

CITY CLERK WARD: Chair Davis?

CHAIRPERSON DAVIS: Yes.

CITY CLERK WARD: Unanimous vote.

CHAIRPERSON DAVIS: Okay. Item 14.

14. **ORDINANCE NO. 4044, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, ENACTING A MORATORIUM FOR A PERIOD UP TO ONE-YEAR AS TO THE FILING AND/OR RECEIVING OF ANY APPLICATIONS FOR PERMITS FOR NEW ABOVE-GROUND WIRELESS COMMUNICATIONS FACILITIES, INCLUDING ANTENNAS AND RELATED EQUIPMENT IN THE PUBLIC RIGHTS OF WAY OF THE CITY OF RIVIERA BEACH IN ORDER TO CREATE REGULATIONS FOR THE PLACEMENT AND MAINTENANCE OF THE ABOVE GROUND WIRELESS COMMUNICATIONS FACILITIES WITHIN THE CITY RIGHTS OF WAY; PROVIDING FOR THE BOUNDARIES SUBJECT TO THE MORATORIUM; APPROPRIATING \$30,000 FOR PROFESSIONAL SERVICES CONNECTED HEREWITH; PROVIDING FOR SEVERABILITY AND CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.**

CHAIR PRO TEM PARDO: So moved.

CHAIRPERSON DAVIS: Okay.

COUNCILPERSON DAVIS: Second.

CHAIRPERSON DAVIS: Mr. -- whose second? Okay. Mr. Davis --

COUNCILPERSON GUYTON: Uh, that was Mr. Davis.

CHAIRPERSON DAVIS: -- second. Okay. Miss Jones?

CITY MANAGER JONES: This is the ordinance on first read --

CHAIR PRO TEM PARDO: Second.

CHAIRPERSON DAVIS: Second, yeah.

CITY MANAGER JONES: -- second read for a moratorium on the antennas. We held the first read on the last present -- last meeting and held a presentation and there was plenty of discussion so unless there's anything in particular, we do not have a presentation on this item.

CHAIRPERSON DAVIS: Okay. I do have two public comment cards. Lisa Maxwell and then Hope Calhoun.

LISA MAXWELL: Thank you, members of the commission. My name is Lisa Maxwell.

I'm here representing Crown Castle. I want to say that we are in a number of different municipalities installing these systems today and we've had the privilege of working with a number of municipalities, as well, in terms of going through a moratorium process, defining a great ordinance on the other side and coming up with some terrific standards which ensure both public safety and that telecommunications can go forward in the City without interruption and -- and we can improve service levels. And that's really what -- what this is about. We do have here today Hope Calhoun who's an attorney working with Crown Castle. We have some specific questions about the ordinance and how it may apply to our current permit applications. And so I'll ask Hope to come up and thank the commission for the time. We look forward to working with the staff.

CHAIRPERSON DAVIS: Thank you, ma'am. Please state your name and address for the record, please.

HOPE CALHOUN: Good evening, Hope Calhoun, attorney with the law firm of Becker & Poliakoff. My business address is 1 E. Broward Boulevard, Fort Lauderdale, Florida. Good evening.

CHAIRPERSON DAVIS: Good evening.

HOPE CALHOUN: Thank you for allowing us to speak this evening. Specifically I just wanted to say a few things. Crown Castle, my client, is -- is very excited and willing to work with -- hoping to work with the City as they go forward with this study. We understand the -- we understand the need for the moratorium. As Lisa has already stated, a number of municipalities have done the same thing.

My point of clarification that I have is specifically regarding section 4 of the ordinance. And I just want to be sure of how it reads and applies potentially to my client. Prohibiting -- the section -- section begins, "The City Council hereby enacts a moratorium for up to one year prohibiting the filing and/or receiving of any application for the permitting of new above-ground wireless communications facilities," and then it goes on. Considering our applications went in, were submitted last year, I think September of 2 -- 2013, I just want to be sure that the moratorium does not apply to our pending applications. We can continue to go forward with our applications, working with the appropriate city staff so they can be designed in accordance what you're looking -- with what you're looking for in terms of appearance and, therefore, we're not impacted by this moratorium.

CHAIRPERSON DAVIS: Okay. Miss Ryan?

CITY ATTORNEY RYAN: Madam Chair?

