



# City of Jacksonville Beach

11 North Third Street  
Jacksonville Beach, Florida

## Agenda City Council

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Monday, December 18, 2017

7:00 PM

Council Chambers

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### MEMORANDUM TO:

The Honorable Mayor and  
Members of the City Council  
City of Jacksonville Beach, Florida

Council Members:

The following Agenda of Business has been prepared for consideration and action at the Regular Meeting of the City Council.

### **OPENING CEREMONIES: INVOCATION, FOLLOWED BY SALUTE TO THE FLAG**

### **CALL TO ORDER**

### **ROLL CALL**

### **APPROVAL OF MINUTES**

- a. 17-214 City Council Briefing Held December 4, 2017
- b. 17-215 Regular City Council Meeting Held December 4, 2017

### **ANNOUNCEMENTS**

### **COURTESY OF THE FLOOR TO VISITORS**

### **MAYOR AND CITY COUNCIL**

- 17-216 Presentation of Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting

### **CITY CLERK**

### **CITY MANAGER**

- a. 17-217 Accept the Monthly Financial Reports for the Month of November 2017

- b. 17-218 Ratify the Collective Bargaining Agreement with the Florida State Lodge, Fraternal Order of Police, Effective October 1, 2017
- c. 17-219 Award Bid Number 1617-15 Package for Expansion of Beaches Energy Services (BES) Guana Substation

## RESOLUTIONS

## ORDINANCES

- a. 17-220 ORDINANCE NO. 2017-8100 (First Reading)
- AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA; AMENDING CHAPTER 5, "ANIMALS AND FOWL," ARTICLE II. - DOGS AND CATS, DIVISION 1. - IN GENERAL, SECTION 5-33 "DOGS ON THE BEACH; REQUIREMENTS AND HOURS" SECTION 5-33(a)(b), PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.
- b. 17-221 ORDINANCE NO. 2017-8101 (First Reading) (PUBLIC HEARING)
- AN ORDINANCE TO AMEND AN ORDINANCE ENACTING AND ESTABLISHING A COMPREHENSIVE LAND DEVELOPMENT REGULATION AND OFFICIAL ZONING MAP FOR THE INCORPORATED AREA OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AS AUTHORIZED BY CHAPTER 163.3202, FLORIDA STATUTES, TO ADD DEFINITIONS FOR "PERSONAL WIRELESS SERVICE," "PERSONAL WIRELESS SERVICE FACILITY OR PERSONAL WIRELESS SERVICE FACILITIES" AND "PERSONAL WIRELESS SERVICE PROVIDER" TO ARTICLE IV, DEFINITIONS OF THE LAND DEVELOPMENT CODE OF THE CITY OF JACKSONVILLE BEACH; AND BY AMENDING ARTICLE VIII, DIVISION 2, SUPPLEMENTAL STANDARDS BY CREATING A NEW SECTION 34-409. PERSONAL WIRELESS FACILITIES, AND A NEW SECTION 34-410. PERSONAL WIRELESS FACILITY DEVELOPMENT STANDARDS; TO REPEAL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, AND FOR OTHER PURPOSES.
- c. 17-222 ORDINANCE NO. 2017-8099 (Second Reading)
- AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA; ADOPTING REGULATIONS RELATED TO WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

**ADJOURNMENT****NOTICE**

*In accordance with Section 286.0105, Florida Statutes, any person desirous of appealing any decision reached at this meeting may need a record of the proceedings. Such person 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 to be based.*

*The public is encouraged to speak on issues on this Agenda that concern them. Anyone who wishes to speak should submit the request to the City Clerk or to the recording secretary prior to the beginning of the meeting. These forms are available at the entrance of the City Council Chambers for your convenience.*

*In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office at (904) 247-6299, extension 10, no later than one business day before the meeting.*

**Minutes of City Council Briefing**  
**Monday, December 4, 2017 – 6:00 P.M.**  
**City Council Chambers Conference Room, 1<sup>st</sup> Floor**  
**11 North 3<sup>rd</sup> Street, Jacksonville Beach, FL**

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The Council Briefing began at 6:00 P.M.

The following City Council Members were in attendance:

Mayor William C. Latham

Lee Buck

Keith Doherty

Christine Hoffman (*absent*)

Bruce Thomason

Jeanell Wilson

Phil Vogelsang

Also present were City Manager George Forbes, Deputy City Manager Trish Roberts and Director of Planning and Development Bill Mann.

**Purpose of Briefing**

The purpose of the briefing was to update the Council Members on projects including, but not limited to, an update on the Johnson Gallery property.

**City Manager**

Mr. Forbes informed the Council of topics for upcoming briefing meetings would include:

- Dr. Kevin Bodge would discuss shore protection.
- A representative of Jacksonville Housing Authority to discuss future improvements to the existing public housing in Jacksonville Beach.

**Johnson Gallery property**

Mr. Steve Diebenow, the representative for former Johnson Gallery property, presented illustrations [on file] of the possible design for the upcoming and remodeled property. Mr. Diebenow explained the plan would include two restaurants in the former gallery building and one restaurant in the building on 1<sup>st</sup> Street. Mr. Diebenow stated parking is going to be an issue, but they are putting together an unsolicited offer to the Community Redevelopment Agency to utilize space and property that is owned by the CRA.

**Small Wireless Facilities updates**

Bill Mann, Director of Planning and Development, stated the Land Development Code communications regulations had not been updated since 2004. It was suggested by Mr. Mann to make the following amendments to the Code in response to recently passed legislation:

- Provide definitions of the following: Personal Wireless Services, Personal Wireless Facility, and Personal Wireless Provider
- Add a new Section 34-409 regarding the application process
- Add a new Section 34-410 regarding the development standards for Personal Wireless Facilities

Also, Mr. Mann stated a three-tier priority hierarchy would establish the most suitable location of the small wireless facilities be located:

- On or in an existing building
- On an existing free-standing facility
- On a public right-a-way

### Medical Marijuana

Mr. Forbes stated the Planning and Development Department is working towards adopting an Ordinance that could allow medical marijuana treatment dispensaries to operate in specific areas.

Mr. Mann reviewed the possible options for this Ordinance:

- Prohibit medical marijuana dispensaries
- Allow medical marijuana dispensaries to be a permitted use in a C-2 district and as a conditional use in C-1 and CBD districts
- Differentiate between two types of pharmacies; one as stand-alone pharmacies which would be allowed in the C-2 district, and the other as pharmacies in conjunction with retail stores which are allowed in all other commercial districts

### Dix.Hite+Partners

Mr. Mann stated Dix.Hite+Partners would be working on redesigning the original plan for the proposed pier entryway as well as redesigning the Relax in Jax logo.

Mr. Mann stated Dix.Hite+Partners had previously provided engineering cost estimates for the various recommended plan elements. In January 2018, Dix.Hite+Partners would begin working on a contract for implementation of work on the following elements:

- Pier entryway
- Site furnishings
- Bike parking master plan
- Lighting plan
- Wayfinding and signage plan
- Art master plan

The briefing adjourned at 6:50 P.M.

Minutes of City Council Briefing  
Monday, December 4, 2017, 6:00 P.M.

Submitted by: Jodilynn Byrd  
Administrative Assistant, City Clerk's Office

Approved:

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William C. Latham, MAYOR

Date: \_\_\_\_\_

Draft

**Minutes of Regular City Council Meeting  
held Monday, December 4, 2017, at 7:00 P.M.  
in the Council Chambers, 11 North 3<sup>rd</sup> Street,  
Jacksonville Beach, Florida**



**OPENING CEREMONIES**

Council Member Buck gave the invocation, followed by the salute to the flag.

**CALL TO ORDER**

Mayor Latham called the meeting to order at 7:00 P.M.

**ROLL CALL**

Mayor: William C. Latham

Council Members: Lee Buck                      Keith Doherty                      Christine Hoffman (*absent*)  
Bruce Thomason                      Phil Vogelsang                      Jeanell Wilson

Also present were City Manager George Forbes, Deputy City Manager Trish Roberts, Planning and Development Director Bill Mann, Fire Chief David Whitmill, Property and Procurement Officer Luis Flores, Director of Public Works Ty Edwards, City Clerk Laurie Scott, and Staff Assistant Mandy Murnane.

**APPROVAL OF MINUTES**

It was moved by Ms. Wilson, seconded by Mr. Doherty, and passed unanimously, to approve the following minutes:

- City Council Briefing held November 20, 2017
- Regular City Council Meeting held November 20, 2017

**ANNOUNCEMENTS**

**COURTESY OF THE FLOOR TO VISITORS**

- Kevin Allan, Liveaboard Sailor in Jacksonville Beach, spoke regarding medicinal marijuana dispensaries in Jacksonville Beach.

**MAYOR AND CITY COUNCIL**

The Mayor introduced Christopher Smith, a 7<sup>th</sup>-grade student from Fletcher Middle School, who was present at the meeting to watch government in action.

**CITY CLERK**

**CITY MANAGER**

**(a) Item #17-205 - Appointment of a Fifth Member to Serve on the General Employees' Retirement System Board of Trustees**

**Motion:** It was moved by Ms. Wilson and seconded by Mr. Doherty, to reappoint Brandon Maresma to serve as a trustee as the fifth member on the General Employees' Retirement System Board, for a two-year term to expire December 31, 2019.

**Discussion:** After Mr. Forbes briefly reviewed the ministerial action, Mayor Latham requested a roll call vote.

**Roll call vote:** Ayes – Buck, Doherty, Thomason, Vogelsang, Wilson, and Mayor Latham.  
The motion passed unanimously.

**(b) Item #17-206 - Appointment for One Alternate Member to the Board of Adjustment**

**Motion:** It was moved by Ms. Wilson and seconded by Mr. Doherty, to Nominate Lucas Snyder for appointment to the Board of Adjustment for a two-year term expiring on December 31, 2019.

**Discussion:** Mayor Latham called for a roll call vote, as there was no discussion on the agenda item.

**Roll call vote:** Ayes – Doherty, Thomason, Vogelsang, Wilson, Buck, and Mayor Latham.  
The motion passed unanimously.

**(c) Item #17-207 - Purchase a 2018 Rosenbauer Commander Rescue Pumper from the State Sheriff's Contract at a Cost of \$398,744 to Replace Our Current Squad 13, a 2001 Freightliner Commercial Pumper**

**Motion:** It was moved by Ms. Wilson and seconded by Mr. Doherty, to approve the purchase of a 2018 Rosenbauer Commander Rescue Pumper from the State Sheriff's Contract as outlined in the memo by Chief David Whitmill dated November 29, 2017.

**Discussion:** Mr. Forbes said the purchase would replace Squad 13, the 2001 Central States/ Freightliner Commercial Chassis Pumper that is beginning to need extensive repairs. The pumper will be built and arrive within a year, whereupon Squad 13 will be sold for plus/minus \$18,000.

Fire Chief David Whitmill, reported the Pumper includes a one-year warranty.

**Roll call vote:** Ayes – Thomason, Vogelsang, Wilson, Buck, Doherty,  
and Mayor Latham.  
The motion passed unanimously.

(d) **Item #17-208 - Approve a Contract with Garland/DBS Inc. for Water Intrusion Repairs at the Community Services Center Facility Located at 850 6th Avenue South**

**Motion:** It was moved by Ms. Wilson and seconded by Mr. Doherty, to approve the contract with Garland/DBS, Inc. for water intrusion repairs at the Community Services Center facility as described in a memo from Luis F. Flores, Property and Procurement Officer, dated November 27, 2017.

**Speakers:**

- Lori Richards, 2315 Beach Boulevard, stated she was the Executive Director of BEAM and spoke in favor of the agenda item.

**Discussion:** Mr. Forbes reviewed the exterior building repairs needed to address water intrusion issues throughout the facility.

A discussion ensued regarding the repairs at the Community Services Center and the utilization of the property before, during and after the repairs, and consideration for a rate reduction for time lost for the use of workspaces. Mr. Forbes advised that as the rent was about half of the market rate and BEAM had free use of the adjacent lot; he did not believe a rent reduction was warranted.

Property and Procurement Officer, Luis Flores, stated the majority of the repairs would be on the exterior of the building, allowing for the continued use of the facility during the construction process, which is estimated to be three months.

**Roll call vote:** Ayes – Vogelsang, Wilson, Buck, Doherty, Thomason,  
and Mayor Latham.  
The motion passed unanimously.

(e) **Item #17-209 - Approve the Dedication to the City and Acceptance for Maintenance of the Public Infrastructure Improvements Constructed in Conjunction with the New Worship Facilities for the *Church of Our Savior***

**Motion:** It was moved by Ms. Wilson and seconded by Mr. Doherty, to approve the dedication to the City and acceptance for maintenance of the public infrastructure improvements constructed in conjunction with the development of the *Church of Our Savior* property along Beach Boulevard as described in the memorandum from the Public Works Director dated November 9, 2017.

**Discussion:** Mr. Forbes provided a summary of the Church of Our Savior water and sewer line installation, and said the agenda item action requests acceptance of the project.

**Roll call vote:** Ayes - Wilson, Buck, Doherty, Thomason, Vogelsang,  
and Mayor Latham.  
The motion passed unanimously.

**RESOLUTION:**

**(a) Item # 17-211 - RESOLUTION NO. 1997-2017**

Mayor Latham requested that the City Clerk read Resolution No. 1997-2017, by title only, whereupon Ms. Scott read the following:

**“A RESOLUTION AUTHORIZING THE CONSTRUCTION AND MAINTENANCE AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION DETAILING OWNERSHIP OF, AND RESPONSIBILITIES FOR THE COST, CONSTRUCTION, OPERATION, MAINTENANCE AND REPAIR OF, THE NEW BRIDGES AND ROADWAY APPROACHES AT 15TH AND 18TH AVENUES NORTH IN JACKSONVILLE BEACH, FLORIDA, AS PART OF THE DEPARTMENT'S STATE ROAD A1A DRAINAGE IMPROVEMENTS PROJECT, WITH FINANCIAL PROJECT NUMBER 436077-1-52-01.”**

**Motion:** It was moved by Ms. Wilson and seconded by Mr. Doherty, to adopt Resolution 1997-2017, authorizing the Mayor and City Manager to execute with the Florida Department of Transportation, the Construction and Maintenance Agreement detailing ownership of, and responsibilities for the maintenance and repair of the new bridges and roadway approaches at 15<sup>th</sup> and 18<sup>th</sup> Avenues North.

**Discussion:** Mr. Forbes stated the Construction Maintenance Agreement with FDOT has an emphasis on rebuilding drainage channel improvements, beginning at 15<sup>th</sup> Avenue North and 18<sup>th</sup> Avenue North by spanning new channel bulkheads with new bridges. Though several concerns were brought to the attention of FDOT staff for changes in the agreement language, Mr. Forbes said the City's staff requests for changes continued to be disregarded and had to be escalated to the FDOT attorney, and, ultimately, to the District 2 Secretary-level.

Mr. Forbes explained that the FDOT is responsible to design and construct the bridges and roadway approaches at its expense, while the City is responsible for operating, maintaining, and repairing the bridges and the roadway approaches at its expense.

Mr. Forbes and the Director of Public Works, Ty Edwards, shared their concerns and challenged the following clauses in the agreement in particular:

**11. IMPROVEMENTS & MODIFICATIONS**

*A. The FDOT may require the City to improve or modify the Improvement if the Department determines: (1) improvements or modifications are required by applicable Governmental Law; or (2) improvements or modifications are necessitated by the FDOT in the conduct of its business.*

**15. REMOVAL**

*A. The FDOT may require the City to remove the Improvement and restore the Drainage Easement to such condition as required by the FDOT if the FDOT determines.*

Mr. Forbes said he doesn't know what the clause means [consequences of this clause are uncertain]. While meeting with the FDOT staff to address their concerns, the FDOT staff informed Mr. Forbes and Mr. Edwards that they would not change the language.

