



**TOWN OF REDINGTON BEACH
BOARD REGULAR MEETING AGENDA
Wednesday, July 7, 2021
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 Skjoldager
Public Works/Parks	Commissioner Cariello
Finance	Vice Mayor Dorgan
Mayor	
Town Clerk	
Attorney Eschenfelder	
Boards & Committees	
Library Report	
- 7. CONSENT AGENDA**
 - A. Board Regular Meeting Minutes, June 16, 2021**
 - B. Bill List for Day Ending July 2, 2021**
- 8. UNFINISHED BUSINESS**
 - A. Final Reading: Ordinance 2021-04: An Ordinance of the Town of Redington Beach, Florida, Amending Chapter 22, (Utilities) of the Town code to Remove Outdated, Preempted, or Unenforceable Provisions and to Incorporate Current State and Federal Law Requirements and Town Practices; Making Related Findings; Providing for Codification, Severability, and an Effective Date.**
 - B. Final Reading: Ordinance 2021-08: An Ordinance of the Town of Redington Beach, Florida Amending Chapter 20 (Taxes) of the town Code to Remove Outdated, Preempted, or Unenforceable Provisions and to Incorporate Current State and Federal Law**



Requirements; Making Related Findings; Providing for Codification, Severability, and an Effective Date.

- C. Final Reading: Ordinance 2021-09: An Ordinance of the Town of Redington Beach, Florida, Amending Chapter 19 (Streets, Sidewalks, and other Public Ways) of the Town Code to Remove Outdated, Preempted, or Unenforceable Provisions and to Incorporate Current State and Federal Law Requirements; Making Related Findings; Providing for Codification, Severability, and an Effective Date.**
- D. Final Reading: Ordinance 2021-10: An Ordinance of the Town of Redington Beach, Florida Amending 13-32 of the Town Code (Vehicles on the Beaches) to Prohibit the Operation of Electric Bicycles on the Town's Beaches; Providing for Codification, Severability, and for an Effective Date.**

9. NEW BUSINESS

- A. Planning Board Appointment (1)**
- B. Board of Adjustment Appointment (2)**
- C. Ordinance 2021-07: An Ordinance of the Town of Redington Beach, Pinellas County, Florida, Amending Chapter 6 (Buildings and Building Regulations), Section 6-65, and Amending Article VII, (Mechanical Code), Including Sections 6-208 and 6-209, of the Town Code to Reconcile said Sections and to Remove Conflicting Provisions, to Reflect the Town's Actual Experience with the Construction of Regulated Mechanical Fixtures, to Make Related Changes; and to Remove Outdated, or Unenforceable Provisions, Making Related findings; Providing for Severability, and Establishing an Effective Date.**
- D. Ordinance 2021-11: An Ordinance of the Town of Redington Beach, Pinellas County, Florida, Repealing in Part, Section 4 of Appendix A, of the Town Code Establishing a Fire Rating Requirement for Certain Walls and Requiring a Minimum Story Height, Making Related Findings; Providing for Severability; and Establishing an Effective Date.**
- E. Ordinance 2021-12: An Ordinance of the Town of Redington Beach, Pinellas County, Florida, Amending Town Code, Section 6-289 (f) by Clarifying the Circumstances in, and the Procedures by, Which a De Minimis or Administrative Variance may be Granted by the Building Code Administrator, Providing for Severability; and Establishing 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, June 16, 2021
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, June 16, 2020, 6:30 p.m.**, in Redington Beach Town Hall at 105 164th Avenue, Redington Beach Florida.

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

Roll Call

	Present	Absent
Commissioner Cariello	X	
Commissioner Kornijtschuk	X	
Commissioner Skjoldager	X	
Vice Mayor Dorgan	X	
Mayor Will	X	
Town Attorney Eschenfelder	X	
Town Clerk Clarke	X	

Approval of Agenda: A motion by Commissioner Kornijtschuk and seconded by Commissioner Cariello to approve the agenda as presented. No public comment. Motion passed with all ayes.

Public Forum: **Hayward Chapman, 15910 Gulf Blvd**, would like to see the town form a committee and have the committee review the codes to reduce some of the litigation in town.

Reports:

Public Safety

- Spoke with Captain Leiner regarding Safety Day in October and he is lining up vehicles to have at the event. Also, Duke Energy has committed \$2,500.00 towards the event to purchase bracelets, snow cones, etc.

Building/Code

- First draft of a checklist for permitting to streamline the process is completed.

Public Works/Parks

- The park board is looking at finishing some small projects, such as the electrical and light poles in Town Park. They are also looking to replace the playground equipment in the fiscal year 2024/2025.

Finance

- Nothing to Report.

Mayor

- Want to Thank Santa's Angels for the Movie night in the park. Red tide is being addressed by the county and a dumpster will be at beach park as part of the cleanup.

Town Clerk

- Nothing to Report.

Town Attorney

- Nothing to Report.

Boards and Committees

- Nothing to Report.

Library Board

- A meeting was held on the 7th and the Covid 19 policies have been rescinded and the library is now open. A new A/C unit has been installed, new plantings, new stripping for ADA, 10 new computers are installed. Painting on the inside and outside of the building is in the works. The next meeting is to be held on July 26th and one is planned for August 23rd.

CONSENT AGENDA

A. Board Regular Meeting Minutes, June 2, 2021

B. Bill list ending for Day Ending June 11, 2021.

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

UNFINISHED BUSINESS

- A. Stormwater System Maintenance Project:** The Request for Proposal (RFP) has been completed by the town attorney. It calls for it to be uploaded to DemandStar on June 17th, and final bids to be delivered by 3:00 p.m. on July 9th. One item to be added is the budget the town has for this project. The recommendation of Vice Mayor Dorgan is to keep \$225,000.00 in the reserves, therefore, with using \$500,000.00 in the reserves, using monies from Pennies for Pinellas, and the operating account, he is comfortable in recommending a budget of \$780,000.00. A motion by Commissioner Cariello and seconded by Commissioner Kornijtschuk to authorize the draft RFP with a budget of \$780,000.00. A question was asked regarding the budget by Evan Soileau, 16107 Gulf Blvd. Roll call vote was taken and motion passed with all ayes.

	Motion	Second	Aye	Nay	Absent
Commissioner Cariello	X		X		
Commissioner Kornijtschuk		X	X		
Commissioner Skjoldager			X		
Vice Mayor Dorgan			X		
Mayor Will			X		

NEW BUSINESS

- A. First Reading: Ordinance 2021-009: An Ordinance of the Town of Redington Beach, Florida, Amending Chapter 19, (Streets, Sidewalks and Other Public Ways) of the Town Code to Remove Outdated, Preempted, or Unenforceable Provisions and to Incorporate Current State and Federal Law Requirements; Making Related Findings; Providing for Codification, Severability, and an Effective Date.** Attorney Eschenfelder read the ordinance by title only. A motion by Commissioner Kornijtschuk and seconded by Commissioner Cariello to adopt the ordinance on its first reading. This is a rewrite of the town code and includes the existing code for swales. Questions were asked of the attorney regarding section 19-10 (a) (c), 19-11 (a), €, 19-12 (b) (c). The attorney will address these concerns prior to the final reading. No public comment. Roll call vote was taken and the ordinance passed on its first reading.

	Motion	Second	Aye	Nay	Absent
Commissioner Cariello		X	X		
Commissioner Kornijtschuk	X		X		
Commissioner Skjoldager			X		
Vice Mayor Dorgan			X		
Mayor Will			X		

- B. First Reading: Ordinance 2021-10: An Ordinance of the Town of Redington Beach, Florida, Amending 13-32 of the Town Code (Vehicles on the Beaches) to Prohibit the Operation of Electric Bicycles on the Town's Beaches; Providing for Codification, Severability, and for an Effective Date.** Attorney Eschenfelder read the ordinance by title only. A motion by Commissioner Kornijtschuk and seconded by Commissioner Cariello to adopt the ordinance on its first reading. This ordinance will prevent electric bicycles on the beach. Public comment was made by John Miller, 15654 1st Street, Evan Soileau, 16107 Gulf, and Leslie Wilkins, 505 161st Street, and Tim Thompson, 205 162nd Avenue. Town attorney will address these items before final reading. Roll call vote was taken and motion passed with all ayes.

	Motion	Second	Aye	Nay	Absent
Commissioner Cariello		X	X		
Commissioner Kornijtschuk	X		X		
Commissioner Skjoldager			X		
Vice Mayor Dorgan			X		
Mayor Will			X		

- C. Appointment to Finance Committee:** There is a current opening on the finance committee and the clerk received two applications from John Miller and Sue Ferenc to fill the position. John Miller was present, but chose not to speak. Sue Ferenc spoke of her Phd in economics and how she could be an asset to the committee with her experience

in risk management and grant writing. A motion by Commissioner Skjoldager and seconded by Vice Mayor Dorgan to appoint John Miller to the finance committee. Motion failed with Commissioners Cariello and Kornijtschuk voting no along with Mayor Will. A motion by Commissioner Kornijtschuk and seconded by Commissioner Cariello to appoint Sue Ferenc to the finance committee. Motion passed with a majority by roll call vote.

	Motion	Second	Aye	Nay	Absent
Commissioner Cariello		X	X		
Commissioner Kornijtschuk	X		X		
Commissioner Skjoldager				X	
Vice Mayor Dorgan			X		
Mayor Will			X		

Other Business

With no further business, a motion was made by Commissioner Kornijtschuk and seconded by Commissioner Cariello to adjourn. Regular meeting was adjourned at 7:30 p.m.

Adopted: June , 2021

Missy Clarke, CMC, Town Clerk

6/28/2021

9908 PAYROLL
9909 PAYROLL
9910 PAYROLL
9911 PAYROLL

2,338.83
1,420.03
1,461.29
1,042.41

6,262.56

MAYOR WILL

COMMISSIONER KORNIJTSCHUK

COMMISSIONER SKJOLDAGER

VICE MAYOR DORGAN

ATTEST:

COMMISSIONER CARIELLO

Missy Clarke, CMC, Town Clerk

Regular Meeting of July 6, 2021

Date: 07/02/2021
Time: 9:57 am
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Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
Fund: 101 General Fund							
Dept: 512 Town Clerk							
101-512-512.230	Group Insurance FLORIDA MUN INSURANCE	2021-07-02	July 2021	0	07/02/2021	07/02/2021	802.73
							802.73
101-512-512.231	Life Insurance FLORIDA MUN INSURANCE	2021-07-02	July 2021	0	07/02/2021	07/02/2021	9.75
							9.75
101-512-512.232	Dental Insurance FLORIDA MUN INSURANCE	2021-07-02	July 2021	0	07/02/2021	07/02/2021	64.15
							64.15
101-512-512.410	Telephone BRIGHT HOUSE NETWORKS	056775401060921	6/8/21-7/7/21	0	06/09/2021	06/09/2021	199.96
							199.96
101-512-512.411	Internet Services BRIGHT HOUSE NETWORKS	056775401060921	6/8/21-7/7/21	0	06/09/2021	06/09/2021	142.97
							142.97
101-512-512.480	Promotion/Public KONA ICE OF SOUTHWEST	210827	SAFETY DAY 10/23/21	0	06/11/2021	06/11/2021	400.00
							400.00
101-512-512.510	Office Supplies APEX OFFICE PRODUCTS	2220764-0	Paper, Lysol wipes, post its	0	06/30/2021	06/30/2021	116.90
	CHASE CARD SERVICES	5302	Comp Plan - Postage,shipping	0	06/16/2021	06/16/2021	417.13
	CHASE CARD SERVICES	ZIN07000493	Carbonite renewal 2021-2022	0	06/23/2021	06/23/2021	119.99
	CHASE CARD SERVICES	2021-07-01	Card interest	0	07/01/2021	07/01/2021	5.13
							659.15
101-512-512.542	Dues & Subscrip FLORIDA GOVERNMENT FIN	2021-07-02	CLARKE dues 2021-2022	0	07/02/2021	07/02/2021	50.00
							50.00
Total Dept. Town Clerk:							2,328.71
Dept: 513 Finance & Admin							
101-513-513.230	Group Insurance FLORIDA MUN INSURANCE	2021-07-02	July 2021	0	07/02/2021	07/02/2021	809.98
							809.98
101-513-513.231	Life Insurance FLORIDA MUN INSURANCE	2021-07-02	July 2021	0	07/02/2021	07/02/2021	9.75
							9.75
101-513-513.232	Dental Insurance FLORIDA MUN INSURANCE	2021-07-02	July 2021	0	07/02/2021	07/02/2021	105.02
							105.02
Total Dept. Finance & Admin:							924.75
Dept: 514 Legal Counsel							
101-514-514.124	Town Attorney TRASK, DAIGNEAULT, LLP A	6077	June 2021 General	0	07/01/2021	07/01/2021	5,267.50
							5,267.50
101-514-514.310	Legislative Coun TRASK, DAIGNEAULT, LLP A	5941	June 2021 Code Revision	0	07/01/2021	07/01/2021	140.00
							140.00
Total Dept. Legal Counsel:							5,407.50

Date: 07/02/2021
Time: 9:57 am
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Town of Redington Beach

Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
Dept: 515 Comprehensive Planning							
101-515-515.310	Planning BRUCE MCLAUGHLIN CONS	2021-07-02	6/11-7/1/2021	0	07/02/2021	07/02/2021	4,104.00
							4,104.00
Total Dept. Comprehensive Planning:							4,104.00
Dept: 521 Law Enforcement							
101-521-521.340	Law Enforcement PINELLAS COUNTY SHERIFF	1007481	July 2021 Law Enf.	0	07/01/2021	07/01/2021	22,479.00
							22,479.00
Total Dept. Law Enforcement:							22,479.00
Dept: 539 Department of Public Works							
101-539-539.230	Group Insurance FLORIDA MUN INSURANCE CO	2021-07-02	July 2021	0	07/02/2021	07/02/2021	1,597.32
							1,597.32
101-539-539.231	Life Insurance - C FLORIDA MUN INSURANCE CO	2021-07-02	July 2021	0	07/02/2021	07/02/2021	19.50
							19.50
101-539-539.232	Dental Insurance FLORIDA MUN INSURANCE CO	2021-07-02	July 2021	0	07/02/2021	07/02/2021	137.03
							137.03
101-539-539.440	P/W Utilities DUKE ENERGY	31525-72269-2021-06-09	5/10-6/9/2021	0	06/09/2021	06/09/2021	78.34
							78.34
Total Dept. Department of Public Works:							1,832.19
Dept: 571 Libraries							
101-571-571.000	Libraries GULF BEACHES PUBLIC LIB	2021-07-01	Q4 FY 20-21	0	06/21/2021	06/21/2021	7,045.67
							7,045.67
Total Dept. Libraries:							7,045.67
Dept: 572 Parks and Recreation							
101-572-572.430	Utilities DUKE ENERGY	54246-18249-2021-07-02	5/10-6/9/2021	0	06/09/2021	06/09/2021	29.48
	DUKE ENERGY	60814-47178-2021-07-02	5/24-6/23/2021	0	06/23/2021	06/23/2021	16.96
	PINELLAS COUNTY UTILITIES	104362637-2021-07-02	4/6-6/4/2021	0	06/15/2021	06/15/2021	18.41
	PINELLAS COUNTY UTILITIES	108164128-2021-07-02	4/6-6/4/2021	0	06/16/2021	06/16/2021	18.50
							83.35
101-572-572.461	Maintenance - Beach Hardware BEACH HARDWARE	191	Flags, poles, tools	0	06/10/2021	06/10/2021	146.32
							146.32
101-572-572.462	Maintenance - Gravel BEACH HARDWARE	191	Flags, poles, tools	0	06/10/2021	06/10/2021	275.52
	HOME DEPOT CREDIT SERVICES	030036/1280768	10 Trash Cans	0	06/30/2021	06/30/2021	329.70
	PIECZONKA TROPHY OF FLA	61660	Gracean plaque	0	06/15/2021	06/15/2021	14.00
							619.22
101-572-572.522	Gasoline & Oil BEACH HARDWARE	191	Flags, poles, tools	0	06/10/2021	06/10/2021	15.67
	CHASE CARD SERVICES	502670	SPEEDWAY Diesel fuel	0	07/01/2021	07/01/2021	39.08
	WEX BANK	534651	Unleaded	0	06/21/2021	06/21/2021	80.90
	WEX BANK	548222	Unleaded	0	06/30/2021	06/30/2021	80.36
							216.01

Date: 07/02/2021
Time: 9:57 am
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Town of Redington Beach

Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
101-572-572.527	Tools & Equipment BEACH HARDWARE	191	Flags, poles, tools	0	06/10/2021	06/10/2021	69.11
							69.11
101-572-572.535	Signage OSBURN ASSOCIATES INC	256790	Galv. U channel - 5	0	07/01/2021	07/01/2021	127.50
							127.50
Total Dept. Parks and Recreation:							1,261.51
Total Fund General Fund:							45,383.33
Fund: 400 Storm Water							
Dept: 535 Storm Water							
400-535-535.548	NPDES Drain Cle PINELLAS COUNTY OFFICE	2021-03-04	FY 20 Ambient Water Monitoring	0	03/04/2021	03/04/2021	940.94
							940.94
400-535-535.800	Storm Drain Repl G.A. NICHOLS COMPANY	21-0405	16026 Redington Dr./Storm box	0	06/15/2021	06/15/2021	6,900.00
							6,900.00
Total Dept. Storm Water:							7,840.94
Total Fund Storm Water:							7,840.94
Grand Total:							53,224.27

ORDINANCE NO. 2021 - 04

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA, AMENDING CHAPTER 22 (UTILITIES) OF THE TOWN CODE TO REMOVE OUTDATED, PREEMPTED OR UNENFORCABLE PROVISIONS AND TO INCORPORATE CURRENT STATE AND FEDERAL LAW REQUIREMENTS AND TOWN PRACTICES; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Redington Beach (the Town) has codified its ordinances over time into a Town Code (the Code) which sets forth the cumulative law of the Town; and

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

WHEREAS, however, many portions of the Code date back to 1980, with other portions of the Code not having been updated for ten or more years; 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 Florida and federal statutory and case law, that they reflect current actual Town operations, and that they do not contain outdated, redundant or erroneous provisions; and

WHEREAS, in light of the foregoing, the Commission has charged the Town Attorney with the task of conducting a complete review of the Town's Code (excluding the Land Development Code) and to bring forward any recommended revisions to the Code which would alleviate any of the aforementioned potential concerns with the Code's current text; and

WHEREAS, the Town Attorney has submitted his assessment of Chapter 22 of the Code concerning utilities, and has recommended that the Commission make the revisions to that Chapter as are set forth in this Ordinance; and

WHEREAS, the Commission has considered the Town Attorney's recommendations and finds them to be consistent with the goals of the Commission; 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.

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

Section 1. Chapter 22 (Utilities) of the Redington Beach Town Code is hereby amended to read as follows:

Chapter 22 – UTILITIES

ARTICLE I. – IN GENERAL

Sec. 22-1. - Damaging sewer system; maintenance of plumbing.

- (a) No person shall injure, break or remove any section of any manhole, lamp hole, flush tank, catch basin or any other part of the town's sewer system, or throw or deposit or cause to be deposited or thrown in any sewer opening or receptacle connecting with the sewer system any garbage, oil, petroleum, chemical, effal, dead animal or human flesh or bone, vegetation, fruits or vegetables, (including parings), ashes, cinders, rags or other matter or thing whatsoever, except feces, urine and the necessary waste toilet paper and liquid, house and mill slops.
- (b) All plumbing, both existing and new, and parts thereof, shall be maintained in a safe and sanitary condition. All devices or safeguards which are required by this Code shall be maintained in good working order. The owner or his designated agent shall be responsible for the maintenance of plumbing. If a stoppage or blockage occurs anywhere between the sanitary sewer connection to the lateral and the building, it shall be the responsibility of the owner or occupant to have the stoppage or blockage removed at the owner's or occupant's expense.
- (c) If any breakage, malfunction or damage shall occur in the town sewer lateral which is not caused by negligence on the part of the owner or occupant, the town shall cause repairs or replacement to be made to the sewer lateral.
- (d) If a question arises as to responsibility as stated in this section, it shall be resolved by the public works commissioner.
- (e) If the property owner or occupant is aggrieved by the decision of the public works commissioner under this section, ~~such aggrieved person~~ he shall have the right to appeal the decision to the board of commissioners, and the decision of the board shall be final and binding.

Sec. 22-2. - Grease traps.

Restaurants, garages and similar establishments shall maintain proper grease traps for the removal of greases, fumes and gaseous matter of any nature from sewage before disposal of the sewage into the sewer system.

Sec. 22-3. - Permit for connection to sanitary sewer system.

All persons connecting property with the sanitary sewer system of the town shall make application for and secure a permit before the connection is made.

Sec. 22-4. - Rates for sewer service.

Rates for sewer service within the town shall be those established from time to time by the board of commissioners and on file in the town clerk's office.

Sec. 22-5. - Owner's liability.

- (a) Liability for sewer service shall begin on the date the user is connected to the town's sewer main, in accordance with the provisions of this chapter.
- (b) Billing for sewer service shall be commenced and continued without regard to actual occupancy of any unit or structure and without regard to frequency or actual use of the sewer system.

