

23. ORDINANCE NO. _____ AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, FLORIDA, AMENDING CHAPTER 10, ARTICLE VI ENTITLED "TELECOMMUNICATIONS REGULATIONS" OF THE CODE OF ORDINANCES BY RENAMING THE ARTICLE TO "PLACEMENT AND MAINTENANCE OF FACILITIES FOR COMMUNICATIONS SERVICES IN RIGHTS-OF-WAY"; UPDATING DEFINITIONS IN CONFORMANCE WITH STATE LAW; PROVIDING FOR WIRELESS COMMUNICATIONS FACILITIES; UPDATING AND REVISING THE REGISTRATION AND PERMITTING PROCESS; REQUIRING DESIGN FEATURES FOR CERTAIN ABOVE-GROUND FACILITIES; PROVIDING PLACEMENT PARAMETERS FOR WIRELESS TELECOMMUNICATIONS FACILITIES IN RESIDENTIAL RIGHTS OF WAY; REVISING ADMINISTRATION AND ENFORCEMENT PROCEDURES; PROVIDING REGULATIONS FOR "PASS THROUGH PROVIDERS" IN ACCORDANCE WITH STATE LAW; PROVIDING FOR CONFLICTS, SEVERABILITY AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

CHAIRPERSON DAVIS: Is there a motion?

COUNCILPERSON GUYTON: So moved.

CHAIRPERSON DAVIS: Is there a second?

COUNCILPERSON DAVIS: Second.

CHAIRPERSON DAVIS: Okay. It's been moved and second. I have one public comment card, Mr. Brian Moore.

BRIAN MOORE: Good evening, ladies and gentlemen. Thank you for giving me just a few minutes here and I promise I'll be brief. I want to start off, let me state for the record my name is Brian Moore. I'm an attorney with AT&T. I'm located at 150 W. Flagler Street in Miami. And I am here to address the item number 23.

First of all, I very much want to thank the City Attorney, Mr. Keith Davis and Mary McKinney with the city staff for discussing already before this meeting some of the questions and concerns that AT&T has regarding the ordinance. It's been a pleasure working with them and we've been able to work some things out, and I want to thank them very much for that.

I really only have two things that I'd like to ask the -- the council to consider. (Coughing). Excuse me. First of all, one of the requirements of the proposed ordinance is that whenever a -- a communications facility is proposed to be installed in the right-of-way, that the applicant provide what's called an inventory of other above-ground facilities within a 1,000-foot radius. We're asking the commission to please consider changing it so that it -- the radius only be a 500-foot radius. Now, I say only. That's still a significant area surrounding the location of the proposed facility. I would note that other jurisdictions in Florida have, in fact, accepted a 500-foot requirement, and we certainly understand the need for the -- the -- this inventory, particularly when you're

dealing with above-ground facilities. You want to see how it fits in to the surrounding facilities.

But 1,000-foot radius, that is, you know, three-plus football fields on either side of the proposed facility. And our concern is that obviously speaking on behalf of my client, there'll be additional paperworks and -- paperwork and burdens associated with that. But likewise, there'll be additional burdens on the City, as well, to maintain a lot more information when, in fact, the -- the -- the scope of what's going to be focused on is fairly limited.

So we're going to -- we -- we ask that the City consider changing that 1,000-foot requirement to 500-foot requirement. In addition on that same theme, there are two provisions in this ordinance, proposed ordinance, that deal with types of security or protection to make sure that any restoration of the right-of-way takes place. Those two things are a \$50,000 security fund and then for each permit, an individual bond. I can tell you from experience from other places that the individual bond requirement has proven very difficult for both applicants and the cities to administer.

There are, of course, occasions where, let's say, for instance, the -- the potential cost of restoration exceeds \$50,000 where it may be appropriate to ask for an individual bond. But there are other cases where -- where the -- the potential cost of restoration is far less significant and well below \$50,000. And so what we would like to ask is that there be language in there that provide that is the \$50,000 security fund can act as a type of blanket bond and only when the cost will exceed that amount that an individual bond be required.

And I look forward to discussing that further with the City's attorneys, and I hope that's something that the City will consider. And I thank you very much for your time this evening.

CHAIRPERSON DAVIS: Thank you, sir.

COUNCILPERSON GUYTON: Madam Chair, I have a question.

CHAIRPERSON DAVIS: Hold on, sir.