Mr. Forbes stated by acknowledging the agreement; it would ultimately allow for the award of twenty million dollars in stormwater improvements funded by the FDOT. He stated that while he did not agree with the contract language, it was a risk/reward situation. The risk of FDOT implementing these clauses was low, and the benefit of a 20 million dollar plus project was great.

Mayor Latham asked Mr. Forbes if the City Attorney had any feedback on the agreement.

Mr. Forbes confirmed the City Attorney had prior experience dealing with the FDOT and was aware of our concerns, however, he could not speak for the City Attorney.

**Roll call vote:** Ayes – Buck, Doherty, Thomason, Vogelsang, Wilson,  
and Mayor Latham.  
The motion passed unanimously.

**(b) Item # 17-213 - Authorize the Utility Work by Highway Contractor Agreement with the FDOT to Relocate City Water & Sewer Utilities Infrastructure at 15th and 18th Avenues North, as Part of the FDOT A1A Drainage Project.**

**Motion:** It was moved by Ms. Wilson and seconded by Mr. Doherty, to authorize the Mayor and City Manager to execute with the Florida Department of Transportation the Utility Work by Highway Contractor Agreement to relocate City water and sewer utilities infrastructure at 15th and 18th Avenues North, as part of the Department's State Road A1A Drainage Improvements Project, with Financial Project Number 436077-1-56-01.

**Discussion:** Mr. Forbes said the FDOT requires the City execution of the FDOT standard Utility Work by Highway Contractor Agreement, which authorizes the FDOT to utilize FDOT contractors to design and construct, at its expense, the relocation of City water and sewer utilities infrastructure as part of the FDOT A1A Drainage Improvements Project. He stated the City Council had already adopted a similar agreement for Beaches Energy Services.

**Roll call vote:** Ayes – Doherty, Thomason, Vogelsang, Wilson, Buck,  
and Mayor Latham.  
The motion passed unanimously.

**ORDINANCE:**

**Item #17-212 - ORDINANCE NO. 2017-8099 (First Reading)**

Mayor Latham requested that the City Clerk read Ordinance No. 2017-8099, by title only, whereupon Ms. Scott read the following:

**“AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA; ADOPTING REGULATIONS RELATED TO WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.”**

**Motion:** It was moved by Ms. Wilson and seconded by Mr. Doherty, to adopt Ordinance Number 2017-8099, amending Article IV of Chapter 28 of the City Code of Ordinances regulating small wireless facilities in the public rights-of-way as explained in the memorandum from the Public Works Director dated November 27, 2017.

**Discussion:** Mr. Forbes provided a summary of the recent bill passed during the last state legislative session, which regulates the placing of utility poles in the City’s rights-of-way to support small wireless facilities.

The primary objective of the City Code update was divided into two parts for adoption:

1. The first part recommends adopting Ordinance 2017-8099, the subject of the agenda item memorandum.
2. The second part recommends amending the Land Development Code, which must be considered by the Planning Commission before being brought to the Council for consideration.

The adoption of regulations for small wireless facilities was recommended to manage the growth of wireless communications facilities within the city limits in the best interests of the public safety, health, and prudent land use, including the limited resource of rights-of-way.

Additionally, the Ordinance incorporates a state law required “shot-clock” timeline and a required pre-application meeting between the City and applicant.

**Roll Call Vote:** Ayes – Doherty, Thomason, Vogelsang, Wilson, Buck, and Mayor Latham.  
The motion passed unanimously.

**ADJOURNMENT:**

There being no further business, the meeting adjourned at 7:45 P.M.

Submitted by: Laurie Scott  
City Clerk

Approval:

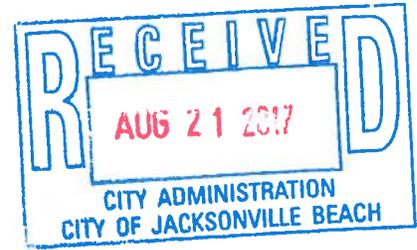
William C. Latham, MAYOR

Date: \_\_\_\_\_

Draft



**Government Finance Officers Association**  
203 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601-1210  
312.977.9700 fax: 312.977.4806



August 15, 2017

George D. Forbes  
City Manager  
City of Jacksonville Beach  
11 North Third Street  
Jacksonville Beach, FL 32250

Dear Mr. Forbes:

We are pleased to notify you that your comprehensive annual financial report (CAFR) for the fiscal year ended 2016 qualifies for GFOA's Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

When a Certificate of Achievement is awarded to a government, an Award of Financial Reporting Achievement (AFRA) is also presented to the individual(s) or department designated by the government as primarily responsible for its having earned the Certificate. This award has been sent to the submitter as designated on the application.

We hope that you will arrange for a formal presentation of the Certificate and Award of Financial Reporting Achievement, and that appropriate publicity will be given to this notable achievement. A sample news release is enclosed to assist with this effort.

We hope that your example will encourage other government officials in their efforts to achieve and maintain an appropriate standard of excellence in financial reporting.

Sincerely,

Todd Buikema  
Acting Director, Technical Services Center



GOVERNMENT FINANCE OFFICERS ASSOCIATION  
**NEWS RELEASE**

**FOR IMMEDIATE RELEASE**

08/15/2017

**For more information contact:**  
**Todd Buikema, Acting Director/TSC**  
**Phone: (312) 977-9700**  
**Fax: (312) 977-4806**  
**E-mail: [tbuikema@gfoa.org](mailto:tbuikema@gfoa.org)**

(Chicago, Illinois)--The Certificate of Achievement for Excellence in Financial Reporting has been awarded to **City of Jacksonville Beach** by Government Finance Officers Association of the United States and Canada (GFOA) for its comprehensive annual financial report (CAFR). The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

An Award of Financial Reporting Achievement has been awarded to the individual(s) or department designated by the government as primarily responsible for preparing the award-winning CAFR.

The CAFR has been judged by an impartial panel to meet the high standards of the program, which includes demonstrating a constructive "spirit of full disclosure" to clearly communicate its financial story and motivate potential users and user groups to read the CAFR.

*Government Finance Officers Association is a major professional association servicing the needs of nearly 19,000 appointed and elected local, state, and provincial-level government officials and other finance practitioners. It provides top quality publications, training programs, services, and products designed to enhance the skills and performance of those responsible for government finance policy and management. The association is headquartered in Chicago, Illinois, with offices in Washington, D.C.*

City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6274

Fax: 904.270.1642

[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)

MEMORANDUM

TO: George D. Forbes, City Manager  
FROM: Karen Nelson, Chief Financial Officer  
SUBJECT: Monthly Financial Reports for November 2017  
DATE: December 4, 2017

**Action Requested**

Accept the monthly financial reports for the month of November 2017.

**Background**

The monthly financial reports for November 2017 are provided for your information and review. These reports can be found in the "Reports and Information" portion of this agenda.

**Recommendation**

Accept the financial reports for the month of November 2017, as submitted by the Chief Financial Officer.



City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6263

Fax: 904.247.6169

[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)

## MEMORANDUM

TO: George D. Forbes, City Manager  
FROM: Ann Meuse, Human Resources Director   
SUBJECT: Ratification of FOP Contract, Effective October 1, 2017  
DATE: December 6, 2017

### ACTION REQUESTED

Ratify the Collective Bargaining Agreement with the Florida State Lodge, Fraternal Order of Police, effective October 1, 2017.

### BACKGROUND

The City and the FOP began negotiations several months ago for a three-year contract. 12 bargaining sessions were held and on December 8, 2017, the union held a vote among its members and ratified the contract. Major provisions of the agreement are as follows:

#### Duration

- A three-year contract effective October 1, 2017 and expiring September 30, 2020.

#### Wages

- Provides for a merit based step pay plan in accordance with the Pay Grade Schedule, (*Attachment A, Appendix C*), whereby bargaining unit employees will receive the greater of:
  - 2% above his or her base wage rate effective October 1, 2017 and placed in the closest step within his or her pay grade,
  - or the wage rate of the step that correlates with the employee's years of service.
- Provides for a merit based step increase upon annual evaluation as employees advance through the Pay Grade Schedule. The increase is based on whether the employee "meets" or "exceeds" expectations.
- Increases the Pay Grade Schedule by 4% effective October 1, 2018 and by 4% effective October 1, 2019.



Memorandum to George D. Forbes

December 6, 2017

Page 2 of 2

- Provides for a lump sum award, based on merit, of 2%-3% for employees who have reached the maximum rate in the assigned pay grade.

Sick Leave

- Removes the dependent care sick leave cap of fifty-six hours (56) for dependent sick leave that qualifies under the Family Medical Leave Act.

Retirement

- Provides for all annual and accumulated premium tax revenues to be used to offset the City's pension contributions.

Proposed changes to the existing language are highlighted in *Attachment A*.

RECOMMENDATION

Ratify the three-year Collective Bargaining Agreement with the Florida State Lodge, Fraternal Order of Police, effective October 1, 2017.

**COLLECTIVE BARGAINING AGREEMENT**

**BETWEEN**

**FLORIDA STATE LODGE, FRATERNAL ORDER OF POLICE**

**and**

**CITY OF JACKSONVILLE BEACH**



Ratified by the FOP on December 8, 2017

## ARTICLE 12

### WAGES

12.1 All bargaining unit employees shall be compensated in accordance with the pay schedule attached hereto and made a part hereof, referred to as Appendix "C".

12.2 Administration of the pay plan shall be in accordance with Appendix "D," but the pay plan shall be suspended until September 30, 2020.

12.3 Effective October 1, 2017, All each bargaining unit employees with six (6) years of service or less on May 1, 2014 shall receive a pay increase of 2.5% or an increase to the minimum rate for the pay grade, whichever is greater. All bargaining unit employees with more than six (6) years of service on May 1, 2014 shall receive a pay increase of 1.5% or an increase to the minimum rate for the pay grade, whichever is greater. This shall be a one time increase on the effective date of this agreement and no further increases shall be automatic will receive the greater of (a) 2% above his or her base wage rate in effect immediately preceding the effective date of this Agreement, placed in the closest step within his or her pay grade or (b) the wage rate of the step which correlates with the employee's years of service with the City.

**ARTICLE 21**  
**SICK LEAVE**

~~21.1 — This article shall be effective January 1, 1995.~~

21.21 Full-time regular employees in the bargaining unit will be eligible to accrue sick leave after 30 days continuous service with the City.

21.32 Sick leave shall accrue at the rate of three and sixty nine hundredths (3.69) hours per pay period with no limitation on the maximum accumulation.

21.43 Sick leave may be granted only for absence from duty because of the following:

- (a) personal illness or injury;
- (b) professional treatment by a doctor or dentist to prevent illness or treat an illness or injury;
- (c) legal quarantine; and
- (d) serious illness or injury of a member of the employee's immediate family which requires the personal care and attention of the employee. (maximum usage per year fifty-six (56) hours except for leave that qualifies under the Family and Medical Leave Act).

21.54 Sick leave may be charged in increments of not less than one hour for the first hour of an absence, and in one-half ( $\frac{1}{2}$ ) hour increments for the remainder of the absence.

21.65 Sick leave will not be charged when an observed holiday falls within the period of authorized absence.

21.76 Unused sick leave shall be forfeited upon termination from the City for any reason other than retirement under the City's pension plan or the death of the employee. Payment for unused sick leave up to a maximum of seven hundred twenty (720) hours at his/her current rate of pay

will be made to any employee retiring under the City’s pension plan, and to the beneficiary upon the death of an employee. An additional payment of sick leave shall be paid to retiring employees who:

- (a) are retiring in “good standing”
- (b) possess twenty (20) years of continuous service with the City; and
- (c) possess a sick leave balance of seven hundred twenty (720) hours.

Employees meeting the above criteria, as well as the beneficiary of a deceased employee, shall be eligible to receive payment for twenty five percent (25%) of any hours accrued over seven hundred twenty (720) to a maximum of two thousand eight hundred eighty (2880).

21.~~87~~ An employee claiming sick leave shall be required to sign and file an appropriate form certifying as to the illness. A doctor's certificate may be required for any absence and is required for any absence in excess of two (2) shifts.

21.~~98~~ Sick leave is a privilege extended to employees to ensure they do not lose income when incapacitated from performing their duties. Abuse of this privilege shall be cause for discharge from the City.

21.~~109~~ Employees not using any sick leave for one full calendar year shall have the option of converting sixteen (16) hours sick leave to sixteen (16) additional hours annual leave or cash. If an employee uses ten (10) or ~~less-fewer~~ hours, he/she shall have the option of converting eight (8) hours sick leave to eight (8) additional hours’ annual leave or cash.

21.~~110~~ Sick Leave Donation for Catastrophic Illness.

The City recognizes that during times of serious illness, often times an employee’s financial integrity is at risk. To enable employees to help their fellow workers suffering a catastrophic illness without a direct financial outlay, the City and the Union agree to offer a leave donation program. The program is outlined to allow full-time bargaining unit employees to donate leave from their sick account to other employees within the unit as outlined below:

- (a) Any full-time bargaining unit employee who suffers a catastrophic illness and has exhausted all their accumulated leave (compensatory time, sick leave, personal leave, vacation, etc.) may be eligible to receive sick leave donations from other employees within the FOP bargaining unit.
- (b) Catastrophic illness is defined as a) a life threatening illness that requires hospitalization of a minimum of five days and recovery at home or in another facility (the hospitalization must not be due to elective surgery) or b) a disease or illness certified by a duly licensed physician practicing within the scope of the physician's license which disables the individual from performing all his/her job functions for an extended period of time (at least thirty (30) calendar days).
- (c) Employees may request this leave donation by submitting a leave request with appropriate medical certification to their supervisor two weeks in advance of when the leave donation is needed. Failure to provide notice two weeks in advance may result in denial of the leave donation, unless due to circumstances beyond the employee's control the appropriate notice could not be given. The Department Director may also initiate a request for sick leave donation.
- (d) Payment begins on the first day following a five (5) consecutive unpaid work day elimination period.
- (e) Employees who wish to donate sick leave to another employee's sick account for catastrophic illness (as defined above) may do so by completing a sick leave donation form and submitting it to the Police Department administrative offices. The maximum donation allowed per incident from any one employee is forty (40) hours. Employees making the donation must have a minimum eighty (80) hour balance in order to donate. Donations must be made in increments of not less than eight hours.
- (f) The maximum payable to any one employee for catastrophic illness from employee donations is two hundred forty (240) hours.
- (g) The City Manager or his/her designee shall have sole discretion in approving any leave donation request. No provision of this section is subject to the grievance procedure.

**ARTICLE 29**  
**RETIREMENT**

29.1 Retirement benefits and employee contributions for employees covered by this Agreement shall be as provided in the City of Jacksonville Beach Police Officers' Retirement Plan (the "Plan"), ~~except as provided below. All changes to the existing Plan shall take effect effective~~ June 23, 2014 ~~or upon implementation of this Agreement, if later~~ (the "effective date").

29.2 The benefit multiplier shall be 3.0% for all credited service on and after the effective date, up to the maximum benefit provided in section 29.3 below. Employees who ~~are~~ were employed on the effective date shall retain their accrued benefits based on service prior to the effective date.

29.3 The maximum benefit shall be 90% of final average compensation or \$90,000 annually, whichever is less; provided any employee who ~~has~~ accrued a benefit percentage in excess of 90% or an annual benefit of more than \$90,000 on the effective date shall retain that accrued benefit, but shall not accrue any additional benefit percentage after the effective date.

