



**TOWN OF REDINGTON BEACH
BOARD REGULAR MEETING AGENDA
Wednesday, November 4, 2020
6:30 P.M.**

Town Hall

Assembly Hall

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. APPROVAL OF AGENDA

- 5. PUBLIC FORUM: Non-Agenda Items Only NOTE:** A three minute time limit applies to all comments from the public on non-agenda items only. If a person wishes to address the Board of Commissioners, please fill out a "Speakers Card" and give it to the Town Clerk prior to the start of the meeting.

6. REPORTS

Public Safety	Commissioner Kornijtschuk
Building/Code	Commissioner Will
Public Works/Parks	Commissioner Steiermann
Finance	Vice Mayor Dorgan
Mayor	
Town Clerk	
Attorney Daigneault	
Boards & Committees	

7. CONSENT AGENDA

- A. Board Regular Meeting Minutes, October 21, 2020**
- B. Bill List for Day Ending October 30, 2020**

8. UNFINISHED BUSINESS

- A. Final Reading: Ordinance 2020-06: An Ordinance of the Town of Redington Beach, Florida Amending chapter 6 – Buildings and Building Regulations, Article XI – Board of Adjustment of the Town Code to Clarify the Scope of the Powers and Duties of the Board of Adjustment; Making Related Findings; Providing for Codification, Severability, and an Effective Date.**



9. NEW BUSINESS

A. Library Board Appointment

B. First Reading: Ordinance 2020-08: An Ordinance granting to Duke Energy Florida, LLC d/b/a Duke Energy, an Electric Utility Rights of Way Utilization Franchise; Prescribing the Terms and Conditions Related to the Occupancy of Municipal Streets and Rights of Way in the Town of Redington Beach, Florida, for the Purpose of Providing Electric Service; Providing for Severability of Provisions; and Providing an Effective Date.

10. OTHER BUSINESS

11. ADJOURNMENT

Note: The Town of Redington Beach Board of Commissioners meet the First and Third Wednesday of each month beginning at 6:30 p.m.

The Town of Redington Beach Board of Commissioners may take action on any matter during this meeting, including items that are not set forth within this agenda.

Minutes of the Board of Commissioners meeting may be obtained from the Town Clerk's office. The meetings may be recorded. The Minutes are not transcribed verbatim. It is the policy of the Board of Commissioners to make "action minutes" of all meetings

Persons requiring a verbatim transcript of any Town meeting (for purposes of appeal or otherwise) should make arrangements to have a certified Court Reporter, at their own cost and expense, present at the meeting.

Persons who wish to appeal any decision made by the Board of Commissioners with respect to any matter considered at this meeting will need a record of the proceedings, and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. (F.S 286.0105) **Notice Regarding Special Accommodations: (F.S. 286.26)**



**TOWN OF REDINGTON BEACH, FLORIDA
BOARD REGULAR MEETING MINUTES
Wednesday, October 21, 2020
6:30 p.m.**

Having been duly advertised as required by law, the **Regular Meeting** of the Board of Commissioners of the Town of Redington Beach, Florida, was held on **Wednesday, October 21, 2020, 6:30 p.m.**, in Redington Beach Town Hall at 105 164th Avenue, Redington Beach Florida.

Mayor Simons called the **Regular Meeting** to order and led the pledge of allegiance.

Roll Call

	Present	Absent
Commissioner Kornijtschuk	X	
Commissioner Steiermann	X	
Commissioner Will	X	
Vice Mayor Dorgan	X	
Mayor Simons	X	
Town Attorney Daigneault	X	
Town Clerk Clarke	X	

Agenda: A motion by Commissioner Kornijtschuk and seconded by Vice Mayor Dorgan to accept the agenda as presented. No public comment. Motion passed with all ayes.

Public Forum: No public comment.

Reports

Public Safety

- Received a complaint regarding speeding on the causeway and suggested that stop signs be put in to slow the traffic. The consensus of the commission was to start with speed limit signs. Commissioner Kornijtschuk will get together with the public works department for placement of the signs.

Building/Code

- Nothing to Report

Public Works/Parks

- Nothing to Report

Finance

- The CD's that came due were reinvested at .3%.

Mayor

- Nothing to Report

Town Clerk

- Nothing to Report

Town Attorney

- Nothing to Report

Boards and Committees

- Nothing to Report

CONSENT AGENDA: A motion by Vice Mayor Dorgan and seconded by Commissioner Kornijtschuk to approve the consent agenda as presented. No public comment. Motion passed with all ayes.

UNFINISHED BUSINESS

- A. Solid Waste & Recycling Services Selection:** Town Planner, Bruce McLaughlin recapped the expiration of the current franchise and the RFP process. He reviewed the criteria for scoring. The three companies that submitted an RFP were Waste Connections, Waste Pro, and Orion. Comments from the commission was to keep the present company. Ian Boyle, government affairs manager with Waste Connections spoke on wanting to keep the current relationship with the town. Brad Avery of Orion, stated that Waste Connections is a good company. Tracey Meehan of Waste Pro, noted that the comments on the transition were incorrect, as they did a five day turn around for Port Orange. A motion by Commissioner Steiermann and seconded by Commissioner Will to enter into negotiations for a contract with Waste Connections. No public comment. Motion passed with all ayes by roll call vote.

	Motion	Second	Aye	Nay	Absent
Commissioner Kornijtschuk			X		
Commissioner Steiermann	X		X		
Commissioner Will		X	X		
Vice Mayor Dorgan			X		
Mayor Simons			X		

NEW BUSINESS

- A. Lynn Burnett; Roads and Streets Capital Improvement Plan:** Town Planner, Bruce McLaughlin recapped the stormwater improvement and roads and streets project for the Capital Improvement Plan. Lynne Burnett noted that she came out and assessed the roads and graded them from A through F. The ones that scored an F received priority, which includes 161st Avenue and 4th, 5th, and 6th Street. Monies from the 8th Cent tax the town receives could be used for the project. Vice Mayor Dorgan noted that there are monies available. Ms. Burnett updated the commission on the Boca Ciega Bay Stormwater Quality Improvement Project with the Tampa Bay Estuary Program. A grant was applied for through SWFWMD for the fiscal year 2021-2022 in which she believes the town will have a high ranking.
- B. Cooperative Funding Agreement with SWFWMD:** Lynn Burnett explained that this is an agreement between the town and SWFWMD for the design, permitting and construction of

stormwater retrofits to improve the water quality discharging to Boca Ciega Bay. Questions were asked regarding the amounts of nitrogen and phosphorus on the contract compared to the stormwater project with the Tampa Bay Estuary Program. Ms. Burnett explained that different calculations were used as they are two different projects. A motion by Vice Mayor Dorgan and seconded by Commissioner Steiermann to authorize the mayor to execute the agreement with the SWFWMD. Motion passed with all ayes.

Other Business

With no further business, a motion was made by Commissioner Kornijtschuk and seconded by Commissioner Will to adjourn. Regular meeting was adjourned at 7:31 p.m.

Adopted: , 2020

Missy Clarke, CMC, Town Clerk

Date: 10/30/2020

Time: 12:53 pm

Page: 1

Town of Redington Beach

Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
Fund: 101 General Fund							
Dept: 511 Legislative							
101-511-511.820	Donations						
	NEIGHBORLY CARE NETWO	2020-10-30	FY 2020 Donation	0	10/30/2020	10/30/2020	500.00
							500.00
						Total Dept. Legislative:	500.00
Dept: 512 Town Clerk							
101-512-512.230	Group Insurance						
	FLORIDA MUN INSURANCE	2020-10-30	2020 November Insurance	0	10/30/2020	10/30/2020	802.73
							802.73
101-512-512.231	Life Insurance						
	FLORIDA MUN INSURANCE	2020-10-30	2020 November Insurance	0	10/30/2020	10/30/2020	9.75
							9.75
101-512-512.232	Dental Insurance						
	FLORIDA MUN INSURANCE	2020-10-30	2020 November Insurance	0	10/30/2020	10/30/2020	64.15
							64.15
101-512-512.420	Postage						
	CHASE CARD SERVICES	2020-10-19	Postage	0	10/19/2020	10/19/2020	50.00
							50.00
101-512-512.421	Stamps.com						
	CHASE CARD SERVICES	2020-10-30	Stamps.com	0	10/30/2020	10/30/2020	17.99
							17.99
101-512-512.440	Utilities- Water/EI						
	DUKE ENERGY	73928-48713	2020-10-30 October 2020	0	10/30/2020	10/30/2020	576.07
							576.07
101-512-512.461	Building Maintenanc						
	FLORIDA GRILL DOCTOR	2020-50	ASSEMBLY HALL Trim, plexi-gla	0	10/28/2020	10/28/2020	500.00
	T&T PEST CONTROL	2020-10-23	Rodent control	0	10/23/2020	10/23/2020	340.00
							840.00
101-512-512.510	Office Supplies						
	APEX OFFICE PRODUCTS	2127748-0	Paper towels, toilet tissue	0	10/28/2020	10/28/2020	86.97
	PIECZONKA TROPHY OF FL	60121	2 name plates	0	10/08/2020	10/08/2020	19.00
							105.97
						Total Dept. Town Clerk:	2,466.66
Dept: 513 Finance & Admin							
101-513-513.230	Group Insurance						
	FLORIDA MUN INSURANCE	2020-10-30	2020 November Insurance	0	10/30/2020	10/30/2020	809.98
							809.98
101-513-513.231	Life Insurance						
	FLORIDA MUN INSURANCE	2020-10-30	2020 November Insurance	0	10/30/2020	10/30/2020	9.75
							9.75
101-513-513.232	Dental Insurance						
	FLORIDA MUN INSURANCE	2020-10-30	2020 November Insurance	0	10/30/2020	10/30/2020	32.01
							32.01
101-513-513.320	Audit Fee						
	CLIFTON LARSON ALLEN LL	2650441	FY 19-20 Audit prep	0	10/27/2020	10/27/2020	1,470.00
							1,470.00
						Total Dept. Finance & Admin:	2,321.74
Dept: 515 Comprehensive Planni							

INVOICE APPROVAL LIST BY FUND REPORT

Date: 10/30/2020
Time: 12:53 pm
Page: 3

Town of Redington Beach

Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
						Grand Total:	61,186.83

10/21/2020

9494 PAYROLL
9495 PAYROLL
9496 PAYROLL
9497 PAYROLL
9498 PAYROLL
9499 PAYROLL
9500 PAYROLL
9501 PAYROLL
9502 PAYROLL
Payroll Liabilities
Retirement

EFT
EFT

277.05
277.05
381.75
277.05
277.01
2,324.28
1,439.69
1,336.03
1,085.64
3,523.95
1,597.55

12,797.05

MAYOR SIMONS

COMMISSIONER WILL

COMMISSIONER KORNIJTSCHUK

VICE MAYOR DORGAN

ATTEST:

COMMISSIONER STEIERMANN

Regular Meeting of November 4, 2020
Missy Clarke, CMC, Town Clerk

BRUCE McLAUGHLIN CONSULTING SERVICES, INC.

900 Gulf Boulevard, Suite 303
Indian Rocks Beach, Florida 33785
Phone: 727/595-7634 Cell: 727/244-7311
Email BruceSandy@aol.com

October 30, 2020

TRB

Meeting Date: November 4, 2020

Agenda Item 9.e

ADVERTISED PUBLIC HEARING

M E M O R A N D U M

TO: Honorable Mayor and Members, Town Board of Commissioners

FROM: R. Bruce McLaughlin, AICP, MCIP, Town Planner

SUBJECT: Ordinance 2020-06, Board of Adjustment Powers and Duties

EXECUTIVE SUMMARY

The current Board of Adjustment provisions Found in Chapter 6 of the Code grant the Board jurisdiction over “this chapter.” Accordingly, the Town Attorney’s office became concerned (and I concur) that the Board lacks jurisdiction to hear applications related to other Code chapters including Appendix A, Zoning, and Chapter 5, Boats, Docks, etc. Ordinance 2020-06 clarifies that the Board’s jurisdiction includes all land use related matters in the Town Code and updates the Code. The LPA recommended adoption of the Ordinance which has been adopted on first reading. **I RECOMMEND THAT THE TOWN BOARD ADOPT ORDINANCE 2020-06 ON SECOND READING.**

BACKGROUND

Applicant	Town of Redington Beach
Affected Area	Entire Town

THE REQUEST

That the Town Board adopt proposed Ordinance 2020-06 on second reading.