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 _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____,

2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

David Will, Mayor

Attest:

Missy Clarke, CMC, Town Clerk

	Motion	Second	Aye	Nay	Absent
Commissioner Cariello					
Commissioner Kornijtschuk					
Commissioner Skjoldager					
Vice Mayor Dorgan					
Mayor Will					

ORDINANCE NO. 2021 - 08

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA, AMENDING CHAPTER 20 (TAXES) OF THE TOWN CODE TO REMOVE OUTDATED, PREEMPTED OR UNENFORCABLE PROVISIONS AND TO INCORPORATE CURRENT STATE AND FEDERAL LAW REQUIREMENTS; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Redington Beach (the Town) has codified its ordinances over time into a Town Code (the Code) which sets forth the cumulative law of the Town; and

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

WHEREAS, however, many portions of the Code date back to 1980, with other portions of the Code not having been updated for ten or more years; 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 Florida and federal statutory and case law, that they reflect current actual Town operations, and that they do not contain outdated, redundant or erroneous provisions; and

WHEREAS, in light of the foregoing, the Commission has charged the Town Attorney with the task of conducting a complete review of the Town's Code (excluding the Land Development Code) and to bring forward any recommended revisions to the Code which would alleviate any of the aforementioned potential concerns with the Code's current text; and

WHEREAS, the Town Attorney has submitted his assessment of Chapter 20 of the Code concerning taxes, and has recommended that the Commission make the revisions to that Chapter as are set forth in this Ordinance; and

WHEREAS, the Commission has considered the Town Attorney's recommendations and finds them to be consistent with the goals of the Commission; 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.

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

Section 1. Chapter 20 (Taxes) of the Redington Beach Town Code is hereby amended to read as follows:

Chapter 20 - TAXATION

ARTICLE I. - IN GENERAL

Sec. 20-1. - Homestead exemption for persons 65 and older.

- (a) The Town of Redington Beach, Florida, acting by and through its town commission by the authority of the provisions of the Charter of the Town of Redington Beach, Florida, and by the authority of Florida -Statutes- § 196.075, hereby grants an additional homestead exemption in the amount of \$25,000.00 for persons 65 years and older, whose household income does not exceed the amount established by Florida -Statutes- § 196.075.
- (b) The income limitation shall be adjusted annually on January 1 by the percentage change in the average cost of living index in the period January 1 through December 31 of the immediate prior year, compared with the same period for the year prior to that year, in accordance with Florida -Statutes- § 196.075(3).
- (c) The exemption applies only to taxes levied by the Town of Redington Beach, Florida.
- (d) Qualifying taxpayers claiming this exemption must submit to the property appraiser a sworn statement of household income on a form prescribed by the department of revenue, no later than March 1 of each year an exemption is claimed.
- (e) The statement of household income must be supported by copies of federal income tax returns for the prior year, wage and earning statements (W-2 forms), any request for an extension of time to file returns, and any other documents necessary for review by the department of revenue, for each member of the household, to be submitted for inspection by the property appraiser.
- (f) The taxpayer's sworn statement shall attest to the accuracy of the documents and grant permission to allow a review of the document if requested by the property appraiser.
- (g) Submission of supporting documentation is not required for the renewal of an exemption under Florida -Statutes- § 196.075, unless such documentation is requested by the property appraiser.

Sec. 20-2. - Fire insurance premium tax.

- (a) Pursuant to Florida Statutes § 175.101, there is hereby assessed, imposed and levied on every insurance company, corporation or other insurer now engaging in or carrying on, or which shall hereafter engage in or carry on the business of insuring with respect to property insurance, as shown by the records of the department of financial services, an excise or license tax in addition to any license tax or excise now levied by the Town of Redington Beach, which said tax shall be in the amount of 1.85 percent of the gross amount of receipts of premiums from policy holders on all premiums collected on property insurance policies, covering property within the corporate limits of the Town of Redington Beach.
- (2) The excise tax provided for in this section shall be payable and collected in the manner provided for by state law providing for the creation and administration of a firefighter's pension fund.

ARTICLE II. - PUBLIC SERVICE TAX

~~Sec. 20-26. - Penalty for violation of article.~~

~~Any purchaser willfully failing, refusing or neglecting to pay the tax imposed and levied by this article, where the seller has not elected to assume and pay such tax, and any seller willfully violating the provisions of this article or any officer, agent or employee of any seller violating the provisions of this article shall, upon conviction, be punished as provided in section 1-14.~~

Sec. 20-27. - Levy.

- (a) There is hereby levied and imposed by the town, on each and every purchase of electricity, in the corporate limits of the town, a tax in the amount of 7½ percent of the payment received by the seller of such utility service. There is hereby levied and imposed by the town on each and every purchase of fuel oil in the corporate limits of the town a tax in the amount of \$0.02 per gallon of fuel oil delivered. The tax in every case shall be collected from the purchaser of such utility service and paid by such purchaser for the use of the town to the seller of such utility service at the time of the purchaser paying the charge therefor to the seller, but not less often than monthly, commencing upon the effective date of this article.
- (b) There is hereby levied and imposed by the town, on each and every purchase of metered or bottled fuel oil in the corporate limits of the town a tax in the amount of \$0.02 per gallon of fuel oil delivered. For purposes of this section, the term "fuel oil" shall mean liquefied petroleum gas and manufactured gas, as those terms are used in Florida Statutes § 166.231(1)(a). ~~on each and every purchase of local telephone service, as defined in F.S. § 203.012(3), a tax in the amount of five percent of the monthly recurring customer service charges, excluding public telephone charges collected on site, access charges and any customer access line charge paid to a local telephone company.~~
- (c) Pursuant to Florida Statutes § 166.231(1)(a), ~~There is hereby levied a seven percent tax on the purchase of metered natural gas telecommunications service within the town which originates and terminates in this state, excluding public telephone charges collected on site, access charges, and any customer access line charges paid to a local telephone company. This tax shall be governed by the provisions set forth in F.S. § 166.231 and the applicable sections and subsections of F.S. § 203.01.~~
- (d) The taxes imposed by subsection (a) of this section shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. For purposes of this section, fuel adjustment charge means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.
- (e) Services competitive with those enumerated in this section ~~or section 20-29, as defined by ordinance,~~ shall be taxed on a comparable basis at the same rates. The maximum rate allowed for fuel oil taxed at a rate of ten percent shall be \$0.04 per gallon, and, therefore, the maximum tax on fuel oil levied in this section shall bear the same proportion to \$0.04 which the tax rate levied under this section bears to the maximum rate allowable which is ten percent.

Sec. 20-28. - Exemptions.

The United States of America, the state and the political subdivisions and agencies, boards, commissions and authorities thereof, school districts, and county and municipal governments, are hereby exempted from payment of the tax imposed and levied by this article upon the services used by such governmental agencies.

~~Sec. 20-29. -- Maximum tax on telephone service.~~

~~The tax imposed and levied by this article upon purchases within the town of local telephone service, as defined in F.S. § 203.012(3) shall be at a rate not to exceed ten percent of the monthly recurring customer service charges, excluding public telephone charges collected on site, access charges and any customer access line charges paid to a local telephone company.~~

Sec. 20-30. - Collection from purchaser.

Pursuant to Florida Statutes § 166.231(7), the tax established by § 20-27 shall be collected by the seller of the taxable item from the purchaser at the time of the payment for such service, which collection shall be conducted ~~It shall be the duty of every seller of local telephone service, electricity, bottled gas, fuel oil and water service, in acting as the tax collection medium or agency for the town, to collect from the purchaser, without any cost or charge to the town, for the use of the town, The taxes established by § 20-27 shall be imposed and levied by this article at the time of collecting the purchase price charged for each transaction, and to reported and paid over to the town on or before the 15th day of each calendar month which have been unto the town all such taxes imposed, levied and collected during the preceding calendar month.~~ It shall be unlawful for any seller of such utility service to collect the price of any sale of local telephone service, electricity, bottled gas, fuel oil and metered natural gaswater service without at the same time collecting the tax imposed and levied by this article in respect to such purchase unless such seller shall elect to assume and pay such tax without collecting the tax from the purchaser. Any seller failing to collect such tax at the time of collecting the price of any purchase where the seller has not elected to assume and pay such tax shall be liable to the town for the amount of such tax in like manner as if the tax had been actually paid to the seller, and the board of commissioners shall cause to be brought all suits and actions and take all proceedings in the name of the town as may be necessary for the recovery of such tax; provided, however, that the seller shall not be liable for the payment of such tax upon uncollected charges. If any purchaser shall fail, neglect or refuse to pay the tax imposed and levied by this article to the seller at the time of sale, the seller shall have and is hereby vested with the right, power and authority to immediately discontinue further service to such purchaser until the tax shall have been paid in full, except for local telephone service, which is regulated by Florida Statutes.

Sec. 20-31. - Records of purchases.

Each and every seller of local telephone service, electricity, bottled gas, fuel oil and metered natural gaswater service shall keep complete records showing all purchases in the town of such service, which records shall show the price charged upon each purchase, the date thereof and the date of payment thereof. Such records shall be kept open for inspection by the duly authorized

agents of the town during business hours on all business days, and the agents of the town shall have the right, power and authority to make such transcripts thereof during such time as they may desire.

Sec. 20-32. - Computation.

- (a) In all cases where the seller of ~~local telephone service~~, electricity, bottled gas, fuel oil and metered natural ~~gas~~water service collects the price thereof at monthly periods, the tax imposed and levied by this article may be computed on the aggregate amount of purchases during such monthly period; provided that the amount of the tax to be collected shall be the nearest whole cent to the amount computed.
- (b) Where the seller of any of the services listed in this section collects for the purchases for any period less than one month or longer than one month, then such seller shall collect the tax imposed by this article for the period actually covered by the seller's collection practice, and shall remit the tax to the town on the 15th day of the month following the actual collection for such purchases.

Sec. 20-33. - Applicability to transactions occurring partly within town.

The purchase of ~~local telephone service~~, electricity, bottled gas, fuel oil and metered natural ~~gas~~water service upon which a tax is imposed and levied by this article shall embrace and include any part of the transaction or purchase occurring within the corporate limits of the town, whether the transaction or purchase is the entering into a contract for the purchase of any such utility service or otherwise.

Sec. 20-34. - Duration.

This article shall not be repealed so long as there are outstanding and unpaid any of the principal of or interest on any service or other obligations issued in anticipation of collection of revenues under this article secured by such revenues, nor shall this article be amended or modified in any manner so as to impair or adversely affect in any manner any pledge of the revenues under this article or the rights of any holders of such certificates or obligations issued in anticipation of the collection of such revenues under this article.

Sec. 20-35. - Penalty for violation of article.

Any purchaser willfully failing, refusing or neglecting to pay the tax imposed and levied by this article, where the seller has not elected to assume and pay such tax, and any seller willfully violating the provisions of this article or any officer, agent or employee of any seller violating the provisions of this article shall, upon conviction, be punished as provided in section 1-14.

~~Sec. 20-35. - Fire insurance premium tax.~~

- ~~(a) There is hereby assessed, imposed and levied on every insurance company, corporation or other insurer now engaging in or carrying on, or which shall hereafter engage in or carry on the business of insuring with respect to property insurance, as shown by the records of the department of financial services, an excise or license tax in addition to any license tax or excise now levied by the Town of Redington Beach, which said tax shall be in the amount of 1.85 percent of the gross amount of receipts of premiums from policy holders on all premiums collected on property insurance policies, covering property within the corporate limits of the Town of Redington Beach.~~
- ~~(2) The excise tax provided for in this section shall be payable and collected in the manner provided for by state law providing for the creation and administration of a firefighter's pension fund.~~

ARTICLE III. - BUSINESS TAX

Sec. 20-55. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business means all kinds of vocations, occupations, professions, enterprises, establishments and all other kinds of activities and matters, together with all devices, machines, vehicles and appurtenances used therein, any of which are conducted for private profit or benefit, either directly or indirectly, on any premises in the town, or anywhere else within the town's jurisdiction, any business activity in which any person maintains a permanent business location or branch office within the town for the privilege of engaging in or managing business within the town, or any business activity in which any person not maintaining a permanent business location or branch office within the town transacts any business in the town except a person engaging in those activities upon which a business tax is prohibited by United States Constitution, Art. I, § [8] or by state statutes. The term does not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in this state, as defined in this § 20-55.

Business tax means the fees charged and the method by which the town grants the privilege of engaging in or managing any business, profession, or occupation within the town's jurisdiction. It does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection, which unless otherwise provided by law, are deemed to be regulatory and in addition to, but not in lieu of, any business tax imposed herein.

Charitable institutions means only nonprofit corporations operating physical facilities in the state at which are provided charitable services, a reasonable percentage of which shall be without cost to those unable to pay.

Educational institutions means state tax-supported or parochial, church and nonprofit private schools, colleges or universities conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Secondary Schools,

department of education or the Florida Council of Independent Schools. Nonprofit libraries, art galleries and museums open to the public are defined as educational institutions and eligible for exemption.

Employee means every person engaged in any business, profession or occupation under any appointment, agency, contract of hire, or apprenticeship, express or implied, oral or written.

Merchandise means any goods, wares or commodities bought or sold in the usual course of trade, wholesale or retail, including necessities, provisions and articles for immediate consumption.

Merchant, retail means any merchant who sells to the consumer or for any purpose other than resale.

Merchant, wholesale means any merchant who sells to another for the purpose of resale. Sales to governmental entities shall be considered wholesale sales.

Occupation means any occupation in which any person maintains a permanent business location or branch office within the town, or any occupation in which any person not maintaining a permanent business location or branch office within the town transacts any business in the town except a person engaging in those activities upon which a business tax is prohibited by United States Constitution, Art. I, § 8 or by state statutes.

Person means any individual, firm, partnership, joint adventure, syndicate or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver or other fiduciary and includes the plural as well as the singular.

Premises means all lands, structures, places, and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is either affixed to or is otherwise used in connection with any such business conducted on such premises.

Profession means any profession in which any person maintains a permanent business location or branch office within the town for the purpose of engaging in or managing any profession within the town, or any profession in which any person not maintaining a permanent business location or branch office within the town transacts any business in the town, except a person engaging in those activities upon which a business tax is prohibited by United States Constitution, Art. I, § 8 or by state statutes.

Receipt means the document that is issued by the town which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is issued has complied with the provisions of this article relating to the business tax.

Religious institutions means, churches and ecclesiastical or denominational organizations, or established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and also church cemeteries.

Sec. 20-56. - Levy of business tax.

(a) There is levied a business tax for the privilege of engaging in or managing any business, profession, or occupation on any person who:

- (1) Maintains a permanent business location or branch office within the town, for the privilege of engaging in or managing any business within its jurisdiction.
- (2) Maintains a permanent business or location or branch office within the town, for the privilege of engaging in or managing any profession or occupation within its jurisdiction.
- (3) Does not qualify under subsection (1) or (2) of this section and transacts any business or engages in any occupation or profession in interstate commerce, if the business tax is not prohibited by the United States Constitution, Art. I, § 8.

(b) For the purpose of this article, any person shall be deemed to be engaging in or managing a business, profession or occupation, and thus subject to the requirements of this article, when on premises in the town that person does one act of:

- (1) Selling any goods or service;
- (2) Soliciting business or offering goods or services for sale or hire;
- (3) Acquiring or using any vehicle or any premises in the town for business purposes;
- (4) Providing any service within the jurisdiction of the town.

Sec. 20-576.1. - Receipt required; exemptions; conditions.

- (a) It shall be unlawful for any person to exercise any of the privileges or carry on or engage in or conduct any of the businesses, occupations or professions specifically enumerated in this article without paying the business tax required by this article in the manner provided or to fail to make reports to the town as required or to violate any other section of this article.
- (b) No business tax shall be required for any business or occupation which is exempt pursuant to Florida Statutes chapter 205.
- (c) As to any business or occupation which is, pursuant to Florida Statutes chapter 205, required to have an active state license prior to issuance of town business, no receipt shall be issued for any such business or occupation until proof of such license is provided to the finance director.
- (d) A business tax receipt is not required of any charitable, religious, fraternal, youth, civic, service, or other similar organization that makes occasional sales or engages in fundraising projects that are performed exclusively by the members, and the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic, and service activities of the organization.
- (e) No business license shall be required of any person for the mere act of delivering into the town any property purchased or acquired in good faith from such person at the person's regular place of business outside the town where no intent by such person is shown to exist to evade the provisions of this article.

Sec. 20-586.2. - Penalty for violation.

Any person who shall, either as a proprietor or agent or otherwise, carry on, conduct or engage in any business, profession or occupation for which a business tax is required under this

~~articleCode or town ordinances~~, without having first obtained such business tax, except when otherwise provided by law, shall be punished as provided in section 1-14, and the amount of any such business tax shall constitute an indebtedness to the town recoverable in any court of competent jurisdiction.

Sec. 20-597. -- Prerequisite for pest control businesses~~Applicability of article.~~

~~Pursuant to Florida Statutes § 205.1967, the town will not issue a business tax receipt to any pest control business regulated under chapter 482 unless a current license has been procured from the Department of Agriculture and Consumer Services for each of its business locations in the town. Upon presentation of the requisite licenses from the department and the required fee, a business tax receipt shall be issued by the town. For purposes of this article, any person shall be deemed to be in business or engaging in a nonprofit enterprise, and thus subject to the requirements of section 20-56, when he does one act of:~~

- ~~(1) — Selling any goods or service.~~
- ~~(2) — Soliciting business or offering goods or services for sale or hire.~~
- ~~(3) — Acquiring or using any vehicle or any premises in the town for business purposes.~~

Sec. 20-6058. - Responsibility of agents of nonresident businesses.

The agents or other representatives of nonresidents who are doing business in the town shall be personally responsible for the compliance of their principals and of the businesses they represent with the provisions of this article.

Sec. 20-610. - Branch establishments and separate locations.

A receipt shall be obtained in the manner prescribed in this article for each branch establishment or location of the business engaged in, as if each such branch establishment or location were a separate business, provided that warehouses and distributing plants used in connection with and incidental to a business receipt under the provisions of this article shall not be deemed to be separate places of business or branch establishments.

Sec. 20-621. - Due date; duration of business tax.

All business taxes imposed under this article, except as otherwise expressly provided, shall be due and payable on October 1 of each year, and business taxes shall expire on September 30 of the succeeding year.

Sec. 20-623. - Proration.

- (a) No receipt shall be issued under this article for a period less than six months, except as otherwise specifically stated in this article.
- (b) For each business tax renewed and for each new business tax issued between October 1 and March 31 of each year, the full amount of business tax imposed by this article shall be paid. For each receipt issued to a business beginning to operate on or after April 1 of each year, one-half of the total amount of the business tax shall be paid.

Sec. 20-642.1. - Receipts for fractional part of year.

Unless otherwise provided, for each receipt obtained between October 1 and April 1, the full tax shall be paid, and for each receipt obtained from April 1 to September 30, one-half the full tax for one year shall be paid.

Sec. 20-653. - Payment; default.

All business taxes under this article shall be due and payable on October 1 of each year, and if not paid within 30 days thereafter the taxes shall be considered in default. Business taxes in default shall be subject to a penalty of ten percent during the month of November, and an additional five percent for each additional month of default. The payment of this penalty shall not be in lieu of other penalties provided for the violation of any section of this article.

Sec. 20-663.1. - Penalty for delinquent payment of taxes.

- (a) Each business tax not renewed by September 30 shall be considered delinquent and shall be subject to a delinquency penalty of ten percent of the total tax due for the month of October, plus an additional five percent penalty for each month of delinquency thereafter until paid; provided, however, that the total penalty shall not exceed 25 percent of the total tax due.
- (b) Any person who engages in or manages any business, occupation, or profession without first obtaining a receipt, if required, is subject to a penalty of 25 percent of the business tax due, in addition to any other penalty provided by law or ordinance.
- (c) Any person who engages in any business, occupation, or profession covered by this article, who does not pay the required business tax within 150 days after the initial notice of tax due and who does not obtain the required receipt, is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to \$250.00.
- (d) Nothing in this section, however, shall be construed to prevent the imposition of a fine or imprisonment or both, upon conviction for violation of any section of this article.

Sec. 20-674. - Display or possession of receipt.

Every person required to have a business tax receipt under this article shall at all times from the issuance of such receipt by the town conspicuously display such receipt in his place of business. Where the business tax payor does not have a place of business, he shall be prepared at all times while engaged in his occupation to present his receipt for inspection by any police officer or receipt officer of the town when requested to do so.

Sec. 20-684.1. - Posting of receipt.

Every receipt issued shall be posted in a conspicuous place in the place of business for which it is issued, and the holder of such receipt shall exhibit the receipt to the town inspector or any police officer upon being requested to do so by either of them.

Sec. 20-694.2. - Replacing lost or destroyed receipt.

For the purpose of replacing any mutilated, destroyed or lost receipt granted by the town, the finance director is authorized and empowered to cause to be executed and delivered an appropriate duplicate receipt, upon the submission of evidence satisfactory to the finance director that the original receipt was mutilated, destroyed or lost and upon the holder of such original furnishing the town with indemnity satisfactory to the clerk and upon the payment to the town by the holder the sum of \$1.00 for each such duplicate receipt executed and delivered. The sum charged is declared to be a reasonable amount to reimburse the town for the expense incidental to executing and delivering each such duplicate receipt.

Sec. 20-7065. - Transfer of receipt.

- (a) All receipts issued by the town under this article shall be transferred with the approval of the board of commissioners with the businesses for which they were taken out, except for certain business tax classifications set forth as not transferable in the receipt tax schedule, when there is a bona fide sale and transfer of the property used and employed in the business as stock in trade, and not otherwise, provided that the seller of the business shall present the license to the board of commissioners with the endorsement on the reverse side of the receipt issued, assigning all right, title and interest to the purchaser, and the purchaser shall produce a properly executed bill of sale showing the transfer of stock from the person to the purchaser.
- (b) Receipts may be transferred from one location to another provided the receipt is presented to the board of commissioners for approval of such transfer.
- (c) Any business receipt may be transferred to a new owner when there is a bona fide sale of the business upon payment of a transfer fee of up to ten percent of the annual tax, but not less than \$3.00 and not more than \$25.00, and presentation of the original receipt together with evidence of the sale of the business, but such transferred receipt shall not be good for any longer or for any other place than that for which it was originally issued. Any receipt may be transferred from an abandoned location to another location within the town upon the presentation of the original receipt and payment of a transfer fee of up to ten percent of the annual business tax, but not less than \$3.00 and not more than \$25.00.