29.4 The normal retirement date for employees with less than 10 years of credited service on the effective date and employees hired on or after that date shall be age 52 with 25 years of credited service, age 55 with 10 years of credited service, or 30 years of credited service regardless of age, whichever is earlier. Employees with 10 or more years of credited service on the effective date shall retain the current normal retirement date of age 52 with 25 years of credited service, age 55 with 5 years of credited service, or 30 years of credited service regardless of age.

29.5 The early retirement benefit ~~shall be~~ was eliminated on the effective date; provided, employees who ~~have~~ attained age 50 with 10 or more years of credited service or 20 years of credited service regardless of age on the effective date shall retain the current early retirement benefit.

29.6 The vesting period for employees with less than 5 years of credited service on the effective date and employees hired on or after that date shall be 10 years, including credited service before and after the effective date. The deferred benefit for employees with less than 10 years of credited service on the effective date and employees hired on or after that date who attain 10 years of credited service, and separate from City employment prior to the normal or early retirement date shall be payable at age 55 with 10 years of credited service, age 52 with 25 years of credited service, or age 65 with 5 years of credited service, whichever is earliest.

29.7 The above changes shall not apply to any employee who ~~has~~ reached age 52 with 25 years of credited service, age 55 with 5 years of credited service, or 30 years of credited service regardless of age on the effective date.

29.8 Compensation for pension purposes on and after the effective date shall be base pay plus longevity pay, incentive pay, and overtime pay in an amount not to exceed three hundred (300) hours per calendar year. Compensation shall exclude overtime pay in excess of 300 hours per calendar year, leave payouts and all other compensation. Payments for overtime in excess of 300 hours per calendar year accrued as of the effective date and attributable to service earned prior to the effective date, shall be included in compensation for pension purposes even if payment is not made until on or after the effective date.

29.9 The DROP ~~shall be~~was closed to new members on the effective date, and replaced with a BACK-DROP. Employees who ~~are~~were participating in the DROP on the effective date may continue to participate in the DROP under the terms in effect on the date they entered the DROP. Employees who reach the normal retirement date on or after the effective date may elect the BACK-DROP. Under the BACK-DROP, an employee may receive a lump sum payment equal to the pension benefits the employee would have received had he/she retired on their normal retirement date, with interest at the rate of 3%. The member's benefit will then be actuarially adjusted to reflect the lump sum payment.

29.10 ~~Commencing on the effective date,~~ The employee contribution shall be 7.95% of compensation.

29.11 ~~The parties agree that all accumulated additional premium tax revenues as reflected in the October 1, 2012 actuarial valuation shall be used to reduce the unfunded actuarial accrued liability of the Plan.~~ All annual premium tax revenues received pursuant to Chapter 185, Florida Statutes, will be used to offset the City's pension contributions.

29.12 All accumulated excess premium tax revenues as of October 1, 2016 will be used to offset the City's pension contributions.

29.13 In accordance with section 185.35(6), Florida Statutes, a defined contribution plan component ("share plan") will be established for police officers as part of the defined benefit pension plan, to be funded exclusively with Chapter 185 premium tax revenues. However, the City and Union have mutually agreed that no Chapter 185 premium tax revenues will be allocated to the share plan at this time. The share plan shall not be activated until Chapter 185 premium tax revenues are allocated to the share plan by mutual agreement of the parties. At such time as the City and Union agree to allocate Chapter 185 premium tax revenues to the share plan, the parties will negotiate the details of the share plan.

ARTICLE 30  
ENTIRE AGREEMENT

29.1 This Agreement shall be effective on ~~May-October~~ 1, ~~2014-2017~~ and shall remain in force and effect until ~~April-September~~ 30, ~~2017~~2020.

~~29.2 The City and the FOP agree to reopen Article 12 (Wages) prior to April 30, 2016, for the year beginning May 1, 2016.~~

~~29.3~~2 This Agreement is complete in writing. It may be amended only by an instrument in writing, signed by the City and the FOP. Such an amendment may be effective during the term of this Agreement and may extend the term of this Agreement.

In witness whereof, the parties hereto have set their hands this \_\_\_\_ day of \_\_\_\_\_, ~~2014~~2017.

FOR THE CITY

FOR THE FOP

\_\_\_\_\_  
Charles W. Latham, Mayor

\_\_\_\_\_  
~~Gary W. Evans~~Steven Amos

\_\_\_\_\_  
George D. Forbes, City Manager

\_\_\_\_\_  
William K. Brown

\_\_\_\_\_  
~~Judy Bullock~~Laurie Scott, City Clerk

\_\_\_\_\_  
David D. Cohill

**APPENDIX C  
PAY GRADE SCHEDULE**

**October 1, 2017 - September 30, 2018**

| <b>Officer</b> |                  |                 |                    |                 |
|----------------|------------------|-----------------|--------------------|-----------------|
| <i>Step</i>    | <i>Meets (a)</i> |                 | <i>Exceeds (b)</i> |                 |
|                | <i>Hourly</i>    | <i>Annually</i> | <i>Hourly</i>      | <i>Annually</i> |
| 1              | \$19.32          | \$40,185.60     |                    |                 |
| 2              | \$19.80          | \$41,184.00     | \$19.99            | \$41,579.20     |
| 3              | \$20.40          | \$42,432.00     | \$20.59            | \$42,827.20     |
| 4              | \$21.01          | \$43,700.80     | \$21.21            | \$44,116.80     |
| 5              | \$21.64          | \$45,011.20     | \$21.85            | \$45,448.00     |
| 6              | \$22.29          | \$46,363.20     | \$22.50            | \$46,800.00     |
| 7              | \$22.96          | \$47,756.80     | \$23.18            | \$48,214.40     |
| 8              | \$24.91          | \$51,812.80     | \$25.15            | \$52,312.00     |
| 9              | \$25.58          | \$53,206.40     | \$25.83            | \$53,726.40     |
| 10             | \$26.27          | \$54,641.60     | \$26.53            | \$55,182.40     |
| 11             | \$26.98          | \$56,118.40     | \$27.24            | \$56,659.20     |
| 12             | \$27.71          | \$57,636.80     | \$27.98            | \$58,198.40     |
| 13             | \$28.46          | \$59,196.80     | \$28.73            | \$59,758.40     |
| 14             | \$29.22          | \$60,777.60     | \$29.51            | \$61,380.80     |
| 15             | \$30.01          | \$62,420.80     | \$30.31            | \$63,044.80     |
| 16             | \$30.82          | \$64,105.60     | \$31.12            | \$64,729.60     |

| <b>Corporal</b> |                  |                 |                    |                 |
|-----------------|------------------|-----------------|--------------------|-----------------|
| <i>Step</i>     | <i>Meets (a)</i> |                 | <i>Exceeds (b)</i> |                 |
|                 | <i>Hourly</i>    | <i>Annually</i> | <i>Hourly</i>      | <i>Annually</i> |
| 1               | \$28.70          | \$59,696.00     |                    |                 |
| 2               | \$29.28          | \$60,902.40     | \$29.56            | \$61,484.80     |
| 3               | \$30.15          | \$62,712.00     | \$30.45            | \$63,336.00     |
| 4               | \$31.06          | \$64,604.80     | \$31.36            | \$65,228.80     |
| 5               | \$31.99          | \$66,539.20     | \$32.30            | \$67,184.00     |
| 6               | \$32.95          | \$68,536.00     | \$33.27            | \$69,201.60     |
| 7               | \$33.94          | \$70,595.20     | \$34.27            | \$71,281.60     |

| <b>Sergeant</b> |                  |                 |                    |                 |
|-----------------|------------------|-----------------|--------------------|-----------------|
| <i>Step</i>     | <i>Meets (a)</i> |                 | <i>Exceeds (b)</i> |                 |
|                 | <i>Hourly</i>    | <i>Annually</i> | <i>Hourly</i>      | <i>Annually</i> |
| 1               | \$31.67          | \$65,873.60     |                    |                 |
| 2               | \$32.31          | \$67,204.80     | \$32.62            | \$67,849.60     |
| 3               | \$33.28          | \$69,222.40     | \$33.60            | \$69,888.00     |
| 4               | \$34.27          | \$71,281.60     | \$34.61            | \$71,988.80     |
| 5               | \$35.30          | \$73,424.00     | \$35.65            | \$74,152.00     |
| 6               | \$36.36          | \$75,628.80     | \$36.72            | \$76,377.60     |
| 7               | \$37.45          | \$77,896.00     | \$37.82            | \$78,665.60     |

**APPENDIX C  
PAY GRADE SCHEDULE**

**October 1, 2018 - September 30, 2019**

| <b>Officer</b> |                  |                 |                    |                 |
|----------------|------------------|-----------------|--------------------|-----------------|
| <b>Step</b>    | <b>Meets (a)</b> |                 | <b>Exceeds (b)</b> |                 |
|                | <i>Hourly</i>    | <i>Annually</i> | <i>Hourly</i>      | <i>Annually</i> |
| 1              | \$20.09          | \$41,787.20     |                    |                 |
| 2              | \$20.59          | \$42,827.20     | \$20.79            | \$43,243.20     |
| 3              | \$21.21          | \$44,116.80     | \$21.42            | \$44,553.60     |
| 4              | \$21.85          | \$45,448.00     | \$22.06            | \$45,884.80     |
| 5              | \$22.50          | \$46,800.00     | \$22.72            | \$47,257.60     |
| 6              | \$23.18          | \$48,214.40     | \$23.40            | \$48,672.00     |
| 7              | \$23.87          | \$49,649.60     | \$24.11            | \$50,148.80     |
| 8              | \$25.90          | \$53,872.00     | \$26.16            | \$54,412.80     |
| 9              | \$26.60          | \$55,328.00     | \$26.86            | \$55,868.80     |
| 10             | \$27.32          | \$56,825.60     | \$27.59            | \$57,387.20     |
| 11             | \$28.06          | \$58,364.80     | \$28.33            | \$58,926.40     |
| 12             | \$28.82          | \$59,945.60     | \$29.10            | \$60,528.00     |
| 13             | \$29.59          | \$61,547.20     | \$29.88            | \$62,150.40     |
| 14             | \$30.39          | \$63,211.20     | \$30.69            | \$63,835.20     |
| 15             | \$31.21          | \$64,916.80     | \$31.52            | \$65,561.60     |
| 16             | \$32.06          | \$66,684.80     | \$32.37            | \$67,329.60     |

| <b>Corporal</b> |                  |                 |                    |                 |
|-----------------|------------------|-----------------|--------------------|-----------------|
| <b>Step</b>     | <b>Meets (a)</b> |                 | <b>Exceeds (b)</b> |                 |
|                 | <i>Hourly</i>    | <i>Annually</i> | <i>Hourly</i>      | <i>Annually</i> |
| 1               | \$29.85          | \$62,088.00     |                    |                 |
| 2               | \$30.45          | \$63,336.00     | \$30.75            | \$63,960.00     |
| 3               | \$31.36          | \$65,228.80     | \$31.67            | \$65,873.60     |
| 4               | \$32.30          | \$67,184.00     | \$32.62            | \$67,849.60     |
| 5               | \$33.27          | \$69,201.60     | \$33.60            | \$69,888.00     |
| 6               | \$34.27          | \$71,281.60     | \$34.60            | \$71,968.00     |
| 7               | \$35.30          | \$73,424.00     | \$35.64            | \$74,131.20     |

| <b>Sergeant</b> |                  |                 |                    |                 |
|-----------------|------------------|-----------------|--------------------|-----------------|
| <b>Step</b>     | <b>Meets (a)</b> |                 | <b>Exceeds (b)</b> |                 |
|                 | <i>Hourly</i>    | <i>Annually</i> | <i>Hourly</i>      | <i>Annually</i> |
| 1               | \$32.94          | \$68,515.20     |                    |                 |
| 2               | \$33.60          | \$69,888.00     | \$33.93            | \$70,574.40     |
| 3               | \$34.61          | \$71,988.80     | \$34.95            | \$72,696.00     |
| 4               | \$35.65          | \$74,152.00     | \$36.00            | \$74,880.00     |
| 5               | \$36.72          | \$76,377.60     | \$37.08            | \$77,126.40     |
| 6               | \$37.82          | \$78,665.60     | \$38.19            | \$79,435.20     |
| 7               | \$38.95          | \$81,016.00     | \$39.33            | \$81,806.40     |

**APPENDIX C  
PAY GRADE SCHEDULE**

**October 1, 2019 - September 30, 2020**

| <b>Officer</b> |                  |                 |                    |                 |
|----------------|------------------|-----------------|--------------------|-----------------|
| <i>Step</i>    | <i>Meets (a)</i> |                 | <i>Exceeds (b)</i> |                 |
|                | <i>Hourly</i>    | <i>Annually</i> | <i>Hourly</i>      | <i>Annually</i> |
|                | 1                | \$20.90         | \$43,472.00        |                 |
| 2              | \$21.42          | \$44,553.60     | \$21.63            | \$44,990.40     |
| 3              | \$22.06          | \$45,884.80     | \$22.28            | \$46,342.40     |
| 4              | \$22.72          | \$47,257.60     | \$22.94            | \$47,715.20     |
| 5              | \$23.40          | \$48,672.00     | \$23.63            | \$49,150.40     |
| 6              | \$24.11          | \$50,148.80     | \$24.34            | \$50,627.20     |
| 7              | \$24.83          | \$51,646.40     | \$25.07            | \$52,145.60     |
| 8              | \$26.94          | \$56,035.20     | \$27.20            | \$56,576.00     |
| 9              | \$27.67          | \$57,553.60     | \$27.94            | \$58,115.20     |
| 10             | \$28.41          | \$59,092.80     | \$28.69            | \$59,675.20     |
| 11             | \$29.18          | \$60,694.40     | \$29.47            | \$61,297.60     |
| 12             | \$29.97          | \$62,337.60     | \$30.26            | \$62,940.80     |
| 13             | \$30.78          | \$64,022.40     | \$31.08            | \$64,646.40     |
| 14             | \$31.61          | \$65,748.80     | \$31.92            | \$66,393.60     |
| 15             | \$32.46          | \$67,516.80     | \$32.78            | \$68,182.40     |
| 16             | \$33.34          | \$69,347.20     | \$33.66            | \$70,012.80     |

| <b>Corporal</b> |                  |                 |                    |                 |
|-----------------|------------------|-----------------|--------------------|-----------------|
| <i>Step</i>     | <i>Meets (a)</i> |                 | <i>Exceeds (b)</i> |                 |
|                 | <i>Hourly</i>    | <i>Annually</i> | <i>Hourly</i>      | <i>Annually</i> |
|                 | 1                | \$31.04         | \$64,563.20        |                 |
| 2               | \$31.66          | \$65,852.80     | \$31.98            | \$66,518.40     |
| 3               | \$32.61          | \$67,828.80     | \$32.93            | \$68,494.40     |
| 4               | \$33.59          | \$69,867.20     | \$33.92            | \$70,553.60     |
| 5               | \$34.60          | \$71,968.00     | \$34.94            | \$72,675.20     |
| 6               | \$35.64          | \$74,131.20     | \$35.99            | \$74,859.20     |
| 7               | \$36.71          | \$76,356.80     | \$37.07            | \$77,105.60     |

| <b>Sergeant</b> |                  |                 |                    |                 |
|-----------------|------------------|-----------------|--------------------|-----------------|
| <i>Step</i>     | <i>Meets (a)</i> |                 | <i>Exceeds (b)</i> |                 |
|                 | <i>Hourly</i>    | <i>Annually</i> | <i>Hourly</i>      | <i>Annually</i> |
|                 | 1                | \$34.26         | \$71,260.80        |                 |
| 2               | \$34.94          | \$72,675.20     | \$35.29            | \$73,403.20     |
| 3               | \$35.99          | \$74,859.20     | \$36.34            | \$75,587.20     |
| 4               | \$37.07          | \$77,105.60     | \$37.44            | \$77,875.20     |
| 5               | \$38.18          | \$79,414.40     | \$38.56            | \$80,204.80     |
| 6               | \$39.33          | \$81,806.40     | \$39.71            | \$82,596.80     |
| 7               | \$40.51          | \$84,260.80     | \$40.91            | \$85,092.80     |

## APPENDIX D

## POSITION CLASSIFICATION AND PAY PLAN

- A. Appointments and Starting Rates.
- 1) The minimum salary established for a position is considered the normal appointment rate for new employees.
  - 2) Appointments above the minimum salary may be authorized by the City Manager if the applicant's training, experience or other qualifications are substantially above those required for the position.
- B. Progression Through Administration of the Pay Plan.
- 1) The Pay Plan Grade Schedule consists of a pay grade schedule with steps provides pay grades and salary ranges in hourly and annual amounts. Minimums, maximums and midpoints are identified.
  - 2) An employee may receive a salary increase by means of a merit salary advancement, promotion or reclassification, provided there is an availability of funds.
  - 3) The progression rate of pay of an employee within the pay grade will depend on merit. There are no provisions in the pay plan for automatic salary advancement as all merit increases are to be based upon work performance and other pertinent factors as evaluated by the employee's supervisor.
  - 4) The City Manager may approve special salary increases based on evaluation of performance and/or to address what the City determines to be pay inequities.
- C. Merit Increases
- 1) A merit salary advancement is a salary increase within the same pay grade and is not considered to be automatic but based upon an evaluation of performance of an individual.
  - 2) An employee is eligible for a merit salary advancement on the anniversary date of his/her employment in the position, as warranted by performance.
  - 3) The employee may advance through his/her assigned pay grade following an annual evaluation. Rules guiding the performance evaluation system determine whether there will be no increase or the increase will be one

~~step be 2% to 3% of the midpoint within the employee's current pay grade. Within each step, employees will be placed in category a (meets)-or category b (exceeds).<sup>1</sup>~~ Recommendations for no increase or salary decrease must be justified.

