



## **TOWN OF MIAMI LAKES, FLORIDA**

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### **AGENDA PLANNING AND ZONING BOARD MEETING February 21, 2017 6:00 PM Government Center 6601 Main Street Miami Lakes, FL 3301**

- 1. Call to Order**
- 2. Roll Call**
- 3. Pledge of Allegiance**
- 4. Approval of Minutes**
  - A.       • November 15, 2016 Planning and Zoning Board Minutes**
- 5. Business Requiring Board Action**

**QUASI-JUDICIAL PUBLIC HEARINGS** - Please be advised that the following items on the Board's agenda are quasi-judicial in nature. An opportunity for persons to speak on each item will be made available after the applicant and staff have made their presentations on each item. All testimony, including public testimony and evidence, will be made under oath or affirmation. Additionally, each person who gives testimony may be subject to cross-examination. If you do not wish to be either cross-examined or sworn, your testimony will be given its due weight. The general public will not be permitted to cross-examine witnesses, but the public may request the Board to ask questions of staff or witnesses on their behalf. Persons representing organizations must present evidence of their authority to speak for the organization. Any person presenting documents to the Board should provide the Town Clerk with a minimum of 10 copies. Further details of the quasi-judicial procedure may be obtained from the Clerk.

- B.       AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE PROCESSING, ISSUANCE, OR APPROVAL OF ANY DEVELOPMENT ORDER, INCLUDING BY NOT LIMITED TO, BUILDING PERMITS, CERTIFICATES OF USE, SITE PLANS, VARIANCES, CONDITIONAL USES, OR LAND USE MODIFICATIONS FOR CANNABIS DISPENSARIES OR MARIJUANA TREATMENT CENTERS FOR A PERIOD OF ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE**

**OF ADOPTION OF THIS ORDINANCE; PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING FOR THE GEOGRAPHIC AREA COVERED; AND PROVIDING FOR AN EFFECTIVE DATE.**

- C. AN ORDINANCE OF THE TOWN OF MIAMI LAKES FLORIDA, IMPOSING A TEMPORARY MORATORIUM UPON ISSUANCE ANY DEVELOPMENT ORDERS, INCLUDING BUT NOT LIMITED TO BUILDING PERMITS, CERTIFICATES OF USES, VARIANCES, SITE PLANS, CONDITIONAL USES, OR SPECIAL EXCEPTIONS, PERTAINING TO THE INSTALLATION OR SITING OF ANY "TELECOMMUNICATIONS TOWERS", AS MAY BE DEFINED BY FEDERAL LAW, OR ANY "NEW WIRELESS PERSONAL TELECOMMUNICATIONS SERVICES TOWER," "TOWER," OR "DISTRIBUTED ANTENNA SYSTEM," AS DEFINED BELOW OR ANY OTHER COMMUNICATIONS FACILITIES WHOLLY CONTAINED OR MOUNTED ON A SINGLE STAND ALONE TOWER, AS MAY BE CONTEMPLATED BY SECTION 337.401, FLORIDA STATUTES; SUCH MORATORIUM BEING EFFECTIVE FOR ANY PUBLIC RIGHTS-OF-WAY WITHIN THE JURISDICTION OF THE TOWN OF MIAMI LAKES, FLORIDA UNDER THE FLORIDA TRANSPORTATION CODE PROVIDING FOR DEFINITIONS; PROVIDING FOR INTERPRETATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

#### **6. Director's Report**

#### **7. Adjournment**

This meeting is open to the public. A copy of this Agenda and the backup therefore, has been posted on the Town of Miami Lakes Website at [www.miamilakes-fl.gov](http://www.miamilakes-fl.gov) and is available at Royal Oaks Park Community Center, 16500 NW 87th Avenue, Miami Lakes, FL 33018. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact Town Hall at 305-364-6100 two days prior to the meeting.

Anyone wishing to appeal any decision made by the Miami Lakes Planning and Zoning Board with respect to any matter considered at this meeting or hearing will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based.



## **Town of Miami Lakes Memorandum**

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**To: Chairman Jeffrey Rodriguez**

**From: Gina Inguanzo, Town Clerk**

**Subject: Approval of Minutes**

**Date: February 21, 2017**

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### **Recommendation:**

Attached please see the Minutes from November 15, 2016 Planning & Zoning Board.