BRIAN MOORE: Oh, I'm sorry.

CHAIRPERSON DAVIS: Mr. Guyton?

COUNCILPERSON GUYTON: I have a quick question. I'm sorry. What was your name?

BRIAN MOORE: It's Brian Moore.

COUNCILPERSON GUYTON: Mr. Brian --

BRIAN MOORE: Moore, M-O-O-R-E.

COUNCILPERSON GUYTON: -- Moore? And you're with AT&T?

BRIAN MOORE: Yes, I am.

COUNCILPERSON GUYTON: Is AT&T -- does AT&T engage in any of these activities that would require this equipment?

BRIAN MOORE: Yes, sir. We -- we -- we -- and I'm using the AT&T umbrella. We have obviously a lot of different companies. AT&T has both the traditional wire line business, the home and business phone business that use traditional wires that have been in place for, you know, decades. And we have a wireless business. So this ordinance impacts both sides of our business. And there -- we do expect that as the -- as the future needs develop, that we will be looking to place additional wireless facilities in the Riviera Beach area and, of course, you know, maintaining and putting additional wires to support our traditional wire line business, which includes not only basic telephone service but --

COUNCILPERSON GUYTON: Okay.

BRIAN MOORE: -- Internet, as well.

COUNCILPERSON GUYTON: As it relates to the thousand foot and you want us to reduce it to a hundred -- a 500-foot radius --

BRIAN MOORE: Right.

COUNCILPERSON GUYTON: -- what impact does that have? Why is AT&T requesting that? What --

BRIAN MOORE: Well --

COUNCILPERSON GUYTON: -- in layman -- layman terms, now. What -- what -- what kind of impact? Why are you requesting us to reduce the radius that the equipment would be able to cover?

BRIAN MOORE: Yeah. I'm sure my law school professors would probably cringe, but basically it's just harder. It creates more paperwork --

CHAIRPERSON DAVIS: Oh.

BRIAN MOORE: -- to look at that thousand-foot radius. And -- and, you know, that can be inclusive of --

COUNCILPERSON GUYTON: Okay. But --

BRIAN MOORE: -- of -- of putting a small facility on a pole. 'Cause as the way it's written, it applies to even the smallest facilities, which may not even be visible from a thousand feet away.

COUNCILPERSON GUYTON: Okay. When you say "create more paperwork," are you talking about for you or for us?

BRIAN MOORE: For both us and the City, because what we have to -- we would have to do under this ordinance is present that inventory, literally of every above-ground facility that's within that radius. And that you would then be maintaining that -- that paperwork that we submit as part of the permit application and just by the nature of the beast, the bigger the radius, the more information and the more paperwork we're gonna have to provide.

COUNCILPERSON GUYTON: Now, the impact that it would have on the communications that we're trying to address in this area --

BRIAN MOORE: Right.

COUNCILPERSON GUYTON: -- obviously that would limit that?

BRIAN MOORE: Well, you know, the -- the --

COUNCILPERSON GUYTON: Okay. Well, that -- could you give me a yes or no?

BRIAN MOORE: Yes, it would.

COUNCILPERSON GUYTON: It will limit that.

BRIAN MOORE: Because it would -- it would have a cost impact, which is an important element of the decisions we make about where we need to -- where we make decisions about where we install facilities.

COUNCILPERSON GUYTON: Okay.

BRIAN MOORE: It adds to the burden and cost.

COUNCILPERSON GUYTON: That's -- that's all I have, Madam Chair?

CHAIRPERSON DAVIS: Okay. Thank you, sir.

CHAIR PRO TEM PARDO: Madam -- Madam Chair?

CHAIRPERSON DAVIS: Miss Pardo?

CHAIR PRO TEM PARDO: Okay.

CHAIRPERSON DAVIS: Uh-huh.

CHAIR PRO TEM PARDO: Can -- I'd like to hear Miss McKinney's opinion on this thousand --

COUNCILPERSON GUYTON: Yeah. I was going to ask her to -- yeah.

CHAIRPERSON DAVIS: Yeah.

CHAIR PRO TEM PARDO: -- foot radius versus --

CHAIRPERSON DAVIS: Thank you, sir.

BRIAN MOORE: Thank you very much.

