REGULAR CITY COUNCIL MEETING
6:30 PM – COUNCIL CHAMBERS – CITY HALL
FEBRUARY 5, 2019

AGENDA

ALL CITIZENS DESIRING TO ADDRESS THE PORT ORANGE CITY COUNCIL DURING CITIZEN PARTICIPATION SHOULD COMPLETE A SPECIAL APPLICATION FORM WHICH IS LOCATED ON THE STANDS OUTSIDE THE COUNCIL CHAMBERS. AFTER COMPLETING THE FORM, PRESENT IT TO THE CITY CLERK.

A. OPENING
   1. Invocation by Pastor Jeffrey Birch of Spruce Creek Presbyterian Church
   2. Pledge of Allegiance
   3. Roll Call

B. CONSENT AGENDA
   4. Public Comments on Consent Agenda Items Only
   5. Agenda Approval
   6. Approval of Minutes
      a. January 22, 2019 - Regular City Council Meeting
   7. Resolution No. 19-5 - Adopting Local Rules and Repealing Resolution No. 01-36 - Public Participation Policy
   8. Approval of Rental of a Belt Press from H&A Resource Management for the Water Reclamation Facility
   9. Major Special Event Request – 4Ever Fitness 5K Run/Walk & 1-Mile Kids Fun Run located at 4Ever Fitness, 4639 Clyde Morris Boulevard
   10. Major Special Event Request – All Aboard Storage Go Make a Difference 5K Run/Walk located at the Clark Office Building, 5111 S. Ridgewood Avenue.
   11. Major Special Event Request – Bike Week: First Turn Steakhouse & Lounge – 5236, 5204 & 5164 South Ridgewood Avenue
   12. Resolution No. 19-10 - 30-day Extension to the Moratorium on Personal Wireless Communications Governed by Chapter 16, Section 9 of the Land Development Code
C. CITIZEN PARTICIPATION (Non-Agenda – 15 minutes)

D. COUNCIL COMMENTS

13. Comments/Concerns from Council Members

E. SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

14. Parks & Recreation Advisory Board Report
15. Environmental Advisory Board Report

F. PUBLIC HEARING

16. Second Reading - Ordinance 2019-2 - LDC Amendment/Chapter 13 - Landscaping Requirements for Residential Lots (Case No. 18-25000009)
17. Second Reading - Ordinance 2019-5 - LDC Amendment/Chapter 2, 16, and 18 - Siting of Personal Wireless Communication Facilities (Case No. 18-25000010)

G. REGULAR AGENDA

18. First Reading - Ordinance No. 2019-7 - Amending Section 50-58 of the Code of Ordinances relating to the Parks & Recreation Advisory Board

H. ADDITIONAL ITEMS

19. City Attorney Reports for Council consideration
20. City Manager

I. COUNCIL COMMITTEE REPORTS

21. City Council Committee Reports
   a. River to Sea TPO
   b. General Employees' Pension Board

J. ADJOURNMENT

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERk FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS
POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO
THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 1-800-955-
8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN
ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT
THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

ANY INVOCATION THAT IS OFFERED BEFORE THE OFFICIAL START OF THE CITY COUNCIL MEETING SHALL BE THE
VOLUNTARY OFFERING OF A PRIVATE PERSON, TO AND FOR THE BENEFIT OF THE CITY COUNCIL. THE VIEWS OR
BELIEFS EXPRESSED BY THE INVOCATION SPEAKER HAVE NOT BEEN PREVIOUSLY REVIEWED OR APPROVED BY
THE CITY COUNCIL OR THE CITY STAFF, AND THE CITY IS NOT ALLOWED BY LAW TO ENDORSE THE RELIGIOUS
BELIEFS OR VIEWS OF THIS, OR ANY OTHER SPEAKER. PERSONS IN ATTENDANCE AT THE CITY COUNCIL MEETING
ARE INVITED TO STAND DURING THE OPENING INVOCATION AND PLEDGE OF ALLEGIANCE. HOWEVER, SUCH
INVITATION SHALL NOT BE CONSTRUED AS A DEMAND, ORDER, OR ANY OTHER TYPE OF COMMAND. NO PERSON
IN ATTENDANCE AT THE MEETING SHALL BE REQUIRED TO PARTICIPATE IN ANY OPENING INVOCATION THAT IS
OFFERED. A PERSON MAY EXIT THE CITY COUNCIL CHAMBERS AND RETURN UPON COMPLETION OF THE
OPENING INVOCATION IF A PERSON DOES NOT WISH TO PARTICIPATE IN OR WITNESS THE OPENING INVOCATION.
THE REGULAR CITY COUNCIL MEETING of the City of Port Orange was called to order by Mayor Donald O. Burnette at 6:30 p.m.

OPENING

Invocation - Rev. Diane Langworthy of United Church of Christ

Pledge of Allegiance

Roll Call Present: Councilman Drew Bastian
Councilman Scott Stiltner
Vice Mayor Chase Tramont
Mayor Donald Burnette

Also Present: City Manager Jake Johansson
City Clerk Robin Fenwick
Deputy City Attorney Matthew Jones

CONSENT AGENDA

4. Public Comments on Consent Agenda Items Only

There were none.

5. Agenda Approval

There were no changes.

6. Approval of Minutes
   a. January 8, 2019 - Special City Council Meeting
   b. January 8, 2019 - Regular City Council Meeting

7. Bid Awards and Contract Items
   a. Approval of Change Order No 1 to Task Authorization No 10 under the Master Contract for Engineering Services with Kimley-Horn and Associates, Inc as it relates to Engineering Services
   b. Approval of Change Order No 1 to the EJCDC Agreement to Petticoat-Schmitt Civil Contractors, Inc. as it relates to ITB17-41 WWTP Influent Bypass.

8. Approval to Submit Grant Application for St. Johns River Water Management District’s FY2019-2020 Cost Share Program and authorizing the execution of the Cost Share Agreement

9. Fee Waiver Request from Spruce Creek High School Softball Team
Motion to approve the Agenda as presented was made by Councilman Drew Bastian and Seconded by Councilman Scott Stiltner. Motion carried unanimously by roll call vote.

Motion to approve the Consent Agenda as presented was made by Councilman Scott Stiltner and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

CITIZEN PARTICIPATION (Non-Agenda – 15 minutes)

There were none in attendance.

COUNCIL COMMENTS

10. Comments/Concerns from Council Members

Councilman Scott Stiltner asked Council if one hour is enough time to discuss all of the items needed at the workshop with the Volusia County School Board. Council agreed to begin the workshop at 4:30 p.m. on February 19, 2019 subject to the School Board’s availability. Mr. Johansson has provided the following topics to the School Board for discussion: Port Orange school ratings; child protection; traffic concerns; new school at Town West. Councilman Stiltner asked to also discuss new programs being considered by the school board at the high school levels, as well as curriculum concerns. Vice Mayor Tramont would like to discuss the plan for any renovations at Spruce Creek High School.

Mayor Burnette asked for the dates of the Tallahassee trip relating to Port Orange and Volusia Days. Mr. Johansson provided the dates.

Motion to re-open Citizen Participation as Terry Rowe is in attendance was made by Vice Mayor Chase Tramont and Seconded by Councilman Scott Stiltner. Motion carried unanimously by voice vote.

Terry Rowe, citizen, asked for information relating to payment on the License Agreement Council has revoked. He submitted receipts two months ago and believes he should have received a phone call relating to the payment.

Mr. Johansson provided an update on the revocation of the License Agreement, which will be terminated on February 8, 2019. He will execute a contract once the License Agreement is revoked legally.
SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

11. Report from KemperSports on the Cypress Head Golf Course

Bob Duquette, General Manager, provided information from the recent golf course reports.

BOARD APPOINTMENTS, INTERVIEWS, REPORTS

12. Citizen Advisory Committee for TPO

Bobby Ball was unable to attend the meeting to provide the report. He will update Council in February.

13. Golf Advisory Board Report

Richard Lee, Chairman, provided details from the recent meetings. He congratulated Bob Duquette for executing the budget and being in the black at year end. He asked Council to continue budgeting appropriately to ensure the course remains in good shape. He expressed concern with the success of the restaurant. He asked if a notice could be included on the water bill.

14. Fire Pension Board - Interim member

Jake Johansson, City Manager, asked Council to consider appointing Councilman Stiltner to the Fire Pension Board as an interim member until a new council member is elected and Council appoints someone.

Motion to appoint Scott Stiltner as the interim member of the Fire Pension Board was made by Councilman Drew Bastian and Seconded by Vice Mayor Chase Tramont. Motion carried unanimously by voice vote.

PUBLIC HEARING


Mayor Burnette read Ordinance No. 2018-32.

ORDINANCE NO. 2018-32

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES,
CHAPTER 10, SECTION 10-20 ESTABLISHING A PERMANENT URBAN CHICKEN PROGRAM; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2018-32 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian. Motion carried 3-1 by roll call vote with Councilman Scott Stiltner voting no.


Mayor Burnette read Ordinance No. 2019-1.

ORDINANCE NO. 2019-1

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA AMENDING THE LAND DEVELOPMENT CODE CHAPTER 15 RELATING TO RESIDENTIAL SUBDIVISION SIGNAGE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2019-1 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

17. Second Reading - Ordinance No. 2019-3 - Amending Section 2-275 of the Code of Ordinances relating to Local Preference

Mayor Burnette read Ordinance No. 2019-3.

ORDINANCE NO. 2019-3

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE VI, DIVISION 2, SECTION 2-275 TO ESTABLISH A NEW SUB-SECTION REGARDING APPLICATION OF THE LOCAL PURCHASING PREFERENCE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.
Motion to adopt Ordinance No. 2019-3 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

18. Second Reading - Ordinance No. 2019-4 - Amending the Code of Ordinances relating to the Golf Course Advisory Board

Mayor Burnette read Ordinance No. 2019-4.

ORDINANCE NO. 2019-4

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING SECTION 50-108, CODE OF ORDINANCES, TO REDUCE THE NUMBER OF MEMBERS ON THE GOLF ADVISORY BOARD AND REMOVE THE CITY COUNCILMEMBER POSITION ON THE GOLF ADVISORY BOARD; AMENDING SECTION 50-109, CODE OF ORDINANCES, TO PROVIDE FOR INITIAL APPOINTMENT TERMS; AMENDING SECTION 50-111, CODE OF ORDINANCES, TO REDUCE THE NUMBER OF BOARD MEMBERS NECESSARY TO FORM A QUORUM; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2019-4 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

19. First Reading - Ordinance 2019-5 - LDC Amendment/Chapter 2, 16, 17, and 18 - Wireless Communications Facilities Siting (Case No. 18-25000010)

Mayor Burnette read Ordinance No. 2019-5.

ORDINANCE NO. 2019-5

AN ORDINANCE OF THE CITY OF PORT ORANGE, FLORIDA AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF PORT ORANGE TO AMEND CHAPTER 2, SECTION 2 DEFINITIONS; TO REPEAL AND REPLACE CHAPTER 16, MISCELLANEOUS REGULATIONS, SECTION 9, PERSONAL WIRELESS COMMUNICATIONS, WITH A NEW CHAPTER 16,
MISCELLANEOUS REGULATIONS, SECTION 9, ENTITLED WIRELESS COMMUNICATIONS FACILITIES SITING, WITH THE FOLLOWING SUBSECTIONS: PURPOSE; GENERAL SITING PREFERENCES; PROCEDURAL REQUIREMENTS; SPECIFIC REGULATIONS AND PROCEDURES FOR PROPOSED FACILITIES MODIFICATION APPLICATIONS; PROTECTION OF THE PUBLIC; AMATEUR RADIO ANTENNAS; ENFORCEMENT; AMENDING CHAPTER 18, SECTION 3(b)(25) ADDRESSING SPECIAL REQUIREMENTS FOR COMMUNICATIONS TOWERS IN RESIDENTIAL DISTRICTS; AMENDING CHAPTER 16, SECTION 4 ADDRESSING HEIGHT; AMENDING CHAPTER 16, SECTION 5 ADDRESSING SPECIAL SETBACKS; AMENDING CHAPTER 17, ZONING REGULATIONS, SECTION 1, IN GENERAL, TO REFERENCE THE WIRELESS COMMUNICATIONS FACILITIES SITING REGULATIONS SET FORTH IN CHAPTER 16, SECTION 9; AMENDING CHAPTER 17, ZONING REGULATIONS, TO REMOVE ALL REFERENCES TO ANTENNAS, CAMOFLAUGED ANTENNAS, AND CAMOFLAUGED, GUYED, LATTICE AND MONOPOLE COMMUNICATION TOWERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR THE TERMINATION OF MORATORIUM ADOPTED PURSUANT TO ORDINANCE NO. 2018-25; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2019-5 to include the changes as presented was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian.

Tim Burman, Community Development Director, provided details of the code changes. Mr. Burman answered questions from Council.

Katie Cole, Attorney for Crown Castle, advised of some comments she has regarding the ordinance.

Matthew Jones, Deputy City Attorney, does not currently have any recommended changes but will provide Council will any comments and recommendations prior to the second reading.

Robert Reinhagen, citizen, expressed his concerns regarding a special fee included in the ordinance.

Motion carried unanimously by roll call vote.
REGULAR AGENDA

20. Ratification and approval of Task Authorization No 20 with Mead and Hunt for the Taylor Road Bridge at B-19 and Sweetwater Emergency Repairs

Motion to approve was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian.

Mr. Johansson provided details of the quotes received in the emergency situation. Staff did their due diligence to protect the funds of the City and taxpayers while getting the job done quickly.

Motion carried unanimously by roll call vote.

21. Ratification of emergency PO to P&S Paving for Taylor Road Repairs

This item relates to item #20 and was discussed together.

Motion to approve was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

ADDITIONAL ITEMS

22. City Attorney

There was nothing further.

23. City Manager

Mr. Johansson asked Councilman Stiltner to consider the appointment of Jeff Martindale to the Bicycle Pedestrian Trail Committee with the TPO. Council agreed to the appointment. Councilman Drew Bastian volunteered to be the alternate on the TPO board to attend if/when Councilman Stiltner can’t.

Mr. Johansson advised that Staff will be staying away of civil affairs between neighbors that have been coming up lately.

Mr. Johansson asked Council to consider allowing Staff to update the Purchasing Policy without Council’s approval as Council approves all of the ordinances dictating how the procedures are written in the Purchasing Policy. Council agreed.
COUNCIL COMMITTEE REPORTS

24. City Council Committee Reports
   a. First Step Shelter – Vice Mayor Tramont has nothing new to share.
   b. Port Orange/South Daytona Chamber of Commerce – Mayor Burnette provided an update on the upcoming events.
   c. Arthaus – There was no report.

ADJOURNMENT 7:54 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, CMC
City Clerk
CONSENT ITEM: No

SUBJECT: (B7) Resolution No. 19-5 - Adopting Local Rules and Repealing Resolution No. 01-36 - Public Participation Policy

DEPARTMENT: City Clerk

GOAL:

RECOMMENDED MOTION: Move to adopt Resolution No. 19-5 adopting the Local Rules and repealing Resolution No. 01-36 - Public Participation Policy.

SUMMARY: The rules listed in Resolution No 01-36 - Public Participation Policy are already included in the Local Rules adopted by Council on January 8, 2019. There is no need for a separate Resolution.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

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Robin Fenwick Created/Initiated - 01/07/2019
Matthew Jones Approved - 01/24/2019
Jake Johansson Approved - 01/25/2019
Robin Fenwick Final Approval - 01/25/2019
RESOLUTION NO. 19-5

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ADOPTING THE PORT ORANGE CITY COUNCIL LOCAL RULES OF PROCEDURE; REPEALING RESOLUTION 01-36 – PUBLIC PARTICIPATION POLICY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council approved its Local Rules of Procedure on January 9, 2019 (the "Local Rules"); and

WHEREAS, the Local Rules provide for public participation policy and procedure in accordance with Section 286.0114, Florida Statutes;

WHEREAS, the City Council desires to repeal Public Participation Policy adopted by Resolution 01-36 which is now rendered obsolete by the adoption of the Local Rules.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1. The City Council of the City of Port Orange, Florida hereby formally adopts the Port Orange City Council Local Rules of Procedure (attached hereto as Exhibit “A”).

SECTION 2. The City Council of the City of Port Orange, Florida hereby repeals Resolution 01-36 - Public Participation Policy.

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SECTION 3. This resolution shall become effective immediately upon adoption by the City Council.

________________________________
MAYOR DONALD O. BURNETTE

ATTEST:

______________________________
Robin L. Fenwick, CMC, City Clerk

Adopted on the _____ day of _____________, 2019

Reviewed and Approved: ________________________________
Matthew J. Jones, Deputy City Attorney
PORT ORANGE CITY COUNCIL
LOCAL RULES OF PROCEDURE

I. GENERAL PARLIAMENTARY RULES.

The general parliamentary procedure to be followed by the City Council of the City of Port Orange, Florida, except as otherwise modified by the City Council or as modified or amended herein, shall be in accordance with the most current edition of Robert's Rules of Order, Newly Revised.

II. PRESIDING OFFICER AND DUTIES.

A. The Mayor, if present, shall preside at all meetings of the Council. In the absence of the Mayor, the Vice Mayor shall preside.
B. The meetings of the Council shall be called to order, recessed and adjourned by the presiding officer.
C. The presiding officer shall preserve order and enforce the rules of decorum and conduct set forth herein.
D. The presiding officer shall determine all points of order, subject to the right of any Councilmember to appeal to the Council. If any appeal is taken, the question shall be, “Shall the decision of the presiding officer be sustained?” A majority of the Council sitting and eligible to vote is required to reverse the ruling of the presiding officer.
E. The presiding officer may call another Councilmember to temporarily chair the meeting to make a motion, or to cover a temporary absence, such substitution is not to continue beyond adjournment.

III. LOCAL RULES.

A. The following Local Rules of Procedure (“Local Rules”) shall be applicable to the organization and conduct of business, as well as preparation and publication of agendas, of the City Council of the City of Port Orange, Florida. To the extent these Local Rules shall modify or conflict with the standard “Robert’s Rules of Order” as adopted above, these Local Rules shall prevail to the extent of their conflict or inconsistency with “Robert’s Rules of Order”. The approval of these Local Rules shall take place at the first meeting held in January of each year, or as soon as possible thereafter.

1. Regular meetings of the City Council shall typically be held on the first and third Tuesdays of each month, with exceptions due to holidays and Port Orange municipal election dates, at 6:30 p.m., in City Hall. These meeting dates and
times are subject to change as determined necessary by the City Council or to comply with the City’s Charter. There shall be no regular City Council meeting on the date of a Port Orange municipal election. A meeting that would otherwise have been scheduled for such date shall be held on the Wednesday immediately following the election at 6:30 p.m. at City Hall.

2. Workshop meetings of the City Council shall be held as needed on the fourth Tuesday of each month at such time and place as set by Council or the City Manager. Every effort will be made to avoid the scheduling of workshops in the months of November and December. Workshops may also be scheduled at other times as determined necessary by the City Council.

3. All regular City Council meetings shall be held in the City Council Chambers at City Hall, unless otherwise designated by the City Council. All City Council workshops will typically be held in the Second Floor Conference Room, Lakeside Activity Center, the Adult Activity Center, or the Council Chambers at City Hall, as determined by the City Manager. All meetings of the City Council shall end by 11:00 p.m. unless extended beyond 11:00 p.m. by a motion of the City Council. Thereafter, the meeting shall end upon the conclusion of each hour (12:00, 1:00, etc.), unless extended by a motion of the City Council for each hour. Any unfinished business shall be considered at a time and place set by the City Council.

4. There may also be special meetings or workshop meetings at such other times designated in advance by the City Council for the purposes of holding joint meetings with City boards, commissions, etc., to include receiving annual reports and presentations from the City’s boards, committees, agencies and authorities, or for such other purposes as may be deemed necessary or desirable by the City Council.

5. Special meetings shall be called at the request of the Mayor or any two Councilmembers in accordance with the provisions of the City Charter and the Code of Ordinances.

6. Ex Parte Communication and Quasi-Judicial Proceedings shall be governed by City Council Resolution No. 00-65. At a minimum, all parties to a Quasi-Judicial Proceeding shall be entitled to the following:

a. An opportunity to call and examine witnesses, who shall be sworn;

b. An opportunity to introduce evidence;

c. An opportunity to cross examine witnesses; and

d. An opportunity to rebut evidence.

