

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2019-307

A RESOLUTION OF THE CITY COMMISSION OPPOSING PREEMPTION OF CITY AUTHORITY REGARDING THE DEPLOYMENT OF SMALL CELL TECHNOLOGY IN CITY PUBLIC RIGHTS-OF-WAY AND URGING THE FLORIDA LEGISLATURE TO REPEAL SECTION 337.401(7), FLORIDA STATUTES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Coral Gables, Florida, (“City”) enjoys Home Rule authority under the Florida Constitution; and

WHEREAS, the City exercises its authority particularly, its authority over the deployment of facilities in its public rights-of-way, in the interest of health, welfare of the City’s residents, businesses and visitors; and

WHEREAS, in 2017, Florida enacted the Advance Wireless Infrastructure Deployment Act (“small cell statute”), codified at Section 337.401(7), Florida Statutes (“Section 337.401(7)”), which preempted to large extent the City’s authority over the placement and maintenance of small cell facilities in the City’s public rights-of-way; and

WHEREAS, in 2019, the Florida legislature amended Section 337.401, Florida Statutes, by providing additional restrictions on local governments’ authority with respect to the deployment and regulation of such facilities in public rights-of-way; and

WHEREAS, in 2019, the City fully adopted Ordinance No. 2019-08 to implement the City’s authority under Section 337.401(7) of its authority, consistent with applicable state and federal law; and

WHEREAS, the City is in the process of considering an amendment to this ordinance to implement the 2019 amendments; and

WHEREAS, the installation of facilities associated with small cell facilities in the City has caused damage to the City’s public rights-of-way, causing the City to engage in litigation to recover expenses incurred to repair damage to the City’s public rights-of-way; and

WHEREAS, the City enjoys significant historic and cultural properties, and has undertaken efforts to have significant areas of the City declared historical property; and

WHEREAS, the deployment of small cell facilities in the City’s public rights-of-way has the potential of damaging City and third-party utilities and public rights-of-way as well as impacting negatively the preservation of historical property within the City; and

WHEREAS, residents are concerned with the potential health effects of radio

frequency (“rf”) emissions from small cell facilities, particularly given the potential close proximity of such facilities to homes, schools, playgrounds and workplaces; and

WHEREAS, federal law preempts the City’s consideration of the potential health effects of small cell facilities on decisions regarding the siting of such facilities; yet the Federal Communications Commission has not updated its standards in over twenty (20) years and has not sufficiently studied the potential health consequences of rf emissions, particularly from small cell facilities located in close proximity to residents and businesses; and

WHEREAS, the City has received numerous applications to install fiber throughout its public rights-of-way to create the network to support advanced wireless service from small cell facilities in the City; and

WHEREAS, the City has received an application to construct a small cell facility in the City’s public rights-of-way and has been notified that it will receive many additional applications for such facilities in its public rights-of-way; and

WHEREAS, the installation of such fiber and small cell facilities disrupts other users of the public rights-of-way, damages City public rights-of-way and City facilities and utilities in the public rights-of-way, and has the potential of harming the City’s historic and cultural resources; and

WHEREAS, Section 337.401(7) prevents the City from managing its public rights-of-way in the best interest of the City’s residents, visitors and businesses; and

WHEREAS, the City supports advancements in communications technology and services, and in fact the City has won awards for being a “Smart” City by deploying advanced technology to improve the quality of life of the City’s residents, businesses and visitors and enabling the City to provide services in an effective and efficient manner, while deploying such facilities in a way that protects the health, safety and welfare of the public; and

WHEREAS, Section 337.401(7) interferes with the City’s ability to work cooperatively with wireless providers and the communications industry to deploy small cell facilities in a manner that would enable provision of advanced communication services while not negatively impacting the health, safety and welfare of the City’s residents, visitors and businesses;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

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 upon the adoption hereof.

SECTION 2. That the City Commission of Coral Gables urges the Florida Legislature to repeal Section 337.401(7), Florida Statutes, and to preserve the authority of the City with respect to the deployment of small cell facilities in the City’s public rights-of-way.

SECTION 3. The City Clerk is directed to distribute this resolution to the Miami-Dade County Legislative Delegation, the Governor, the Florida League of Cities, and the Miami-

Dade County League of Cities.

SECTION 4. That this Resolution shall become effective immediately upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS EIGHTH DAY OF OCTOBER, A.D., 2019.

(Moved: Lago / Seconded: Keon)


(Yeas: Keon, Lago, Mena, Valdes-Fauli)

(Absent: Fors, Jr.)

(Majority: 4-0)

(Agenda Item: G-3)

ATTEST:




BILLY Y. URQUIA
CITY CLERK

APPROVED:



RAUL VALDES-FAULI
MAYOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



MIRIAM SOLER RAMOS
CITY ATTORNEY