

**SPONSORED BY:
MAYOR BROWN**



ORDINANCE NO. 2018-03

A BILL TO BE ENTITLED

**AN ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA;
AMENDING CHAPTER 29, WIRELESS TELECOMMUNICATIONS,
ARTICLE II, WIRELESS TELECOMMUNICATIONS FACILITY;
ADOPTING REGULATIONS RELATED TO WIRELESS FACILITIES IN
PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE REPEAL OF ALL
ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING
FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND
PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
NEPTUNE BEACH, FLORIDA:**

SECTION 1. AMENDMENTS TO CHAPTER 29, CODE OF ORDINANCES.

That Chapter 29, Article II, Wireless Telecommunications, of the Code of Ordinances of the City of Neptune Beach, Florida, is hereby amended to read as follows:

ARTICLE II. WIRELESS TELECOMMUNICATIONS FACILITY

Sec. 29-26. Purpose and legislative intent.

- (a) The City hereby makes and declares the following findings and declares its legislative intent as follows:
- (1) The public rights-of-way within the City of Neptune Beach are a unique and physically limited resource and important amenity that are critical to the travel and transport of persons and property in the City.
 - (2) The demand for telecommunications services has grown exponentially in recent years, requiring the continual upgrading of telecommunications equipment and services to satisfy such demand.
 - (3) The placement of telecommunications equipment and facilities in the public rights-of-way to satisfy the demand for telecommunications services raises important issues with respect to the City's responsibility to manage its public rights-of-way.

- (4) The public rights-of-way must be managed and controlled in a manner that enhances the health, safety and general welfare of the City and its citizens.
- (5) The use and occupancy of the public rights-of-way by providers of communications services must be subject to regulation, which can ensure minimal inconvenience to the public, coordinate users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of an optimal number of providers of cable, telecommunications, and other services in the public interest.
- (6) Section 166.041, Florida Statutes, provides for procedures for adoption of an ordinance which is a regulation of general and permanent nature and enforceable as local law.
- (7) Section 337.401, Florida Statutes, addresses the authority of municipalities to regulate the placement and maintenance of communication facilities, and other utilities, in the public rights-of-way.
- (8) In 2017, Florida passed Chapter 2017-136, Laws of Florida, which among other things, amends § 337.401, Florida Statutes, to create the new Subsection (7) known as the Advanced Wireless Infrastructure Deployment Act ("Wireless Deployment Act"), effective July 1, 2017, to address municipalities' regulation of access to the public rights-of-way for wireless communications facilities and wireless support structures.
- (9) The Wireless Deployment Act provides that municipalities may require a registration process in accordance with § 337.401(3), Florida Statutes, may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties and further provides that, for any applications filed before the effective date of ordinances implementing this subsection, an authority may apply current ordinances relating to the placement of communications facilities in the rights-of-way related to registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties.
- (10) The City is exempt under 47 U.S.C. § 224 from federal pole attachment requirements, and finds that the utility poles located within the City are either owned or operated by a "municipal electric utility" such that the City utility poles are not subject to the Wireless Deployment Act's "Collocation" requirements as stated in § 337.401(7)(l), Florida Statutes, currently set forth in Chapter 2017-136, Laws of Florida.
- (11) The communication industry is in a constant state of emerging technology that includes the infrastructure required to support the increased demand

and capacity to receive and to transmit increased data and voice communications.

- (12) A new network of wireless communications infrastructure has emerged comprised of a series of small individual antenna ("Small Cells"), or nodes ("Distributed Antenna Systems" or "DAS"), and wireless backhaul networks that are linked to a larger hub site.
- (13) The City has received requests to place new utility poles, wireless communications facilities, and wireless support structures within the public rights-of-way.
- (14) The current City Code contains requirements for registration, insurance, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties that address sufficiently the placement or maintenance within the public rights-of-way for wireline and wireless communications facilities or wireless support structures, but needs to be updated to incorporate state law changes since the adoption of the original ordinance.
- (15) The City finds that, to promote the public health, safety and general welfare, it is necessary to:
 - i. Provide for the placement or maintenance of Communications Facilities in the public rights-of-way within the City limits,
 - ii. Adopt and administer reasonable rules, regulations and general conditions not inconsistent with applicable state and federal law,
 - iii. Manage the placement and maintenance of Communications Facilities in the public rights-of-way by all communications services providers,
 - iv. Minimize disruption to the public rights-of-way, and
 - v. Require the restoration of the public rights-of-way to original condition.
- (16) It is the intent of the City to require that the placement or maintenance of any wireline or wireless communications facility or wireless support structure in the public rights-of-way must have an effective registration which satisfies the requirements set forth herein for such registration, to the extent not inconsistent with applicable federal and state laws and regulations.
- (17) It is also the City's intent to exercise the City's retained authority to regulate and manage the City's roads and rights-of-way in exercising its police power over communications services providers' placement and maintenance of facilities in the public rights-of-way in a nondiscriminatory and competitively neutral manner.

- (b) This Article shall apply to any public or private entity who seeks to construct, place, install, maintain or operate a communications system or facilities, as such terms are defined herein, in the public rights-of-way, unless otherwise exempt by operation of applicable state or federal law. Notwithstanding the above, this Article shall not apply whatsoever to a City owned or controlled communications system.

Sec. 29-27. Definitions.

For purposes of this article, the following terms, phrases, words, and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and the word "may" is permissive. Words not otherwise defined shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. §§ 151 et seq., as amended (collectively the "Communications Act"), and, if not defined therein, as defined by Chapter 202, Florida Statutes, or Chapter 337, Florida Statutes, and, if not defined therein, be construed to mean the common and ordinary meaning.