- 4) ~~Merit increases to category b in excess of 2% of the midpoint~~ within the applicable pay grade ~~are reserved may be justified~~ for employees deserving special recognition and must be approved by the City Manager.

#### D. Promotional and Probationary Increases

- 1) Officers and Corporals promoted shall receive a minimum salary increase of 5% ~~and will be placed in the closest step, within their pay grade.~~ Upon successful completion of 6 months service in the new position, the employee will be eligible for a ~~merit salary advancement of one step~~ 5% ~~pay increase.~~
- 2) All new employees shall, upon successful mid-probation evaluation, be eligible for a merit salary advancement of ~~one step~~ 3% to 5% ~~over the employee's current rate.~~ Merit increases for employees upon successful mid-probation evaluation ~~to category b in excess of 3%~~ may be justified for employees deserving special recognition and must be approved by the City Manager.

#### E. Special Assignment

Police Officers may receive additional pay for special assignments which require them to assume some supervisory responsibilities on a temporary basis, such as Field Training Officer. Assignments of this sort should be closely monitored and selectively made.

Field Training Officers shall be eligible to receive an additional 10% when assigned to train a probationary officer. Officers will receive additional pay only during those hours they are actually performing the special assignment. Officers' eligibility for special assignment pay based upon the above criteria is subject to the discretion of the Police Chief. The Chief shall have the sole discretion to approve or disapprove special assignment pay.

#### F. Longevity Pay

In addition to the normal salary determined for an individual position, employees should be eligible for longevity pay under the following conditions: 1) Each employee shall receive Two Hundred Forty Dollars (\$240) per year for each five years of continuous service to the City; 2) Layoffs initiated by the City or approved leaves of absences shall

<sup>1</sup> Under the evaluation system in effect as of ratification of this Agreement, "satisfactory" will result in being placed in the "meets" category; higher ratings will be categorized "exceeds." Lower categories do not warrant any step increase.

not count toward the determination of continuous service but neither shall such constitute breaks in service; 3) Longevity pay shall be paid commencing with the anniversary of the employee's fifth, tenth, fifteenth, twentieth, twenty-fifth, etc. year of service. Employees hired after October 1, 2001 shall not be eligible to receive longevity pay.

G. EXCEL (Excellent City Employees with Longevity) Program

- 1) An employee may be eligible for a lump sum award ~~of 2% to 3% of the midpoint within the employee's current pay grade,~~ based upon the performance evaluation, once the individual has achieved progression ~~through to the maximum pay in~~ the assigned pay grade ~~to the maximum step. The individual at the maximum step of the assigned pay grade will be evaluated in the same manner as other employees. The amount of EXCEL awards are 2 or 3%. EXCELs of 3% should be reserved for those individuals deserving special recognition.~~ EXCEL awards will be provided in one lump sum in lieu of an increase to the employee's base pay. ~~Appropriate tax exclusions will be made.~~
- 2) EXCEL lump sums may be awarded once every year. An EXCEL award shall not be given during the same year as a merit increase. Exception is granted if the individual is recommended for an increase and in order to award the increase, it is necessary to combine the merit increase with a lump sum EXCEL amount, ~~so that the employee's pay rate does not exceed the maximum rate for the pay grade.~~ ~~For example, if an employee qualifies for a 3% increase, but is within 1% of the maximum rate for the pay grade, he or she will receive a 1% pay rate increase plus a 2% EXCEL award.~~

H. Effective Date

The Position Classification and Pay Plan shall be effective on ~~October 1, 2017~~ ~~May 1, 2014~~ and shall remain in force and effect until ~~September 30, 2020~~ ~~April 30, 2016~~, at which time it will expire.



BEACHES | ENERGY  
SERVICES

## MEMORANDUM

**TO:** George D. Forbes  
City Manager

**FROM:** Allen Putnam  
Director of Beaches Energy Services

**DATE:** December 9, 2017

**RE:** Bid No. 1617-15 Package for Expansion of Beaches Energy Services Guana Substation

---

### **ACTION REQUESTED:**

Award Bid Number 1617-15 Package for Expansion of Beaches Energy Services (BES) Guana Substation.

### **BACKGROUND:**

The primary goal for any electrical utility is to provide highly reliable electric service to its customers. In 2016, our post-storm analysis of Hurricane Matthew revealed a weak point in our substation configuration. We determined that we have insufficient power transformer capacity at the Guana substation in the event the Ft. Diego substation experiences an extended outage. This is important considering Ft. Diego substation's proximity to the Intracoastal Waterway.

For this reason, the Beaches Energy Services Capital Improvement Plan for FY2017-2018 includes the expansion of the Guana substation by adding a second power transformer in a ring-bus configuration. Additionally, slight modifications are required at two adjacent substations (Ft. Diego and Sampson) to accommodate the upgrades at the Guana substation.

The power transformer was delivered on November 3, 2017. Aside from three 26.4 kV breakers, the next step is to procure all other necessary substation materials, structural steel, and remaining equipment via a substation packager. These materials are required to construct all supporting structures and ancillary sub-systems at Guana, Ft. Diego and Sampson substations. Once these materials are procured, a separate bid solicitation will be submitted to secure the services of a general contractor to complete the installation and construction of these items.

In September 2017, bids were received for the Package for Expansion of Beaches Energy Services Guana Substation. Two of the bids were rejected due to the bid submissions not providing pricing for the materials we specifically identified within the bid solicitation document.

Following is the bid tabulation sheet:

| <b>VENDOR</b>             | <b>AMOUNT</b> |
|---------------------------|---------------|
| V&S Schuler               | \$548,480*    |
| Dis Tran                  | \$551,335*    |
| MD Henry Company          | \$565,268     |
| Substation Enterprises    | \$629,718     |
| Engineered Power Products | \$690,000     |

\* Rejected Bid

**RECOMMENDATION:**

Award Bid 1617-15 - Package for the Expansion of the Beaches Energy Services Guana Substation to the lowest responsive bidder, MD Henry Company.

City of  
Jacksonville Beach  
City Hall  
11 North Third Street  
Jacksonville Beach  
FL 32250  
Phone: 904.247.6268  
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**To:** Mayor Latham  
Members of the City Council

**From:** George Forbes  
City Manager

**Subject:** Adopt revisions to Chapter 5 "Animals and Fowl" of the Code of Ordinances of the City of Jacksonville Beach, Florida, by amending sections of 5-33, "Dogs on the beach; requirements and hours."

**Date:** November 30, 2017

### **ACTION REQUESTED**

Adopt City Ordinance 2017-8100, "Dogs on the beach; requirements and hours," to allow dogs on the beach at any hour during Eastern Standard Time (EST).

### **BACKGROUND**

Several citizens have asked the City to review the dogs on the beach ordinance and requested if it could be less restrictive in the wintertime, when the beach is not as crowded. Neptune Beach recently did a similar review and this ordinance is very similar to the new regulations Neptune Beach adopted.

Jacksonville Beach currently allows dogs to be on the beach from 5:00 p.m. to 9:00 a.m. year round. They are not allowed on the beach from 9:00 a.m. to 5:00 p.m.

The proposed ordinance would change our regulations to allow dogs on the beach any time during Eastern Standard Time (EST). Eastern Standard Time is from the first Sunday in November to the second Sunday in March.

During Eastern Daylight Time (EDT), the regulations only allow dogs on the beach from 5:00 p.m. to 9:00 a.m.

The intention of the proposed ordinance is to allow dogs on the beach at any time during the winter months when the beach is usually not crowded. It also requires dogs to be on a leash not more than 16 feet in length, and the owner must carry suitable materials to clean up any waste from their dog.



**RECOMMENDATION**

Adopt City Ordinance 2017-8100, amending sections of 5-33, "Dogs on the beach; requirements and hours" of the Code of Ordinances of the City of Jacksonville Beach, Florida.

Introduced by: \_\_\_\_\_  
1<sup>st</sup> Reading: \_\_\_\_\_  
2<sup>nd</sup> Reading: \_\_\_\_\_

**ORDINANCE NO. 2017-8100**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA; AMENDING CHAPTER 5, "ANIMALS AND FOWL," ARTICLE II. – DOGS AND CATS, DIVISION 1. – IN GENERAL, SECTION 5-33 "DOGS ON THE BEACH; REQUIREMENTS AND HOURS" SECTION 5-33(a)(b), PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

**SECTION 1.** That Sec. 5-33, Dogs on the beach; requirements and hours, of Article II, Division 1, Chapter 5, "Animals and Fowl" of the Code of Ordinances of the City of Jacksonville Beach, Florida be amended as follows:

**Sec. 5-33. - Dogs on the beach; requirements and hours.**

(a)

~~It shall be unlawful for any person who shall own, keep, harbor or be in control of or in charge of a dog to allow or permit such dog to wander, stray or be unleashed or unaccompanied on the Atlantic Ocean Beach adjacent to the city and it shall be the duty of each such person to keep such stray or unaccompanied dog from that area.~~

(a)

Dogs are permissible on the Atlantic Ocean Beach adjacent to the City during the following time periods:

1. At any hour during Eastern Standard Time; and,
2. During the hours of 5:00 p.m. through 9:00 a.m., during Eastern Daylight Time (daylight saving time).

(b)

~~It shall be unlawful for any person who shall own, keep, harbor or be in control of or in charge of a dog to lead such dog upon the Atlantic Ocean beach adjacent to the city except during the hours between 5:00 p.m. in the afternoon and 9:00 a.m. in the morning, provided that such person fulfills the following requirements:~~

(b)

In addition to the above provisions, all owners, custodians and/or persons responsible for and in control of any dog(s) on the beach must comply with the following:

(1)

Each such dog must be fastened to a suitable leash of dependable strength not to exceed ~~eight (8)~~ sixteen (16) feet in length, and the leash must be held or controlled by that person at all times.

(2)

Any person having a dog on the beach during the above enumerated hours must carry with and on such person suitable materials and utensils with which to remove from the beach any fecal matter deposited by such dog and must remove any fecal matter immediately upon its deposit by the dog under the person's supervision and control.

(3)

Each such dog must either be properly registered with the City of Jacksonville Beach as required by Division 2, Chapter 5, of the Code of Ordinances of the City of Jacksonville Beach and display the proper tags or must have affixed to its collar a current rabies inoculation tag evidencing the dog has been properly inoculated against rabies within the past year.

**SECTION 2.** If any provision of this Ordinance or the particular application of this Ordinance shall be held invalid by any Court, administrative agency or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses or phrases shall remain in effect.

**SECTION 3.** That all other ordinances or parts of ordinances in conflict with this ordinance are, to the extent the same may be in conflict, repealed.

**SECTION 4.** Codification of this ordinance in the Code of Ordinances of the City of Jacksonville Beach is hereby authorized and directed.

**SECTION 5.** This ordinance shall take effect upon its adoption.

AUTHENTICATED THIS \_\_\_ DAY OF \_\_\_\_\_, A.D. 2018.

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William C. Latham, Mayor

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Laurie Scott, City Clerk

City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6231

Fax: 904.247.6107

## MEMORANDUM

**To:** George D. Forbes, City Manager

**From:** William C. Mann, Planning and Development Director

**Re:** **Ordinance No. 2017-8101**, amending the Land Development Code by adding definitions and development standards for the regulation of Personal Wireless Service Facilities.

**Date:** December 7, 2017

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### ACTION REQUESTED:

**Ordinance No. 2017-8101**, amending the Land Development Code by adding definitions for *Personal Wireless Service*, *Personal Wireless Service Facility or Facilities*, and *Personal Wireless Service Provider*, and by adding a new Section 34-409. *Personal Wireless Facilities* and a new Section 34-410. *Personal Wireless Facility Development Standards*.

### BACKGROUND:

In June of 2017, the State legislature passed House Bill 687 (effective July 1, 2017) amending Florida Statutes Chapter 337.401 creating regulations called the "Advanced Wireless Infrastructure Deployment Act". The new law preempts local government control of city owned rights-of-way for the placement of "small" or "micro" wireless antennas and equipment, and bans local governments from prohibiting such facilities from existing near or on existing towers and utility poles with in rights-of-way.

Pursuant to Section 337.401 Florida Statutes, a "micro wireless facility" means 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. A "small wireless facility" means a wireless facility where each antenna 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 all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume.



The law also provides a permit process and development standards that local governments must adopt into their local codes. The purpose of the Land Development Code text amendment is to define new terms for the types of personal wireless facilities associated with H.B. 687, and to provide development standards for regulating facilities that are not inconsistent with the new State law.

The attached ordinance proposes a hierarchy of “preferred” options for the placement of personal wireless service facilities in the city, with the number of restrictions and regulations increasing as you go from most preferred to least preferred. The locational preference, in order from most to least preferred is:

1. Antennae located on or in an existing building.
2. The co-location of antennae on an existing freestanding facility.
3. Installation of a new freestanding facility.

The ordinance also restricts the placement of new freestanding facilities to City or School Board owned properties, including public schools, city parks and cemeteries, and most public rights of way in commercial and industrial zoning districts.

The intent of these regulations is to keep any new freestanding facilities, as much as possible, out of the lower density residential areas of the city. The ordinance also requires that a new freestanding facility be sited at least one foot away from the nearest residential property boundary for every foot of height of the facility.

The Public Works Department has also introduced companion changes to City Council, via Ordinance No. 2017-8099, to amend Section 28 of the City Code of Ordinances to regulate the registration and placement of these types of communications facilities in City rights-of-way.