- November 15, 2016 Planning and Zoning Board Minutes

### **Attachments:**

[November 15 2016 Meeting Minutes](#)

**MINUTES**  
**PLANNING & ZONING BOARD MEETING**  
**November 15, 2016**  
**6:00 p.m.**  
**Government Center**  
**6601 Main Street, Miami Lakes, FL 33014**

**1. Call to Order**

Chairman Jeffrey Rodriguez called the meeting to order at 6:15 p.m.

**2. Roll Call**

The Deputy Town Clerk, Helen Roldan, called the roll and the following Board Members were present: Avelino Leoncio, Homero Cruz, Vice Chairman Raul de la Sierra and Chairman Jeffrey Rodriguez. Board Member Fred Senra was absent. Board members Robert Julia and Ameli Padron Fragetta joined the meeting late.

**3. Pledge of Allegiance/Moment of Silence**

Chairman Jeffrey Rodriguez led the Pledge of Allegiance and called for a moment of silence.

**4. Approval of Minutes**

A. Minutes for September 13, 2016 Planning and Zoning Board Meeting

Vice Chairman Raul de la Sierra made a motion to approve the minutes. The motion received a second from Board Member Homero Cruz. The motion passed 4-0. Board members Fred Senra, Robert Julia, and Ameli Padron Fragetta were absent.

**5. Business Requiring Board Action**

Assistant Town Attorney, Lorenzo Cobiella, read the Quasi-Judicial Procedures.

**QUASI-JUDICIAL PUBLIC HEARINGS** – Please be advised that the following items on the Board's agenda are quasi-judicial in nature. An opportunity for persons to speak on each item will be made available after the applicant and staff has made their presentations on each item. All testimony, including public testimony and evidence, will be made under oath or affirmation. Additionally, each person who gives testimony may be subject to cross-examination. If you do not wish to be either cross-examined or sworn, your testimony will be given its due weight. The general public will not be permitted to cross-examine witnesses, but the public may request the Board to ask questions of staff or witnesses on their behalf. Persons representing organizations must present evidence of

their authority to speak for the organization. Any person presenting documents to the Board should provide the Town Clerk with a minimum of 10 copies. Further details of the quasi-judicial procedure may be obtained from the Clerk.

- B. AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA, AMENDING THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE BY AMENDING ARTICLE III, BY AMENDING LANGUAGE IN SECTION 13-308; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Brandon Schaad, Planning Director for the Town of Miami Lakes, presented the item.

The Board asked staff questions related to the ordinance.

Chairman Jeffrey Rodriguez opened the public hearing.

Carol Wylie came before the Board to speak about how the current long the county takes to pass plats. She believes this ordinance will help with the process to get plat approval.

As no one else wished to speak, Chairman Jeffrey Rodriguez closed the public hearing.

Board member Avelino Leoncio made a motion to approve the ordinance. The motion passed unanimously 4-0. Board members Fred Senra, Robert Julia, and Ameli Padron Fragetta were absent.

- C. HEARING NUMBER:      VARH2016-0016

APPLICANT:                      Gator Miami Lakes, LLC.

FOLIO:                              32-2022-006-0016

LOCATION:                          7850 NW 146 ST., Miami Lakes, Florida 33016

The Deputy Town Clerk swore in anyone wishing to speak.

Assistant Town Attorney, Lorenzo Cobiella, read the Quasi-Judicial Procedures.

Luis Davila came before the Board on behalf of Gator Miami Lakes, LLC. He formally requested to defer the hearing to another date.

Chairman Jeffrey Rodriguez closed the public hearing.

Vice Chairman Raul De La Sierra made a motion to defer the item. Chairman Jeffrey Rodriguez seconded the motion. The motion passes unanimously 4-0. Board members Fred Senra, Robert Julia, and Ameli Padron Fragetta were absent.