Sec. 20-7165.1. - False statements in business tax application.

Any receipt obtained under this article upon a misrepresentation of a material fact shall be deemed null and void, and the taxpayer who has thereafter engaged in any business under such receipt shall be subject to prosecution or other applicable penalties to the same effect and degree as though no such receipt had ever been issued.

Sec. 20-7266. — Business operation as privilege~~Revocation of receipt.~~

The issuing of a business tax receipt by the town is for the privilege of engaging in or managing a business, profession or occupation. The town reserves the right to decline to issue or renew, or to revoke or suspend a business license for a violation of this article. ~~right to revoke any receipt issued under the provisions of this article for cause is reserved to the town. Such revocation shall be made at the direction of the board of commissioners.~~

Sec. 20-7366.1. - Business tax is applicable to one place of business.

All business taxes provided for in this article shall be issued for and shall apply to only one place of business within the town.

Sec. 20-7466.2. - Multiple business taxes.

If any person engaged in a business, occupation or profession at one location or place of business is required under the terms of this article to have more than one receipt and to pay more than one business tax, the taxpayer shall pay all business taxes so required.

Sec. 20.75. – Application procedure.

(a)Application. Every person required to procure or renew a business license under the provisions of this article shall submit an application for such license to the designee. The application shall:

- (1) Be a written statement upon forms provided by the designee, and shall be in the form of an affidavit wherein the applicant attests to the truthfulness of the information contained therein and acknowledging the requirements of this article;
- (2) Be accompanied by the full amount of the current taxes or fees chargeable for such business license along with any other overdue fines or fees payable under this article;
- (3) Require, as to renewal applications, the disclosure of such information concerning the conduct, organization and operation of applicant's business during the preceding licensing period as is reasonably necessary to verify the applicant's eligibility for a renewed business license, and for a possible adjustment of assigned business category or tax amount due.

- (b) *Denial.* If the designee determines, based upon the criteria established in this article, the town code, and any relevant statutory law, that an applicant does not meet said criteria, the application shall be denied. Upon denying an application, the designee shall refund any tax paid in advance by the applicant, provided the applicant is not otherwise indebted to the town. The denial shall be in writing to the applicant and shall state the reason(s) for such denial. When the issuance of a business license is denied and any action instituted by the applicant to compel its issuance, such applicant shall not engage in the business for which the business license was denied unless a business license is issued to the applicant pursuant to a judicial order requiring the issuance of such business license.
- (c) *Appeal.* The applicant may appeal such denial to the board of commissioners. The appeal must be in writing and submitted to the town clerk within 20 days of receipt of the written denial. Once the appeal is received by the town in conformity with this section, the matter shall be placed on the next regularly scheduled agenda for the consideration of the board of commissioners at a quasi-judicial hearing. Appeals of decisions by the board of commissioners shall be to the Circuit Court of the Sixth Judicial Circuit within 30 days of the board's decision in the manner provided by law.

Sec. 20-7667. - Inspections.

- (a) Town code inspectors shall have the authority to conduct regulatory inspections of the following premises, at all reasonable times, to ensure compliance with this article. The following persons are authorized to conduct inspections in the manner prescribed in this section:
 - (1) Those for which a business license is required; All town officials having duties to perform with reference to licensees or businesses subject to this article.
 - (2) Those for which a business license was issued and which, at the time of inspection, are operating under such business license; All police officers who shall inspect and examine businesses located within their respective jurisdictions or beats to enforce compliance with the provisions of this article.
 - (3) Those for which a business license has been revoked or suspended;
 - (4) Those to which a business license has been transferred to.
- (b) Regulatory inspections under this section may occur in the following instances. All persons authorized in this section to inspect licensees and businesses shall have the authority to enter, with or without search warrant, at all reasonable times, the following premises:
 - (1) Where the code inspector has been invited or has otherwise been permitted to enter the premises by the owner, manager, employee or other agent with actual or apparent authority to control the premises; Those for which a license is required.
 - (2) Where the code inspector enters a licensed business premises during a time when that business is open for business and the code inspector inspects only areas of the business which are otherwise open to or viewable by customers, delivery personnel, or other persons who are invitees of the business; Those for which a license was issued and which, at the time of inspection, are operating under such license.

- (3) Where the code inspector presents an inspection warrant ~~Those for which the license has been revoked or suspended.~~
- (c) Code inspections under this section may not occur for the purpose of conducting criminal investigations, but shall be limited to the regulatory purposes for which the inspector is seeking to conduct the inspection. Notwithstanding the foregoing, nothing in this subsection is intended to deprive any member of law enforcement who is otherwise lawfully within a licensed premises to observe any item which is in plain view to the officer, and to thereafter take such criminal law enforcement action as that officer's agency and the law may authorize. It shall be the right and duty of the board of commissioners, or its authorized deputy, auditor, inspector or representative, to inspect from time to time the records of any business in the town where the license tax of such business is based on amount of inventory, number of employees, number of vehicles or number of rental units. The information obtained from such inspection and investigation shall be used as an aid in determining the proper classification and license tax for such business or establishment, and any person hindering, impeding or obstructing the inspectors in the reasonable performance of their duty shall be guilty of an offense.
- (d) For purposes of this section, the term "reasonable times" shall be those times when the business premises is occupied by at least one owner, employee or authorized agent and is otherwise open for business.

Sec. 20-7768. - Continuation of fees; authority to establish fees.

- (a) ~~Nothing in this article Code or the ordinance adopting this Code shall be construed as repealing or otherwise affecting the validity of any ordinance establishing a license fee for any person engaged in managing, operating or undertaking any occupation, business or profession within the town, and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this section.~~
- (b) The board of commissioners may from time to time establish such fees by ordinance.

Sec. 20-7869. - Schedule of amounts.

The business tax levied in subsection 20-56(e) shall be collected from every person exercising the privilege of carrying on, managing or engaging in the businesses, professions or occupations specifically enumerated in this section, as fixed in this section. Each such amount must be based upon reasonable classifications and must be uniform throughout any class and, unless otherwise specifically stated, shall be the amount payable per year as a business tax for exercising such privilege or carrying on or engaging in such business, profession, or occupation mentioned for each, and it shall be unlawful for any person to carry on or engage in any such business, occupation or profession herein prescribed and designated without having first paid the business tax or complied with the terms of this article as follows:

Automobile garage and repair shop \$30.00

Beauty parlor 30.00

Book and magazine canvasser 100.00
Contractor—general 60.00
Insurance agency 30.00
Insurance companies 50.00
Motel 30.00
Nonresident realtor 25.00
Local real estate broker 30.00
Vending machines (except cigarette and stamp) 10.00
Each business not otherwise specified 30.00

Sec. 20-79. - Town license officer; duties.

- (a) The town clerk or such other official as the town may designate (the designee) shall administer this article. The designee shall:
- (1) Collect all business license taxes, penalties or other fees, and shall issue business tax receipts in the name of the town to all persons qualified under the provisions of this article;
 - (2) Promulgate and enforce all reasonable administrative rules and regulations necessary to the operation and enforcement of this article;
 - (3) Adopt all forms, including applications, notices of denial or suspension, license transfer applications and approvals, notices of tax due, and business tax receipts, as are necessary to administer this article;
 - (4) Require applicants to submit all affidavits and oaths necessary to the administration of this article;
 - (5) Determine the eligibility of any applicant for a business license pursuant to the criteria established in this article, the town code, and in any relevant statutory law;
 - (6) Examine the books and records of any applicant or licensee when reasonably necessary to the administration and enforcement of this article.
- (b) The designee shall provide to the commission copies of all administrative procedures and forms developed pursuant to this section. The commission reserves the right to revise or rescind any of these if, in its judgment, such procedures or forms are inconsistent with this article, the town code or other applicable law, or if doing so would otherwise be in the town's best interest.

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 2nd day of June, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ___ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

David Will, Mayor

Attest:

Missy Clarke, CMC, Town Clerk

ORDINANCE NO. 2021 - 09

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA, AMENDING CHAPTER 19 (STREETS, SIDEWALK AND OTHER PUBLIC WAYS) OF THE TOWN CODE TO REMOVE OUTDATED, PREEMPTED OR UNENFORCEABLE PROVISIONS AND TO INCORPORATE CURRENT STATE AND FEDERAL LAW REQUIREMENTS; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Redington Beach (the Town) has codified its ordinances over time into a Town Code (the Code) which sets forth the cumulative law of the Town; and

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

WHEREAS, however, many portions of the Code date back to 1980, with other portions of the Code not having been updated for ten or more years; and

WHEREAS, the Town owns or holds in public trust certain lands, commonly referred to as right-of-way, for the placement of transportation and utility system infrastructure in, on, under or above such lands; and

WHEREAS, Florida Statutes § 362.01 has, since 1927, given telegraph and telephone companies the special powers to install poles, wires and other fixtures on or beside public roads where permission is first obtained from the local government; and

WHEREAS, in the years since the Town adopted its first right-of-way code, the telecommunications industry landscape has changed in substantial ways, on the regulatory, business model, and technology fronts; and

WHEREAS, the federal Telecommunications Act of 1996, at 47 U.S.C. § 332, prohibits local government regulations which unreasonably discriminate among providers of telecommunication services, have the effect of prohibiting the provision of personal wireless services, and which regulate based on health or environmental effects of radio frequency emissions; and

WHEREAS, in 2003, the Florida Legislature adopted Florida Statutes § 364.0361, which prohibits local governments from directly or indirectly regulating the provision of voice-over-internet protocol services; and

WHEREAS, in 2003, the Florida Legislature adopted Florida Statutes § 365.172, which places significant constraints on local governments with respect to the permitting and approval process for cellular towers and antennae; and

WHEREAS, Florida Statutes § 337.401 provides certain authority, and limitations on authority, for local governments to manage the occupation of their rights-of-way by utilities; and

WHEREAS, on March 22nd 2018, the Federal Communications Commission approved an order to streamline the national approval process for deploying small cell technology, which is advanced radio hardware required for use of next-generation 5G cellular networks; and

WHEREAS, the Florida Legislature has adopted the Advanced Wireless Infrastructure Deployment Act (the “Act”), codified at Florida Statutes § 337.401(7), which as of July 1st 2017, places certain limitations on local government authority to regulate small or micro wireless communications facilities within the public right-of-way and requires local governments to expedite review of permit applications for such facilities; and

WHEREAS, the Act authorizes local governments to adopt objective design standards that may require wireless facilities in the right-of-way to meet reasonable location context, color, stealth, and concealment requirements, and spacing and location requirements for ground-mounted equipment; and

WHEREAS, in 2019 the Florida Legislature enacted amendments to the Act via Chapter Law 2019-131, Laws of Florida, creating additional restrictions on the right of local governments to regulate small or micro wireless communications facilities within the public right-of-way; and

WHEREAS, passage of the Act, along with the other legal and technological changes in the wireless industry since the Town last regulated on this topic, necessitates that the Town amend its current cell tower and right-of-way regulations to ensure they comply with the law and properly address new technologies seeking to occupy its right-of-way; and

WHEREAS, the Town finds that the regulatory revisions adopted hereby will advance the public health, safety, and welfare, and help protect the unique aesthetic qualities of the Town, while complying with all state and federal laws, rules and regulations governing communications facilities; and

WHEREAS, part of the Town Commission’s duties include the necessity to ensure that the Town’s ordinances, as codified in the Code, are up to date, reflect current Florida and federal statutory and case law, that they reflect current actual Town operations, and that they do not contain outdated, redundant or erroneous provisions; and

WHEREAS, in light of the foregoing, the Commission has charged the Town Attorney with the task of conducting a complete review of the Town’s Code (excluding the Land Development Code) and to bring forward any recommended revisions to the Code which would alleviate any of the aforementioned potential concerns with the Code’s current text; and

WHEREAS, the Town Attorney has submitted his assessment of Chapter 19 of the Code concerning streets, sidewalks and other public ways, and has recommended that the Commission make the revisions to that Chapter as are set forth in this Ordinance; and

WHEREAS, the Commission has considered the Town Attorney’s recommendations and finds them to be consistent with the goals of the Commission; and

WHEREAS, the Commission therefore finds that it is in the best interests of the Town,

and its citizens and property owners to adopt this Ordinance.

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

Section 1. Sections 19-1 through 19-10 of Chapter 19 (Streets, Sidewalks and other Public Ways) of the Redington Beach Town Code are hereby repealed in their entirety.

Section 2. A new Article I (Right-of-Way Construction Requirements) of Chapter 19 (Streets, Sidewalks and other Public Ways) of the Redington Beach Town Code is hereby created to read as follows:

Chapter 19 – STREETS, SIDEALKS AND OTHER PUBLIC WAYS

ARTICLE I. - RIGHT-OF-WAY CONSTRUCTION REQUIREMENTS

§ 19-1. - Definitions.

The following definitions shall be applicable to this chapter:

1. Annual General Permit shall mean the permit as issued in accordance with § 19-5 of this article.
2. Antenna means any outdoor apparatus designed for telephonic, radio or television communications through the sending or receiving of electromagnetic waves.
3. Cable Service shall have the same definition as that set out in Florida Statutes § 610.103.
4. Camouflage shall mean disguising an object with paint, structural elements or foliage; concealment by means of encasement within or placement upon a different object in a manner which conceals the object so placed.
5. Collocate shall mean to install, mount, maintain, modify, operate, or replace one or more wired or wireless facilities on, under, within, or adjacent to a wired or wireless support structure or utility pole. The term includes installing additional fiberoptic or other lines in existing conduit, but does not include the installation of a new utility pole or wireless support structure in the public right-of-way.
6. Communications Services shall mean the transmission, conveyance or routing of voice, data, audio, video or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave or other medium or method now in existence or hereafter devised and regardless of the protocol used for such transmission or conveyance.
7. Communications Services Provider (CSP) shall mean any person who transmits, conveys, or routes voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or

hereafter devised, regardless of the protocol used for such transmission or conveyance. This term does not include any utility holding a valid franchise or registration with the town that provides any of the above-mentioned services for use only by its employees or contractors who construct facilities for that utility in the rights-of-way.

8. *Construct or Construction*, and any variations thereof, shall mean any repair, alteration, pavement cut, grading, excavation, filling, relocation, replacement, placement of new facilities, or other type of improvement in the rights-of-way.
9. *Economically Unreasonable* shall mean the cost of performing the activity required by this article would place an unreasonable economic hardship on the utility.
10. *Emergency* shall mean a situation when a repair is needed to be completed immediately due to danger to property or individuals or interruption in service.
11. *Expedited Permit* shall mean the permit issued in accordance with § 19-4 of this article.
12. *Facilities* shall mean any device or structure used or to be used for transmission of telecommunications, electricity, gas, television broadcasts, including but not limited to cables, wires, conduits, ducts, pipes, antennas, converters, splice boxes, cabinets, handholes, manholes, vaults, drains, surface location markers, or any other facility used or to be used by a utility to deliver utility service to its customers.
13. *FCC* shall mean the Federal Communications Commission.
14. *FDOT* shall mean the Florida Department of Transportation.
15. *Franchise* shall mean an agreement between a utility and the town for use and occupation of the rights-of-way.
16. *MOT* shall mean maintenance of traffic.
17. *Pavement* shall include, but not limited to, asphalt, concrete, brick, or other like materials laid on the rights-of-way, but does not include gravel, dirt or other loose materials laid on the rights-of-way.
18. *Person* includes individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
19. *Place or Maintain or Placement or Maintenance or Placing or Maintaining* shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications service provider that owns or exercises physical control over facilities in the rights-of-way, such as the physical control to maintain and repair, is “placing or maintaining” the facilities. A party providing service only through resale or only through use of a third party’s unbundled network elements is not “placing or maintaining” the facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the rights-of-way does not constitute “placement or maintenance” of facilities in the rights-of-way.
20. *PSC* shall mean the Florida Public Service Commission.
21. *Public Land* shall mean any property owned by the town that is not considered a right-of-way under Florida law.

22. *Registrant* shall mean a communications service provider that has registered with the town in accordance with the provisions of article II of this chapter.
23. *Rights-of-Way* shall mean a right-of-way, easement, highway, street, bridge, tunnel or alley owned by the town or in which the town holds a property interest and exercises rights of management or control, and includes the surface, the air space over the surface and the area below the surface. The term does not include parks, open space and other public lands not designated for utility use. This term includes any privately-owned area within the town which has not yet become a public street, but is a proposed public street on any subdivision map approved by the town. Any portion of driveways located in or on a right-of-way shall be considered a part of that right-of-way.
24. *Technically Impossible* shall mean that the facility will not function as required if the utility does as required by this article.
25. *Town Staff* shall mean the public works commissioner or such other person or firm assigned by the town to administer any part of this chapter.
26. *Trench* shall mean an opening in or along the rights-of-way that is dug for the purpose of placing wires, cables, pipes, or other facilities in the rights-of-way.
27. *Utility* shall mean any communications service provider, electric utility, gas utility, or other utility provider not owned by the town, and any authorized agent of any of the aforementioned.
28. *Utility Pole* shall mean a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less.
29. *Utility Service* shall mean any service provided by a utility to customers within the corporate limits of the town, including, but not limited to, electric service, gas service, cable service, voice communication services, wireless data service, fiber optic service, and internet service.
30. *Video Service Provider* means any person who provides transmission of video, audio, or other programming service to a purchaser, including any purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services, and including point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises (not including direct-to-home satellite service), and including basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.
31. *Wireless Facility* means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and

backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications.

32. *Wireless Infrastructure Provider* means a person who has been certificated to provide telecommunications service in Florida and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.
33. *Wireless Services* means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.
34. *Wireless Support Structure* means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

§ 19-2. - Permit required; fees.

- (a) At least forty-five (45) days prior to construction not considered an emergency and not covered by an annual general permit or an expedited permit, the utility shall proceed with due diligence to obtain all necessary permits and authorizations, including, but not limited to, any joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by federal or state law or agency or by the town.
- (b) With respect to any utility operating under a franchise agreement with the town, within sixty (60) days after acceptance of any franchise, the utility shall proceed with due diligence to obtain all necessary permits and authorizations, including, but not limited to, any joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of that utility. Prior to the issuance of any permits, the utility shall provide to the town a construction plan, including a map and schedule, which shall be incorporated by reference and made part of the franchise.
- (c) Except in an emergency, no person shall begin any construction in the rights-of-way without first obtaining the applicable permit, pursuant to this article. This requirement shall apply to all contractors and/or utilities performing work within the town's rights-of-way. Such permits are in addition to any other approvals that may be required.
- (d) Application fee; exemptions.
 1. Each application for any permit required by this chapter shall be accompanied by a permit application fee, which shall be set at a reasonable amount by the town commission from time to time, to defray the town's costs of filing, engineering and inspection.
 2. Communications services providers paying the communications services tax pursuant to Florida Statutes Chapter 202 are exempt from this fee.

§ 19-3. - Rights-of-way construction permit, exemption.

(a) If the utility does not hold an annual general permit, if the construction to be performed is not included in the utility's annual general permit, or if the construction does not qualify for an expedited permit, the utility shall obtain a rights-of-way construction permit prior to any construction within the rights-of-way.

(b) Process.

1. The utility shall apply for a permit to the town through the town staff at least forty-five (45) days before construction is scheduled to commence, and shall provide:
 - (i) the addresses of the property located at the termination points of the proposed work area and the location of the work area;
 - (ii) name and address of the party doing the work;
 - (iii) name and business address of the employees, contractors or other agents retained to perform the work;
 - (iv) name and business address of the agent of the utility applying for the permit on the utility's behalf, if the utility is not directly applying for the permit;
 - (v) a site map for the construction detailing the proposed work;
 - (vi) a maintenance of traffic control plan (MOT);
 - (vii) a proposed timetable which contains a detailed description of each phase of construction;
 - (viii) unless operating under an annual general permit, a statement verifying the applicant's status as a utility authorized by this article and Florida law to install and maintain facilities, and to operate in the public's right-of-way;
 - (ix) permit fee, if a fee has been established and is required; and
 - (x) any other information as the town staff shall find reasonably necessary to the determination of whether a permit should be issued hereunder.
2. Any plans submitted shall not unreasonably or unnecessarily conflict with, create access difficulty, or otherwise adversely affect the town's use and construction of any of its utilities.
3. Once a completed application is received by the town, relevant town staff persons will review the application for completeness and if complete then will review it to ensure the requested work will be consistent with all applicable town ordinances, rules or regulations in effect at the time of review of the application.
4. The town shall, not less than fifteen (15) days before construction is scheduled to commence, issue a decision regarding a permit request. For good cause, the town may extend the time period for review, but review should not exceed sixty (60) days. If a permit is still under consideration at the end of this period, the permit shall be considered denied except as provided for in article III of this chapter.
5. If the permit is not issued, the town shall provide the utility with reasons why the permit was not issued. Except as provided for in article III of this chapter, the utility shall have three (3) days to cure the defects in the application for a permit, and if the defects are

cured and the applied for work is authorized under this chapter and other applicable laws, the town shall approve the application.

