



## AGENDA ITEM COVER SHEET

Meeting Date: November 1, 2016

Item # 10

Contact Name: Michael Rumer

Contact Number: (407) 905-3100 x1018

*MR*

Reviewed By:

Department Director:

City Manager:

**Subject: Temporary Moratorium on processing applications for utility poles within existing right-of-way**

### Background Summary:

The City has received an application for the location of a new 120 foot above-ground utility pole within the existing City right of way. Upon review of the City Code, the City's Land Development Code, and the application, City staff and the City Attorney's Office has determined that existing regulations are not adequate to address this type of request. Therefore, regulations relating to location of an above-ground utility pole within existing right of way that will meet the City's land development regulations as well as Florida Department of Transportation safety standards must be created. The City Attorney's Office has been in communication with other local government attorneys in regards to issuing permits for above ground utility poles and has found it appropriate to recommend a six month moratorium be established. This moratorium will cover the processing and consideration of applications for development orders, development permits, and right of way utilization permits relating to above-ground utility poles within the existing right of way. This moratorium will allow City Staff and the City Attorney's Office time to establish land development code citing criteria and right-of-way use permit requirements.

### Issue:

Should the Honorable Mayor and City Commissioners approve an ordinance establishing a temporary moratorium on the processing and consideration of applications for development orders, development permits, and right of way utilization permits relating to above-ground utility poles within the existing right of way for a period of six months?

### Recommendations:

Staff respectfully recommends that the Honorable Mayor and City Commissioners approve an Ordinance establishing a temporary moratorium on the processing and consideration of applications for development orders, development permits, and right of way utilization permits relating to above-ground utility poles within the existing right of way for a period of six months.

### Attachments:

Ordinance

**Financial Impact:**

N/A

**Type of Item:** *(please mark with an "x")*

- Public Hearing
- Ordinance First Reading
- Ordinance Second Reading
- Resolution
- Commission Approval
- Discussion & Direction

*For Clerk's Dept. Use:*

- Consent Agenda
- Public Hearing
- Regular Agenda

- 
- Original Document/Contract Attached for Execution by City Clerk
  - Original Document/Contract Held by Department for Execution

Reviewed by City Attorney	_____	_____	N/A
Reviewed by Finance Dept.	_____	_____	N/A
Reviewed by ( )	_____	_____	N/A

**ORDINANCE 2016-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF OCOEE, FLORIDA, IMPLEMENTING A TEMPORARY MORATORIUM UNTIL APRIL 30, 2017 ON THE PROCESSING AND CONSIDERATION OF APPLICATIONS FOR DEVELOPMENT ORDERS, DEVELOPMENT PERMITS, AND RIGHT OF WAY UTILIZATION PERMITS FOR ABOVE-GROUND UTILITY POLES IN THE EXISTING RIGHT OF WAY; PROVIDING FOR EXEMPTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, as provided in Article VIII of the Constitution of the State of Florida and chapters 163 and 166, Florida Statutes, the City of Ocoee (the "City") enjoys all home rule authority, police power, land development and zoning authority, and governmental and proprietary powers necessary to conduct municipal government and perform municipal functions; and

**WHEREAS**, the City may exercise any power for municipal purposes, except as expressly prohibited by law; and

**WHEREAS**, the City has found that there is a need to create regulations relating to location of above-ground utility poles within existing right of way that will meet the City's land development regulations as well as Florida Department of Transportation safety standards; and

**WHEREAS**, the City staff is in the process of evaluating the City Code of Ordinances and Land Development Code and intends to present to the City Commission a proposed ordinance or ordinances establishing regulations staff can use when considering applications for installation of above-ground utility poles within the existing right of way; and

**WHEREAS**, the City wishes to place the public and all parties on notice that it is considering such amendments and is hereby creating a temporary moratorium on the acceptance, processing, and consideration of applications for development orders, development permits, and right of way utilization permits for this purpose;

**WHEREAS**, pursuant to the pending legislation doctrine set forth in *Smith v. City of Clearwater*, 383 So. 2d 681 (Fla. 2d DCA 1980), the City hereby declares and implements the pending ordinance doctrine concerning the zoning and land development regulations

governing such applications; and

**WHEREAS**, the City Commission in good faith determines that this Ordinance is in the best interest of the City and its residents and promotes the health, safety, and welfare of the public.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF OCOEE, FLORIDA, AS FOLLOWS:**

Section 1. **Recitals.** The foregoing recitals are hereby ratified and confirmed as true and correct and incorporated herein by this reference.