D. HEARING NUMBER:      VARH2016-0017

APPLICANT:                      Lennar Homes, LLC

FOLIO:                              32-2016-000-0040

LOCATION:                          Northwest Corner of NW 154th Street & NW 87th  
Avenue, Miami Lakes, Florida 33016

Brandon Schaad, Planning Director for the Town of Miami Lakes, presented the item.

Eliezer Palacio, Building Official for the Town of Miami Lakes, answered questions from the Board.

Hugo Arza came before the Board on behalf of Lennar and answered questions from the Board.

As no one else wished to speak, Chairman Jeffrey Rodriguez closed the public hearing.

Board Member Avelino Leoncio made a motion to approve staff recommendations. Vice Chairman Raul de la Sierra seconded the motion. The motion passed 4-2. Board Members Leoncio, Julia, de la Sierra, and Rodriguez voted in favor. Board member Fred Senra was absent.

## **6. Director's Report**

Brandon Schaad announced it was his last Planning and Zoning Board meeting at the Town of Miami Lakes.

## **7. Adjournment**

There being no further business to come before the Board, the meeting adjourned at 6:50 p.m.

Approved this 21<sup>st</sup> day of February, 2017.

Attest:

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Jeffrey Rodriguez, Chairman

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Gina M. Inganzo, Town Clerk



## **Town of Miami Lakes Memorandum**

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**To:** Chairman Rodriguez and Board Members

**From:** Darby DelSalle, Planning Director

**Subject:** Marijuana Dispensary Moratorium

**Date:** February 21, 2017

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### **Recommendation:**

It is recommended that the Town institute a 6-month moratorium on the establishment of marijuana dispensing organizations and medical marijuana treatment centers within the Town in order to consider and weigh the changes to the Land Development Code needed to appropriately comply with recent changes to State law.

### **Background:**

On November 8, 2016, Florida voters approved Amendment 2, titled "Use of Marijuana for Debilitating Medical Conditions"; which fully legalized the medical use of marijuana throughout the State for individuals with specified "debilitating" conditions, and authorized cultivation, processing, distribution, and sale of marijuana and related activities by licensed "Medical Marijuana Treatment Centers". This item was heard and moved on first reading by the Town Council on February 7, 2017.

Pursuant to Section 381.986(8) of the Florida Statutes, a municipality may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law, for dispensing facilities or dispensing organizations located within its municipal boundaries. Because the Town's Land Development Code does not currently contain provisions for the regulation of marijuana dispensing organizations and marijuana treatment centers, a moratorium would allow time for appropriate legislation to be drafted, considered, and adopted to address these new uses. The attached ordinance would impose a 6-month moratorium on the establishment of marijuana dispensing organizations and medical marijuana treatment centers with the Town.

Many jurisdictions across Florida have adopted, or are in the process of adopting, moratoria on this issue in order to similarly comply with State Statutes.

**Attachments:**

[Ordinance](#)

**ORDINANCE NO. 17-\_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE PROCESSING, ISSUANCE, OR APPROVAL OF ANY DEVELOPMENT ORDER, INCLUDING BY NOT LIMITED TO, BUILDING PERMITS, CERTIFICATES OF USE, SITE PLANS, VARIANCES, CONDITIONAL USES, OR LAND USE MODIFICATIONS FOR CANNABIS DISPENSARIES OR MARIJUANA TREATMENT CENTERS FOR A PERIOD OF ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF ADOPTION OF THIS ORDINANCE; PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING FOR THE GEOGRAPHIC AREA COVERED; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Florida Legislature in 2014 enacted a Low-TCH and Medical Cannabis law, the “Compassionate Medical Cannabis Act of 2014” (codified as Section 381.986, Florida Statutes) (“Act”) which, among other provisions, authorized a limited number of large nurseries to cultivate, process, transport and dispense non-euphoric, low THC cannabis and operate as “Dispensing Organizations” for individuals with certain specified serious ailments; and

**WHEREAS**, the Florida Legislature in 2016 amended the Compassionate Medical Cannabis Act (Section 381.986, Florida Statutes) to include the use of full strength “medical marijuana” for eligible patients with terminal conditions; and

**WHEREAS**, the 2016 Amendment to Section 381.986, Florida Statutes, expanded the type of marijuana available to eligible patients beyond low THC cannabis to include all types of marijuana, and the statutory amendment has been codified and has become effective in the State of Florida; and