6. If the utility does not cure the defects in its application for a permit, the town shall deny the issuance of the permit. The utility may reapply for a permit any time after a final denial.
7. If issued a permit, a utility shall contact the town staff at least twenty-four (24) hours prior to commencement of construction.
8. Right-of-way permits are issued to permit utilities to occupy and work in town right-of-way, and for no other purpose. Therefore, every permit application must clearly identify the utility for which the work is to be performed, and shall contain a statement under penalty of perjury that the person completing and filing the application is an authorized agent of the utility with the authority to submit the application on the utility's behalf. Town staff are prohibited from processing permit applications which do not contain the foregoing content.
9. Pursuant to Florida Statutes § 337.401(3)(g), the Town may not require any permit for the maintenance, repair, replacement, extension, or upgrade of existing aerial wireline communications facilities on utility poles or for aerial wireline facilities between existing wireline communications facility attachments on utility poles by a communications services provider. However, it may require a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane or parking lane, unless the provider is performing service restoration to existing facilities. A permit application required by the Town under this subsection for placement of communications facilities must be processed and acted upon consistent with the permit review process set forth in § 19-49 of this code. As used in this subsection, the term "extension of existing facilities" includes those extensions from the rights of way into a customer's private property for purposes of placing a service drop or those extensions from the rights of way into a utility easement to provide service to a discrete identifiable customer or group of customers.

§ 19-4. - Expedited permit.

- (a) A utility that is required by the PSC to provide new customer service or guarantees service to new customers within a specified time period that is less than forty-five (45) days shall apply to town staff for an expedited permit if it is necessary to cross the paved area of the rights-of-way. The utility must apply for the permit as soon as reasonably possible.
- (b) The following are required to be included in the application for an expedited permit:
 1. the name and address of the utility;
 2. the name and address of the contractor performing the work, if applicable;
 3. an MOT;
 4. the type of facilities to be installed;
 5. the proposed location of the facilities;

6. a description of the pavement to be crossed;
 7. estimated length of time necessary to complete construction;
 8. if the utility does not hold an annual general permit, a statement verifying the applicant's status as a utility authorized by this chapter and Florida law to install and maintain facilities, and to operate in the public's right-of-way;
 9. if PSC required, the number of the regulation requiring the expedited installation;
 10. if customer service driven, documentation written to the customer stating the date upon which service was promised;
 11. permit fee, if a fee is required and if not exempt; and
 12. any other information the town staff shall find reasonably necessary to the determination of whether a permit should be granted hereunder.
- (c) If all of subsection (b) is included in the application and is acceptable, the town staff shall approve the expedited permit as soon as possible, in order for the utility to meet its service deadline.
- (d) A utility constructing under an expedited permit shall notify town staff at least sixty (60) minutes after arrival at the site that construction has commenced.
- (e) If requested by town staff, within a reasonable time, the utility shall provide a map of the proposed areas of construction in the rights-of-way within the town detailing the work performed or to be performed.
- (f) Unless deemed an emergency, a utility engaging in construction within the rights-of-way under an expedited permit is subject to every section of this article, with the exception of § 19-8 (j) and (l).

§ 19-5. - Annual general permit.

- (a) A utility shall apply to the town staff for an annual general permit no later than November 1 of each year, and the effective dates of that permit shall be from January 1 until December 31 of the subsequent year. Any utility seeking to obtain an annual general permit for the current year shall apply as soon as possible, and the effective dates of that permit shall be from the date of issuance of the permit until December 31 of that year. An annual general permit may be issued only to utilities with existing facilities in the rights-of-way. The annual general permit allows the following activities:
1. Communications services providers new customer service:
 - (i) installation of service drops no longer than 500 feet from serving location;
 - (ii) installation of a new buried distribution cable no longer than 500 feet that does not cross or begin in the pavement;
 - (iii) extension of a buried distribution cable up to 500 feet, so long as it does not cross or begin in the pavement;

- (iv) extension of two-way four-inch conduit system up to 500 feet, so long as it does not cross or begin in the pavement;
- (v) adding a new terminal to existing cable;
- (vi) pulling in new underground feeder cables in an existing permitted conduit or manhole and conduit system;
- (vii) digging of a splice hole to splice a new cable or adding a terminal;
- (viii) digging of a splice hole for cable acceptance testing for quality;
- (ix) digging of a splice hole to change the count of a cable leg for new service;
- (x) extension of existing aerial distribution cable up to 500 feet from existing poles, providing other aerial utility service still exists and providing it does not cross the pavement.

2. Communications services providers maintenance of existing facilities:

- (i) replacement of existing service drops up to 500 feet in length;
- (ii) replacement/repair of existing terminals;
- (iii) replacement up to 500 feet in length or repair of existing aerial cable providing other aerial utility service exists;
- (iv) replacement up to 500 feet in length or repair of existing underground feeder cable in an existing permitted manhole and conduit system, so long as it does not cross the pavement;
- (v) pumping water out of a manhole to maintain underground cables in conduit system;
- (vi) digging of a splice hole to change the count of a cable;
- (vii) digging of a splice hole to locate and repair air leaks in cables;
- (viii) digging of a splice hole to add a side leg off feeder cable;
- (ix) digging of a hole to repair broken conduits;
- (x) digging of a splice hole for cable acceptance testing for quality;
- (xi) digging of a splice hole to repair wet or damaged cable;
- (xii) digging of a hole to verify the location of buried facilities;
- (xiii) removal of facilities no longer needed for services;
- (xiv) adjust aerial facilities to meet National Electric Safety Code;
- (xv) trim trees, so long as the utility complies with § 19-11 of this article;
- (xvi) Any facility relocations required for town improvements.

3. Natural gas providers:

- (i) extend and/or replace existing facilities up to 500 feet parallel to the rights-of-way, provided it does not cross pavement;

- (ii) install 5/8" and up to 1-1/4" service and connect to existing main, so long as it does not extend more than 500 feet or cross the pavement;
- (iii) maintain anodes, rectifiers, and telemetering stations;
- (iv) repair existing facilities, providing they do not cross the pavement;
- (v) retire services and mains;
- (vi) install and maintain valves, regulator stations, and insulators;
- (vii) install test stations, gas markers and vents;
- (viii) perform field inspections for conditions and location of gas facilities;
- (ix) perform miscellaneous minor maintenance related work;
- (x) install gas facilities in existing casing/pipe;
- (xi) any facility relocations required for town improvements.

4. Cable service providers and electric utilities:

- (i) routine maintenance of equipment, including, but not limited to, poles, overhead/underground transformers, streetlights, and brackets, wire and cable (underground or aerial, provided other aerial facilities exist), pedestals, switches, arresters, risers, fuses, and all associated hardware;
- (ii) installation of equipment in order to provide new customer service within 500 feet, providing it does not cross the pavement;
- (iii) extend or replace existing underground facilities up to 500 feet parallel to the rights-of-way, provided it does not cross the pavement;
- (iv) extend or replace existing aerial facilities up to 500 feet parallel to the rights-of-way, provided other aerial facilities exist and it does not cross the pavement;
- (v) repair existing facilities, provided it does not cross the pavement;
- (vi) replace or upgrade existing facilities, up to 500 feet, provided it does not cross the pavement;
- (vii) perform field inspections for conditions and locations of electric facilities;
- (viii) perform miscellaneous minor maintenance related work;
- (ix) install electric facilities in existing casing/pipe or conduit system;
- (x) remove facilities no longer needed for service;
- (xi) adjust aerial facilities to meet National Electric Safety Code;
- (xii) trim trees, so long as the utility complies with § 19-11 of this article;
- (xiii) any facility relocations required for town improvements.

(b) A utility shall submit the following in order to obtain an annual general permit:

- 1. name and address of the utility;
- 2. general MOT for various types of construction that may occur in the right-of-way;

3. either proof of a valid franchise or valid registration with the town, or a letter from town staff stating that the utility is expressly permitted by the town to operate within the rights-of-way without a franchise or registration;
 4. permit fee, if a fee has been established and if the utility is not exempt; and
 5. any other information as the town staff shall find reasonably necessary to the determination of whether a permit should be issued hereunder.
- (c) A utility operating under an annual general permit shall provide town staff with weekly locations and a schedule of construction in the rights-of-way or shall notify town staff within sixty (60) minutes of any construction in the rights-of-way, if no map is provided or if construction is required to facilities not on the weekly map and schedule.
- (d) If a utility is operating under an annual general permit and the construction is not on the provided weekly map and schedule, the utility must notify town staff within twenty-four (24) hours of completion of construction in the rights-of-way pursuant to this section.
- (e) Unless deemed an emergency, a utility engaging in construction in the rights-of-way under an annual general permit is subject to every section of this article, with the exception of § 19-8(e), (m), (j) and (l).
- (f) Notwithstanding subsection (e), town staff must be notified of the completion of work performed under an annual general permit and must, thereafter, be inspected as provided for in § 19-8(m).

§ 19-6. - Appeals process for denial of permits.

The utility may submit a notice of appeal to the town clerk no later than 30 days after the denial of the permit by the town staff. Failure to file an appeal in a timely manner shall render the decision final and shall foreclose further review of the matter. The appeal must state with specificity each fact relevant to the appeal, and each provision of town code or state or federal law the applicant contends would be violated by the denial. The town commission shall hear the appeal at the next regularly scheduled meeting of the commission. At the hearing, the applicant is entitled to be represented by counsel, to call witnesses and to introduce any evidence it contends is relevant to the appeal. The town commission shall render a decision on the appeal in writing within 10 days after hearing the appeal. The decision of the commission shall be final. Appeals from the commission's decision may be taken in the circuit court by way of a petition for writ of certiorari as provided for by general law and court rules.

§ 19-7. - Emergencies.

- (a) If an emergency arises, a utility may repair or replace any facilities affected without obtaining the usual necessary permits.
- (b) The following paragraphs or subparagraphs of this article do not apply in the event of an emergency: § 19-2; 19-3; 19-4; 19-5; 19-6; 19-8(c), (e), (f), (g), (j), (l), and (p); and 19-9(d).

- (c) If a utility begins any construction in the rights-of-way due to an emergency, the utility or its designee shall notify the town within sixty (60) minutes of arrival at the site.

§ 19-8. - Construction specifications.

- (a) The town staff, in coordination with town staff, may develop a Utility Accommodations Guide that will provide an outline of the procedures and requirements, as provided in this article, that a utility shall follow in order to be considered for approval from the town.
- (b) All construction in the rights-of-way by any utility shall be performed in an orderly and professional manner.
- (c) Prior to the issuance of a permit for construction in the rights-of-way, the utility shall obtain all necessary permits, licenses, or other authorizations from federal, state and local authorities for construction of facilities in the rights-of-way.
- (d) The utility shall construct facilities in a manner consistent with and in full compliance with the rules and regulations promulgated by any federal or state agency having jurisdiction over the utility. If the town's board of commissioners, after holding a public hearing, determines that there are reasonable grounds to believe the utility is not in compliance with the rules and regulations promulgated by the federal and/or state agencies having jurisdiction over the utility, the utility shall have thirty (30) days to come into compliance and verify compliance. If the utility fails to come into compliance and verify compliance within thirty (30) days, the utility may report any violations to the appropriate agency and suspend any permits in connection with the violation.
- (e) All new construction shall be pursuant to the town's land development and building codes.
- (f) Upon the undergrounding of the aerial facilities of the utility owning the poles upon which other utilities are located, all such other utilities shall concurrently place its facilities underground at depths and locations approved by the town staff. All new electrical or communications services facilities placed underground shall be placed in conduits unless the town staff agrees that doing so is technically impossible. Those poles no longer being used by such utilities shall be deemed abandoned and removed from the rights-of-way as soon as possible.
- (g) Commencement of construction shall take place as soon as possible after issuance of a permit by the town, but not later than twenty (20) days after line location, unless the utility notifies town staff and provides a good faith reason for not proceeding with construction.
- (h) The utility shall comply in all respects with the requirements of Florida Statutes Chapter 556, including the Florida One Call System.
- (i) The utility shall comply with all applicable federal, state, and local laws and all applicable federal, state, and local rules and regulations.
- (j) Except as provided for in article III of this chapter, if construction of an approved plan is not commenced within three (3) months after the issuance of a rights-of-way construction permit or a shorter time to be determined by town staff, unless the utility provides a good faith reason

in writing for the delay, it is presumed that the utility failed to proceed expeditiously, and the town staff shall revoke any permits issued to the utility.

- (k) Nothing in this article shall prevent early completion of construction of facilities. Once commenced, construction within the rights-of-way shall not exceed ten (10) working days, unless otherwise provided for in the permit.
- (l) If construction is not completed on the final day of scheduled construction, the utility shall provide reasons for the delay, and if the town staff determines that there is good cause for the delay, the permit shall be extended for a reasonable amount of time, as determined by town staff. If town staff determines that the delay in completion of construction is unreasonable, it may (1) allow the utility to complete construction, (2) secure the area so as not to cause danger to the public, at the utilities sole expense, and require the utility to obtain a new permit, or (3) may complete the construction at the utility's sole expense. Town staff may deny any further permits to a utility that does not abide by construction schedules, as set forth by town staff, and may fine the utility pursuant to § 19-15 of this article.
- (m) Within three (3) working days after completion of construction in the rights-of-way, the utility shall notify the town staff of completion via either email or in person. After notification is received, a final inspection of the permitted work shall be conducted. If the work is found to be compliant with the code and permit terms, the permit will be closed. Any further work under a closed or expired permit is unauthorized.
- (n) All utilities placing facilities in the rights-of-way shall mark their facilities for identification in such a manner as the town staff requests. A key to the identifying marks shall be kept by the town.
- (o) As soon as possible after completion of construction, a utility shall submit in a format acceptable to the town staff as-built plans to the town staff. The as-built plans should identify the size of the facility placed and its exact location within the rights-of-way. Any proprietary information regarding the installation not necessary for purposes of locating the facility should not be included in the as-builts.
- (p) Except as otherwise provided by federal or state law or federal or state agency with jurisdiction over the utility, poles that meet the definition of new facilities shall not be emplaced in the rights-of-way by any utility.
- (q) If any underground facilities are to be placed under pavement, the utility constructing said facilities shall use a boring technique. If boring is economically unreasonable or technically impossible, or if there is an active plan to resurface the pavement within twelve (12) months of commencement of construction, the utility may seek approval from the town staff to cut any pavement or excavate in order to construct facilities. Pavement shall not be cut unless no other reasonable construction alternatives are available and no alternative exists as to the desired route that will avoid cutting the pavement.
- (r) A town inspector may be present at various times during construction of facilities in order to assure compliance with this article and with any permits issued.
- (s) The permit holder is responsible for safety and is required to meet all federal, state and local construction standards.

- (t) The town reserves the right to limit the work of the utility to assure a minimum of inconvenience to the public.
- (u) Unless state or federal law or a state or federal agency with jurisdiction over the utility require otherwise, the town may request that a utility locate its facilities within a specific portion of the rights-of-way, so long as the request is not technically unreasonable or economically impossible.
- (v) At all times, at least one (1) individual on the construction site shall speak English.
- (w) If any terminals, cross connect boxes, pedestals, junction boxes, or other like facilities are to be placed in the rights-of-way, they shall be placed on the property lines as they exist at the time of construction of the facilities or as close to the property lines as possible of adjacent private property. Unless otherwise required by federal or state law or federal or state agency, and unless technically impossible or economically unreasonable, all new construction of terminals, cross-connect boxes, pedestals, junction boxes, or other like facilities shall be placed at or below grade. If federal or state law or federal or state agency require the facilities be placed above ground, the town may, at its option, require the undergrounding of the facility at the town's expense, pursuant to federal or state law or federal or state agency. If the new terminals, cross-connect boxes, pedestals, junction boxes, or other like facilities are placed above grade, the utility shall provide camouflage reasonably related to the size and function of the facility, which shall be adequate to sufficiently conceal the facility in a manner approved by the town during the permitting process. In selecting such devices, utilities shall use the smallest and least obtrusive facilities to perform the desired function unless doing so would be technically impossible or economically unreasonable.
- (x) If the utility restores or reconstructs any part of any paved area of the rights-of-way, the utility shall comply with all federal and state requirements, as well as any applicable provisions of the town's zoning code. Any restoration or reconstruction of the rights-of-way performed by the utility as a consequence of its construction in the rights-of-way shall be at the utility's own expense. The utility shall maintain all such restoration or reconstruction in a condition approved by the town for a period of one year following such restoration or reconstruction or until such time as the right-of-way is damaged or altered by a person or force beyond the utility's control, whichever is shorter. If the utility does not proceed expeditiously to complete the restoration or reconstruction, the town may perform the restoration or reconstruction at the sole expense of the utility.

§ 19-9. - Collocation and cooperation requirement.

- (a) If not technically impossible or economically unreasonable, all communications services provider, video service provider or wireless infrastructure provider facilities shall be installed parallel with and in the same manner as utilities previously occupying the rights-of-way.
- (b) Multiple cable configurations shall be arranged in parallel and bundled or stacked so as to occupy as little space in the rights-of-way as possible with due respect for engineering considerations.
- (c) A utility shall install its underground equipment and apparatuses simultaneously with other like utilities whenever possible. The town shall notify in writing all other utilities located in

that portion of the rights-of-way for which a utility has applied for and been granted a rights-of-way construction permit. If the town elects not to make such notice, it shall not enforce the foregoing undergrounding requirement as against such other utilities who do not possess knowledge of the approved project.

1. Any utilities wishing to perform construction under an annual general permit in that portion of the rights-of-way in which another utility is planning construction shall notify the town staff at least forty-eight (48) hours prior to the scheduled date for commencement of construction.
 2. Any utility wishing to perform construction under an expedited permit in that portion of the rights-of-way in which another utility is planning construction shall apply for the permit as soon as possible after notification is received from the town, but no later than five (5) business days prior to commencement of construction.
 3. Any utilities wishing to perform joint construction under a rights-of-way construction permit in a portion of the rights-of-way for which another utility is planning construction shall notify the town staff within five (5) business days of receipt of the notification.
 4. The town shall issue a schedule of construction in writing to all utilities wishing to perform joint construction under rights-of-way construction permits at the issuance of the permits.
 5. The town shall amend the schedule as needed to accommodate those utilities that are engaging in construction under the annual general or expedited permits.
- (d) All horizontally-installed utilities of like kind shall occupy one (1) trench, unless technically impossible or economically unreasonable. If a utility cannot occupy an existing trench, that utility shall create a new trench into which all like utilities thereafter installed shall collocate, unless technically impossible or economically unreasonable, or until there is no space remaining for any additional utilities.
- (e) Unless technically impossible, a CSP, video service provider or wireless infrastructure provider shall install its horizontally-installed facilities within an existing conduit, if space is available in an existing conduit and agreeable terms can be reached between the owner of the conduit and the CSP, video service provider or wireless infrastructure provider seeking to enter into the conduit. The owner of the conduit may reserve inner ducts and conduits for future use, and if the only available space is a conduit or inner ducts reserved for future use, it is deemed that there is no space in the existing conduit. If there is no space in an existing conduit, a telecommunications service provider, video service provider or wireless infrastructure provider may construct a new conduit within an existing trench as provided in subsection (e). The CSP, video service provider or wireless infrastructure provider may charge a reasonable rental fee or divide the cost of construction and maintenance pro rata with any new CSPs, video service providers or wireless infrastructure providers required by this section to locate within its conduit, but not both.
- (f) If there is sufficient space within an existing conduit and it is not technically impossible to place the facilities in the conduit and no reasonable arrangement can be made with the owner of the conduit for use of that space, the utility seeking to locate its facilities within that portion of the rights-of-way may apply for a variance to the board of adjustment. A variance may be granted only if the utility owning the conduit refuses to charge a reasonable rental fee or

construction and maintenance fee or if the utility owning the conduit places unreasonable conditions or restrictions upon the utility seeking to enter the rights-of-way. If a utility owning a conduit causes another utility to apply for a variance in violation of any requirements of this chapter, the conduit owner is subject to the penalties listed in section 19-15.

- (g) Any communications services provider, video service provider or wireless infrastructure provider unwilling to collocate its facilities as required in this subsection shall not be issued a permit.

§ 19-10. - Damage or injury caused by utility constructing in the rights-of-way.

- (a) In the event that a utility, during construction of facilities under any of the permits issued pursuant to this article or as otherwise authorized by this chapter causes damage to pavement, sidewalks, driveways, facilities owned by the town, facilities owned by other utilities, or other property, public or private, the utility shall notify the town and the owner of the damaged property within twenty-four (24) hours of such damage. Pursuant to Florida Statutes § 337.401(2), the permit-holder which caused the damage or its authorized agent shall, at its own expense and in a manner approved by the town, replace and restore such places to as good or better condition than existed before said work was commenced within a reasonable time and manner acceptable to town staff. If necessary, temporary repairs may be performed according to FDOT standards. If the owner of the damaged property requests that said owner repair the damage caused by the permit holder, and does in fact repair the damage in a reasonable time and in a manner acceptable to town staff, the permit holder shall reimburse the owner for the actual and reasonable cost and labor of repairs resulting from the damage. If the permit holder damages any town streets or sidewalks, the it shall abide by all guidelines provided in the town's land development code. The permit holder shall further maintain all such restoration in the condition approved by the town for a period of one year following such restoration, or until such time as the right-of-way is damaged or altered by a person, utility, or force beyond the control of the utility making the repairs, whichever is shorter.
- (b) Acknowledgment required. At the time a utility submits its application for an annual general permit, or if the utility does not apply for an annual general permit then as part of its application for the permit required by § 19-2, the utility shall sign an acknowledgment stating the following: "As a utility or agent of a utility applying for this right of way permit, I, the applicant, acknowledge that if, during construction of a utility's facilities by the utility, a claim arises against the utility and/or the town as a result of the negligent or intentional acts of the utility or its agent, the utility will indemnify, hold harmless, and defend the town against all claims.
- (c) In addition to the foregoing, and pursuant to Florida Statutes § 337.402, should any public road be damaged or impaired in any way because of the installation, inspection, or repair of a utility located on such road, the owner of the utility shall, at its own expense, restore the road to its original condition before such damage. If the owner fails to make such restoration, the town is authorized to undertake the work and to charge the cost thereof against the owner.
- (d) At the time a utility submits its application for an annual general permit, or if the utility does not apply for an annual general permit, prior to being issued a site-specific permit, that utility shall sign an acknowledgment stating the following:

If, during construction of a utility's facilities by the utility or its agents, a claim arises against the town as a result of the utility's negligent or intentional acts, the utility will indemnify, defend and hold harmless the town against all such claims.