Abandonment shall mean the permanent cessation of all uses of a communications facility; provided however, that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be abandonment of a facility in public rights-of-way.

Affiliate means each person, directly or indirectly, controlling, controlled by, or under common control with a communications services provider that is registered with the City; provided that Affiliate shall in no event mean any limited partner, member, or shareholder holding an interest of less than 15 percent in such Communications Services Provider.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services or other communications services.

The City shall mean the City of Neptune Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida.

City Code means the Code of Ordinances of the City of Neptune Beach, Florida.

City Manager shall mean the City Manager of the City of Neptune Beach or the City Manager's designated representative.

City Utility Pole means a utility pole owned by the City in the right-of-way, but excludes City utility poles that are used to support the City's owned or operated electric transmission, distribution and lighting facilities or those utility poles owned or operated by Beaches Energy.

Collocate or Collocation means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless

support structure in the public rights-of-way, nor does it include interconnection of communications facilities or the sale or purchase of capacity (whether bundled or unbundled).

Communications facility or facility or system shall mean any permanent or temporary plant, equipment, and property including, but not limited to cables, wires, conduits, ducts, fiber optics, poles, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained, or to be placed or maintained, in the public rights-of-way of the city and used, or capable of being used, to transmit, convey, route, receive, distribute, provide, or offer communications services.

Communications services shall include, without limitations, the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by and through electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, including wireless services, regardless of the protocol used for such transmission, conveyance, open video system, or cable service.

Communications services provider shall refer to any person making available or providing communications services, as defined herein, or a wireless infrastructure provider.

Communications Facilities Development Permit means the permit required under Section 29-30 and/or Section 29-31, City Code, prior to commencement of any placement or maintenance of Facilities in the public rights-of-way.

FCC shall mean the Federal Communications Commission.

In public rights-of-way or in the public rights-of-way shall mean in, on, through, over, under, or across the public rights-of-way.

Law means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirements, as amended, now in effect or subsequently enacted or issued including, but not limited to, the Communications Act of 1934, 47 U.S.C 151 et seq. as amended, all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the governing state authority pursuant thereto, Section 337.401 Florida Statutes, as amended, and all state statutes and regulations issued by state agencies pursuant thereto.

Ordinance shall mean this ordinance.

Pass-Through Facilities means the facilities for a communication system that merely pass through the City from one point to another point and from which no revenues are directly attributable to subscribers or other carriers within the City.

Pass-Through Provider means any person, municipality or county that places or maintains a communications system or communications facilities in the public rights-of-way but who does not provide communications services, including for example a company that places "dark fiber" or conduit in the public rights-of-way and leases or otherwise provides those facilities to another company that does provide communications

services to an end user. This definition of "pass-through provider" is intended to include any person that places or maintains "pass-through facilities" in the public rights-of-way, but does not provide communications services to an end user within the corporate limits of the City.

Person shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization, or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations.

Place or maintain or placement or maintenance or placing or maintaining shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate, or relocate. A communications services company or provider that owns or exercises physical control over communications facilities in public rights-of-way, shall be considered as "placing or maintaining" the facilities. A person providing communication service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way is not placing or maintaining facilities in the public rights-of-way.

Public rights-of-way shall mean a dedicated public right-of-way, highway, roadway, street, bridge, tunnel, or alley for which the city has authority, jurisdiction, control, and may lawfully grant access pursuant to applicable law and includes the surface, the air space above the surface, and the area below the surface. Public rights-of-way shall not include private property. Public rights-of-way shall not include any real or personal property of the city, except as described herein and shall not include the city's buildings, fixtures, poles, conduits, facilities, structures, appurtenances, or improvements regardless of whether they are situated within or without the public rights-of-way. Public rights-of-way shall not include existing and future private easements, private rights-of-way, leases, contracts, or agreements between the city and any other party or entity.

Public Service Commission or PSC means the agency for the State of Florida charged with the powers and duties conferred upon it by Chapter 364, Florida Statutes.

Registrant shall mean a communications services company and provider registered with the city in accordance with the provisions of this section.

Registration or register shall mean the process described in this section whereby a communications services company and provider performs certain duties and provides certain information to the city.

Utility Pole means a pole or similar structure used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights, but does not include any horizontal structures upon which are attached signal lights or other traffic control devices and does not include any pole or similar structure 15 feet in height or less unless the City grants a waiver for the pole. The term does not include a utility pole owned by the City, nor does it include any other utility pole exempt from such term pursuant to § 337.401, Florida Statutes.

Wireless Support Structure means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

Sec. 29-28. Registration.

- (a) A communications services company or provider that desires to place or maintain a communications facility in public rights-of-way in the city shall first register with the city in accordance with this article. Subject to the terms and conditions prescribed in this section, as amended, a registrant may place and maintain communications facilities in public rights-of-way.
- (b) The act of registration shall not convey any title, equitable or legal, to the registrant in the city's public rights-of-way. Registration under this article embodies only the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes, or regulations apply to the placement or maintenance in the public rights-of-way of facilities, which are not communications facilities. Registration does not excuse a communications services company or provider from obtaining appropriate and required access or pole attachment agreements before locating communication facilities on the city's facilities or another person's facilities. Registration does not excuse a communications services company or provider from complying with all applicable city ordinances, codes, or regulations including this section.
- (c) Each communications services company or provider that desires to place or maintain a communications facility in public rights-of-way in the city shall file a registration with the city, which shall include the following information:
 - (1) Name of the applicant;
 - (2) Name, address, and telephone number of the applicant's primary contact person in connection with the registration, and the name, address, and telephone number of the person to contact in case of an emergency;
 - (3) Registrations submitted prior to April 1, 2018, shall state if the applicant provides local service, toll service, or both;
 - (4) Evidence of the insurance coverage required under this section and acknowledgment that applicant has received and reviewed a copy of this section; however, the acknowledgment of the receipt of this section shall not be deemed an agreement;
 - (5) The type of communications services that the applicant intends to provide within the corporate limits of the City (if more than one, state all that apply), or, if none, state that the applicant is a pass-through provider or is intending only to place and maintain pass-through facilities, as the case may be;
 - (6) For registrations submitted on or after April 1, 2018, a copy of both the applicant's resale certificate and certificate of registration issued by the Florida Department

of Revenue to engage in the business of providing communications services in the State of Florida; and