HISTORY

The current regulations for the Board of Adjustment are found in Chapter 6, Article XI of the Town Code. The Article was derived from Ordinance 2013-02.

The key provisions governing the Board of Adjustment are:

Sec. 6-289. - Powers and duties.

The board of adjustment shall have the following powers and duties:

- (a) To authorize upon application in specific cases such exception/variance **from the term of this chapter** as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary and undue hardship.
- (b) To consider written applications for a special exception/variance when it demonstrates that:
 - (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
 - (2) A literal interpretation **of the provisions of this chapter** would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of **this chapter** and would work unnecessary and undue hardship on the applicant.

Town of Redington Beach Code, § 6-289, [Emphasis Added]

(It should also be noted that nowhere in the Town Code are provisions made for “special exceptions,” a “term of art” in zoning and land use planning. Thus, pursuant to § 6-289, the Board of Adjustment is granted jurisdiction to hear a type of application that does not exist under the Town Code.)

However, the more important issue is the limitation on the Board of Adjustment’s jurisdiction to Chapter 6 of the Town Code, “this chapter” as referenced in Article XI. This limitation casts

doubt on the Board of Adjustment's jurisdiction to hear variances under the other Chapters of the Town Code, including at least:

- (1) Chapter 5, Boats, Docks and Waterways;
- (2) Chapter 6, Buildings and Building Regulations
- (3) Chapter 7, Concurrency Management System
- (4) Chapter 9, Fire Prevention and Protection
- (5) Chapter 10, Floodplain Management
- (6) Chapter 17, Signs
- (7) Chapter 18.5, Stormwater
- (8) Chapter 19, Right-of-Way Utilization
- (8) Appendix A, subject to the limitations of the Town Charter ¹

Proposed Ordinance 2020-06 grants the Board of Adjustment authority to hear **any** variance application from any land use related regulation in the Town Code, including from the Chapters listed above, thereby remedying the current concern that the Board is without jurisdiction to hear these other variances.

NOTICE

The Clerk's office will advise as to the notice given of this advertised public hearing.

LOCAL PLANNING AGENCY RECOMMENDATION

Acting pursuant to its general authority for the Town's comprehensive planning program pursuant to § 163.3174(4), Florida Statutes, 2019, the Planning Board/Local Planning Agency has recommended that the Town Board adopt Ordinance 2020-06.

AUTHORITY

Pursuant to §§ 4 and 5 of the Town Charter, the Town is governed by the Board of Commissioners which may exercise all powers available to a municipality under the Constitution and laws of the State of Florida. Those powers include preparing and adopting land development

¹ Some variances from Appendix A are also variances from provisions of Chapter 6 and have been considered as such.

regulations and the tools to implement and enforce those regulations including the variance process and the role of a Board of Adjustment in implementing the variance process.

ANALYSIS

The Need for a Variance Process

At present, the Board of Adjustment has jurisdiction to grant variances only from Chapter 6 of the Town Code. However, the variance mechanism is like a “safety valve” to preserve the constitutionality of a land development regulation: *Crone v. Town of Brighton*, 119 N.Y.S.2d 877 (N.Y. Int. App. 1952), or as an “escape hatch” from the strict application of land development regulations: *Lincourt v. Zoning Board of Review, City of Warwick*, 201 A.2d 482 (R.I. 1964).

The year after the Supreme Court found zoning regulations to be constitutionally permissible, (*Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 121 (1926)), the Court decided *Gorieb v. Fox*, 274 U.S. 603, 47 S.Ct. 675 (1927). In *Gorieb*, the Court held:

... The proviso evidently proceeds upon the consideration that an inflexible application of the ordinance may under some circumstances result in unnecessary hardship. In laying down a general rule, such as the one with which we are here concerned, the practical impossibility of anticipating and providing in specific terms for every exceptional case which may arise, is apparent. And yet the inclusion of such cases may well result in great and needless hardship, entirely disproportionate to the good which will result from a literal enforcement of the general rule. Hence **the wisdom and necessity here of reserving the authority to determine whether, in specific cases of need, exceptions may be made** without subverting the general purposes of the ordinance. We think it entirely plain that the reservation of authority in the present ordinance to deal in a special manner with such exceptional cases is unassailable upon constitutional grounds. [Citations Omitted, Emphasis Added]

Gorieb tracked the provisions of the *Standard State Zoning Enabling Act*:²

² Advisory Committee on City Planning and Zoning; US Department of Commerce, Herbert Hoover, Secretary, 1926.

Sec. 7 BOARD OF ADJUSTMENT. Such local legislative body may provide for the appointment of a board of adjustment and [may] authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

Variances are not a way of avoiding the law: they are a recognition that no zoning ordinance or other land development regulation could possibly anticipate every land use situation that might arise and the provision of a mechanism for dealing with individual cases. *See, e.g.,* Brown, Robert N., *Varying the Variance*, Cleveland APA Planning & Zoning Workshop, Cleveland, Ohio, November 13, 2015:

In fact, variances are essential to the proper functioning and administration of a zoning code. *Ibid.*

The foregoing is true not just of zoning regulations but of all land development regulations which implement the Town's Comprehensive Plan. However, it must be stressed that a board of adjustment should not usurp the powers of the governing body and try to stand in the shoes of the governing body and make policy or adopt laws. Rather, a board of adjustment administers the policies and laws adopted by the governing body.

Since the potential to seek and be granted a variance is essential to the implementation of the Town's Comprehensive Plan through the enforcement of the implementing land development regulations, it is equally essential that the variance power of the Board of Adjustment be established clearly, cogently and in a legally sufficient fashion.

The Proposed Amendments

Ordinance 2020-06 makes a number of changes to Article XI of Chapter 6 of the Town Code. The two most important changes are to clarify that the Board of Adjustment has jurisdiction over most variance requests from the land development regulations found in various chapters of the Town Code and to codify the criteria which the Board of Adjustment **must** apply in considering any variance application.

In the course of the public hearings to date on Ordinance2020-06, it was initially alleged that the

proposed language of the ordinance was unclear, unusual and arbitrary. However, it was pointed out that the Ordinance's language was typical of board of adjustment jurisdictional ordinances along the Pinellas Beaches, throughout Florida and even throughout North America. This objection seems to no longer be at issue.

A follow-on objection was that the other similar ordinances offered guidance, not mandates. Appendix A is the corresponding code provisions from the other Pinellas Beach communities. As can be seen from Appendix A, the variance criteria to be applied in these other Panels communities are mandates, not guidelines. (In fact, some jurisdictions have forsaken their boards of adjustment for special magistrates based on the premises that the magistrate will be more likely to adhere to the law and not grant variances that are not supported by the variance criteria.)

As noted above, the Board of Adjustment's jurisdiction is expressed throughout Article XI as being over requests for variances from the provisions of "this chapter." It has recently been determined that this language limits the Board of Adjustment's jurisdiction and that the Board does not have jurisdiction to consider variance applications from other chapters of the Town Code, particularly Chapter 5 pertaining to docks and seawalls. Ordinance 2020-06 clarifies that, with three exceptions, the Board of Adjustment has jurisdiction to consider variance requests from any land development regulation wherever found in the Town Code.

The types of variances which may not be considered by the Board of Adjustment are with respect to permitted land uses and permitted densities in zoning districts pursuant to Appendix A; to the maximum height of buildings; for nonconforming docks, and from any provision of the Town's Comprehensive Plan. Otherwise, Ordinance 2020-06 confers on the Board of Adjustment jurisdiction to hear applications for variances from any land development regulation found in the Town Code.

The second major change found in Ordinance 2020-06 is the codification of the criteria for granting a variance. These criteria:

- Unusual hardship;
- Not self-created;
- Minimum variance necessary;
- Variance will not confer a special benefit;
- Denial of rights enjoyed by other property owners; and
- In the public interest

(Draft Ordinance page 3, line 4 - page 4, line 2)

are enshrined in planning and zoning practices and principles and in the common law.³

However, these criteria are not currently articulated in Article XI of Chapter 6 of the Town Code. To properly align Article XI with land use planning and zoning principles and with the common law these criteria are being written into the Code.

The Board of Adjustment is further required to make findings that a variance application comports with the criteria for a variance, a requirement that is unchanged by Ordinance 2020-06.

Other changes proposed by Ordinance 2020-06 include, but are not limited to:

- Deletion of references to special exceptions since that is a zoning technique not employed by the Town;
- Elimination of some internal paperwork requirements;
- Expanding the prohibited time for a re-application for a denied variance;
- Permitting the Building Official to grant *de minimis* variances;
- Expanding the notice requirements for dock variances; and
- Establishing a 60 day time frame within which the work authorized by a variance must obtain a building permit.

The foregoing changes and the other changes that can be found in Ordinance 2020-06 will enhance the variance process in the Town and offer significant additional protections to the Town and its residents and property owners.

RECOMMENDATION

THAT THE TOWN BOARD OF COMMISSIONERS ADOPT ORDINANCE 2020-06 ON SECOND READING.

³ They are also enumerated in some state zoning enabling laws in substantially the same language.

APPENDIX A
PINELLAS BEACH COMMUNITIES' VARIANCE CRITERIA

1 **CURRENT REDINGTON BEACH GENERIC STATEMENT OF AUTHORITY**
2

3 Sec. 6-289. - Powers and duties.

4 The board of adjustment shall have the following powers and duties:

5 (a) To authorize upon application in specific cases such exception/variance from the term of
6 this chapter as will not be contrary to the public interest where, owing to special conditions, a
7 literal enforcement of the provisions of this chapter would result in unnecessary and undue
8 hardship.

9 (b) To consider written applications for a special exception/variance when it demonstrates
10 that:

11 (1) Special conditions and circumstances exist which are peculiar to the land, structure, or
12 building involved and which are not applicable to other lands, structures, or buildings in the same
13 district;

14 (2) A literal interpretation of the provisions of this chapter would deprive the applicant of
15 rights commonly enjoyed by other properties in the same district under the terms of this chapter
16 and would work unnecessary and undue hardship on the applicant.
17

18 **PROPOSED REDINGTON BEACH SPECIFIC CRITERIA**
19

20 (3) No variance shall be granted unless the applicant demonstrates by relevant,
21 competent, and substantial evidence that the following criteria have been satisfied:
22

23 a. The property has an unusual hardship not suffered by other similarly
24 situated properties within the same district;
25

26 b. The hardship of the property was not self-created by the applicant and was
27 not the result of an action taken with the applicant's prior knowledge or
28 approval. Further, no variance may be granted arising from illegal
29 construction of a structure or an illegal use of the premises which would
30 otherwise have required a permit to be issued and which construction was
31 commenced illegally. Under such conditions, the property owner shall
32 have no legal right to apply for a variance and the board shall have no
33 legal right to grant a variance;
34

35 c. The requested variance is the minimum variance necessary to permit the
36 reasonable use of the property;
37

38 d. The requested variance will not confer on the applicant any special
39 privilege that is denied by the applicable code to other similarly situated
40 property owners;
41

42 e. The literal interpretation of the applicable code would deprive the
43 applicant of rights commonly enjoyed by other similarly situated property

owners:

- f. The requested variance will not be contrary to the public interest and will be in harmony with general intent and purpose of the applicable code.

BELLEAIR BEACH SPECIFIC CRITERIA

Sec. 94-62. - Powers and duties.

