

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 § 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 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 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 right-of-way's 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 Town Council appointed the Planning and Zoning Board as the Local Planning Agency for the Town pursuant to §163.3174, Florida Statutes; and

WHEREAS, on February 21, 2017 the Planning and Zoning Board, acting in its capacity as the Local Planning Agency, acted in accordance with state law, and in specific compliance with § 163.3174, Florida Statutes and has reviewed and recommends approval of this temporary moratorium; 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 colocations) in the Town's public rights-of-way applications; therefore the temporary moratorium adopted hereby will not: (i) prevent or affect applications for colocation 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 One Hundred and Eighty (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 Tim Daubert	_____
Councilmember Luis Collazo	_____
Councilmember Ceasar Mestre	_____
Councilmember Frank Mingo	_____
Councilmember Nelson Rodriguez	_____

Passed and adopted on first reading this 17th day of January, 2017.

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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 Tim Daubert	_____
Councilmember Luis Collazo	_____
Councilmember Ceasar Mestre	_____
Councilmember Frank Mingo	_____
Councilmember Nelson Rodriguez	_____

Manny Cid
MAYOR

Attest:

Gina Inguanzo
TOWN CLERK

Approved as to form and legal sufficiency:

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