**, since that time, the proceedings have taken an unusual course in that several appeals were filed, including some by the communications industry, in multiple federal appeals courts including the First, Second, Ninth, and Tenth Circuit Courts of Appeals, justifying the random selection of a venue by the Judicial Panel of Multidistrict Litigation; and

**WHEREAS**, fortunately, the City's appeal was successfully consolidated with the other cases and transferred to the more appropriate and preferred venue of the Ninth Circuit Court of Appeals after argument that earlier litigation already pending in that circuit presented valid grounds for judicial economy; and

**WHEREAS**, other unforeseen events occurred that prolonged the traditional course of an appeal, such as when a separate coalition of local governments decided to file a Petition for Reconsideration with the FCC itself, rather than joining the other coalitions asking for review by a circuit court of appeals; and

**WHEREAS**, most recently, in the Ninth Circuit Court of Appeals, the City's motion for a case management conference was granted which will finally set forth the schedule for filing the appellate briefs, however, a separate motion from the FCC was granted in part to allow a partial stay on the issues until the case management conference is held; and

**WHEREAS**, due to the unforeseen path this appeal has taken, the Firm has expended more resources than originally charted and has requested an additional flat fee of \$3,000.00 (over the initial \$5,000.00 requested and already paid), but has reassured the City that notwithstanding this request, the City will retain its place in the litigation through until the disposition of the matter; and

**WHEREAS**, the City Commission believes it is in the best interest of the residents of the City to pursue its legal remedies by further funding the services of outside counsel to continue the briefing of the appeal of the Small Cell Preemption Order and join other 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 the increased flat fee of \$3,000.00 for outside counsel to continue the appeal of the Small Cell Preemption Order.

**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 11<sup>th</sup> day of April, 2019.**

\_\_\_\_\_  
Sandra L. Welch, Mayor

Attest:

\_\_\_\_\_  
Leslie Wallace May, City Clerk

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