The Planning Commission met to consider the proposed Land Development Code amendments on December 11, 2017 and voted to recommend approval of the amendments to the City Council.

***RECOMMENDATION:***

**Adopt Ordinance No. 2017-8101**, amending the Land Development Code by adding definitions and development standards for the regulation of Personal Wireless Service Facilities.

Introduced by: \_\_\_\_\_  
1st Reading: \_\_\_\_\_  
2nd Reading: \_\_\_\_\_

**ORDINANCE NO. 2017-8101**

**AN ORDINANCE TO AMEND AN ORDINANCE ENACTING AND ESTABLISHING A COMPREHENSIVE LAND DEVELOPMENT REGULATION AND OFFICIAL ZONING MAP FOR THE INCORPORATED AREA OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AS AUTHORIZED BY CHAPTER 163.3202, FLORIDA STATUTES, TO ADD DEFINITIONS FOR “PERSONAL WIRELESS SERVICE,” “PERSONAL WIRELESS SERVICE FACILITY OR PERSONAL WIRELESS SERVICE FACILITIES” AND “PERSONAL WIRELESS SERVICE PROVIDER” TO ARTICLE IV, DEFINITIONS OF THE LAND DEVELOPMENT CODE OF THE CITY OF JACKSONVILLE BEACH; AND BY AMENDING ARTICLE VIII, DIVISION 2. SUPPLEMENTAL STANDARDS BY CREATING A NEW SECTION 34-409. PERSONAL WIRELESS FACILITIES, AND A NEW SECTION 34-410. PERSONAL WIRELESS FACILITY DEVELOPMENT STANDARDS; TO REPEAL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, AND FOR OTHER PURPOSES:**

**WHEREAS**, the demand for telecommunications services has grown exponentially in recent years, requiring the continual upgrading of telecommunications equipment and services to satisfy such demand; and

**WHEREAS**, in 2017, the Florida Legislature passed Chapter 2017-136, Laws of Florida, which inter alia, amends § 337.401, Florida Statutes, to create the new Subsection (7) known as the Advanced Wireless Infrastructure Deployment Act (“Wireless Deployment Act”), effective July 1, 2017, to address municipalities’ regulation of access to the public rights-of-way for wireless communications facilities and wireless support structures; and

**WHEREAS**, the Jacksonville Beach Land Development Code currently provides for communications facilities as permitted uses in certain zoning districts, and for the placement of communications antennae as accessory structures on buildings in certain other zoning districts, but needs to be updated to incorporate state law changes since the current communications facilities regulations were most recently amended in 2004, via Ordinance No. 2004-7880;

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

**SECTION 1.** For purposes of Land Development Code Sections 34-409 and 34-410, as created in Section 2. herein, the following terms, phrases, words, and their derivations shall have

the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and the word "may" is permissive. Words not otherwise defined shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. §§ 151 et seq., as amended (collectively the "Communications Act"), and, if not defined therein, as defined by Chapter 202, Florida Statutes, or Chapter 337, Florida Statutes, and, if not defined therein, be construed to mean the common and ordinary meaning. Neither personal wireless service nor personal wireless facilities constitute an essential public service as defined in Article IV of the Land Development Code. Accordingly, Article IV. Definitions of the Comprehensive Land Development Regulation of the City of Jacksonville Beach, Florida is hereby amended to add, in proper alphabetical order, new definitions as follows:

### **Section 34-41. General**

*Personal wireless service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access facilities and those defined by the Communications Act, including but not limited to, the transmission and reception of radio microwave signals used for communication, data, cellular phone, personal communication services, enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless services.

*Personal wireless service facility or personal wireless service facilities* means facilities used for the provision of personal wireless service including any freestanding facility, antennae, distributed antennae system, and/or small cell technology. Personal wireless service facilities include, but are not limited to, utility poles, towers, monopoles, communications facilities, and other facilities, equipment, and appurtenances that are used in the delivery or transmission of personal wireless services,

*Personal wireless service provider* means a company licensed by the Federal Communications Commission (FCC) that provides personal wireless service. A builder or owner of a personal wireless service facility is not a personal wireless service provider unless licensed to provide personal wireless services.

**SECTION 2.** That Division 2. Supplemental Standards of Article VIII of the Comprehensive Land Development Regulation of the City of Jacksonville Beach, Florida is hereby amended by adding new Sections 34-409 and 34-410, which shall read as follows:

#### **Section 34-409. - Personal wireless service facilities.**

- (a) Purpose and legislative intent. Federal and state laws recognize the City's authority to regulate the placement, construction, and modification of personal wireless service facilities. The City recognizes that personal wireless service facilities play

an important and complex role in the community. The intent of this section is to ensure that the placement, construction or modification of personal wireless service facilities is consistent with the City's land use policies and balances the community needs. This section strives to establish a fair and efficient application process, mitigate impacts of personal wireless service facilities, provide a high quality of service that is technically viable and meets the current industry standards of service, and protect the health, safety and welfare of the residents and visitors of the City.

- (b) Hierarchy of personal wireless service facility preferences. The City has established the hierarchy set forth below for personal wireless service facilities, with (1) being the most preferred and (3) being the least preferred. More preferred facilities require fewer approvals and are subject to fewer restrictions.
  - (1) An antenna located on or in an existing building, whether or not a co-location (see Sec. 34-410 (a)(2), (3) and (5)).
  - (2) The co-location of an antenna on an existing freestanding facility (see Sec. 34-410(a)(4)).
  - (3) Freestanding facilities (see Sec. 34-410(b)).
- (c) Prohibited personal wireless service facilities. Self-supporting lattice towers, guyed towers, and all freestanding facilities not meeting the requirements of Sec. 34-410(b) are prohibited.
- (d) Priority determination. If the proposed personal wireless service facility is not one of the two highest priorities listed, a detailed explanation and technical justification shall be provided as to why each of the higher priority facilities was not selected. This must include documentation that any existing personal wireless service facility (whether owned by the applicant or not) located within a two-mile radius of the proposed location is physically and/or technically unable to support collocation of additional personal wireless service equipment, that the existing facility is insufficient, or that the existing facility does not meet the engineering requirements of the applicant.
- (e) Generally applicable review procedures and timeframes.
  - (1) The Planning and Development Director shall notify the applicant for a personal wireless service facility within 20 days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and has been properly submitted in accordance with the requirements of the City Code and Land Development Code. An application for personal wireless service facility is deemed properly completed and properly submitted when it is verified that the information contained within the application is true, accurate, and contains all applicable information needed to make a determination as to the merits of the request. Such notification shall

indicate with specificity any deficiencies that, if cured, could make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the City shall again have 20 days to notify the applicant, in writing, of any remaining deficiencies that must be cured. If the applicant does not cure the deficiencies within 30 days, the application shall be considered withdrawn and closed.

- (2) An application is deemed submitted or resubmitted on the date the application is received by the City. If the City does not notify the applicant in writing that the application is not completed in compliance with this Zoning Code within 20 days after the date the application is initially submitted or resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted.
  - (3) Applications for a collocation of small wireless facilities shall be processed in accordance with ~~§ 28-76 of the City Code~~ Chapter 28, Section 28-76 of the Code of Ordinances of the City of Jacksonville Beach, Florida. Applications for new personal wireless service facilities, including freestanding facilities, shall be processed within 90 days after an application has been properly completed and properly submitted; provided, however, that applications for new utility poles that qualify under ~~§ 28-76(e) of the City Code~~ said Chapter 28, Section 28-76 shall be processed in accordance with the time frames set forth in ~~§ 28-76(e), City Code~~ Section 28-76.
  - (4) The timeframes stated in this subsection may be extended or tolled by mutual agreement of the City and applicant.
  - (5) The final decision approving or denying an application shall be in writing and supported by "substantial evidence" pursuant to the Communications Act, 47 U.S.C. § 332(c)(7)(B)(iii) and shall comply with the provisions of ~~Division 4, Chapter 34, City Code~~ Land Development Code Article VIII, Division 2, Section 34-410.
  - (6) Applications must demonstrate that no portion of any abutting, adjoining, or nearby residentially zoned property will be exposed to radio frequency (RF) emissions exceeding the federal safety limits for RF emissions. ~~One~~ When installation has been completed for any personal wireless service facility, a post-construction RF energy testing study must be conducted by the applicant and submitted to the City within 30 days following receipt of a certificate of completion for the installation demonstrating that the personal wireless service facility complies with this provision and all federal safety standards for RF energy exposure.
- (f) Variances, waivers and departures. Variances, waivers, departures or other methods of relief from the provisions of the Code shall not be granted for personal wireless service facilities.

- (g) During a declared emergency within the City, the City manager is authorized to allow the placement and operation of temporary personal wireless service facilities within any zoning district for a period not to exceed 90 days. Placement and operation of temporary personal wireless service facilities beyond the 90-day limit may be granted by the City Council if deemed necessary for the health, safety, and welfare of the public due to extended disruption in services after a declared emergency.

**Section 34-410. - Personal wireless service facility development standards.**

(a) Antennas.

- (1) An application for an antenna, whether or not a collocation, shall include the following information:
  - a. The name of the applicant;
  - b. Whether the applicant is an individual, partnership, limited partnership, limited liability corporation, professional corporation, professional association, governmental entity, or some other type of legal group or association;
  - c. A complete, thorough and accurate description of the proposed antenna, including an elevation drawing ~~or model~~ of the proposed antenna showing the view from north, east, west and south;
  - d. The type of existing building or structure on which the antenna is proposed to be located;
  - e. Certification that the proposed antenna will comply with applicable Federal Aviation Administration requirements under 14 C.F.R. s. 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use;
  - f. The proposed use of the antenna;
  - g. The proposed location of the antenna with a map in sufficient detail to indicate the location with precision;
  - h. ~~The applicant shall provide proof that~~ Written, notarized authorization from the property owner, if different from applicant, that authorizes the installation of the facilities;

- i. The zoning/land use designation of the site for the proposed antenna;
  - j. The height of the proposed antenna;
  - k. Where applicable, a lighting plan, that is consistent with all federal, state and local requirements;
  - l. Documentation that the proposed antenna and any appurtenances will withstand wind speeds as set forth in the Florida Building Code;
  - m. A plan detailing the steps to visually blend the proposed antenna with surrounding buildings, facilities and features;
  - n. The estimated ~~completion date~~ timeframe for constructing and/or locating the antenna, and any ancillary equipment.
- (2) An antenna classified as an initial (rather than collocation) antenna, located on a rooftop, a rooftop antenna platform, or the exterior of a building shall meet the following minimum criteria:
- a. It is located in a ~~multi-family~~ building with a height in excess of four (4) stories in ~~any zoning district~~ a C-1, C-2, CBD, or RM-2 zoning district.
  - b. It is located on a rooftop of an existing building in excess of 40 feet in height, a rooftop antenna platform located on a roof of an existing building in excess of 40 feet in height, or the exterior of an existing building in excess of 40 feet in height.
  - c. The height of the antenna shall not exceed ~~15~~ 20 feet above the highest point of the building; and
  - d. The antenna shall be camouflaged. An antenna shall be deemed to be camouflaged if the antenna and any ancillary equipment are concealed from view by way of enclosure or through a blending of the antenna and ancillary equipment with the architectural design and appearance, color and scale of the building to which it is attached.
- (3) An antenna located inside a building is permitted provided it is not visible from any surrounding properties or roadways and no portion of the antennae is recognizable or discernible from the exterior of the building. Architectural features concealing the antennae must be consistent with the architecture of the building to which they are attached. The architectural features shall not exceed the height restrictions for the zoning district in which they are located, except as allowed by this Code. The setback for any architectural features concealing an antenna from any residentially zoned property must be at least

one foot for every foot in height of the architectural features (dwellings located on the same parcel as the antenna are excluded).

- (4) An antenna classified as a collocation located on an existing freestanding facility not owned by the City shall meet the following minimum criteria:
  - a. The antenna does not increase the height of the freestanding facility to which it is to be attached, except as allowed in Section 34-410(b), as measured to the highest point of any part of the freestanding facility or any existing antenna attached to the freestanding facility;
  - b. The applicant shall include proof of consent of the owner of the freestanding facility for inclusion of the antenna on the freestanding facility.
  - c. The ground space area, if any, previously approved for equipment enclosures and ancillary facilities is not increased; and
  - d. The antenna and its ancillary facilities meet all requirements as established in § Section 34-410(b).
- (5) An antenna classified as a collocation located on an existing building shall meet the following minimum criteria:
  - a. The height of the antenna does not exceed ~~15~~ 20 feet above the highest point of the building;
  - b. The ground space area, otherwise known as the compound, if any, previously approved for equipment enclosures and ancillary facilities is not increased;
  - c. The antenna and its ancillary facilities are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the building for initial antennas;
- (6) If only a portion of an application for a personal wireless service facility classified as a collocation does not meet the requirements of subsections (4) or (5) above, the noncompliant portion of the collocation application shall be reviewed as an initial antenna, under subsection (2) and the compliant remainder of the collocation application shall be reviewed in accordance with subsections (4) or (5), as applicable. A collocation application that complies with subsections (4) or (5), except that it is proposing to increase the equipment ground compound approved in the original site plan for equipment enclosure and ancillary facilities by no more than a cumulative amount of 400 square feet

or 50 percent of the original ground equipment enclosure size, whichever is greater, may continue to be reviewed as a collocation.

(7) Standards applicable to all antennas.

- a. All antennas must be at least 30 feet from ground level.
- b. An antenna and its ancillary facilities must meet all applicable requirements of the Florida Building Code.
- c. The antenna equipment shelter/cabinet must have a sign in close proximity which is readable from a distance of at least five feet, in accordance with FCC regulations, which notes the owner of the equipment and the name and telephone number of the person to contact to report an emergency or situation when notification is warranted.
- d. All additional requirements of state, federal and local law must be adhered to.

(8) The review and approval of an application for an antenna under this section is by ~~site plan and~~ building permit review, except as an initial installation where existing buildings are proposed to be architecturally modified to conceal an antennae. Existing buildings that are proposed to be architecturally modified to conceal antennae must follow the site development plan approval process.

(b) Freestanding facilities.