7. To the extent compatible with the conduct of business, all workshop meetings shall be held on an informal basis. The applicability of the City’s general rules shall not be strictly applied. Presentations made at workshop meetings shall be limited to twenty (20) minutes, unless the Council, by consensus, agrees to extend the time.
8. The City Manager shall be responsible for organization and placement of items on the City Council Agenda; however, the Agenda and Agenda packets shall be prepared by the City Clerk. If the Council or any of its members wish to place an item on an agenda, any such request or inquiry shall be directed to the City Manager's office for disposition as opposed to any Councilmember contacting any City officer or employee who is subject to the direction and supervision of the City Manager.

9. With regard to the agenda for regular City Council meetings, the following shall apply:

a) To the extent possible, the City Administration shall group all matters by subject area, and shall place as many items as possible on the consent portion of the agenda. Those items of a controversial nature or those that need explanation will not be placed on the Consent Agenda.

b) The Consent Agenda shall be considered by Council only after the public has had an opportunity to comment on the items included. Should Council need further discussion to occur on a Consent Agenda Item, he/she may motion for the item to be pulled and discussed separately. Those items pulled will be discussed immediately following the Consent Agenda approval.

c) The agenda format shall generally be as follows: Call to Order; Invocation; Pledge of Allegiance; Roll Call; City Employee Recognition, Consent Agenda (to include Citizen Comments on Consent Agenda Items and Agenda Approval); Public Participation (Agenda); Public Participation (Non-Agenda); Council Comments; Special Awards, Reports, Recognition and Proclamations; Board Appointments, Interviews, and Reports; Tabled Items; Public Hearings; Regular Agenda, (to include first readings of ordinances); Items from the City Attorney and the City Manager; and Council Committee reports. The agenda format is subject to change at the discretion of the City Manager or upon consensus of Council.

d) Any items received during the public participation (non-agenda) portion of the agenda may, at the discretion of the Council, be discussed by the City Council at the time of such presentation, may be directed by the Council to the City Manager for action or resolution, or may be added to a subsequent meeting or workshop agenda if a member of the City Council so specifically requests.

e) Votes taken on ordinances and resolutions shall be by roll call and shall be recorded by the City Clerk. All roll call votes shall be in order of District with District 1 voting first, District 2 voting second, and so on, with the Vice Mayor always voting fourth and the Mayor voting last.
f) Once a motion has been made, seconded, and voted upon, it is final, except that the Council may reconsider that matter at the same meeting at which the motion was voted upon or the immediate subsequent meeting. If reconsideration is requested for an immediate subsequent meeting, the Councilmember requesting reconsideration shall notify the City Clerk in advance of the meeting at which the reconsideration will take place and provide the reasons for requesting reconsideration to allow the City Clerk to include the request as part of the meeting agenda and properly notice the item to be reconsidered. The City Clerk shall consult with the City Attorney's Office to determine sufficiency of notice to interested parties. To reconsider a final vote of the City Council, a motion to reconsider shall be made by a member of the Council that voted on the prevailing side. The City Council shall establish for the public record the reasons that a reconsideration of the final vote was warranted.

10. The City Council of the City of Port Orange is committed to maintaining civility in public and political discourse and encourages the public to do the same. To promote civil discourse and avoid a confrontational atmosphere, all comments by members of the Council, advisory board members, and/or the public should:
   a. Respect the right of all citizens in our community to hold different opinions;
   b. Avoid rhetoric intended to humiliate or question the wisdom of those whose opinions are different from ours;
   c. Strive to understand differing perspectives;
   d. Be truthful, not accusatory and avoid distortion; and
   e. Avoid violence, prejudice and incivility towards citizens, employees, and officials of the City of Port Orange.

11. Cell phone ringers shall be disabled while a meeting or workshop is in progress.

IV. PUBLIC PARTICIPATION.

A. The City of Port Orange recognizes the statutorily created right of the public to be heard on propositions in front of City Council as set forth in Section 286.0114, Florida Statutes, and is committed to democratic, participatory local government. The following rules, guidelines and procedures are intended to promote orderly conduct and defined methods for participation. The presiding officer shall have the authority to enforce these rules and may request the removal of any individual who has been warned of and persists with prohibited conduct.

1. General Rule

   a. Members of the public shall be given a reasonable opportunity to be heard on a proposition before City Council, subject to the rules, guidelines and procedures set forth herein. The opportunity to be heard need not occur at the same meeting at which City Council takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which City Council takes the official action.
b. Public participation is not required under the following circumstances:
   i. An official act must be taken to deal with an emergency situation affecting the public health, welfare, or safety, and public participation would cause an unreasonable delay in the ability of the City Council to act;
   ii. An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
   iii. A meeting that is exempt from s. 286.011, Florida Statutes; or
   iv. A meeting during which the board or commission is acting in a quasi-judicial capacity, unless otherwise provided by law.

2. Meeting Decorum and Conduct

   a. Individuals may only make comments from the podium, or such other reasonable accommodation, after being recognized by the presiding officer.

   b. Prior to commenting, individuals are required to clearly state their name and city of residence for the record in order to preserve an accurate public record reflected in the meeting minutes for future reference.

   c. All comments shall be directed to the presiding officer and shall not contain profane, aggressive or threatening language, or personal verbal attacks.

   d. Repetitive, redundant, or immaterial presentations or requests may be limited, and shall not resume unless authorized by a majority vote of the City Council.

   e. Comments shall be limited to the allotted times set forth herein, but additional comments may be submitted in writing to supplement and fully address any issue. The presiding officer shall have the discretion to provide additional time for a representative who can produce supporting documentation or evidence that he or she is authorized to speak on behalf of a group or faction comprised of five or more members of the public.

   f. Individuals attending a City Council meeting may choose to either hold a sign or place a sign along the rear wall of Council Chambers. Signs shall not be placed or held in any manner which obstructs the view of other audience members or obstructs the access to or from Council Chambers. Signs shall not be waived or lighted in any manner that causes distraction to the Council members or members of the audience during a City Council meeting or workshop. Signs shall not be affixed to the walls or other surfaces within Council Chambers.

3. Procedures and Guidelines for Public Participation

   a. Public Participation – Non-Agenda
      i. The City Council allocates 20 minutes at each regularly scheduled City Council Meeting for members of the public who wish to
appear before the City Council to make a request, voice a complaint or concern, express an opinion, or give recognition. Council may extend the allocated time by majority vote of the Council.

ii. Members of the public who wish to be heard shall complete a public participation form and provide the completed form to the City Clerk prior to the beginning of the meeting. Public participation forms shall be made available outside Council Chambers one hour prior to the meeting and in the City Clerk’s Office during regular business hours. The City Clerk shall present all completed forms to the presiding officer prior to the beginning of the meeting.

iii. The presiding officer shall divide the time allocated equally between all who have signed-up to speak. Each individual shall be afforded no more than three minutes to speak, unless such time is extended by a majority vote of city council.

iv. If an item brought forward under Citizen Participation – Non-Agenda requires a longer presentation by the citizen or will require staff research of materials, the item may be scheduled by the Mayor for a future City Council Meeting under Citizen Participation – Agenda.

b. Public Participation – Agenda

i. The City Council shall reserve a section of the agenda dedicated to hearing Public Participation items requiring more than three minutes to fully address.

ii. Members of the public who wish to have their discussion item placed on the agenda shall file the request with the City Clerk at least three weeks in advance of the Council Meeting at which the item is to be heard. The request shall include the nature of the discussion and any supporting information to be considered.

iii. The City Clerk shall forward a copy of the request and supporting information to the City Council and the appropriate City Department(s) so that research may be conducted and information may be provided by staff as part of the agenda item to assist City Council in making a decision.

iv. Requests shall be forwarded to the appropriate City Advisory Board or Commission for recommendations to the City Council prior to placement on an agenda, when applicable.

v. Public Participation Agenda Items shall be considered in the following format:

1. Presentation by requestor
2. Questions of the requestor by City Council
3. Presentation by City staff, if necessary
4. Questions of City staff by City Council
5. Public comments
6. Take action, if necessary

vi. The requestor and City staff shall each be given 15 minutes to address the agenda item, unless extended by the majority vote of Council. Presentations shall be clear, concise, and to the point. Presentation materials shall be provided to the City Clerk at least 48 hours prior to the meeting date. The City Clerk will upload the
presentation materials to the computer in Council Chambers. Members of the public who wish to participate after the presentation by voicing support, opposition or neutrality to the request shall be afforded no more than three minutes each to speak.

c. Public Hearings, Regular Agenda, and Consent Agenda Items
   i. Members of the public shall be given an opportunity to be heard on public hearing items and regular agenda items once the applicant has completed his or her presentation, the City Staff has completed its presentation on the issue, and interested parties, if any, have completed their presentation; and before a decision has been made by City Council.
   ii. Members of the public who wish to be heard on a particular item listed on the agenda may choose to complete a public participation form and turn-in the completed form to the City Clerk in advance of the meeting or raise a hand and wait to be called-on when the presiding officer opens the floor to comments from the public.
   iii. Applicant(s) and City Staff shall have as much time as necessary to make their presentation before the City Council. Each member of the public shall have no more than three minutes to be heard once recognized by the presiding officer.

d. Submission of Petitions
   i. Petitions may be presented to Council during public participation at a meeting or by mailing or hand-delivering to the City Clerk.
   ii. If the petition is presented at a meeting, the presenter shall present the petition to the presiding officer through the City Clerk along with a brief overview of the reason for the petition. Such presentation shall be limited to three minutes.
   iii. If the petition is sent by mail or hand-delivered to the City Clerk, the petition shall provide the reason for the petition. Upon receipt of the petition, the City Clerk shall place the item on the agenda with a copy of the petition for the next available meeting for discussion.

V. OPENING INVOCATION

A. It shall be the policy of the City Council that the procedures stated in this rule concerning opening invocation shall govern all official meetings of the City Council and that the members of the City Council and City staff shall adhere to these rules. These policies and procedures are not intended, shall not be implemented, and shall not be construed in any way to affiliate the City Council or the City with, nor express a preference for or against any faith, belief, opinion, religion, or denomination. Rather, these policies and procedures are intended to acknowledge and express the City Council respect for the diversity of religious denominations and faiths represented and practiced among the citizens of the City.

1. After the Call to Order of all official meetings of the City Council an Opening Invocation as described herein shall occur. The opening invocation will occur
and be completed during the opening, ceremonial portion of the City Council meeting and shall in no event occur, or be construed to occur, during the policymaking or legislative portions of the City Council meeting. If the selected speaker is absent or a selection cannot be made for any reason, the invocation will consist of a brief moment of silence.

2. The opening invocation will be performed by a local volunteer selected in accordance with these rules. The local volunteer selected for leading the opening invocation shall be selected from a wide pool of local clergy as specified below, and he/she shall in no event receive compensation from the City for his/her participation or services. To ensure that such person is selected from among a wide pool of local clergy, on a rotating basis, the invocation speaker shall be selected according to the following procedure:

a. The City Clerk or his/her designee shall compile and maintain a database of the religious congregations with an established presence within the jurisdictional limits of the City of Port Orange and Volusia County.

b. The Congregation List shall be compiled by referencing the listings for “churches,” “congregations,” or other similar religious assemblies located within the jurisdictional limits of the City and Volusia County in the annual Yellow Pages telephone book(s) published for the City and Volusia County, research from the Internet, and consultation with local chambers of commerce. All religious congregations with an established presence within the jurisdictional limits of the City and Volusia County are eligible to be, and shall be, included in the Congregation List. Any such congregation, entity, organization, or individual within the jurisdictional limits of the City and Volusia County not otherwise identified for participating may request inclusion on the Congregation List by written communication directed to the City Clerk that references the opening invocation. This policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious congregation within the jurisdictional limits of the City and Volusia County. The Congregation List is compiled and used for purposes of logistics, efficiency, and equal opportunity for all religious leaders within the jurisdictional limits of the City and Volusia County to choose whether to respond to the City Council’s Invitation and participate. The City Clerk or his/her designee may not inquire into the faith, denomination, or other religious belief of the congregation before adding it to the Congregation List.

c. The Congregation List shall also include the name and contact information of any religious congregation located outside the City and Volusia County, if such religious congregation is attended by a resident or residents of the City or Volusia County, and such resident requests the inclusion of said religious congregation by specific written communication to the City Clerk.

d. The Congregation List shall also include the name and contact information of any chaplain who may serve one or more of the fire departments or law enforcement agencies of the City and Volusia
The Congregations List shall be updated, by reasonable efforts of the City Clerk or his/her designee, on or about the month of July of each calendar year.

Within thirty (30) days of the effective date of this policy, and on or about May 1 of each calendar year thereafter, the City Clerk or his/her designee shall mail an invitation addressed to the religious leader, chaplain, minister, rabbi or similar, or other contact person of each congregation listed on the Congregations List. The invitation will comport with substantially the following form:

Dear Sir or Madam:

The City of Port Orange City Council makes it a policy to invite members of the clergy and other religious leaders having an established presence within the jurisdictional limits of the City of Port Orange and Volusia County to voluntarily offer an invocation before the beginning of its meetings for the benefit and blessing of the City Council. As the leader of one of the religious congregations with an established presence within the jurisdictional limits of the City and Volusia County, you are invited to offer this important service at an upcoming meeting of the City Council.

If you are willing to assist the City Council in this regard, please send a written reply at your earliest convenience to the City Clerk at the address included on this letterhead. Invocation speakers are scheduled on a first-come, first-serve basis. The dates of the City Council’s scheduled meetings for the upcoming year are enclosed. If you have a preference among the date, please state that request in your written reply.

This opportunity is voluntary, and you are free to offer the invocation according to the dictates of your own conscience. The invocation should be brief and succinct. To maintain a spirit of respect and ecumenism, the City Council respectfully requests that the invocation opportunity not be exploited as an effort to convert others to the particular faith of the invocation speaker, nor to disparage any faith or belief different than that of the invocation speaker or otherwise threaten damnation or denigrate nonbelievers.

On behalf of the City Council of the City of Port Orange, I thank you in advance for considering this invitation.

Regards,
City Clerk or his/her designee

As the invitation letter shall state, the respondents to the invitation shall be scheduled on a first-come, first serve basis to deliver a brief and succinct invocation. All reasonable efforts shall be made to ensure that a variety of
invocation speakers are scheduled for City Council meetings. Notwithstanding the preceding, no invocation speaker shall be scheduled to offer an invocation at consecutive meetings of the City Council, or at more than three (3) City Council meetings in any calendar year.

5. No member of the City Council, City employee or staff shall engage in any prior inquiry, review, or involvement in, the content of any invocation to be offered by an invocation speaker.

6. No member of the City Council, City employee or staff, or any other person in attendance at the meeting shall be required to participate in any opening invocation that is offered. An opportunity to exit the City Council Chambers and return upon completion of the opening invocation is afforded to those who do not wish to participate or witness the opening invocation. Persons in attendance at the City Council meeting are invited to stand during the opening invocation and Pledge of Allegiance. However, such invitation shall not be construed as a demand, order, or any other type of command. Such invitation constitutes a general invitation that a person in attendance may stand if he/she wishes to do so for such observances.

7. The following statement shall be placed at the bottom of City Council meeting agendas:

Any invocation that is offered before the official start of the City Council meeting shall be the voluntary offering of a private person, to and for the benefit of the City Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the City Council or the city staff, and the City is not allowed by law to endorse the religious beliefs or views of this, or any other speaker. Persons in attendance at the City Council meeting are invited to stand during the opening invocation and Pledge of Allegiance. However, such invitation shall not be construed as a demand, order, or any other type of command. No person in attendance at the meeting shall be required to participate in any opening invocation that is offered. A person may exit the City Council Chambers and return upon completion of the opening invocation if a person does not wish to participate in or witness the opening invocation.

VI. CITY BOARD, COMMITTEE, COUNCIL AND AGENDA APPOINTMENTS.

A. All appointments to city boards, commissions, and committees whose members are not subject to appointment by other entities, and in accordance with any applicable restrictions by State Statute, shall be made in accordance with the following procedures:

1. All vacancies subject to appointment to such city boards, commissions, and committees shall be made on a nomination basis by each of the members of the City Council. This nomination shall be construed to be a Motion to Appoint. When more than one nominee has been identified for a single vacancy, voting
shall be conducted by written ballot which shall include the name of the Council Member and the name of the nominee. The written ballots shall be read aloud into the record.

2. Roster lists and volunteer applications for City boards, commissions, and committees shall be established and maintained by the City Clerk’s office.

3. Appointments for vacancies occurring on a board wherein the particular member has, for whatever reason, not fulfilled their entire term of membership on that particular board, commission, or committee, shall be to complete the unexpired term only, unless the unexpired term is for a period of time less than six (6) months. In that event, the appointed member shall then be allowed to serve the following full regular term without reappointment.

VII. Documents

All documents, photographs or other materials submitted to the City Council for their consideration shall be maintained by the City Clerk in accordance with the public records law. Each presenter submitting such materials shall provide copies to each Councilmember, as well as the City Manager, City Attorney, and City Clerk.

VIII. CITY MANAGER/CITY ATTORNEY ANNUAL REVIEW.

The City Council shall annually conduct a performance evaluation and salary review of the City Manager and City Attorney in accordance with their respective employment agreements.

Approved and adopted by the City Council of the City of Port Orange, Florida, at the Regular City Council Meeting held on the 8th day of January, 2019.

[Signature]
Donald O. Burnette, Mayor

[Signature]
Robin L. Fenwick, CMC, City Clerk
SUBJECT: (B8) Approval of Rental of a Belt Press from H&A Resource Management for the Water Reclamation Facility

DEPARTMENT: Public Utilities

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve a rental agreement with H&A Resource Management for a BDP belt filter press for biosolids dewatering at the Water Reclamation Facility in an amount not to exceed $37,000 for one month subject to the vendor’s execution of the final contract documents approved by the City Attorney; and authorizing the Mayor and City Clerk to execute all approved documents.

SUMMARY: The Water Reclamation Facility is currently equipped with five belt presses. The belt presses are 28 years old and in need of replacement. The capital improvement plan has anticipated the replacement equipment. Industry technology has significantly changed since the original presses were installed. To ensure the best equipment is purchased for longevity, it is best to evaluate the new equipment in the same circumstances the permanent equipment would operate.

BDP is one of the leading manufacturers of belt presses for wastewater sludge. It is also the manufacturer of the current 28-year-old units. Therefore, the department recommends using the same manufacturer for comparison. H&A Resource Management is the sole supplier of a BDP brand rental unit.

In addition, because the rental unit is trailer mounted and self-contained, it will allow the press building to be off line to complete other equipment repairs. The replacement cost of one of the five units is $500,000. The cost for the rental unit for one month is $37,000.

Project No.: _ Funding Account No.: 401 0400 535 4410

Presenter: Lynn Stevens

ATTACHMENTS:

<table>
<thead>
<tr>
<th></th>
<th>First Draft H&amp;A Resource Management LLC Rental Agreement and Addendum No. 1</th>
<th>H&amp;A Resource Management LLC Rental Agreement and Addendum No. 1.pdf</th>
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<tbody>
<tr>
<td>2.</td>
<td>Sole Source Sole Brand Form</td>
<td>Sole Source Sole Brand Form.pdf</td>
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<td>Document Name</td>
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<td></td>
<td></td>
<td>Rick Wilson (Approved: 12/31/2018)</td>
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<td></td>
<td></td>
<td>Lynn Stevens (Approved: 01/08/2019)</td>
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<td></td>
<td></td>
<td>Lori Bockelman (Approved: 01/09/2019)</td>
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<td></td>
<td></td>
<td>Margaret Roberts (Approved: 01/14/2019)</td>
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<td></td>
<td></td>
<td>Jake Johansson (Approved: 01/15/2019)</td>
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<td>Robin Fenwick (Final Approval: 01/15/2019)</td>
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<td>4.</td>
<td>H&amp;A Piolet Study Agreement</td>
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<td>2019 Press Rental Agreement - Opelika Utilities.pdf</td>
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<td>5.</td>
<td>H&amp;A Resource Management LLC Rental Agreement and Addendum No 1</td>
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<td></td>
<td>H&amp;A Resource Management LLC Rental Agreement and Addendum No 1.pdf</td>
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RENTAL AGREEMENT

Equipment Description

The proposed equipment is a BOP Model 3DP 1.0 Meter Skid Mounted Mobile Belt Press. The press is mounted on a 48' drop deck curtain side trailer. The unit includes the following items:

- 1 - Nema 4X stainless steel control panel, complete with starters and VFD's. Includes all press, pump, conveyor controls.
- 1 - Stainless steel Venturi mixing valve for polymer/sludge with 4 point injection ring.
- 1 - Gould's 10 HP Wash water booster pump.
- 1 - MXQ Model EH1900 progressive cavity sludge feed pump (max. 300 gpm).
- 1 - Neptune emulsion polymer system.
- 1 - Duplex polymer system consisting of dual 500 gallon stainless tanks, Chemineer mixers, and one Moyno polymer feed pump. This system is for dry polymer usage if desired.
- 1 - hot dip galvanized skid with stainless steel sump, stainless steel stairs, handrail and catwalk with non-slip aluminum grating.