CHAIR PRO TEM PARDO: -- 500 feet. And if it's going to be a burden on us, if paperwork will be a burden.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Okay. Oh, paperwork will not be a -- well, paperwork is always a burden but paperwork will not be a burden --

CHAIR PRO TEM PARDO: Okay.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: -- for us for this requirement. Um, we can go back and discuss among our staff and the attorney the 500 feet, but we're comfortable with the thousand foot. We prefer that it remain that way.

CHAIR PRO TEM PARDO: Okay.

COUNCILPERSON GUYTON: Okay. Madam Chair, one question to --

CHAIRPERSON DAVIS: Mr. Guyton?

COUNCILPERSON GUYTON: Thank you. It -- the radius that we're discussing now, is that the area that would be impacted from one of these?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Yes.

COUNCILPERSON GUYTON: What are they called? What --

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: This is a pole that has an antenna box with an antenna on top of the pole.

COUNCILPERSON GUYTON: Okay.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: We -- we gave you a picture so that it would be easier than, like, just a sketch.

COUNCILPERSON GUYTON: And for the public, what would that box allow or address as it relates to wireless?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Technically, as far as providing more communication?

COUNCILPERSON GUYTON: Yes.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Well, I'm not an expert in that -- in the technical aspect of it. But our understanding is it will provide for gap in service that may exist now for recipients to receive their wireless communications.

COUNCILPERSON GUYTON: Does it help with dropped calls?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: It -- it -- it may. It may. It probably does.

COUNCILPERSON GUYTON: Is there someone here from --

CHAIRPERSON DAVIS: AT&T is here.

CHAIR PRO TEM PARDO: (Inaudible).

CHAIRPERSON DAVIS: Would you like to come up, sir?

BRIAN MOORE: Yes, if I could.

CHAIRPERSON DAVIS: I'm -- I'm -- you're the attorney, correct?

BRIAN MOORE: Yes.

CHAIRPERSON DAVIS: And Mr. -- what's his name from AT&T?

BRIAN MOORE: I'm here with Mr. Beninati [phonetic], my client.

CHAIRPERSON DAVIS: Yes, Mr. Beninati.

BRIAN MOORE: Would you like him --

COUNCILPERSON GUYTON: Who can answer that?

MR. BENINATI: I'm (Inaudible) with AT&T. And I'll fill out a card when I get through. But in answer to your question, yes, it would improve service. Something that a lot of people don't know, you can only talk so much over the cell phones. But the real growth that's eating up the bandwidth, the ability to call, is not people with conversations. It's people using data. And that is, you know, on the Internet, checking out Google and things like that.

Today, two-thirds of the new growth over the cell system, over the wireless is over data as opposed to voice. And I live in Fort Lauderdale and I sure hope I can get some of this because I have dropped calls every day. And you may experience the same thing, sir.

COUNCILPERSON GUYTON: Very much.

MR. BENINATI: So --

COUNCILPERSON GUYTON: That -- that's what --

MR. BENINATI: -- so it helps dropped calls, but it also helps for all the people and a lot of folks younger than me who use it for data.

COUNCILPERSON GUYTON: Has AT&T submitted or will be submitting an application?

MR. BENINATI: To -- to my knowledge, we haven't submitted one now. Okay? But with the growth of data, with your constituents and our customers, it's got to happen eventually.

COUNCILPERSON GUYTON: Okay. Thank you, Madam Chair. One last question --

CHAIRPERSON DAVIS: I --

COUNCILPERSON GUYTON: -- for Miss McKinney. I'm done, sir. Thank you.

CHAIRPERSON DAVIS: -- but can I -- let -- can I ask him a question while he's --

COUNCILPERSON GUYTON: Oh, I'm sorry.

CHAIRPERSON DAVIS: -- standing here?

COUNCILPERSON GUYTON: Yes. I'm sorry, Madam Chair.

CHAIRPERSON DAVIS: Mr. Beninati?

MR. BENINATI: Yes, ma'am.

CHAIRPERSON DAVIS: This picture that's on the screen here --

MR. BENINATI: Uh-huh.

CHAIRPERSON DAVIS: Is that an accurate depiction of what your antennas will look like?

MR. BENINATI: I would say it is. But here's what I would say to you.

CHAIRPERSON DAVIS: It looks awful.

MR. BENINATI: Every day we're doing everything we can, okay, to improve these. Improve means smaller. Okay? Smaller and more powerful. And when we go through and do this, we work with city staff and the people with permitting to put them in the appropriate locations. We learned that from you when we were working with the City and other cities on U-verse. We understand it's important where we put them and we try to do that, okay, from the technical side, but also for the benefit of your constituents.