(a) The board of adjustment shall adopt rules of procedure for the conduct of its meetings. The board of adjustment may grant allowable variances to the provisions of this chapter and any other construction or building ordinances in harmony with the board of adjustment's general purposes and intent. A variance granted by the board of adjustment shall be consistent with the public interest, when owing to a special condition and literal enforcement of the provisions of this chapter will not result in an unnecessary and undue hardship to the applicant, and the special condition or unique circumstance will not result from the intentional act of the applicant or the applicant's agent. In order to authorize any variance from the provisions of this chapter, the board of adjustment shall find that the applicant:

- (1) Demonstrated that special conditions or unique circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other similar structures or buildings in the same zoning district.
- (2) Demonstrated that the variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.
- (3) Demonstrated that granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter.
- (4) Demonstrated that the variance requested does not change the use of the property from the use characteristics mandated for districts I and II in sections 30-51 and 94-252 and article IV, division 3 of this chapter.
- (5) Will comply fully with additional conditions and safeguards, which the board of adjustment may prescribe, including, but not limited to, reasonable time limits within which the action for which a variance is required shall commence and/or be completed.
- (6) Demonstrated that the variance requested does not violate any provision and requirements set forth in chapter 62 and chapter 74 of the city code.

BELLEAIR SHORE SPECIFIC CRITERIA

Sec. 46-85. - Grounds and criteria for approving applications for variances.

The town commission shall not grant variances from the requirements of any provision of this land development code unless it makes a positive finding, based on substantial competent evidence and weighing and balancing the merits of the request in consideration of the following

criteria:

- (1) The variance request is not exclusively based upon a desire to reduce the cost of developing the subject site.
- (2) The proposed variance will not substantially increase congestion on surrounding public streets, the danger of fire or other hazards to the public.
- (3) The proposed variance will not substantially diminish property values in nor alter the essential character of the area surrounding the site.(4)Special conditions.
 - a. That special conditions and circumstances exist that are peculiar to the land, structure or building involved in the application.
 - b. That the special condition or circumstance did not result from the actions or inaction(s) of the applicant.
- (5) No special privilege. That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other similar lands, buildings or structures in the same zoning district.
- (6) Unnecessary hardship. That there are practical or economic difficulties in carrying out the strict letter of the regulation and the literal interpretation of the provisions of this land development code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this land development code.
- (7) Minimum variance necessary. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
- (8) Purpose and intent compliance. That the grant of the variance will be in harmony with the general intent, purpose, and spirit of this land development code, and with the city's comprehensive land use plan adopted pursuant to state law.
- (9) No detriment to public welfare. That such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

INDIAN ROCKS BEACH SPECIFIC CRITERIA

(b)Generally; criteria for granting variances from the terms of subpart B.(1)

The board of adjustments and appeals shall make recommendations on and the city commission shall decide variance applications as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the board or the city commission shall consider each of the following:

- a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district;
- b. The special conditions and circumstances do not result from the actions of

- 1 the applicant;
- 2 c. Granting the variance will not confer on the applicant any special privilege
- 3 that is denied by subpart B to other lands, structures or buildings in the
- 4 same zoning district;
- 5 d. Literal interpretation of the provisions of subpart B would deprive other
- 6 properties in the same zoning district under the terms of subpart B and
- 7 would work unnecessary and undue hardship upon the applicant;e.The
- 8 variance granted is the minimum variance that will make possible the
- 9 reasonable use of the land, structure or building; andf.The granting of the
- 10 variance will be in harmony with the general intent and purpose of subpart
- 11 B, and such variance will not be injurious to the area involved or be
- 12 otherwise detrimental to the public welfare.
- 13
- 14

15 ***INDIAN SHORES SPECIFIC CRITERIA***

16

17 Sec. 110-84. - Variances.

- 18 (a) A variance to this chapter may be granted when such variance will not be contrary to the
- 19 public interest and when, owing to conditions peculiar to the property and not the result
- 20 of the actions of the applicant, a literal enforcement of this chapter would result in
- 21 unnecessary and undue hardship. A variance is authorized only for the following
- 22 numerical provisions of this chapter such as: minimum building area per principal
- 23 building; minimum building setbacks; swimming pool or swimming pool enclosure
- 24 setbacks; minimum building height; minimum enclosed floor space; maximum lot
- 25 coverage; floor area ratio; minimum distance between buildings; minimum required open
- 26 area; and minimum off-street parking space requirements. Establishment or expansion of
- 27 a use otherwise prohibited shall not be allowed by variance nor shall a variance be
- 28 granted because of the presence of nonconformities in the zoning district or classification
- 29 or in adjoining zoning districts or classifications.
- 30
- 31 (b) In authorizing any variance from this chapter where strict adherence to this chapter would
- 32 result in unnecessary or undue hardship, the board of adjustment shall consider the
- 33 following required criteria:
- 34 (1) Special conditions or circumstances exist which are peculiar to the land,
- 35 structure, building or occupancy involved and which are not generally
- 36 applicable to other lands, structures, buildings or occupancies in the same
- 37 zoning district.
- 38 (2) Such special conditions or circumstances do not result from the actions of
- 39 the applicant.
- 40 (3) Granting the variance requested will not be contrary to the public interest
- 41 or have a detrimental effect upon adjoining properties or the
- 42 neighborhood.
- 43 (4) A literal interpretation and enforcement of this chapter would deprive the

1 applicant of rights commonly enjoyed by other properties in the same
2 zoning district or would result in unnecessary or undue hardship to the
3 applicant.

4 (5) The variance requested or as granted by the board of adjustment is the
5 minimum variance necessary to alleviate the hardship.

6 (6) Granting the variance will be in harmony with the general intent and
7 purpose of this chapter, the comprehensive plan and land development
8 regulations.
9

10 ***REDINGTON SHORES SPECIFIC CRITERIA***

11
12 Sec. 90-127. - Appointment of special magistrate for variance requests; powers and duties.
13 The board of commissioners shall appoint such special magistrate as may be deemed necessary
14 or required from time to time to hear variance requests filed with the town. Such special
15 magistrate shall have the following powers and duties:
16

17 A. Authorize such variance, as herein defined, from the terms of this part 5, other than those
18 establishing zoning and density, as will not be contrary to the public interest when, owing to
19 special conditions, a literal enforcement of the provisions of this part 5 would result in
20 unnecessary and undue hardship and when the requested variance meets all the requirements set
21 forth herein. B. In order to authorize any variance from the terms of this part 5, the special
22 magistrate must find:

- 23 (1) That special conditions and circumstances exist which are peculiar to the
24 land, structure or building involved and which are not applicable to other
25 lands, structures or buildings in the same zoning district.
26 (2) That the special conditions and circumstances do not result from the
27 actions of the applicant.
28 (3) That granting the variance requested will not confer on the applicant any
29 special privilege that is denied by this part 5 to other lands, buildings or
30 structures in the same zoning district.
31 (4) That literal interpretation of the provisions of this part 5 would deprive the
32 applicant of rights commonly enjoyed by other properties in the same
33 zoning district under the terms of this part 5 and would work unnecessary
34 and undue hardship on the applicant.
35 (5) That the variance granted is the minimum variance that will make possible
36 the reasonable use of the land, building or structure.
37 (6) That the grant of the variance will be in harmony with the general intent
38 and purpose of this part 5, and that such variance will not be injurious to
39 the area involved or otherwise detrimental to the public welfare.
40

41 ***NORTH REDINGTON BEACH SPECIFIC CRITERIA***

42
43 Sec. 98-73. - Conditions required for variance.

- (a) A variance from the terms of this chapter may not be granted unless the special magistrate finds that competent substantial evidence exists to find that the following conditions exist:
1. Special conditions and circumstances exist which are peculiar to the land, structure or building involved.
 2. The special conditions and circumstances do not result from the actions of the applicant.
 3. Literal interpretation of the provisions of this chapter would work unnecessary and undue hardship on the applicant.
 4. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
 5. The grant of the variance will be in harmony with the general intent and purpose of this chapter and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- (b) The desire to maximize the value of the land or any structure thereon shall not constitute a justification for the granting of a variance. (c) The opinions of neighboring property owners or other citizens may be considered by the special magistrate when considering a variance application, but only to the extent such opinions address one or more of the factors set forth in subsection (a) above.

MADEIRA BEACH SPECIFIC CRITERIA

Sec. 2-507. - Variances:

- (a) The purpose of a variance is to ensure that no property because of the special circumstances applicable to it, shall be deprived of privileges commonly enjoyed by other properties in the same zone and vicinity. Variances shall be reviewed and may be approved, approved with conditions, or denied by the special magistrate.
- (b) The special magistrate shall authorize, upon application to appeal, after public notice has been given and public hearing held, such variance from the terms of the city land development regulations as not being contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the land development regulations, subpart B of this Code will result in unnecessary and undue hardship. In order to authorize any variance from the terms of the city land development regulations, the special magistrate shall consider the following criteria and shall find that the criteria has been satisfied in full and that a hardship exists:
- (1) Special conditions and circumstances exist which are peculiar to the land, building, or other structures for which the variance is sought and which do not apply generally to the lands, building, or other structures in the same district. Special conditions to be considered shall include, but are not limited to, the following circumstances:

- a. Substandard or irregular-shaped lot. If the site involves the utilization of an existing lot that has unique physical circumstances or conditions, including irregularity of shape, narrowness, shallowness, or the size of the lot is less than the minimum required in the district regulations;
 - b. Significant vegetation or natural features. If the site contains significant native vegetation or other natural features;
 - c. Residential neighborhood character. If the proposed project promotes the established historic or traditional development pattern of a block face, including setbacks, building height, and other dimensional requirements;
 - d. Public facilities. If the proposed project involves the development of public parks, public facilities, schools, or public utilities;
 - e. Architectural and/or engineering considerations. If the proposed project utilizes architectural and/or engineering features that would render the project more disaster resistant.
- (2) The special conditions and circumstances do not result from the actions of the applicant. A self-created hardship shall not justify a variance.
 - (3) Granting the variance will not confer on the applicant any special privilege that is denied to other lands, buildings or structures in the same zoning district.
 - (4) Literal interpretation would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the land development regulations, subpart B of this Code and would work unnecessary and undue hardship on the applicant.
 - (5) The variance granted is the minimum variance that will make possible the reasonable use of the land.
 - (6) The granting of the variance will be in harmony with the general intent and purpose of the city land development regulations, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

TREASURE ISLAND SPECIFIC CRITERIA

The board or commission has considered the following criteria and find that they have been substantially satisfied and a hardship exists:

- a. The variance is in fact a variance as set forth within the land development regulations and within the province of the board or commission based upon the opinion of the city manager or his designee;
- b. Special conditions or circumstances exist which are peculiar to the building, structure, or land for which the variance is sought and do not apply generally to buildings, structures, or lands in the same zoning district;

- c. Strict application of the provisions of the land development regulations would not permit the applicant reasonable use of the building; structure, or land;
- d. The peculiar conditions and circumstances existing are not the result of the actions of the applicant, the applicant agent's agents, or the applicant's predecessors in title;
- e. The variance proposed to be granted is the minimum variance that will make possible the reasonable use of the building, structure, or land;
- f. Owing to special conditions, a literal enforcement would result in unnecessary hardship. Special conditions to be considered pursuant to this section of the land development regulations shall include, but not be limited to, the following circumstances:
 - 1. Redevelopment. If the proposed project involves the redevelopment or utilization of an existing developed or partially developed site.
 - 2. Substandard lot(s). If the proposed project involves the utilization of an existing legal nonconforming lot(s).
 - 3. Neighborhood character. If the proposed project promotes the established development pattern of a block face, including setbacks, building height, and other dimensional requirements.
 - 4. Public facilities. If the proposed project involves the development of public parks, public facilities or public utilities.
 - 5. Architectural and/or engineering considerations. If the proposed project utilizes architectural and/or engineering features that would render the project more disaster resistant.
- g. The granting of the variance will be in harmony with the general purpose and intent of this chapter;
- h. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

ST. PETE BEACH SPECIFIC CRITERIA

(b) Authority and approval criteria.

