

ORDINANCE NO. C-14-34

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA PERTAINING TO THE SUBJECT OF A MORATORIUM; IMPOSING A TEMPORARY MORATORIUM UPON THE RECEIPT OF OR PROCESSING OF APPLICATIONS, PERMITS OR PENDING APPROVALS 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 CITY OF FORT LAUDERDALE, FLORIDA UNDER THE FLORIDA TRANSPORTATION CODE; PROVIDING FOR AN EFFECTIVE DATE RETROACTIVE TO AUGUST 19, 2014; PROVIDING FOR DEFINITIONS; PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICTING ORDINANCE PROVISIONS; AND PROVIDING FOR AN EXPIRATION DATE; PROVIDING FOR AN EXTENSION OF EXPIRATION DATE.

WHEREAS, with the enactment of the Telecommunications Act of 1996 ("Act"), the Act prevents the City 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;

WHEREAS, the Act prevents the City from unreasonably discriminating among providers of functionally equivalent services, such that if the City of Fort Lauderdale were to begin a practice of allowing 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 City's public rights-of-way, it must formulate reasonable nondiscriminatory rules and policies that are applicable to all such similar devices; and

WHEREAS, the State of Florida has adopted legislation, presently codified as § 365.172, Fla. Stat. (2014) (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, 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.

WHEREAS, the State of Florida has adopted legislation, presently codified as § 337.401, Fla. Stat. (2014) (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. (2014).

WHEREAS, explosion of personal wireless communications has included not only "traditional" large towers, but recently the use of new smaller tower "microcell" technologies such as Distributed Antenna Systems Networks or DAS Networks; and

WHEREAS, as a result of coverage throughout the media and applications filed with the City, the City has become aware that Distributed Antenna System Networks or DAS Networks desire to begin installations of new tower facilities within the City of Fort Lauderdale's public rights-of-way; and

WHEREAS, these new technologies may require improvements that have not been contemplated by the City of Fort Lauderdale in the management and control of the City'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. (2014) 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 City Commission and staff of the City of Fort Lauderdale have noted the rapid deployment and potential for rapid deployment of such telecommunications towers, wireless personal telecommunications service tower, towers and Distributed Antenna Systems (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, the purpose of this Ordinance is to undertake a thorough analysis of the City'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 tower locations (as distinguished from co-locations) in the City's public rights-of-way applications for which are filed on or after the effective date hereof; therefore, the brief 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 City in accordance with § 365.172 (13), Fla. Stat. (2014), (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 City of Fort Lauderdale, Broward County, the State of Florida, or the United State of America or any of their respective agencies or districts; (iv) below-grade communications service facilities under City Code § 25-25-100.1(b); and (v) at-grade communications service facilities under City Code § 25-100.1 (c).;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE THAT:

SECTION 1. The foregoing recitals are incorporated by this reference as if fully set forth in the text of this Ordinance. The recitals evidence the concern, motivations and reasons for imposition of this Ordinance.

SECTION 2. 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.

City means the City of Fort Lauderdale, Florida.

Co-location 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 City is the authority that has jurisdiction and control over the transportation corridor pursuant to the Florida Transportation Code, including roads transferred to the City in accordance with § 335.0415, Fla. Stat. (2014). "Public rights-of-way" shall not include any real or personal City property except as described above and shall not include city 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. As of the effective date hereof, there is hereby imposed a Moratorium on the acceptance of applications for or the processing of applications for the installation of or siting of any new "wireless personal telecommunications services tower," or any "Tower" as defined by § 365.172, Fla. Stat. (2014), or any communications distributions facilities (antennae) wholly contained or mounted on a new single, stand alone tower in any of the City's public rights-of-way. The moratorium will not: (i) prevent or affect applications to co-locate antenna arrays on existing telecommunications towers which have antenna arrays anywhere in the City in accordance with § 365.172 (13), Fla. Stat. (2014), (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 City of Fort Lauderdale, Broward County, the State of Florida, or the United States of America or any of their respective agencies or districts; (iv) below-grade communications service facilities under City Code § 25-25-100.1(b); and (v) at-grade communications service facilities under City Code § 25-100.1 (c).

SECTION 4. To ensure that all communications utilities that wish to operate within the City's public rights-of-way are treated in a non-discriminatory fashion, this moratorium shall not apply to the following types of communications utility installations within the City's public rights-of-way, which installations shall be required to obtain a permit from the City Engineer and be subject to the Building Official's review for compliance with the Florida Building Code and Broward County Administrative Amendments thereto:

Below-grade communications service facilities as regulated by City Code § 25-100.1 (b).

(c). At-grade communications service facilities as regulated by City Code § 25-100.1

Co-location of antenna arrays in accordance with § 365.172 (13), Fla. Stat. (2014) on existing telecommunications towers which have antenna arrays within the City.

Other Approved Typical Installations. While the City is in the process of formulating regulations, the City reserves the right, by Resolution, to adopt other typical installation descriptions that may be excluded from the Moratorium.

SECTION 5. This Ordinance is to be liberally construed to accomplish its objectives.

SECTION 6. This Ordinance shall remain in effect for one hundred eighty (180) days from effective date hereof, unless earlier rescinded, repealed or extended by an Ordinance or Resolution of the City Commission of the City of Fort Lauderdale. Within ninety (90) days from the effective date hereof, City staff shall provide an interim report to the City Commission as to the progress being made in the preparation of an Ordinance implementing revised regulations hereunder.

SECTION 7. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 8. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 9. That upon final passage, this Ordinance shall take effect retroactively to August 19, 2014.

PASSED FIRST READING this the 19 day of August, 2014.

PASSED SECOND READING this the 3rd day of September, 2014.

Mayor
JOHN P. "JACK" SEILER

ATTEST:

City Clerk
JONDA K. JOSEPH

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