**WHEREAS**, on November 8, 2016, Florida’s voters voted in favor of an amendment to the Florida Constitution, titled “Use of Marijuana for Debilitating Medical Conditions (“Amendment 2”); and

**WHEREAS**, Amendment 2 fully legalizes the medical use of marijuana throughout the State of Florida for those individuals with specified debilitating conditions, and authorized the cultivation processing, distribution and sale of marijuana and related activities by licensed “Medical Marijuana Treatment Centers”; and

**WHEREAS**, Section 381.986(8)(b), Florida Statutes, provides that the criteria for the number and location of, and other permitting requirements that do not conflict with state

law or rules of the Florida Department of Health, may be established by local ordinance; and

**WHEREAS**, Section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law; and

**WHEREAS**, Florida laws relating to the cultivation, production and dispensing of low THC-cannabis and medical marijuana products are likely to be modified as of the result of Amendment 2 – raising substantial questions about whether cannabis-related land uses, as a category of commercial use, may have deleterious and negative secondary effects on surrounding land uses and communities without reasonable regulations; and

**WHEREAS**, the purpose of this ordinance is to place a temporary moratorium on the issuance of any development orders, including but not limited to building permits, certificates of uses, site plans, variances, conditional uses, or land use modifications permitting the establishment, siting and operations of any new cannabis dispensing facilities and medical marijuana treatment centers, to afford the Town the time reasonably necessary to evaluate any potential impact that may arise from such uses and to prepare to appropriate development standards, as permitted by State Statutes, within its Land Development Code; and

**WHEREAS**, the Town of Miami Lakes Council finds that the temporary moratorium imposed by this ordinance is for a reasonable duration appropriate to provide the town the time necessary to investigate the impacts of such facilities, and if necessary, to promulgate reasonable regulations relating thereto ; and

**WHEREAS**, the Town of Miami Lakes Council hereby finds that this ordinance is in the best interest of the public health, safety and welfare of the Town.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, ADOPTS THE FOLLOWING ORDINANCE.**

**Section 1. Findings of Fact.** The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this ordinance.

**Section 2. Definitions.** For purposes of this ordinance, the following words terms and phrases, including their respective derivatives have the following meanings:

- a. *Cannabis* means all parts of any plant of the genus *Cannabis*, whether growing or

not; the seeds thereof; the resin extracted from any part of the plant and every compound, manufacture, salt derivative, mixture or preparation of the plant or its seeds or resin also known as marijuana.

- b. *Cannabis dispensary* means an establishment where the cultivation of the cannabis plant, sale of the cannabis plant, sale of any part of the cannabis plant, including its flowers and any derivative product of the cannabis plant, including low-THC cannabis, is dispensed at retail.
- c. *Derivative product* means any form of cannabis suitable for routes of administration.
- d. *Low-THC cannabis* means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seed or resin that is dispensed only from a dispensing organization approved by the Florida Department of Health pursuant to Section 381.986, Florida Statutes.
- e. ~~*Low-THC*~~ *Cannabis dispensary* means an establishment where low-THC cannabis and medical cannabis is dispensed at retail.
- f. *Medical cannabis* means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a dispensing organization for medical use by an eligible patient as defined in Section 499.0295, Florida Statutes.
- g. *Medical Marijuana Treatment Center* means business entities that cultivate, process, and dispense cannabis for medicinal purposes to qualified patients.

**Section 3. – Temporary Moratorium.** Beginning on the effective date of this ordinance and continuing through One Hundred Eighty (180) days from the effective date, or sooner if provided pursuant to section 4 of this ordinance, a moratorium is hereby imposed on the issuance of any development orders, including but not limited to building permits, certificates of uses, site plans, variances, conditional uses, or land use modifications permitting the establishment, siting and operations of any new cannabis dispensing facilities and medical marijuana treatment centers. During the moratorium, it shall be unlawful and a violation of this ordinance for any person, firm, or corporation to open or cause to be opened any cannabis dispensary, low-THC cannabis dispensary or medical marijuana treatment facilities within the Town of Miami Lakes.