- (1) The city manager or appropriate board of authority may authorize variances to the Land Development Code if the applicant is able to demonstrate the following conditions:
 - a. Unnecessary and undue hardship variance. Standards of review for an unnecessary and undue hardship variance. The appropriate board of authority shall approve an unnecessary and undue hardship variance only if the variance applicant demonstrates by substantial competent evidence that all of the following are met and satisfied:
 - 1. Special conditions and circumstances exist which are

- 1 peculiar to the land, structure, or building involved, and
2 which are not applicable to other lands, structures, or
3 buildings in the same zoning district;
4 2. The special conditions and circumstances do not result
5 from the actions of the applicant or a prior owner of the
6 property;
7 3. Literal interpretation of the provisions of the Land
8 Development Code deprives the applicant of rights
9 commonly enjoyed by other properties in the same zoning
10 district under the terms of the Land Development Code and
11 results in unnecessary and undue hardship on the applicant;
12 4. The hardship has not been deliberately or knowingly
13 created or suffered to establish a use or structure which is
14 not otherwise consistent with the comprehensive plan or the
15 Land Development Code, nor will it permit an increase in
16 development density;
17 5. An applicant's desire or ability to achieve greater financial
18 return or maximum financial return from his property does
19 not constitute hardship;
20 6. Granting the variance application conveys the same
21 treatment to the applicant as to the owner of other lands,
22 buildings, or structures in the same zoning district;
23 7. The requested variance is the minimum variance that makes
24 possible the reasonable use of the land, building, or
25 structure; and
26 8. The requested variance is in harmony with the general
27 intent and purpose of the comprehensive plan and the Land
28 Development Code, is not injurious to the neighborhood or
29 otherwise detrimental to the public safety and welfare, is
30 compatible with the neighborhood, and will not
31 substantially diminish or impair property values within the
32 neighborhood.
33
34

TOWN OF REDINGTON BEACH
ORDINANCE NO. 2020 - 06

**AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA,
AMENDING CHAPTER 6 – BUILDINGS AND BUILDING REGULATIONS,
ARTICLE XI. – BOARD OF ADJUSTMENT OF THE TOWN CODE TO
CLARIFY THE SCOPE OF THE POWERS AND DUTIES OF THE BOARD
OF ADJUSTMENT; MAKING RELATED FINDINGS; PROVIDING FOR
CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

WHEREAS, the Town Board of Commissioners regularly adopts ordinances amending the Code; and

WHEREAS, part of the Commission's duties include the necessity to ensure that the Town's ordinances, as codified in the Code, are up to date, reflect current actual Town operations, do not contain outdated, redundant or erroneous provisions, and are harmonious with other provisions in the Town Code; and

WHEREAS, in light of the foregoing, the Commission desires to update the authority and clarify the powers and duties of the Town's Board of Adjustment in light of recent changes to other provisions in the Town's Code; and

WHEREAS, the Commission therefore finds that it is in the best interests of the Town, and its citizens, property owners and businesses to adopt this Ordinance and

WHEREAS, the Redington Beach Planning Board has recommended adoption of this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Beach, Florida, that:

SECTION 1. Chapter 6 – Buildings and Building Regulations, Article XI. – Board of Adjustment, is amended as follows:

Sec. 6-288. - General.

- (a) A board of adjustment is hereby established, to consist of five members and two alternates, designated as such to be appointed by the town commission, each for a term of three years; provided that in initial appointments, three terms shall be for one year, two for two years, and two alternates for three years. All members must be electors of the city

Town. No member of the board shall be an official or employee of the town.

(1) *Alternate members.* Alternate members may act in the temporary absence or disability of any regular member or when a regular member is otherwise disqualified in a particular case.

(2) *Member removal.* Members of the board may be removed from office for cause by the town commission on written notice and after public hearing.

(3) *Vacancies.* Vacancies shall be filled by the town commission within 30 days after the vacancy occurs for the unexpired term of the member affected.

(b) The board shall elect a chairman and vice chairman who shall be a member of the board of adjustment. Terms of all offices under this subsection shall be for one year, with eligibility for reappointment.

(c) The board shall adopt rules for transaction of its business, and shall keep a record of its resolutions, findings and determinations, which shall be public record. The board shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote indicating such fact.

(d) Meetings of the board shall be held at the call of the chairman and at such times as the board may determine. Minutes of the board shall be filed promptly in the office of the town clerk. ~~Copies of every application and appeal, notice of public hearing, and resolution of the board shall be forwarded to each member of the town commission.~~

(e) The town commission is authorized and empowered to appropriate such funds that are necessary to conduct the work of the board. The town commission is authorized to establish a schedule of fees to be charged by the board. The board shall have the authority to expend all sums made available for its use from fees and other sources for the purpose and activities authorized by this chapter.

Sec. 6-289. - Powers and duties.

The board of adjustment shall have the following powers and duties:

(a) To authorize upon application in specific cases such ~~exception~~/ variances from the terms of ~~this chapter~~ the Town's Code of Ordinances unless otherwise specifically excepted. that as will not be contrary to the public interest where, owing to special conditions, a

1 literal enforcement of ~~the~~ those provisions of ~~this chapter~~ would result in unnecessary and
2 undue hardship.

3
4 (b) To consider written applications for a ~~special exception~~/variance when it is demonstrated
5 demonstrates that:

- 6
7 (1) Special conditions and circumstances exist which are peculiar to the land,
8 structure, or building involved and which are not applicable to other similarly
9 situated lands, structures, or buildings in the same district; and
- 10
11 (2) A literal interpretation of the provisions of ~~this chapter~~ the applicable code would
12 deprive the applicant of rights commonly enjoyed by other similarly situated
13 properties in the same district under the terms of ~~this chapter~~ the applicable code
14 and would work unnecessary and undue hardship on the applicant.
- 15
16 (3) No variance shall be granted unless the applicant demonstrates by relevant,
17 competent, and substantial evidence that the following criteria have been satisfied:
- 18
19 a. The property has an unusual hardship not suffered by other similarly
20 situated properties within the same district;
- 21
22 b. The hardship of the property was not self-created by the applicant and was
23 not the result of an action taken with the applicant's prior knowledge or
24 approval. Further, no variance may be granted arising from illegal
25 construction of a structure or an illegal use of the premises which would
26 otherwise have required a permit to be issued and which construction was
27 commenced illegally. Under such conditions, the property owner shall
28 have no legal right to apply for a variance and the board shall have no
29 legal right to grant a variance;
- 30
31 c. The requested variance is the minimum variance necessary to permit the
32 reasonable use of the property;
- 33
34 d. The requested variance will not confer on the applicant any special
35 privilege that is denied by the applicable code to other similarly situated
36 property owners;
- 37
38 e. The literal interpretation of the applicable code would deprive the
39 applicant of rights commonly enjoyed by other similarly situated property
40 owners;
- 41

f. The requested variance will not be contrary to the public interest and will be in harmony with general intent and purpose of the applicable code.

(c) To hear and decide appeals where it is alleged there is error in any order, decision, or determination of the building code administrator in the administration or interpretation of the building regulations of the Town of Redington Beach. This appeals process is limited to the provisions of the Town's Code and does not allow for appeals of interpretation or application of the Florida Building Code, or other similar code which the Town may adopt from time to time.

~~———— (d) ——— No amendment, repeal or change whatsoever or exception/variance of any kind to those certain zoning ordinances of the town restricting, providing and establishing certain zones and zoning of the town, shall be made or affected unless a resolution is duly passed and adopted by the board of commissioners of the town proposing such change and calling for an election, either at a special or general election or other specific election, whereupon, the registered voters of the town shall vote upon the question for affirmation or approval or disaffirmation or disapproval of the resolution and the proposition contained therein respecting any amendment, repeal or change of any nature in the present zoning laws and ordinances of the town. Amendment, repeal or change of any exception/variance to those certain zoning ordinances of any kind must be approved by at least two-thirds of the voters, voting on such amendment, repeal or change.~~

~~———— (e) ——— The board of adjustment is specifically prohibited from granting any exception or variance whatsoever from the laws, regulations, ordinances or other restrictions relating to the overall height of buildings and structures within the town as set forth in Section 20 of the Charter of Redington Beach and section 5(c) and (d) of the building regulations of appendix A, zoning, of the Redington Beach Code.~~

~~The board of adjustment shall not consider not-permitted or non-conforming use of lands, structures or buildings in the same zoning district, or not-permitted or non-conforming use of lands, structures, or buildings in other zoning districts as grounds for the issuance of a special exception/variance.~~

(d) Prohibited Variances. The board of adjustment is specifically prohibited from hearing and granting any variance from:

(1) The provisions of Appendix A to the Town's Code of Ordinances restricting, providing, and establishing certain zones and zoning of the Town;

(2) The overall height of buildings and structures within the Town as set forth in Section 20 of the Charter of Redington Beach and sections 5(c) and (d) of the building regulations of Appendix A of the Redington Beach Code;

(3) The regulations governing non-conforming docks set forth in section 5-57 (a)(7) of the Redington Beach Code; and

(4) Any provision of the Town's Comprehensive Plan.

(e) The board shall not consider any petition or application for the same request for a period of ~~30~~ 120 days from the effective date of the order on a previous action on the petition or application.

(f) A *de minimis* or administrative variance may be granted by the Town's building code administrator without being presented to the board of adjustment so long as it meets the following criteria:

(1) The structure or use at issue was constructed or commenced lawfully and with the proper permits;

(2) Such a variance would not be contrary to the public interest or give special benefit to the property owner requesting such a variance;

(3) The variance, if granted, would not be in violation of the Town's Comprehensive Plan; and

(4) The deviation being sought does not exceed twelve inches for setbacks and accessory structure heights, or one percent for measurements pertaining to lot dimensions or area. All other prohibitions on the granting of variances contained in Section (d) above are applicable to *de minimis* variances.

Denial of a *de minimis* variance may be appealed to the board of adjustment subject to the variance criteria set forth in section (b) above.

WHEN A *DE MINIMIS* VARIANCE IS GRANTED BY THE BUILDING OFFICIAL, ANY "PERSON AFFECTED" BY THE GRANT OF SAID VARIANCE MAY APPEAL THE GRANTING OF THE VARIANCE TO THE BOARD OF ADJUSTMENT AS PROVIDED FOR IN SECTION 6-289(C) OF THE TOWN CODE. A "PERSON AFFECTED" BY THE GRANT OF A *DE MINIMIS* VARIANCE IS A PERSON WHO WOULD BE ENTITLED TO NOTICE OF A BOARD OF ADJUSTMENT HEARING ON A NON-*DE MINIMIS* VARIANCE PURSUANT TO CODE SECTION 6-290(B). NO OTHER PERSON SHALL HAVE STANDING TO APPEAL THE GRANTING OF A *DE MINIMIS* VARIANCE.

Sec. 6-290. - Procedures.

When an application for ~~special exception~~/variance is submitted:

(a) A public hearing shall be held. Any party may appear in person, by agent, or by attorney.

(b) ~~Except as provided herein, d~~Due notice of the public hearing shall be given by no less than 30 days' written notice (~~in writing~~) mailed to the applicant and to all property owners within 150 feet of any property line of the applicant as determined by the Pinellas County Property Appraiser's Office. For a dock variance application for a property located on an inside radius as such is defined herein, notice of the variance application shall be given to all property owners with property that fronts on the inside radius. For the purposes of this subsection, "inside radius" means a curvilinear length of shoreline wherein the shoreline recedes from the waterway, thereby creating a cove, inlet or bay or similar physical feature, or exceptions as determined by the building code administrator (exceptions would be docks which would entail a greater distance). Board of adjustment members, and the building code administrator and the town commissioners shall also be notified at least 14 days prior to the public hearing.

(c) The board of adjustment shall make findings as to whether the requirements as set forth in section 6-289 have been met by the applicant.

(d) The board of adjustment shall further make a finding whether the reasons set forth in the application justify the granting of the ~~special exception~~/variance, and whether the ~~special exception~~/variance is the minimum ~~special exception~~/variance that will make possible the reasonable use of the land, building, or structure of the applicant.

(e) The board of adjustment shall further make a finding that the granting of the special exception/variance will be in harmony with the general purpose and intent of ~~this chapter~~, the applicable provisions of the Town Code and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

(f) The board of adjustment, in granting any ~~special exception~~/variance, may ~~prescribe~~ impose appropriate conditions and safeguards in conformity with the applicable code sections this chapter, including time limits for beginning and for completion of any action involved by the variance. Violation of such conditions and safeguards, when made a part of the terms under which the ~~special exception~~/variance is granted, shall be deemed a violation of ~~this chapter the Town Code~~, and all such violations shall be governed by the code enforcement ordinance and presented to the special master in accordance with chapter 2, administration, article III, code enforcement, sections 2-55 through 2-93 of the Code of Redington Beach.

