



Legislation Text

File #: RES 2018-257, Version: 1

AGENDA ITEM REPORT

TITLE:

A RESOLUTION 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.

BACKGROUND:

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. The action of the FCC will significantly undercut every local jurisdictions' authority on the deployment of wireless infrastructure because it creates wholesale presumptions for the Telecommunications Industry to use to argue that local laws prohibit or have the effect of prohibiting interstate or intrastate telecommunications service in violation of the Telecommunications Act of 1996. Many experts in the field are calling this action an existential threat to home rule powers.

DISCUSSION:

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. This will result in more litigation rather than less, defying the stated goal of the Small Cell Preemption Order. Most importantly, the City stands to lose all discretion in permit processing as any wireless infrastructure deployment permit must take precedence over all other pending permits in order to meet the shot-clock deadlines. Furthermore, the Small Cell Preemption Order denies the City its ability to charge for traditional permit processing, such as building and electrical fees, which will result in significant loss of revenue for the City. The City Attorney's Office has researched various national law firms leading the charge to appeal the Small Cell Preemption Order. Kenneth S. Fellman, Esq. of Kissinger & Fellman, P.C., located in Denver, Colorado, is a highly qualified legal expert in the field who represents cities and counties within his coalition that face similar legal issues as the City of Coconut Creek. He has agreed to represent the City for a fee not-to-exceed \$5,000, including costs.

RECOMMENDATION:

Staff recommends approval of this Resolution.

FISCAL IMPACT:

REVENUES: \$ 0

EXPENDITURES: \$ 5,000

BUDGETED? Yes

NOTES: Account No. 0113-3112, Outside Legal Counsel.