**Section 4. - Expiration of the Temporary Moratorium.** This Ordinance shall remain in effect for one hundred eighty (180) days from effective date hereof, unless earlier rescinded, repealed, or extended by Resolution of the Town Council.

**Section 5. – Recommendation for Land Development Regulations.** The planning

official is hereby directed to study, develop, and recommend land development regulations for cannabis dispensaries, low-THC cannabis dispensaries and medical marijuana treatment facilities in the Town of Miami Lakes, with such recommendation being delivered to the Town of Miami Lakes Council prior to the expiration of this ordinance.

**Section 6. - Severability.** If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without invalid provision or application and to this end the provisions of this ordinance are severable.

**Section 7. - Effective date.** This Ordinance shall become effective immediately upon its adoption on second reading.

#### **FIRST READING**

The foregoing ordinance was offered by Councilmember \_\_\_\_\_ who moved its adoption on first reading. The motion was seconded by Councilmember \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	_____
Vice Mayor Tony Lama	_____
Councilmember Luis Collazo	_____
Councilmember Tim Daubert	_____
Councilmember Ceasar Mestre	_____
Councilmember Frank Mingo	_____
Councilmember Nelson Rodriguez	_____

Passed and adopted on first reading this 17<sup>th</sup> day of January, 2017.

**THIS SPACE INTENTIONALLY LEFT BLANK**

The foregoing ordinance was offered by Councilmember \_\_\_\_\_ who moved its adoption on second reading. The motion was seconded by Councilmember \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	_____
Vice Mayor Tony Lama	_____
Councilmember Luis Collazo	_____
Councilmember Tim Daubert	_____
Councilmember Ceasar Mestre	_____
Councilmember Frank Mingo	_____
Councilmember Nelson Rodriguez	_____

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Manny Cid  
MAYOR

Attest:

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Gina Inguanzo  
TOWN CLERK

Approved as to form and legal sufficiency:

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Raul Gastesi, Jr.  
Gastesi & Associates, P.A.  
TOWN ATTORNEY



## **Town of Miami Lakes Memorandum**

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**To:** Chairman Rodriguez and Board Members

**From:** Darby DelSalle, Planning Director

**Subject:** Cell Tower Moratorium

**Date:** February 21, 2017

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### **Recommendation:**

It is recommended that the Town of Miami Lakes institute a 6-month moratorium on the approval of any development orders involving the installation of telecommunication equipment in the public rights-of-way, including but not limited to building permits, site plan approvals, variances or conditional uses, in order to consider and weigh the changes to the Land Development Code needed to suitably accommodate these facilities within Town boundaries while complying with recently enacted Florida Statutes and Federal Laws regarding such equipment.

### **Background:**

The siting of wireless telecommunication facilities is regulated by the federal government through the Telecommunications Act of 1996, the State of Florida through Section 365.12 Florida Statutes, as recently amended, and various sections of the Town of Miami Lakes Land Development Code including Sec. 35-27. The Telecommunications Act of 1996 provides that state and local governments may not unreasonably discriminate among otherwise equivalent wireless providers, nor may they effectively prohibit wireless services. With the advancement of new technologies in wireless communications, such as Distributed Antenna Systems (DAS) and small cell systems, it becomes incumbent upon the town to consider appropriate development standards to guide the siting of such facilities and equipment.

Because of these new and emerging technologies and changes in State Statutes, other cities and counties in Florida are imposing, or are considering the imposition of, a temporary moratorium on the approval of development orders relating to the placement of wireless communications facilities in the public rights-of-way. The desire is provide their respective

staff sufficient time to study the issues and develop appropriate siting standards. The time period set for the temporary moratorium typically varies from six months to eighteen months.

The Town is receiving requests to place communication towers and/or facilities in public rights-of-way in order to improve wireless connectivity and coverage. The Town's current standards require review, and possibly adjustment, to ensure they comply with amended Florida Statutes prior to consideration of any application for new facilities.