~~(1) The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties as set forth in chapter 2, administration, article III, code enforcement, sections 2-55 through 2-93~~

of the Code of Redington Beach.

(2) ~~It shall be a violation for any person to destroy, move, remove, or deface or obscure any sign or notice erected or posted pursuant to the requirements of this chapter and any person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties as set forth in chapter 2, administration, article III, code enforcement, sections 2-55 through 2-93 of the Code of Redington Beach.~~

(3) ~~Nothing herein contained shall prevent the town from taking any other lawful action necessary to prevent or remedy any violation.~~

(g) Any variance granted under the provisions of this code shall expire within sixty (60) days from the date of the executed order granting the variance, unless a building permit for construction or alteration has been issued in accordance with the plans and conditions upon which the variance was granted.

(h) Upon receiving a request in writing at least thirty (30) days prior to the scheduled expiration date of the variance, the board of adjustment may, in its discretion, grant a one-time thirty (30) day extension calculated from the date the original variance would have expired, provided proper public notice by mail has been given and the request is one made in good-faith.

Sec. 6-291. - Appeals from decisions of the board of adjustment.

Any person aggrieved by any decision of the board, may seek judicial review of such decision in a court of competent jurisdiction as provided by law. ~~by filing a notice of appeal, in the form prescribed by the Florida Appellate Rules, in the circuit court, within 30 days of the execution of the order to be appealed.~~ The decision of the board of adjustment shall be considered a final administrative action, and shall only be subject to review based upon the record established at the hearing before the board.

Sec. 6-292. - Appeals to the board of adjustment.

It is the intent of this article that all questions of interpretation and enforcement of the Building Code and Building Regulations of the Town of Redington Beach shall be first presented to the building code administrator.

(a) Appeals to the board of adjustment concerning interpretation or administration of the Town's Building these r~~Regulations or for special exception or variance under these regulations~~ may be taken by any person aggrieved by any decision, determination, or requirement

1 of the building code administrator.

2
3 (b) Such appeals shall be taken within 30 days, by filing a notice of appeal specifying
4 the grounds of appeal with the building code administrator. The building code administrator
5 shall forthwith transmit to the board of adjustment all papers constituting the record upon which
6 the building code administrator took the action appealed.

7
8 (c) The board of adjustment shall fix a reasonable time for the hearing of the appeal,
9 giving public notice thereof in the same manner as for ~~special exceptions~~/variances, as provided
10 in section 6-290, as well as due notice to the parties in interest, and decide the same within a
11 reasonable time. At the hearing, any party may appear in person or by agent or attorney.

12
13 (d) An appeal stays all proceedings in furtherance of the action appealed unless the
14 building code administrator, from whom the appeal is taken, certifies to the board after notice of
15 appeal is filed that, in the administrator's opinion, a stay would cause a hazard to life or property.
16 In such event, the proceedings shall not be stayed except by ~~restraining order granted a~~
17 supermajority vote by the board or by an injunction issued by a court of competent jurisdiction,
18 on notice to the administrator and ~~on due~~ with good cause shown.

19
20
21 **Sec. 6-293. - Schedule of fees, charges and expenses.**

22
23 (a) The town commission shall establish a schedule of fees, charges, and expenses
24 and a collection procedure for review by the board of adjustment. The schedule of fees shall be
25 posted in the office of the building code administrator and town clerk, and may only be amended
26 by the town commission.

27
28 (b) The fee and administrative costs for a ~~special exception~~/variance heard by the
29 board of adjustment shall be \$250.00 and \$50.00 for administrative or de minimis variances.
30 There shall be no additional fee for an appeal as set forth in section 6-291.

31
32 (c) Until all applicable fees, costs and expenses have been paid in full, no action shall
33 be taken on any application or appeal.

34
35 (d) In addition to the fee schedule outlined above, the petitioner shall be responsible
36 for the payment of any extraordinary expenses incurred by the town, at a cost consistent with the
37 reasonable expenses in analyzing or reviewing all or any part of an application. The
38 extraordinary expenses may be occasioned by the town's retention of the services of a third-party
39 consultant. The petitioner will be advised of the necessity of such expense prior to it being
40 incurred. The petitioner and the building code administrator must jointly approve an estimated
41 cost amount before these charges can be authorized. Upon the request of the petitioner, the town

commission may review such extraordinary expenses as to its necessity and amount. The charges for extraordinary expenses will be paid in advance to the town in the form of cash or certified check at the agreed upon cost.

Sec. 6-294. - Severability clause.

Should any section or provision of this article be decided by ~~the courts~~ a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the balance of this article.

SECTION 2. For purposes of codification of any existing section of the Redington Beach Code herein amended, words underlined represent additions to original text, words ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

SECTION 3. If any section, subsection, sentence, clause, provision, or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

SECTION 4. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

SECTION 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2020, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2020, by the Board of Commissioners of the Town of Redington Beach, Florida.

James Simons, Mayor

Attest:

1
2 Missy Clarke, CMC, Town Clerk

3
4 Approved as to form:

5
6
7
8
9 Jay Daigneault, Town Attorney

10
11
12
13 C:\Red Bch\Board of Adjustment\Code Rewritten.wpd
14



TOWN OF REDINGTON BEACH, FLORIDA

APPLICATION FOR APPOINTMENT TO TOWN BOARD OR TOWN COMMITTEE

NAME:

Tom Dorgan

ADDRESS:

16109 - 3rd Street East, Redington Beach, FL 33708

HOME PHONE:

727-251-7520 CELL PHONE:

E-MAIL:

tdorgan27@gmail.com

SEEKING APPOINTMENT TO (Check Appropriate Choice):

☐ Board of Adjustment

☐ Planning Board

☐ Park Board

☐ Other (Specify) Library Board

EDUCATIONAL BACKGROUND:

School:

BCC

Location:

Bellevue, WA

Major:

CS

Degree:

AA

EMPLOYMENT:

Employer:

Retired

Industry:

Address:

City:

State: Zip:

Position:

How Long:

Employment Reference:

Phone:

Prior Employment:

Employer:

Open Text

Industry:

Computer Services

Address:

City:

Seattle

State:

WA Zip: 98104

Position:

CSE

How Long:

18 yrs

Employment Reference:

Phone:

Why would you like to be considered as a candidate for service as noted in this Application?

As an active member of the commission,
it would be appropriate to act as a Trustee

Signature

Date:

10/23/2020



OCT 21 2020

TOWN OF REDINGTON BEACH, FLORIDA

APPLICATION FOR APPOINTMENT TO TOWN BOARD OR TOWN COMMITTEE

NAME: LISA MILLER
ADDRESS: 16335 REDINGTON DRIVE, Redington Beach, FL 33708
HOME PHONE: — CELL PHONE: 914-227-0505
E-MAIL: LISAJPMILLER@AOL.COM

SEEKING APPOINTMENT TO (Check Appropriate Choice):

☐ Board of Adjustment ☐ Planning Board ☐ Park Board ☒ LIBRARY BOARD
☒ Other (Specify) LIBRARY BOARD

EDUCATIONAL BACKGROUND:

School: UNIV. OF OTTAWA Location: OTTAWA, ONTARIO Major: LAW Degree: J.D.
LAW SCHOOL

EMPLOYMENT:

Employer: NOW RETIRED - PRIOR EMPLOYMENT Industry: —

Address: SEE ATTACHED RESUME City: — State: — Zip: —

Position: — How Long: —

Employment Reference: SANDI KNIGHT Phone: 214-215-1373

Prior Employment:

Employer: — Industry: —

Address: — City: — State: — Zip: —

Position: — How Long: —

Employment Reference: — Phone: —

Why would you like to be considered as a candidate for service as noted in this Application?

CONTINUE TO WORK ON BOARD

Signature

Date: OCT. 20/2020

LISA MILLER

16335 Redington Drive
Redington Beach, Florida 33708
(914) 227-0505

PROFESSIONAL EXPERIENCE

HEALTHMARKETS, INC., NORTH RICHLAND HILLS, TX

2012 – 4/2016

Deputy General Counsel

Texas-based national health insurance sales agency

- Negotiated and finalized a variety of health, life, long term care and disability insurance distribution contracts for national insurance sales agency.
- Reviewed website content and training materials for marketing department to ensure legal compliance.
- Assisted with corporate reorganizations and corporate resolutions.
- Responsible for loan documentation for agent loans.

FAIR HEALTH, INC., NEW YORK, NY

2011 - 2012

Deputy General Counsel

National, independent not-for-profit corporation licensing data products to the healthcare industry, government and researchers

- Created new templates for licensing data products to help streamline the negotiation process.
- Reviewed and negotiated vendor contracts for new IT infrastructure, HIPAA Business Associate Agreements and various types of commercial and real estate agreements.
- Reviewed and revised marketing materials for new products available online.
- Created new independent contractor consulting template agreement.

HEALTHMARKETS COMPANIES, NORWALK, CT

2005 – 2010

Assistant General Counsel

Texas-based private national health insurance group and sales agency

- Created new templates for leased network, including revised provider contracts for network operations, including managed care and utilization management contracts, IPA contracts.
- Negotiated and drafted all HIPAA Business Associate Agreements and security provisions for commercial contracts to ensure compliance with privacy and security laws by insurance carriers.
- Negotiated confidentiality and independent contractor consulting agreements.
- Drafted financing documentation for intercompany loan to finance new sales agency.

CRITICAL CARE SYSTEMS, INC., A DIVISION OF ACCREDO HEALTH GROUP/MEDCO

(FORMERLY CURATIVE HEALTH SERVICES, INC., HAUPPAUGE, NY)

2003 – 2004

Corporate Counsel

Publicly traded healthcare company with specialty pharmacy, home health and wound care divisions.

- Managed healthcare regulatory issues, including compliance issues relating to home health and specialty pharmacy licensing compliance issues.
- Responsible for SEC filings and IT licensing, trademark filings, and marketing review.
- Due diligence for acquisition and bank financing of new national home health business.

SERCHUK & ZELERMYER, LLP, WHITE PLAINS, NY
2003

2001 –

Associate Attorney

Banking and real estate law firm serving financial institutions, including federal, state and foreign banks.

- Implemented commercial real estate refinancing transactions for various banks.
- Drafted agreement for the acquisition of the Florida National Bank by Provident Bank.
- Monitored anti-money laundering compliance for financial institutions.
- Drafted shareholders' agreements, proxy statements, confidentiality and employment agreements and documentation for bank annual meetings.

WILMER CUTLER PICKERING HALE AND DORR LLP, WASHINGTON, DC

1998 - 1999

Staff Attorney

Commercial real estate department specializing in refinancing and reorganization transactions

- Reorganized corporations, partnerships and limited liability companies for real estate transactions and acquisitions.
- Represented real estate development companies in various financing and acquisition transactions, including Fannie Mae loan for refinancing of apartment buildings in NC and the acquisition of airport cargo buildings in Pittsburgh, PA.

OTHER PROFESSIONAL EXPERIENCE

IN HOUSE COUNSEL EXPERIENCE

Director legal and business affairs with international offshore financing group of TransCanada Pipelines, a Canadian multinational corporation having subsidiaries in Holland, Curacao, Switzerland and US. Managed the legal, financial, accounting and tax matters for the group.

LAW FIRM EXPERIENCE

Experience with corporate financing, corporate governance, mergers and acquisitions, commercial real estate and financing experience for diverse international and domestic clientele.