*Note: All auxiliary support equipment is interlocked into the control panel

Pricing

The rate for a one-week pilot while operating 8 hours per day is $1,000.00 per day (4 day minimum).

Freight $4,000.00 (Round Trip).

* The rental rate starts the day the machine arrives at your site. The rental rate stops when unit returns to our shop.

* Service/maintenance calls that may be required will be billed at a rate of $100.00/hour plus expenses and any required parts.

* An invoice will be submitted upon completion of the pilot. Payment will be required within 15 days of receipt of the invoice.

Scope of Work

H&A will perform/provide the following:

- Supply unit as described herein.
• Test run machine prior to shipment.
• Approximately 200' of 2" camlock connection water hose.
• Approximately 200' of 4' camlock connection sludge feed and filtrate discharge hose.
• Delivery/Mobilization/Demobilization/Set-up/Operation.

**Renter's Responsibilities**

Under the terms of this agreement, the Customer will be responsible to provide the following:

• Access to the site to facilitate the delivery and installation of the press and equipment
• Utilities – filtrate discharge point capable of handling a minimum of 200 gpm, a 4" sludge feed line, a 2" water connection capable of providing a minimum of 80 gpm, and an electrical source of 480 volt, 3 phase 80-100 amp power source with a disconnect.
• Setup assistance.
• Competent operation of the unit.
• All sludge feed hoses and filtrate hoses necessary for the project in excess of those provided and described above.
• Any necessary permits and associated fees required for the project
• Taxes, customs, export charges or any other taxes of any kind applicable to the rental of the equipment under this proposal are not included and are the responsibility rentor.

**Equipment Availability**

The belt press as described is available at the time of submittal of this proposal and is currently available for shipment as early as the week of January 14, 2018. The unit is available on a “first come-first serve” basis. If the unit is committed to another project prior to the signing of the agreement, H&A will make every effort to locate another similar unit for the pilot.

**Limitation of Liability**

In no event and under no circumstances shall H&A Resource Management be liable to the customer for consequential, incidental, indirect, special or punitive damages, whether due to delay, breach of contract, tort (including without limitation negligence) except when the liability results from H&A Resource Management acts or omissions in any other cause. In no event shall H&A Resource Management liability hereunder exceed the value to this contract regardless of legal theory. H&A Resource Management is not responsible for any accidents or injuries related to the equipment rented, during the rental period.
ACCEPTANCE OF THIS PROPOSAL:

We accept the terms and conditions of this proposal as prepared and presented, this the eighth day of January, 2019 for the following:

By signing the acceptance of this proposal, the individuals warrant that they have the authority to bind the respective parties in this agreement.

H&A Resource Management

G. HMA

Signature of Authorized Representative

G. TODD STEPHENS, PRESIDENT

Print Name and Title

1/8/2019

Date

City of Port Orange

See Page 9 of Addendum No. 1

Signature of Authorized Representative

Print Name and Title

Date
ADDENDUM NO. 1

to H&A Resource Management, LLC Rental Agreement dated ____________

This Addendum No. 1 ("Addendum" and/or "Contract") is entered into on the day and year set forth hereinafter by and between the CITY OF PORT ORANGE, a Florida municipal corporation whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and H&A RESOURCE MANAGEMENT, LLC ("Contractor"), a Kentucky limited liability corporation, whose principal address is 103 Fieldview Drive, Versailles, Kentucky 40383, collectively "the Parties." The Parties have agreed as follows:

1. This Addendum No. 1 supplements the terms provided in the Rental Agreement ("Base Contract") between H&A Resource Management, LLC and City of Port Orange.

2. Limitation of Liability. Paragraph 6 "Limitation and Liability of the Base Agreement shall read:
In no event and under no circumstances shall H&A Resource Management be liable to the customer for consequential, incidental, indirect, special or punitive damages, whether due to delay, breach of contract, tort, except when the liability results from H&A Resource Management acts or omissions.

3. Term. The term of this Contract shall commence upon issuance of a written Purchase Order issued and executed by the City (the "Term").

4. Inspection and Acceptance. City reserves the right to inspect and accept equipment upon initial set-up and completion of maintenance and repair work. In the event the City does not accept the equipment, the Contractor shall be responsible for the cost of maintenance and repair.

5. Prompt Payment. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

6. Contract Administration. Lynn Stevens, the Director of Public Works and Utilities, shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice."

7. Insurance. Consultant shall maintain insurance during the life of this Contract. Consultant shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. For workers' compensation coverage, the bidder's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the city as an additional insured for workers' compensation.

   Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Consultant shall not commence work under this Agreement until the City has received a certificate or certificates of insurance and endorsement evidencing the required insurance. Consultant shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change.

   The City reserves the right to increase insurance coverage as determined for higher risk contracts and shall reimburse the Consultant for the reasonable additional costs of increased coverage.
<table>
<thead>
<tr>
<th>Insurance</th>
<th>Standards</th>
<th>Additional Requirements</th>
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</thead>
<tbody>
<tr>
<td>Workers' Compensation</td>
<td>Limits: Coverage A - Statutory Coverage B - $100,000</td>
<td>□ If Agreement requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required.</td>
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<td></td>
<td>All States (Broad Form) Voluntary Compensation</td>
<td>□ If vessels involved, Jones Act coverage with limits of $500,000 required.</td>
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<tr>
<td>Additional Coverage:</td>
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<tr>
<td>Comprehensive General Liability</td>
<td>Limits: Combined Single Limit Bodily Injury and Property damage $500,000 occurrence $1,000,000 Aggregate</td>
<td>□ When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Agreement, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.</td>
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<td>(including Completed Operations and Contractual Liability)</td>
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<tr>
<td>Comprehensive Business, Automobile Liability to include all automobiles.</td>
<td>Limits: Auto Liability Body Injury: $200,000 each person $300,000 each occurrence Property Damage Liability $100,000 each occurrence.</td>
<td>Or $500,000 Combined Single Limit for Bodily Injury and Property Damage</td>
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<td>Additional Coverage: Non-Owned, Hired Car</td>
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### Additional Insurance Requirements

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<tr>
<th>Box</th>
<th>Description</th>
<th>Limits</th>
<th>Notes</th>
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<tr>
<td>☐</td>
<td>Property Insurance Builders Risk.</td>
<td>Buildings - Completed value of agreement.</td>
<td>If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on &quot;All Risk&quot; form, including transit and Owner shall be named.</td>
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<tr>
<td>☐</td>
<td>Additional Coverage:</td>
<td>&quot;All Risk&quot; coverage on latest ISO or its equivalent. Permission granted to occupy. Owner named as insured AIMA</td>
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<td>Professional Liability</td>
<td>Coverage - $1,000,000 minimum</td>
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<td>☐</td>
<td>Installation Floater (IT)</td>
<td>Coverage - $ To be determined.</td>
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<td>☐</td>
<td>Contractor Pollution Liability</td>
<td>Coverage - $ To be determined.</td>
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<td>Errors and Omissions</td>
<td>Coverage - $ To be determined.</td>
<td>Agents acting on behalf of the City.</td>
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<tr>
<td>☐</td>
<td>Payment and Performance Bond Required</td>
<td>Coverage - Equal to amount of Contract.</td>
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- ☐ Department Head waives Payment and Performance Bond for work under $25,000.00.
Unless otherwise required by law, Department Head waives Insurance for work described as follows:

(check at least one)
- under $25,000.00
- including goods F.O.B. the place of destination

8. **Examination of Records**
   
   (a) The Consultant agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any pertinent books, documents, papers and records of the Consultant involving transactions related to this Contract.

   (b) The Consultant further agrees to include in any subcontract for more than $10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such Consultant involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

   (c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

9. **Examination of Records**
   
   (d) The Contractor agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any pertinent books, documents, papers and records of the Contractor involving transactions related to this Contract.

   (e) The Contractor further agrees to include in any subcontract for more than $10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such Contractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

   (f) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.
10. **Public Records Compliance.** Contractor shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

   (a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

   (b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

   (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term.

   (d) Upon completion of the Contract, Contractor shall transfer to the City, at no cost, all public records in possession of the Contractor and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

   If Contractor does not comply with a public records request, the City shall enforce the contract provisions in accordance with the contract.

**CONTRACTOR QUESTIONS RELATING TO CONTRACTOR'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO THE OFFICE OF THE CITY CLERK, CITY HALL, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 TELEPHONE: (386) 506-5563 E-MAIL: CITYCLERK@PORT-ORANGE.ORG.**

11. **Non-discrimination.** During the performance of this Contract, Contractor agrees as follows:

   (a) Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Contractor agrees and fully supports and complies with the Americans with Disabilities Act of 1990.

   (b) Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor is an equal opportunity employer.

   (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. Contractor shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over $10,000 so that the provisions will be binding upon each subcontractor or vendor.

12. **Force Majeure.** Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.
13. **Disputes.** Disputes shall be resolved by non-binding mediation.

14. **Controlling Law.** THIS CONTRACT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.

15. **Notice.** For purposes of this agreement, notices shall be sent as follows:

   City: City of Port Orange  
   Attention: City Manager  
   1000 City Center Circle  
   Port Orange, Florida 32129  
   (386) 506-5501

   Copy to: City of Port Orange  
   Attention: Lynn Stevens, Director of Public Works and Public Utilities  
   1000 City Center Circle  
   Port Orange, Florida 32129  
   (386) 506-5852

   Contractor: H&A Resource Management, LLC  
   Attention: G. Todd Stephens, President  
   11811 Willows Road NE  
   Versailles, Kentucky 40383  
   (859) 873-3331 – Telephone

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may, from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

16. **Integration.** This Addendum No. 1 shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto. In the event of a conflict between the Base Contract, and this Addendum, this Addendum shall control.

17. **Contract Construction.** This Addendum may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Addendum shall be deemed valid as if an original signature was delivered. No contract shall be formed between Contractor and the City until the City signs this Addendum.
18. Authority to Sign. Each person signing this Addendum warrants that he or she is duly authorized to do so and to bind the respective party to the Addendum.

[remainder of page intentionally left blank]
Witnesses:

Printed Name: ________________________________

Printed Name: ________________________________

H&A RESOURCE MANAGEMENT, LLC

By: ________________________________

G. Todd Stephens, President

If this Contract is signed by an individual not identified as the President of the corporation in the records of the State of Washington or Florida Department of State, Division of Corporations, please provide written authorization for that individual to enter into contracts on behalf of the corporation.

Date: ________________________________

STATE OF KENTUCKY
COUNTY OF WOODFORD

The foregoing instrument was acknowledged before me this _____ day of ____________, 2019, by G. Todd Stephens, as President of H&A Resource Management, LLC, a Kentucky limited liability corporation, and who:

[Notary: Please select one]
□ is personally known to me; or
□ has produced ______________________ as identification.

Notary Public, State of Kentucky
Printed, typed or stamped name, commission and expiration:
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ______ day of ____________, 2019, by M.H. Johansson, as City Manager of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

------------------------------
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

CITY OF PORT ORANGE

By: _________________________
M.H. Johansson, City Manager

Printed Name: _________________________

Date: _________________________

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ______ day of ____________, 2019, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

------------------------------
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:
SOLE SOURCE/SOLE BRAND REQUEST
(Waiver of Competitive Quotes / Bids)

I. REQUEST: Provide a description of the features of the product/service or Scope of Work.

Pilot Study with H&A Resource Management for new dewatering equipment technology and equipment rental.

Il. JUSTIFICATION: Please check all boxes that describe your reason(s) for determining that only one source or brand is reasonably available.

**Only Sole Source/Uniqueness**

☐ Proprietary Item - this vendor/source has the only rights to provide this service or commodity. A letter from the manufacturer or authorizing entity is included in this request.

☐ Technology Improvements - updates or upgrades to an existing system, software, software as a service hardware purchases.

☐ Patented, copyright or unique design restrictions.

☐ Only Qualified Supplier - reliability and maintainability of the product or service would be degraded unless specified supplier is used; may void warranty. This request includes a copy of the current warranty information.

☐ Other/or Additional information - the City requires this sole source, sole brand purchase for the following reasons:

**Business Case (One/Most Reasonable Source or One/Most Reasonable Brand)**

☐ Operational Compatibility - replacement parts from alternate suppliers are not interchangeable with original part and causes equipment incompatibility. Previous findings and/or documentation is included with this request.

☐ Ease of Maintenance - maintenance or retooling prohibits competition. Section III, Comparative Market Research includes estimated costs associated with changing current source and/or brand.

☐ Follow-On - potential for continued development or enhancement with same supplier and eliminates costs incurred by using different supplier. Section III, Comparative Market Research includes estimated costs for replacing current or existing system.

☐ Complies with existing community and safety standards, and other laws, rules, and regulations.

☐ Exempted from the Competition - per City Purchasing Manual.

☐ Other/or additional information - using this sole source, sole brand purchase benefits the City for the following reasons:

Revised 12/1/17 [JT]
III. COMPARATIVE MARKET RESEARCH: Provide a detailed source or market analysis for justification of sole source/brand or most reasonable source (attach extra sheets as needed).

Estimated project value: $37,000
Contract length (if applicable): 60 days

Expenses to date: none

Has this commodity or service been previously provided to the City? ☐ Yes ☑ No

If yes, when and by whom? ______________________________

How was item/service procured? ( ) Piggyback ( ) Competitive Bid ( ) Sole Source

What is the current contract or purchase order number? n/a

If this is a sole brand, is there an "authorized" dealers list? ☐ Yes ☑ No

Cost/Benefit Analysis: What would the cost be to utilize an alternate vendor or source? This explanation should include the savings and/or additional costs to the City by not using the preferred vendor or source. Attach additional sheets if needed.

See attached documents for additional information.

CERTIFICATION: I have thoroughly researched the sole source or sole brand justification and fully understand the implications of Section 838.22 of the Florida Statutes:

(2) "It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole source contract for commodities or services."

(5) "Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084"

The undersigned requests that competitive procurement be waived and that the vendor identified as the supplier of the service or material described in this single/sole source justification be authorized as single/sole source for the service or material. Purchasing approval required prior to submitting for City Manager approval.

Department Head Approval (Print Name): Lynn Stevens, Public Works & Utilities Director

Department Head Approval Signature: __________________________ Date: 12/31/2018

Software or hardware purchases only:

IT Approval (Print Name): __________________________

IT Approval Signature: __________________________ Date: __________

Purchasing Manager Approval Signature: __________________________ Date: __________

CITY MANAGER APPROVAL:

City Manager Approval: __________________________ Date: __________

M.H. Johansson, City Manager

Revised 12/1/17 [JT]
TO: City of Port Orange Public Utilities Department

THRU: Lynn Stevens, Public Utilities Director

THRU: Julia Wiggins, Public Utilities Budget Analyst

FROM: Steve Parnell, Reclaimed Water Production Manager

DATE: October 25, 2018

SUBJECT: BOP Belt Filter Press Rental

REQUEST:
The Public Utilities Department is requesting to rent a 1.5-meter BOP belt filter press.

PURPOSE:
The WRF has been evaluating new biosolids dewatering technology. The current belt filter presses are 28 years old and in need of replacement. The purpose of this rental is to evaluate new belt filter press technology. Additionally, needed repairs to the press building can also be accomplished during this downtime in operation, since the rental unit is self-contained and will load the biosolids directly into the sludge trailers.

CONSIDERATION:
Upgrading belt filter presses can result in drier cake solids leaving the WRF. This will be a direct savings to the City. The City currently pays $39.95 per wet ton for biosolids and average 13.5% solids. The BOP presses we have seen operate at neighboring cities are yielding around 16.5-18% solids. The City currently hauls 9,000 wet tons annually. So, a 3% increase in cake solids would equate to an estimated savings of $59,000 annually in biosolids hauling costs.

FUNDING:
Reclaim Water Plant 403 0400 535 6397

RECOMMENDATION:
The Public Utilities Department is requesting the rental of a 1.5-meter BDP belt filter press with H&A Resource Management for an amount not to exceed $37,000.00

ANTICIPATED SCHEDULE:
   a.) Enter on Boardsync –
   b.)

ATTACHMENTS:
   a.) Demandstar Quote – Attached.
   b.)
October 31, 2018

To: City of Port Orange  
817 Oak Street  
Port Orange, FL 32127

Attn: Steve Parnell  
Phone: 386-506-5786  
E-mail: sparnell@port-orange.org

RE: Proposal for Rental of dewatering equipment

Dear Mr. Parnell,

H&A Resource Management is pleased to provide the following quotation for rental of a trailer mounted BDP model 1.5 meter 3DP belt press. A description of the unit and conditions of the rental are outlined below.

Belt Press Description

One (1) BDP Industries 1.5 meter Model 3DP belt filter press mounted on a 53 foot drop deck curtain-side trailer. The trailer is fully self-contained and includes fold out catwalks, lights, heaters and an air-conditioned office. Additional items are outlined below:

1. One (1) 1.5M 3DP with independent gravity section at operator level.
   - Stainless steel tubular frame.
   - Machined bearing pads.
   - 304 stainless steel wetted parts.
   - 304 stainless steel hardware.
   - Nylon coated rollers.
   - Self-cleaning showers.
   - 50 PLI hydraulic belt tension.
   - Up-flow feedbox with high solids variable speed paddle wheel distribution to insure even sludge distribution.
   - Ten-foot independent gravity belt section.
   - Six rows of adjustable, furrowing plows.
   - Adjustable, curved wedge section.
- 20" diameter, 304, stainless steel perforated roller.
- Stainless steel non-rewetting perforated roll.
- Eight s-wrap, vertical pressure section.
- Severe duty, TEFC motors.
- Individual drip trays to eliminate cake rewetting.

2. Hydraulic Power Unit.

3. Custom bi-fold, full width conveyor, capable of loading dump trucks and trailers. Conveyor is made of stainless steel and is variable speed, hydraulic drive.

4. One Emulsion polymer feed system with 8 GPH pump.

5. One Bornemann EH1900 progressive cavity sludge pump, rated at an approximate maximum of 300 GPM.

6. Gould 15 hp model 3656 booster pump rated for 60 GPM at 120 PSI.

7. Stainless steel sump pan with 4” cam lock connections on both sides.

8. 4” Diameter Siemens Magnetic Flow Meter.

9. Complete electrical control panel for all belt filter press control functions and drives. The press shall contain interlocks required for ancillary equipment.
   - NEMA 4X stainless steel enclosure.
   - 100 amp service.
   - Start/Stop push buttons with run lights on all press drives and auxiliary equipment.
   - Alarm lights for e-stop, belt misalignment.
   - All VFD drives for press, GBT and sludge feed pump.

10. Custom aluminum and stainless steel catwalks, including:
    - Catwalks with non-slip aluminum grating. Stainless steel construction on catwalk frame and handrails. Cantilever design to fold up & down. Complete along both sides of the press.

Scope of Work

H&A will perform/provide the following:
- Supply unit as described.
• Test run machine prior to shipment.
• Provide setup assistance and training as noted in proposal.

**Under the terms of this agreement, the Customer will be responsible to provide the following:**

- Access to the site to facilitate the delivery of the press.
- Utilities - 4” filtrate drain line, 4” sludge feed line and 2” water line (all plumbing connections are cam lock fittings). Electrical - 480 volt, 3 phase 100 amp power source with a disconnect.
- Set up, maintenance and repairs of unit, as outlined in the O&M manual.
- Polymer required for proper press operation.
- Competent operation of the unit.
- Daily cleaning of the press, after operation has ceased.

**Certificate of Insurance:** A certificate of Insurance providing the following:

  - Property coverage for the value of the rental unit including H&A as a loss payee. Value: $350,000.00
  - Liability coverage for no less than $1,000,000 per occurrence for bodily injury and/or property damage and $2,000,000 aggregate.
  - Cancellation provision to give 30 days’ notice to Certificate Holder

  Certificate holder to read: H&A Resource Management
  103 Fieldview Drive, Versailles, KY 40383

- Any necessary permits and associated fees required for the project
- Rental equipment must be kept clean and returned in excellent condition. Customer will be responsible for all maintenance and any cleaning charges. Customer will also be responsible for any damage to the unit while in Customer’s possession. Customer is responsible for missing parts or items. H&A reserves the right to inspect the equipment at any time, during normal working hours. Customer agrees to pay H&A invoices for damaged or missing parts or equipment.