**Attachments:**

[Ordinance](#)

**ORDINANCE NO. 17-**

**AN ORDINANCE OF THE TOWN OF MIAMI LAKES FLORIDA, IMPOSING A TEMPORARY MORATORIUM UPON ISSUANCE ANY DEVELOPMENT ORDERS, INCLUDING BUT NOT LIMITED TO BUILDING PERMITS, CERTIFICATES OF USES, VARIANCES, SITE PLANS, CONDITIONAL USES, OR SPECIAL EXCEPTIONS, PERTAINING TO THE INSTALLATION OR SITING OF ANY "TELECOMMUNICATIONS TOWERS", AS MAY BE DEFINED BY FEDERAL LAW, OR ANY "NEW WIRELESS PERSONAL TELECOMMUNICATIONS SERVICES TOWER," "TOWER," OR "DISTRIBUTED ANTENNA SYSTEM," AS DEFINED BELOW OR ANY OTHER COMMUNICATIONS FACILITIES WHOLLY CONTAINED OR MOUNTED ON A SINGLE STAND ALONE TOWER, AS MAY BE CONTEMPLATED BY SECTION 337.401, FLORIDA STATUTES; SUCH MORATORIUM BEING EFFECTIVE FOR ANY PUBLIC RIGHTS-OF-WAY WITHIN THE JURISDICTION OF THE TOWN OF MIAMI LAKES, FLORIDA UNDER THE FLORIDA TRANSPORTATION CODE PROVIDING FOR DEFINITIONS; PROVIDING FOR INTERPRETATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, with the enactment of the Telecommunications Act of 1996 ("Act"), the Act prevents the Town from adopting local regulations in response to perceived or real fears of radio frequency emissions once such facilities comply with Federal Communications Commission ("FCC") Regulations, in that the Act provides:

No state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions; and

**WHEREAS**, the Act prevents the Town from unreasonably discriminating against providers of functionally equivalent services, such that when the Town allows communications distribution facilities (antennae) or Distributed Antenna Systems wholly contained or mounted on a single, stand-alone tower, or wireless personal telecommunications services antennae towers, within the Town's public rights-of-way, it must formulate reasonable nondiscriminatory rules and policies that are applicable to all such similar facilities; and

**WHEREAS**, the State of Florida has adopted legislation, presently codified as § 365.172, Fla. Stat (2016) (herein the "Emergency Communications Number E911 Act") which is designed to facilitate E-911 Service Implementation for the wireless personal telecommunications industry, by expediting certain co-location requests and otherwise limiting a municipality's authority to regulate the installation of wireless telecommunications towers and antennae arrays; and

**WHEREAS**, pursuant to Florida Statute 356.175(13), the Emergency Communications Number E-911 Act does not prevent a municipality from managing its public rights-of-way and provides in pertinent part:

“Further, notwithstanding anything in this section to the contrary, this subsection does not apply to or control a local government's action as a property or structure owner in the use of any property or structure owned by such entity for the placement, construction, or modification of wireless communications facilities. In the use of property or structures owned by the local government, however a local government may not use its regulatory authority so as to avoid compliance with, or in a manner that does not advance, the provisions of this subsection.”

§ 365.172, Fla. Stat (2016); and

**WHEREAS**, the State of Florida has adopted legislation, presently codified as § 337.401, Fla. Stat. (2016) (herein the "Right Of Way Regulatory Laws") which is designed to promote the expansion of the wireless personal telecommunications industry, by confirming a municipality's authority to adopt and enforce reasonable, non-discriminatory rules and regulations which apply to the installation of utilities facilities in public rights-of-way, in stating:

“Because of the unique circumstances applicable to providers of communications services, and the fact that federal and state law require the nondiscriminatory treatment of providers of telecommunications services, and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities and counties treat providers of communications services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services and, notwithstanding any other law, may not require a provider of communications services to apply for or enter into an individual license, franchise or other agreement with the municipality or county as a condition of placing or maintaining communications facilities in its roads or

rights-of-way.”