- (7) The applicant's certificate of authorization or license number to provide communications services issued by the state public service commission, the Federal Communications Commission, or other federal or state authority, if any, having jurisdiction;
 - (8) For an applicant that does not provide a state public service commission certificate of authorization number, if the applicant is a corporation, proof of authority to conduct business in the state. A certificate number from, or filing with, the Florida Department of State will be acceptable;
 - (9) For an applicant that is a pass-through provider, in lieu of paragraphs (5), (6), (7) and (8) above, the applicant shall provide a certified copy of the certificate or license issued by the Florida Department of State, or other appropriate state agency or department, authorizing the company to do business in the State of Florida.
- (d) The City shall review the information submitted by the applicant. The City Manager or the City Manager's designee shall conduct such review. If the applicant submits information in accordance with this article, the registration shall be effective and the city shall notify the applicant in writing of the effectiveness of the registration. If the city determines that the information has not been submitted in accordance with this article, the city shall notify the applicant in writing of the non-effectiveness of the registration, and reasons for the non-effectiveness. The city shall notify an applicant within thirty (30) calendar days after receipt of the registration information from the applicant. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration.
 - (e) A registrant may cancel a registration upon written notice to the city stating that registrant will no longer place or maintain any communications facilities in public rights-of-way within the city and registrant will no longer require permits to perform work in public rights-of-way. A registrant shall not cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.
 - (f) Registration does not establish a right or provide authority to place and maintain or establish priority for the future placement or maintenance of a communications facility in public rights-of-way within the city, but shall establish for the registrant, a right to apply for a permit from the city. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any new or existing city laws, as well as any new or existing federal or state laws, rules, and regulations which may be enacted or which have been enacted.
 - (g) A registrant shall renew its registration with the city by the first day of April of even numbered years in accordance with the registration requirements in this section, except that a registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year. Within thirty (30) calendar days of any change in the information required herein, a

registrant shall provide updated information to the city. If the information in the then-existing registration has not changed, the renewal may provide that no information has changed. Failure to renew a Registration may result in the city restricting the issuance of additional permits until the communications services company or provider has complied with the registration requirements of this article.

- (h) In accordance with applicable city ordinances, codes, regulations, or policies a permit shall be required of a communications services company or provider that desires to place or maintain a communications facility in public rights-of-way. An acceptable and approved registration shall be a condition precedent to requesting and obtaining a permit. Notwithstanding an acceptable and approved registration, permitting requirements shall always apply. A permit may be obtained by a Registrant having an acceptable and approved registration if all permitting requirements are met.

Sec. 29-29. Notice of transfer, sale, or assignment of assets.

If a registrant transfers, sells, or assigns the assets located in public rights-of-way or incident to a transfer, sale, or assignment of the registrant's assets the transferee, the buyer, or the assignee shall be fully obligated to comply with the terms of this section. Written notice of any such transfer, sale, or assignment shall be provided by such registrant to the city within twenty (20) calendar days after the effective date of the transfer, sale, or assignment. If the transferee, buyer, or assignee is a current registrant then the transferee, buyer, or assignee may not be required to re-register. If the transferee, buyer, or assignee is not a current registrant, then the transferee, buyer, or assignee shall register as provided herein within thirty (30) calendar days of the transfer, sale, or assignment. If permit applications are pending in the registrant's name the transferee, buyer, or assignee shall notify the city that the transferee, buyer, or assignee is the new applicant.

Sec. 29-30. Placement or maintenance of communications facilities.

As a condition of allowing the placement or maintenance of a communications system or any communications facility in the public rights-of-way, and under additional authority granted pursuant to Chapter 337, Florida Statutes, the City hereby imposes the following rules, regulations and general conditions. Unless otherwise provided in this Article, these rules, regulations and general conditions shall apply to all communications services providers, including those that are pass-through providers irrespective of whether they place and maintain only conduit, dark fiber or pass-through facilities.

- (a) A registrant shall, at all times, comply with and abide by all applicable provisions of federal and state laws, regulations, rules and the city ordinances, codes, regulations, and policies in placing and maintaining a communications facility in public rights-of-way.
- (b) Neither a registrant nor a communications service provider shall commence to place or maintain a communications facility in public rights-of-way until all applicable permits, if any, have been issued by the city and other appropriate authorities. Registrant acknowledges and accepts, that as a condition of granting any permits,

the city may impose reasonable rules, regulations, and policies governing the location, placement, and maintenance of a communications facility in public rights-of-way. The communications services provider shall provide prompt notice to the City of the placement or maintenance of a Communications Facility in the public rights-of-way in the event of an emergency and shall, after-the-fact, be required to submit plans and Record Drawings and As-Built Surveys, if required by the City Manager or the City Manager's designee, showing the placement or relocation of a communications facility undertaken in connection with the emergency.