CHAIRPERSON DAVIS: Go ahead.

CITY ATTORNEY RYAN: Well, one of the reasons that we --

CHAIRPERSON DAVIS: Hold on. Hold on. Just a minute. Are you finished with your comments?

CITY MANAGER JONES: (Inaudible).

HOPE CALHOUN: I am. If -- if I --

CHAIRPERSON DAVIS: Oh, sorry.

HOPE CALHOUN: No, that's okay.

CITY ATTORNEY RYAN: Just jump right in.

CITY MANAGER JONES: (Inaudible) your questions.

HOPE CALHOUN: I -- I am finished with my, I think, comments, but if I may, since I have a minute and 15 seconds left, if necessary, can I respond to any questions or comments?

CITY ATTORNEY RYAN: No.

CHAIRPERSON DAVIS: Well, we would like for you to go ahead and finish all -- everything.

HOPE CALHOUN: I'm finished. Thank you.

CHAIRPERSON DAVIS: Okay.

CITY ATTORNEY RYAN: One of the reasons that we need to enact the moratorium is because of Crown Castle's application. One -- what we're really concerned about is opening the door. If we allow Crown Castle to come in and put up their -- their antennas while the moratorium is going on, I believe that we are opening the door for others to do the same thing. What we will do is work with them on their application while we are working on the standards. So that when the moratorium ends, and we're hoping that it won't take a year for the moratorium to go through for us to have our -- our regulations in place -- we will be ready to -- to bring -- submit theirs and bring it to the council as soon as it's ready so that they won't have to wait to apply and have their application process after the moratorium is lifted and after the regulations are in. We will work with them at the same time. But I do not want to give Crown Castle the impression that we will approve your permit applications before our regulations are done. That is not our intent.

HOPE CALHOUN: Okay.

CHAIRPERSON DAVIS: Okay? So you got your answer?

HOPE CALHOUN: May I ask a follow-up question?

CHAIRPERSON DAVIS: Go ahead, ma'am.

HOPE CALHOUN: Thank you. Just again, point of clarification. So of the statement made was opening any door. And I just want to be clear, because our application was

submitted some time ago and we have been trying to work with and we'd like to continue to try to work with your staff. We understand the concerns of -- of the city commission and what you don't want -- and the city manager's concerns and what you don't want to see in the city. So again, we're willing to work. Our fear is that if (inaudible) -- is it me?

CHAIRPERSON DAVIS: Go ahead.

HOPE CALHOUN: -- our fear is that if we continue to wait and prolong this process, service in this city just is not going to be as good as it can be and should be. So we want to provide excellent service and so for that reason we'd like to be able to continue permitting while this is going forward.

CHAIRPERSON DAVIS: Okay. We understand your concerns. Thank you very much for coming. Okay?

HOPE CALHOUN: Thank you. Thank you.

CHAIRPERSON DAVIS: All right. So we have the motion and second on the floor. Any other questions or comments from the board?

COUNCILPERSON THOMAS: Yes. I have some questions.

CHAIRPERSON DAVIS: Mr. Thomas.

COUNCILPERSON THOMAS: Miss Ryan, does this leave us any type of exposure legal wise since they've had their applications in prior to this moratorium being enacted if this gets approved?

CITY ATTORNEY RYAN: Right. I'm not going to tell you that it doesn't. The -- the -- you know, this -- it's the chicken or the egg. If we allow them the -- to go through without regulations in place, then we run the risk of approving something for Crown Castle that we would not approve for anyone else. As I stated, our issue came about because of Crown Castle. We don't have regulations in place so I don't know how we can permit them when our issue is that we don't have regulations. If Crown Castle wants to file a lawsuit against us on this issue, they may very well do that. They've always had that opportunity to do that. We've been talking to them for over six months. It's my understanding that they wish to work with the cities to have -- to make sure that, you know, the permitting is done correctly. They've worked with the moratoriums. They've worked on the regulations. We've told Crown Castle that we're willing to work with them. They know that we are hiring one of two attorneys most likely, and Mary McKinney's looking at some other technical help for the City and that's why you all have set aside funds for that. But if they want to file something, you know, they have the opportunity to do that.