- (e) The town may require a utility to present proof of insurance prior to the commencement of construction in the rights-of-way.
- (f) To ensure that property owners are not required to pursue subcontractors and sub-subcontractors in order to have their damaged property repaired, the utility for which the work is being performed shall be deemed to be a co-permit holder, along with its contractor and any of its contractor's subcontractors. Any property owner who is not afforded the repair work required by this section is authorized to file a civil action in the appropriate court to enforce the terms of this section.

§ 19-11. – Trimming, maintenance or removal of greenery.

- (a) Any utility trimming or removal of any tree protected by state or local law trees in or from the right-of-way must occur only in compliance with those laws.
- (b) If any utility finds it necessary to trim trees or other plant life in the rights-of-way in order to avoid contact between wires or cables and branches, the utility shall notify the town staff at least 24 hours prior to the proposed trimming. At the option of the town, the trees or other plant life may be trimmed either by the town at the expense and under the supervision of the utility or by the utility under the supervision of the town. When authorized, trimming shall be limited to the area required for clear cable passage and shall not include major structural branches which materially alter the appearance and natural growth habits of the tree. Any trees or other plant life may not be trimmed in a manner that would adversely affect its natural growth pattern or cause the tree to appear unnatural. The utility shall be responsible for any and all damages to any trees or other plant life as a result of the trimming, to property surrounding any tree or plant life and to persons who may be injured as a result of the trimming.
- (d) If a utility seeks to temporarily remove trees or other plant life from the rights-of-way to construct facilities, the utility shall submit a restoration plan to town staff (which may consult with a qualified arborist) with its application for permit or, if constructing facilities under an annual general permit, at least forty-eight (48) hours prior to construction. The restoration plan shall propose to restore the disturbed area to its previous state, or as close as possible to its previous state. If the plan is unacceptable, town staff shall state the defects in the plan in writing as soon as possible after submission, and, town staff may deny any permits in connection with the restoration plan or may delay construction under an annual general permit until the defects in the restoration plan are corrected.
- (e) To the extent the town requires a utility, as a condition of permitting the installation of utility infrastructure in the right-of-way, to install trees, shrubs or other vegetation, the utility shall continue to maintain such greenery to the standards set forth in the permit and the town's landscaping code, and shall provide a one-year warranty against the death or disease of any such installed vegetation, beginning on the date of the town's inspection and acceptance of the installation work.

§ 19-12. - Relocation required if requested.

- (a) If a utility facility that is placed upon, under, over, or within the right-of-way limits of any town road is found by the town to be unreasonably interfering in any way with the convenient, safe or continuous use, or the maintenance, improvement, extension, or expansion of such road or rights-of-way, the facility owner shall, upon 30 days' written notice to the owner or its agent by the town, initiate the work necessary to alleviate the interference, including by relocating or removing its facilities, at its own expense, except in those circumstances set forth in Florida Statutes § 337.403(a)-(j).
- (b) The town shall notify, by certified mail, return receipt requested, all affected utilities in writing at least ninety (90) days prior to construction. The town shall require all utilities to respond within thirty (30) days of receipt of the notice, stating the amount of time, in days, the utility estimates it will require to remove their facilities and whether the utility can perform work simultaneously with any other utilities. Depending on the scope of the project, the town may grant additional time to the utilities to respond to the notice.
- (c) Pursuant to the information received from the affected utilities, the town shall prepare a removal and relocation plan in writing, and all affected utilities shall remove or relocate their facilities according to that plan. If any facilities are relocated pursuant to this paragraph, the utility shall comply with this article in its entirety, except that the utility shall not need to apply for a permit.
- (d) If a utility fails to comply with an order of the town to relocate its facilities or otherwise to alleviate the interference as required by this section, and the town must undertake the work at its own expense, the town shall first provide the utility owner's chief executive officer or other agent designated by the utility notice that the town will perform the work. Pursuant to Florida Statutes § 337.404, after the work has been completed at the town's expense, the town shall present an order to the utility requiring the payment of the cost of the work, and affording the utility a reasonable time, which shall be not less than twenty (20) days and not more than thirty (30) days, to appear before the town clerk to contest the reasonableness of the order. A utility which does not make an appearance within this time, the order is deemed final. A final order shall constitute a lien on any property of the utility owner and may be enforced in the manner set forth in Florida Statutes § 337.404(2).

§ 19-13. - Guarantees.

- (a) The following guarantees are required prior to the approval of an application for any permit established by this article:
 - 1. Repair guarantee. If the town commission finds that a utility has a demonstrated history of damaging property during right of way work in the town, then, prior to November 1 of every year, the applicant shall provide a repair guarantee for the subsequent year of no less than five thousand dollars (\$5,000) to be submitted to the town guaranteeing that construction performed throughout the year has not damaged any utility owned by the town or other property, public or private. The amount of the guarantee may vary

according to the scope of construction at the discretion of the town staff. The guarantee may be in the form of an acceptable irrevocable letter of credit or bond approved by the town attorney, a cashier's check, or cash deposited with the town. Such guarantee will be written in favor of the town. If any damage to town owned utilities or other property, public or private, is discovered, the repair guarantee shall be used to repair that damage. The town reserves the right to require a utility that has caused damage at a value above the amount of the guarantee herein to pay any amount above the guarantee. If there is no damage to any property caused by the utility found within the town, the repair guarantee may be released to the utility by no later than January 31 or, at the option of the utility, may be utilized by the utility as the repair guarantee for the subsequent year.

(b) The following guarantees may be required in the town's sole discretion to accompany an application for any permit established by this article:

1. Performance guarantee. In cases where the estimated cost of the project exceeds two thousand five hundred dollars (\$2,500.00) and the utility is not currently occupying any portion of the rights-of-way within the town, the town may require a performance guarantee to be filed with the application for a permit hereunder in an amount equal to one hundred percent (100%) of the estimated cost of the project. The guarantee may be in the form of an irrevocable letter of credit or bond approved by the town attorney, cashier's check, or cash deposited with the town. Such guarantees shall be written in favor of the town and shall be conditioned on the completion of the project within the time limit on the face of the permit. The amount of the performance guarantee shall be based on standard construction cost determining methods and approved by town staff. No guarantee shall be released until a final inspection by the town staff determines that the installations are acceptable.
2. Maintenance guarantee. In cases where the estimated cost of the project exceeds ten thousand dollars (\$10,000), the town may require a maintenance guarantee to be submitted to the town guaranteeing the improvement for a period of not less than eighteen (18) months. The guarantee may be in the form of an acceptable irrevocable letter of credit or bond approved by the town attorney, cashier's check, or cash deposited with the town. The applicant shall request an inspection of the guaranteed facilities three (3) months prior to the expiration of the eighteen (18) month guarantee period, and no security shall be released until an acceptable inspection has been conducted by the town staff.

§ 19-14. - Removal of facilities not in use.

- (a) If any utility does not utilize any facilities or portion thereof placed in the rights-of-way within twelve (12) months of location therein, upon written request, the utility shall provide proof to the town staff that the facilities will be used within three (3) months or a written statement that those facilities are reserved for future use. If the utility does not provide the above, the utility shall remove those facilities not utilized when construction of facilities by another utility takes place in that portion of the rights-of-way where the facilities to be removed are located, or at such other reasonable time as the town shall require in light of the needs of the town to manage its rights-of-way, including risks associated with allowing

abandoned facilities to remain therein, as well as the needs of other utilities to deploy or plan to deploy facilities within the same rights-of-way.

- (b) If any utility abandons any facilities located within the rights-of-way, the utility shall notify the town clerk within sixty (60) days of the intent to abandon the facilities. When a notice of intent to abandon facilities is received, the utility has the option of leaving those facilities in place and giving the town a bill of sale for such facilities, or removing the facilities. The town shall notify the utility within sixty (60) days whether the town will accept the bill of sale or require the utility to remove the facilities. Failure of such notice shall not obligate the town to purchase the same and the town may renotify the utility of its preferred alternative at a later date. If the town rejects the bill of sale, the facilities shall be removed at the expense of the utility when construction of facilities by another utility takes place in that portion of the rights-of-way where the abandoned facilities are located.

§ 19-15. - Penalties.

Any violation of this chapter shall be punishable by fine or otherwise as provided for in § 1-14 of the code. However, enforcement, including fines, will not be imposed for any violation under appeal pursuant to § 19-6.

In addition, after giving written notice and reasonable time to cure, the town can pursue all other lawful action, including suspending or denying permits issued pursuant to this article, filing a complaint with the Florida PSC advising of a violation of the town's code, filing an injunction in the circuit court to enforce the terms of this article or to enjoin the use of the rights-of-way, filing an action in federal court to enforce payment of just compensation pursuant to the federal Telecommunications Act, pursuing action before the code enforcement board to impose daily fines, and/or denying permits or development orders for other projects or use of the rights-of-way by the utility. These remedies shall be cumulative.

Section 3. A new Article II (Use by Communications Services Providers) of Chapter 19 (Streets, Sidewalks and other Public Ways) of the Redington Beach Town Code is hereby created to read as follows:

ARTICLE II. – USE BY COMMUNICATIONS SERVICES PROVIDERS

§ 19-20. - Purpose.

The purpose of this article is:

- (a) To establish a competitively neutral policy for the use of the rights-of-way for the provision of communications services, as defined in Florida Statutes § 202.11.
- (b) To protect the town's investment in the rights-of-way by providing rules and regulations governing communications services providers' access to and use of the rights-of-way by

communications service providers to ensure and protect the public health, safety and welfare.

- (c) To regulate the placement of structures and facilities in the rights-of-way pursuant to Florida Statutes § 166.01.
- (d) To prescribe reasonable rules for such uses not inconsistent with Florida Statutes § 337.401 and Florida Statutes § 364.0361, so as to minimize disruption of services in the rights-of-way, regulate the use of the rights-of-way by communications services providers, and regulate the construction, installation, maintenance, repair, removal and replacement of such facilities in the rights-of-way.
- (e) To preserve the public's traditional use of the rights-of-way while allowing access to the rights-of-way to utilities.

§ 19-21. - Registration for construction, placement, maintenance, or ownership of facilities in rights-of-way.

- (a) A CSP that desires to place or maintain facilities in the rights-of-way in the town shall first register with the town in accordance with the terms of this article. Subject to the terms and conditions prescribed in this article, a registrant may place or maintain facilities in the rights-of-way.
- (b) Subject to the terms and conditions contained in this division, a registrant may construct, install, maintain, repair, expand, remove, or locate permanent or temporary facilities in, on, over, under, on and across the designated rights-of-way.

§ 19-22. - Nature of registration.

A registration shall not convey to the registrant any title, equitable or legal in the rights-of-way. Registration under this article governs only the placement or maintenance of facilities in the rights-of-way. Other ordinances, codes, or regulations may apply to the placement or maintenance in the rights-of-way of facilities that are not facilities as defined herein. Registration does not excuse a CSP from obtaining appropriate access or pole attachment agreements before locating its facilities on the town's or another person's facilities. Registration does not excuse a CSP from complying with all applicable town ordinances, including this article.

§ 19-23. - Registration: effectiveness.

1. Registration. Each CSP that desires to place or maintain facilities in rights-of-way shall file a registration with the town, which shall include the following information:
 - (a) Name of the applicant;
 - (b) Name, address and telephone number of applicant's primary contact person in connection with the registration;

- (c) Evidence of insurance coverage required under this article;
 - (d) The number of the registrant's current certificate of authorization issued by the Florida PSC, the FCC or other federal or state authority, if any; and
 - (e) For an applicant that does not provide a Florida PSC certificate of authorization number, if the applicant is a corporation, proof of authority to do business in the State of Florida, including the number of certificate of incorporation.
2. The town shall review the information submitted by the applicant. Such review shall be by the town staff. If the applicant submits information in accordance with § 19-23(1) above, the registration shall be effective and the town shall notify the applicant of the effectiveness of the registration in writing. If the town determines that the information has not been submitted in accordance with § 19-23(1) above, the town shall notify the applicant of the non-effectiveness of registration, and reasons for non-effectiveness, in writing. The town shall so reply to an applicant within thirty (30) days after receipt of registration information from the applicant. Appeals from denials of registration shall be governed by § 19-26.
 3. A registrant may cancel a registration upon sixty (60) days written notice to the town noticing that it will not place or maintain facilities in the right-of-way and will no longer need to obtain permits to perform work in the rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any facilities in the rights-of-way.
 4. Registration shall not in itself establish any right to place or maintain priority for the placement or maintenance of the rights-of-way within the town, but shall establish a right for the registrant to apply for a permit. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional town ordinances, as well as any state or federal laws that may be enacted.
 5. Pursuant to Florida Statutes § 337.401(3)(a), a registrant shall renew its registration with the town no later than April 1 of every fifth year after the initial year of registration. During periods between renewals, registrants shall notify the town within ninety (90) days of any change in registration information. If no information has changed in the then existing registration, the renewal may state that no information has changed. If the town finds that non-renewal of registration was a good faith error on the part of the CSP, the only penalty for non-registration shall be the non-issuance or revocation of permits to work in the rights-of-way; otherwise § 19-32 shall apply.
 6. In accordance with applicable town codes and ordinances, a permit is required of a CSP that desires to place or maintain facilities in the rights-of-way. An effective registration shall be a condition of obtaining a permit. An effective registration with the town shall not be construed to mean that permit requirements shall not apply or that such requirements have been satisfied by the registrant.
 7. Maintenance of registration documents, registration fee. The town clerk shall provide a registration number to a CSP that has satisfied the requirements in subsections (1) and (2) of this chapter. The town clerk shall maintain records of registration and renewal for all CSP's placing or maintaining facilities within the rights-of-way. Pursuant to Florida Statutes § 337.401(3)(a), the town is prohibited from requiring a provider to pay any fee, cost or other charge for registration or renewal thereof.

§ 19-24. - Assignment of facilities; effect on registration.

If the registrant transfers, sells or assigns any of its facilities located within the rights-of-way within the town, the transferee, buyer or assignee shall comply with the terms of this article as of the effective date of the transfer or assignment. Written notice of any such sale, transfer or assignment shall be provided by the registrant to the town within 20 days after the effective date of the transfer. If the transferee, buyer or assignee is registered with the town at the time of the transfer, sale or assignment, the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant. No later than sixty (60) days after the effective date of the transfer, sale or assignment, the transferee, buyer or assignee shall register in its own name in accordance with § 19-23(1) of this article.

§ 19-25. - Suspension of permits.

After giving reasonable notice and time to cure, the town may suspend or deny any permit for work in the rights-of-way for one or more of the following reasons:

- (a) Violation of permit conditions, including conditions set forth in this chapter or other applicable town codes, ordinances, or regulations governing use of the rights-of-way;
- (b) Misrepresentation or fraud by registrant in a registration or permit application to the town;
- (c) Failure to relocate or remove facilities as may be lawfully required by the town;
- (d) Failure of a CSP to timely renew its registration; or
- (e) Any other unlawful activity that may affect the town or the rights-of-way.

A suspension or denial of a permit may be appealed pursuant to § 19-26.

§ 19-26. - Appeals.

Final, written decisions of the town staff denying an application for registration, denying an application for renewal of a registration, or suspending or denying permits are subject to appeal. An appeal must be filed with the town clerk within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The town commission shall hear the appeal and may affirm or reverse the decision of the staff. If the decision is reversed, the town staff shall reevaluate the registration information provided, pursuant to § 19-23(1) of this article, and the town shall reinstate any suspended permits and issue any permits which were denied as a result of violations of this article. The filing of a timely appeal acts as a stay upon any final decision being appealed until such appeal is decided by the commission.

§ 19-27. - Construction in the rights-of-way.

1. *Registrant must obtain applicable permits.* Registrant shall not place or maintain its facilities in the rights-of-way until all applicable permits have been issued by the town or other appropriate authority, subject to article II of this chapter. The registrant may place or maintain the facilities in the rights-of-way specifically identified in permits obtained in accordance with applicable provisions of this chapter or other applicable town codes and regulations. The permission to use and construct in the rights-of-way is only for those areas specifically identified in the permit.
2. *Compliance with town codes and regulations.* Registrant shall comply with all applicable town codes and regulations in placing or maintaining the facilities in the rights-of-way, including, but not limited to, engineering regulations, permit requirements, contractor licensing requirements, landscaping codes, fire codes and zoning codes.
3. *Construction standards.* Registrant shall place or maintain its facilities in the rights-of-way in compliance with all applicable construction standards as established by local, state or federal law and in conformance with the town codes and regulations, including the standards set forth in this chapter. Registrant shall use and exercise due caution, care, skill and expertise in performing work in the rights-of-way and shall take all reasonable steps to safeguard work site areas.
4. *Maintenance.* A registrant shall maintain its facilities in the rights-of-way in a safe condition.

§ 19-28. - Involuntary termination of registration.

A. The town may terminate a registration if:

1. A federal or state authority suspends, denies, or revokes a registrant's certification or license to provide communications services;
2. The registrant's placement or maintenance of a communications facility in the rights-of-way presents, in the reasonable judgment of the town, an extraordinary danger to the general public or other users of the rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice;
3. The registrant ceases to use all of its communications facilities in rights-of-way and has not complied with § 19-14 of this chapter; or
4. The registrant intentionally misrepresented itself on its registration.

B. Prior to termination, the registrant shall be notified in writing by the town of the proposed termination, setting forth all matters pertinent to the proposed termination action, including which of 1. through 4. above is applicable as the reason therefore, and describing the proposed action of the town with respect thereto. The registrant shall have sixty (60) days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the city, to accomplish the same. If the plan is rejected, the city shall provide written notice of such rejection to the registrant and shall make a recommendation to the town commission regarding a final decision as to termination of registration. A decision by a city to terminate a registration may only be accomplished by an action of the town commission. A registrant shall be notified by written notice of any decision by the town

commission to terminate its registration. Such written notice shall be sent within seven (7) days after the decision.

- C. In the event of termination, the former registrant shall: (a) notify the town of assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in rights-of-way; or (b) provide the town with an acceptable plan for disposition of its communications facilities in rights-of-way. If a registrant fails to comply with this subsection, the town may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the communications facilities, requiring the registrant's bonding company within 90 days of the termination to remove some or all of the communications facilities from the rights-of-way and restore the rights-of-way to its original condition before the removal, or requiring that some or all of the communications facilities be removed and the rights-of-way restored to as good or better condition as before the removal at the registrant's expense.
- D. In any event, a registrant whose registration is terminated shall take such steps as are necessary to render every portion of the communications facilities remaining in the rights-of-way of the town safe.
- E. In the event of termination of a registration, this provision does not permit the town to cause the removal of any communications facilities that are used to provide another service for which the registrant holds a valid certification or license with the governing federal or state agency, where required, and is properly registered or holds a valid franchise with the town for such certificated or licensed service, where required.

§ 19-29. - Insurance.

- 1. A registrant shall provide, pay for and maintain satisfactory to the town the types of insurance described herein. All insurance shall be from responsible companies, duly authorized to do business in the State of Florida and having a rating in Best Insurance Guide of "A" or better. All liability policies shall provide that the town is an additional insured as to the activities it will engage in under this chapter. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representatives of the insurance company and shall be filed and maintained with the town annually. The registrant shall add and maintain the town as an additional insured on its general liability policy. The document shall indicate that the town, a political subdivision of the state, is an additional insured as its interests may appear; and shall also provide that insurance shall not be canceled, limited, or nonrenewed until after 30 days' written notice has been received by the town; however, insurance may be canceled and replaced with a policy that continues to meet the requirements of this division. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the town.
- 2. The limits of coverage of insurance required shall be not less than the following:
 - A. *Worker's compensation and employer's liability insurance.*
Worker's Compensation/Florida Statutory Requirements.
Employer's Liability - \$500,000 limit each accident.

\$500,000 limit per accident.

\$500,000 limit per each employee.

B. Comprehensive general liability.

Bodily Injury and Property Damage - \$3,000,000 combined single limit each occurrence.

C. Automobile liability.

Bodily Injury and Property Damage - \$3,000,000 combined single limit each accident.

§ 19-30. - Indemnification.