§ 337.401 (3) (a), Fla. Stat. (2016); and

**WHEREAS**, the expansion of personal wireless communications has included not only "traditional" large towers (“Traditional Towers”), but recently the use of new smaller tower "microcell" technologies such as Distributed Antenna Systems Networks or DAS Networks (“DAS”); and

**WHEREAS**, the Town has become aware that providers of Traditional Towers desire to begin installation of new tower facilities within the Town’s public rights-of-way; and

**WHEREAS**; the Town has become aware that Distributed Antenna System Networks or DAS Networks desire to begin installations of new tower facilities within the Town's public rights-of-way; and

**WHEREAS**, these new technologies may require improvements that have not been contemplated by the Town in the management and control of the Town's public rights-of-way and lawful competing uses thereof which need to be weighed and balanced with safety and aesthetic interests in mind; and

**WHEREAS**, on an increasing basis, public safety officials are becoming alarmed at the dangers of distracted driving caused in part by the use of personal wireless communications technology in the transportation context resulting in the adoption of the Florida Ban on Texting While Driving Law, § 316.305, Fla. Stat. (2016) preventing or limiting the use; therefore, allowing a new technology principally designed to serve rights-of-way users and an immediate surrounding area (which immediate surrounding area likely already has access to alternative forms of communications) could well be viewed as inconsistent with the interest of transportation public safety; and

**WHEREAS**, the Town Council and Staff have noted the potential for rapid deployment of such telecommunications towers, wireless personal telecommunications service tower, Traditional Towers, towers and DAS (hereinafter in these recitals, "Telecommunications Towers") and the need for time to review, consider, and modify the processes for adoption and implementation of regulations pertaining to the deployment of such telecommunications towers and to evaluate the extent that the existing regulations are effectively regulating the deployment of such telecommunications towers; and

**WHEREAS**, there is a need to review and revise the Town’s Land Development Code (“LDC”) to address the potential safety and security concerns that placement and installation of

Telecommunications Towers can create; and

**WHEREAS**, in order to provide sufficient time for Town Staff to review and proposed necessary changes to its LDC, a One Hundred Eighty (180) day moratorium on the issuance of any development orders, including but not limited to building permits, certificates of use, site plans, variances, or conditional uses, for wireless communications facilities in the Town's public rights-of-way or public land is reasonable time frame to complete the process and ensure uniform application of the final ordinance; and

**WHEREAS**, the Federal Communication Commission's Intergovernmental Advisory Committee states that such a moratorium with a clearly defined time limit can provide benefits, including provide for the orderly handling of requests for siting these facilities in the public rights-of-way; and

**WHEREAS**, a six (6) month, or one hundred and eighty (180) day moratorium has been upheld by the Federal Courts in *Sprint Spectrum v. Town of Medina*, 924 F.Supp. 1036 (W.D. Wash. 1996); and

**WHEREAS**, the purpose of this Ordinance is to undertake a thorough analysis of the Town's regulation of telecommunications towers consistent with State and Federal Laws and developing a comprehensive strategy with regard thereto; and

**WHEREAS**, the scope of this Ordinance is purposefully designed to be narrowly tailored as it only affects new wireless communications facilities and/or tower/facility locations (as distinguished from co-locations) in the Town's public rights-of-way applications; therefore the temporary moratorium adopted hereby will not: (i) prevent or affect applications for co-location of antenna arrays on existing telecommunications towers which have antenna arrays anywhere in the Town in accordance with § 365.172 (13), Fla. Stat. (2016), (ii) affect applications to install new telecommunications towers on private property, or (iii) affect any new telecommunications tower applications for any building site owned by the Town of Miami Lakes, Miami-Dade County, the State of Florida, or the United States of America or any of their respective agencies or districts; and shall preclude enforcement of Chapter 104, of the Town's Code as it relates to new applications within the Rights-of-Way of the Town, as same shall be evaluated by the Town over the 180 day moratorium.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, ADOPTS THE FOLLOWING ORDINANCE:**

**Section 1. Findings of Fact.** The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this ordinance.

**Section 2. – Definitions.** The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

*Antenna* means a device capable of transmitting or receiving electromagnetic signals.

*Town* means the Town of Miami Lakes, Florida.

*Collocation* means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antenna. The term includes ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antenna or antennae for the purpose of providing wireless service.

*Distributed Antenna System or DAS* means a network of spatially separated antenna nodes, connected to a common source by way of a transport medium that provides wireless services, including wireless personal telecommunications service, within a limited geographic area. The term DAS as used herein is limited to outdoor installations and excludes indoor installations.