CHAIRPERSON DAVIS: Uh-huh. Okay. Thank you. Miss McKinney? Bruce?

COUNCILPERSON GUYTON: I have one last question for Miss McKinney. Under section 10-211, use of right-of-ways, section C, paren 1, it speaks to requiring an engineer to prepare the plans.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Yes.

COUNCILPERSON GUYTON: I see that "registered" was crossed out. It says "Florida license and registered professional engineer," was crossed out.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Right. We felt -- we felt that the word "licensed" more appropriately describes the term for what a professional engineer receives from the State of Florida. It's a license.

COUNCILPERSON GUYTON: Is -- is -- is that -- does that equate to a PE?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Yes.

COUNCILPERSON GUYTON: With that designation?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Yes.

COUNCILPERSON GUYTON: Okay. So that's not just somebody graduating from --

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: No. Well, no.

COUNCILPERSON GUYTON: -- school with an engineering degree and --

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: No. They --

COUNCILPERSON GUYTON: -- and -- than through --

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: -- they take the exam and they get their --

COUNCILPERSON GUYTON: Yes.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: -- (inaudible).

COUNCILPERSON GUYTON: Okay. That's all I have, Madam Chair.

CHAIRPERSON DAVIS: Okay. Mr. Calhoun, you put your card in after we had started the discussion. But I'm going to allow you to come up and speak. Is it Hope?

HOPE CALHOUN: Yeah, my handwriting is atrocious. I apologize.

CHAIRPERSON DAVIS: Okay. Come on up.

HOPE CALHOUN: I do -- my mom still thinks I should be a doctor instead of a lawyer. No -- no offense to any doctors. Good evening. My name is Hope Calhoun. I am an

attorney here this evening on behalf of Crown Castle. My business address is 1 E. Broward Boulevard, Fort Lauderdale, Florida. I want to -- I'll remind you that probably the last time I was before all of you, I was begging for no moratorium because Crown Castle does have a number of applications in this city. Having said that, in your infinite wisdom you adopted the moratorium and we have continued to follow the progress of this. We've talked to your city staff and your city attorney that's worked on this ordinance. We appreciate all of their time and effort.

There's just two things I want to -- a couple of things, actually, I just want to clarify for our purposes, especially considering our applications that are in right now. First of all, the proposed ordinance speaks to registration, which is not really new because we registered when we submitted our original applications. So my question is just in terms of process. I just want to be sure that we can continue, which was our plea in the beginning, with our pending applications. I guess we can update if necessary our registration. But as this goes hopefully to second reading after tonight, we'd like to just continue our process. And if we need to do any additional updating to registration, we're happy to do that. But just a point of a clarification for Crown Castle's applications just that we can continue to process --

CHAIRPERSON DAVIS: Uh-huh.

HOPE CALHOUN: -- again, as you go to second reading. Secondly -- well, again, you had a picture earlier up there and you asked if that was an accurate depiction of what we would put in the right-of-way. You didn't ask that of me, but I do want to tell you, what we would put in would look a lot different. We have submitted quite a few graphics. Unfortunately, I don't have any with me this evening, but we have, in dealing with your city staff, submitted a few -- quite a few graphics so they would be much more attractive than what you see currently existing. So we hope that you think it's an improvement.

And lastly, I just want to ask one more point of clarification. On page 14 of 49, subsection E speaks about the very last -- the second-to-the-last sentence says, "Notwithstanding any effective registration, applicable city permitting requirements shall continue to apply." And so this section is talking about, again, registering and complying with city codes. So I just want to be clear that we're only talking -- I know it says applicable, but I just want to be clear that we're only talking about obviously any permitting associated with the permitting of these particular towers or nodes that, again, our applications fall under. And there's not a section of the code that we are just unaware of or that we've missed, but it's -- it's consistent with what we were already familiar with. So just those two points of clarification. Thank you for your time.

CHAIRPERSON DAVIS: Thank you. Miss McKinney?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Yes. As far as clarifying they're -- where they are in the process, we'll -- we'd have to review their application, because it's been a period of time, to make sure it complies with the ordinance that's adopted. And if it does, then we'll continue to process what they've submitted. And if it doesn't, then they can update that.