**Rental Pricing & Payment**

Rental pricing is based on a one-month minimum rental.

<table>
<thead>
<tr>
<th>Service/Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rental - 1.5 Meter BDP Unit as Described</strong></td>
<td>$24,500.00/month</td>
</tr>
<tr>
<td><strong>Mobilization/Demobilization (estimated)</strong></td>
<td>$3,500.00/each way</td>
</tr>
<tr>
<td><strong>Set-Up Assistance and Training (3 days)</strong></td>
<td>$5,500.00</td>
</tr>
<tr>
<td><strong>Assistance/Training Exceeding 3 days</strong></td>
<td>$95/hour + expenses</td>
</tr>
</tbody>
</table>

Mobilization/demobilization costs are estimated from Versailles, KY to Port Orange, FL. Only the actual costs will be invoiced.
The rental rate starts the day the unit leaves our shop in Versailles, KY. The rental rate stops when unit returns to our shop.

The first month’s rent is due prior to delivery of the equipment. Any subsequent invoices shall be due in full within fifteen (15) days from the invoice date.

*Taxes and Other Charges:* Any use tax, sales tax, excise tax, duty, custom, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by this transaction will be the responsibility of the Customer. Customer shall provide H&A an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

**Equipment Availability**

The equipment outlined in this proposal will currently be made available for rental starting on or around January 2, 2019. Customer must sign the agreement within 15 days of receipt to secure this date of availability. As with any “in-stock” equipment, the unit is available on a “first come-first served” basis. If this agreement is not signed within 15 days of receipt, the unit may be rented, sold or committed to another project and be unavailable for the desired period of January 2019. Should this happen, an alternative date will have to be arranged or H&A will attempt to locate another unit. However, this cannot be guaranteed.

Thank you for the opportunity to extend this proposal. If you have any questions, do not hesitate to contact me.

Sincerely,

G. Todd Stephens
President

Copy: Eric Jordan
386-225-5250 cell
407-936-1139 office
eric@nugentco.com

FJ Nugent & Associates, Inc.

BDP Industries, Inc. – Dan Fronhofer
LIMITATION OF LIABILITY

In no event and under no circumstances shall H&A Resource Management be liable to the customer for consequential, incidental, indirect, special or punitive damages, whether due to delay, breach of contract, tort (including without limitation negligence) or any other cause. In no event shall H&A’s liability hereunder exceed the value to this contract regardless of legal theory. H&A is not responsible for any accidents or injuries related to the equipment rented, during the rental period.

NON-HAZARDOUS CERTIFICATION

Customer hereby certifies that none of the material to be dewatered with the equipment described within this agreement would be identified or classified as hazardous waste under federal, state or local law. Customer further certifies that it will not combine or mix hazardous waste with the material to be processed with the equipment described herein.

CHOICE OF FORUM AND APPLICABLE LAW

This Agreement shall be construed under and governed by the laws of the State of Kentucky. The Customer submits and consents to the jurisdiction of the Woodford County Common Pleas Court, State of Kentucky as the sole and exclusive forum, court and venue to hear any lawsuit or other cause of action regarding this Agreement including, but not limited to, its enforceability, interpretation, validity, damages and issuance of restraining orders, injunctions, both temporary and permanent.

ACCEPTANCE OF THIS PROPOSAL:

We accept the terms and conditions of this proposal as prepared and presented to the City of Port Orange, FL this ___ day of _____, 2018 for the rental of a BDP Belt Press, described herein, beginning in January of 2019. By signing below, the individuals warrant that they have the authority to bind the respective parties in this agreement.

H&A Resource Management, LLC.                                 City of Port Orange, FL

Signature of Authorized Representative

G. Todd Stephens

Print Name

President

Title

11/1/2018

Date
Example Photo of Trailer Mounted 1.5 meter Belt Press
TO: M.H. Johansson, City Manager

THRU: Lynn Stevens, Public Works & Utilities Director
       Julia Wiggins, Business Manager

FROM: Steve Parnell, Water Reclamation Facilities Manager

DATE: December 31, 2018

SUBJECT: Request for Rental of Dewatering Equipment

REQUEST:
The Public Works & Utilities Department requests City Council approve a rental agreement to H&A Resource Management for the rental of a BDP belt filter press for biosolids dewatering at the Water Reclamation Facility in an amount not to exceed $37,000 for one month.

PURPOSE:
The purpose of this request is to evaluate biosolids dewatering equipment prior to purchasing new technology.

CONSIDERATION:
The final process in the wastewater treatment process is the dewatering of biosolids prior to disposal. The Water Reclamation Facility is currently equipped with five belt presses. The belt presses are 28 years old and in need of replacement. The capital improvement plan has anticipated the replacement equipment. Industry technology has significantly changed since the original presses were installed. To ensure the best equipment is purchased for longevity, it is best to evaluate the new equipment in the same circumstances the permanent equipment would operate.

The Water Reclamation staff has been researching the market for new biosolids dewatering technology. The department is requesting funding to rent a trailer mounted dewatering press that is similar in size to the units currently in use. This will allow staff to evaluate the new equipment next to the existing units for comparison. The comparison will include the percent solids by weight of the dewatered sludge. This is a critical factor in the evaluation because the higher the percent solids, the lower the water content. This equates to significant savings in final disposal costs.
The Water Reclamation Facility is currently paying $39.95 per wet done for biosolids with an average 13.5% solids. The plant produces an estimated 9,000 wet tons annually. Pilot studies at a neighboring municipality is yielding around 16.5% – 18% solids using the same technology as the rental unit. Upgrading the city’s current system to the new belt press technology can result in drier sludge, resulting in an estimated savings of $59,000 annually for disposal costs.

BDP is one of the leading manufacturers of belt presses for wastewater sludge. It is also the manufacturer of the current 28-year-old units. Therefore, the department recommends using the same manufacturer for comparison. H&A Resource Management is the sole supplier of a BDP brand rental unit.

In addition, because the rental unit is trailer mounted and self-contained, it will allow the press building to be off line to complete other equipment repairs. The replacement cost of one of the five units is $500,000. The cost for the rental unit for one month is $37,000.

**FUNDING:**
Water Reclamation Facility – Rental
Pending Budget Transfer
Account: 401 0400 535 4410
Current Budget: $3,696.00
Amount Needed: $37,000

**RECOMMENDATION:**
The Public Works & Utilities Department recommends City Council approve a rental agreement to H&A Resource Management for the rental of a BDP belt filter press for biosolids dewatering at the Water Reclamation Facility in an amount not to exceed $37,000 for one month.

**ANTICIPATED SCHEDULE:**
- a.) CivicClerk - December 31, 2018
- b.) Council Approval – January 22, 2019
- b.) Executed Agreement – January 30, 2019

**ATTACHMENTS:**
- a.) Single Source / Sole Brand Request Form
- b.) H&A Management Proposal
January 8, 2019

Mr. Dan Hilyer  
Opelika Utilities  
4055 Water Street  
Opelika, AL 36803

RE: Rental Proposal  
1.0 Meter BDP Model 3DP Mobile Belt Press

Dear Mr. Hilyer:

H&A Resource Management, LLC. is pleased to provide you with the attached agreement for the rental of a BDP mobile belt filter press. The belt press is to be utilized for a one week pilot demonstration at the Opelika Utilities W. Warner Williams Water Resource Park Treatment Plant. The unit described herein will be operated by H&A and a BDP representative. Opelika Utilities personnel will be trained on operation of the unit if so desired during the pilot.

Specifications of the unit and terms of the agreement are outlined in the attached Rental Agreement.

Thank you for the opportunity to extend this proposal. Please do not hesitate to contact me should you have any questions at (859) 873-3331 or (859) 983-6217.

Sincerely,

G. Todd Stephens  
President
RENTAL AGREEMENT

Equipment Description

The proposed equipment is a BDP Model 3DP 1.0 Meter Skid Mounted Mobile Belt Press. The press is mounted on a 48' drop deck curtain side trailer. The unit includes the following items:

- 1 - Nema 4X stainless steel control panel, complete with starters and VFD's. Includes all press, pump, conveyor controls.
- 1 - Stainless steel Venturi mixing valve for polymer/sludge with 4 point injection ring.
- 1 - Gould's 10 HP Wash water booster pump.
- 1 – MXQ Model EH1900 progressive cavity sludge feed pump (max. 300 gpm).
- 1 - Neptune emulsion polymer system.
- 1 – Duplex polymer system consisting of dual 500 gallon stainless tanks, Chemineer mixers, and one Moyno polymer feed pump. This system is for dry polymer usage if desired.
- 1 - hot dip galvanized skid with stainless steel sump, stainless steel stairs, handrail and catwalk with non-slip aluminum grating.

*Note: All auxiliary support equipment is interlocked into the control panel

Pricing

The rate for a one-week pilot while operating 8 hours per day is $1,000.00 per day (4 day minimum).

Freight $4,000.00 (Round Trip).

* The rental rate starts the day the machine arrives at your site. The rental rate stops when unit returns to our shop.
* Service/maintenance calls that may be required will be billed at a rate of $100.00/hour plus expenses and any required parts.
* An invoice will be submitted upon completion of the pilot. Payment will be required within 15 days of receipt of the invoice.

Scope of Work

H&A will perform/provide the following:

- Supply unit as described herein.
• Test run machine prior to shipment.
• Approximately 200’ of 2” camlock connection water hose.
• Approximately 200’ of 4” camlock connection sludge feed and filtrate discharge hose.
• Delivery/Mobilization/Demobilization/Set-up/Operation.

**Renter’s Responsibilities**

Under the terms of this agreement, the Customer will be responsible to provide the following:

• Access to the site to facilitate the delivery and installation of the press and equipment
• Utilities – filtrate discharge point capable of handling a minimum of 200 gpm, a 4” sludge feed line, a 2” water connection capable of providing a minimum of 80 gpm, and an electrical source of 480 volt, 3 phase 80-100 amp power source with a disconnect.
• Setup assistance.
• Competent operation of the unit.
• All sludge feed hoses and filtrate hoses necessary for the project in excess of those provided and described above.
• Any necessary permits and associated fees required for the project
• Taxes, customs, export charges or any other taxes of any kind applicable to the rental of the equipment under this proposal are not included and are the responsibility rentor.

**Equipment Availability**

The belt press as described is available at the time of submittal of this proposal and is currently available for shipment as early as the week of January 14, 2018. The unit is available on a “first come-first serve” basis. If the unit is committed to another project prior to the signing of the agreement, H&A will make every effort to locate another similar unit for the pilot.

**Limitation of Liability**

In no event and under no circumstances shall H&A Resource Management be liable to the customer for consequential, incidental, indirect, special or punitive damages, whether due to delay, breach of contract, tort (including without limitation negligence) or any other cause. In no event shall H&A Resource Management liability hereunder exceed the value to this contract regardless of legal theory. H&A Resource Management is not responsible for any accidents or injuries related to the equipment rented, during the rental period.
ACCEPTANCE OF THIS PROPOSAL:

We accept the terms and conditions of this proposal as prepared and presented, this the eighth day of January, 2019 for the following:

By signing the acceptance of this proposal, the individuals warrant that they have the authority to bind the respective parties in this agreement.

H&A Resource Management

[Signature]

Signature of Authorized Representative

G. Todd Stephens, President

Print Name and Title

1/8/2019

Date

Opelika Utilities

[Signature]

Signature of Authorized Representative

[Print Name and Title]

[Date]
January 8, 2019

To: City of Port Orange
    817 Oak Street
    Port Orange, FL 32127

Attn: Steve Parnell
Phone: 386-506-5786
E-mail: sparnell@port-orange.org

RE: Proposal for Rental of dewatering equipment

Dear Mr. Parnell,

H&A Resource Management is pleased to provide the following quotation for rental of a trailer mounted BDP model 1.5 meter 3DP belt press. A description of the unit and conditions of the rental are outlined below.

Belt Press Description

One (1) BDP Industries 1.5 meter Model 3DP belt filter press mounted on a 53 foot drop deck curtain-side trailer. The trailer is fully self-contained and includes fold out catwalks, lights, heaters and an air-conditioned office. Additional items are outlined below:

1. One (1) 1.5M 3DP with independent gravity section at operator level.
   - Stainless steel tubular frame.
   - Machined bearing pads.
   - 304 stainless steel wetted parts.
   - 304 stainless steel hardware.
   - Nylon coated rollers.
   - Self-cleaning showers.
   - 50 PLI hydraulic belt tension.
   - Up-flow feedbox with high solids variable speed paddle wheel distribution to insure even sludge distribution.
   - Ten-foot independent gravity belt section.
   - Six rows of adjustable, furrowing plows.
   - Adjustable, curved wedge section.
- 20" diameter, 304, stainless steel perforated roller.
- Stainless steel non-rewetting perforated roll.
- Eight s-wrap, vertical pressure section.
- Severe duty, TEFC motors.
- Individual drip trays to eliminate cake rewetting.

2. Hydraulic Power Unit.

3. Custom bi-fold, full width conveyor, capable of loading dump trucks and trailers. Conveyor is made of stainless steel and is variable speed, hydraulic drive.

4. One Emulsion polymer feed system with 8 GPH pump.

5. One Bornemann EH1900 progressive cavity sludge pump, rated at an approximate maximum of 300 GPM.

6. Gould 15 hp model 3656 booster pump rated for 60 GPM at 120 PSI.

7. Stainless steel sump pan with 4" cam lock connections on both sides.

8. 4" Diameter Siemens Magnetic Flow Meter.

9. Complete electrical control panel for all belt filter press control functions and drives. The press shall contain interlocks required for ancillary equipment.
   - NEMA 4X stainless steel enclosure.
   - 100 amp service.
   - Start/Stop push buttons with run lights on all press drives and auxiliary equipment.
   - Alarm lights for e-stop, belt misalignment.
   - All VFD drives for press, GBT and sludge feed pump.

10. Custom aluminum and stainless steel catwalks, including:
    - Catwalks with non-slip aluminum grating. Stainless steel construction on catwalk frame and handrails. Cantilever design to fold up & down. Complete along both sides of the press.

Scope of Work

H&A will perform/provide the following:

- Supply unit as described.
Test run machine prior to shipment.
Provide setup assistance and training as noted in proposal.

Under the terms of this agreement, the Customer will be responsible to provide the following:

- Access to the site to facilitate the delivery of the press.
- Utilities - 4” filtrate drain line, 4” sludge feed line and 2” water line (all plumbing connections are cam lock fittings). Electrical - 480 volt, 3 phase 100 amp power source with a disconnect.
- Set up, maintenance and repairs of unit, as outlined in the O&M manual.
- Polymer required for proper press operation.
- Competent operation of the unit.
- Daily cleaning of the press, after operation has ceased.
- **Certificate of Insurance:** A certificate of insurance providing the following:
  - Property coverage for the value of the rental unit including H&A as a loss payee. Value: $350,000.00
  - Liability coverage for no less than $1,000,000 per occurrence for bodily injury and/or property damage and $2,000,000 aggregate.
  - Cancellation provision to give 30 days' notice to Certificate Holder
    Certificate holder to read: H&A Resource Management
    103 Fieldview Drive, Versailles, KY 40383
- Any necessary permits and associated fees required for the project
- Rental equipment must be kept clean and returned in excellent condition. Customer will be responsible for all maintenance and any cleaning charges. Customer will also be responsible for any damage to the unit while in Customer's possession. Customer is responsible for missing parts or items. H&A reserves the right to inspect the equipment at any time, during normal working hours. Customer agrees to pay H&A invoices for damaged or missing parts or equipment.

**Rental Pricing & Payment**

Rental pricing is based on a one-month minimum rental.

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rental - 1.5 Meter BDP Unit as Described</td>
<td>$24,500.00/month</td>
</tr>
<tr>
<td>Mobilization/Demobilization (estimated)</td>
<td>$3,500.00/each way</td>
</tr>
<tr>
<td>Set-Up Assistance and Training (3 days)</td>
<td>$5,500.00</td>
</tr>
<tr>
<td>Assistance/Training Exceeding 3 days</td>
<td>$95/hour + expenses</td>
</tr>
</tbody>
</table>

Mobilization/demobilization costs are estimated from Versailles, KY to Port Orange, FL. Only the actual costs will be invoiced.
The rental rate starts the day the unit leaves our shop in Versailles, KY. The rental rate stops when unit returns to our shop.

The first month's rent is due prior to delivery of the equipment. Any subsequent invoices shall be due in full within fifteen (15) days from the invoice date.

*Taxes and Other Charges: Any use tax, sales tax, excise tax, duty, custom, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by this transaction will be the responsibility of the Customer. Customer shall provide H&A an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

Equipment Availability

The equipment outlined in this proposal will currently be made available for rental starting on or around February 2019. Customer must sign the agreement within 15 days of receipt to secure this date of availability. As with any “in-stock” equipment, the unit is available on a “first come-first served” basis. If this agreement is not signed within 15 days of receipt, the unit may be rented, sold or committed to another project and be unavailable for the desired period of February 2019. Should this happen, an alternative date will have to be arranged or H&A will attempt to locate another unit. However, this cannot be guaranteed.

Thank you for the opportunity to extend this proposal. If you have any questions, do not hesitate to contact me.

Sincerely,

G. Todd Stephens
President

Copy: Eric Jordan
386-225-5250 cell
407-936-1139 office
eric@nugentco.com

FJNUGENT

BDP Industries, Inc. Dan Frunhofer
LIMITATION OF LIABILITY

In no event and under no circumstances shall H&A Resource Management be liable to the customer for consequential, incidental, indirect, special or punitive damages, whether due to delay, breach of contract, tort (including without limitation negligence) or any other cause. In no event shall H&A’s liability hereunder exceed the value to this contract regardless of legal theory. H&A is not responsible for any accidents or injuries related to the equipment rented, during the rental period.

NON-HAZARDOUS CERTIFICATION

Customer hereby certifies that none of the material to be dewatered with the equipment described within this agreement would be identified or classified as hazardous waste under federal, state or local law. Customer further certifies that it will not combine or mix hazardous waste with the material to be processed with the equipment described herein.

CHOICE OF FORUM AND APPLICABLE LAW

This Agreement shall be construed under and governed by the laws of the State of Kentucky. The Customer submits and consents to the jurisdiction of the Woodford County Common Pleas Court, State of Kentucky as the sole and exclusive forum, court and venue to hear any lawsuit or other cause of action regarding this Agreement including, but not limited to, its enforceability, interpretation, validity, damages and issuance of restraining orders, injunctions, both temporary and permanent.

ACCEPTANCE OF THIS PROPOSAL:

We accept the terms and conditions of this proposal as prepared and presented to the City of Port Orange, FL this 8th day of January, 2019 for the rental of a BDP Belt Press, described herein, beginning in February of 2019. By signing below, the individuals warrant that they have the authority to bind the respective parties in this agreement.

H&A Resource Management, LLC.  City of Port Orange, FL

Signature of Authorized Representative

______________________________

G. Todd Stephens, President

Print Name

Title

1/9/19

Date
Example Photo of Trailer Mounted 1.5 meter Belt Press
ADDENDUM NO. 1

to H&A Resource Management, LLC Rental Agreement dated _____________

This Addendum No. 1 ("Addendum" and/or "Contract") is entered into on the day and year set forth hereinafter by and between the CITY OF PORT ORANGE, a Florida municipal corporation whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and H&A RESOURCE MANAGEMENT, LLC ("Contractor"), a Kentucky limited liability corporation, whose principal address is 103 Fieldview Drive, Versailles, Kentucky 40383, collectively "the Parties." The Parties have agreed as follows:

1. This Addendum No. 1 supplements the terms provided in the Rental Agreement ("Rental Agreement") between H&A Resource Management, LLC and City of Port Orange.

2. **Rental Pricing & Payment:** "Rental Pricing & Payment" paragraph 2 on page 4 of the Rental Agreement shall be revised to read as follows:

   The first month’s rent is due prior to delivery of the equipment. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

3. **Limitation of Liability.** "Limitation and Liability" paragraph 1 on page 5 of the Rental Agreement shall be revised to read as follows:

   In no event and under no circumstances shall H&A Resource Management be liable to the customer for consequential, incidental, indirect, special or punitive damages, whether due to delay, breach of contract, tort, or when the liability results from H&A Resource Management acts or omissions.