1. In matters related to any actions or activities of the CSP arising under this article, CSP shall, at its sole cost and expense, fully indemnify, defend and hold harmless the town, its officers, boards, commissions, charter officials, employees, agents, and volunteers against any and all claims, suits, actions, proceedings, liabilities, and judgments for damages (including, but not limited to, expenses for reasonable legal fees and disbursements and liabilities assumed by the town in connection therewith) or equitable relief regardless of whether the act or omission complained of is authorized, allowed or prohibited by this ordinance. The CSP's indemnification of the town shall include, but not be limited to all claims, suits, actions, proceedings, liabilities, and judgments for damages arising out of the following:
 - (a) To persons or property, in any way arising out of or through the acts or omissions of the CSP, its officers, agents, employees, servants, contractors, subcontractors, consultants or volunteers or to which the CSP's negligence shall in any way contribute; and
 - (b) Arising out of any claim of invasion of the right of privacy, for defamation of any person, firm, or corporation, or the violation or infringement of any copyright, trademark, trade name, service name, patent, or of any other right of any person, firm or corporation; and
 - (c) Arising out of the CSP's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to the CSP in the conduct of its business under this chapter; and
2. The town shall be responsible for its own negligence, including that of its elected officials, charter officials, officers, and/or employees resulting from activities arising from its sole responsibilities under this chapter, but only to the extent provided by the waiver of sovereign immunity in Florida Statutes § 768.28.
3. The CSP shall have the duty to defend the town in any action to which the town is a part which fails to allege specific actions by the town resulting from its activities under this chapter, whether or not the same claims damages for which the town is immune under federal or state law, including, but not limited to Florida Statutes § 768.28.
4. The town shall give the CSP prompt notice of the making of any claim or the commencement of an any action, suit, or other proceeding covered by the provisions of this chapter. Nothing

in this chapter shall be deemed to prevent town from cooperating with the CSP in participating in the defense of any litigation by its own counsel at its sole cost and expense.

5. Nothing in this article shall be construed to abrogate any immunity under federal or state law, including, but not limited to, 47 U.S.C. § 555a or Florida Statutes § 768.28.

§ 19-31. - Notification of leasing and/or subleasing.

- (1) Any communications services provider registered under § 19-23(1) shall notify the town within thirty days after entering into a lease agreement or sublease agreement with another communications services provider that such agreement has been entered into. Notification shall be sent to the town clerk with a copy being sent to the town attorney.
- (2) The notification shall include:
 - (a) The name of the telecommunications company from which the facilities are leased.
 - (b) The name of the telecommunications company to which the facilities are leased.
 - (c) The address of the company to which the facilities are leased.
 - (d) A contact person of the company to which the facilities are leased.
 - (e) The telephone number where that contact person can be reached, and
 - (f) If not all facilities have been leased or subleased, the location of the facilities leased or subleased to the new telecommunications company.
- (3) The communications services provider leasing the facilities within the town's right-of-way may, at any time, be required to provide financial information necessary to verify the accuracy of the Department of Revenue's calculations in establishing the local share of the Florida communications services tax for the town. Any information provided to the Department of Revenue shall, at the town's request, be provided to the town. The town shall not require any information of the communications provider leasing the facilities within the town's rights-of-way that is more than three years old.

§ 19-32. - Penalties for violation.

Any violation of this article shall be punishable by a fine or otherwise, as provided for in § 1-14 of the code. However, enforcement will not be pursued for any violation under appeal, pursuant to § 19-26.

In addition, after giving written notice and reasonable time to cure, the town can pursue all other lawful action, including filing a complaint with the Florida Public Service Commission advising of a violation of this article, filing an injunction in the circuit court to enforce the terms of this article or registration or to enjoin the use of the rights-of-way, filing an action in federal court to enforce payment of just compensation pursuant to the Telecommunications Act, and/or denying or suspending permits or development orders for other projects or use of the rights-of-way by the CSP. These remedies shall be cumulative.

§ 19-33. - Reservation of rights and remedies.

1. The town reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
2. This article shall be applicable to all facilities placed or maintained in the rights-of-way on or after the effective date of this article and shall apply to all existing facilities in the rights-of-way prior to the effective date of this article to the full extent permitted by state and federal law.
3. Nothing in this article shall limit the remedies of the town or the registrant available under applicable law.

Section 4. A new Article III (Small and Micro Cell Sites in Town Right-of-Way) of Chapter 19 (Streets, Sidewalks and other Public Ways) of the Redington Beach Town Code is hereby created to read as follows:

ARTICLE III. – SMALL AND MIRCO CELL SITES IN TOWN RIGHT-OF-WAY

§ 19-45. – Definitions unique to article.

For purposes of this article, the following terms shall have the following meanings:

Micro Wireless Facility – A small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

Small Wireless Facility – A wireless facility that meets the following qualifications:

A. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

B. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

§ 19-46. – Preemption of town authority.

(a) Pursuant to Florida Statutes § 337.401(7)(c), (d) and (g), the town may not:

(1) prohibit, regulate, or charge for the collocation of small wireless facilities in the right-of-way or for the installation, maintenance, modification, operation, or replacement of utility poles used for the collocation of small wireless facilities in the public rights-of-way;

(2) require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole;

(3) directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the town, including reserving fiber, conduit, or pole space for the town;

(4) require an applicant to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application;

(5) limit the placement of small wireless facilities by minimum separation distances.

(6) Require a demonstration that collocation of a small wireless facility on an existing structure is not legally or technically possible as a condition for granting a permit for the collocation of a small wireless facility on a new utility pole except as provided for in subsections (b) and (c) below.

(7) Require compliance with the town's regulations regarding placement of small wireless facilities or a new utility pole used to support a small wireless facility in rights-of-way under the control of the Florida department of transportation unless the authority has received a delegation from the department for the location of the small wireless facility or utility pole, or require such compliance as a condition to receive a permit that is ancillary to the permit for collocation of a small wireless facility, including an electrical permit.

(8) Require a meeting before filing an application.

(9) Require direct or indirect public notification or a public meeting for the placement of communication facilities in the right-of-way.

(10) Limit the size or configuration of a small wireless facility or any of its components, if the small wireless facility complies with the size limits in § 19-47 of this code.

(11) Prohibit the installation of a new utility pole used to support the collocation of a small wireless facility if the installation otherwise meets the requirements of Florida Statutes § 337.401(7)(d).

(12) Require that any component of a small wireless facility be placed underground except as provided in subsections (b) and (c) below.

(13) Institute, either expressly or de facto, a moratorium, zoning-in-progress, or other mechanism that would prohibit or delay the filing, receiving, or processing of registrations, applications, or issuing of permits or other approvals for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles used to support the collocation of small wireless facilities.

(b) In an area where the town has required all public utility lines in the rights-of-way to be placed underground, a wireless provider must comply with written, objective, reasonable, and nondiscriminatory requirements that prohibit new utility poles used to support small wireless facilities if:

(1) The town, at least 90 days prior to the submission of an application, has required all public utility lines to be placed underground;

(2) Structures that the town allows to remain above ground are reasonably available to wireless providers for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities; and

(3) A wireless provider may install a new utility pole in the designated area in the right-of-way that otherwise complies with this subsection and it is not reasonably able to provide wireless service by collocating on a remaining utility pole or other structure in the right-of-way.

(c) For small wireless facilities installed before the town adopts requirements that public utility lines be placed underground, the town must:

(1) Allow a wireless provider to maintain the small wireless facilities in place subject to any applicable pole attachment agreement with the pole owner; or

(2) Allow the wireless provider to replace the associated pole within 50 feet of the prior location in accordance with subsection (d) below.

(d) The town may require wireless providers to comply with its objective design standards adopted in this code. However, the code may only require:

(1) A new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color;

(2) Reasonable spacing requirements concerning the location of a ground-mounted component of a small wireless facility which does not exceed 15 feet from the associated support structure; or

(3) A small wireless facility to meet reasonable location context, color, camouflage, and concealment requirements, subject to the limitations in Florida Statutes § 337.401(7); and

(4) A new utility pole used to support a small wireless facility to meet reasonable location context, color, and material of the predominant utility pole type at the proposed location of the new utility pole.

Such design standards under this paragraph may be waived by the town upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or utility pole or are technically infeasible or that the design standards impose an excessive expense. The waiver must be granted or denied within 45 days after the date of the request.

§ 19-47. – Small wireless facility height and design provisions.

(a) The height of a small wireless facility shall be limited to 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. The height for a new utility pole is limited to the tallest existing utility pole located in the same contiguous right-of-way as of July 1st 2017, measured from a grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the height of the utility pole shall be no greater than 50 feet, inclusive of the height of the small wireless facility attached thereto.

(b) A new utility pole or similar vertical structure to support a small wireless facility installed in public right-of-way must be designed to afford collocation of at least three antennae, and must be of a design which will limit the added visual blight the installation will cause, and/or which will provide alternative functionality to enhance public safety, such as by incorporation of decorative lighting elements.

§ 19-48. – Small wireless support facilities right-of-way permit process.

(a) A permit shall be required prior to the installation in the public right-of-way of a small wireless facility or a utility pole designed to support a small wireless facility. Except as preempted or limited in this part, such permit applications shall be applied for under the same process, and shall be reviewed under the same standards, and shall be subject to the same conditions, as applies to all other utilities seeking right-of-way permits under this article, including but not limited to provisions on insurance coverage, indemnification, performance bonds, security funds, abandonment, landscaping, undergrounding requirements, and town liability. The town staff shall approve a complete application unless it does not meet the town's applicable codes.

(b) In addition to denial for a failure to satisfy the standards and conditions referenced in subsection (a) above, a permit application for the collocation of a small wireless facility or to place a utility pole used to support a small wireless facility in the right-of-way submitted under this part may be denied if the proposed collocation or pole:

(1) Materially interferes with the safe operation of traffic control equipment.

(2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

(3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

(4) Materially fails to comply with the 2017 edition of the FDOT Utility Accommodation Manual.

(5) Fails to comply with applicable codes.

(6) Fails to comply with objective design standards provided for in this code.

(c) At the applicant's discretion, an applicant seeking to collocate small wireless facilities within the town may file a consolidated application and receive a single permit for the collocation of up to 30 small wireless facilities.

(d) At the town's discretion, the town may require a construction bond to secure restoration of the postconstruction rights-of-way to the preconstruction condition. However, such bond must be time-limited to not more than 18 months after the construction to which the bond applies is completed. For any financial obligation required by the town allowed under this section, the town shall accept a letter of credit or similar financial instrument issued by any financial institution that is authorized to do business within the United States, provided that a claim against the financial instrument may be made by electronic means, including by facsimile. A provider of communications services may add the town to any existing bond, insurance policy, or other relevant financial instrument, and the town must accept such proof of coverage without any conditions other than consent to venue for purposes of any litigation to which the town is a party. The town may not require a communications services provider to indemnify it for liabilities not caused by the provider, including liabilities arising from the town's negligence, gross negligence, or willful conduct.

§ 19-49. – Permit review process.

(a) Permit applications submitted under this part must, in addition to the permit information required in this article, contain an email address the applicant has designated for use as the official means for the town to communicate with it concerning the application process.

(b) Permit applications for the placement of a utility pole designed to support a small wireless facility must include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within 9 months after the date the application is approved.

(c) For permit applications submitted under this part, the town staff must, within 14 days after receiving an application, determine and notify the applicant by electronic mail as to whether the application is complete. If the application is found to be incomplete, the town staff must

specifically identify the missing information. An application is deemed complete if the town staff fails to provide notification to the applicant within 14 days.

(d) A complete application must be reviewed, and either approved or denied, within 60 days after receipt of a complete application. Applications not approved or denied within that period shall be deemed to be approved unless the applicant mutually agrees to extend the review period in writing.

(e) The town staff shall notify the applicant of approval or denial by electronic mail. If the application is denied, the town staff must specify in writing the basis for the denial, including the specific code provision(s) on which the denial was based, and send the documentation to the applicant by electronic mail on the day the application is denied. To the extent the application is denied due to deficiencies within the application, the applicant shall have 30 days after the notice of denial is sent to cure the deficiencies identified and to resubmit the application. The town staff shall, within 30 days after any such resubmission, grant or deny the application. Any denial of a resubmitted application shall be limited to the deficiencies cited in the initial denial. Resubmitted applications not acted on within 30 days shall be deemed approved. If the applicant fails to resubmit the application within the 30 days provided for above, the application shall be deemed to have been withdrawn.

(f) A permit approved under this section shall be effective for 1 year unless extended further by the town.

§ 19-50. – Exemptions from permitting.

(a) The following actions with respect to small wireless facilities shall not require a permit:

(1) Routine maintenance, the performance of service restoration work on existing facilities, or repair work, including, but not limited to, emergency repairs of existing facilities or extensions of such facilities for providing communications services to customers;

(2) Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size, or

(3) Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way and who is remitting communications services tax under Florida Statutes Chapter 202. The town may require an initial letter from or on behalf of such provider, which is effective upon filing, attesting that the micro wireless facility dimensions comply with the limits of this subsection. The town may not require any additional filing or other information as long as the provider is deploying the same, a substantially similar, or a smaller size micro wireless facility equipment.

(b) Notwithstanding the foregoing, an application for right-of-way work shall be required whenever excavation, closure of a sidewalk, or closure of a vehicle lane or parking lane are required, unless the provider is performing service restoration on an existing facility and the work is done in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual. The town requires notice of such work within 30 days after restoration and may require an after-the-fact permit for work which would otherwise have required a permit.

§ 19-51. – Collocation on town poles.

(a) Collocation of small or micro wireless facilities on town-owned poles pursuant to agreement between an applicant and the town is authorized.

(b) Such collocations on town poles are subject to the following limitations:

(1) The town may not enter into an exclusive arrangement with any person for the right to attach equipment to its poles.

(2) The rates and fees charged by the town for such collocations on town poles must be nondiscriminatory, regardless of the type of wireless services provided by the collocated facilities.

(c) Should the town receive a request to collocate a small or micro wireless facility on a town pole, the town commission is authorized to enter an agreement to permit such collocation at a rate of \$150 per pole annually. Such agreement shall be in a form approved by the town attorney and shall, at a minimum, provide for indemnification of the town and terms of use and maintenance. The terms of such agreement shall not conflict with the limitations and conditions set forth in Florida Statutes § 337.401(7)(f)(5)a-d.

Section 5. A new Article IV (Swales) of Chapter 19 (Streets, Sidewalks and other Public Ways) of the Redington Beach Town Code is hereby created to read as follows:

ARTICLE IV. – SWALES

Sec. 19-60. Swales.

(a) Swales required.

(1) On all rights-of-way where drainage is presently provided in the form of a swale, no permit shall be issued for the construction of a new structure or for the expansion of an existing structure until the applicant provides, and the town approves, a detailed drainage plan as required by section 6-59 of this Code.

- (2) Said drainage plan shall include a detailed plan for the swale.
- (3) The detailed plan for the swale shall be prepared in accordance with the technical specifications for swales adopted by Resolution 2019-02. The town board of commissioners, with due public notice, and after a review by the planning board, may amend the technical specifications for swales in the manner prescribed by law.
- (4) The technical specifications for swales shall, at a minimum:
 - a. Establish cross-sectional geometry including the shape and depth of the swale, grass height, maximum and minimum allowable slopes, and minimum height above the high water table;
 - b. Establish flow characteristics including minimum water quality, maximum allowable depth of runoff, the maximum velocity of runoff, and the maximum period for standing water to drain;
 - c. Ensure the stability of the swale; and
 - d. Provide for effective connections with the swales or drainage features on adjacent properties.
- (5) Prior to the issuance of any certificate of completion or certificate of occupancy for the subject property, the engineer of record shall certify and the building official shall confirm, that the swale has been constructed in accordance with the approved plans and with the technical specifications for swales.

(b) *Swale maintenance.*

- (1) Maintenance of the swale area is the responsibility of the owner of the property whose side property lines, if extended into the right-of-way, would encompass said swale.
- (2) The swale area must always remain a pervious area approved by the building official and the engineer of record.
- (3) The swale shall not be filled in or altered in any manner that will disturb its slope or impede the flow of water.
- (4) All swales shall be kept clear of debris and any and all other matter that has the potential to disturb the slope of the swale or impede the flow of water in the swale.
- (5) No drainage pipes may be installed in any swale until an engineer, duly licensed to practice in the state, certifies to the building official that the pipe(s) will function as the swale is intended to function and will not degrade the stormwater management system in the area.
- (6) If drainage pipes are allowed in a swale, the openings to said pipes shall be kept open and free of debris and any and all other matter which might impede the flow of water into or out from the pipe.

Section 6. 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 7. 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 8. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Sections 1 through 5 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 9. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

David Will, Mayor

Attest:

Missy Clarke, CMC, Town Clerk

ORDINANCE NO. 2021-10

**AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA,
AMENDING § 13-32 OF THE TOWN CODE (VEHICLES ON BEACHES)
TO PROHIBIT THE OPERATION OF ELECTRIC BICYCLES ON THE
TOWN'S BEACHES; PROVIDING FOR CODIFICATION,
SEVERABILITY, AND FOR AN EFFECTIVE DATE.**

WHEREAS, § 13-32 of the Town Code prohibits the operation of motor vehicles on the Town's beaches subject to the exceptions set forth therein; and

WHEREAS, on May 7th 2021, Florida's Governor signed into law HB 353, which amends Florida Statutes § 316.2065, entitled "Electric bicycle regulations," to add language permitting local governments which have jurisdiction over a beach or dune to restrict or prohibit the operation of an electric bicycle on a beach or dune; and

WHEREAS, the Board of Commissioners has determined that it is in the interest of the public health, safety, and welfare, to prohibit the operation of electric bicycles on the Town's beaches.

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

Section 1. Section 13-32 of the Town Code of the Town of Redington Beach is hereby amended to read as follows:

Sec. 13-32. – Operation of vehicles on beaches.

- (a) It is unlawful for any person directly or indirectly to use or operate or to allow another to use or operate upon, on or along the gulf beach, or upon any beach or shoreline or waters adjacent thereto, within the town limits, any motor vehicle, including electric bicycles, golf carts, micromobility devices, mopeds, motorized scooters, or tri-vehicles, as those devices are defined in Florida Statutes § 316.003, unless application in writing showing reasonable necessity therefor shall first have been made to the board of commissioners and a special written approval is obtained from the town.
- (b) The following shall be excepted from the provisions of this section:
 - (1) Municipal vehicles or equipment, any vehicle in such area for an emergency purpose for the public safety or general welfare, or any vehicle or equipment authorized by the town to be in such area for a public purpose.
 - (2) Mechanical equipment necessary and temporarily being used in such area for authorized improvements upon private or public property, for the construction of which improvements a permit has been applied for and granted by the town in the manner required by this Code and other ordinances of the town.

(3) Use of an electric personal assistive mobility device, as defined in Florida Statutes § 316.003(23), by a person with a disability who cannot otherwise traverse the beach.

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 16th day of June, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of July, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

Attest:

David Will, Mayor

Missy Clarke, CMC, Town Clerk



TOWN OF REDINGTON BEACH, FLORIDA
APPLICATION FOR APPOINTMENT TO
TOWN BOARD OR TOWN COMMITTEE

NAME: Peter Mattson
ADDRESS: 16108 Redington Drive Redington Beach, FL 33708
HOME PHONE: 813-629-9609 **CELL PHONE:** 813-629-9609
How long has Applicant been a Redington Beach resident? 23 years

SEEKING APPOINTMENT TO: (Check one)

☐ Board of Commissioners ☒ Planning Board
☐ Board of Adjustment ☐ Finance Committee
☐ Regular Member ☐ Alternate

EDUCATIONAL BACKGROUND:

College: _____ **Location:** _____
Major: _____ **Degree:** _____

EMPLOYMENT INFORMATION:

☒ Currently Employed ☐ Retired

Most recent employment:

Employer: ELEMENT Engineering Group **Phone:** 813-386-2101
Address: 1713 E. 9th Street **City, State, Zip Code:** Tampa, FL 33605
Position: Vice President / Geomatics Group Lead **How long:** 8+ years
Why do you want to serve on the Planning Board? Current Member
Community involvement

Applicant Signature Peter Mattson Peter J Mattson
2021.05.11 09:27:32-04'00' **Date** _____

For Office Use Only:

Date Considered by Commission: _____ **Date of Appointment:** _____
Term: _____ **Term Expires on:** _____



TOWN OF REDINGTON BEACH, FLORIDA

APPLICATION FOR APPOINTMENT TO TOWN BOARD OR TOWN COMMITTEE

NAME: WALLY HAWTHORNE
ADDRESS: 15819 REDINGTON DR Redington Beach, FL 33708
HOME PHONE: CELL PHONE: 727-710-6327
How long has Applicant been a Redington Beach resident?

SEEKING APPOINTMENT TO: (Check one)

☐ Board of Commissioners ☐ Planning Board
☒ Board of Adjustment ☐ Finance Committee
☒ Regular Member ☐ Alternate

EDUCATIONAL BACKGROUND:

College: ST. PETE COLLEGE Location: ST. PETE, FL.
Major: BUSINESS Degree: AA BUSINESS

EMPLOYMENT INFORMATION:

 Currently Employed X Retired

Most recent employment:

Employer: SELF Phone: 727-710-6327
Address: HOME City, State, Zip Code:
Position: OWNER How long: 24 YEARS

Why do you want to serve on the Board of Adjustment? CURRENTLY ON
BOARD AS CHAIR

Applicant Signature Wally Hawthorne Date 5-2-21

For Office Use Only:

Date Considered by Commission: Date of Appointment:
Term: Term Expires on:



TOWN OF REDINGTON BEACH, FLORIDA

APPLICATION FOR APPOINTMENT TO TOWN BOARD OR TOWN COMMITTEE

NAME: Darcy W. Bellmore
ADDRESS: 16019 Redington Drive Redington Beach, FL 33708
HOME PHONE: - CELL PHONE: 727-2241584
How long has Applicant been a Redington Beach resident?