As far as what their antenna looks like, we'll bring the graphic of what they submitted with their building -- with their permit application so that you can see what it looks like at the next meeting or we'll -- actually, we'll send it out to you probably tomorrow.

CHAIRPERSON DAVIS: Okay.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: It's similar to this but it's a line graphic so -- but we'll send it out to you tomorrow.

CHAIRPERSON DAVIS: Okay. Thank you.

CHAIR PRO TEM PARDO: Madam Chair?

CHAIRPERSON DAVIS: Miss Pardo?

CHAIR PRO TEM PARDO: Okay. So I have a question for Miss McKinney. Are we regulating where they can be placed? Like, in what areas they can be placed? Or can they be, you know, erected anywhere in Riviera Beach, in a right-of-way?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Well, they can be -- right. They can be erected in our city rights-of-way, but we have encouraged collocating if that's possible, and we're encouraging stealth antennas. We're encouraging underground, if that's possible. So it's not just anywhere. It's within the confines of what we're encouraging and requesting in the ordinance. And -- but they can go in city rights-of-way, but there are restrictions on the proximity to each other that we --

CHAIR PRO TEM PARDO: Right. That was --

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: -- right.

CHAIRPERSON DAVIS: Uh-huh.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: And that's one of the reasons that we feel like the inventory is so important so that we know where there are poles when any provider comes in to apply so that we do have a good mapping of where they are.

CHAIR PRO TEM PARDO: Okay. So if they decide that they want to go into a certain area where there are no poles and they want to -- so they'll be able to put up their own pole?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: They will. They will. It -- but in compliance with all of our requirements.

CHAIR PRO TEM PARDO: Right. So this could really start littering the city. You know, we're trying --

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Well, that's why --

CHAIR PRO TEM PARDO: -- you know, Broadway's looking a lot better. A1A is looking a lot better. Old Dixie.

CHAIRPERSON DAVIS: Blue Heron.

CHAIR PRO TEM PARDO: Blue Heron.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Well, Broadway -- in Broadway your lines will go underground.

CHAIR PRO TEM PARDO: And that --

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: So we won't allow any poles that conflict with the underground plan for Broadway.

CHAIR PRO TEM PARDO: -- (inaudible).

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: So that's one area that they won't be just popping up. The -- they will be allowed but there's a distance requirement they have to be with each other. They have to attempt to share their facilities with each other if they can so that it's not just multiple poles. And we would require them to do that before we would permit poles that could share -- be shared. Or any of the facilities that could be shared. So that's one of the reasons we did put the moratorium so that we could try to prevent those things from happening. And I think, to the best of our legal ability, we've done that.

CHAIR PRO TEM PARDO: Okay. And Miss McKinney, when you guys were doing your due diligence, were you able to come across any cities in Palm Beach County that have allowed this?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: We did. And actually, I think it was Green Acres that had allowed it and they didn't even realize 'cause they just submitted a building permit to their Building Division and it got approved and put up before anybody really knew it was there. I think that Miramar -- and Keith can correct me -- they did a moratorium so they regulated --

CHAIR PRO TEM PARDO: Yeah, but any other cities in Palm Beach County?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Well, there's three --

CHAIR PRO TEM PARDO: All right. So it's really just Green Acres --

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Green Acres --

CHAIR PRO TEM PARDO: -- who was blindsided by it?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: -- they -- and -- right. We try -- right. They were blindsided.

CHAIR PRO TEM PARDO: Okay. But the other cities, you know -- if we have dropped calls, I'm sure every other -- you know, the other 37 municipalities in Palm Beach County also have dropped calls. And you know, I just -- I voiced my concerns months ago when they came in front of us. You know, Riviera Beach is no longer the dumping ground of Palm Beach County. And you know, hopefully we've been proving that over the years, over the past seven or eight years.

And I am just concerned that these things are just going to pop up everywhere and, you know, take away from what we've been trying to accomplish, you know, making the city much more, you know, aesthetically pleasing.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: And --

CHAIR PRO TEM PARDO: And, you know, so, you know --

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: -- I think that we got in front of this --

CHAIR PRO TEM PARDO: -- if Riviera Beach is --

CHAIRPERSON DAVIS: (Inaudible) --

CHAIR PRO TEM PARDO: -- (inaudible) easy one, but you know, what about Boca Raton and the Town of Palm Beach and, you know, Manalapan and Ocean Ridge? So, you know, that's my concern. That is definitely a concern of mine. Okay. That's all I have. Thank you, Miss McKinney.

