

RESOLUTION No. 36765

Authorize City to participate as intervenor in petitioning for review of Federal Communications Commission's decision to preempt state and local regulations for cell tower siting (Resolution).

WHEREAS, On July 11, 2008, CTIA—The Wireless Association® filed a petition with the Federal Communications Commission asking that the Commission issue a Declaratory Ruling clarifying provisions in sections 253 and 332(c)(7) of the federal Communications Act, seeking federal preemption of state and local regulatory authority by establishing federal deadlines for action on zoning applications and “deeming” these applications granted if the federal timetables are not met. In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, FCC 09-99, WT Docket No. 08-165; and,

WHEREAS, On September 29, 2008, the City of Portland filed comments in the FCC proceeding leading up to the Ruling on September 28, 2008 as part of a coalition of local zoning authorities from around the United States; and,

WHEREAS, Effective November 18, 2009, the FCC published notice of its declaratory ruling, which defines timeframes for State and local action on wireless facilities siting requests, 74 Federal Register 67871 (December 21, 2009) (the “Shot Clock” cell tower siting order); and,

WHEREAS, Among other things, the FCC’s “Shot Clock” cell tower siting order established a new 30-day deadline for local review of the “completeness” of siting applications, as well as new 90- and 150-day timelines for the local review of siting applications, and found that a local government may not deny an application solely due to the presence of another carrier; and,

WHEREAS, Following the issuance of the FCC’s “Shot Clock” cell tower siting order, the City of Arlington, Texas filed a petition in the Fifth Circuit Court of Appeals. City of Arlington, Texas v. Federal Communications Commission, United States Court Of Appeals for the Fifth Circuit Case No. 10-60039 (filed January 14, 2010); and

WHEREAS, The FCC’s mandate requires additional, unfunded work to process siting applications, and is not consistent with the usual, established timelines under Oregon law and the City’s administrative practices, impinging on the ability to obtain adequate input from effected persons; and,

WHEREAS, The City of Arlington’s petition asserts, in part, that the FCC’s “Shot Clock” cell tower siting order exceeds the agency’s authority and is contrary to federal law;

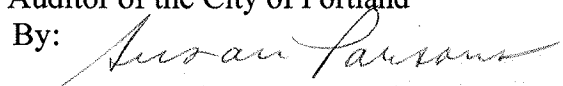
NOW, THEREFORE, BE IT RESOLVED that the City Attorney or her designee is authorized to appear on behalf of the City of Portland in the proceeding before the United States Fifth Circuit Court of Appeals, City of Arlington, Texas v. Federal Communications Commission, Case No. 10-60039 and, in the course of such appearance, the City Attorney, or her designee, is further authorized to make such stipulation, agreement, or admission as in her judgment may be in the best interest of the City.

Adopted by the Council: FEB 24 2010

Commissioner Fritz
Prepared by:
MBHenry/BWalters
February 17, 2009

LaVonne Griffin-Valade
Auditor of the City of Portland

By:



Deputy

Agenda No. **36765**
RESOLUTION NO.
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<p style="text-align: center;">INTRODUCED BY Commissioner/Auditor: Commissioner Amanda Fritz</p>	<p>CLERK USE: DATE FILED <u>FEB 19 2010</u></p>
<p style="text-align: center;">COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Adams</p> <p>Position 1/Utilities - Fritz <i>To wait</i></p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Leonard</p>	<p style="text-align: center;">LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <u><i>[Signature]</i></u> Deputy</p>
<p style="text-align: center;">BUREAU APPROVAL</p> <p>Bureau: OCCFM Bureau Head: David C Olson <i>[Signature]</i></p>	<p>ACTION TAKEN:</p>
<p>Prepared by: Mary Beth Henry Date Prepared: February 17, 2010</p>	
<p>Financial Impact Statement</p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>Council Meeting Date February 24, 2010</p>	
<p>City Attorney Approval <i>[Signature]</i></p>	

AGENDA

TIME CERTAIN
 Start time: _____

Total amount of time needed: _____
 (for presentation, testimony and discussion)

CONSENT

REGULAR
Total amount of time needed: 3
 (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz <i>[Signature]</i>	
2. Fish	2. Fish ✓	
3. Saltzman	3. Saltzman ✓	
4. Leonard	4. Leonard ✓	
Adams	Adams <i>[Signature]</i>	