VOLUNTEER POSITIONS

Chairman of the Board of Trustees Gulf Beaches Public Library, Inc.	2017 - 2020
President of the Redington Beach Property Owners Association, Inc.	2018 - Present
Business Manager - Pleasantville Presbyterian Church, Pleasantville, NY	2009 - 2016
President - Hudson Chorale, Briarcliff Manor, NY	2013 - 2015

EDUCATION AND QUALIFICATIONS

University of Ottawa Law School – J.D. *Graduated Cum Laude*
University of Toronto - B.A. in English and Psychology



TOWN OF REDINGTON BEACH, FLORIDA

**APPLICATION FOR APPOINTMENT TO TOWN BOARD
OR TOWN COMMITTEE**

NAME: Vladimir O. Tchentsov

ADDRESS: 15529 Redington Dr., Redington Beach, FL 33708

HOME PHONE: _____ CELL PHONE: 813-267-3132

E-MAIL: VT2714@gmail.com

SEEKING APPOINTMENT TO (Check Appropriate Choice):

☐ Board of Adjustment ☐ Planning Board ☐ Park Board ☒ Other (Specify) Library Board

EDUCATIONAL BACKGROUND:

School: _____ Location: St. Petersburg, Russia Major: Finance Degree: Finance

EMPLOYMENT:

Employer: US Equity, LLC Industry: Finance

Address: _____ City: _____ State: _____ Zip: _____

Position: Managing Partner How Long: 14 years 7 months

Employment Reference: _____ Phone: 813-500-7014

Prior Employment:

Employer: N. Wasserman & Co. Industry: Marketing & Promotional Manufacturing

Address: _____ City: Columbus State: OH Zip: _____

Position: CFO How Long: 6 years

Employment Reference: Phil Miller Phone: 614-360-8204

Why would you like to be considered as a candidate for service as noted in this Application?

See Attachment

[Signature]
Signature

Date: Oct. 30, 2019

Attachment to Vladimir Tchentsov Library Board Application

I want to be a board member of the Gulf Beaches Public Library to utilize my business experience, skills and acumen to help further improve what I believe to be an already well-functioning board. I am a fan and patron of the library, having often used and become intimately familiar with the Madeira Beach Library with my family over the past six-plus years. As a board member, I would work with other board members to expand the overall quality of both of the libraries, including the entertainment and education there. I would do this by evaluating and monitoring the current systems and policies, plan for the future, and advocating in the community for the library.

BRUCE McLAUGHLIN CONSULTING SERVICES, INC.

900 Gulf Boulevard, Suite 303
Indian Rocks Beach, Florida 33785
Phone: 727/595-7634 Cell: 727/244-7311
Email BruceSandy@aol.com

October 30, 2020
TRB

Meeting Date: November 4, 2020
Agenda Item: 9 B

M E M O R A N D U M

TO: Honorable Mayor and Members, Redington Beach Town Board of Commissioners

FROM: R. Bruce McLaughlin, AICP, MCIP, Town Planner

SUBJECT: Duke Energy Franchise

EXECUTIVE SUMMARY

The Duke franchise for the Town is due for renewal. Duke's proposed franchise ordinance largely exempts Duke from the Town's Right-of-Way Utilization Ordinance and from most Town supervision of its activities in the Town's rights-of-way. However, Duke's ordinance will prevent, or at least mitigate, discord between Duke and the Town with respect to Duke's activities in the rights-of-way while providing a modicum of control to the Town. The proposed Duke ordinance is a compromise between Duke's unfettered use of the Town's rights-of-way and full control by the Town: the Ordinance is recommended for approval.

BACKGROUND

Applicant: Duke Energy

Affected Area: Entire Town East of Gulf Boulevard

THE REQUEST

Duke Energy requests the Town to adopt an ordinance extending the electric power franchise agreement with the Town for an indefinite number of years. As part of its request, Duke initially sought complete and total exemption from any Town supervision of Duke's activities in the Town-owned road rights-of-way. Duke subsequently agreed to some supervision of its activities in the Town's rights-of-way pursuant to the language set out on page *, below.

October 30, 2020

ANALYSIS

Perspective

Since at least January, 2011, the Town Code has regulated: “Digging and Removal of Pavement.” This section, which formed the basis of the current Code Section 19-3, provided:

- (a) It shall be unlawful for any person, including but not restricted to public utilities, agencies of the state and county, or private entities contracting with the town, to dig upon and remove any part or portion of the paved area of any of the streets and public roadways within the corporate limits of the town, including the digging and removal of paved roadways for installing, repairing or maintaining utility lines, pipes, cables and other conduits, or for any purposes, without complying with this section.

Town Code 2011, § 19-3 (a).

The 2011 Code went on to distinguish between major and minor projects and to require Board of Commissioners’ approval for major projects. Most of the substance of § 19-3, 2011, was carried forward into the current § 19-3 in the adoption of Ordinance 2018-05. Of critical importance to this analysis is that, since at least 2011, Duke has been subject to the approval process of which they now complain, a status to which Duke took strenuous objection in August, 2019.

In or about August, 2019, Duke sought permission for two projects in the Town’s rights-of-way. One was a minor project as defined in both 2011 and 2018 and I signed off on the permit.¹ The second permit was for a major project as defined in both 2011 and 2018 and required action by the Board of Commissioners under both Codes.

In the 2020 Duke Franchise ordinance, Duke seeks to clarify that it is exempt from the Town’s right-of-way utilization ordinance. In contrast, the new Duke franchise document **could** provide an opportunity to remove any potential ambiguities between the franchise agreement and the right-of-way utilization ordinance and clarify once and for all that the right-of-way utilization ordinance applies to Duke.

¹ Although I believe that the Building Official countersigned the permit.

October 30, 2020

The Proposed Franchise Agreement

The proposed Duke franchise agreement starts with an appropriate acknowledgment that the Town's permission is necessary for Duke to occupy and work in the Town's rights-of-way:

The Town of Redington Beach, Florida ("Town" or "Grantor") deems it necessary, desirable and in the interest of its citizens to establish by ordinance a rights of way utilization franchise (sometimes referred to herein as the "Franchise") granting Duke Energy Florida, LLC d/b/a Duke Energy ("Company" or "Grantee") permission to occupy the Rights of Way in the Town for the purpose of providing electric services.

Proposed Duke Franchise Ordinance, Section 1.

The proposed Ordinance also includes an appropriate statement of the Town's rights:

The right is hereby reserved to the Town to adopt such regulations as it shall find necessary in the exercise of its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, shall not be in conflict with the laws of the State of Florida or the lawful regulations of any state agency possessing the power to regulate the activities of the Company, and shall not conflict with or otherwise interfere with the benefits conferred on the Company hereunder. In the event of a conflict between this Ordinance and any other ordinance or regulation adopted by the Town or actions (or inactions) of the Town relating to Company's rights to perform work in and/or occupancy of the Rights of Way as permitted hereunder, the rights under this Ordinance shall govern and control. In the event of such conflict, the Town and Company agree to work together in good faith to address and resolve such conflict; provided, however, that Company shall be permitted to continue to exercise the rights granted herein during the resolution of any conflict.

Ibid., Section 8.

However, the proposed agreement goes on to state:

... the Town expressly acknowledges and agrees that Company shall not be required to apply for, obtain, or pay for permits to construct, operate, maintain, or remove its Facilities within the Rights of Way.

Ibid., Section 4(A).

And

The Company is hereby granted the right, authority and privilege to perform all necessary work and excavations in said Rights of Way of the Town related to its Facilities and necessary or incidental to carrying out such rights and obligations as permitted hereunder. The Company shall have the right to fasten, stretch and lay along the lines of said poles, conduits, pipes and cables necessary for transmitting and conveying the electric current to be used in the Company's business, together with all the rights and privileges necessary or convenient for the full use including the right to trim, cut, remove and keep clear all trees and limbs near or along Company's Facilities that may in any way endanger the proper operation or access of same. Moreover, the Company shall have the right to construct, erect, operate and maintain within the Town an electric system consisting of its Facilities for carrying on the Company's business; provided that, in accomplishing these purposes, the streets of said Town shall not be unnecessarily obstructed for an unreasonable amount of time and work in connection therewith shall be done and carried on in conformity with such reasonable rules, standards, regulations and local ordinances with reference thereto as may be adopted by the Town for the protection of the public and which are not in conflict with or otherwise interfere with the benefits conferred on the Company hereunder.

Ibid., Section 9.

The Governing Statute

The governing statute, Section 337.401, F.S., provides:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(1)(a) The department and local governmental entities, referred to ... as the “authority,” that have jurisdiction and control of public roads ... are **authorized to prescribe and enforce reasonable rules or regulations** with reference to the placing and maintaining across, on, or within the right-of-way limits of any road ... any electric transmission, ... lines ... pole lines; poles; ... or other structures referred to in this section and in ss. ... as the “utility.” ...

Section 337.401, F.S., 2019, [Emphasis Added]

Presumably in acknowledgment of the statute, Duke proposed including the following language in proposed Ordinance section 4, beginning at page 3, line 35:

The Company will notify the Town of Significant Projects within Town ROW to confirm that its designs will not unreasonably interfere with the convenient, safe and continuous use of the public road system in accordance with Florida Statute 337.401 and, upon request of the Town, will provide construction plans and design specifications to assure compliance with the NESC safety and design guidelines. The Company will give the Town a minimum of two (2) weeks advance notice of such Significant Projects. Significant Projects for the purposes of this section shall mean the replacement of Facilities spanning one or more blocks in residential areas or relocation of Facilities due to road widening within the Town. This is not to be construed to grant or imply authority upon the Town to regulate the design, construction or maintenance of Company's Facilities. Notice will not be provided for emergency or maintenance activities.

While the foregoing provision is significantly less than the requirements of the Town’s right-of-way utilization ordinance, it does offer some of the protections of the Code, which protections ² would normally include:

² Applicable not only to Duke Energy, but to Clearwater Gas, Frontier Telephone, Pinellas County Utilities and Spectrum Cable.

October 30, 2020

- PUBLIC SAFETY – EMERGENCY VEHICLE ACCESS
- MUNICIPAL LIABILITY
- PROTECTION OF THE ROAD VERGE
- MINIMIZE IMPACTS ON ROAD LIFE-SPAN
- COORDINATION WITH OTHER UTILITIES.
- MAPPING OPPORTUNITY

RECOMMENDATION

There are many benefits to the vigorous application of the Town's right-of-way utilization ordinance to the Duke franchise ordinance. Offsetting those benefits would be the inevitable discord with Duke and the delay in finalizing the Duke franchise agreement. And Duke has made a modest concession to the Town's control over its own rights-of-way with the language quoted on page 5, above.

In the totality of these circumstances, it is prudent to adopt the Duke Franchise Ordinance on first reading.

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ORDINANCE 2020-08

AN ORDINANCE GRANTING TO DUKE ENERGY FLORIDA, LLC d/b/a DUKE ENERGY, AN ELECTRIC UTILITY RIGHTS OF WAY UTILIZATION FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS OF WAY IN THE TOWN OF REDINGTON BEACH, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COMMISSION OF REDINGTON BEACH, FLORIDA:

SECTION 1 – Findings

The Town of Redington Beach, Florida (“Town” or “Grantor”) deems it necessary, desirable and in the interest of its citizens to establish by ordinance a rights of way utilization franchise (sometimes referred to herein as the “Franchise”) granting Duke Energy Florida, LLC d/b/a Duke Energy (“Company” or “Grantee”) permission to occupy the Rights of Way in the Town for the purpose of providing electric services.

SECTION 2 - Short Title

This Ordinance shall be known and may be cited as the “Duke Energy Rights of Way Utilization Franchise.”

SECTION 3 – Definitions

For the purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely permissive.

(A) “Adversely Affected” – For the Company, a loss of one percent (1%) of Base Revenues within the corporate Town limits due to Retail Wheeling. For the Town, a loss of one percent (1%) of Franchise Fees due to Retail Wheeling.

(B) “Base Revenues” – All of Company’s revenues from the retail sale of electricity, net of customer credits, to residential, commercial and industrial customers and Town sponsored street lighting, all within the corporate limits of the Town.