COUNCILPERSON GUYTON: Thank you.

CHAIRPERSON DAVIS: I -- I -- I want Mr. Davis to come up for a minute, 'cause I -- I'll come to you in just a minute, Mr. Guyton.

COUNCILPERSON GUYTON: Okay.

KEITH DAVIS: Good evening, Chair and Council. Keith Davis, Special Counsel for the City for this project.

CHAIRPERSON DAVIS: Okay. Good evening. My question is -- and while I share the same concerns as my colleague Miss Pardo, and I think I might -- may have briefly mentioned this at the meeting where they attended before, what is their legal standing?

KEITH DAVIS: Sure. Here's -- here's what we're up against. . You -- you've got the balance between providing the -- the service that everybody wants versus cluttering up your rights-of-way. Now, from a legal standpoint, in 1996, federal government passed the Telecommunications Act of that year, and Florida has statutes on its books that mimic some of the things in the federal act. And the important thing that those laws say is that when it comes to telecommunication service providers, you -- you have to treat them all in a competitively neutral way. They're -- you -- you can't build in advantages

or disadvantages based on being wired or wireless. They all have to be treated the same way.

And one of the things that the State did -- it was -- I think it's Chapter 202 of the statutes, is it created the communications service tax. So instead of being able to regulate by franchise or -- and -- and deriving revenue from -- based on the revenue that the providers generate --

CHAIRPERSON DAVIS: Uh-huh.

KEITH DAVIS: -- and based on use of your rights-of-way, you're not allowed to do that anymore. The most we can do -- you get your communications service tax that trickles down from the State. Beyond that, the most you can do is require them to register before they can apply for permits to put anything in your rights-of-way. You can make them go through the permitting process.

CHAIRPERSON DAVIS: Uh-huh.

KEITH DAVIS: But the -- the wireless providers have to be treated in essentially the same way that your -- your traditional telephone poles with the wire folks are treated.

CHAIRPERSON DAVIS: Okay. So -- so by us requiring them -- the -- the thousand-foot setback that we are within our right, though?

KEITH DAVIS: We believe that -- that -- that these codes are -- are defensible. They're -- you know, we're trying to drive the placement of these facilities out of your residential rights-of-way into your -- your more commercial rights-of-way. We're trying to -- in situations where something might have to go into a residential right-of-way in order to comply with the competitive neutrality laws --

CHAIRPERSON DAVIS: Uh-huh. Uh-huh.

KEITH DAVIS: -- we have regulations that talk about, you know, it can't be right in front of a house. It can't impair the view from the house. The clusters of those equipment boxes have to be so far apart.

CHAIRPERSON DAVIS: Okay.

KEITH DAVIS: The boxes can only be so big. And there can only be so many clustered together. So we're doing those things and -- and -- and, you know, I think that we are pretty much doing everything that -- that is reasonably defensible from a legal standpoint in -- in regulating and protecting the appearance of your rights-of-way, and at the same time, allowing the providers to come in, use your rights-of-way and provide the services that your residents want.

CHAIRPERSON DAVIS: Okay. All right. Any other questions or comments?

COUNCILPERSON GUYTON: Just one.

CHAIRPERSON DAVIS: Mr. Guyton?

COUNCILPERSON GUYTON: So essentially, you've just said that we can arbitrarily deny anybody the right to put up these antennas?

KEITH DAVIS: I mean, to -- to be drastically -- an extreme example, you could say, we don't want any telecommunications in any of our rights-of-way anywhere in the city. You're treating everybody the same but nobody's going to have service. So --

COUNCILPERSON GUYTON: Yes.

KEITH DAVIS: -- so, correct, you can't arbitrarily --

COUNCILPERSON GUYTON: Understood. And -- and I'm not suggesting that we should.

KEITH DAVIS: Right.

COUNCILPERSON GUYTON: Okay. I'm done. I have a question for Miss McKinney. And let me just say while she's coming, oftentimes we've got to make sacrifices. And when we want better technology, sometimes there's a sacrifice that we have to make for that and we have to try to monitor that and make sure that it doesn't get out of control. I'm more concerned about the impact on the service in our community and -- and in hopes that it would better our service. And as in a democracy, we make sacrifices. First Amendment Right, and people say a lot of things that we don't like. So there's a give-and-take when we're trying to have cutting-edge technology now and keep up with it. And it's my hope that what we have put in place can regulate a lot of just antennas popping up.