I will tell you the law is not as clear as they may make it seem. Just like they can file a lawsuit, we will respond and we will deal with our people in Tallahassee if we have to. This issue affects the entire State of Florida. And I certainly, you know -- this is not a

city that fears lawsuits. We get lawsuits all the time. And I would not -- I would hope that the council wouldn't back down because of a fear that Crown Castle may file a lawsuit. We will work in good faith with Crown Castle. We -- we -- we understand that this technology is coming. We're not trying to fight it but we are trying to protect our residents. And I think that --

CHAIRPERSON DAVIS: (Inaudible).

CITY ATTORNEY RYAN: Right.

COUNCILPERSON THOMAS: Well, Miss -- Madam Chair, if I --

CHAIRPERSON DAVIS: Sure. Go ahead.

COUNCILPERSON THOMAS: (Inaudible) -- I -- I mean, you -- you went down a road that I really wasn't --

CITY ATTORNEY RYAN: I thought you were trying --

COUNCILPERSON THOMAS: -- I mean, yeah. I mean, because I expect you to --

CITY ATTORNEY RYAN: -- I'm sorry, sir.

COUNCILPERSON THOMAS: -- defend the City.

CITY ATTORNEY RYAN: I know. I know.

COUNCILPERSON THOMAS: That's the reason why we have a city attorney.

CITY ATTORNEY RYAN: I know.

COUNCILPERSON THOMAS: I know. But I -- my question was I've seen them bring two different attorneys here. If we've -- if we've been trying to work through this the questions wouldn't be the -- the same. We said that the last time that they was here. What I heard that particular attorney say, she made it very clear that -- she was saying, Hey, our -- our permit has been in for several months.

CITY ATTORNEY RYAN: Yes.

COUNCILPERSON THOMAS: So what happens? I mean, we've done this a couple of times before.

CITY ATTORNEY RYAN: Right.

COUNCILPERSON THOMAS: What actually happens? I know the last time we had told, what, the -- the -- the Adult Arcades or whatever that was --

CITY ATTORNEY RYAN: We did the moratorium on that and we studied it.

COUNCILPERSON THOMAS: Right.

CITY ATTORNEY RYAN: Right. This is -- this -- this won't be the same way because there are other cities that have already gone through this. But we just don't -- we don't - - we do not have the regulations on the books to make us feel comfortable that we could permit them -- we could deny them, or, you know, give them a permit based upon what we have. It made us very uncomfortable. And when I reached out to other cities I found out that not only were -- was Crown Castle coming to -- coming into their cities but the cities were saying you know, Hold up. We -- we need to -- to -- to get up to speed on this.

COUNCILPERSON THOMAS: Are there any other permits or applications for --

CITY ATTORNEY RYAN: From anyone else?

COUNCILPERSON THOMAS: Yes.

CITY ATTORNEY RYAN: No. It -- I don't think so.

CITY MANAGER JONES: No.

CITY ATTORNEY RYAN: No.

COUNCILPERSON THOMAS: So we -- we only have this one?

CITY ATTORNEY RYAN: And -- and I will tell you, you know, I got comments from AT&T which we incorporated. AT&T wanted to make sure that it was only about above-ground antennas and I made a lot of changes to the ordinance as they requested at the last council meeting and I never heard anything else about it. Two days ago I received a letter from Crown Castle which I sent over to Miss McKinney stating that they wanted to make sure that their permit was going through the process. And frankly, you know, it's -- it can go through the process. And we talked about doing it contemporaneously and concurrently with the regulations. But we don't have any plan to allow Crown Castle to get a permit on something that we're still studying. I mean, because we'll allow them to do something and then next week not allow AT&T to do it.

COUNCILPERSON THOMAS: I -- I get it. Did this go before the Planning & Zoning Board?

CITY ATTORNEY RYAN: This ordinance?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: No. It's not necessary.

CITY ATTORNEY RYAN: No.

COUNCILPERSON THOMAS: This -- it -- it's not necessary to go before the Planning & Zoning Board?

CHAIRPERSON DAVIS: Moratorium, no.

CITY ATTORNEY RYAN: Not a moratorium.

COUNCILPERSON THOMAS: No, no, no. Not the moratorium. This actual --

CITY MANAGER JONES: The regulation will.

COUNCILPERSON THOMAS: This actual --

CITY ATTORNEY RYAN: Oh, their application?

