



**City of Coral Gables
CITY COMMISSION MEETING
January 22, 2019**

ITEM TITLE:

Ordinance on Second Reading.

AN ORDINANCE OF THE CITY OF CORAL GABLES, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE CITY OF CORAL GABLES BY AMENDING ARTICLE II, CHAPTER 70, SECTIONS 70-19 THROUGH 70-75, ENTITLED “CITY OF CORAL GABLES CABLE TELEVISION ORDINANCE” AS PROVIDED HEREIN; AMENDING ARTICLE III, CHAPTER 70, SECTIONS 70-76 THROUGH 70-91, AMENDING THE TITLE OF ARTICLE III TO “CORAL GABLES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE”; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR A PERFORMANCE CONSTRUCTION BOND; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING FOR THE PRESERVATION OF HISTORIC PROPERTY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND COMPENSATION; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS AND REPEAL OF ZONING IN PROGRESS; AND PROVIDING AN EFFECTIVE DATE.

BRIEF HISTORY:

On July 1, 2018, the Florida Advanced Wireless Infrastructure Deployment Act (“Act”) became effective, controlling how local governments process applications for and regulate small cell wireless facilities in the public rights-of-way. The Act was adopted to afford the wireless industry access to public rights-of-way and to government-owned poles, to collocate and to install small wireless facilities. The proposed Ordinance creates the City’s Communications-Rights-of-Way Ordinance to exercise the City’s authority in implementing the Act and to regulate all communications facilities placed or maintained in the public rights-of-way consistent with Florida and Federal law. This does not affect facilities on private property, which is governed by the Zoning Code, or facilities on rights-of-way not controlled by the City.

To allow an opportunity to prepare the Ordinance to implement the Act, the Commission adopted a Zoning in Progress, Resolution 2017-205, which has been extended and remains in place. During the Zoning In Progress, Special Counsel Gary Resnick with GrayRobinson, with significant input from the City staff, prepared the proposed Ordinance, entitled the “Coral Gables Communications Rights-of-Way Ordinance.” Mr. Resnick also provided a presentation to the Board of Architects to discuss design standards. The Ordinance creates a registration process that requires, among other things, contact information, insurance, indemnification, and a permanent performance bond in the amount of \$50,000 for owners of facilities in the rights-of-way to ensure compliance. The Ordinance requires permits and sets forth permit application requirements and review procedures. It establishes construction regulations, including restoration of the rights-of-way, and sets forth detailed requirements for historic preservation, location and detailed objective design standards for such facilities, subject to a waiver, for facilities

parties seek to place in the public rights-of-way consistent with Florida law.

Cable Ordinance Amendment: Chapter 610, Florida Statutes, preempts local governments from issuing franchises for cable service and designates the Florida Department of State as the cable franchising authority. The proposed Ordinance amends the City’s cable ordinance, Article II, Chapter 70, consistent with Florida law. Cable facilities will be subject to the Communications Rights-of-Way Ordinance.

Stakeholder Comments: We distributed a draft of the Ordinance to industry members and their representatives for input. We received comments on behalf of many industry members, including T-Mobile, Verizon, AT&T, Comcast, and Crown Castle and conducted a telephone conference on October 2, 2018. We made revisions to the Ordinance to accommodate many comments and may make further revisions before a second hearing on the Ordinance. Most of these comments involve technical issues with respect to application requirements, and location and design standards for facilities. Industry members requested removal of the \$50,000 permanent performance bond, stating that the City does not have this authority under Florida law. However, we disagree with that legal position.

FCC Order: On September 28, 2018, the Federal Communications Commission issued a Declaratory Ruling and Third Report and Order, which significantly limits state and local management of small wireless infrastructure deployment and associated fees for use of the rights-of-way and public property in the rights-of-way (“FCC Order”). The FCC Order does not become effective until 90 days after publication in the Federal Register and will be challenged in court by various parties. The FCC Order is largely consistent with and does not expressly preempt the Florida Statute. Accordingly, we do not envision revisions to the Ordinance based on the FCC Order.

Changes on Second Reading:

The proposed ordinance on second reading includes a number of technical changes. Some of the more significant changes include:

- Addition of language protect the City’s Smart City Technology; and
- Addition of language setting forth a procedure for registrants applying for a permit to locate a communications facility in public rights-of-way that would impact a historic landmark or historic landmark district or that is within the City Plan.

ATTACHMENT(S):

1. Draft Ordinance