MAYOR MASTERS: Yeah.

COUNCILPERSON GUYTON: But my last question is, is there a limit in each respective area -- I believe I read that somewhere -- where we can monitor and restrict the number in a certain area in our right-of-way once it's reached a certain number? Did I read that correctly?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: I don't think it says it quite like that. But we do have provisions in here where we can regulate the proliferation of them in any one area.

COUNCILPERSON GUYTON: Okay. That's what I'm talking about.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: That we can restrict the distance requirements and, right, make them document and prove why they would have to have it wherever they're proposing to have it.

COUNCILPERSON GUYTON: Okay.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: We -- we brought -- made it as strict as we possibly could for the providers to give us information that helps us keep the city from having a proliferation of these types of devices.

COUNCILPERSON GUYTON: Okay. Thank you, Madam --

CHAIRPERSON DAVIS: One last -- one last question from me. You know, we have a pretty good capital improvement plan for our roads and streets. Now, will there -- will this have some impact on our ability to redo our -- our roads, streets?

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: No. No.

CHAIRPERSON DAVIS: Okay.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: None.

CHAIRPERSON DAVIS: All right. Thank you. Anything else from the board?

CITY MANAGER JONES: Madam Chair?

CHAIRPERSON DAVIS: Miss Jones?

CITY MANAGER JONES: I -- in the absence of Councilman Thomas, he has asked me to express that he has real issues with this item. In a previous conversation, he has the concern about the proliferation of the towers or poles throughout the city and the concern for the -- particularly in the residential areas and information being given to the individuals in the areas where the poles will be placed so that they will know what is taking place and what is going on.

CHAIRPERSON DAVIS: Uh-huh.

CITY MANAGER JONES: But he does have some real issues with this item.

CHAIRPERSON DAVIS: Okay. All right. Any other questions or comments?

COUNCILPERSON GUYTON: A question to you, Madam Chair?

CHAIRPERSON DAVIS: Yes, sir?

COUNCILPERSON GUYTON: There were some suggestions made by AT&T, and there were, I think -- their inquiries were answered from the other attorney, if I'm not mistaken. Are we going to address those now or before the next reading? I'm inclined to follow whatever staff recommend as it relates to the radius.

CHAIRPERSON DAVIS: Yeah. If you have the answers now, go ahead.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: I think we should keep the radius at 1,000 feet. I don't think that's an -- a burden for either one of us.

COUNCILPERSON GUYTON: Okay.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: And as far as the types of security, we can look at that again. But we -- we've asked for the \$50,000 security fund. We'll look at whether we think that we need an individual bond for each permit, and then we'll let you know, you know, if we can --

COUNCILPERSON GUYTON: At the next --

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: Right. -- reduce --

COUNCILPERSON GUYTON: Okay.

DIRECTOR OF COMMUNITY DEVELOPMENT McKINNEY: -- feel comfortable with reducing that.

COUNCILPERSON GUYTON: Okay. Thank you. Thank you, Madam Chair.

CHAIRPERSON DAVIS: Okay. Any other questions, comments? Madam Clerk?

DEPUTY CITY CLERK ANTHONY: Councilperson Guyton?

COUNCILPERSON GUYTON: Yes.

DEPUTY CITY CLERK ANTHONY: Councilperson T. Davis?

COUNCILPERSON DAVIS: Yes.

DEPUTY CITY CLERK ANTHONY: Pro Tem Pardo?

CHAIR PRO TEM PARDO: No.

DEPUTY CITY CLERK ANTHONY: Chair Davis?

CHAIRPERSON DAVIS: Yes.

DEPUTY CITY CLERK ANTHONY: That motion is approved with Councilperson Pardo dissenting.

CHAIRPERSON DAVIS: Okay. We're now down to Awards and Presentations, item 12.

COMMENTS FROM THE PUBLIC -7:00 PM Non-Agenda Item Speakers (Three Minute Limitation)

Please be reminded that the City Council has adopted a set of "Rules of Decorum Governing Public Conduct during Official Meetings", which had been posted at the entrance of the Council Chambers. In an effort to preserve order, if any of the rules are not adhered to, the Council Chair may have any disruptive speaker