SEEKING APPOINTMENT TO: (Check one)

☐ Board of Commissioners ☐ Planning Board
☒ Board of Adjustment ☐ Finance Committee
☐ Regular Member ☐ Alternate

EDUCATIONAL BACKGROUND:

College: Location:
Major: Degree:

EMPLOYMENT INFORMATION:

☒ Currently Employed ☐ Retired

Most recent employment:

Employer: Bellmore Enterprises Inc Phone: 727-2241584
Address: 16019 Redington DR Redington Beach FL City, State, Zip Code: 33708
Position: President How long:

Why do you want to serve on the Board of Adjustment? To serve the Town
of Redington Beach

Applicant Signature [Signature]

Date 6-13-21

For Office Use Only:

Date Considered by Commission: Date of Appointment:
Term: Term Expires on:

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

July 1, 2021

Meeting Date: July 7, 2021
Advertised Public Hearing
Agenda Item 9 C

MEMORANDUM

TO: Honorable Mayor and Members, Redington Beach Board of Commissioners
FROM: R. Bruce McLaughlin, AICP, MCIP, Town Planner
SUBJECT: Proposed Ordinance 2021-07, Mechanical Code Amendment

EXECUTIVE SUMMARY

Recent experience with permit applications for emergency generators and for swimming pool equipment has revealed conflicts between different Town codes and disparate treatment of similar mechanical equipment. Similar issues can reasonably be expected to arise with water conditioning and solar energy equipment. The Administration directed the preparation of an amending ordinance to cure these existing and anticipated conflicts and discrepancies. The LPA found Ordinance 2021-07 consistent with the Comprehensive Plan and recommended its approval **STAFF RECOMMENDS THAT THE BOARD ADOPT ORDINANCE 2021-07 ON FIRST READING.**

BACKGROUND

Applicant	Town of Redington Beach
Affected Area	Entire Town

The Redington Beach Planning Board, acting as the Local Planning Agency, found the Ordinance consistent with the Comprehensive Plan and recommended its approval subject to the maintenance of the standard rear yard requirement on waterfront lots and to requiring that corner lot side yards be treated as front yards for the purpose of regulating mechanical equipment. The Planning Board's suggested changes from the staff draft of Ordinance 2021-07 are presented in SMALL CAPS in the attached draft of the Ordinance.

The Ordinance, as presented to the Town Board, permits the listed mechanical equipment – emergency generators, HVAC, solar power equipment, swimming pool equipment, and water conditioning equipment – with a 2.5 foot setback from any side lot line and a five foot setback from the rear lot line in an interior lot. For waterfront properties, Gulf- and Bay-front, the general 25 foot setback continues to apply to mechanical equipment.

July 1, 2021

The Ordinance also sets maximum noise levels for mechanical equipment, a higher level for generators which should be running only during emergencies, and a lower level for the other categories of mechanical equipment which will be running more or less constantly. Finally, the Ordinance cleans up the underlying ordinance with respect to typos and less than clear drafting.

THE REQUEST

That the Town Board adopt proposed Ordinance 2021-07 on first reading.

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 (via § 15-56 of the Town Code), a comprehensive plan for the Town and related land development and other, related, regulations.

The Mechanical Code regulates aspects of building construction and thus is a land development regulation within this Board's authority to adopt and amend.

NOTICE

The Clerk's office will provide proof of the notice of this advertised public hearing.

ANALYSIS

Comprehensive Plan Consistency

Ordinance 2021-07 is consistent with the following Future Land Use Element policies:

Policy 1.1.2

Residential areas shall be located and designed to protect life and property from natural and manmade hazards such as flooding, excessive traffic, subsidence, noxious odors and noise.

Policy 1.1.4

The Town shall continue to implement performance standards, such as buffering and open space requirements, within the land development regulations, as appropriate.

Policy 3.1.4

6. Ensure the compatibility of adjacent land uses and provide for adequate and appropriate buffering;

Therefore, the buffering and noise control provisions of Ordinance 2021-07 for the governed mechanical equipment: HVAC, emergency generators, water conditioning, solar and swimming pool equipment, make the Ordinance consistent with the Town's Comprehensive Plan.

Other Factors

There are also conflicting regulations with respect to the locational criteria for generators. There is a general exemption from the setback requirements for HVAC equipment and, nominally, generators, contradicted by the specific, and therefore governing, regulation of generators in a different section of the Code. These contradictions require resolution and the code language of these and other, related, Code sections is less than clear, another compelling reason to amend the code.

Unbeknownst to current staff, these issues also arose before the Planning Board in February, 2017. At that time, that Board recommended (a recommendation never acted upon), that all mechanical equipment be treated with similar regulations and that that treatment also be extended to water conditioning and solar energy equipment. The proposed Ordinance incorporates those recommendations, applying to HVAC, emergency power, solar, swimming pool and water conditioning equipment and establishing the same locational and noise standards for each of these types of mechanical equipment, with the different noise standards for generators

The setback requirement is also the same as that for sheds, thereby furthering the uniformity of the regulations throughout the accessory items that might be found in a side or rear yard. The proposed uniform side yard setback is 2.5 (two and a half) feet – wide enough not to impede emergency egress but narrow enough to significantly improve the design flexibility for these standard accessory items.

July 1, 2021

As originally drafted, the Ordinance proposed reducing all rear yard setbacks for mechanical equipment to five feet. Instead, the Planning Board, consistent with the Code's treatment of sheds, recommended maintaining the 25 foot setback for mechanical equipment on all waterfront lots.

RECOMMENDATION

STAFF RECOMMENDS THAT THE BOARD ADOPT ORDINANCE 2021-07 ON FIRST READING

RBMcL/m
C:\Red Beh\Town Board\2021-07-07\RB TB Mech Code 2021-07-07.wpd

ORDINANCE 2021-07

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, PINELLAS COUNTY, FLORIDA, AMENDING CHAPTER 6 (BUILDINGS AND BUILDING REGULATIONS), SECTION 6-65, AND AMENDING ARTICLE VII, (MECHANICAL CODE), INCLUDING SECTIONS 6-208 AND 6-209, OF THE TOWN CODE TO RECONCILE SAID SECTIONS AND TO REMOVE CONFLICTING PROVISIONS, TO REFLECT THE TOWN'S ACTUAL EXPERIENCE WITH THE CONSTRUCTION OF THE REGULATED MECHANICAL FIXTURES, TO MAKE RELATED CHANGES; AND TO REMOVE OUTDATED, OR UNENFORCEABLE PROVISIONS; MAKING RELATED FINDINGS; PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Board of Commissioners of the Town of Redington Beach desires to more effectively and uniformly regulate the installation and operation of different types of mechanical equipment; and

WHEREAS, the Board of Commissioners of the Town of Redington Beach finds that such regulation is in the best interests of the public health, safety and welfare; and

WHEREAS, the Board of Commissioners of the Town of Redington Beach has determined that the amendment of those provisions of Chapter 6 of the Town Code which govern mechanical equipment is necessary to effectively regulate same; and

WHEREAS, the Town Planner has recommended that this Ordinance be adopted; and

WHEREAS, the Town's Planning Board, which serves as its Local Planning Agency, has found this Ordinance to be consistent with the Town's Comprehensive Plan and has recommended approval of the amendment to further consistency with the Town's Comprehensive Plan;

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

Section 1. The foregoing whereas clauses are incorporated herein by reference and made a part of hereof.

Section 2. Section 6-65 of the Town Code is amended to read as follows:

Sec. 6-65. - Sheds permitted subject to governing criteria, other Ppermanent installations in building setback areas prohibited.

(a) Utility sheds: permitting, construction, placement and usage.

(1) **Permitting:** A permit ~~must be issued by the Pinellas County Building Department, on behalf of the town,~~ issued by the Town's Building Official in compliance with established procedures for issuance of building permits, is required prior to construction and/or placement of any utility shed on any property within the town.

(2) **Construction:** All utility sheds permitted by this section shall comply with structural building regulations in effect at the time of permitting including, without limitation, regulations pertaining to adequate corner tie-downs, and proper wind and water resistance. The wiring or plumbing of utility sheds for electrical, water, sewer, or gas is prohibited.

A maximum of two utility sheds may be erected on any property. The combined square footage of the two sheds shall not exceed 120 square feet (measured along the exterior ~~interior~~ of the walls). The maximum square footage of any single utility shed shall be 80 square feet. The maximum height of any utility shed shall be eight feet, above the adjacent finished grade. The maximum length of any one side of any utility shed shall be 15 feet. Utility sheds constructed in side yards shall be concealed from view from the street.

(3) **Placement:** No utility shed of any type may be placed within the front yard of any property within the town. Utility sheds may be located in either side yards or rear yards; such utility sheds must meet a setback requirement of a minimum of two and one-half feet from the property line. Utility sheds in rear yards of waterfront properties must meet the same setback requirements for those set forth in this Code for primary structures.

(4) **Usage:** Utility sheds may only be used for the storage of personal property, and not for the operation of motorized equipment, or for habitation.

(b) All permanent installations of any kind, located above grade, in building setback areas (front, side and rear) is are prohibited except for air conditioning condensing units, emergency power generation systems, swimming pool equipment, water conditioning systems, solar power generating systems, and similar mechanical equipment, and fuel tanks required for same. The placement and operation of permitted mechanical equipment is governed by sections 6-208 and 6-209 of this Code.

Section 3. Sections 6-208 and 6-209 of the Town Code are amended to read as follows:

Sec. 6-208. - Power generator systems.

The following provisions shall regulate the installation and use of power generation systems:

- (a) **Applicability:** This ~~ordinance~~ section applies to all power generation systems for residential use. This section does not apply to governmental or commercial uses. ~~(Reference Florida Building Code, current version adopted, for applicability.)~~
- (b) **Definitions:** For purposes of this section, the following terms shall have the meaning given in this subsection:
- (1) **Generator.** A device used to convert mechanical energy into electrical energy. The mechanical energy is typically produced by an internal combustion engine which requires an external fuel source.
 - (2) **Permanent generator.** ~~Also termed permanently installed generator.~~ A generator fixed in place to a foundation or other immovable platform.
 - (3) **Portable generator.** A movable generator.
 - (4) **Trailer mounted generator.** A generator fixed to a vehicle towable trailer. Typically this is a generator, which if not trailer mounted, would be a permanently installed generator.
 - (5) **Fuel.** A substance consumed by a process and converted into mechanical or thermal energy.
 - (6) **Decibel (dB).** The practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound twenty (20) micropascals; abbreviated "dB."
- (c) **Limitations:**
- (1) Generators shall not ~~exceed~~ create noise at a noise level in excess of 70 dB, measured at a distance of 23 feet or seven meters, from the exterior surface of the generator. The noise or sound level shown on the manufacturer's data sheet or specifications for the model in question may be accepted as the unit's noise level. ~~If no measurement distance is stated, it may be assumed that the manufacturer measured the noise level at a distance of 23 feet or seven meters.~~
 - (2) Only gasoline, propane or natural gas fuel may be used for internal combustion engine powered electrical generators.
 - (3) Generators requiring ~~diesel fuel~~, or any ~~other~~ fuel, which, if spilled, would be considered so hazardous that an evacuation of the area would be required, or that chemical protective breathing masks and suits would have to be worn by a

cleanup crew, are prohibited.

- (4) Wind powered generators for permanent installation on land are prohibited.
- (5) Fuel powered generators shall be used only during periods of power outages or for periodic testing and necessary maintenance operation.
- (6) Fuel powered generators shall not be used to re-sell power.
- (7) Fuel powered generators may be operated for routine testing and maintenance once per week, not to exceed 30 minutes, Monday through Friday only (excluding holidays as defined in section 6-69 of this Code), between the hours of 10:00 a.m. and 5:00 p.m.

(d) **Location and installation of permanently installed generators:**

- (1) Generators, ~~require the installation of~~ Electrical power regulation equipment if connected to the main circuit of the building. ~~Such equipment must~~ shall be installed by a licensed electrician familiar with power generators in accordance with the electrical code currently ~~adopted by~~ in force in the town.
- (2) Generators may be installed at ground level on an appropriate foundation, such as concrete, unless otherwise prohibited.
- (3) Location:
 - I. The generator shall be located in the side or rear yards ~~within appropriate setbacks of the subject property.~~ No generator shall be located or operated within 2.5 (two and one half) feet of a side lot line, within 5 (five) feet of a rear lot line OF AN INTERIOR LOT OR WITHIN 25 (TWENTY-FIVE) FEET OF THE REAR LOT LINE OF A GULF-FRONT OR BAY-FRONT LOT.
 - ii NOTWITHSTANDING ANY OTHER PROVISION OF THIS CODE RELATED TO CORNER LOTS, FOR THE PURPOSES OF THE REGULATION OF THE PLACEMENT OF GENERATORS, ANY YARD ABUTTING A STREET SHALL BE CONSIDERED TO BE A FRONT YARD IN WHICH GENERATORS ARE PROHIBITED.
- (4) Generators shall be placed so as to minimize the visual impact on adjacent properties with the use of appropriate sight screening.
- (5) The generator's exhaust shall be, as much as practically feasible, vented upwards or directed away from neighboring properties.
- (6) Generators and fuel tanks may not be located in any easement.

(e) **Portable generators; additional requirements:**

- (1) Trailer mounted generators are prohibited except during a power outage exceeding four days.
- (2) Fuel not in containers attached to the generator must be stored at a safe distance from the generator and from any permanent structure as determined by the fire ~~official~~ marshal or code enforcement officer. When such containers are employed, fFire extinguisher(s) suitable for the size of the generator and type of fuel shall be available, ~~nearby~~ within 5 (five) feet of the generator and in working order.
- (3) Generators in operation must be located away from any door, window, or other opening to the house, garages included, so that the exhaust does not flow into the house.
- (4) Generators and fuel when not in use must be stored in an enclosed location either in a garage or outside the living space of the house.

Sec. 6-209. - Air conditioning systems, ~~and condenser units,~~ water conditioning, solar and pool equipment.

The following provisions shall regulate the location, height and screening of air conditioning systems, ~~and condenser units,~~ water conditioning, solar and swimming pool equipment, including tanks, valves, inverters, racking, batteries, swimming pool filters, heaters, motors and pumps.

- (a) **Applicability:** This section applies to all permanent mechanical installations, such as outdoor air conditioning systems and condenser units, water conditioning, solar energy and swimming pool filters, heaters, motors and pumps, for residential or commercial use.
- (b) **Definitions:** For purposes of this section, the following terms shall have the meaning given in this subsection:
 - (1) **Air conditioning system:** An outdoor mechanical device or unit used to dehumidify, extract, heat and ventilate a residential structure. This shall not include window and through-wall air conditioning units, or portable air conditioning units.
 - (2) **Condenser units:** An outdoor device or unit using cooling water or surrounding air as the coolant of a residential structure.

- (3) **Decibel (dB).** The practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound twenty (20) micropascals; abbreviated "dB."
- (4) **Solar Power Inverter:** A device or circuitry that converts direct current into alternating current as part of the provision of solar power.
- (5) **Solar Power Rackers:** A system used to safely affix solar panels to another surface.
- (6) **Swimming pool filter:** A device that removes dissolved or suspended particles from water by recirculating the water through a porous substance (a filter medium or element). The three types of filters used in pools and spas are sand, cartridge and D.E. (diatomaceous earth).
- (7) **Swimming pool heater:** A fossil-fueled, electric or solar device used to heat the water of a pool, hot tub or spa.
- (8) **Swimming pool motor:** A fossil-fueled, electric or solar device machine that provides power to a swimming pool.
- (9) **Swimming pool pump:** A mechanical device, usually powered by an electric motor, which causes hydraulic flow and pressure for the purpose of filtration, heating and circulation of pool and hot tub water.

(c) **Limitations:**

- (1) All new and replacement air conditioners, ~~and~~ condenser units and water conditioning, solar energy and pool equipment installations shall not exceed a noise level of 60 dB, when measured from the nearest property line ~~or the nearest bedroom window~~ of an adjacent property ~~structure~~. The noise or sound level shown on the manufacturer's data sheet or specifications for the model in question may be accepted as the unit's noise level. ~~If no measurement distance is stated, it may be assumed that the manufacturer measured the noise level at a distance of 23 feet or seven meters.~~

(d) **Location and installation of permanently installed air conditioner systems, ~~or~~ condenser units, solar energy, water conditioning or swimming pool equipment:**

- (1) All new or replacement air conditioning systems, ~~or~~ condenser units, water

1 conditioning, solar energy or swimming pool equipment require the installation of
2 electrical power regulation equipment if connected to the main circuit of the
3 building. Such equipment ~~must~~ shall be installed by a licensed electrician in
4 accordance with the electrical code currently ~~adopted by~~ in force in the town.

- 5
6 (2) Air conditioning systems or condenser units, water conditioning or solar energy
7 equipment may be installed at ground level or above grade. Swimming pool
8 equipment shall be installed at ground level. Should any part of the mechanical
9 unit be installed above six feet from grade, said mechanical unit ~~must~~ shall be
10 concealed using a decorative structure, or materials including, but not limited to
11 louvers, lattice and the like, visually compatible with the building so as to
12 minimize the visual impact on adjacent properties. Screening walls or decorative
13 structures around the equipment may exceed the allowable height limitations
14 provided the height is the minimum required to screen from view the full height
15 of the equipment ~~and the projection into the required yard is the minimum~~
16 ~~encroachment necessary per manufacturers' specifications.~~

- 17
18 (3) ~~All new or replacement air conditioner systems or condenser units shall be located~~
19 ~~within appropriate setbacks. Said mechanical units may not be installed within~~
20 ~~four feet from the property line.~~

21
22 (3) Location:

- 23
24 I. All mechanical equipment shall be located in the side or rear yards of the
25 subject property. No mechanical equipment shall be located or operated
26 within 2.5 (two and one half) feet of a side lot line, within 5 (five) feet of a
27 rear lot line OF AN INTERIOR LOT OR WITHIN 25 (TWENTY-FIVE) FEET OF THE
28 REAR LOT LINE OF A GULF-FRONT OR BAY-FRONT LOT.
29 ii NOTWITHSTANDING ANY OTHER PROVISION OF THIS CODE RELATED TO
30 CORNER LOTS, FOR THE PURPOSES OF THE REGULATION OF THE PLACEMENT
31 OF MECHANICAL EQUIPMENT, ANY YARD ABUTTING A STREET SHALL BE
32 CONSIDERED TO BE A FRONT YARD IN WHICH ALL MECHANICAL EQUIPMENT
33 IS PROHIBITED.

34
35
36 **Section 4.** For purposes of codification of any existing section of the Redington
37 Beach Code herein amended, words underlined represent additions to original text, words
38 ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain
39 unchanged.

40
41 **Section 5.** If any section, subsection, sentence, clause, provision, or word of this
42 Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the
43 remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of

1 the Ordinance shall withstand any severed provision, as the Board of Commissioners would have
2 adopted the Ordinance and its regulatory scheme even absent the invalid part.

3
4 **Section 6.** The Codifier shall codify the substantive amendments to the Redington
5 Beach Town Code contained in Section 1 of this Ordinance as provided for therein, and shall not
6 codify the exordial clauses nor any other sections not designated for codification.

7
8 **Section 7.** Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect
9 immediately upon adoption.

10
11 **ADOPTED ON FIRST READING** on the ____ day of _____, 2021, by the
12 Board of Commissioners of the Town of Redington Beach, Florida.

13
14 **ADOPTED ON SECOND AND FINAL READING** on the ____ day of _____
15 _____, 2021, by the Board of Commissioners of the Town of Redington Beach,
16 Florida.

17
18 _____
19 David Will, Mayor

20 Attest:

21
22 _____
23 Missy Clarke, CMC, Town Clerk

24
25 Approved as to form:

26
27
28
29 _____
30 Robert Eschenfelder, Town Attorney

31
32
33
34 C:\Red Bch\Code Issues\Mechanical Code\2021-07cMech Code.wpd

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

July 1, 2021

Meeting Date: July 7, 2021
Advertised Public Hearing
Agenda Item 9 D

MEMORANDUM

TO: Honorable Mayor and Members, Redington Beach Board of Commissioners
FROM: R. Bruce McLaughlin, AICP, MCIP, Town Planner
SUBJECT: Proposed Ordinance 2021-11, Appendix A Amendments

EXECUTIVE SUMMARY

Issues have been identified with the last two provisions of Section 4 of Appendix A, "Construction Materials." One provision is preempted by state law; the other is surplusage. Although codified in Appendix A, neither regulation is a "zoning regulation" which requires referendum approval. The preempted provision should be removed from the Town Code to avoid confusion and the surplus provision should be removed to eliminate its impact on development. These changes are consistent with the Comprehensive Plan. **STAFF RECOMMENDS THAT ORDINANCE 2021-11 BE ADOPTED ON FIRST READING**

BACKGROUND

Applicant Town of Redington Beach

Affected Area Entire Town

Ordinance 2021-11 deletes the last two provisions of Section 4, Construction Materials, of Appendix A to the Town Code:

Except that second story one (1) hour fire rated exterior walls of type VI construction shall be permitted in single-family residences.

For the purposes of Appendix A the minimum height of a "story" shall not be less than eight feet, eight inches (8'8").

The former provision is preempted by state law; the later is surplusage.

THE REQUEST

That the Town Board adopt proposed Ordinance 2021-11 on first reading.

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 (via § 15-56 of the Town Code), a comprehensive plan for the Town and related land development and other, related, regulations.

The structural code provisions of Section 4 of Appendix A regulate aspects of building construction and thus are land development regulations within this Board's authority to adopt and amend.