4. **Choice of Forum and Applicable Law:** "Choice of Forum and Applicable Law" paragraph 3 on page 5 of the Rental Agreement is hereby deleted in its entirety and shall read as follows:

   THIS CONTRACT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.

5. **Inspection and Acceptance.** City reserves the right to inspect and accept equipment upon initial set-up and completion of maintenance and repair work. In the event the City does not accept the equipment, the Contractor shall be responsible for the cost of maintenance and repair.

6. **Contract Administration.** Lynn Stevens, the Director of Public Works and Utilities, shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice."

7. **Insurance.** Consultant shall maintain insurance during the life of this Contract. Consultant shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. For workers’ compensation coverage, the bidder’s insurance certificate shall include the insurer’s waiver of subrogation in lieu of naming the city as an additional insured for workers’ compensation.

   Policies other than Workers’ Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required
to have a minimum rating of "A" in the “Best Key Rating Guide” published by A.M. Best & Company, Inc. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Consultant shall not commence work under this Agreement until the City has received a certificate or certificates of insurance and endorsement evidencing the required insurance. Consultant shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change.

The City reserves the right to increase insurance coverage as determined for higher risk contracts and shall reimburse the Consultant for the reasonable additional costs of increased coverage.

<table>
<thead>
<tr>
<th>Standard Insurance Requirements</th>
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</thead>
<tbody>
<tr>
<td><strong>Insurance</strong></td>
</tr>
<tr>
<td>Workers’ Compensation</td>
</tr>
<tr>
<td>Additional Coverage:</td>
</tr>
<tr>
<td>Comprehensive General Liability (including Completed Operations and Contractual Liability)</td>
</tr>
<tr>
<td>Additional Coverage:</td>
</tr>
<tr>
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<tr>
<td>------------------------</td>
</tr>
<tr>
<td><strong>Property Insurance</strong></td>
</tr>
<tr>
<td><strong>Additional Coverage:</strong></td>
</tr>
<tr>
<td><strong>Professional Liability</strong></td>
</tr>
<tr>
<td><strong>Installation Floater (IT)</strong></td>
</tr>
<tr>
<td><strong>Contractor Pollution Liability</strong></td>
</tr>
<tr>
<td><strong>Errors and Omissions</strong></td>
</tr>
<tr>
<td><strong>Payment and Performance Bond Required</strong></td>
</tr>
<tr>
<td><strong>Department Head waives Payment and Performance Bond for work under $25,000.00.</strong></td>
</tr>
</tbody>
</table>
Unless otherwise required by law, Department Head waives Insurance for work described as follows:

(check at least one)

☐ under $25,000.00
☐ including goods F.O.B. the place of destination

8. Examination of Records

(a) The Consultant agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any pertinent books, documents, papers and records of the Consultant involving transactions related to this Contract.

(b) The Consultant further agrees to include in any subcontract for more than $10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such Consultant involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

(c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

9. Public Records Compliance. Contractor shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119.0701, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term.

(d) Upon completion of the Contract, Contractor shall transfer to the City, at no cost, all public records in possession of the Contractor and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

If Contractor does not comply with a public records request, the City shall enforce the contract provisions in accordance with the contract.
CONTRACTOR QUESTIONS RELATING TO CONTRACTOR'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO THE OFFICE OF THE CITY CLERK, CITY HALL, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 TELEPHONE: (386) 506-5563 E-MAIL: CITYCLERK@PORT-ORANGE.ORG.

10. **Non-discrimination.** During the performance of this Contract, Contractor agrees as follows:

   (a) Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Contractor agrees and fully supports and complies with the Americans with Disabilities Act of 1990.

   (b) Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor is an equal opportunity employer.

   (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. Contractor shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over $10,000 so that the provisions will be binding upon each subcontractor or vendor.

11. **Force Majeure.** Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

12. **Disputes.** Disputes shall be resolved by non-binding mediation.

13. **Notice.** For purposes of this agreement, notices shall be sent as follows:

   City: City of Port Orange
   Attention: City Manager
   1000 City Center Circle
   Port Orange, Florida 32129
   (386) 506-5501

   Copy to: City of Port Orange
   Attention: Lynn Stevens, Director of Public Works and Public Utilities
   1000 City Center Circle
   Port Orange, Florida 32129
   (386) 506-5852
Contractor: H&A Resource Management, LLC  
Attention: G. Todd Stephens, President  
11811 Willows Road NE  
Versailles, Kentucky 40383  
(859) 873-3331 – Telephone

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may, from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

14. **Integration.** This Addendum No. 1 shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto. In the event of a conflict between the Rental Agreement, and this Addendum, this Addendum shall control.

15. **Contract Construction.** This Addendum may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Addendum shall be deemed valid as if an original signature was delivered. No contract shall be formed between Contractor and the City until the City signs this Addendum.

16. **Authority to Sign.** Each person signing this Addendum warrants that he or she is duly authorized to do so and to bind the respective party to the Addendum.

[remainder of page intentionally left blank]
Witnesses: 

Printed Name: ____________________________

Printed Name: ____________________________

H&A RESOURCE MANAGEMENT, LLC

By: ________________________________

G. Todd Stephens, President

If this Contract is signed by an individual not identified as the President of the corporation in the records of the State of Kentucky or Florida Department of State, Division of Corporations, please provide written authorization for that individual to enter into contracts on behalf of the corporation.

Date: ________________________________

STATE OF KENTUCKY
COUNTY OF WOODFORD

The foregoing instrument was acknowledged before me this _____ day of ____________, 2019, by G. Todd Stephens, as President of H&A Resource Management, LLC, a Kentucky limited liability corporation, and who:

[Notary: Please select one]

☐ is personally known to me; or
☐ has produced __________________ as identification.

Notary Public, State of Kentucky
Printed, typed or stamped name, commission and expiration:
CITY OF PORT ORANGE

By: __________________________
M.H. Johansson, City Manager

Date: __________________________

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of __________, 2019, by M.H. Johansson, as City Manager of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

Wit nesses:

Printed Name: __________________________

Printed Name: __________________________

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of __________, 2019, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

Attest:

By: __________________________
Robin L. Fenwick, CMC, City Clerk

Date: __________________________
SUBJECT: (B9) Major Special Event Request – 4Ever Fitness 5K Run/Walk & 1-Mile Kids Fun Run located at 4Ever Fitness, 4639 Clyde Morris Boulevard

DEPARTMENT: Community Development

GOAL: N/A

RECOMMENDED MOTION: Move to approve the Special Event request for the 4Ever Fitness 5K Run/Walk & 1-Mile Kids Fun Run located at 4Ever Fitness, 4639 Clyde Morris Boulevard subject to the attached conditions.

SUMMARY: The applicant Michael Turcotte, owner of 4Ever Fitness, is requesting a special event, for the 4Ever Fitness 5K Run/Walk & 1-Mile Kids Fun Run. The proposed hours of the event are from 8:30 a.m. until 11:00 a.m. on April 13, 2019.

The 5K race and 1-mile Kids Fun Run will start and finish in the parking lot at 4Ever Fitness located at 4639 Clyde Morris Boulevard. Runners will head east on Herbert Street, turn right onto City Center Drive. At the end of City Center Drive the runners will turn right and follow the circle around to the entrance of the City Parks and Recreation parking lot, following the access drive behind the YMCA and through the Palmer College parking lot, exiting through the main entrance. Runners then turn left onto City Center Parkway and will turn around at Azalea Point Drive, following the reverse course back to the Parks and Recreation parking lot. The runners will then turn right on to City Center Circle and follow the circle, then turn right onto City Center Boulevard. At the end of City Center Boulevard, runners will turn right at Clyde Morris Boulevard and continue towards the entrance of the Gulfstream Village Plaza entrance, just north of Our Lady of Hope Catholic Church.

Parking for the event will be in the Gulfstream Village Plaza parking lot and at City Center. There will be port-o-lets and trash receptacles on site provided by the applicant, as well as, designated areas for two food trucks, and optional sponsor exhibit tents or tables. Restrooms will be available inside 4Ever Fitness. Clean up for the race will occur immediately after.

The proposed event has been reviewed by the Police, Fire, Parks and Recreation, Public Works, and Community Development Departments. The applicant has received the estimates from the Police and Public Works departments for staff overtime costs to assist the event with traffic control, barriers and safety issues within the City of Port Orange. According to Code Enforcement, there are no code violations existing on the proposed site at this time.

The applicant states that a portion of the proceeds raised from this event will directly
benefit “The Wounded Warrior Project”, a non-profit organization whose mission is serving though a variety of programs, wounded veterans returning home from the military actions following September 11, 2001 and providing assistance to their families.

The applicant has also requested the surety bond be waived. The cost of the surety bond is determined by the City Council as outlined in Chapter 58, Article III, of the City of Port Orange Code of Ordinances, and has generally been set at $250 when required. Council has generally waived this bond for similar race events in the past. As a result, staff conditions allow the waiver. Should Council choose to require the bond, the conditions will need to be revised.

Project No.:  Funding Account No.:

Presenter: Tim Burman

ATTACHMENTS:

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<tbody>
<tr>
<td>1.</td>
<td>Staff Recommendations</td>
<td>Staff Recommendations.pdf</td>
</tr>
<tr>
<td>2.</td>
<td>4EverFitness Route Map</td>
<td>4EverFitness Route Map.pdf</td>
</tr>
</tbody>
</table>

Briana Conlan-King Created/Initiated - 01/11/2019
Tim Burman Approved - 01/11/2019
Thomas Grimaldi Approved - 01/11/2019
Ronny Buttrum Approved - 01/11/2019
Jake Johansson Approved - 01/15/2019
Robin Fenwick Final Approval - 01/15/2019
RECOMMENDATION:
Staff recommends approval of the 4Ever Fitness 5K Run/Walk & 1-Mile Kids Fun Run subject to the following conditions:

1. Applicant shall be responsible for any charges for City of Port Orange Police services related to this event and coordinate with the Police Department for all vehicular traffic patterns and pedestrian concerns.

2. Applicant shall be responsible for coordination with the City of Port Orange Public Works Department for Public Works services and all charges for equipment (barricades, lights, etc.) used for this event for traffic control.

3. Rates for this event for staff time and equipment are per Resolution 19-2.

4. Hours of the event shall be from 8:30 a.m. until 11:00 a.m.

5. Access shall be maintained for all emergency vehicles.

6. Event organizers are required to delineate the event area from the vehicular driving and parking area with cones, ropes and/or barricades where necessary.

7. All areas used for this function shall be handicapped-accessible. Handicapped parking is to remain open and accessible for the event.

8. A temporary sign permit shall be required for the one banner permitted for this event. An application shall be submitted at least two weeks prior to the event for permit approval.

9. All trash generated along the route must be picked up and disposed of at the end of the event along with any debris at the event sites.

10. Amplified speaker systems must comply with the City noise ordinance (Code of Ordinances, Chapter 42, Article IV, Section 42 Noise regulations).
SUBJECT: (B10) Major Special Event Request – All Aboard Storage Go Make a Difference 5K Run/Walk located at the Clark Office Building, 5111 S. Ridgewood Avenue.

DEPARTMENT: Community Development

GOAL: N/A

RECOMMENDED MOTION: Move to approve the Special Event request for the All Aboard Storage Go Make a Difference 5K Run/Walk located at the Clark Office Building, 5111 S. Ridgewood Avenue subject to the attached conditions.

SUMMARY: The applicant Molly Clark, event coordinator, and Andy Clark, owner, of All Aboard Storage, are requesting a special event, for the 2nd annual All Aboard Storage Go Make a Difference 5K Run/Walk. The proposed hours of the event are from 6:30 a.m. until 10:00 a.m. on March 9, 2019.

The 5K race will start and finish in the parking lot at the Clark Office Building located at 5111 S. Ridgewood Avenue. Runners will head east on Katherine Street, turn right and proceed south on Riverside Drive and turn around just past Oak Street. The runners will finish the race at the Clark Office Building located at 5111 S. Ridgewood Avenue. Participants will be running within the streets listed above.

After the completion of the race, there will be an awards ceremony after completion of the race at the Clark Office Building located at 5111 S. Ridgewood Avenue. The ceremony will have designated areas for refreshments, post-race massages, and sponsor exhibit tents. There will be trash receptacles on site for the ceremony events.

Parking for the event will be onsite at the Clark Office Building. Restrooms will be available inside the building and port-o-lets will be provided by the applicant. Clean up for the race and ceremony will occur immediately after.

The proposed event has been reviewed by the Police, Fire, Parks and Recreation, Public Works, and Community Development Departments. The applicant has received the estimates from the Police and Public Works departments for staff overtime costs to assist the event with traffic control, barriers and safety issues within the City of Port Orange. According to Code Enforcement, there are no code violations existing on the proposed site at this time.

The applicants state that the proceeds raised from this event will directly benefit “Our Lady of Lourdes Catholic School”, a non-profit school whose mission is to help change lives through a high-quality education in a loving, safe environment.
The applicants have also requested the surety bond be waived. The cost of the surety bond is determined by the City Council as outlined in Chapter 58, Article III, of the City of Port Orange Code of Ordinances, and has generally been set at $250 when required. Council has generally waived this bond for similar race events in the past. As a result, staff conditions allow the waiver. Should Council choose to require the bond, the conditions will need to be revised.

Project No.:  Funding Account No.:  

Presenter: Tim Burman

ATTACHMENTS:

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<tr>
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<th>Staff Recommendations</th>
<th>Staff Recommendations.pdf</th>
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<tbody>
<tr>
<td>1.</td>
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</table>

Briana Conlan-King  Created/Initiated - 01/11/2019
Tim Burman          Approved - 01/11/2019
Thomas Grimaldi     Approved - 01/11/2019
Ronny Buttrum       Approved - 01/11/2019
Jake Johansson      Approved - 01/15/2019
Robin Fenwick       Final Approval - 01/15/2019
RECOMMENDATION:
Staff recommends approval of the Go Make a Difference 5K Run/Walk subject to the following conditions:

1. Applicant shall be responsible for any charges for City of Port Orange Police services related to this event and coordinate with the Police Department for all vehicular traffic patterns and pedestrian concerns.

2. Applicant shall be responsible for coordination with the City of Port Orange Public Works Department for Public Works services and all charges for equipment (barricades, lights, etc.) used for this event for traffic control.

3. Rates for this event for staff time and equipment are per Resolution 19-2.

4. Hours of the event shall be from 6:30 a.m. until 10:00 a.m.

5. Access shall be maintained for all emergency vehicles.

6. Event organizers are required to delineate the event area from the vehicular driving and parking area with cones, ropes and/or barricades where necessary.

7. All areas used for this function shall be handicapped-accessible. Handicapped parking is to remain open and accessible for the event.

8. A temporary sign permit shall be required for the one banner permitted for this event. An application shall be submitted at least two weeks prior to the event for permit approval.

9. All trash generated along the route must be picked up and disposed of at the end of the event along with any debris at the event sites.

10. Amplified speaker systems must comply with the City noise ordinance (Code of Ordinances, Chapter 42, Article IV, Section 42 Noise regulations).
SUBJECT: (B11) Major Special Event Request – Bike Week: First Turn Steakhouse & Lounge – 5236, 5204 & 5164 South Ridgewood Avenue

DEPARTMENT: Community Development

GOAL: N/A

RECOMMENDED MOTION: Move to approve the ten (10) day Special Event request for The First Turn Steakhouse & Lounge located at 5236, 5204 and 5164 Ridgewood Avenue subject to the attached conditions.

SUMMARY: Rick Hilliard, owner of The First Turn Steakhouse & Lounge, requests approval of a Special Event to be held during Bike Week 2019. The proposed event is planned for a ten (10) day period from Friday, March 8, through Sunday, March 17, 2019. The proposed hours for the event are from 11:00 a.m. until 2:00 a.m., daily with outside music ending at 10:00 p.m. This will be the first Special Event for The First Turn Steakhouse & Lounge in 2019. The dates of Bike Week as recognized by the Daytona Regional Chamber of Commerce are Friday, March 8, 2019, through Sunday March 17, 2019.

Normal operations of The First Turn Steakhouse & Lounge will continue. Twelve (12) vendors have been requested and may be in place throughout the site. Vendors are required to obtain a Temporary Merchant License from the City for $250 to participate in this event. The outdoor activities for this event, intended to target the crowd attending Bike Week 2019, include the sale of T-shirts, leather, bike accessories, food, and alcohol. Port-o-let facilities are proposed for the event, along with security.

Chapter 42, Article IV. Noise Regulations, Section 42-80. General Restrictions of the City of Port Orange Code of Ordinances describe the acceptable sound level limit dBA. It shall be the responsibility of the permit holder to monitor for noise violations. The First Turn Steakhouse & Lounge shall take care of the placement of speakers for amplified music by adjusting them away from residential areas. A warning may be issued and if not corrected or the violation recurs, the Special Event may be terminated. All previous noise violations will be taken into account before permitting future events. Based on the City Council’s previous approvals for Bike Week, it is staff’s understanding that all outdoor music shall cease by 10:00 p.m.

The proposed event has been reviewed by the Police, Fire, Public Works, Parks and Recreation and Community Development departments. The owner has received cost estimates from the Police and Public Works departments for staff overtime and materials to assist the event with traffic control, barriers and safety issues within the City of Port Orange. According to Code Enforcement, there are no code violations.
existing on any of the proposed sites at this time.

The First Turn Steakhouse & Lounge has requested that the surety bond be waived due to past good performance in clean-up after previous events. City Council has not waived the surety bond for these events in recent years. The cost of the surety bond is determined by City Council as outlined in Chapter 58, Article III of the City of Port Orange Code of Ordinances and has generally been set at $250.00 when required for past events. City Council has required staff to secure payment of the surety bond in recent years and the staff conditions require it.

Project No.:  Funding Account No.:

Presenter: Tim Burman

ATTACHMENTS:

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<tbody>
<tr>
<td>1.</td>
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</tr>
<tr>
<td>2.</td>
<td>First Turn Location Map</td>
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Briana Conlan-King  Created/Initiated - 01/14/2019
Tim Burman  Approved - 01/14/2019
Thomas Grimaldi  Approved - 01/15/2019
Ronny Buttrum  Approved - 01/15/2019
Jake Johansson  Approved - 01/17/2019
Robin Fenwick  Final Approval - 01/18/2019
RECOMMENDATION:
Staff recommends approval of The First Turn Steakhouse & Lounge Special Event request, subject to the following conditions:

1. Applicant shall be responsible for any charges for City of Port Orange Police services related to this event and coordinate with the Police Department for all vehicular traffic patterns and pedestrian concerns.

2. Applicant shall be responsible for coordination with the City of Port Orange Public Works Department for Public Works services and all charges for equipment (barricades, lights, etc.) used for this event for traffic control.

3. Rates for this event for staff time and equipment are per Resolution 19-2.

4. The First Turn Steakhouse & Lounge shall be responsible Volusia County and/or the Florida Department of Transportation with respect to traffic control devices or plans.

5. Hours for the event shall be from 11:00 a.m. to 2:00 a.m. with outside music ending at 10:00 pm. The First Turn Steakhouse & Lounge also shall not serve alcohol indoors or outdoors past 2:00 a.m., as required by Port Orange Code of Ordinances.

6. 5204 and 5164 Ridgewood Avenue are not incorporated in the alcoholic beverages license for The First Turn Steakhouse & Lounge. These properties are only used for additional parking. Signs stating, “No Alcoholic Beverages Beyond This Point” shall be placed between 5204 and 5236 Ridgewood Avenue.

7. Based on the City Council’s previous approvals for Biketoberfest, it is staff’s understanding that all outdoor music shall cease by 10:00 p.m. The First Turn Steakhouse & Lounge shall take care in the placement of speakers for amplified music by adjusting them away from residential areas.

8. Where fences are required to delineate outdoor alcohol serving areas, as well as parking areas for automobiles, motorcycles and the handicapped, a four (4)-foot high orange construction fence shall be erected to enclose the event area. All fencing must be in place prior to the site inspection for the event.

9. All outdoor cooking equipment involving liquefied petroleum gas and/or storage cylinders shall comply with NFPA #58 Liquefied Petroleum Gas Code and be approved by the Fire Marshal.

10. A copy of The First Turn Steakhouse & Lounge’s liquor license for outdoor sales of alcohol during this event shall be obtained from the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, prior to the event.