(1) Freestanding facilities and their ancillary equipment shall be approved by site development plan review and ~~conditional-use~~ building permit granted by the Planning and Development Department only on property owned by the City of Jacksonville Beach or the Duval County School Board, with a contract approved by the respective owner, adjacent to on City energy substation properties (active or inactive), ~~commercial or industrial zoning districts~~, in City parks and facilities, including the golf course and cemeteries, ~~and adjacent to on public and private school properties, and in public rights-of-way in commercial or industrial zoning districts~~, provided the following criteria are met:

- a. The freestanding facility shall be designed so as to mimic a structure or natural feature that could reasonably be found and/or blend with the surrounding area, such as a light fixture or tree.
- b. Ancillary equipment must meet the following criteria:
  1. Shall be no wider than seven feet;
  2. Shall be no longer than 13 feet;

3. Shall not exceed the height limitations for mechanical equipment as provided by this Zoning Code;
  4. May be located within a required side or required rear yard, provided, that it shall be no closer than ten feet to any lot line;
  5. Shall be included in lot coverage and non-open space calculations for the site, including the pad;
  6. Shall be located on a concrete pad, unless required to be elevated due to FEMA regulations;
  7. Shall be screened from view by landscaping, architectural features, or a combination of both, and designed in a manner which minimizes nuisance impacts, such as noise and odor. Screening shall be at least equal to the height of the ancillary equipment on all sides and shall be maintained in good order; and
  8. Shall be set back from any existing residential dwelling at least one foot for every foot in height of the facility (dwellings located on the same parcel as the structure are excluded), as measured from the base of the structure containing the antennae to nearest property line of the residential dwelling(s).
- c. ~~The top of any freestanding facility and ancillary equipment shall not exceed the maximum height established for the zoning district in which the facility is located, as measured from base flood elevation, but in no case shall the height exceed 50 feet in height.~~
- d. For any freestanding facility that utilizes lighting, the lights must meet all applicable federal, state, and local regulations regarding shielding of lighting to protect sea turtles.
- e. The freestanding facility, its components, ancillary equipment, and screening must be maintained in good order. Failure to maintain the freestanding facility, its components, ancillary equipment, and screening shall constitute a violation of this chapter.
- (2) ~~The conditional use permit~~ development plan application for a freestanding facility must be made in conjunction with the site plan review requirements set forth in the City Code. An application shall include the following information:
- a. The name of the applicant(s) and whether each applicant is an individual, partnership, limited partnership, limited liability corporation, professional corporation, professional association, governmental entity, or some other type of legal group or association;

- b. A complete and accurate description of the proposed freestanding facility, including ~~where necessary,~~ a scale elevation drawings ~~or model~~ of the proposed freestanding facility;
- c. If applicable, documentation of any contract, license, lease, letter of understanding, agreement in principle, or other type of agreement with a personal wireless service provider for use of the freestanding facility and a summary of the agreement or arrangement;
- d. The proposed location of the freestanding facility together with both a legal description of the location, and a map in sufficient detail to indicate the location with precision;
- e. Proof that the property owner, if different from applicant, authorizes the installation of the facilities.
- f. The zoning/land use designation for the proposed freestanding facility;
- g. The height of the proposed freestanding facility;
- h. The projected collapse zone certification that in the event of fall or collapse of the freestanding facility, said freestanding facility would not damage or negatively impact the real or personal property of the surrounding property owners;
- i. Documentation demonstrating compliance with the provisions of state statute and City Codes;
- j. A detailed plan for landscaping any ancillary ground equipment, in such a manner that the landscaping will shield the equipment from the view of adjoining parcels and/or public rights-of-way, noting that the landscaping shall be native, xeriscape plants only;
- k. A detailed preventive maintenance program that meets minimum maintenance program standards for which the applicant is to remain solely responsible. The City will not be responsible for monitoring the maintenance program;
- l. Certification that the proposed equipment will comply with applicable Federal Aviation Administration requirements under 14 C.F.R. § 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use;
- m. The estimated timeframe for completion date for the location and/or construction or modification of each of the freestanding facilities and any ancillary equipment;

n. The identity and location of any landline backhaul network to each freestanding facility location, if applicable;

o. Whether the applicant, within a two-mile radius of the proposed location, has ever had any permit (or similar or equivalent authorization) revoked, rescinded, canceled or terminated which authorized the placement, construction, and/or modification of personal wireless service facilities, and, if so, what were the reasons surrounding such revocation;

p. The proposed equipment shall not interfere with or obstruct public safety telecommunications facilities in accordance with the applicable rules of the Federal Communications Commission; and

q. All applicable provisions of the City Code, the Land Development Code and the Florida Building Code shall be met.

(3) In evaluating the development plan and building permit applications for a conditional-use permit for a freestanding facility, in addition to the ~~findings standards of compliance with Section 34-259, Standards (1) through (7) 34-231, City Code~~, the ~~Planning and zoning board~~ Development Division shall consider and evaluate the above application criteria and the following, with the intent of balancing the reasonable allowance of a freestanding facility to provide personal wireless service in the area with the protection of the aesthetics of the area from adverse visual impacts:

a. The proposed location of the freestanding facility, including the zoning/land use designation of the site and abutting properties;

b. The proposed height of the freestanding facility;

c. The number and location of freestanding facilities and structures over 40 feet in height already existing within a 500-foot radius of the proposed freestanding facility;

d. The distance of the proposed freestanding facility to the nearest single-family residence measured from the freestanding facility to the boundary of the nearest single-family residence;

e. The proposed aesthetics of the freestanding facility and whether it visually blends in with surrounding buildings, structures and existing vegetation;

f. The potential impacts on property values of nearby or surrounding single-family properties.

(4) Upon granting site development plan and building permit approval and conditional-use permit for the construction of a freestanding facility, the City reserves the right to inspect placement, construction and modification of such freestanding

facility and ancillary equipment for the life of the facility. Any modification, relocation, rebuilding, repairing, in any way without the issuance of all applicable approvals and permits will be deemed a violation of the permit and result in the removal of the freestanding facility and ancillary equipment.

(5) Removal of a freestanding facility and ancillary equipment. The City may require, upon notice with a reasonable opportunity to cure, the immediate removal of a freestanding facility and ancillary equipment if:

- a. It has been abandoned for a period in excess of six months;
- b. It falls into such a state of disrepair that it becomes an unsafe structure or becomes a public nuisance;
- c. It is modified, relocated, or rebuilt without the issuance of all applicable approvals and permits;
- d. ~~The conditional use permit has been revoked.~~

**SECTION 3. SEVERABILITY.** It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

**SECTION 4. CONFLICTING ORDINANCES.** All ordinances or parts of ordinances in conflict with this ordinance are, to the extent that the same may conflict, hereby repealed.

**SECTION 5. EFFECTIVE DATE.** This ordinance shall take effect upon its adoption in accordance with applicable law.

**AUTHENTICATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 2018**

\_\_\_\_\_  
William C. Latham, MAYOR

\_\_\_\_\_  
Laurie Scott, CITY CLERK

City of

Jacksonville Beach

City Hall

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Jacksonville Beach

FL 32250

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[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)

November 27, 2017

TO: George Forbes, City Manager

FROM: Ty Edwards, Public Works

RE: Ordinance No. 2017-8099, Amending Article IV, Chapter 28 of the City Code of Ordinances: Streets, Sidewalks and Other Public Places – Communications Rights-of-Way by Revising and Adding Certain Sections Pertaining to Small Wireless Facilities in the Public Rights-of-Way

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**ACTION REQUESTED**

Adopt Ordinance No. 2017-8099, amending Article IV of Chapter 28 of the City Code of Ordinances pertaining to small wireless facilities in public rights-of-way.

**BACKGROUND**

In June 2017, the state legislature passed a bill (HB 687) amending Florida Statutes Chapter 337.401 by creating regulations called the "Advanced Wireless Infrastructure Deployment Act." The new law specifically regulates the placing of new utility poles in the City's rights-of-way to support small wireless facilities and micro wireless facilities. This law became effective on July 1, 2017.

The following are some of the key points of the state law, which:

- Preempts local government control of the placement of "small" or "micro" wireless antennas and equipment;
- Bars local governments from prohibiting the placement of "small" or "micro" wireless facilities on or next to existing cellphone towers and utility poles within municipally owned rights-of-way;
- Requires a local government to approve or deny an application for a permit to collocate small wireless facilities on very streamlined "shot-clock" times. If the local government misses any of the "shot-clock" times, then the permit is automatically approved.



- Provides for a fee not to exceed \$150 annually per utility pole (or wireless support structure) on which wireless facilities are installed in the rights-of-way;
- Local governments are also prohibited from imposing minimum distances between small wireless equipment;
- This “micro” equipment/infrastructure can be as large as six cubic feet in volume (for instance, 2 feet by 3 feet). All other wireless equipment associated with the facility cumulatively can be as large as 28 cubic feet in volume (the approximate size of a small refrigerator);
- The height of a small wireless facility is restricted to no more than 10 feet above the existing utility pole. Unless waived by the local government, the height for a new pole is limited to the tallest existing utility pole located in the right of way;
- If there is no utility pole within 500 feet of the proposed location, then the new utility pole (or wireless support structure) can be no taller than 50 feet;
- An applicant seeking to collocate small wireless facilities can file a consolidated application and receive a single permit for the collection of no more than 30 small wireless facilities;
- Allows for some minimum design standards and for the wireless communications provider and the local government to negotiate those design standards;
- The local government may negotiate for 30-days with the applicant on the applicant’s chosen locations for wireless facilities.
- Exempts the following from the requirements of this new state law:
  - The Florida Department of Transportation, and
  - Municipal electric utilities (*such as Beaches Energy Services*).

While the City supports this new technology, the far-reaching implications of this bill required prompt but thorough review.

The primary objective of the City Code update is to manage the growth of wireless communications facilities within the city limits in the best interests of the public in safety, health and prudent land use (including the limited resource of rights-of-way), and in a manner that is not inconsistent with the new state law.

- In August, the City Attorney coordinated services for the City with Attorney Thomas Cloud of Orlando, FL, a preeminent subject matter expert in Florida on this new state law. We quickly began working with Mr. Cloud on a proposed amendment to the City Code.
- In September / October, we responded to the impacts of Hurricane Irma, which delayed work on the amendment.
- In November, we divided the proposed amendment into two parts for adoption:
  - The first part recommends adopting Ordinance 2017-8099, which proposes amending Article IV of Chapter 28 of the Code of Ordinances, titled "Communications Facilities Rights-of-Way Ordinance." This part is the subject of this council memorandum.
  - The second part recommends adopting an Ordinance, which proposes amending portions of the Land Development Code. This part is first to be considered by the Planning Commission and then brought to Council for consideration.

#### **HIGHLIGHTS OF PROPOSED CITY ORDINANCE No. 2017-8099**

- Sec.28-70. -Short title: Revised to read "Jacksonville Beach Communications Facilities Rights-of-Way Ordinance".
- Sec. 28-71. – Intent and purpose: Revised to be consistent with the new state law.
- Sec. 28-72. – Definitions: Added new, and updated existing, definitions to be consistent with the new state law.
- Sec. 28-73. - Registration: A communications services provider is required to register with the City prior to submitting an application for permit for small wireless facilities. This includes providing required liability insurance (with the City as additional insured), construction bond and surety account as detailed in Sections 28-81, 28-83 and 28-84, respectively.
- Sec. 28-74 – Notice of transfer, sale, or assignment of assets: No change.
- Sec. 28-75. – Placement or maintenance of communications facilities: The communication service provider requesting to collocate or install in rights-of-way shall certify that an appropriate inquiry with other providers has been made to determine if existing communication facilities are available through a joint-use agreement with the owner provider.

- Sec. 28-76. – Wireless facilities: *(This is a new section. All existing sections hereafter renumbered.)*
  - Telecommunications towers and antennae are subject to the City's zoning and land use regulations including the most current version of Sections 34-409 and 34-410 of the City's Land Development Code.
  - Reinforces that the Beaches Energy Services is exempt, as a municipal electric utility, such that its utility poles are not subject to the requirements of the new state law.
  - The following "shot-clock" timeline for an application for permit to place new utility poles in the public rights-of-way in support of collocation, is as follows:

- 14-days prior to application: A pre-application conference is required between the applicant and the City.

The goal of this meeting is for the City and potential applicant to communicate and develop agreement on consensus locations for new poles for wireless facilities – private property, public property or, as a last resort, public right-of-way. It is also a time for the City to communicate its application process and land development requirements for communications facilities.

- 14-days after receipt of application: City shall notify applicant by email whether and or not the application is complete. If not complete, City shall also identify what information is missing.

Failure by the City to notify the applicant within 14 days shall result in the application being deemed complete.

- 30-days after receipt of an incomplete notification: Applicant must complete the application within 30-days.

Failure to resubmit the completed application within 30 days shall result in the application being deemed incomplete and the City may deny application.

- 60-days after receipt of a complete application: Once an application is deemed complete, then City has 60-days (from initial receipt) to either approve or deny the application by email. If denied, then City must identify the deficiencies of the completed application.

Failure by the City to approve or deny the application within 60 days shall result in approval of the application. (This time may be extended by mutual agreement.)

- 30-days after denial: Applicant has 30-days after City denial to cure the deficiencies of the completed application and resubmit the application to the City. (All subsequent reviews are limited to the deficiencies cited in the denial.)

Failure by the applicant to resubmit the cured completed application shall result in a final denial.

- Sec. 28-77. – Suspension of permits: No change.
- Sec. 28-78. – Involuntary termination of registration: No change.
- Sec. 28-79. – Fees applicable to those not subject to communications services tax: *(This is a new section. All existing sections hereafter renumbered.)* Reserves the right to the City to require fees from entities that are not communications providers, which are applying for permits to install communications facilities in public rights-of-way.
- Sec 28-80. – Existing communication facilities in public rights-of-way: No change.
- Sec 28-81. – Insurance: No change.
- Sec. 28-82. – Indemnification: No change.
- Sec. 28-83. – Construction bond: No change.
- Sec. 28-84. – Security account: No change.
- Sec. 28-85. – Enforcement remedies: No change.
- Sec. 28-86. – Abandonment: No change.
- Sec. 28-87. – Force Majeure: No change.
- Sec. 28-88. – Reservation of rights and remedies. No change.

### **RECOMMENDATION**

Adopt Ordinance Number 2017-8099, amending Article IV of Chapter 28 of the City Code of Ordinances regulating small wireless facilities in the public rights-of-

way as explained in the memorandum from the Public Works Director dated November 27, 2017.

Introduced by \_\_\_\_\_  
1st Reading \_\_\_\_\_  
2nd Reading \_\_\_\_\_

**ORDINANCE NO. 2017-8099**

**AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA; ADOPTING REGULATIONS RELATED TO WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.**

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

**SECTION 1. AMENDMENTS TO CHAPTER 28, CODE OF ORDINANCES.**

That Chapter 28, Article IV, Communications Rights-of-Way, of the Code of Ordinances of the City of Jacksonville Beach, Florida, is hereby amended to read as follows:

**ARTICLE IV. - COMMUNICATIONS RIGHTS-OF-WAY**

**Sec. 28-70. - Short title.**

This article shall be known and may be cited as the ~~city~~ Jacksonville Beach ~~e~~ Communications ~~f~~ Facilities ~~r~~ Rights-of-w ~~W~~ ay ~~e~~ Ordinance.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-71. - Intent and purpose.**

(a) The City hereby makes and declares the following findings and declares its legislative intent as follows:

(1) The public rights-of-way within the City of Jacksonville Beach are a unique and physically limited resource and important amenity that are critical to the travel and transport of persons and property in the City.

- (2) The demand for telecommunications services has grown exponentially in recent years, requiring the continual upgrading of telecommunications equipment and services to satisfy such demand.
- (3) The placement of telecommunications equipment and facilities in the public rights-of-way to satisfy the demand for telecommunications services raises important issues with respect to the City's responsibility to manage its public rights-of-way.
- (4) The public rights-of-way must be managed and controlled in a manner that enhances the health, safety and general welfare of the City and its citizens.
- (5) The use and occupancy of the public rights-of-way by providers of communications services must be subject to regulation, which can ensure minimal inconvenience to the public, coordinate users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of an optimal number of providers of cable, telecommunications, and other services in the public interest.
- (6) Section 166.041, Florida Statutes, provides for procedures for adoption of an ordinance which is a regulation of general and permanent nature and enforceable as local law.
- (7) Section 337.401, Florida Statutes, addresses the authority of municipalities to regulate the placement and maintenance of communication facilities, and other utilities, in the public rights-of-way.
- (8) In 2017, Florida passed Chapter 2017-136, Laws of Florida, which among other things, amends § 337.401, Florida Statutes, to create the new Subsection (7) known as the Advanced Wireless Infrastructure Deployment Act ("Wireless Deployment Act"), effective July 1, 2017, to address municipalities' regulation of access to the public rights-of-way for wireless communications facilities and wireless support structures.
- (9) The Wireless Deployment Act provides that municipalities may require a registration process in accordance with § 337.401(3), Florida Statutes, may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties and further provides that, for any applications filed before the effective date of ordinances implementing this subsection, an authority may apply current ordinances relating to the placement of communications facilities in the rights-of-way related to registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties.

