

ORDINANCE NO. 1478

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AMENDING CHAPTER 19 OF THE CITY'S CODE OF ORDINANCES RELATING TO RIGHT-OF-WAY USE; PROHIBITING NEW UTILITY POLES AND FACILITIES EXCEEDING THREE FEET IN RIGHT-OF-WAY SOUTH OF THE CENTERLINES OF FRONT BEACH ROAD, SOUTH THOMAS DRIVE, AND THE PORTION OF THOMAS DRIVE EAST OF SOUTH THOMAS DRIVE; EXEMPTING CITY OWNED LIGHT POLES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

WHEREAS, the City of Panama City Beach (the "City") regulates the use of Rights-of-way through its City Code and requires any person who will place or maintain a Facility in a Right-of-way to obtain a permit from the City; and

WHEREAS, Florida Statute 337.401 provides that the City retains the authority to regulate and manage Rights-of-way in exercising its police power, but all rules which govern providers of communications services must be reasonable and nondiscriminatory; and

WHEREAS, this ordinance applies equally not only to all communications service providers, but to all persons who request to install Facilities in a Right-of-way; and

WHEREAS, the sandy beaches and the Gulf of Mexico are among the City's most valuable assets; and

WHEREAS, residents and tourists value scenic views of the Gulf of Mexico, including views from locations across the street from the Gulf of Mexico or views while traveling within Rights-of-way; and

WHEREAS, above-ground utilities, such as utility poles, which the Code includes in its definition of Facilities, interfere with these views and are aesthetically harmful the quality of life for citizens and the tourist experience for visitors; and

WHEREAS, currently the City has few utility poles or other above-ground

utilities on the south side of its Gulf-front Scenic Corridors; and

WHEREAS, it is in the best interest of the City to minimize above-ground utilities in these locations, prohibit additional above-ground utilities in these areas, and gradually phase out the existing above-ground utilities in these areas; and

WHEREAS, utility providers have adequate space for equipment on the north sides of these Gulf-front Scenic Corridors, where placement of above-ground Facilities is less detrimental to views of the Gulf of Mexico and the aesthetics of the City; and

WHEREAS, this ordinance is not intended to authorize the use of the north side of any Right-of-way for above-ground utilities if above-ground utilities are otherwise prohibited now or in the future for that entire area of Right-of-way.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH:

SECTION 1. From and after the effective date of this ordinance Chapter 12 of the Code of Ordinances of the City of Panama City Beach, related to Right of way use and permitting is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

**Sec. 19-154. - Permittee obligations.**

- A. Telecommunications Towers, Small Wireless Poles, Collocations, and other wireless communications Facilities are governed additionally by the more specific requirements of the Panama City Beach Land Development Code.
- B. No new Facility that is over fifteen (15) feet in height from grade may be constructed within seventy-five (75) feet of any other Facility that is over fifteen (15) feet in height from grade, unless granted a variance due to unique circumstances. This restriction shall not prohibit the City from installing new Facilities for public safety and welfare reasons, including light poles.
- C. **No person shall be granted a permit or otherwise be allowed to install any utility pole or any other Facility if such Facility would be three (3) or more feet above grade within a Right-of-way south of the centerline of Front Beach Road, South Thomas Drive, or the portion of Thomas Drive east of South Thomas Drive. This prohibition shall not apply to light poles owned by the City. Any existing utility poles or Facilities that would not be permissible**



**under this rule shall not be permitted to be replaced, but may be maintained used and repaired, provided repairs do not exceed 50% of the value of the utility pole or Facility.**

- CD.** Permittee shall place or maintain all Facilities in the Right-of-way so as not to unreasonably interfere with the drainage of all lands lying within the City, the travel and use of the right-of-way by the public and with the rights and convenience of property owners who adjoin any portion of the right-of-way, and in a manner consistent with accepted industry practice and applicable law.
- DE.** Permittee shall not place or maintain its Facilities in the Right-of-way so as to interfere with, displace, damage or destroy any Facilities lawfully occupying the Right-of-way, including but not limited to sewers, gas or water mains, storm drains, pipes, cables or conduits of the City or any other Person.
- EF.** All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of Facilities in a Right-of-way.
- FG.** When requested by City, the Permittee shall, at Permittee's expense, make changes to the components or location of Facilities to conform to the reasonably necessary requirements of localized areas.
- GH.** Permittee shall coordinate its placement and maintenance activities with other utilities and the City when such activities require disturbance of the Right-of-way, and shall notify the City not less than twenty-four nor more than seventy two hours in advance of any pavement cut. Unless otherwise authorized or directed by the City, Permittee shall use directional bores for any work to Facilities which require the crossing of a Right-of-way, or for the installation of Facilities parallel to a fully developed and landscaped urban curb and gutter Right-of-way.
- HI.** Where excavation of a Right-of-way is required, a Permittee shall comply with the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes (2006), as it may be amended.
- IJ.** Permittee shall use and exercise due caution, care and skill in performing permitted work in a Right-of-way and shall take all reasonable steps to safeguard work site areas.
- JK.** A Permittee shall, upon thirty days written notice by any person holding a City Right-of-way Permit, temporarily raise or lower its Facilities to allow the work authorized by the Permit, at the requesting Permittee's expense.
- KL.** After the completion of any placement or maintenance of a Facility in a Right-of-way or each phase thereof, a Permittee shall, at its expense, restore to its original condition the Right-of-way and any other public or private property damaged or destroyed in whole or in part by Permittee, its agents, servants or employees in exercising the privileges granted by the Permit. If the Permittee fails to make such restoration within thirty days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement and maintenance, the City may perform the restoration and charge the costs of restoration against the Permittee in accordance with Section 337.401, Florida Statutes, (2006), as it may be amended. A Permittee shall guarantee its restoration

work and shall correct any restoration work that does not satisfy the City's requirements at its own expense for twelve months following written acceptance of the permitted work by the City Engineer.

- LM.** Permittee shall warrant that all work performed in connection with the placement or maintenance of a Facility in a Right-of-way will be of good quality and in conformance with the Plans and Specifications submitted with the application and approved by the City.
- MN.** Upon completion of the placement or maintenance of a Facility in a Right-of-way, Permittee shall promptly file three copies of complete and accurate "as-built" plans identifying and locating those portions of the Facilities placed in the Right-of-way.
- NO.** Permittee shall at all times comply with and abide by all applicable provisions of state and federal law, and City ordinances, codes and regulations in placing or maintaining a Facility in a Right-of-way, for so long as Permittee places or maintains a Facility in a Right-of-way.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

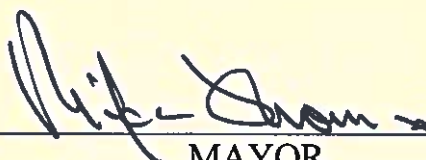
SECTION 3. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the Panama City Beach Code, and unless a contrary ordinance is adopted within ninety (90) days following such publication, the codification of this Ordinance shall become the final and official record of the matters herein ordained. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 4. This Ordinance shall take effect immediately upon passage.


PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this 13<sup>th</sup> day of



December, 2018.

  
MAYOR

ATTEST:

  
CITY CLERK

EXAMINED AND APPROVED by me this 13<sup>th</sup> day of December, 2018.

  
MAYOR

Published in the Parana City News Herald on the 30<sup>th</sup> day of November, 2018.

Posted on pcbgov.com on the 14<sup>th</sup> day of December, 2018.

Notice provided to the Secretary of State on the 10<sup>th</sup> day of October, 2018, which is at least 10 days prior to consideration on first reading.