- (c) As part of the permit application to place a new or replace or maintain an existing communications facility in public rights-of-way, the registrant shall provide not less than the following:
 - (1) A description of the location of the proposed facilities including a narrative description and a scaled pictorial drawing of the facilities to be installed, where the facilities are to be located, and the size of facilities to be located in public rights-of-way; and
 - (2) A description of the construction methods or techniques which will be used to install the facilities; and
 - (3) A maintenance plan for disruption of traffic; and
 - (4) A statement concerning the ability of the public rights-of-way to accommodate the proposed facility; and
 - (5) An estimate of the cost of the restoration to the public rights-of-way; and
 - (6) A timetable for project construction and each phase thereof, and the areas within the city which will be affected; and
 - (7) Such additional information as the city finds necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application.
- (d) To the extent not otherwise prohibited by federal or state laws, the city shall have the power to prohibit or limit the placement of new or additional communications facilities within particular areas of all public rights-of-way.
- (e) All communications facilities shall be placed and maintained so as not to interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin the public rights-of-way. The use of trenchless technology, joint trenching, and co-locating of facilities in existing conduit in the public rights-of-way is encouraged and shall be employed when feasible. The City Manager or the City Manager's designee may promulgate rules, regulations, and policies concerning the placement and maintenance of a communications facility in public rights-of-way consistent with this article and other applicable federal and state laws.
- (f) All safety practices required by applicable municipal, state, and federal laws or accepted industry practices and standards, shall be used during the placement or maintenance of communications facilities in public rights-of-way.

- (g) After the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof, the registrant shall at the registrant's expense, restore the public rights-of-way to the original condition, or superior to the original condition, which existed before such placement or maintenance. If the registrant fails to complete the restoration within thirty (30) calendar days, following the completion of such placement or maintenance, the city may perform the restoration and charge the total costs of the restoration to the registrant in accordance with § 337.402, Florida Statutes as amended. For twelve (12) calendar months following the original completion date of the work, the Registrant shall guarantee the restoration work and shall correct, at the Registrant's expense, any restoration work, which does not satisfy the requirements of the city.
- (h) Removal or relocation, at the direction of the city of a registrant's existing communications facility in public rights-of-way, shall be governed by the provisions of § 337.403 and § 337.404, Florida Statutes, as amended.
- (i) An approved permit from the city shall constitute authorization to undertake only certain activities in public rights-of-way in accordance with this article, and the permit does not create a property right or grant authority to impinge upon the rights of others who have an interest in the public rights-of-way.
- (j) A registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.
- (k) In connection with excavation in the public rights-of-way, a registrant shall where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Ch. 556, Florida Statutes, as amended.
- (l) A registrant shall use and exercise due caution, care, and skill in performing work in the public rights-of-way and shall take all reasonable and necessary steps to safeguard the entire work area and the general public.
- (m) Upon request of the city, and as notified by the city of the other work, construction, installation, or repairs, a registrant may be required to coordinate all placement and all maintenance activities with any other work, construction, installation, or repairs which may be occurring, or scheduled to occur, in public rights-of-way. A registrant may be required to alter an installation and maintenance schedule to minimize disruptions and disturbance in the public rights-of-way.
- (n) A registrant shall not place or maintain communications facilities, which interfere with, displace, damage, or destroy other facilities including, but not limited to, sewer mains, gas mains, water mains, electric facilities, stormwater drains, pipes, cables, conduits, and all other facilities occupying the public rights-of-way.
- (o) The city makes no expressed or implied warranties or representations regarding the fitness, suitability, or availability of the city public rights-of-way for the registrant's communications facilities and any performance of work, costs incurred, or services provided by registrant shall be at registrant's exclusive risk. Nothing in this article shall affect the city authority to add, increase, vacate, or abandon public rights-of-way, and the city makes no expressed or implied warranties or representations regarding the

availability of any added, increased, vacated, or abandoned public rights-of-way for communications facilities.

- (p) The city shall have the right and authority to make any inspections, at any time, of communications facilities placed or maintained in public rights-of-way as the city determines necessary to ensure compliance with this article.
- (q) A permit application to place a new or maintain an existing communications facility in public rights-of-way shall include plan and profile drawings, which show the actual location of the facilities in the public rights-of-way. If the drawings require revision based upon actual installation, the registrant shall promptly provide the revised as-built drawings to the city. The drawings shall be in a hard copy format and an electronic format specified by the city. All such drawings, data and information shall be provided at no cost to the city.
- (r) The city reserves, without limitation, the exclusive right to place, maintain, and permit to be placed or maintained, all sewer, gas, water, electric, stormwater drainage, communications, all other types of facilities, cables, or conduits and to do, and to permit to be done, any underground and overhead installations or improvements which may be deemed necessary or proper by the city in public rights-of-way that may be occupied by a registrant. The city further reserves, without limitation, the exclusive right to alter, change, or cause to be altered or changed the grading, installation, relocation, or width of the public rights-of-way within the limits of the city and within said limits as the limits may, from time to time, be altered.
- (s) A registrant shall, upon request of any person holding a permit issued by the city, temporarily adjust any communications facilities to allow for work authorized by other permits. The expense of such temporary adjustments of facilities shall be paid by the person requesting the adjustment and the registrant shall have the right to request such payment of expense in advance. If the city requests temporary or permanent adjustments of a registrant's existing or proposed facilities to allow for work to be done by the city, its contractors, or its agents, however, all expenses and costs related to the adjustments of the registrant's temporary or permanent facilities, shall be the responsibility of and shall be paid by the registrant. The registrant shall be given not less than fifteen (15) calendar days advance written notice to arrange for such temporary or permanent adjustments.
- (t) Any communications facilities placed in the public rights-of-way by the communications services provider without first having obtained the required communications facilities development permits shall be removed within thirty (30) days of written notice by the City to remove the same and in default of compliance with such notice, such facilities may be removed by order of the City Manager or the City Manager's designee and the cost of removal shall be borne and paid by the communications services provider upon demand.
- (u) The placement or maintenance of all communications facilities shall be underground unless otherwise approved in writing and in compliance with the most current version of the provisions of Article II, Chapter 29. Communications facilities shall be placed between the property line and the curb line of all streets and avenues and shall not be within the roadway or the roadway recovery area unless specifically approved in