COUNCILPERSON THOMAS: Yes.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Mary McKinney. The regulations will go to the -- through the Planning & Zoning Board when we draft the regulations.

COUNCILPERSON THOMAS: Well, I'm -- I'm trying to figure out how -- how did they get to -- to this point with us if they -- how -- how did we get to the point where we're even denying it if they have not gone through the actual Planning & Zoning Board?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Right. We haven't -- we haven't denied an application. Their application was always incomplete. They never submitted all the information for the City to even review it based on what we have currently on our code.

COUNCILPERSON THOMAS: Okay.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: So -- and we had asked - - we -- we had just a lot of written correspondence back and forth with them saying, Provide us this information. Provide this document, which they were not able to do. And they had not to this date. So --

CITY ATTORNEY RYAN: Under our code.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Under our existing regulations.

COUNCILPERSON THOMAS: So they -- they have not complied with what we have existing?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Yes. They have not.

COUNCILPERSON THOMAS: Okay. Well, that's all I needed to hear. Then I'm -- I'm comfortable with that, then.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Okay.

CHAIRPERSON DAVIS: And Miss Pardo, did you have any comments?

CHAIR PRO TEM PARDO: No. Nothing.

CHAIRPERSON DAVIS: Okay. There is one question that I have, and I'm going to ask you to come back up, please. I heard you say that if your permit was denied, that the service would not be as good later as it would now. How is that? Why?

HOPE CALHOUN: If -- if I said that, that's -- that was a misstatement on my part.

CHAIRPERSON DAVIS: Okay.

HOPE CALHOUN: What I thought I said --

CHAIRPERSON DAVIS: (Inaudible).

HOPE CALHOUN: -- okay, was that it would -- it would improve once we have the new towers up.

CITY ATTORNEY RYAN: Right.

HOPE CALHOUN: I thought that's what I said but perhaps I misspoke.

CHAIRPERSON DAVIS: Okay. All right. Well, thank you very much.

HOPE CALHOUN: And also, if there are no other applications, I don't know how we could open the door. Thank you.

CHAIRPERSON DAVIS: No. No, ma'am. That's all. Thank you. Okay. Any other comments or questions?

MAYOR MASTERS: Madam Chair?

CHAIRPERSON DAVIS: Mr. Mayor.

MAYOR MASTERS: A couple -- a couple things that's -- may be somewhat confusing to me. Sometimes I think it's an adversarial relationship and sometimes I think it's -- it's not. So let us -- me ask a couple of questions. One is during the moratorium period, are we going to -- we're not going to give any permits to them or we are? I just need to be -- I need to be clear through an issue because I heard we -- I heard -- I thought I heard that we were going to be working with them in -- in some instances. Maybe we were going to do some things. Is that a permit or it's something else that's called --

CHAIRPERSON DAVIS: We're not -- from what I understood, we're not gonna give any permits until we've done our -- our research.

MAYOR MASTERS: Okay.

CHAIRPERSON DAVIS: That's what Miss Ryan said.

CITY ATTORNEY RYAN: Right. What I said was we will continue to process their application while we are working on the regulations. We do not want to approve their permit in one way and then have regulations that say something totally different.

MAYOR MASTERS: So when the regulations are in place, then are we going to --

CITY ATTORNEY RYAN: Correct. And what I --

MAYOR MASTERS: -- permit --

CITY ATTORNEY RYAN: -- right. What I said was we can do them at the same time. As soon as our regulations are approved, they will already be ready to have their -- their application approved because they will be working with us the entire time.

MAYOR MASTERS: Okay. And working with us means what? What are they going to be doing with us? Can somebody answer that for me? I mean --

CITY ATTORNEY RYAN: That means meeting with them, talking with them about what their tower would look like. We talked -- at -- at the last meeting we had facades, pictures of what some of the antennas look like in certain jurisdictions. We will make sure that they are building their -- I don't know how they do their antennas, but that they are doing them -- they -- they can go ahead and start building them or whatever it is they're doing as long as it is going to be in compliance with the regulations that we will be putting before the council. Now, they run the risk of building an antenna that may, let's say, looks -- that may look like a, um -- a tree and then this council says, You know, we don't really like trees. We prefer that they look like FPL poles, and then they'll have to change. But that's -- that's just an example. I don't think that that would happen.