- (10) The City is exempt under 47 U.S.C. § 224 from federal pole attachment requirements, and finds that it is a “municipal electric utility” such that the City utility poles are not subject to the Wireless Deployment Act’s “Collocation” requirements as stated in § 337.401(7)(l), Florida Statutes, currently set forth in Chapter 2017-136, Laws of Florida.
- (11) The communication industry is in a constant state of emerging technology that includes the infrastructure required to support the increased demand and capacity to receive and to transmit increased data and voice communications.
- (12) A new network of wireless communications infrastructure has emerged comprised of a series of small individual antenna (“Small Cells”), or nodes (“Distributed Antenna Systems” or “DAS”), and wireless backhaul networks that are linked to a larger hub site.
- (13) The City has received requests to place new utility poles, wireless communications facilities, and wireless support structures within the public rights-of-way.
- (14) The current City Code contains requirements for registration, insurance, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties that address sufficiently the placement or maintenance within the public rights-of-way for wireline and wireless communications facilities or wireless support structures, but needs to be updated to incorporate state law changes since the adoption of the original ordinance in 2001.
- (15) The City finds that, to promote the public health, safety and general welfare, it is necessary to:
- i. Provide for the placement or maintenance of Communications Facilities in the public rights-of-way within the City limits,
  - ii. Adopt and administer reasonable rules, regulations and general conditions not inconsistent with applicable state and federal law,
  - iii. Manage the placement and maintenance of Communications Facilities in the public rights-of-way by all communications services providers,
  - iv. Minimize disruption to the public rights-of-way, and
  - v. Require the restoration of the public rights-of-way to original condition.
- (16) It is the intent of the City to require that the placement or maintenance of any wireline or wireless communications facility or wireless support structure in the public rights-of-way must have an effective registration which satisfies the requirements set forth herein for such registration, to the

extent not inconsistent with applicable federal and state laws and regulations.

(17) It is also the City's intent to exercise the City's retained authority to regulate and manage the City's roads and rights-of-way in exercising its police power over communications services providers' placement and maintenance of facilities in the public rights-of-way in a nondiscriminatory and competitively neutral manner.

(b) This Article IV of City Code Chapter 28 shall apply to any public or private entity who seeks to construct, place, install, maintain or operate a communications system or facilities, as such terms are defined herein, in the public rights-of-way, unless otherwise exempt by operation of applicable state or federal law. Notwithstanding the above, this Article IV of City Code Chapter 28 shall not apply whatsoever to a City owned or controlled communications system.

~~It is the intent and purpose of the city to promote the public health, safety, and general welfare by: providing for the placement or maintenance of communications facilities in the public rights-of-way within the city; adopting and administering reasonable rules, regulations, and policies not inconsistent with federal and state laws including F.S. § 337.401,(2000), as amended, the city's home rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state laws; establishing reasonable rules, regulations, and policies necessary to manage the placement or maintenance of communications facilities in the public rights-of-way by all communications service companies and providers; and minimizing disruption to the public rights-of-way.~~

~~(Ord. No. 2001-7813, 6-4-01)~~

#### **Sec. 28-72. - Definitions.**

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

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

conduit continues to be used, shall not be abandonment of a facility in public rights-of-way.

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

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

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

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

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

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

Collocate or Collocation means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way, nor does it include interconnection of communications facilities or the sale or purchase of capacity (whether bundled or unbundled).

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

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

~~F.S. § 202.11(2), (2000), as amended, is not included in the definition of "communications services," and cable service providers shall be subject to ordinances of the city.~~

~~Communications services *company and provider* shall refer to any person making available or providing communications services, as defined herein, or a wireless infrastructure provider.~~mean any person, including a county or state, providing communications services through the placement or maintenance of a communications facility in public rights-of-way. "Communications services company and provider" shall also include any person, including a county or state, that places or maintains a communications facility in public rights-of-way, but does not provide communications services.~~~~

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

~~Communications Facilities Development Permit means the permit required under Section 28-75 and/or Section 28-76, City Code, prior to commencement of any placement or maintenance of Facilities in the public rights-of-way.~~

~~FCC shall mean the Federal Communications Commission.~~

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

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

~~Ordinance shall mean this ordinance.~~

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

~~Pass-Through Provider means any Person, municipality or county that places or maintains a communications system or communications facilities in the public rights-of-way but who does not provide communications services, including for example a company that places "dark fiber" or conduit in the public rights-of-way and leases or otherwise provides those facilities to another company that does provide communications services to an end user. This definition of "pass-through provider" is intended to include any person that places or maintains "pass-through facilities" in the public rights-of-way.~~

but does not provide communications services to an end user within the corporate limits of the City.

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

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

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

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

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

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

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

Wireless Support Structure means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to

support or capable of supporting wireless facilities. The term does not include a utility pole.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-73. - Registration.**

- (a) A communications services company or provider that desires to place or maintain a communications facility in public rights-of-way in the city ~~of~~ shall first register with the city in accordance with this article. Subject to the terms and conditions prescribed in this section, as amended, a registrant may place and maintain communications facilities in public rights-of-way.
- (b) The act of registration shall not convey any title, equitable or legal, to the registrant in the city's public rights-of-way. Registration under this article embodies only the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes, or regulations apply to the placement or maintenance in the public rights-of-way of facilities, which are not communications facilities. Registration does not excuse a communications services company or provider from obtaining appropriate and required access or pole attachment agreements before locating communication facilities on the city's facilities or another person's facilities. Registration does not excuse a communications services company or provider from complying with all applicable city ordinances, codes, or regulations including this section.
- (c) Each communications services company or provider that desires to place or maintain a communications facility in public rights-of-way in the city shall file a registration with the city, which shall include the following information:
  - (1) Name of the applicant;
  - (2) Name, address, and telephone number of the applicant's primary contact person in connection with the registration, and the name, address, and telephone number of the person to contact in case of an emergency;
  - (3) Registrations submitted prior to ~~October 1,~~ December 18, 2017, shall state if the applicant provides local service, toll service, or both;
  - (4) Evidence of the insurance coverage required under this section and acknowledgment that applicant has received and reviewed a copy of this section; however, the acknowledgment of the receipt of this section shall not be deemed an agreement;
  - (5) The type of communications services that the applicant intends to provide within the corporate limits of the City (if more than one, state all that apply), or, if none, state that the applicant is a pass-through provider or is intending only to place and maintain pass-through facilities, as the case may be;
  - (6) For registrations submitted on or after December 18, 2017, a copy of both the applicant's resale certificate and certificate of registration issued by the Florida

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

(57) The applicant's certificate of authorization or license number to provide communications services issued by the state public service commission, the Federal Communications Commission, or other federal or state authority, if any, having jurisdiction; ~~and~~

(68) For an applicant that does not provide a state public service commission certificate of authorization number, if the applicant is a corporation, proof of authority to conduct business in the state. A certificate number from, or filing with, the Florida Department of State will be acceptable;

(9) For an applicant that is a pass-through provider, in lieu of paragraphs (5), (6), (7) and (8) above, the applicant shall provide a certified copy of the certificate or license issued by the Florida Department of State, or other appropriate state agency or department, authorizing the company to do business in the State of Florida.

- (d) The city shall review the information submitted by the applicant. ~~Such review shall be conducted by the city manager or the city manager's designee~~ The city manager or the city manager's designee shall conduct such review. If the applicant submits information in accordance with this article, the registration shall be effective and the city shall notify the applicant in writing of the effectiveness of the registration. If the city determines that the information has not been submitted in accordance with this article, the city shall notify the applicant in writing of the non-effectiveness of the registration, and reasons for the non-effectiveness. The city shall notify an applicant within thirty (30) calendar days after receipt of the registration information from the applicant. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration.
- (e) A registrant may cancel a registration upon written notice to the city stating that registrant will no longer place or maintain any communications facilities in public rights-of-way within the city and registrant will no longer require permits to perform work in public rights-of-way. A registrant shall not cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.
- (f) Registration does not establish a right or provide authority to place and maintain or establish priority for the future placement or maintenance of a communications facility in public rights-of-way within the city, but shall establish for the registrant, a right to apply for a permit from the city. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any new or existing city laws, as well as any new or existing federal or state laws, rules, and regulations which may be enacted or which have been enacted.
- (g) A registrant shall renew its registration with the city by the first day of April of even numbered years in accordance with the registration requirements in this section, except that a registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year.

Within thirty (30) calendar days of any change in the information required herein, a registrant shall provide updated information to the city. If the information in the then-existing registration has not changed, the renewal may provide that no information has changed. Failure to renew a Registration may result in the city restricting the issuance of additional permits until the communications services company or provider has complied with the registration requirements of this article.

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

~~(Ord. No. 2001-7813, 6-4-01)~~

#### **Sec. 28-74. - Notice of transfer, sale, or assignment of assets.**

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

~~(Ord. No. 2001-7813, 6-4-01)~~

#### **Sec. 28-75. - Placement or maintenance of communications facilities.**

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

- (a) A registrant shall, at all times, comply with and abide by all applicable provisions of federal and state laws, regulations, rules and the city ordinances, codes, regulations, and policies in placing and maintaining a communications facility in public rights-of-way.
- (b) ~~A~~ Neither a registrant nor a communications service provider shall ~~not~~ commence to place or maintain a communications facility in public rights-of-way until all applicable permits, if any, have been issued by the city and other appropriate authorities. Registrant acknowledges and accepts, that as a condition of granting any permits, the city may impose reasonable rules, regulations, and policies governing the location, placement, and maintenance of a communications facility in public rights-of-way. The communications services provider shall provide prompt notice to the City of the placement or maintenance of a Communications Facility in the public rights-of-way in the event of an emergency and shall, after-the-fact, be required to submit plans and Record Drawings and As-Built Surveys, if required by the City manager or his designee, showing the placement or relocation of a communications facility undertaken in connection with the emergency.
- (c) As part of the permit application to place a new or replace or maintain an existing communications facility in public rights-of-way, the registrant shall provide not less than the following:
  - (1) A description of the location of the proposed facilities including a narrative description and a scaled pictorial drawing of the facilities to be installed, where the facilities are to be located, and the size of facilities to be located in public rights-of-way; and
  - (2) A description of the construction methods or techniques which will be used to install the facilities; and
  - (3) A maintenance plan for disruption of traffic; and
  - (4) A statement concerning the ability of the public rights-of-way to accommodate the proposed facility; and
  - (5) An estimate of the cost of the restoration to the public rights-of-way; and
  - (6) A timetable for project construction and each phase thereof, and the areas within the city which will be affected; and
  - (7) Such additional information as the city finds necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application.
- (d) To the extent not otherwise prohibited by federal or state laws, the city shall have the power to prohibit or limit the placement of new or additional communications facilities within particular areas of all public rights-of-way.
- (e) All communications facilities shall be placed and maintained so as not to interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin the public rights-of-way. The use of trenchless technology, joint trenching, and co-locating of facilities in existing conduit

in the public rights-of-way is encouraged and shall be employed when feasible. The city manager or the city manager's designee may promulgate rules, regulations, and policies concerning the placement and maintenance of a communications facility in public rights-of-way consistent with this article and other applicable federal and state laws.

- (f) All safety practices required by applicable municipal, state, and federal laws or accepted industry practices and standards, shall be used during the placement or maintenance of communications facilities in public rights-of-way.
- (g) After the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof, the registrant shall at the registrant's expense, restore the public rights-of-way to the original condition, or superior to the original condition, which existed before such placement or maintenance. If the registrant fails to complete the restoration within thirty (30) calendar days, following the completion of such placement or maintenance, the city may perform the restoration and charge the total costs of the restoration to the registrant in accordance with ~~F.S. § 337.402, Florida (2000), as Statutes as~~ amended. For twelve (12) calendar months following the original completion date of the work, the Registrant shall guarantee the restoration work and shall correct, at the Registrant's expense, any restoration work, which does not satisfy the requirements of the city.
- (h) Removal or relocation, at the direction of the city of a registrant's existing communications facility in public rights-of-way, shall be governed by the provisions of ~~F.S. § 337.403 and § 337.404, Florida Statutes (2000),~~ as amended.
- (i) An approved permit from the city shall constitute authorization to undertake only certain activities in public rights-of-way in accordance with this article, and the permit does not create a property right or grant authority to impinge upon the rights of others who have an interest in the public rights-of-way.
- (j) A registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.
- (k) In connection with excavation in the public rights-of-way, a registrant shall where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in ~~F.S. Ch. 556, Florida Statutes(2000),~~ as amended.
- (l) A registrant shall use and exercise due caution, care, and skill in performing work in the public rights-of-way and shall take all reasonable and necessary steps to safeguard the entire work area and the general public.
- (m) Upon request of the city, and as notified by the city of the other work, construction, installation, or repairs, a registrant may be required to coordinate all placement and all maintenance activities with any other work, construction, installation, or repairs which may be occurring, or scheduled to occur, in public rights-of-way. A registrant may be required to alter an installation and maintenance schedule to minimize disruptions and disturbance in the public rights-of-way.
- (n) A registrant shall not place or maintain communications facilities, which interfere with, displace, damage, or destroy other facilities including, but not limited to, sewer mains,

gas mains, water mains, electric facilities, stormwater drains, pipes, cables, conduits, and all other facilities occupying the public rights-of-way.

- (o) The city makes no expressed or implied warranties or representations regarding the fitness, suitability, or availability of the city public rights-of-way for the registrant's communications facilities and any performance of work, costs incurred, or services provided by registrant shall be at registrant's exclusive risk. Nothing in this article shall affect the city authority to add, increase, vacate, or abandon public rights-of-way, and the city makes no expressed or implied warranties or representations regarding the availability of any added, increased, vacated, or abandoned public rights-of-way for communications facilities.
- (p) The city shall have the right and authority to make any inspections, at any time, of communications facilities placed or maintained in public rights-of-way as the city determines necessary to ensure compliance with this article.
- (q) A permit application to place a new or maintain an existing communications facility in public rights-of-way shall include plan and profile drawings, which show the actual location of the facilities in the public rights-of-way. If the drawings require revision based upon actual installation, the registrant shall promptly provide the revised as-built drawings to the city. The drawings shall be in a hard copy format and an electronic format specified by the city. All such drawings, data and information shall be provided at no cost to the city.
- (r) The city reserves, without limitation, the exclusive right to place, maintain, and permit to be placed or maintained, all sewer, gas, water, electric, stormwater drainage, communications, all other types of facilities, cables, or conduits and to do, and to permit to be done, any underground and overhead installations or improvements which may be deemed necessary or proper by the city in public rights-of-way that may be occupied by a registrant. The city further reserves, without limitation, the exclusive right to alter, change, or cause to be altered or changed the grading, installation, relocation, or width of the public rights-of-way within the limits of the city and within said limits as the limits may, from time to time, be altered.
- (s) A registrant shall, upon request of any person holding a permit issued by the city, temporarily adjust any communications facilities to allow for work authorized by other permits. The expense of such temporary adjustments of facilities shall be paid by the person requesting the adjustment and the registrant shall have the right to request such payment of expense in advance. If the city requests temporary or permanent adjustments of a registrant's existing or proposed facilities to allow for work to be done by the city, its contractors, or its agents, however, all expenses and costs related to the adjustments of the registrant's temporary or permanent facilities, shall be the responsibility of and shall be paid by the registrant. The registrant shall be given not less than fifteen (15) calendar days advance written notice to arrange for such temporary or permanent adjustments.
- (t) Any communications facilities placed in the public rights-of-way by the communications services provider without first having obtained the required communications facilities development permits shall be removed within thirty (30)

days of written notice by the City to remove the same and in default of compliance with such notice, such facilities may be removed by order of the City manager or his designee and the cost of removal shall be borne and paid by the communications services provider upon demand.