writing by the City Manager or the City Manager's designee. All communications facilities shall have consistent alignment parallel with the edge of pavement, a thirty-six inch (36") minimum depth of cover for and shall have a minimum of two feet (2') of horizontal clearance from other underground utilities and their appurtenances. Where approved by the City Manager or the City Manager's designee, Facilities to be placed in the street shall be laid according to the permanent grade of the street and at a depth below the surface of the permanent grade as each is determined by the City Manager or the City Manager's designee. The City retains the final decision on vertical depth and/or height location and horizontal location within the right-of-way of communications facilities and appurtenances.

- (v) The placement or maintenance of facilities aboveground, including new utility poles and aerial wires, is subject to written approval and to compliance with the most current version of the provisions of Article II, Chapter 29. Attachment to any pole or other aboveground structure must be pursuant to a valid and effective pole attachment agreement or similar instrument. Location on any utility pole or other above-ground structure shall not be considered a vested interest of the communications services provider and such Utility Poles or structures, if owned by the communications services provider, shall be removed or modified by the communications services provider at its own expense whenever the City or other governmental authority determines that the public convenience would be enhanced thereby. The communications services provider shall, at such time as the electric utility facilities or other communications facilities are placed underground or are required by the City to be placed underground, concurrently place its communications facilities underground without cost to the City. The City retains the final decision on vertical depth and/or height location and horizontal location within the right-of-way of communications facilities and appurtenances.
- (w) The placing of any new utility pole or other aboveground structure to support communications facilities is subject to written approval and to compliance with the most current version of the provisions of Article II, Chapter 29 and shall be done under the supervision of the City Manager or the City Manager's designee. No such utility pole or other aboveground structure shall be placed in any gutter or drainage area and must be behind the curb to avoid damage to any sidewalk. In areas of the City where either electric utility wires or other communications facilities are aboveground and such facilities are moved, either voluntarily or at the direction of the City, to a new utility pole or other above-ground structure, the communications services provider or wireless infrastructure provider shall likewise move all its above-ground facilities on such utility poles or structures to such new utility pole or structure within thirty (30) days after receipt of written notice from either the City or the owner of the new utility pole or structure, without cost to the City. New utility poles installed by wireless infrastructure providers shall also be subject to and may avail themselves of the requirements and process set forth in Section 29-31 hereof. The City retains the final decision on vertical depth and/or height location and horizontal location within the rights-of-way of communications facilities and appurtenances.

- (x) A communications services provider, in an effort to minimize the adverse impact on the useful life of the public rights-of-way, shall, whenever possible, enter into joint use agreements with the City and other parties who have registered with, or who are expressly authorized by, the City to use its public rights-of-way; provided that the terms of such agreements are satisfactory to the communications services provider. Nothing herein contained shall mandate that the communications services provider enter into joint use agreements with parties other than the City or an agency of the City. However, prior to placement of any new or additional underground conduit in the public rights-of-way, a communications services provider is required to certify in writing to the City Manager or the City Manager's designee that it has made appropriate inquiry to all existing utilities and other entities possessing a right to occupy the public rights-of-way as to the availability of existing or planned conduit that the particular communications services provider could reasonably utilize to meet its needs, and that no such conduit is available or planned at a reasonable cost by any other entity on the time schedule reasonably needed. The communications services provider shall not be permitted to perform any placement or maintenance of facilities in those segments of the public rights-of-way where there exists vacant or available conduit, dark fiber or surplus fiber owned by the City, an agency of the City or another governmental body which is or, through a reasonable amount of effort and expense, can be made compatible with the communications services provider's system or network. Under such circumstances the communications services provider shall have the opportunity to enter into a use agreement or lease arrangement with the City or an agency of the City at or below reasonable and prevailing market rates for such conduit or fiber or, where owned by another governmental body, shall, in good faith, first exhaust all means of obtaining use of such conduit or fiber before applying for a communications facilities development permit from the City. The City retains the final decision on vertical depth and/or height location and horizontal location within the rights-of-way of communications facilities and appurtenances.

Sec. 29-31. Wireless facilities.

- (a) *Generally.* The placement of telecommunication towers and antennae anywhere in the corporate limits of the City shall in all cases be subject to the City's Chapter 27, Unified Land Development Regulations, which is a part of the City Code. Where placement of a wireless antenna in the public rights-of-way has been approved by the City and to the extent not inconsistent with any City zoning and land use regulations, a wireless antenna attached to a permitted and legally maintained vertical structure in the public rights-of-way, such as a light pole or utility pole, shall, unless otherwise agreed to by the City in writing:
- (1) Not extend more than 10 feet above the highest point of the vertical structure;
 - (2) Not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law;

- (3) Comply with any applicable Federal Communications Commission Emissions Standards;
- (4) Comply with any applicable local building codes in terms of design, construction and installation; and
- (5) Not contain any commercial advertising thereon.

(b) *Small Wireless Facilities in Public Rights-of-Way.* The City is exempt under 47 U.S.C. § 224 from federal pole attachment requirements, and finds that the utility poles located within the City are owned or operated by a “municipal electric utility” such that the City utility poles are not subject to the Wireless Deployment Act’s “Collocation” requirements as stated in § 337.401(7)(I), Florida Statutes, currently set forth in Chapter 2017-136, Laws of Florida. Unless and until the City adopts an ordinance regulating pole attachments, the City reserves the right to approve or deny individual requests for pole attachments to City utility poles within its sole discretion.