1
2 (C) "Electric Energy Provider" – Every legal entity or association of any kind
3 (including their lessees, trustees or receivers), including any unit of state, federal or local
4 government (including Town herein), which owns, maintains, or operates an electric generation,
5 transmission, or distribution system or facilities, or which otherwise provides, arranges for, or
6 supplies electricity or electric energy to the public, or which supplies electricity to itself utilizing
7 Company's distribution or other facilities. Without limitation of the foregoing, "Electric Energy
8 Provider" shall also include every Electric Utility, electric power marketer or electric power
9 aggregator. It shall also include every entity providing such services as metering, customer
10 billing, payment collection and processing, and customer information and data processing.
11

12 (D) "Electric Utility" – Shall have the meaning set out in Section 366.02(2), Florida
13 Statutes (2019), and shall also include every electric "Public Utility" as defined in Section
14 366.02(1), Florida Statutes (2019). "Electric Utility" shall further include every investor owned,
15 municipally or governmentally owned, or cooperatively owned electric utility (including their
16 lessees, trustees or receivers), which owns, maintains, or operates an electric generation,
17 transmission, or distribution system in any State or County.
18

19 (E) "Electric Utility System" – An electric power system installed and operated in the
20 Franchise Area in accordance with the provisions of the Florida Public Service Commission
21 establishing technical standards, service areas, tariffs and operating standards, which shall
22 include, but not be limited to, electric light, heat, power and energy facilities, and a generation,
23 transmission, and distribution system, with such extensions thereof and additions hereto as shall
24 hereafter be made.
25

26 (F) "Franchise Area" – That area for which Company provides electric utility service
27 within the corporate Town limits of the Town.
28

29 (G) "Franchise Fees" – Shall have the meaning set forth in Section 6 of this
30 Ordinance.
31

32 (H) "Facilities" – Conduits, cables, poles, wires, street lighting, supports and such
33 other structures, appurtenances or accessories as may be reasonably necessary for the
34 construction, maintenance and operation of an electric generation, transmission and distribution
35 system, including information, telecommunication, and video transmission used solely for the
36 provision of electric service.
37

38 (I) "Ordinance" – The ordinance titled and described in the preamble herein and
39 ordained by the Town Commission of Redington Beach, Florida.
40

41 (J) "Person" – Any person, firm, partnership, association, corporation, company or
42 organization of any kind.
43

1 (K) "Public Service Commission" – The Florida Public Service Commission.

2
3 (L) "Rights of Way" – All of the public streets, alleys, highways, waterways,
4 easements, bridges, sidewalks and parks, and any other public ways or places owned by the
5 Town, as they now exist or may be hereafter constructed, opened, laid out or extended within the
6 present limits of the Town, or in such territory as may hereafter be added, consolidated or
7 annexed to the Town.

8
9 (M) "Retail Wheeling" – A customer/supplier arrangement whereby an Electric
10 Energy Provider utilizes transmission and/or distribution facilities of Company to make energy
11 sales directly to an end use customer located within the Franchise Area.

12
13 **SECTION 4 - Grant of Authority**

14
15 (A) This grant of authority is limited to the provision by Company to have, maintain,
16 or place its Facilities within the Rights of Way for its electric utility services. Accordingly, the
17 Town hereby grants to the Company, its successors and assigns the non-exclusive right,
18 authority, and franchise to lay, erect, construct, maintain, repair and operate its Facilities in,
19 under, upon, over and across the present and future Rights of Way, as they now exist or may be
20 hereafter constructed, opened, laid out or extended within the present and future limits of the
21 Town, provided that all portions of the same shall conform to accepted industry standards,
22 including but not limited to, the National Electrical Safety Code. Nothing in this Ordinance shall
23 require Grantee to remove, de-energize, or cease using any poles, wires, or other things or
24 Facilities identified hereinabove that were in place under previous ordinances or permits prior to
25 the Effective Date (as defined in Section 5) of this Ordinance, regardless of whether such poles,
26 wires or other Facilities are located outside "Rights of Way" as defined herein. Nor shall
27 anything in this Ordinance prohibit Company from performing upgrades, replacements,
28 maintenance or servicing of such poles, wires, or other Facilities after the Effective Date of this
29 Ordinance. Rather, all such preexisting poles, wires, or other Facilities shall be authorized under
30 this Ordinance. Because this Franchise is intended to grant Company the unrestricted right to
31 place its Facilities within the Rights of Way, the Town expressly acknowledges and agrees that
32 Company shall not be required to apply for, obtain, or pay for permits to construct, operate,
33 maintain, or remove its Facilities within the Rights of Way. THE COMPANY WILL NOTIFY THE
34 TOWN OF SIGNIFICANT PROJECTS WITHIN TOWN ROW TO CONFIRM THAT ITS DESIGNS WILL NOT
35 UNREASONABLY INTERFERE WITH THE CONVENIENT, SAFE AND CONTINUOUS USE OF THE PUBLIC
36 ROAD SYSTEM IN ACCORDANCE WITH FLORIDA STATUTE 337.401 AND, UPON REQUEST OF THE
37 TOWN, WILL PROVIDE CONSTRUCTION PLANS AND DESIGN SPECIFICATIONS TO ASSURE COMPLIANCE
38 WITH THE NESC SAFETY AND DESIGN GUIDELINES. THE COMPANY WILL GIVE THE TOWN A
39 MINIMUM OF TWO (2) WEEKS ADVANCE NOTICE OF SUCH SIGNIFICANT PROJECTS. SIGNIFICANT
40 PROJECTS FOR THE PURPOSES OF THIS SECTION SHALL MEAN THE REPLACEMENT OF FACILITIES
41 SPANNING ONE OR MORE BLOCKS IN RESIDENTIAL AREAS OR RELOCATION OF FACILITIES DUE TO
42 ROAD WIDENING WITHIN THE TOWN. THIS IS NOT TO BE CONSTRUED TO GRANT OR IMPLY
43 AUTHORITY UPON THE TOWN TO REGULATE THE DESIGN, CONSTRUCTION OR MAINTENANCE OF

COMPANY'S FACILITIES. NOTICE WILL NOT BE PROVIDED FOR EMERGENCY OR MAINTENANCE ACTIVITIES.

(B) Annexation or Contraction. Town represents that as of the date of the adoption of this Ordinance, it has provided Company with accurate information for all residential, commercial and industrial customers and Town sponsored street lighting that are within the Franchise Area. Company shall be responsible for remitting the Franchise Fee only to service and billing addresses identified as being within the Franchise Area as of the date of this Ordinance. However, Town and Company agree that the Franchise Area is subject to expansion or reduction by annexation and contraction of municipal boundaries. If Town approves any Franchise Area expansion or reduction by annexation or contraction, Town shall provide written notice to Company's Annexation Coordinator, at the address provided below, within sixty (60) days of such approval, and this Franchise shall automatically extend to include any such annexed areas.

Additionally, within sixty (60) days of any such annexation or contraction, Town shall provide to Company an updated list containing the new or removed street names, known street name aliases, street addresses, street address number ranges, applicable directional and zip codes associated with each street name, all zip codes assigned to geographic areas located entirely within the Town (including zip codes assigned to post office boxes), and all post office box number ranges and the town names and zip codes associated therewith. For a range of street address numbers located within Town which consists only of odd or even street numbers, the list must specify whether the street numbers in the range are odd or even. Subject to the first paragraph, Company shall be responsible for remitting the Franchise Fee only to service and billing addresses identified as being within the Franchise Area contained in a list which includes all the required elements in this subsection.

The lists shall be provided by email; except that if a list is available on another medium, the Town shall, upon request, furnish the list on such medium in addition to, or in lieu of, the emailed list. The municipality shall be responsible for updating the lists as changes occur and for furnishing this information to the Company.

All notices of annexation or contraction and address listings shall be addressed to the Annexation Coordinator as follows, with the address subject to change:

Duke Energy
Tax Team DT02-V
9700 David Taylor Drive
Charlotte NC 28262

And by email to: TaxTeam@duke-energy.com

Company must revise its payments due to any annexation or contraction within a reasonable time after Company has received such notice and updated list from Town, but no later than sixty (60) days after receipt of notice and the list. Town understands and affirmatively

acknowledges that the Company will exclusively rely upon the Town to provide timely and accurate information to the Company regarding any such annexations or contractions, and that failure to do so will impair, inhibit, and/or preclude the Company's ability to revise any payments due to the Town that are impacted by such annexations or contractions. Further, Town acknowledges that if such information is not timely furnished to Company as required herein, any related obligation to collect payments shall be suspended during the period of delay.

(C) Use of the Rights of Way. During the term of the Franchise granted herein, Company shall be the sole Electric Utility allowed to use and occupy the Rights of Way; provided, however, the Company's right to use and occupy Rights of Way for the purposes set forth herein shall be non-exclusive as to entities not engaged in the provision of electric energy service, and the Town reserves the right to grant the right to utilize the Rights of Way to any person at any time during the period of this Franchise so long as such grant does not create an unsafe condition or unreasonably conflict with the rights granted to Company herein. In addition to any other rights and/or remedies Company may have under this Ordinance or at law or in equity, should Town permit an Electric Utility other than Company to use and occupy the Rights of Way, Town agrees that Company shall be entitled to injunctive relief.

SECTION 5 - Notice of Acceptance and Term of Franchise

(A) This Ordinance shall become effective upon being legally passed and adopted ("Effective Date") by the Town Commission; and it is further agreed that Grantee shall accept this Franchise as of the date of the passage and adoption by the Town Commission and shall signify its acceptance in writing within thirty (30) days after the Town Commission's approval of this Ordinance by filing its written acceptance with the Town Clerk. If Grantee fails to accept this Franchise within thirty (30) days of its date of passage and adoption, then this Ordinance shall be null and void, and of no force and effect of any kind.

(B) Commencing on the Effective Date, the term of the Franchise granted herein shall be for a period of _____ () years. Thereafter, the Franchise granted by this Ordinance will renew automatically for up to two (2) successive five (5)-year periods, unless either party provides the other with written notice of its intent to forego automatic renewal at least twelve (12) months prior to the date of the automatic renewal.

(C) If the Franchise expires without the parties entering a new franchise agreement, then Company shall have the right to decrease the percentage of Company's Base Revenues collected and paid to the Town under this Franchise by two percent (2%) beginning on the first anniversary of the expiration of the Franchise and by an additional two percent (2%) on the second anniversary of the expiration of the Franchise; provided that the percentage of Company's Base Revenues collected and paid to the Town pursuant to this Franchise shall not be reduced to less than two percent (2%) of Company's Base Revenues in any case. If Company determines at the time of expiration of this Franchise that the parties are actively engaged in good faith negotiations and making substantial progress toward the execution of a new franchise

1 agreement, Company may elect in its discretion to waive, delay, or abate the payment reductions
2 permitted under this Section 5(C).

3 4 **SECTION 6 - Payment to Town**

5
6 (A) Effective the first day of the second month beginning after the Effective Date of
7 this Ordinance, Town shall be entitled to receive from Company a monthly franchise amount that
8 will equal six percent (6%) of Company's Base Revenues (the "Franchise Fee") for the
9 preceding month, which amount shall be the total compensation due Town for any and all rights,
10 authority and privileges granted by this Franchise, including compensation for any required
11 permits, parking fees, or any other fee or cost related to the rights granted hereunder. Any
12 Franchise Fees that will be paid to the Town will be collected by the Company from Company's
13 customers in the Franchise Area and passed through to the Town in the manner described herein.
14 The Town expressly acknowledges that no additional or other amounts shall be due or remitted
15 by Company for the exercise of its rights granted hereunder.

16
17 Payment shall be made to Town for each month no later than the twentieth (20th) day of
18 the following month. The monthly payment shall be made by wire transfer. Any monthly
19 payment or any portion thereof made twenty (20) days after the due date without good cause
20 shall be subject to interest at the rate of ten percent (10%) per annum.

21
22 (B) Only disputed amounts shall be allowed to be withheld by Company, and any
23 such amount shall not accrue any interest during the pendency of any such dispute.

24
25 (C) The Town acknowledges that all classifications and categories of retail customers
26 of Company shall be subject to the payment of the Franchise Fee due hereunder.