11. The First Turn Steakhouse & Lounge shall be responsible for all participating vendors with respect to any permit conditions or compliance with applicable state, county and city laws, rules, regulations, codes and ordinances. Therefore, The First Turn Steakhouse & Lounge must screen all participating vendors to ensure compliance with but not limited to the following:
a. *Article VI, Chapter 18, Port Orange Code of Ordinances*, relating to peddlers and transient merchants.

b. Temporary event permits issued by the Department of Business and Professional Regulation, Division of Hotels and Restaurants for all food vendors.

c. Required liquor license for a temporary event shall be obtained from the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.

d. Provisions and Standards of the City’s *Body Art Ordinance*.

e. Provisions and Standards of the City’s *Sexually Oriented Businesses Code*.

f. *Special Event Fee Resolution* establishing Temporary Merchant Fee.

12. Tents or canopies being used in association with this event shall comply with the requirements set forth in *NFPA 101 Chapter 11.11 (Tents) Standards for Tents and Membrane Structures*. Tents or canopies cannot be erected more than forty-eight (48) hours prior to the event, and must be removed within twenty-four (24) hours after the duration of the event. All tents/canopies must maintain at least two (2) exit ways in an unobstructed fashion to allow for a continuous path of travel.

13. If any outdoor lighting or other structural features are to be installed in association with this event, The First Turn Steakhouse & Lounge shall obtain the proper Building Permits from the Community Development Department. Such lighting must be a minimum of twenty (20) foot candles to provide a safe environment at night.

14. Temporary electrical wiring shall be installed by a certified electrician and shall comply with Article 590 of the current adopted *NFPA #70 National Electrical Code*. This includes (F) Lamp protection. Any temporary lamps shall be protected from accidental contact or breakage by a suitable fixture or lamp holder with a guard.

15. Fire extinguishers shall be provided as outlined in accordance with the *NFPA #10, Standard for Portable Fire Extinguishers*.

16. All exits and means of egress shall remain accessible and unobstructed and it shall be the responsibility of The First Turn Steakhouse & Lounge to maintain access for emergency vehicles.

17. The First Turn Steakhouse & Lounge shall provide two (2) port-o-let facilities, with one (1) for females and one (1) for males during the event. A minimum of five percent (5%) of the portable toilets, but no less than one (1) for each sex, shall comply with Section 603 of FBCA as required per Section 213.2 FBCA for handicapped-accessible facilities.

18. All areas being used for this special event shall be handicapped-accessible. Handicapped parking is to remain open and accessible for this event.

19. Tripping hazards shall be removed or isolated from pedestrian traffic. Vehicle areas, including parking, shall be physically separated from pedestrian areas.
20. If there are calls for police service, or if security threats develop, the Police Department shall require additional officers to provide security for this event. The additional officers will be hired at the expense of The First Turn Steakhouse & Lounge at the rate of $40.00 per hour with a minimum of three hours.

21. The First Turn Steakhouse & Lounge shall hire a police officer to cross pedestrians and monitor congestion during periods of heavy traffic flow, if an event traffic plan is in operation. The anticipated dates, times, and charges for such detail and traffic control devices will be agreed upon by The First Turn Steakhouse & Lounge and the Police Department and paid to the City prior to issuance of the permit.

22. The City's Code of Ordinances prohibits the exposure of any sexual organs at commercial establishments that serve alcoholic beverages. Furthermore, Florida Statutes prohibit any type of public nudity at such an event.

23. A temporary sign permit shall be required for the one (1) banner permitted for this event.

24. No trees shall be removed, and care shall be taken to protect landscaped areas.

25. The First Turn Steakhouse & Lounge shall contact the Community Development Department to schedule an inspection of the property prior to the start of the event to ensure that the construction fence and any canopies or tents are well secured, and that all other safety measures are in place.

26. Repair of any disturbance of public right-of-way shall be the sole responsibility of The First Turn Steakhouse & Lounge.

27. It is The First Turn Steakhouse & Lounge's responsibility to contact Code Enforcement for an inspection of debris removal within 48 hours after the event.

28. No more than the requested twelve (12) vendors shall be on this site.

29. The First Turn Steakhouse & Lounge shall comply with the approved maximum capacity occupancy requirements within the confines of the facility.

30. Camping on premises prohibited by code; includes, but not limited to, tents, motor homes, travel trailers, or other vehicles.

31. The $250.00 surety bond must be paid in full before issuance of permit.
SUBJECT: (B12) Resolution No. 19-10 - 30-day Extension to the Moratorium on Personal Wireless Communications Governed by Chapter 16, Section 9 of the Land Development Code

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION: Move to approve Resolution No. 19-10.

SUMMARY: On December 4, 2018, the City Council approved a two (2) 30-day extensions to a moratorium on Personal Wireless Communications governed by Chapter 16, Section 9 of the Land Development Code. The moratorium was initially adopted in September 2018 to allow staff to review the existing City requirements for personal wireless communications in the Land Development Code (LDC) as part of an on-going maintenance effort. The current moratorium will expire on February 17, 2019. As part of the adopted moratorium, a provision was included to allow the moratorium to be extended for additional thirty (30) day increments by resolution of City Council, as needed. Staff has prepared a draft ordinance to update the City’s LDC requirements for personal wireless communications but will need to extend the moratorium for one (1) more additional 30-day period to bring the ordinance before City Council for second reading of the new ordinance to complete the public hearing process. Based on the public hearing schedule required for the LDC text amendment for personal wireless communications, an additional 30-day extension beyond the February 17, 2019 moratorium expiration date is needed to complete the required public hearings. The City Council discussed and approved the draft ordinance at first reading on January 22, 2019.

Presenter: Tim Burman

ATTACHMENTS:

1. Reso. No. 19-10 Reso. No. 19-10.pdf

Robin Fenwick Created/Initiated - 01/24/2019
Tim Burman Approved - 01/24/2019
Matthew Jones Approved - 01/25/2019
Jake Johansson Approved - 01/25/2019
RESOLUTION NO. 19-10

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; EXTENDING THE EXISTING MORATORIUM ESTABLISHED BY ORDINANCE NO. 2018-25 FOR AN ADDITIONAL 30-DAY PERIOD; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 19, 2018 the City Council adopted Ordinance No. 2018-25 establishing a three-month moratorium to allow the Community Development Department and Public Utilities Department to review the City’s regulations related to wireless facilities, communication towers, wireless support structures, and other communications facilities used in support thereof and governed by Chapter 16, Section 9 of the Land Development Code; and

WHEREAS, on December 4, 2018 the City Council approved Resolution No. 18-58 for two (2) separate 30-day extensions; and

WHEREAS, Ordinance No. 2018-25 provides for extensions by City Council for additional thirty (30) day periods; and

WHEREAS, staff has determined that an additional 30 days is needed, beyond the two (2) separate 30-day extensions, for the moratorium to complete the amendments to the Land Development Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. Extension.

The moratorium established by Ordinance No. 2018-25 is hereby extended for an additional thirty (30) day period beyond its expiration date, as previously extended by Resolution No. 18-58.
Section 2. Effective Date.

This Resolution shall become effective immediately upon final passage by the City Council.

________________________________
MAYOR DONALD O. BURNETTE

ATTEST:

_______________________________
Robin L. Fenwick, CMC, City Clerk

Adopted on this _______ day of ________________, 2019.

Reviewed and Approved: ___________________________
Matthew J. Jones, Deputy City Attorney
SUBJECT: (E14) Parks & Recreation Advisory Board Report

DEPARTMENT: Parks & Recreation

GOAL:

RECOMMENDED MOTION:

SUMMARY: Chairman Jack Wiles will present the report from the January 15, 2019 meeting.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

Susan Lovallo  Created/Initiated - 01/03/2019
Susan Lovallo  Approved - 01/03/2019
Jake Johansson  Approved - 01/03/2019
Robin Fenwick  Final Approval - 01/16/2019
SUBJECT: (F16) Second Reading - Ordinance 2019-2 - LDC Amendment/Chapter 13 - Landscaping Requirements for Residential Lots (Case No. 18-25000009)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance 2019-2, amending Chapter 13 of the Land Development Code.

SUMMARY: Planning Commission Action (12/13/18): Recommended Approval

At the July 24 Environmental Advisory Board (EAB) meeting, the EAB discussed and recommended modifications to the City’s Tree Protection and Landscape requirements in the Land Development Code (LDC). Then, at the October 23, 2018 City Council Workshop, staff presented a summary of the EAB’s recommended modifications for discussion and Council direction. Based on the discussion at the workshop, staff was asked to move forward with implementing modifications to the LDC related to tree protection/preservation and landscaping requirements. Staff will bring these modifications to the LDC in a series of amendments over the next few months.

The proposed amendment to Chapter 13 of the LDC is to update the landscaping requirements for all residential lots. Based on the discussion at the City Council workshop, the initial amendment provides alternatives to plant or replant shade tree(s) on lots 6,000 square-feet or less and does not change the shade tree requirement of 1 shade tree per 2,500 square-feet, but it would allow for the administrative official to have the ability to allow the following alternatives, or a combination of the following for a residential lot 6,000 square-feet or less:

1. The use of understory trees at a ratio of two (2) understory trees per one (1) required shade tree;
2. The upsizing of a shade tree from a two-inch, 10-foot tall tree at the time of planting to a four-inch 14-foot tall tree at the time of planting and to count the upsized shade tree as two (2) shade trees; and
3. A contribution to the City’s Tree Mitigation Bank. The tree mitigation payment for a shade tree will be provided in a fee resolution that will accompany this item to Council.

The proposed amendment also modifies the number of shrubs to be installed with a new residential dwelling. The current code uses residential zoning districts to determine the number of shrubs required to be planted; however, not all City’s residential zoning districts are currently listed in this section. The proposed amendment will modify the shrub requirement based on lots size:
1. A lot greater than 20,000 square-feet is required to install 20 shrubs;
2. A lot that is 20,000 square-feet to 6,000 square-feet is required to install 12 shrubs; and
3. A lot less than 6,000 square-feet is required to install eight (8) shrubs.

The staff report is attached for more information.

Presenter: Penelope Cruz

ATTACHMENTS:

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Robin Fenwick   Created/Initiated - 01/22/2019
ORDINANCE NO. 2019-2

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA AMENDING THE LAND DEVELOPMENT CODE CHAPTERS 13 RELATING TO LANDSCAPING REQUIREMENTS FOR RESIDENTIAL LOTS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning Commission has recommended amendments to the Land Development Code; and

WHEREAS, the proposed amendments would provide alternatives to plant or replant shade tree(s) on lots 6,000 square feet or less to comply with Land Development Code (“Code”).

WHEREAS, the proposed amendment is necessary to improve the content of the existing Land Development Code (“Code”) in an effort to update the City’s Tree Protection and Landscape requirements of the Code to allow for more flexibility for certain sized lots and compliance with the requirements of the City’s Code.

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (strikethrough) type shall constitute deletions from the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1: The City Council of the City of Port Orange hereby amends in part the Land Development Code, City of Port Orange, Florida, Chapter 13 – Landscaping and Buffers, Section 5.5 – Landscaping for single- and two-family residences, to read as follows:
LAND DEVELOPMENT CODE OF THE CITY OF PORT ORANGE, FLORIDA
Chapter 13 – Landscaping and Buffers

[No changes to Sections 1 through 5]

Section 5.5: - Landscaping for single- and two-family residences.

(a) Materials. Each single-family and two-family residence shall maintain the following minimum landscaping:

(1) Mobile home lot. One shade tree per 2,500 square feet of lot area, and 12 shrubs. Where gravel or crushed stone is used as a finished ground cover, the number of required shrubs shall be 24.

(2) A or RR single-family lot. Seventeen shade trees or one shade tree per 2,500 square feet of lot area, whichever is more, and 25 shrubs.

(3) R-7SF single-family lot. Three shade trees or one shade tree per 2,500 square feet of lot area, whichever is more, and 12 shrubs.

(4) R-8SF single-family lot. Four shade trees or one shade tree per 2,500 square feet of lot area, whichever is more, and 12 shrubs.

(5) R-10SF single-family lot. Four shade trees or one shade tree per 2,500 square feet of lot area, whichever is more, and 12 shrubs.

(6) R-20SF single-family lot. Eight shade trees or one shade tree per 2,500 square feet of lot area, whichever is more, and 20 shrubs.

(7) R-2D two-family lot (per unit). Two shade trees or one shade tree per 2,500 square feet of lot area, whichever is more, and ten shrubs.

(8) R-2D zero lot line. Four shade trees and ten shrubs.

(9) PUD single-family or two-family (per unit). As required for the most similar zoning district described in paragraphs (1) through (8) of this subsection.

(1) Trees:

(a) Lots 6,000 square feet or greater in area: One shade tree per 2,500 square feet of lot area.

(b) Lots less than 6,000 square feet in area: One shade tree per 2,500 square feet of lot area. When site specific conditions exist, which do not reasonably permit installation of the required number of shade trees, then the administrative official may allow for:

(i) the use of understory trees at a 2:1 basis as shade trees,

(ii) the upsizing of a shade tree from a two-inch, 10-foot tall tree at the time of planting to a four-inch 14-foot tall tree at the time of planting and to count the upsized shade tree as two (2) shade trees;
(iii) contribution to the city’s tree bank in an amount established by resolution of the City Council; or
(iv) combination of all of the above.

(2) Shrubs:

(a) A lot greater than 20,000 square-feet is required to install 20 shrubs;
(b) A lot that is 20,000 square-feet to 6,000 square-feet is required to install 12 shrubs;
and
(c) A lot less than 6,000 square-feet is required to install eight (8) shrubs.

[No changes to Subsections (b), (c), (d), and (e)]
[No changes to Sections 6 through 10]

SECTION 2: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 3: The provisions of this Ordinance shall become and be made a part of the Land Development Code of the City of Port Orange and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 4: If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 5: This Ordinance shall take effect immediately upon adoption.
ORD. NO. 2019-2

______________________________
MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Passed on first reading on the __________ day of __________

Passed and adopted on second and final reading on the __________ day of __________

Reviewed and Approved: ________________________________

Shannon K. Balmer, Assistant City Attorney
REQUEST: To amend the Land Development Code (LDC) Chapter 13 to update the landscaping requirements for residential lots.

APPLICANT: City of Port Orange

STAFF RECOMMENDATION: Approval

STAFF CONTACT: Briana Conlan-King, Senior Planner (386) 506-5676

PLANNING COMMISSION DATE: December 13, 2018

CITY COUNCIL DATE: January 8, 2019

SUMMARY OF PROPOSED AMENDMENT
At the July 24 Environmental Advisory Board (EAB) meeting, the EAB discussed and recommended modifications to the City’s Tree Protection and Landscape requirements in the Land Development Code (LDC). Then, at the October 23, 2018 City Council Workshop, staff presented a summary of the EAB’s recommended modifications for discussion and Council direction. Based on the discussion at the workshop, staff was asked to move forward with implementing modifications to the LDC related to tree protection/preservation and landscaping requirements. Staff will bring these modifications to the LDC in a series of amendments over the next few months.

The proposed amendment does not change the shade tree requirement of 1 shade tree per 2,500 square-feet, but it does provide alternatives to plant or replant shade tree(s) on lots 6,000 square-feet or less to comply with code. The proposed amendment allows for the administrative official to have the ability to allow the following alternatives, or a combination of the following, in lieu of planting or replanting the required number of shade trees for a residential lot 6,000 square-feet or less:

1. The use of understory trees at a ratio of two (2) understory trees per one (1) required shade tree;
2. The upsizing of a shade tree from a two-inch, 10-foot tall tree at the time of planting to a four-inch 14-foot tall tree at the time of planting and to count the upsized shade tree as two (2) shade trees; and
3. A contribution to the City’s Tree Mitigation Bank. The tree mitigation payment for a shade tree will be provided in a fee resolution that will accompany this item to Council.

The intent of the proposed amendment is to provide flexibility for lots 6,000 square-feet or less to meet the City’s LDC requirements and maintain a residential tree canopy throughout the City.

The initial proposed amendment is to provide a property owner of a lot 6,000 square-feet or less with alternative options to meet the City’s one shade tree per 2,500 square feet of lot area requirement.

Over the past 10-15 years, there have been several residential subdivisions (Royal Palm, Coquina Cove, Westport Reserve, Port Orange Plantation, Cornerstone Grove, Woodhaven, etc.)
developed with lots less than 6,000 square-feet, and typically when a property owner of a smaller lot requests to remove a required shade tree on their lot, they are then required to plant a replacement shade tree at another location on the lot. However, on these smaller lots, space to plant a replacement shade tree(s) can be limited because of the home, driveway, accessory structures (pool, screen room, wood deck, patio, etc.), public/private infrastructure (FPL transformers, utility meter boxes, etc.), and existing tree roots. A typical standard planting area for a shade tree should be at least 30’ X 30’ so the tree roots have the area needed to establish and grow; and for these smaller lots, there is not enough space replant a required shade tree(s).

The proposed amendment also modifies the number of shrubs to be installed with a new residential dwelling. The current code uses residential zoning districts to determine the number of shrubs required to be planted; however, not all City’s residential zoning districts are currently listed in this section. The proposed amendment will modify the shrub requirement based on lots size:

1. A lot greater than 20,000 square-feet is required to install 20 shrubs;
2. A lot that is 20,000 square-feet to 6,000 square-feet is required to install 12 shrubs; and
3. A lot less than 6,000 square-feet is required to install eight (8) shrubs.

**RECOMMENDATION**
Approval of the amendment to Chapter 13 of the Land Development Code.
SUBJECT: (F17) Second Reading - Ordinance 2019-5 - LDC Amendment/Chapter 2, 16, and 18 - Siting of Personal Wireless Communication Facilities (Case No. 18-25000010)

DEPARTMENT: Community Development

GOAL:


SUMMARY: Planning Commission Action (12/13/18): Recommended Approval

In September 2018, a moratorium was approved for personal wireless communications governed by Chapter 16, Section 9 of the Land Development Code (LDC), in order to review existing regulations in the LDC related to personal wireless communications, and if necessary, to develop amendments to maintain reasonable and uniform regulations that protect the health, safety and general welfare of the residents of Port Orange.

The proposed amendment is intended to update the regulations in the LDC related to wireless communication facilities siting, to comply with federal and state law to regulate the siting of communication towers, antennas and facilities, update local siting requirements and hierarchy, and minimize adverse impacts on residential zoning districts from the construction of new communication towers and facilities through setbacks, separation requirements, and landscape/screening.