(c) *Placement of Utility Poles in the Public Rights-of-Way in Support of Collocation of Small Wireless Facilities.* A wireless infrastructure provider may apply to the City to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within 9 months after the date the application is approved by the City, and the application must contain an attestation that the applicant cannot find a leasable site for the utility pole on private property within the City. The City shall accept and process the application in accordance with the procedure set forth below and any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way. Applicants seeking permission to install new utility poles within public rights-of-way shall comply with the registration, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, City liability, and City warranties provisions contained in this Chapter 29.

(1) *Filing, Review, and Processing of Applications.* The City shall accept applications for permits and shall process and issue permits for the placement of utility poles in the public rights-of-way in support of collocation of small wireless facilities subject to the following requirements:

- a. Prior to filing any such application, the applicant shall notify the City and schedule a pre-application conference for the purpose of notifying and disclosing all information relevant to the City’s assessment of any application to be filed hereunder. No such application may be filed until the pre-application meeting has been scheduled and conducted. The pre-application meeting shall be scheduled and held at least fourteen (14) days prior to the filing of any such application.
- b. The applicant shall as a part of its application provide information necessary to demonstrate the applicant’s compliance with § 337.401(7), Florida Statutes, the

applicable provisions of Chapter 29 and other applicable provisions of the City Code for the placement of a new utility pole in the locations identified in the application, and shall bear the burden of demonstrating compliance therewith.

- c. Within fourteen (14) days after receiving an application, the City must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the City must specifically identify the missing information. An application is deemed complete if the City fails to provide notification to the applicant within fourteen (14) days. If the applicant fails to complete the application within thirty (30) days after receiving a notice from the City that the application is deemed incomplete, then the City may deny the application.
 - d. The City shall process all applications on a nondiscriminatory basis. If the City fails to approve or deny a complete application within 60 days after receipt of the application, the application is deemed approved. The parties may mutually agree to extend the 60-day application review period. The City shall grant or deny the application at the end of the extended period.
 - e. A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the City.
 - f. The City shall notify the applicant of approval or denial by electronic mail. The City shall approve a complete application unless it does not meet the applicable provisions of § 337.401(7), Florida Statutes, this Chapter 29, and other applicable provisions of the City Code.
 - g. If the application is denied, the City shall specify in writing the basis for denial, including the specific statutory or code provisions on which the denial is based, and shall send the documentation to the applicant by electronic mail on the day the City denies the application.
 - h. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days after notice of the denial is sent to the applicant. Failure by the applicant to resubmit the Application timely shall result in a final denial of the application. The City shall approve or deny a timely filed revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.
- (2) The City may deny a proposed new utility pole in the public rights-of-way if the proposed new utility pole violates or fails to comply with one or more of the following:
- a. Violates or fails to comply with any provision of § 337.401(7), Florida Statutes.
 - b. Violates or fails to comply with any provision of Chapter 29, City Code, as amended from time to time.
 - c. Violates or fails to comply with any provision of the City's Chapter 27, Unified Land Development Regulations.
 - d. Violates or fails to comply with any provision related to historic preservation set forth in the City Code, as amended from time to time.

- e. Materially interferes with the safe operation of traffic control equipment.
- f. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
- g. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

Sec. 29-32. Suspension of permits.

The city shall have the exclusive authority to suspend or revoke a permit for any work in the public rights-of-way for due cause and for one or more of the following reasons:

- (a) Violation of permit conditions including any conditions set forth in the permit, this section, or other applicable city ordinances, codes, policies, rules or regulations governing placement or maintenance of communications facilities in public rights-of-way; and
- (b) Misrepresentation or fraud by registrant in a registration or permit application to the city; and
- (c) Failure to properly renew a registration or ineffectiveness of a registration; and
- (d) Failure to relocate or remove facilities as required by the City. The City Manager or the City Manager's designee may provide a notice and the opportunity for a registrant to cure any violation or failure described herein.

Sec. 29-33. Involuntary termination of registration.

- (a) The City may terminate a registration for due cause, reason, and for one or more of the following:
 - (1) Federal or state authority suspends, denies, or revokes a registrant's certification or license to provide communication services; or
 - (2) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents a danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of notice; or
 - (3) The registrant ceases to use all of the communications facilities in public rights-of-way or has not complied with the requirements of this section.
- (b) Prior to termination, the registrant shall be notified by the City Manager or the City Manager's designee, by a written notice, which sets forth all pertinent matters to the proposed termination action and describing the intended action of the City. The registrant shall have thirty (30) calendar days after the date of such notice to eliminate the reasons for the termination. In the event the registrant has not eliminated the reasons for the notice of termination at the end of the thirty (30) calendar day period, the termination shall be final.

- (c) In the event of termination, a former registrant shall: (a) notify the City of any anticipated assumption by another Registrant of ownership of the terminated registrant's communications facilities in public rights-of-way; and (b) provide the City with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a terminated registrant fails to comply with this section, the City may exercise any remedies or rights it has at law or in equity including, but not limited to, taking possession of the facilities when another person has not assumed ownership or physical control of the facilities or requiring the registrant, within ninety (90) calendar days of the termination or such period as may be agreed to by the registrant, to remove part or all of the facilities from the public rights-of-way and restore the public rights-of-way to the original condition. All expenses incurred by the City or its agents to remove part or all of the facilities and to restore the public rights-of-way to the original condition shall be paid by the registrant.
- (d) A terminated registrant shall take all steps necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the City.
- (e) In the event of termination of a registration, this section does not authorize the City to remove or cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is also registered with and holds a valid permit issued by the City.