Section 2. **Authority.** The City Commission of the City of Ocoee has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes.

Section 3. **Definitions.** For the purposes of this Ordinance, the terms "development order" and "development permit" have the same meaning as these terms are defined at Section 163.3164, Florida Statutes.

Section 4. **Moratorium.** Unless otherwise specifically provided for in this Ordinance, the City hereby places a temporary moratorium (suspension) on the processing and consideration of all applications for development orders, development permits, and right of way utilization permits for installation of above-ground utility poles within the existing right of way from the effective date of this Ordinance until April 30, 2017, unless this Ordinance is terminated earlier or extended by an Ordinance or Resolution duly adopted by the City Commission.

Section 5. **Conflict.** All Ordinances or parts of Ordinances, Resolutions, or parts of Resolutions in conflict herewith are hereby made ineffective to the extent of such conflict.

Section 6. **Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereto.

Section 7. **Non-codification.** It is the intention of the City Commission that the provisions of this Ordinance shall not be codified.

Section 8. **Effective Date.** This Ordinance shall become effective immediately upon passage and adoption.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2016

**APPROVED:**

**CITY OF OCOEE, FLORIDA**

**ATTEST:**

\_\_\_\_\_  
City Clerk

(SEAL)

\_\_\_\_\_  
Rusty Johnson, Mayor

**ADVERTISED \_\_\_\_\_, 2016**

**READ FIRST TIME \_\_\_\_\_, 2016**

**READ SECOND TIME AND ADOPTED**

**\_\_\_\_\_, 2016**

**UNDER AGENDA ITEM NO. \_\_\_\_\_**

**FOR USE AND RELIANCE ONLY BY  
THE CITY OF OCOEE, FLORIDA;  
APPROVED AS TO FORM AND  
LEGALITY**

This \_\_\_\_ day of \_\_\_\_\_, 2016.

**SHUFFIELD, LOWMAN & WILSON, P.A.**

By: \_\_\_\_\_  
City Attorney

# COPY OF ADVERTISEMENT

Date Published and Media Name

WEST ORANGE TIMES & OBSERVER | THURSDAY, OCTOBER 20, 2016

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## Advertisement or Article

### City of Ocoee Notice of Public Hearing

#### MORATORIUM ON ABOVE GROUND UTILITY POLES

**Notice Is Hereby given** that the City of Ocoee City Commission will consider a proposed Ordinance relating to a Moratorium on Above Ground Utility Poles. City staff is in the process of evaluating the Land Development Code to present to the City Commission a proposed ordinance or ordinances amending the City's Comprehensive Plan and land development code that would establish a temporary moratorium on the processing and consideration of applications for development orders, development permits, and right of way utilization permits relating to above-ground utility poles within the existing rights-of-way for a period of six months.

The **OCOEE CITY COMMISSION** will hold a public hearing on the proposed moratorium on **Tuesday, NOVEMBER 1, 2016, at 7:15 pm** or as soon thereafter as practical. The public hearing will be held in the City Hall Commission Chambers located at 150 North Lakeshore Drive, Ocoee.

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Interested parties may appear at the public hearing and be heard with respect to the proposed actions above. The complete case file may be inspected at the Ocoee Development Services Department/Planning Division located at 150 North Lakeshore Drive, Ocoee, Florida between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. The City Commission may continue these public hearing to other dates and times, as it deems necessary. Any interested party shall be advised of the dates, times, and places of any continuation of these or continued public hearings shall be announced during the hearing and no further notices regarding these matters will be published. You are advised that any person who desires to appeal any decision made at the public hearings will need a record of the proceedings and for this purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is based. Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office 48 hours in advance of the meeting at 407-905-3105.