Project No.:   Funding Account No.:

Presenter: Tim Burman

ATTACHMENTS:

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Robin Fenwick Created/Initiated - 01/22/2019
ORDINANCE 2019-5

AN ORDINANCE OF THE CITY OF PORT ORANGE, FLORIDA AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF PORT ORANGE TO AMEND CHAPTER 2, SECTION 2 DEFINITIONS; TO REPEAL AND REPLACE CHAPTER 16, MISCELLANEOUS REGULATIONS, SECTION 9, PERSONAL WIRELESS COMMUNICATIONS, WITH A NEW CHAPTER 16, MISCELLANEOUS REGULATIONS, SECTION 9, ENTITLED WIRELESS COMMUNICATIONS FACILITIES SITING, WITH THE FOLLOWING SUBSECTIONS: PURPOSE; GENERAL SITING PREFERENCES; PROCEDURAL REQUIREMENTS; SPECIFIC REGULATIONS AND PROCEDURES FOR PROPOSED FACILITIES MODIFICATION APPLICATIONS; PROTECTION OF THE PUBLIC; AMATEUR RADIO ANTENNAS; ENFORCEMENT; AMENDING CHAPTER 18, SECTION 3(b)(25) ADDRESSING SPECIAL REQUIREMENTS FOR COMMUNICATIONS TOWERS IN RESIDENTIAL DISTRICTS; AMENDING CHAPTER 16, SECTION 4 ADDRESSING HEIGHT; AMENDING CHAPTER 16, SECTION 5 ADDRESSING SPECIAL SETBACKS; AMENDING CHAPTER 17, ZONING REGULATIONS, SECTION 1, IN GENERAL, TO REFERENCE THE WIRELESS COMMUNICATIONS FACILITIES SITING REGULATIONS SET FORTH IN CHAPTER 16, SECTION 9; AMENDING CHAPTER 17, ZONING REGULATIONS, TO REMOVE ALL REFERENCES TO ANTENNAS, CAMOFLAUGED ANTENNAS, AND CAMOFLAUGED, GUYED, LATTICE AND MONOPOLE COMMUNICATION TOWERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR THE TERMINATION OF MORATORIUM ADOPTED PURSUANT TO ORDINANCE NO. 2018-25; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Telecommunications Act of 1996, 47 U.S.C. §151 et seq. (“96 Act”) and Federal Communications Commission (“FCC”) Orders adopted thereto, provide federal regulation of wireless communications, a technology of wireless voice, video and data communications systems widely used and expanding rapidly, requiring land use facilities that impact planning and zoning concerns in the City of Port Orange (“City”) and throughout the United States; and

WHEREAS, Florida statutes apply to the City's regulation the siting of wireless communication facilities; and

WHEREAS, the “Middle Class Tax Relief and Job Creation Act (“Spectrum Act”) (PL-122-96; codified at 47 U.S.C. §1455(a)) and FCC orders promulgated thereto, codified at 47 C.F.R. §1.40001, address, inter alia, local governments’ regulation of the modification of existing wireless antenna support structures and base stations; and
WHEREAS, it is the City's legislative intent to implement the adopted City Comprehensive Plan by continuing to ensure the highest quality living environment possible by developing zoning and development codes based on objectives and policies that will enhance the City’s natural and man-made resources while minimizing any damage or threat of degradation to the health, safety and welfare of the City's citizens, native wildlife and environment; and

WHEREAS, it is the City’s intent to balance growth, safety, aesthetics, the compatibility of land uses and consistency with community vision; and

WHEREAS, it is the City's intent to establish standards in compliance with applicable federal and state laws; and

WHEREAS, on August 7, 2018, the City Council adopted Ordinance 2018-13, creating Chapter 58, Article IV of the City Code, creating the Port Orange Communications Rights-of-Way Ordinance, providing for the processing of applications for communications facilities in the City public rights-of-way and the regulation of such facilities; and

WHEREAS, on April 29, 1997, the City Council of Port Orange, Florida, adopted Ordinance No. 1997-23, in the City Land Development Code to provide for the regulation of facilities for Personal Wireless Communications; and

WHEREAS, the City has received and expects to receive additional requests from communications service providers to site wireless communication towers, antennas and facilities within the City boundaries and is authorized by federal, state and local law to regulate the siting of such communication towers, antennas and facilities; and

WHEREAS, there have been significant advances in communications technology as well as revisions in applicable federal and state law since the adoption of Ordinance No. 1997-23 in the Land Development Code; and

WHEREAS, the City Council seeks to avoid adverse impacts on residential zoning districts from the construction of new communication towers and facilities; and

WHEREAS, on December 13, 2018, the Planning Commission held a public hearing on this proposed ordinance and recommended that the proposed ordinance be approved; and

WHEREAS, a duly noticed public hearing as required by law was held by the City Council of the City of Port Orange, at which public hearing all residents and interested persons were given an opportunity to be heard; and

WHEREAS, the City Council has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the City’s plans.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:
SECTION 1. The foregoing WHEREAS clauses are ratified and incorporated as the legislative intent of this Ordinance.

SECTION 2. The City Council hereby amends CHAPTER 2, Definitions and Interpretations, SECTION 2, DEFINITIONS, of the Port Orange, Florida Land Development Code, City of Port Orange, Florida, to insert alphabetically the definitions as amended herein as follows:

**Amateur Radio Antenna:** An antenna used to engage in amateur radio communications utilized by a Federal Communications Commission (FCC) licensed amateur radio operator.

**Antenna:** Any structure or device used to transmit or receive communications as authorized by the Federal Communications Commission, which is mounted on or proposed to be mounted on a communication tower or alternative support structure.

**Antenna:** A transmitting and/or receiving device mounted on a tower, building or structure and used in telecommunications personal wireless services that radiates or captures electromagnetic waves, digital signal, analog signals, and radio frequencies, directional antennas such as panel and microwave dish antennas, and omni-directional antennas such as whips but excluding small wireless facilities as defined in the Port Orange Communications Rights-of-Way Ordinance, Chapter 58, Article IV of the Code of Ordinances, radar antennas, amateur radio antennas, and satellite earth stations.

**Applicant** [owner, licensed contractor, and/or lessee]: For purposes of Chapter 16, Section 9 of the Land Development Code, a person or entity with property owner authorization, with an application before the City for a permit for a wireless communications facility.

**Base Station.** A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. To the extent not inconsistent with applicable law, this term Base Station does not include a utility pole for the co-location of a small wireless facility in the City’s public rights-of-way pursuant to the Port Orange Communications Rights-of-Way Ordinance, Chapter 58, Article IV, of the City Code. The term Base Station does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes but is not limited to:

(a) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul;

(b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks); and

(c) Any structure other than a tower that, at the time the relevant application is filed with the City under Chapter 16, Section 9, supports or houses equipment described in subparagraphs (a)-(b) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. Base

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1 Words **stricken through** are intended to be deleted; words **underlined** are intended to be added.
Station does not include any structure that, at the time the relevant application is filed under Chapter 16, Section 9, does not support or house equipment described in (a) or (b) above.

**Broadcasting Facility.** Any communication tower built primarily for the purpose of broadcasting licensed AM, FM or television signals pursuant to 47 C.F.R. Part 73 of the FCC rules, as it may be amended.

**Building Permit Review.** A review for compliance with building constructions standards adopted by the City under Chapter 553, Florida Statutes, and Chapter 14, Art. III of the City Code of Ordinances and does not include a review for compliance with land development regulations.

**Camouflage Equipment Building or Antenna Structure.** A designed structure that encloses, obscures or conceals the presence of an antenna, equipment building and/or a communication tower such that the tower, equipment building and/or antenna blends into the environment. For example, the following may be determined to be a camouflage tower, equipment building or antenna: towers and antennas integrated into man-made trees that are similar in height, branches and leaf coverage to resemble natural trees occurring on the proposed site, clock towers, bell steeples, light poles, architecturally screened roof mounted antennas, equipment buildings installed below grade or not visible beyond the property as a result of landscaping or other buffering, and similar alternative designs.

**Carrier.** A company licensed by the Federal Communications Commission (FCC) that provides wireless communications services. A communication tower builder, manager, or owner is not a carrier unless it is licensed to provide wireless communications services.

**Co-location.** For purposes of an Eligible Facilities Modification as set forth in Chapter 16, Section 9, the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. “Co-location” for all other purposes, means the situation when a second or subsequent wireless carrier use an existing structure to locate a second or subsequent antennas. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antenna. The installation of antennas by two or more wireless communication providers on an existing or proposed communication tower or an existing or proposed alternative support structure.

**Co-location requirements.** Specific requirements listed under subsection 9(4) of Chapter 16 which the applicant shall satisfy when applying for a permit to construct a communication tower or to install an antenna.

**Communication facility operator.** A provider of wireless communications services, or an owner or operator of a wireless communications facility.

**Communication tower.** A freestanding tower designed and constructed for the sole or primary purpose of supporting one or more antennas and their associated equipment intended for transmitting or receiving wireless communications services, telephone, radio and similar communication purposes, licensed or authorized by the FCC to the extent required. The term
shall not include those towers used exclusively for receive-only antennas, or two-way dispatch, or amateur radio (as licensed by the FCC), nor those towers which are under district height limits. To the extent not inconsistent with applicable law, the term communication tower does not include a utility pole for the co-location of a small wireless facility in the City public rights-of-way pursuant to the Port Orange Communications Rights-of-Way Ordinance, Chapter 58, Article IV, of the City Code. A communication tower shall not include the following:

1. A cell-on-wheels or temporary communication tower authorized pursuant to Chapter 16, Section 9.
2. A structure supporting a utility transmission line(s) only.
3. A structure up to one hundred fifty (150) feet in height supporting a 69KV or higher voltage utility transmission line(s), and antenna(e), when located in non-residential zoning districts.
4. An amateur radio antenna or its support apparatus.
5. A Wireless Facilities Support Pole, or
6. A structure supporting a radio, television or satellite receiving antenna for residential uses only.

Communication towers shall be classified as follows:

(a) Camouflaged: A communication tower designed to blend into and conform in appearance with existing or proposed surroundings. An example of a camouflaged communication tower is a tower which is designed and constructed to resemble a tree in form, shape, and color, height, branches and leaf coverage to resemble natural trees occurring on the proposed site.

(b) Guyed: A communication tower which is anchored with guy wires.
(c) Lattice: A communication tower which is self-supporting and has three or more sides of open-framed supports and without the use of guy wires or other supports.
(d) Monopole: A single self-supporting communication tower of spin-cast concrete, concrete, steel, or other similar materials containing no guy wires, ground anchors, or other supports that is constructed or proposed to be constructed on a permanent foundation.

Communication tower height. When referring to a communication tower, the distance measured from the finished grade of a parcel to the highest point on the communications tower, including the base pad and any antenna, but excluding lights and lightning rods or warning devices.

Eligible facilities modification application. A written document submitted to the City pursuant to the Land Development Code for review and approval of a proposed eligible facilities modification.

Eligible facilities modification. Any request for modification of an existing tower or base station that does not result in a substantial change in the physical dimensions of such tower or base station, involving:

(a) Co-location of new transmission equipment;
(b) Removal of transmission equipment; or
(c) Replacement of transmission equipment.
Eligible facilities modification permit. A written document issued by the City pursuant to Chapter 16, Section 9 of the Land Development Code, approving an eligible facilities modification application.

Eligible support structure. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City.

Equipment building. The cabinets, shelter, building or other such structure which contains the electronic equipment used in the operation of the antenna. Unless the context indicates otherwise, the term includes generators, generator fuel supplies, cable connections and supports, electrical panels and similar accessory components.

Essential services. Those services provided by the City and other governmental entities that directly relate to the health and safety of residents, including fire, police and rescue.

Existing. For purposes of an Eligible Facilities Modification, a constructed tower or base station that has been reviewed or approved under the applicable zoning or siting process of the City, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

Existing structure. As used in Chapter 16, Section 9, means a structure that exists at the time an application for permission to place antennas on a structure is filed with the City. The term includes any structure that can structurally support the attachment of antennas in compliance with applicable codes.

Fall radius. The greater of the height of a communication tower or the calculated distance measured from the center of the base of a communication tower which defines the maximum circular area into which the tower and any further distance in which any part of a tower may fall in case of structural failure or collapse.

Historic Structure, Site, Object, or District. When used in Chapter 16, Section 9, means any building, resource, structure, site, object, or district that has been officially designated as a historic building, historic resource, historic structure, historic site, historic object, or historic district through a federal, state or local designation program.

Interference or Interfere. For purposes of Chapter 16, Section 9, the impairment of transmission or reception of any desired communications or radio frequencies.

Licensed engineer. A person who satisfies the requirements of Section 471.003, Florida Statutes.

Microwave dish antenna. A dish-shaped device used to transmit and/or receive microwave signals in a straight line to and from similarly earth bound point sources.

Personal wireless service. Commercial mobile services, licensed wireless services, and common carrier wireless exchange access services, and shall include “wireless service” as defined in
Section 365.172, Florida Statutes, as amended, as well as “personal wireless services” as defined in 47 USC §322(c)(7)(C)(i), as amended.

**Personal wireless service Facilities.** Facilities for the provision of personal wireless services. A power, light, or other utility pole used exclusively as such prior to attachment of a personal wireless service facility shall not be considered a personal wireless service facility because of such attachment.

**Pre-existing antenna.** An antenna for which a permit has been issued prior to the effective date of Ordinance 1997-23, and its amendments, or antenna for which a permit has been properly issued and finalized, including antennas that have not yet been constructed so long as such approval and permit is current and not expired.

**Pre-existing communication tower.** A communication tower for which a permit has been issued prior to the effective date of Ordinance 1997-23, and its amendments, or any communication tower for which a permit has been properly issued and finalized, including permitted communication towers that have not yet been constructed so long as such approval and permit is current and not expired.

**Proposed facilities modification:** Any request for modification of an eligible support structure which the applicant asserts is subject to review under the Middle Class Tax Relief and Job Creation Act (“Spectrum Act”) (PL-122-96; codified at 47 U.S.C. §1455(a)), as amended, and FCC orders promulgated thereto, codified at 47 C.F.R. §1.40001, as amended, and involving:

(a) Co-location of new transmission equipment;  
(b) Removal of transmission equipment; or  
(c) Replacement of transmission equipment.

**Public safety communications facility.** Any wireless communications facilities used by a government agency for the primary purpose of providing public safety related communications, including but not limited to, wireless communications for police, fire and emergency services.

**Search area.** The geographic area, in which a wireless communications facility must be located to provide FCC required coverage of the applicant’s designed service areas, as certified by Radio Frequency (RF) licensed engineer, or other such appropriate technical expert.

**Substantial change.** A modification that changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(a) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;  
(b) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance,
whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
(c) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
(d) It entails any excavation or deployment outside the current site;
(e) It would defeat the concealment elements of the eligible support structure; or
(f) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in sub-paragraphs (a)-(d) above.

Transmission equipment. Equipment that facilitates transmissions for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul and the associated site, and shall not include for example; utility poles, light poles, pedestrian signalized poles or signalized intersection poles, masts, or similar vertical structures that have a primary purpose or function independent of supporting a wireless telecommunications facility.

Wireless communications facility. Any equipment or facility used to provide wireless communications service and may include, but is not limited to, antennas, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility. Such definition shall not include facilities of a governmental entity where such facilities are utilized to provide intra-governmental communications, not generally available to the public, to protect the health, safety and welfare of the public.

Wireless communications service. Personal wireless service or "commercial mobile radio service" as provided under ss. 3(27) and 332(d) of the Telecommunications Act of 1996, 47 U.S.C. §§151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term includes service provided by any wireless real-time two-way communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.
Wireless facility support pole. A pole or similar structure that resembles and functions as a light or traffic control pole that is no less than ten (10) feet or more than fifty (50) feet in height and is used to support a camouflaged antenna or antennas for wireless communications service, and where electronic equipment associated with the antenna is either contained within the pole or installed below grade so as not to be visible.

SECTION 3. The City Council hereby repeals in its entirety CHAPTER 16, Miscellaneous, SECTION 9, Personal Wireless Communications, of the Port Orange, Florida Land Development Code.

SECTION 4. The City Council hereby creates CHAPTER 16, Miscellaneous, SECTION 9, Wireless Communications Facilities Siting, of the Port Orange, Florida Land Development Code, to read as follows:

Section 9: - Wireless Communications Facilities Siting

(a) **Purpose.** The purpose of this section is to establish regulations and requirements for the siting of wireless telecommunication facilities. All new towers or antennas in the City shall be subject to these regulations, except where specifically excluded. The section is intended to accomplish the following:

1. Protect and promote the public health, safety and general welfare of the residents of the City;

2. Accommodate the growing need and demand for reliable wireless communications services by permitting the siting of wireless communication towers and antennas within the City’s boundaries and provide reasonable accommodation to promote and to encourage innovations in technology and fair and reasonable competition among telecommunications service providers or providers of functionally equivalent services on a neutral and nondiscriminatory basis;

3. Minimize potential impacts of towers upon residential areas and land uses;

4. Encourage and promote the location of towers in nonresidential areas, where the adverse impact on the community is minimal;

5. Minimize the total number of towers throughout the community by strongly encouraging the co-location of antennas on new and pre-existing tower sites as a primary option rather than construction of additional single-use towers;

6. Encourage and promote users of telecommunication towers and antennas to configure them in a way that minimizes the adverse visual impact of the communication towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;

7. Minimize potential damage to property from wireless communication towers and telecommunications facilities by requiring such structures be soundly designed, constructed, modified and maintained and in compliance with all requirements of the Florida Building Code applicable to similar structures; and

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2 Words *stricken through* are intended to be deleted; words *underlined* are intended to be added.
(8) Enhance the ability of the providers of wireless telecommunications services to provide such services to the community through an efficient and timely application process;

(9) Encourage the location and co-location of antennas on existing structures thereby minimizing new visual impacts and reducing the need for additional antenna support structures;

(10) Further the balance between predictability for the communications industry in the placement of wireless telecommunications facilities and appropriate land use regulations to protect the aesthetic integrity and public safety of the City’s residents, visitors and businesses;

(11) Establish appropriate zoning requirements, including but not limited to setback and distance separation requirements, aesthetics, landscaping, land use based location priorities, and structural design for wireless communication towers and antennas within the City’s boundaries, with due consideration to the City’s comprehensive plan, zoning map, existing land uses and environmentally sensitive areas, including hurricane preparedness areas;

(12) Establish setback and distance separation requirements for towers that do not exceed the minimum distance necessary to satisfy structural safety or aesthetic concerns;

(13) Adopt regulations that are consistent with applicable federal and state laws, including but not limited to the Telecommunications Act of 1996, which as set forth in 47 U.S.C. § 332(c)(7)(B)(iv), expressly preempts, state and local government regulation of the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC’s regulations concerning such emissions, and Section 365.172(13), Florida Statutes;

(14) Establish procedural requirements and substantive criteria applicable for the review and approval or denial of applications for eligible facilities modification;

(15) Ensure that application submittal requirements for eligible facilities modifications are related to information reasonably necessary to the determination of whether or not the proposed modification will result in a substantial change in the physical dimensions of the eligible structure;

(16) Exempt facilities modifications approved under this section as eligible facilities requests from zoning and development regulations that are inconsistent with Section 6409 of the Spectrum Act, Middle Class Tax Relief and Job Creation Act (“Spectrum Act”) (PL-122-96; codified at 47 U.S.C. § 1455(a)) and FCC orders promulgated thereto, codified at 47 C.F.R. §1.40001;

(17) Confirm that this Ordinance shall not apply to wireless communications facilities or applications for wireless facilities in the public rights-of-way. Such facilities and applications shall be governed by the Port Orange Communications Rights-of-Way Ordinance.

(18) Confirm that this Ordinance will not govern any communication tower or the installation of any antenna that is for the use of a broadcasting facility or is used exclusively for receiving only antennas.
Confirm that communications facilities owned by the City shall not be subject to this Ordinance, except as specifically referred to herein to the extent not inconsistent with applicable law.

Establish specific regulations for Federal Communications Commission (FCC) licensed amateur radio; and

Preserve the City’s right to continue to enforce and condition approvals pursuant to this Section on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health, safety and welfare.

In furtherance of these goals, the City will at all times give due consideration to the City's Comprehensive Plan, zoning maps, existing land uses, and environmentally sensitive areas, including hurricane preparedness areas, in approving sites for the location of towers and antennas.

(b) General Siting Provisions.

(1) Hierarchy of siting alternatives. Placement of new antennas, communication towers, and communications facilities shall be in accordance with the following siting alternatives hierarchy. The order of ranking is from highest (b)(2)a. to lowest (b)(3)h. Where a lower ranked alternative is proposed, the applicant must demonstrate in its application that higher ranked options are not available. The availability of a less expensive lease on a lower ranked site is not sufficient in and of itself to justify using the lower ranked alternative where a higher ranked alternative is otherwise available.

(2) Co-location Preference. Consistent with federal and state law, the City hereby establishes a preference for co-location of antennas on existing communication towers and structures, as opposed to constructing a new communication tower. The preference for co-location shall have a secondary priority as follows with the higher preference listed in (b)(2)a., followed by (b)(2)b., through (b)(2)d., the lowest ranked preference.

a. Co-location of camouflage antenna(s) on an existing camouflaged communication tower in any zoning district, for example, additional antennas within a camouflaged communication tower designed as a flagpole, co-location of antenna(s) on a communication tower on property used for a municipal purpose including, but not limited to, parks, public service and City maintenance yards, police and fire stations, City Hall, community centers and similar City properties (hereinafter “municipal use property”), or antennas attached to a structure on municipal use property.

b. Co-location of antennas on existing non-camouflaged communication tower on municipal use property.
c. Co-location of antennas on an existing non-camouflaged communication tower on private property or attached camouflage antennas on a structure on private property.

d. Attached non-camouflage antennas to an existing structure on private property.