Sec. 29-34. Fees applicable to those not subject to communications services tax.

While the Florida Legislature has prohibited municipalities from requiring providers of communications services who have registered with the Florida Department of Revenue from having to enter into franchise agreements or license arrangements as a condition to placing or maintaining communications facilities in the public rights-of-way, the City expressly reserves the right to require the payment of consideration or regulatory fees by persons using or occupying the public rights-of-way in other capacities. The City reserves the right to require such payments based on the type of user and to the extent as follows:

- (a) *Dealer.* Except as provided in 29-30(x), a communications services provider who meets the definition of dealer as set forth in state statute and who has registered in accordance with Section 29-28 is not required to enter into a franchise agreement or license arrangement with the City as a condition to placing or maintaining communications facilities in the public rights-of-way, nor is a dealer required to make payment of any franchise fees, license fees or other user fees to the City as consideration for the use or occupancy of the public rights-of-way for the provision of communication services.
- (b) *Pass-through Provider and Pass-through Facilities.* A communications services provider who meets the definition of Pass-through Provider as set forth in this Chapter 29 and who is not subject to the City's Local Communications Services

Tax imposed pursuant to §§ 202.19 and 202.20, Florida Statutes shall pay the City the maximum annual amount allowed under § 337.401(6)(b), Florida Statutes, as amended. For purposes of calculating payments hereunder, each separate pole or tower installed or maintained by a pass-through provider for purposes of supporting antennas for other over-the-air radio transmission or reception equipment in the public rights-of-way shall comprise a separate communications facility subject to assessment of a separate permit fee in the amount of five hundred dollars (\$500.00) per linear mile, or portion thereof, up to the maximum amount allowed under § 337.401, Florida Statutes, whichever is higher. The annual amount referred to above shall be due and payable on October 1 of every year beginning on October 1, 2017. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one percent per month from the date due until paid. The acceptance of any payment required hereunder by the City shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable or authorization to install any facilities in the public rights-of-way.

- (c) *Other Persons.* All other persons, except governmental entities, are required to pay the City, as consideration for the use or occupancy of the public rights-of-way for the placement or maintenance of communications facilities, an amount based on and in accordance with Section 29-34(b), City Code.
- (d) *Government.* A governmental entity is not required to pay the City consideration for the use or occupancy of the public rights-of-way for the placement or maintenance of communications facilities, unless such facilities are being used by such governmental entity or a communications services provider, including resellers, to offer or provide communication services other than for such governmental entity's internal non-commercial use, in which event the governmental entity, where not subject to the City's Local Communications Services Tax imposed pursuant to §§ 202.19 and 202.20, Florida Statutes is required to pay the City, as consideration for the use or occupancy of the Public Rights-of-Way by or through its Facilities placed therein after April 1, 2018, an amount based on and in accordance with § 29-34(b), City Code, or such other amount or rate of compensation as mutually agreed to in writing by the governmental entity and the City.

Sec. 29-35. Existing communication facilities in public rights-of-way.

A communications services company or provider with an existing communications facility in the public rights-of-way of the City shall have ninety (90) calendar days from the effective date of this section to comply with the terms of this section including, but not limited to registration, or shall be in violation of this section.

Sec. 29-36. Insurance.

- (a) A registrant shall provide, pay for, and maintain satisfactory to the City, not less than the types and coverage limits of insurance described herein. All insurance shall be from and issued by responsible companies duly authorized to conduct business in the state and having a rating acceptable to the City. All liability policies shall provide that the City is an additional insured as to the activities under this section. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained annually with the City. Thirty (30) calendar days advance written notice by certified mail or facsimile, as determined by the City, must be given to the City of any cancellation, intent of cancellation, intent not to renew, or reduction in the types of policies or coverage limits. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the City.
- (b) The types of coverage and limits of coverage of insurance required shall not be less than the following:
 - (1) Worker's Compensation and Employer's Liability Insurance.
 - Worker's Compensation-Florida Statutory Requirements.
 - Employer's Liability.
 - \$1,000,000* limit each accident
 - \$1,000,000* limit each employee
 - (2) Comprehensive General Liability.
 - Bodily Injury and Property Damage.
 - \$2,000,000* combined single limit each occurrence.
 - (3) Automobile Liability.
 - Bodily Injury and Property Damage.
 - \$2,000,000* combined single limit each accident.

Sec. 29-37. - Indemnification.

- (a) A registrant shall, at the registrant's cost and expense indemnify, hold harmless, and defend the City its officials, boards, members, agents, contractors, and employees against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, costs, and expenses incurred by the City arising out of the placement or maintenance of communications systems or facilities in public rights-of-way, regardless of whether the act or omission is authorized, allowed, or prohibited by this section provided, however, that a registrant's obligation hereunder

shall not extend to any claims caused by the gross negligence, wanton acts, or willful acts of the City. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceedings. The City agrees to notify a registrant in writing, within a reasonable period of time, of any issue the City determines may require indemnification. Nothing in this section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own expense. Nothing contained in this section shall be construed or interpreted: (a) as denying to any person or entity a remedy or defense available to such person or entity under the laws of the state; or (b) as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, (2000), as amended.

- (b) The indemnification requirements shall survive and shall be in effect after a termination or cancellation of a registration.

Sec. 29-38. Construction bond.