Pursuant to the Town Charter:

No amendment, repeal or change whatsoever or exception of any kind to those certain zoning ordinances of the Town of Redington Beach restricting, providing and establishing certain zones and zoning of the Town of Redington Beach, Florida shall be made or affected unless a resolution is duly passed and adopted by the Board of Commissioners of the Town of Redington Beach proposing such change and calling for an election, either at a special or general election or other specific election, whereupon, all of 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 of Redington Beach. Amendment, repeal or change or any exception of any kind must be approved by at least two-thirds (2/3) of the voters voting on such amendment, repeal or change.

Town Charter, Section 20

June 29, 2021

However, according to the Town Attorney, the relevant provisions of Section 4 do not fall within the type of zoning regulation which requires referendum approval (see attached). Accordingly, this Ordinance can be treated as an ordinary land development regulation subject to this Board's authority to amend land development regulations.

NOTICE

The Clerk's office will provide proof of the notice of this advertised public hearing.

ANALYSIS

Comprehensive Plan Consistency

Ordinance 2021-11 is consistent with the following Future Land Use Element policies:

Goal 3: Land development regulations shall continue to implement the requirements of this comprehensive plan.

Policy 3.1.1

The land development regulations shall contain guidelines for the administration of those land use categories adopted for the Town of Redington Beach.

Policy 3.1.4

The land development regulations shall contain specific and detailed provisions required to implement this comprehensive plan, which, at a minimum: ...

And with the following Housing Element policy:

Policy 1.1.2

The Town shall review ordinance codes, regulations and the permitting process for the purpose of updating and amending in order to increase private sector participation in meeting the housing needs of the town, while continuing to ensure the health, welfare and safety of the residents.

June 29, 2021

Other Factors

However, the first of the subject policies is preempted by the Florida Fire Prevention Code and the Florida Building Code. To avoid confusion, this regulation should be repealed so that it is clear that only the state codes comply.

The second existing provision is arguably inconsistent with the Comprehensive Plan since it is surplusage which has the potential to create difficulties in the lawful expansion of existing homes as developers try to match existing story heights while complying with the Code.

Accordingly, Ordinance 2021-11, repealing these two provisions, is consistent with the Town's Comprehensive Plan.

RECOMMENDATION

STAFF RECOMMENDS THAT THE BOARD ADOPT ORDINANCE 2021-11 ON FIRST READING.

Subject: **RE: Red Bch Code Amendment Question**
Date: 6/16/2021 3:52:52 PM Eastern Standard Time
From: Rob@cityattorneys.legal
To: brucesandy@aol.com
Cc: townclerk@townofredingtonbeach.com, bcooper@safebuilt.com,
mayor@townofredingtonbeach.com, tdorgan@townofredingtonbeach.com,
sskjoldager@townofredingtonbeach.com, tkornijtschuk@townofredingtonbeach.com,
rcariello@townofredingtonbeach.com

Mr. McLaughlin,

Mr. Daigneault was correct that just because a given regulatory provision was included in a local government's zoning code does not make it a zoning provision. It is indeed the case that there are many areas of the Town's zoning code which, had we to do it all over, would better be placed in either the building code, or one of the general police power chapters.

But until the next opportunity comes to more comprehensively revise the zoning code, since Section 4 is (with the exception of the last sentence) effectively a statement of what type of building materials are to be used in construction, and you correctly point out that at least part of it is arguably preempted by the Florida Building Code, I advise that it can be removed by way of ordinance.

As to the last sentence of Section 4 of Appendix A, it provides:

For the purposes of Appendix A the minimum height of a "story" shall not be less than eight feet, eight inches (8'8").

The only other place in the Town Code which uses the word "story" is Section 5(b) of Appendix A, which provides in relevant part:

...and provided further, that in the case of apartments and/or hotels constructed in areas other than that designated for business, the following lot line regulation shall apply, to wit: That in the event of a one-story or more apartment or hotel, the construction of any part thereof shall not approach nearer than ten (10) feet to the side line of the lot or lots upon which the same is constructed, excepting eaves which may approach two and one-half (2½) feet nearer to side lines.

The Section 4 sentence has no impact on the use of the word "story" in Section 5(b), and as it does not appear to have any other referential use in the Code, it is essentially a stray provision and so it, too, can be removed by ordinance. Indeed, while your note states that the sentence is causing problems with respect to remodeling options, since the sentence is confined to "the purposes of Appendix A, and Appendix A doesn't really deal with

stories apart from the passage in Section 5(b) noted above, I'm not even sure how it would be being cited as an impairment to remodeling single family structures.

With respect to whether a referendum would be required to cause the ordinance to become effective, Section 21 of the Town Charter requires a referendum vote on the "amendment, repeal or change...to those certain zoning ordinances of the Town...restricting, providing and establishing certain zones and zoning of the Town..."

Section 4 of Appendix A does not restrict, provide for, or establish any zone or zoning of the Town. Rather, it requires a certain kind of building material be used. Therefore, no referendum would be required to cause the ordinance to come into effect.

Finally, should you recommend that the Town Commission adopt such an ordinance, I would advise that, even though it is not really a zoning matter, since the language is being removed from the zoning code, to remove the argument, the Town should run the ordinance as if it were a zoning ordinance, including having the planning board review it.

I hope that provides the analysis you were requesting. Please let me know if you have any other questions on the matter.

Regards,

Robert M. Eschenfelder, Esquire

Board Certified in City, County and Local Government Law

Rob@cityattorneys.legal

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From: Bruce McLaughlin <brucesandy@aol.com>
Sent: Wednesday, June 16, 2021 10:46 AM
To: Robert Eschenfelder <Rob@cityattorneys.legal>
Cc: sskjoldager@townofredingtonbeach.com; townclerk@townofredingtonbeach.com; deputyclerk@townofredingtonbeach.com; bcooper@safebuilt.com
Subject: Red Bch Code Amendment Question

Rob, some time ago Jay opined that not every provision of Appendix A was a zoning regulation, the amendment or repeal of which would require referendum approval. On that premise, may the Town delete the last two provisions of Appendix A, § 4:

Except that second story one (1) hour fire rated exterior walls of type VI construction shall be permitted in single-family residences.

For the purposes of Appendix A the minimum height of a "story" shall not be less than eight feet, eight inches (8'8").

without referendum approval?

The former is obviously preempted by the FBC and the FFPC and the latter serves no apparent legitimate purpose, limits a builder's flexibility under our height limits, and is beginning to potentially cause problems with remodeling projects.

Please advise, thank you.

Sent from [AOL Desktop](#)

Bruce McLaughlin Consulting Services, Inc.
[Bruce](#)
R. Bruce McLaughlin, AICP, MCIP
President
900 Gulf Blvd., Suite 303
Indian Rocks Beach, FL 33785
(727) 595-7634 (Voice)

ORDINANCE 2021-11
LAND DEVELOPMENT REGULATION AMENDMENT

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, PINELLAS COUNTY FLORIDA, REPEALING IN PART SECTION 4 OF APPENDIX A, OF THE TOWN CODE ESTABLISHING A FIRE RATING REQUIREMENT FOR CERTAIN WALLS AND REQUIRING A MINIMUM STORY HEIGHT, MAKING RELATED FINDINGS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Board of Commissioners of the Town of Redington Beach desires to more effectively and uniformly regulate building construction in the Town; and

WHEREAS, the Board of Commissioners of the Town of Redington Beach finds that such regulation is in the best interests of the public health, safety and welfare; and

WHEREAS, the Board of Commissioners of the Town of Redington Beach has determined that the amendment of those provisions of Appendix A to the Town Code which regulate fire-resistant construction but which are preempted by state law and those provisions of Appendix A which regulate story height, should be repealed; and

WHEREAS, the Town Planner has recommended that this Ordinance be adopted; and

WHEREAS, the Town's Planning Board, which serves as its Local Planning Agency, has found this Ordinance to be consistent with the Town's Comprehensive Plan and has recommended approval of the amendment to further consistency with the Town's Comprehensive Plan;

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

Section 1. The foregoing whereas clauses are incorporated herein by reference and made a part of hereof.

Section 2. Section 4 of Appendix A to the Town Code is amended to read as follows:

Sec. 4. - Construction material.

Districts Nos. 1, 2 and 3 are hereby zoned for the construction of buildings of masonry construction only as defined in the building code of the Town of Redington Beach and any amendments thereto; provided, however, that alterations or additions, otherwise

conforming to this and other ordinances of the Town of Redington Beach, may be made to any building now existent of the same structural material as that used in the original construction of such building.

~~Except that second story one (1) hour fire rated exterior walls of type VI construction shall be permitted in single family residences.~~

~~For the purposes of Appendix A the minimum height of a "story" shall not be less than eight feet, eight inches (8'8").~~

Section 3. 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 4. 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 5. 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 6. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

David Will, Mayor
Attest:

Missy Clarke, CMC, Town Clerk
Approved as to form:

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6
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8
9

Robert Eschenfelder, Town Attorney

C:\Red Bch\Code Issues\Story\2021-11 FC Stry HghtA.wpd

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

July 1, 2021

Meeting Date: July 7, 2021
Advertised Public Hearing
Agenda Item 9. E

MEMORANDUM

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

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

SUBJECT: Proposed Ordinance 2021-12 – *De Minimis* Variances

EXECUTIVE SUMMARY

A variance is a “safety valve” to preserve the constitutionality of a land development regulation in unusual and unforeseen circumstances. Usually administered by a quasi-judicial board, certain *de minimis* variances are appropriately considered and granted by staff. Ordinance 2020-06 attempted to establish a *de minimis* variance process but was not felt to be sufficiently clear in its grant of authority and establishment of criteria. Ordinance 2021-12 elaborates on staff’s authority to grant *de minimis* variances and on the governing criteria. **STAFF RECOMMENDS THAT THE BOARD ADOPT ORDINANCE 2021-12 ON FIRST READING**

BACKGROUND

Applicant	Town of Redington Beach
Affected Area	Entire Town

Ordinance 2021-12 clarifies that the Building Code Administrator (Building Official) has the authority to grant *de minimis* variances and elaborates on the criteria for the consideration of such variances. Ordinance 2020-06 was intended to create this authority and provide adequate criteria but was not felt to have achieved these goals.

In particular, a number of buildings in the Town are undergoing expansion but are being found to have been built in violation of the Town codes when they were built, in some cases more than 50 years ago. In many cases, actual side setbacks are 7.3' or 7.4' instead of the required 7.5 feet. In many cases, particularly if the new construction would represent a further encroachment into the required yards, the current nonconformity creates an impediment to the proposed building expansion.

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The *de minimis* variance necessary to cure this type of nonconformity is an ideal candidate for an administrative variance or waiver. It should be noted that the grant of a *de minimis* variance is predicated on an absence of malfeasance in establishing the nonconformity in the first place. If there was malfeasance in creating the nonconformity, then a full variance process is required.

It should be noted that proposed finding 7 on page 3 is a significant departure from standard zoning/variance practice. Generally, and notwithstanding their “safety valve” effect, variances are considered to be in derogation of the public interest. This finding asserts that the described *de minimis* variances **further** the public interest.

Variances generally can be sought from:

- Chapter 5, Boats, Docks and Waterways;
- Chapter 6, Buildings and Building Regulations
- Chapter 7, Concurrency Management System
- Chapter 9, Fire Prevention and Protection
- Chapter 10, Floodplain Management
- Chapter 17, Signs
- Chapter 18.5, Stormwater
- Chapter 19, Streets
- Chapter 19.5, Driveway Connections
- Appendix A, subject to the limitations of the Town Charter ¹

Ordinance 2021-12 grants the Building Code Administrator authority to hear and decide **any** *de minimis* variance application from any land use related regulation in the Town Code, including from the Chapters listed above. However, variances to

- land uses
- residential density
- building height; and
- any provision of the Town’s Comprehensive Plan

are specifically prohibited.

It should be noted that the *de minimis* variances will generally apply to existing construction

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

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where there is not strict compliance with the codes. However, the Ordinance does not limit these variances to existing construction: they may be granted to new constructions as well.

The Ordinance requires the Building Official to confer with the Town Clark and the Building Commissioner in considering an application for a *de minimis* variance. As amended by the Planning Board, the Ordinance also requires the establishment of a tracking process for these variances.

Further, nothing in the Ordinance compels the Building Official to grant any particular variance application: rather the Ordinance specifically contemplates an applicant who is denied a *de minimis* variance appealing that denial in the form of a regular variance application to the Board of Adjustment.

It should also be pointed out that there is a growing trend, (*e.g.*, North Redington Beach), to remove variance authority from appointed citizen boards and to grant that authority to “special magistrates” who are learned in a relevant discipline and are more removed from neighbor pressure. Granting the Building Official the power to approve *de minimis* variances is simply a form of the special magistrate approach on a much smaller scale.

In considering an application for a *de minimis* variance, the Building Code Administrator applies the same criteria as the Board of Adjustment along with the special criteria enumerated in the Ordinance. Denial of a *de minimis* variance can be appealed to the Board of Adjustment as an application for a regular variance.

A nearby property owner, who would be entitled to notice of a Board of Adjustment hearing for a regular variance, may appeal the granting of a *de minimis* variance.

The Planning Board expressed concern about the lack of notice to nearby property owners. Proposed sections (d) and (e) (SMALL CAPS on page 4) are intended to address these concerns by requiring that notice of the grant of the variance be given to the same property owners who would receive notice of a regular variance application and by delaying the effective date of the variance by 21 days. While reducing somewhat the efficiencies to be produced by the *de minimis* variance process, these provisions provide reasonable notice of the variance applications.

Pursuant to its plenary responsibility for the conduct of the comprehensive planning process (Section 163.3174(4), Florida Statutes, 2019), the Planning Board has recommended approval of the Ordinance with some amendments from the staff draft.

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NOTICE

The Clerk's office will provide proof of the notice of this advertised public hearing.

THE REQUEST

That the Town Board adopt Ordinance 2021-12 on first reading.

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 (via § 15-56 of the Town Code), a comprehensive plan for the Town and related land development and other, related, regulations.

As set out in the analysis below, variances are an integral part of the administration of land development regulations. The Town Board thus has authority to adopt and amend regulations related to the variance process.

ANALYSIS

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

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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]

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 difference between regular variances adjudicated by the Board of Adjustment and *de minimis* variances adjudicated by the Building Code Administrator is simply one of scale: the Board deals with larger variances while the BCA deals with smaller requests that in almost every case would be considered to be *pro forma* if submitted to the Board.

RECOMMENDATION

THAT THE TOWN BOARD ADOPT ORDINANCE 2021-12 ON FIRST READING.

ORDINANCE 2021-12

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, PINELLAS COUNTY, FLORIDA, AMENDING TOWN CODE, SECTION 6-289 (f) BY CLARIFYING THE CIRCUMSTANCES IN, AND THE PROCEDURES BY, WHICH A *DE MINIMIS* OR ADMINISTRATIVE VARIANCE MAY BE GRANTED BY THE BUILDING CODE ADMINISTRATOR, PROVIDING FOR SEVERABILITY; AND ESTABLISHING 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 Building Code Administrator with respect to *de minimis* variances from the provisions of the Town Code's land development and related regulations; 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, as amended by Ordinance 2020-06, is further amended by the deletion of section 6-289 (f):

~~(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(e) 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.~~

SECTION 2. Chapter 6 – Buildings and Building Regulations, Article XI. – Board of Adjustment, as amended by Ordinance 2020-06, is further amended by the insertion of a new section 6-289-1, as follows:

Sec. 6-289-1. -De Minimis Variances, Approval by the Building Code Administrator

- (a) **Statement of Purpose and Intent.** The Town recognizes that:
- (1) *De minimis* discrepancies may exist between code-compliant construction and actual construction; and
- (2) Therefore situations exist wherein a structure exists that is nonconforming pursuant to the Town's Code; and
- (3) Such nonconformity may occur with respect to setbacks, vertical features in required setbacks, landscaping, lot grading or elevations, utility connections, or other requirements of the Town's land development and related regulations; and
- (4) There is a rebuttable presumption that said discrepancies are the result of errors in the design, construction and/or permit administration processes and are not the result of malfeasance; and

- (5) Said rebuttable presumption may be overcome only by clear and convincing evidence of malfeasance; or
- (6) Said *de minimis* discrepancies are the result of code changes since an existing building was constructed; and
- (7) In the absence of malfeasance in the creation of the *de minimis* discrepancy, it is in the public interest to waive strict compliance with the relevant codes or to allow property improvements that incorporate the *de minimis* discrepancy; and
- (8) It is in the public interest that said *de minimis* variances may be granted by the Building Code Administrator without the need for a full Board of Adjustment proceeding.

(b) **De Minimis Variance Defined.** For the purposes of this Code, a *de minimis* variance is a variance which does not exceed twelve inches for setbacks and accessory structure heights, or one percent for all other measurements including those pertaining to lot dimensions or area. All prohibitions on the granting of variances contained in Section 6-289(d) above are applicable to *de minimis* variances.

(c) **Criteria for Granting a De Minimis Variance.** A *de minimis* variance is intended to provide relief when the literal or strict enforcement of the provisions of the Town's land development and related regulations causes unusual, exceptional, unnecessary difficulties or hardship because of the size of the tract, parcel or lot, the topography, the condition or nature of adjoining areas or the existence of other unusual physical conditions, including existing construction features. In such circumstances, the Building Code Administrator, after conferring with the Building Commissioner and the Town Clerk and such other officials as the Administrator deems appropriate, may grant a *de minimis* variance subject to the following criteria:

- (1) The variance request complies with the requirements of Code Section 6-289(b)(3);
- (2) The structure or use at issue was constructed or commenced lawfully and with the proper permits;
- (3) Such a variance would not be contrary to the public interest or give special benefit to the property owner requesting such a variance; and
- (4) The variance, if granted, would not be in violation of the Town's Comprehensive Plan.

THE BUILDING CODE ADMINISTRATOR SHALL CREATE A FORM FOR THE INITIATION OF A

1 REQUEST FOR APPROVAL OF A *DE MINIMIS* VARIANCE AND A PROCESS BY WHICH AN APPLICATION IS
2 TRACKED THROUGH EACH STAGE OF THE APPLICATION PROCESS AS SET OUT HEREIN.

3
4 **(D) NOTICE OF THE GRANTING OF A *DE MINIMIS* VARIANCE.** UPON THE GRANTING OF
5 A *DE MINIMIS* VARIANCE, THE CLERK'S OFFICE SHALL GIVE NOTICE OF SAID GRANT TO THE
6 APPLICANT AND TO ALL PROPERTY OWNERS WITHIN 150 FEET OF ANY PROPERTY LINE OF THE
7 APPLICANT AS DETERMINED BY THE PINELLAS COUNTY PROPERTY APPRAISER'S OFFICE. FOR A
8 DOCK VARIANCE APPLICATION FOR A PROPERTY LOCATED ON AN INSIDE RADIUS AS SUCH IS
9 DEFINED BY SECTION 6-290(B), NOTICE OF THE GRANT OF THE VARIANCE SHALL BE GIVEN TO ALL
10 PROPERTY OWNERS WITH PROPERTY THAT FRONTS ON THE INSIDE RADIUS. ALL NOTICES GIVEN
11 PURSUANT TO THIS SECTION SHALL CLEARLY STATE THAT THE RECIPIENT OF THE NOTICE HAS THE
12 RIGHT TO APPEAL THE GRANT OF THE VARIANCE WITHIN 21 DAYS OF THE DATE OF THE NOTICE AS
13 PROVIDED BY SECTION 6-289-1(F).

14
15 **(E) EFFECTIVE DATE OF THE GRANT OF A *DE MINIMIS* VARIANCE.** NO *DE MINIMIS*
16 VARIANCE GRANTED PURSUANT TO THIS SECTION SHALL TAKE EFFECT UNTIL 21 DAYS AFTER THE
17 DATE OF THE NOTICE REQUIRED BY SECTION 6-289-1(D). ALTERNATIVELY, THE BUILDING CODE
18 ADMINISTRATOR MAY DEEM A *DE MINIMIS* VARIANCE TO HAVE TAKEN EFFECT ON RECEIPT OF
19 LETTERS OF NO OBJECTION FROM EACH PERSON TO WHOM A NOTICE IS ADDRESSED PURSUANT TO
20 SECTION 6-189-1(D).

21
22 **(f) Appeals from the Grant or Denial of a *De Minimis* Variance.** Denial of a *de*
23 *minimis* variance may be appealed to the board of adjustment subject to the variance criteria set
24 forth in section 6-289(b). When a *de minimis* variance is granted by the Building Code
25 Administrator any "person affected" by the grant of said variance may, within 30 days of the
26 grant of the *de minimis* variance, appeal the granting of the variance to the Board of Adjustment
27 as provided for in section 6-289(c) of the Town Code. A "person affected" by the grant of a *de*
28 *minimis* variance is a person who would be entitled to notice of a Board of Adjustment hearing
29 on a non-*de minimis* variance pursuant to Code section 6-290(b). No other person shall have
30 standing to appeal the granting of a *de minimis* variance.

31
32 **SECTION 3.** For purposes of codification of any existing section of the Redington
33 Beach Code herein amended, words underlined represent additions to original text, words
34 ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain
35 unchanged.
36

37 **SECTION 4.** If any section, subsection, sentence, clause, provision, or word of this
38 Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the
39 remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of
40 the Ordinance shall withstand any severed provision, as the Board of Commissioners would have
41 adopted the Ordinance and its regulatory scheme even absent the invalid part.

42 **SECTION 5.** The Codifier shall codify the substantive amendments to the Redington
43 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 6. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2021, by the Board of Commissioners of the Town of Redington Beach, Florida.

David Will, Mayor

Attest:

Missy Clarke, CMC, Town Clerk

Approved as to form:

Robert Eschenfelder, Town Attorney

C:\Red Beh\Board of Adjustment\De Min VariancesC.wpd