

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY ATTORNEY TO TAKE ANY AND ALL ACTION NECESSARY ON BEHALF OF THE CITY OF MIAMI BEACH ("CITY") TO INTERVENE IN THE CASE *FLORIDA LEAGUE OF CITIES, INC., ET AL. v. LAUREL M. LEE, ET AL.*, CASE NO. 2019 CA 001948 (FLA. 2D CIR. CT.), AND TO FURTHER AUTHORIZE THE CITY ATTORNEY TO INITIATE ANY AND ALL ACTION NECESSARY, IN LAW OR EQUITY, WHETHER IN LOCAL, STATE, OR FEDERAL, TO ADDRESS THE DEPLOYMENT OF ADVANCED WIRELESS INFRASTRUCTURE AND SMALL CELL WIRELESS FACILITIES AND TECHNOLOGY (COLLECTIVELY, "SMALL CELL TECHNOLOGY AND INFRASTRUCTURE"), AND THOSE APPROPRIATE EFFORTS TO ELIMINATE PREEMPTION BY THE STATE OF FLORIDA AND, THE REDUCTION OF THE CITY OF MIAMI BEACH'S HOME RULE POWERS RELATING TO SMALL CELL TECHNOLOGY AND INFRASTRUCTURE.

WHEREAS, the State of Florida ("State") adopted Chapter 2017-136, Laws of Florida ("Amendment"), which substantially amended Section 337.401, of the Florida Statutes, relating to the use of public (municipal or county) rights-of-way, and structures located within the right-of-way, for broadband or wireless facility infrastructure; and

WHEREAS, the Amendment implemented specific notice requirements for ordinance adoption, established shortened timelines for the processing of permit applications, and curtailed a municipality's legal ability to appropriately charge permit fees; and

WHEREAS, the State adopted Chapter No. 2019-131, Laws of Florida ("2019 Amendment"), which further amended Section 331.401, F.S., to include various changes to the law on the use of public rights-of-way, including those provisions pertaining to small wireless infrastructure; and

WHEREAS, the 2019 Amendment, specifically removed the requirement that wireless providers are obligated to comply with local government nondiscriminatory utility undergrounding requirements, further limiting a municipality's ability to deny permit applications for the installation or collocation of small wireless facilities in a municipalities public right-of-way, prohibiting municipalities from imposing certain requirements such as minimum separation requirements, and establishing a private cause of action in state or federal court for any person allegedly aggrieved by a violation of the statute, including pay attorneys' fees and costs to the aggrieved person; and

WHEREAS, the Florida League of Cities, Inc., the City of Fort Walton Beach, Florida, the City of Naples, Florida, and the City of Port Orange, Florida, (collectively, "FLC") have filed a complaint for declaratory and injunctive relief in the Circuit Court of the Second Judicial Circuit in and For Leon County, Florida challenging the various statutory amendments adopted by the State; and

WHEREAS, the Mayor and City Commission believe that it is in the best interests of the City, and its residents to join FLC in its legal challenge of these statutory provisions, and protect the City's home rule authority over the City's rights-of-way.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, hereby authorizing the City Attorney to take any and all action necessary on behalf of the City of Miami Beach to intervene in the case *Florida League of Cities, Inc., et al. v. Laurel M. Lee, et al.*, Case No. 2019 CA 001948 (Fla. 2d Cir. Ct.), and to further authorize the City Attorney to initiate any and all action necessary, in law or equity, whether in local, state, or federal, to address the deployment of advanced wireless infrastructure and small cell wireless facilities and technology (collectively, "small cell technology and infrastructure"), and those appropriate efforts to eliminate preemption by the State of Florida and, the reduction of the City of Miami Beach's home rule powers relating to small cell technology and infrastructure.

PASSED AND ADOPTED this _____ day of _____ 2019.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

REC'd 10-7-19

City Attorney **AB** Date