

RESOLUTION NO. 17- _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, PURSUANT ORDINANCE NO. 17-201, EXTENDING BY SIX (6) MONTHS, THE TEMPORARY MORATORIUM UPON ISSUANCE OF 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 IN ORDINANCE 17-201, 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, AS IMPOSED BY SAID ORDINANCE; AND 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; 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 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 365.172(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 (13), Fla. Stat (2016); and

WHEREAS, the State of Florida 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 became aware that there is a desire by private entities to install Distributed Antenna System Networks or DAS Networks 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, in light of this development, the Town Council, on March 7th, 2017,

adopted Ordinance No. 17-201 (Exhibit A), imposing a moratorium upon the issuance of 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 in Ordinance 17-201, or any other communications facilities wholly contained or mounted on a single standalone 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, for a period not to exceed 180 days unless otherwise extended by resolution; and

WHEREAS, the Florida Legislature, at the conclusion of the 2017 Legislative Session (2017), again amended the Florida Statutes regarding the regulations of such facilities within the Rights-of-Way of local jurisdictions; and

WHEREAS, the Town now desires to extend the temporary moratorium imposed by Ordinance No. 17-201 for an additional six (6) months to allow time for Town Staff to draft municipal regulations reflective of State Law and Federal Laws, for the Town Council to consider for adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and hereby made a specific part of this Resolution upon adoption hereof.

Section 2. The Town Council, pursuant to Ordinance No. 17-201 authorizes a six (6) month extension to said ordinance upon the issuance of 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 in ordinance 17-201, or any other communications facilities wholly contained or mounted on a single standalone 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, s.

Section 3. This Resolution shall take effect upon its passage and adoption by the Town Council.

PASSED AND ADOPTED this ____ day of July, 2017.

Motion to adopt by: _____, second by: _____.

FINAL VOTE AT ADOPTION

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

Manny Cid
Mayor

Attest: Approve as to Form and Legal Sufficiency

Attest: _____
Gina Inguanzo
Town Clerk

Raul Gastesi
Town Attorney

EXHIBIT A

ORDIANCE NO. 17-201