MAYOR MASTERS: Yeah.

CITY ATTORNEY RYAN: But that's one of the reasons why we want to make sure that it's being done concurrently but certainly not before. We're not prepared to deal with it

MAYOR MASTERS: So it would be more -- more like a mutual understanding relationship as we --

CITY ATTORNEY RYAN: I'm not going to call it a mutual understanding relationship.

MAYOR MASTERS: -- work -- working through the -- what do you call it?

CITY ATTORNEY RYAN: I'm just saying we will work with them.

MAYOR MASTERS: Okay. Thank you.

CHAIRPERSON DAVIS: Okay. Any other questions or comments?

COUNCILPERSON GUYTON: Just -- just one question for clarification.

CHAIRPERSON DAVIS: Mr. Guyton.

COUNCILPERSON GUYTON: The regulations are being done so that we can have some type of standards by which we can give permits. But I -- I -- I -- I think what is being missed is that this is not an effort to establish prohibition. This is an effort to regulate what is going to come.

CHAIRPERSON DAVIS: Uh-huh.

COUNCILPERSON GUYTON: So I --

CITY ATTORNEY RYAN: That is correct. And -- and --

COUNCILPERSON GUYTON: -- I don't want people to get confused --

CHAIRPERSON DAVIS: Hold on.

CITY ATTORNEY RYAN: Okay.

COUNCILPERSON GUYTON: -- that they're gonna prohibited but we just need the adequate regulations in order to monitor and enforce and for other things that the legal counsel may find needed. Thank you, Madam.

CHAIRPERSON DAVIS: Okay.

COUNCILPERSON THOMAS: Madam Chair?

CHAIRPERSON DAVIS: Mr. Thomas.

COUNCILPERSON THOMAS: I'll -- you know, I'll be willing to -- I know that you've invited, I think, most of us, but to look at some of the -- the structures that they have now. I'll still be willing to do that on behalf of the board if they would like and bring back some -- some comments and some things that I think that we can see to add to it.

CHAIRPERSON DAVIS: Well, any of us could do that if we want to.

CHAIR PRO TEM PARDO: Yeah. I'd rather do my own research.

CHAIRPERSON DAVIS: Okay. Any other comments or questions?

COUNCILPERSON THOMAS: No. No. I was just saying -- everybody can do their own research. No problem.

CHAIRPERSON DAVIS: Well, I'm -- I'm -- I'm -- it wasn't a --

COUNCILPERSON THOMAS: No, no, no. Not you. I heard Miss Pardo say she wanted to do her own research.

CHAIRPERSON DAVIS: -- you know, I'm just saying --

COUNCILPERSON THOMAS: I just was volunteering.

CHAIR PRO TEM PARDO: Thank you.

CHAIRPERSON DAVIS: Okay.

COUNCILPERSON THOMAS: Uh-huh.

CHAIRPERSON DAVIS: Any -- no other questions or comments? Madam Clerk?

CITY CLERK WARD: Madam Chair, this ordinance was advertised on second reading, Palm Beach Post, April the 19th, 2014.

CHAIRPERSON DAVIS: Okay.

CITY CLERK WARD: Councilperson Guyton?

COUNCILPERSON GUYTON: Yes.

CITY CLERK WARD: Councilperson T. Davis?

COUNCILPERSON DAVIS: Yes.

CITY CLERK WARD: Councilperson Thomas?

COUNCILPERSON THOMAS: Yes.

CITY CLERK WARD: Pro Tem Pardo?

CHAIR PRO TEM PARDO: Yes.

CITY CLERK WARD: Chair Davis?

CHAIRPERSON DAVIS: Yes.

CITY CLERK WARD: Unanimous vote.

CHAIRPERSON DAVIS: Okay. Ordinances on First Reading. Item 15.

ORDINANCES ON FIRST READING

15. **ORDINANCE NO. _____ AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 12 ENTITLED, "OFFENSES", ARTICLE V ENTITLED, "RED LIGHT ENFORCEMENT PROGRAM", PROVIDING FOR CHANGES TO THE MARK WANDALL TRAFFIC SAFETY PROGRAM INCLUDING DESIGNATING A LOCAL RODERICK HARVEY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.**