27 28 **SECTION 7 - Favored Nations**

29
30 (A) In the event Grantee shall hereafter accept an electric utility franchise ordinance
31 from any municipality providing for the payment of a franchise fee in excess of that provided for
32 in Section 6 above, Grantee shall notify Grantor, and Grantor reserves the right to amend this
33 Franchise to increase the Franchise Fee payable under this Ordinance to no more than the greater
34 franchise fee that Grantee has agreed to pay to such other municipality. Grantee's obligation to
35 pay such greater franchise fee to Grantor shall apply prospectively beginning with the next
36 monthly Franchise Fee payment following Grantor's timely notice of its exercise of its
37 amendment right to which Grantee may collect such increased franchise fee from its customers.
38 Grantee's failure to notify Grantor of such additional payments does not limit Grantor's right to
39 amend to require such additional franchise fees.

40
41 (B) It is the intent and agreement of Grantor and Grantee that should applicable laws
42 change to expressly prohibit Company from being the sole Electric Utility allowed to use and
43 occupy the Rights of Way, Grantee shall not be required to pay Grantor a franchise fee under

1 Section 6 of a percentage greater than that paid to Grantor by any other Electric Utility or
2 Electric Energy Provider utilizing Grantor's Rights of Way on such Electric Utility's or Electric
3 Energy Provider's revenues attributable to services that are the same or substantially the same as
4 those performed by Grantee. It is further the intent and agreement of Grantor and Grantee that
5 Grantee should not be placed at a competitive disadvantage by the payments required by Section
6 6 of this Ordinance in the event other Electric Utilities or Electric Energy Providers provide
7 services in competition with Grantee without utilizing Grantor's Rights of Way.
8

9 (C) In the event applicable laws change to expressly prohibit Company from being the
10 sole Electric Utility allowed to use and occupy the Rights of Way, and if Grantor imposes a
11 lesser fee, no fee, or is unable to impose a fee on another Electric Utility or Electric Energy
12 Provider providing or seeking to provide services in competition with Grantee to customers
13 within Grantor's municipal boundaries, whether utilizing Grantor's Rights of Way or not
14 utilizing Grantor's Rights of Way, Grantee's Franchise Fee under Section 6 for such services
15 shall be automatically reduced to the lesser fee charged the other Electric Utility or Electric
16 Energy Provider (or to zero (0), if no fee is charged such other Electric Utility or Electric Energy
17 Provider). In all events, Town shall not grant more favorable treatment to other Electric Energy
18 Providers than is granted to Company under this Ordinance; it being the intent of the parties that
19 no future provider of electric service, be it generation, transmission or distribution service, to
20 customers within the corporate limits of Town shall be given a competitive advantage over
21 Company.
22

23 **SECTION 8 - Grantor Rights**

24

25 The right is hereby reserved to the Town to adopt such regulations as it shall find
26 necessary in the exercise of its police power, provided that such regulations, by ordinance or
27 otherwise, shall be reasonable, shall not be in conflict with the laws of the State of Florida or the
28 lawful regulations of any state agency possessing the power to regulate the activities of the
29 Company, and shall not conflict with or otherwise interfere with the benefits conferred on the
30 Company hereunder. In the event of a conflict between this Ordinance and any other ordinance
31 or regulation adopted by the Town or actions (or inactions) of the Town relating to Company's
32 rights to perform work in and/or occupancy of the Rights of Way as permitted hereunder, the
33 rights under this Ordinance shall govern and control. In the event of such conflict, the Town and
34 Company agree to work together in good faith to address and resolve such conflict; provided,
35 however, that Company shall be permitted to continue to exercise the rights granted herein
36 during the resolution of any conflict.
37

38 **SECTION 9 - Work in Rights of Way**

39

40 The Company is hereby granted the right, authority and privilege to perform all necessary
41 work and excavations in said Rights of Way of the Town related to its Facilities and necessary or
42 incidental to carrying out such rights and obligations as permitted hereunder. The Company shall
43 have the right to fasten, stretch and lay along the lines of said poles, conduits, pipes and cables

1 necessary for transmitting and conveying the electric current to be used in the Company's
2 business, together with all the rights and privileges necessary or convenient for the full use
3 including the right to trim, cut, remove and keep clear all trees and limbs near or along
4 Company's Facilities that may in any way endanger the proper operation or access of same.
5 Moreover, the Company shall have the right to construct, erect, operate and maintain within the
6 Town an electric system consisting of its Facilities for carrying on the Company's business;
7 provided that, in accomplishing these purposes, the streets of said Town shall not be
8 unnecessarily obstructed for an unreasonable amount of time and work in connection therewith
9 shall be done and carried on in conformity with such reasonable rules, standards, regulations and
10 local ordinances with reference thereto as may be adopted by the Town for the protection of the
11 public and which are not in conflict with or otherwise interfere with the benefits conferred on the
12 Company hereunder.

13 14 **SECTION 10 - Indemnification**

15
16 (A) The acceptance of this Franchise by Company shall be deemed an agreement on
17 the part of Company to indemnify Town and hold it harmless from and against any and all direct
18 damages, claims, expenses, reasonable attorneys' fees (including appellate fees) and costs
19 incurred by the Town arising out of the death of or bodily injury to any person, or the destruction
20 of or damage to any property and caused by the negligence or willful misconduct of Company,
21 its contractors and agents in the construction, repair, operation, or maintenance of its electric
22 utility Facilities hereunder. Company shall not be required to indemnify and hold harmless Town
23 for any damages, claims, expenses, reasonable attorneys' fees and costs arising out of or
24 resulting from the negligence or willful misconduct of Town, its employees, contractors and/or
25 agents. In no event shall Company be liable to Town for any consequential, incidental, punitive,
26 exemplary, multiple, or indirect damages, lost profits or other business interruption damages, by
27 statute, in tort (including negligence or strict liability), in contract, or under any indemnity
28 provision or otherwise.

29
30 (B) Company shall maintain throughout the term of this Franchise sufficient financial
31 resources to provide self-insurance insuring Town and Company with regard to all damages set
32 forth in Section 10 (A) in the minimum amounts of:

- 33 (i) \$1,000,000 for bodily injury or death to a person;
34 \$3,000,000 for bodily injury or death resulting from any one accident;
35 (ii) \$50,000 for property damage resulting from any one accident; and
36 (iii) \$1,000,000 for all other types of liability.

37 (C) Town acknowledges that Company provides its own liability insurance
38 (self-insured).

39 40 **SECTION 11 - Records and Reports**

41
42 (A) Company Rules and Regulations. The following documents shall be available to
43 Town upon Town's reasonable request: copies of rules, regulations, and procedures adopted by

Company that relate to Company's use of Town's Rights of Way.

(B) Accounting. Company shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by the Florida Public Service Commission or such other applicable governing agency having jurisdiction over Company, as determined by Company.

(C) Reports. Company will submit monthly a statement of its estimated Base Revenues for the period on which such payment is based. The acceptance of any statement or payment shall not prevent the Town from asserting that the amount paid is not the amount due, or from recovering any deficit by any lawful proceeding, including interest to be applied at the rate set forth in Section 6 (A).

(D) Availability of Records and Reports. Company shall supply information that Town or its representatives may from time to time reasonably request relative to the calculation of Franchise Fees, subject to the Company's obligation to keep certain records confidential. Such records shall, on written request of Town, be open for examination and audit by Town and Town's representatives at Company's headquarters in St. Petersburg, Florida, during ordinary business hours and such records shall be retained by Company for a period of three (3) years.

(E) Audit. Town may require an audit of Company's books related to this Ordinance upon prior written notice and during Company's normal business hours not more than once every three (3) years and then only for the preceding three (3) years. Company will reimburse Town's audit costs if the audit identifies errors in Company's Franchise Base Revenues of five percent (5%) or more for the period audited. If an underpayment of Franchise Fees has occurred due to the Company's error, interest will be calculated at the rate of ten percent (10%) per annum. Both the underpayment and interest shall be paid within ninety (90) days from completion of the audit.

(F) Customer Report. In addition to Town's obligations in Section 4 (B), within ninety (90) days of the Effective Date of this Ordinance, Town shall provide to Company a report in a format acceptable to Company setting forth a list containing the new or removed street names, known street name aliases, street addresses, street address number ranges, and applicable directional and zip codes associated with each street name. Town shall annually thereafter provide a report identifying any changes to the address listing provided the previous year. For a range of street address numbers located within Town which consists only of odd or even street numbers, the list must specify whether the street numbers in the range are odd or even.

SECTION 12 - Retail Wheeling

In the event the appropriate governmental authorities authorize Retail Wheeling, then either party, if Adversely Affected thereby, may reopen this Ordinance upon thirty (30) days written notice to the other for the sole purpose of addressing the Franchise Fee payments

1 between Company and the Town. If the parties are unable to agree within ninety (90) days of
2 reopening, either party may declare an impasse and may file an action in the Circuit Court in
3 Pinellas County, Florida for declaratory relief as to the proper Franchise Fee in light of Retail
4 Wheeling.
5

6 **SECTION 13 – Severability**

7

8 Should any section or provision of this Ordinance or any portion thereof, the deletion of
9 which would not adversely affect the receipt of any material benefits or, substantially increase
10 the burden of any party hereunder, be declared by a court of competent jurisdiction to be invalid,
11 such decision shall not affect the validity of the remainder, as a whole or any part thereof, other
12 than the part declared to be invalid. In the event of any such partial invalidity, Town and
13 Company shall meet and negotiate in good faith to obtain a replacement provision that is in
14 compliance with the judicial authority's decision.
15

16 **SECTION 14 - Governing Law and Venue**

17

18 (A) This Ordinance shall be construed and interpreted according to the laws of the
19 State of Florida.
20

21 (B) In the event that any legal proceeding is brought to enforce the terms of this
22 Ordinance, the same shall be brought in the appropriate state court in Pinellas County, Florida,
23 or, if a federal claim, in the U.S. District Court in and for the Middle District of Florida, Tampa
24 Division.
25

26 **SECTION 15 – Merger**

27

28 This Ordinance is the full, complete and entire understanding and agreements of the
29 parties as to its subject matter, and the written terms supersede all prior contemporaneous
30 representations, discussions, negotiations, understanding and agreements relating to the subject
31 matter of this agreement. The parties shall not be bound or liable for any statement, prior
32 negotiations, correspondence, representation, promise, draft agreements, inducements, or other
33 understanding of any kind or nature not set forth or provided herein.
34

35 **SECTION 16 – Notices**

36

37 Except in exigent circumstances, all notices by either Town or Company to the other
38 shall be made by depositing such notice in the United States Mail, Certified Mail return receipt
39 requested, or by recognized commercial delivery with delivery receipt requested (e.g., FedEx,
40 UPS or DHL). Any such notice shall be deemed to have been given when received by the
41 recipient based on the delivery receipt. All notices shall be addressed as follows:
42

43 To Town:

To Company:

Town Clerk
105 164th Ave
Redington Beach, FL 33708
Phone: (727) 391-3875

Government & Community Relations Dept.
Duke Energy
299 1st Street North – FL163
St. Petersburg, FL 33701
Phone: (727) 820-5474

SECTION 17 - Non-Waiver Provision

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

SECTION 18 - Repealer and Superseding Provision

This Ordinance shall supersede, as to the rights, privileges, and obligations between Town and Company, all ordinances and parts of ordinances in conflict with the terms of this Ordinance. Ordinance No. 10-09 and any amendments thereto, are hereby deemed null and void and/or repealed upon the effective date of this Ordinance and none of the provisions of such repealed Ordinance No. 10-09 and any amendments thereto shall have any further force and effect.

SECTION 19 - Dispute Resolution

The parties to this Ordinance agree that it is in each of their respective best interests to avoid costly litigation as a means of resolving disputes which may arise hereunder. Accordingly, the parties agree that prior to pursuing their available legal remedies they will meet in an attempt to resolve any differences. If such informal effort is unsuccessful, then the Parties may exercise any of their available legal remedies.

FIRST READING AND PUBLIC HEARING: 2020.

SECOND READING, ADOPTION, AND PUBLIC HEARING: 2020.

ATTEST:

Missy Clarke, CMC Town Clerk

James "Nick" Simons, Mayor

1 Approved as to form and legality
2 for the use and reliance of the
3 Town of Redington Beach, Florida, only.
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Jay Daigneault, Town Attorney
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11

Catherine S. Stempien, State President
12 Duke Energy Florida, LLC