

RESOLUTION NO. 2017-23
INTRODUCED BY: MAYOR PATRICK A. WARD AND
COUNCIL AS A WHOLE

A RESOLUTION EXPRESSING SUPPORT FOR THE CITY OF CLEVELAND IN THE CASE CAPTIONED CITY OF CLEVELAND V. STATE OF OHIO, CUYAHOGA COUNTY COURT OF COMMON PLEAS CASE NO. 877584, WHICH CHALLENGES THE CONSTITUTIONALITY OF SB 331, AND THE LEGISLATION ELIMINATING THE ABILITY OF MUNICIPALITIES TO REGULATE UTILITY CONSTRUCTION WITHIN THEIR RIGHTS OF WAY, AND DECLARING AN EMERGENCY

WHEREAS, by the adoption of Ordinance No. 2016-90 on November 7, 2016, this Council placed a moratorium on the construction, installation and operation of new telecommunications towers in the City, including but not limited to outdoor small cells and distributed antenna systems, as well as the addition of any new facilities to existing telecommunications towers, which moratorium remains in effect until May 7, 2017, unless extended; and

WHEREAS, by the adoption of Resolution No. 2016-99 on December 5, 2016, this Council expressed its opposition to any effort in the lame duck legislature to enact legislation reducing or eliminating the ability of municipalities to regulate utility construction within their rights of way, and to any effort to enact legislation to remove such control from municipalities and place with any federal, state or local commission or with wireless internet companies; and

WHEREAS, despite opposition Statewide, the legislature passed SB 331 in December, 2016, and said bill was signed by the Governor with an effective date of March 21, 2017; and

WHEREAS, the Council of the City of Lyndhurst has reviewed said bill, and believes the bill violates the single subject limitation in Article II, Section 15 of the Ohio Constitution; and

WHEREAS, this Council further believes that the bill is an illegal intrusion on the right of home rule guaranteed to municipal corporations by Article XVIII, Section 3 of the Ohio Constitution; and

WHEREAS, the City of Cleveland has filed a lawsuit in Cuyahoga County Common Pleas Court alleging those Constitutional violations, being captioned City of Cleveland v. State of Ohio, Cuyahoga County Common Pleas Case No. 877584; and

WHEREAS, while not having been invited to participate with the City of Cleveland in this lawsuit, since it is venued in Cuyahoga County, and Lyndhurst is a municipal corporation located in Cuyahoga County, this Council wishes to express its support for the City of Cleveland in the aforesated litigation. Now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNDHURST, CUYAHOGA COUNTY, STATE OF OHIO, THAT:

SECTION 1. This Council declares its complete and absolute support for the City of Cleveland in its position alleging violations of the Ohio Constitution by the Ohio Legislature in passing SB 331, as stated in the litigation captioned City of Cleveland v. State of Ohio, Cuyahoga County Common Pleas Case No. 877584.

SECTION 2. This Council declares its complete and absolute opposition to reducing or eliminating the legal ability of a municipal corporation to regulate use of its right of way.

SECTION 3. This Council declares its complete and absolute opposition to any effort to place municipal control of the public rights of way before any federal, state or local commission, in any way that would reduce or eliminate the local power to zone.

SECTION 4. Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 5. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation for the public peace, health, welfare, and safety of the City of Lyndhurst and its residents. Therefore, this Resolution shall be in full force and effect immediately upon its passage by the affirmative vote of not less than five (5) members elected to Council, and signature by the Mayor, or otherwise at the earliest time allowed by law.

PASSED: April 3, 2017

MAYOR

VICE MAYOR

ATTEST: _____
Clerk of Council

I, the undersigned Clerk of Council of the City of Lyndhurst, hereby certify that there is no newspaper published or having an office of publication in said City, and that I published the foregoing Ordinance by advertising the same by title on one day in each of two consecutive weeks in a newspaper of general circulation in said City, on April 13, 2017 and April 20, 2017.

Clerk of Council

First Reading: April 3, 2017

Second Reading: Suspended

Third Reading: Suspended