*Public rights-of-way* means the surface, the airspace above the surface and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, court, lane, way, drive, circle, or any other property for which the Town is the authority that has jurisdiction and control over the transportation corridor pursuant to the Florida Transportation Code, including roads transferred to the Town in accordance with § 335.0415, Fla. Stat. (2014). "Public rights-of-way" shall not include any real or personal Town property except as described above and shall not include Town buildings, fixtures, or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

*Tower* means any structure designed primarily to support a wireless provider's antenna or antennae.

*Utility pole* means any pole that is used to support power, telephone or other

communications service wires, including monopoles or antennae.

*Wireless communications facility* means any equipment or facility used to provide support for service and may include, but is not limited to Distributed Antenna Systems, wireless personal telecommunications service antenna or antennae, antenna or antennae towers, equipment enclosures, cabling, antenna brackets, and other similar equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility.

*Wireless personal telecommunications service antenna tower* means a monopole or lattice structure, of free standing or guyed design, to support or contain one (1) or more wireless personal telecommunications service antenna and their appurtenances.

*Wireless personal telecommunications service antenna* shall mean an antenna used in the provision of over the air wireless personal telecommunications services.

**Section 3. – Temporary Moratorium.** A temporary moratorium is hereby established and imposed upon the issuance of any development orders, including but not limited to building permits, certificates of uses, site plans, variances, conditional uses, or land use modifications permitting the establishment, siting and operations of any applications for the installation of or siting of any new "wireless personal telecommunications services tower," facility, or any "Tower" as defined by § 365.172, Fla. Stat. (2016), or any communications distributions facilities (antennae) wholly contained or mounted on a new single, standalone tower in any of the Town's public rights-of-way.

**Section 4. Exemptions.** The temporary moratorium will not: (i) prevent or affect applications for co-location of antenna arrays on existing telecommunications towers which have antenna arrays anywhere in the Town in accordance with § 365.172 (13), Fla. Stat. (2016), (ii) affect applications to install new telecommunications towers on private property, or (iii) affect any new telecommunications tower applications for any building site owned by the Town of Miami Lakes, Miami-Dade County, the State of Florida, or the United States of America or any of their respective agencies or districts; and shall preclude enforcement of Chapter 104, of the Town's Code as it relates to new applications within the Rights-of-Way of the Town.

**Section 5. – Interpretation.** This Ordinance is to be liberally construed to accomplish its objectives.

**Section 6. - Expiration of the Temporary Moratorium.** This Ordinance shall remain in effect for one hundred eighty (180) days from effective date hereof, unless earlier rescinded, repealed by Ordinance or extended by Resolution of the Town Council.

**Section 7. - Severability.** If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without invalid provision or application and to this end the provisions of this ordinance are severable.

**Section 8. - Effective date.** This Ordinance shall become effective immediately upon its adoption on second reading.

### **FIRST READING**

The foregoing ordinance was offered by Councilmember \_\_\_\_\_ who moved its adoption on first reading. The motion was seconded by Councilmember \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	_____
Vice Mayor Tony Lama	_____
Councilmember Luis Collazo	_____
Councilmember Tim Daubert	_____
Councilmember Ceasar Mestre	_____
Councilmember Frank Mingo	_____
Councilmember Nelson Rodriguez	_____

Passed and adopted on first reading this 17<sup>th</sup> day of January, 2017.

**THIS SPACE INTENTIONALLY LEFT BLANK**

## SECOND READING

The foregoing ordinance was offered by Councilmember \_\_\_\_\_ who moved its adoption on second reading. The motion was seconded by Councilmember \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	_____
Vice Mayor Tony Lama	_____
Councilmember Luis Collazo	_____
Councilmember Tim Daubert	_____
Councilmember Ceasar Mestre	_____
Councilmember Frank Mingo	_____
Councilmember Nelson Rodriguez	_____

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Manny Cid  
MAYOR

Attest:

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Gina Inguanzo  
TOWN CLERK

Approved as to form and legal sufficiency:

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Raul Gastesi, Jr.  
Gastesi & Associates, P.A.  
TOWN ATTORNEY