(u) The placement or maintenance of all communications facilities shall be underground unless otherwise approved in writing and in compliance with the most current version of the provisions of Article IV, City Code Chapter 28. Communications facilities shall be placed between the property line and the curb line of all streets and avenues and shall not be within the roadway or the roadway recovery area unless specifically approved in writing by the City manager or his designee. All communications facilities shall have consistent alignment parallel with the edge of pavement, a thirty-six inch (36") minimum depth of cover for and shall have a minimum of two feet (2') of horizontal clearance from other underground utilities and their appurtenances. Where approved by the City manager or his designee, Facilities to be placed in the street shall be laid according to the permanent grade of the street and at a depth below the surface of the permanent grade as each is determined by the City manager or his designee. The City retains the final decision on vertical depth and/or height location and horizontal location within the right-of-way of communications facilities and appurtenances.

(v) The placement or maintenance of facilities aboveground, including new utility poles and aerial wires, is subject to written approval and to compliance with the most current version of the provisions of Article IV, City Code Chapter 28. Attachment to any pole or other aboveground structure must be pursuant to a valid and effective pole attachment agreement or similar instrument. Location on any utility pole or other above-ground structure shall not be considered a vested interest of the communications services provider and such Utility Poles or structures, if owned by the communications services provider, shall be removed or modified by the communications services provider at its own expense whenever the City or other governmental authority determines that the public convenience would be enhanced thereby. The communications services provider shall, at such time as the electric utility facilities or other communications facilities are placed underground or are required by the City to be placed underground, concurrently place its communications facilities underground without cost to the City. The City retains the final decision on vertical depth and/or height location and horizontal location within the right-of-way of communications facilities and appurtenances.

(w) The placing of any new utility pole or other aboveground structure to support communications facilities is subject to written approval and to compliance with the most current version of the provisions of Article IV, City Code Chapter 28 and shall be done under the supervision of the City manager or his designee. No such utility pole or other aboveground structure shall be placed in any gutter or drainage area and must be behind the curb to avoid damage to any sidewalk. In areas of the City where either electric utility wires or other communications facilities are aboveground and such facilities are moved, either voluntarily or at the direction of the City, to a new

utility pole or other above-ground structure, the communications services provider or wireless infrastructure provider shall likewise move all its above-ground facilities on such utility poles or structures to such new utility pole or structure within thirty (30) days after receipt of written notice from either the City or the owner of the new utility pole or structure, without cost to the City. New utility poles installed by wireless infrastructure providers shall also be subject to and may avail themselves of the requirements and process set forth in § 28-76 hereof. The City retains the final decision on vertical depth and/or height location and horizontal location within the rights-of-way of communications facilities and appurtenances.

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

~~(t) Wireless facilities which are an appurtenance of a communication facility, which are located within public rights-of-way, and which lie within or adjacent to a zoning district where a communication facility is a permitted use pursuant to chapter 34 of the Code of Ordinances, shall be subject to not less than the following criteria:~~

- ~~(1) Structures installed to serve as a mounting device for antennae, except those structures owned by the city, are expressly prohibited from being placed in the public rights-of-way;~~
- ~~(2) Wireless facilities shall comply with any applicable federal communications commission emissions standards;~~
- ~~(3) The design, construction, and installation of wireless facilities shall comply with all applicable building codes;~~
- ~~(4) No signs shall be allowed on wireless facilities except warning and informational signs approved, in advance, by the city;~~
- ~~(5) All equipment within the public rights-of-way which are used in conjunction with a wireless facility shall comply with all applicable municipal rules, regulations, policies, and ordinances.~~

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-76. –Wireless facilities.**

(a) Generally. The placement of telecommunication towers and antennae anywhere in the corporate limits of the City shall in all cases be subject to the City's zoning and land use regulations, including those set forth in the most current version of §§ 34-409 and 34-410 in the City's Land Development Code, which is a part of the City Code. Where placement of a wireless antenna in the public rights-of-way has been approved by the City and to the extent not inconsistent with any City zoning and land use regulations, a wireless antenna attached to a permitted and legally maintained vertical structure in the public rights-of-way, such as a light pole or utility pole, shall, unless otherwise agreed to by the City in writing:

- (1) Not extend more than 10 feet above the highest point of the vertical structure;
- (2) Not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law;
- (3) Comply with any applicable Federal Communications Commission Emissions Standards;
- (4) Comply with any applicable local building codes in terms of design, construction and installation; and
- (5) Not contain any commercial advertising thereon.

(b) Small Wireless Facilities in Public Rights-of-Way. The City is exempt under 47 U.S.C. § 224 from federal pole attachment requirements, and finds that it is a "municipal electric utility" such that the City utility poles are not subject to the Wireless Deployment Act's "Collocation" requirements as stated in § 337.401(7)(l), Florida Statutes, currently set forth in Chapter 2017-136, Laws of Florida. Unless and until the City adopts an ordinance regulating pole attachments, the City reserves the right

to approve or deny individual requests for pole attachments to City utility poles within its sole discretion.

(c) Placement of Utility Poles in the Public Rights-of-Way in Support of Collocation of Small Wireless Facilities. A wireless infrastructure provider may apply to the City to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within 9 months after the date the application is approved by the City, and the application must contain an attestation that the applicant cannot find a leasable site for the utility pole on private property within the City. The City shall accept and process the application in accordance with the procedure set forth below and any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way. Applicants seeking permission to install new utility poles within public rights-of-way shall comply with the registration, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, City liability, and City warranties provisions contained in this Chapter 28.

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

- a. Prior to filing any such application, the applicant shall notify the City and schedule a pre-application conference for the purpose of notifying and disclosing all information relevant to the City's assessment of any application to be filed hereunder. No such application may be filed until the pre-application meeting has been scheduled and conducted. The pre-application meeting shall be scheduled and held at least fourteen (14) days prior to the filing of any such application.
- b. The applicant shall as a part of its application provide information necessary to demonstrate the applicant's compliance with § 337.401(7), Florida Statutes, the applicable provisions of Chapter 28 and other applicable provisions of the City Code for the placement of a new utility pole in the locations identified in the application, and shall bear the burden of demonstrating compliance therewith.
- c. Within fourteen (14) days after receiving an application, the City must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the City must specifically identify the missing information. An application is deemed complete if the City fails to provide notification to the applicant within fourteen (14) days. If the applicant fails to complete the application within thirty (30) days after receiving a notice from the City that the application is deemed incomplete, then the City may deny the application.

- d. The City shall process all applications on a nondiscriminatory basis. If the City fails to approve or deny a complete application within 60 days after receipt of the application, the application is deemed approved. The parties may mutually agree to extend the 60-day application review period. The City shall grant or deny the application at the end of the extended period.
  - e. A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the City.
  - f. The City shall notify the applicant of approval or denial by electronic mail. The City shall approve a complete application unless it does not meet the applicable provisions of § 337.401(7), Florida Statutes, this Chapter 28, and other applicable provisions of the City Code.
  - g. If the application is denied, the City shall specify in writing the basis for denial, including the specific statutory or code provisions on which the denial is based, and shall send the documentation to the applicant by electronic mail on the day the City denies the application.
  - h. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days after notice of the denial is sent to the applicant. Failure by the applicant to resubmit the Application timely shall result in a final denial of the application. The City shall approve or deny a timely filed revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.
- (2) The City may deny a proposed new utility pole in the public rights-of-way if the proposed new utility pole violates or fails to comply with one or more of the following:
- a. Violates or fails to comply with any provision of § 337.401(7), Florida Statutes.
  - b. Violates or fails to comply with any provision of Chapter 28, City Code, as amended from time to time.
  - c. Violates or fails to comply with any provision of §§ 34-409 and 34-410 in the City's Land Development Code.
  - d. Violates or fails to comply with any provision related to historic preservation set forth in the City Code, as amended from time to time.
  - e. Materially interferes with the safe operation of traffic control equipment.
  - f. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
  - g. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

**Sec. 28-767. - Suspension of permits.**

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

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

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-778. - Involuntary termination of registration.**

- (a) The city may terminate a registration for due cause, reason, and for one or more of the following:
  - (1) Federal or state authority suspends, denies, or revokes a registrant's certification or license to provide communication services; or
  - (2) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents a danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of notice; or
  - (3) The registrant ceases to use all of the communications facilities in public rights-of-way or has not complied with the requirements of this section.
- (b) Prior to termination, the registrant shall be notified by the city manager or the city manager's designee, by a written notice, which sets forth all pertinent matters to the proposed termination action and describing the intended action of the city. The registrant shall have thirty (30) calendar days after the date of such notice to eliminate the reasons for the termination. In the event the registrant has not eliminated the reasons for the notice of termination at the end of the thirty (30) calendar day period, the termination shall be final.
- (c) In the event of termination, a former registrant shall: (a) notify the city of any anticipated assumption by another Registrant of ownership of the terminated registrant's communications facilities in public rights-of-way; and (b) provide the city with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a terminated registrant fails to comply with this section, the city may exercise any remedies or rights it has at law or in equity including, but not limited to,

taking possession of the facilities when another person has not assumed ownership or physical control of the facilities or requiring the registrant, within ninety (90) calendar days of the termination or such period as may be agreed to by the registrant, to remove part or all of the facilities from the public rights-of-way and restore the public rights-of-way to the original condition. All expenses incurred by the city or its agents to remove part or all of the facilities and to restore the public rights-of-way to the original condition shall be paid by the registrant.

- (d) A terminated registrant shall take all steps necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the city.
- (e) In the event of termination of a registration, this section does not authorize the city to remove or cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is also registered with and holds a valid permit issued by the city.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-79. – Fees applicable to those not subject to communications services tax.**

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

- (a) Dealer. Except as provided in 28-75(x), a communications services provider who meets the definition of dealer as set forth in state statute and who has registered in accordance with Section 28-73 is not required to enter into a franchise agreement or license arrangement with the City as a condition to placing or maintaining communications facilities in the public rights-of-way, nor is a dealer required to make payment of any franchise fees, license fees or other user fees to the City as consideration for the use or occupancy of the public rights-of-way for the provision of communication services.
- (b) Pass-through Provider and Pass-through Facilities. A communications services provider who meets the definition of Pass-through Provider as set forth in this Chapter 28 and who is not subject to the City's Local Communications Services Tax imposed pursuant to §§ 202.19 and 202.20, Florida Statutes shall pay the City the maximum annual amount allowed under § 337.401(6)(b), Florida Statutes, as amended. For purposes of calculating payments hereunder, each

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

(c) Other Persons. All other persons, except governmental entities, are required to pay the City, as consideration for the use or occupancy of the public rights-of-way for the placement or maintenance of communications facilities, an amount based on and in accordance with Section 28-79(b), City Code.

(d) Government. A governmental entity is not required to pay the City consideration for the use or occupancy of the public rights-of-way for the placement or maintenance of communications facilities, unless such facilities are being used by such governmental entity or a communications services provider, including resellers, to offer or provide communication services other than for such governmental entity's internal non-commercial use, in which event the governmental entity, where not subject to the City's Local Communications Services Tax imposed pursuant to §§ 202.19 and 202.20, Florida Statutes is required to pay the City, as consideration for the use or occupancy of the Public Rights-of-Way by or through its Facilities placed therein after December 18, 2017, an amount based on and in accordance with § 28-79(b), City Code, or such other amount or rate of compensation as mutually agreed to in writing by the governmental entity and the City.

**Sec. 28-7880. - Existing communication facilities in public rights-of-way.**

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

(Ord. No. 2001-7813, 6-4-01)

**Sec. 28-7981. - Insurance.**

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

(Ord. No. 2001-7813, 6-4-01)

**Sec. 28-802. - Indemnification.**

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

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

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

~~(Ord. No. 2001-7813, 6-4-01)~~

### **Sec. 28-813. - Construction bond.**

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

~~(Ord. No. 2001-7813, 6-4-01)~~

### **Sec. 28-824. - Security account.**

At or prior to the time a registrant receives the initial permit to place or maintain a communications facility in public rights-of-way after the effective date of this section, the registrant shall, at the sole discretion of the city, be required to file with the city, for the

city approval, an annual bond, cash deposit, or irrevocable letter of credit in the sum of \$100,000 having as a surety a company qualified to do business in the state, and shall be referred to as the "security account." The security account shall be maintained from such time through the: (a) transfer, sale, assignment, or removal of all communications facilities in the public rights-of-way; or (b) twelve (12) calendar months after the termination or cancellation of any registration. The security account shall be conditioned upon the full and faithful performance by the registrant of all requirements, duties, and obligations imposed upon registrant by the provisions of this section and other ordinances, as amended. The security account shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform the duties and obligations imposed upon the registrant by the provisions of this section, there shall be recoverable, jointly and severally from the principal and surety of the security account, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification, cost of removal, relocation, or abandonment of any facilities of the registrant in public rights-of-way, including a reasonable allowance for attorneys' fees, up to the full amount of the security account. The city shall not pay registrants interest on any monies held by the city in a registrant's security account.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-835. - Enforcement remedies.**

- (a) A registrant's failure to comply with provisions of this section shall constitute a violation of this Ordinance and shall subject the registrant to the code enforcement provisions and procedures as provided in ~~F.S.~~ Ch. 162, [Florida Statutes \(2000\)](#) and ~~F.S.~~ § 166.0415, [Florida Statutes \(2000\)](#), as amended. In addition, violation of this section may be punishable as provided in ~~F.S.~~ § 162.22, [Florida Statutes](#), as amended and as provided in the city ordinances.
- (b) Failure of the city to enforce any requirements of this section shall not constitute a waiver of the city right to enforce the violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-846. - Abandonment.**

- (a) Upon anticipated abandonment or the abandonment of a communications facility owned by a registrant in public rights-of-way, the registrant shall notify the city within thirty (30) calendar days of the anticipated abandonment or the abandonment.
- (b) The city may, at its sole discretion, direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's expense if the city determines that the presence of the abandoned facility interferes with the public health, safety, or welfare which shall include, but shall not be limited to, a determination that such facility: (a) compromises safety at any time for any public

rights-of-way user or during construction or maintenance in public rights-of-way; (b) interferes with or prevents another person from locating facilities in the area of public rights-of-way; or (c) creates a maintenance condition which is disruptive to the intended use of the public rights-of-way.

- (c) In the event the city does not direct the removal of the abandoned facility, the registrant by notice of abandonment to the city, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the city or by another person.
- (d) If the registrant fails to remove all or any portion of an abandoned facility as directed by the city within a time period as required by the city, the city, or its agents, may perform such removal and charge the entire cost of the removal to the registrant.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-857. - Force majeure.**

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

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-868. - Reservation of rights and remedies.**

- (a) The city reserves the right to amend this section, from time to time, as it shall find necessary.
- (b) This section shall be applicable to all communications facilities placed in public rights-of-way on or after the effective date of this section and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of this section, to the full extent permitted by federal and state laws.
- (c) The adoption of this section is not intended to affect or amend any rights or defenses of the city or a communications services company or provider under any existing franchises, licenses, or other agreements with a communications services company or provider.

(d) Nothing in the section shall affect the remedies the city or the registrant have available under applicable federal and state laws.”

~~(Ord. No. 2001-7813, 6-4-01)~~

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

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

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

**AUTHENTICATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D., 2017.**

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**William C, Latham, MAYOR**

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**Laurie Scott, CITY CLERK**