

MEMORANDUM

Agenda Item No. 11(A)(12)


TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 29, 2019

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution urging the Florida Legislature to repeal the state law preemption of local governments regulating small wireless facilities, also referred to as 5G equipment; or, alternatively, restore local authority to determine the design and overall aesthetic of the public rights-of-way and other public spaces that each local government is responsible for managing

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.


Abigail Price-Williams
County Attorney

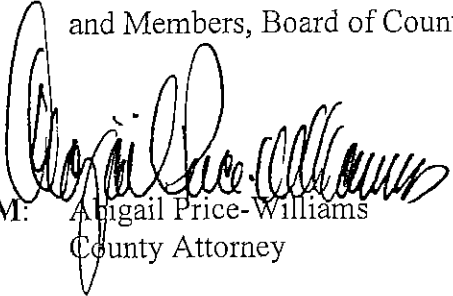
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(Revised)

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Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(12)
10-29-19

RESOLUTION NO. _____

RESOLUTION URGING THE FLORIDA LEGISLATURE TO REPEAL THE STATE LAW PREEMPTION OF LOCAL GOVERNMENTS REGULATING SMALL WIRELESS FACILITIES, ALSO REFERRED TO AS 5G EQUIPMENT; OR, ALTERNATIVELY, RESTORE LOCAL AUTHORITY TO DETERMINE THE DESIGN AND OVERALL AESTHETIC OF THE PUBLIC RIGHTS-OF-WAY AND OTHER PUBLIC SPACES THAT EACH LOCAL GOVERNMENT IS RESPONSIBLE FOR MANAGING

WHEREAS, during the 2017 Legislative Session, the Florida Legislature enacted Chapter 2017-136, Laws of Florida (House Bill 687), which added a new subsection (7) to section 337.401, Florida Statutes, to be cited as the “Advanced Wireless Infrastructure Deployment Act” (the “Act”); and

WHEREAS, the Act addressed the installation of wireless telecommunications infrastructure within public rights-of-way and significantly preempted local authority over regulation of small wireless facilities, also referred to as 5G equipment; and

WHEREAS, during the 2019 Legislative Session, the Florida Legislature enacted Chapter 2019-131, Laws of Florida (Senate Bill 1000), which amended the Act to significantly expand the preemption of local authority over local rights-of-way in favor of installation of 5G and other wireless telecommunications equipment; and

WHEREAS, among the most significant impacts of SB 1000 was to preempt local authority over new poles that are allowed in the rights-of-way and to entitle wireless companies that install 5G equipment to their own new poles at their preferred locations, without requiring collocation of multiple providers to reduce impacts to the rights-of-way; and

WHEREAS, telecommunications companies are unique among other utilities that are authorized to install equipment in the rights-of-way in that there are numerous telecommunications companies, and both state and federal law require that regulations be competitively neutral, which do not apply when there is a single utility; and

WHEREAS, the effect of SB 1000 has been to encourage a free-for-all among multiple competing telecommunications providers, which have been rushing to install new poles to accommodate their equipment in the public rights-of-way; and

WHEREAS, the numerous telecommunications providers seeking to install new poles have been doing so with little regard to the disruption their work imposes on the businesses and residents who use those rights-of-way on a daily basis; and

WHEREAS, in their rush to occupy the public rights-of-way and secure their preferred territories, telecommunications companies have installed poles and associated equipment in an unsafe manner, such as by leaving exposed electrical equipment or wiring; and

WHEREAS, some companies have further exacerbated the disruption to public rights-of-way by installing a pole before obtaining an electrical permit, inadequately securing their construction sites while the electrical permits are pending, or performing additional construction weeks later in the same location after obtaining other required permits; and

WHEREAS, companies have been hastily installing new poles with little regard for whether they are obstructing historical buildings or art in public places, which deteriorates the aesthetic of urban spaces; and

WHEREAS, these problems are a consequence of the Act depriving local communities of the authority to manage their rights-of-way and allowing dozens of companies the same rights to access the public rights-of-way as utilities that have only one or two providers seeking installations in the same areas; and

WHEREAS, rather than preempting local authority on a matter that so significantly affects the aesthetic of each of Florida's diverse communities, the Florida Legislature should instead preserve and expand local authority to determine the design and overall aesthetic of the public rights-of-way and other public spaces that each local government is responsible for managing,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Urges the Florida Legislature to repeal the state law preemption of local governments regulating small wireless facilities, also referred to as 5G equipment or, alternatively, restore local authority to determine the design and overall aesthetic of the public rights-of-way and other public spaces that each local government is responsible for managing.

Section 2. Directs the Clerk of the Board to transmit a certified copy of this resolution to the Governor, Senate President, House Speaker, and the Chair and members of the Miami-Dade State Legislative Delegation.

Section 3. Directs the County's state lobbyists to advocate for the action set forth in Section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2020 State Legislative Package to include this item.

The Prime Sponsor of the foregoing resolution is Commissioner Eileen Higgins. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman
Rebeca Sosa, Vice Chairwoman

Esteban L. Bovo, Jr.
Jose "Pepe" Diaz
Eileen Higgins
Joe A. Martinez
Dennis C. Moss
Xavier L. Suarez

Daniella Levine Cava
Sally A. Heyman
Barbara J. Jordan
Jean Monestime
Sen. Javier D. Souto

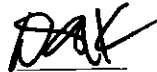
The Chairperson thereupon declared the resolution duly passed and adopted this 29th day of October, 2019. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Dennis A. Kerbel