- (a) Prior to issuing a permit, when the work authorized by a permit will require restoration of public rights-of-way, the City shall require a construction bond to secure the restoration of the public rights-of-way. Notwithstanding the foregoing, a construction bond hereunder shall only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security account as provided herein. The construction bond shall be issued by a surety having a Triple A Rating or equivalent acceptable to the City; shall be subject to the approval of the City Manager or the City Manager's designee; and shall provide that: "For twelve (12) calendar months after issuance of the bond, the bond shall not be canceled, or allowed to lapse until sixty (60) calendar days after receipt of written notice by the City, by certified mail, return receipt requested, from the issuer of the bond of the issuer's intent to cancel or to not renew the bond."
- (b) The rights reserved by the City with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the City may have under this section, under other ordinances, at law, or at equity.
- (c) The rights reserved by the city under this section are in addition to all other rights of the City, whether reserved in this section, or authorized by law and no action, proceeding, or exercise of a right with respect to the construction bond shall affect any other rights of the City.

Sec. 29-39. Security account.

At or prior to the time a registrant receives the initial permit to place or maintain a communications facility in public rights-of-way after the effective date of this section, the registrant shall, at the sole discretion of the City, be required to file with the City, for the City approval, an annual bond, cash deposit, or irrevocable letter of credit in the sum of \$100,000 having as a surety a company qualified to do business in the state, and shall be referred to as the "security account." The security account shall be maintained from such time through the: (a) transfer, sale, assignment, or removal of all communications facilities in the public rights-of-way; or (b) twelve (12) calendar months after the termination or cancellation of any registration. The security account shall be conditioned upon the full and faithful performance by the registrant of all requirements, duties, and

obligations imposed upon registrant by the provisions of this section and other ordinances, as amended. The security account shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform the duties and obligations imposed upon the registrant by the provisions of this section, there shall be recoverable, jointly and severally from the principal and surety of the security account, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, cost of removal, relocation, or abandonment of any facilities of the registrant in public rights-of-way, including a reasonable allowance for attorneys' fees, up to the full amount of the security account. The City shall not pay registrants interest on any monies held by the City in a registrant's security account.

Sec. 29-40. Enforcement remedies.

- (a) A registrant's failure to comply with provisions of this section shall constitute a violation of this Ordinance and shall subject the registrant to the code enforcement provisions and procedures as provided in Ch. 162, Florida Statutes, and § 166.0415, Florida Statutes, as amended. In addition, violation of this section may be punishable as provided in § 162.22, Florida Statutes, as amended and as provided in the City ordinances.
- (b) Failure of the City to enforce any requirements of this section shall not constitute a waiver of the City right to enforce the violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

Sec. 29-41. Abandonment.

- (a) Upon anticipated abandonment or the abandonment of a communications facility owned by a registrant in public rights-of-way, the registrant shall notify the City within thirty (30) calendar days of the anticipated abandonment or the abandonment.
- (b) The City may, at its sole discretion, direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's expense if the City determines that the presence of the abandoned facility interferes with the public health, safety, or welfare which shall include, but shall not be limited to, a determination that such facility: (a) compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way; (b) interferes with or prevents another person from locating facilities in the area of public rights-of-way; or (c) creates a maintenance condition which is disruptive to the intended use of the public rights-of-way.
- (c) In the event the City does not direct the removal of the abandoned facility, the registrant by notice of abandonment to the City, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the City or by another person.
- (d) If the registrant fails to remove all or any portion of an abandoned facility as directed by the City within a time period as required by the City, the City, or its agents, may perform such removal and charge the entire cost of the removal to the registrant.

Sec. 29-42. Force majeure.

In the event a registrant's performance of or compliance with any of the provisions of this section is prevented by a cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result provided, however, that such registrant has used all available means to expeditiously cure or correct any such inability to perform or comply. For purposes of this article, causes or events not within a registrant's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires, natural disasters, acts of public enemies, riots, civil disturbances, sabotage, strikes, and restraints imposed by order of a governmental agency or court. Causes or events within registrant's control and therefore, not within this section shall include, without limitation, registrant's financial inability to perform or comply, economic hardship, misfeasance, malfeasance, and nonfeasance by any of registrant's directors, officers, employees, contractors, or agents.

Sec. 29-43. Reservation of rights and remedies.

- (a) The City reserves the right to amend this section, from time to time, as it shall find necessary.
- (b) This section shall be applicable to all communications facilities placed in public rights-of-way on or after the effective date of this section and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of this section, to the full extent permitted by federal and state laws.
- (c) The adoption of this section is not intended to affect or amend any rights or defenses of the City or a communications services company or provider under any existing franchises, licenses, or other agreements with a communications services company or provider.
- (d) Nothing in the section shall affect the remedies the City or the registrant have available under applicable federal and state laws.

SECTION 2. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence paragraph or section of this Code shall be declared unconstitutional by the valid judgement or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

SECTION 3. CONFLICTING ORDINANCES. All ordinances or parts of ordinances in conflict with this ordinance are, to the extent that the same may conflict, hereby repealed.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect upon its adoption in accordance with applicable law.

VOTE RESULTS OF FIRST READING AND PUBLIC HEARING:

Mayor Elaine Brown	YES
Vice Mayor Scott Wiley	YES
Councilor Rory Diamond	YES
Councilor Richard Arthur	YES
Councilor Fred Jones	YES

Passed on First Reading this 5th day of March, 2018.

VOTE RESULTS OF SECOND AND FINAL READING AND PUBLIC HEARING:

Mayor Elaine Brown	YES
Vice Mayor Scott Wiley	YES
Councilor Rory Diamond	YES
Councilor Richard Arthur	YES
Councilor Fred Jones	YES

Passed on Second and Final Reading this 2nd day of April, 2018.


Elaine Brown, Mayor

ATTEST:


Catherine Ponson, City Clerk



Approved as to form and content:


Patrick Krechowski, City Attorney