(3) New Communication Towers. If co-location or attachment of antennas as listed above is not possible as demonstrated through the factors listed below, an applicant may propose a new communication tower. The priority rankings for a new communication tower are set forth below from (b)(3)a. highest to (b)(3)h. lowest.

a. Camouflaged communication tower on municipal use property.

b. Non-camouflaged communication tower on municipal use property.

c. Camouflaged communication tower on light industrial and commercial industrial zoning district private property.

d. Non-camouflaged communication tower on light industrial and commercial industrial zoning district private property in the following preferred order: monopole, guyed and lattice.

e. Camouflaged communication tower in other zoning districts on private or other governmental property other than residential.

f. Non-camouflaged communication tower in the following preferred order monopole, guyed and lattice, in other zoning districts on private or other governmental property other than residential.

g. New communication towers are not permitted in a residential zoning district. If an applicant seeks to locate a communication tower in a residential zoning district, the applicant may apply to the City, with payment of the appropriate fee, for the City to cooperate in determining an appropriate site. Such application for cooperation, however, shall not be subject to the timeframes for action on an application as otherwise provided in this Ordinance.

h. New communication towers are not permitted in the following zoning districts without a variance approved by the City Council pursuant to Chapter 16, Section 9(d)(10), following a recommendation of the Planning Commission:

1. The Port Orange Town Center Riverwalk District Community Redevelopment Agency;
2. The PC-A Zoning District (West Town Center, Neighborhood and Community Districts);
3. Floodplain Conservation (F-C) District;
4. Agricultural (A) District; and
5. A residential zoning district.

(c) Regulations for communications facilities.

(1) Lease Required for City Property.
  a. Any new construction, installation or placement of a communications facility on any property owned, leased, and/or controlled by the City including municipal use property shall require a Lease Agreement executed by the City and the owner of the facility. The City may refuse to enter into a lease for communications facilities on municipal use property in its sole discretion. Notwithstanding any provision in the City Code to the contrary, subject to applicable state and federal law, communication towers shall not be allowed in the public rights-of-way controlled by the City. The City cannot and hereby expressly does not waive or relinquish any of its land use, regulatory, permitting and police power authority, approval or enforcement rights and obligations, as they may relate to government regulations of general applicability which may govern property subject to a lease or sublease with the City, any improvements thereon, or any operations on the property. Wireless communications facilities shall not interfere with any facilities of the City or governmental entity used to provide essential services. Nothing in any lease or sublease with the City shall be deemed to create an affirmative duty of the City to abrogate its right to exercise its police power and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations and grant agreements, as they may be amended.

  b. The City may require, as a condition of entering into a Lease Agreement with a communications service provider, the dedication of space on the facility for public health and safety purposes or to provide essential services, as well as property improvements on the leased space. Any dedications and improvements shall be negotiated prior to execution of the lease.

  c. No lease granted under this section shall convey any right, title, or interest in the public lands other than a leasehold interest, but shall be deemed only to allow the use of the public lands for the limited purpose and term stated in the lease agreement. No lease granted under this section shall be construed as a conveyance of a fee title interest in the property.
(2) A proposed communication tower must include the attachment of a wireless communications facility such as antennas to be used for the provision of wireless communications services. A proposed communication tower that does not include wireless communications facilities to be used for the provision of wireless communications service or an executed lease or license for the co-location or attachment of antenna within a reasonable period of time after construction of the tower shall not be approved in any zoning district.

(3) Subject to the siting priorities above, new communication towers may be located as a permitted use on municipal use property and in the light industrial and commercial industrial districts. A new communication tower in all other districts shall require a variance pursuant to the requirements of this Chapter 16, Section 9(d)(10).

<table>
<thead>
<tr>
<th>Communication Tower Type</th>
<th>Residential Districts’ and Other Districts Prohibited pursuant to Chapter 16, Section 9(b)(3)h. herein.</th>
<th>Municipal Use Property</th>
<th>Light Industrial &amp; Commercial Industrial (LI &amp; CI)</th>
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<tbody>
<tr>
<td>Camouflaged</td>
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<td>Monopole</td>
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* Includes: A, AP, RR, RMH, R-2D, R-7SF, R-8SF, R-10SF, R-20SF, R-3L, R-3M, R-3H, NP, PUD, and PC-A (West Town Center, Neighborhood and Community Districts).

-- = Not allowed

PU = Permitted Use
Satisfaction of Priority Siting Requirements.

If an applicant is proposing new communications antennas on a communication tower other than the highest ranked priority or a new communication tower as opposed to co-location or attachment on an existing structure, the applicant shall demonstrate the lack of availability of a higher priority. No new communication tower shall be approved unless the applicant demonstrates to the reasonable satisfaction of the City that no pre-existing tower, structure or economically or technically feasible alternative technology that does not require the use of new communication tower or new structures can accommodate, or be modified to accommodate, the applicant's proposed antenna. Evidence submitted to demonstrate that no higher ranked alternative for a proposed antenna or that a pre-existing communication tower, structure or alternative technology is not available shall consist of any of the following:

a. An affidavit demonstrating that the applicant made diligent efforts but was unable to obtain permission to install or collocate the applicant's antenna within as applicable, the search area or a one-mile radius of the proposed communication tower site.

b. An affidavit demonstrating that the applicant made diligent efforts to install or co-locate the applicant's antenna on pre-existing towers or useable antenna support structures on municipal use property or owned by other persons located within as applicable, the search area or a one-mile radius of the proposed communication tower site, but was unable to obtain permission.

c. Pre-existing towers or structures do not have sufficient structural strength and cannot reasonably be modified to support applicant's proposed antenna and related equipment as demonstrated by supporting plans and calculations by a licensed engineer experienced in the design of wireless communications facilities.

d. The applicant's proposed antenna would cause interference with the antenna on the pre-existing towers or structures, or the antenna on the pre-existing towers or structures would cause interference with the applicant's proposed antenna and such interference cannot reasonably be eliminated as demonstrated by a licensed engineer.

e. The fees, costs, or contractual provisions required by the owner to share an existing tower or structure or to adapt an existing tower or structure for co-location or attachment are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

f. The applicant demonstrates with support from a licensed engineer that no pre-existing tower or structure located within the search area has the capacity to provide reasonable technical service, is of sufficient height to
meet applicable requirements, or there are other limiting factors that render pre-existing towers or structures unsuitable.

g. The applicant demonstrates that alternative technology used in the wireless communications industry and within the scope of applicant's FCC license, is economically or technically not feasible.

h. Other factors which demonstrate the reasonable need for a new communication tower or for an antenna on a lower ranked priority.

(5) Communication towers may be located on the same property as another use. A different existing use on the same lot or parcel that is proposed to have a communication tower located on it shall not preclude the installation of that communication tower if the other requirements of this section can be met.

(6) Communication tower cell sites shall not be required to comply with minimum living area, minimum lot area, minimum lot width, maximum building coverage, or minimum open space requirements, when such cell sites constitute a specified area within a lot or parcel.

(7) Principal use. Every cell site shall be deemed to be a principal use of the parcel or lot which constitutes the cell site or on which the cell site is located. An existing principal use and/or an existing structure on a lot or parcel shall not preclude a specified area within that lot or parcel from being utilized as a cell site as provided herein. For purposes of determining whether a cell site complies with the regulations of the applicable zoning district, including but not limited to setback, lot coverage and other such requirements, the dimensions of the entire lot or parcel shall control, even if the cell site is located on a specified area within such lot or parcel.

(8) Setbacks. The following setback requirements shall apply to all communication towers in addition to the separation requirements in this Chapter 16, Section 9. In establishing these setback requirements, the City Council finds that such setbacks are the minimum distance necessary to satisfy structural safety and aesthetic concerns for owners of adjacent properties, residents, and users of nearby public rights-of-way. Such setbacks shall be measured from the base of said communication towers. Setback standards shall be calculated and applied to communication tower facilities located in the City irrespective of municipal and county jurisdictional boundaries.

a. All communication towers shall be setback from all property lines of the parcel on which it is to be constructed a minimum distance of 110% of the fall radius of the tower or the minimum setback for the zoning district, whichever is greater.
b. The setback for the base of any guys for guved towers and any equipment buildings must satisfy the minimum zoning district setback requirements.

c. Communication towers shall be set back a minimum of the fall radius or 200 feet from Dunlawton Avenue and 100 feet from all other street rights-of-ways, whichever is greater.

d. All buildings which are ancillary to communication transmission and reception, shall be set back a minimum of ten feet from property lines or shall meet the minimum setback requirements of the district in which they are located, whichever is greater.

(9) Separation.
In addition to the setback from the property line, the following separation requirements shall apply to all communication towers. Communication tower separation shall be measured from the base of the proposed communication tower to the lot line of the off-site and/or designated areas. The City Council hereby finds that the separation requirements for towers in this section are the minimum distance necessary to satisfy structural safety and aesthetic concerns of nearby existing or potential residents. Communication tower separation standards shall be calculated and applied to communication tower facilities located in the City irrespective of municipal and county jurisdictional boundaries.

a. For a guyed, lattice or non-camouflaged monopole communication tower, such proposed tower shall be separated at least four times its height from the property line of a lot with any habitable residential structure or from vacant land in a residentially zoned district.

b. For a camouflaged communication tower, such proposed tower shall be separated at least two times its height from the property line of a lot with any habitable residential structure or vacant land in a residentially zoned district.

c. A proposed communication tower shall be separated a minimum of one-half mile from existing communication towers.

(10) Height.

a. Communication towers shall not be required to comply with district height limitations applicable to buildings and structures.

b. Communication towers (including mounted antennas) shall not exceed 300 feet in height. However, when reviewing an application for a communication tower which would constitute an airport hazard or result in an obstruction within an airport hazard area, the administrative official may reduce the maximum height to less than 300 feet. Appeal of the
administrative official's decision to reduce the maximum height shall comply with the provisions of subsection 7.1(b), chapter 3 of this code.

c. Subject to applicable law, antennas attached to alternative support structures shall not extend more than 20 feet above the overall height of such structures. Buildings may be used as alternative support structures only when they are 45 feet or greater in height.

(11) Spruce Creek Fly-In Airport. Any person proposing to construct a communication tower within the City limits west of Interstate 95 and within a four-mile radius of the ends of the runways of the Spruce Creek Fly-In Airport shall be required to send a copy of the completed application for the communication tower by registered mail to the last known address of the owner, operator or licensee of the Spruce Creek Fly-In Airport by reference to the latest ad valorem tax records. The owner, operator or licensee shall have ten days from receipt of the application to provide written comments to the administrative official relating solely to height and/or lighting concerns arising from the location of the proposed communication tower. The administrative official shall consider such comments and based on such comments shall be authorized to:
   a. Reduce the maximum height allowed for the proposed communication tower if the tower would constitute an airport hazard or result in an obstruction within an airport hazard area, as provided in Section 9(c)(10) of this Chapter 16; or
   b. Impose lighting requirements to eliminate or reduce potential airport hazards, as provided in Section 9(c)(12) of this Chapter 16.

(12) Lighting and Signs.
   a. Communication towers shall not be artificially lighted, unless required by the administrative official, FAA, or other governmental entity having authority over such matters. If lighting is required, the administrative official shall review the permitted lighting alternatives and shall have authority to require as a condition of the building permit that the lighting alternative used balance the need for safety and cause the least adverse impact to adjoining properties.

   b. No commercial signage or advertising shall be permitted on a communication tower unless otherwise required by law or the signage pertains only to the posting of the property relative to trespassing and public safety.

   c. Warning signs may be attached to free standing poles if the content of the signs may be obstructed by landscaping.

   d. The City reserves the right to modify or waive the above requirements to avoid visual clutter and to better apply the goals of this section.
e. Warning signs shall include the name of the owner(s) and operators and a twenty-four-hour emergency telephone number posted adjacent to the gate.

f. If high voltage is necessary for the operation of the telecommunications tower or any accessory structures, "HIGH VOLTAGE—DANGER" warning signs shall be permanently attached to the fence or wall surrounding the structure and spaced no more than forty (40) feet apart.

g. "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall and spaced no more than forty (40) feet apart.

h. The height of the lettering of the warning signs shall be at least twelve (12) inches in height. The warning signs shall be installed at least five (5) feet above the finished grade.

(13) Compound and Landscaping.

a. Communication towers shall be enclosed by a wall or fence as prescribed by chapter 14 of this code. The wall or fence shall be not less than six feet in height and shall be equipped with an appropriate anti-climbing device unless the administrative official waives the need for such device based on consideration of public safety. Access to the communication tower through the wall or fence shall be through a locked gate. Vehicles may be parked only while construction or maintenance is occurring.

b. Landscaping requirements. In addition to the requirements of chapter 13 of this code, the following landscaping and buffering shall be required:

1. Around the perimeter of any wall or fence installed on a cell site, a row of shade trees spaced at ten feet on center shall be planted around the perimeter of the wall or fence. In addition, a continuous hedge at least 30 inches high at planting and capable of growing to at least 36 inches in height within 18 months shall be planted in front of the row of shade trees.

2. In addition to the plantings required in the immediately preceding subsection 1., the required buffer yard design type for a communication tower shall be calculated by assigning a land use intensity factor of nine to the cell site.

3. The minimum amount of planting required adjacent to an equipment building/storage structure located on a cell site shall be the same as in subparagraph 5(a)(1)(a) of chapter 13 of this code.

4. If the tower compound perimeter abuts a public or private street or public right-of-way, the minimum buffer width shall be fifteen (15) feet. Existing mature growth, not including exotics, and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural
growth around the property perimeter may be a sufficient buffer. The administrative official or designee shall be responsible for determining if the existing native perimeter vegetation meets the intent of this Code. All areas disturbed during project construction shall be replanted with vegetation according to this Code.

5. All landscaping shall be properly maintained to ensure good health and viability at the expense of the owner.

(14) Certification and Inspections. All communication towers shall be certified by a licensed engineer to be structurally sound and in conformance with the requirements of the standard building code and all other construction standards set forth by this code, federal and state law. Such certification shall be submitted with the application for letter of completion. Owners and/or operators of towers shall certify that all licenses required by law for the construction and/or operation of a wireless communications system in the City have been obtained and shall file a copy of all required licenses with the City. In addition, for monopole communication towers, such certification shall be submitted every five years after the initial certification, and for lattice and guyed communication towers such certification shall be submitted every two years after initial certification. Notwithstanding this provision, an owner of a communication tower shall provide such certification following recovery from a declaration of a state of emergency by the City or by an appropriate state official that included the area of the tower. In addition to the foregoing, the City shall have authority to require the communication tower owner or operator to submit to more frequent certification submissions if the City has reason to believe that the structural and electrical integrity of the communication tower is jeopardized. The City's officers, employees and agents, shall have the authority to enter onto the property upon which a tower is located, at such times as the City may deem necessary, for the purpose of inspecting the communication tower to determine whether it complies with the standard building code and all other construction standards provided by this code, federal and state law. The City shall have authority to conduct such inspections at any time, upon reasonable notice to the communication tower owner. All expenses related to such inspections by the City shall be reimbursed by the communication tower owner.

(15) Design requirements. Except for design elements that are necessary to enable a communication tower, antennas and/or associated facilities to be camouflage, the following design requirements shall apply.

a. Communication towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, so as to reduce visual obtrusiveness.

b. Antennas shall be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna as visually unobtrusive as possible. If an antenna is installed on a structure
other than a communication tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

c. In addition to meeting applicable requirements of chapter 14 of this code, the design of any equipment and/or building(s) ancillary to communication transmission and reception shall use materials, colors and textures that will blend the equipment and/or building(s) into the natural setting and built environment.

d. Microwave dish antennas located less than sixty-five (65) feet above the ground may not exceed six (6) feet in diameter. Microwave dish antennas located sixty-five (65) feet and higher above the ground may not exceed eight (8) feet in diameter. Ground-mounted microwave dish antennas must be located or screened so as not to be visible from abutting public streets to the extent consistent with applicable law.

(16) **Pre-Existing Communication towers.**

a. All lawfully constructed communication towers existing on the effective date of this ordinance shall be permitted to continue to be used and maintained as they presently exist.

b. **Nonconforming structures.** An antenna co-located on or attached to a communication tower or alternative support structure which is deemed nonconforming as provided in Section 8 of Chapter 3 of this code, shall not be deemed to increase the degree of nonconformity notwithstanding the provisions of Section 8 of Chapter 3.

c. Routine maintenance shall be permitted for any pre-existing communication tower. However, except as provided in subparagraph d. of this paragraph any such communication tower which is undergoing expansion of use or new construction shall comply with all requirements of this code for new communication towers.

d. Any pre-existing communication tower may be modified to accommodate co-location of additional antennas. In such instance the height restrictions herein of Chapter 16, Section 9 shall apply with respect to the communication tower and all antennas. Any pre-existing communication tower may be rebuilt and relocated on the same lot or parcel and may be moved on site within fifty (50) feet of its existing location to accommodate co-location, subject to applicable setback and separation requirements. However, if it is impossible for a pre-existing communication tower to be rebuilt in compliance with applicable setback requirements, the City
Council may approve a variance to such setback and separation requirements to allow the tower to be rebuilt in its exact previous location.

e. A tower which previously received a conditional use or special exception approval may be rebuilt according to the conditions under which the conditional use or special exception was approved.

f. After the tower is rebuilt to accommodate co-location, only one (1) tower may remain on the site. The initial tower shall be removed within thirty (30) days following the final inspection for the new tower.

(17) Co-location and Attachment of Antennas on Existing Towers and Structures. A proposed antenna to be attached to an existing tower and that is not subject to Section 9(e) of this Chapter 16, Proposed Facilities Modifications, shall be approved provided such co-location or attachment is accomplished in a manner consistent with the following:

a. The City shall grant or deny each properly completed application that is not subject to Section 9(e) of this Chapter 16, Proposed Facilities Modifications, as provided in this Section, for the co-location of a wireless communications facility within the City's jurisdiction within the normal time frame for a similar building permit review but in no case later than forty-five (45) business days after the date the application is determined to be properly completed in accordance with the City's application procedures.

b. Co-locations on towers, including nonconforming towers that meet the requirements in subparagraphs 1. through 3. below, are subject to only building permit review, which may include a review for compliance with this subparagraph, such co-locations are not subject to any design or placement requirements of the City's land development regulations in effect at the time of the co-location that are more restrictive than those in effect at the time of the initial antennas placement approval, to any other portion of the land development regulations, or to public hearing review. This subparagraph shall not preclude a public hearing for any appeal of the decision on the co-location application, provided the following:

1. The co-location does not increase the communications tower height to which the antennas are to be attached, measured to the highest point of any part of the tower or any existing antenna attached to the tower; and

2. The co-location does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment enclosures and ancillary facilities; and

3. The co-location consists of antennas, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any.
applied to the initial antennas placed on the tower and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the tower supporting the antenna. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the City's land development regulations in effect at the time the initial antennas placement was approved.

c. Except for a historic building, structure, site, object, or district, a co-location on all other existing structures that meet the requirements in subparagraphs 1. through 4. below shall be subject to no more than building permit review, and an administrative review for compliance with this subparagraph. Such co-locations are not subject to any portion of the City's land development regulations not addressed herein, or to public hearing review. Nothing herein shall preclude a public hearing for any appeal of the decision on the co-location application:

1. The co-location does not increase the height of the existing structure to which the antennas are to be attached, measured to the highest point of any part of the structure or any existing antenna attached to the structure;
2. The co-location does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;
3. The co-location consists of antenna, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional co-locations on the existing structure or procedural requirements, other than those authorized by this section, of the City's land development regulations in effect at the time of the co-location application; and
4. The co-location consists of antenna, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with subparagraph 3. and were applied to the initial antenna placed on the structure and its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the antennas.

d. If only a portion of the co-location does not meet the requirements of this subparagraph, such as an increase in the height of the proposed antenna over the existing structure height or a proposal to expand the ground space approved in the site plan for the equipment enclosure, where all other portions of the co-location meet the requirements of this subparagraph, the portion of the co-location only may be reviewed under the City's regulations applicable to an initial placement of that portion of the facility, including,
but not limited to, its land development regulations, and within the review

time frame specified in this chapter for the placement of new

communications towers. The rest of the co-location shall be reviewed in

accordance with this subparagraph. A co-location proposed under this

subparagraph that increases the ground space area, otherwise known as the

compound, approved in the original site plan for equipment enclosures and

ancillary facilities by no more than a cumulative amount of four hundred

(400) square feet or fifty percent (50%) of the original compound size,

whichever is greater, shall, however, require no more than administrative

review for compliance with the City's regulations, including, but not limited
to, land development regulations review, and building permit review, with

no public hearing. This subparagraph shall not preclude a public hearing for

any appeal of the decision on the co-location application.

e. The communication facility operator of the existing tower or existing

structure on which the proposed antennas are to be co-located shall remain

responsible for compliance with any applicable condition or requirement of

a permit or agreement, or any applicable condition or requirement of the

land development regulations to which the existing tower or structure had
to comply at the time the tower was permitted, including any aesthetic

requirements, provided the condition or requirement is not inconsistent with

this paragraph.

f. An existing tower, including a nonconforming tower, may be structurally

modified in order to permit co-location or may be replaced through no more

than site plan and building permit review process for approval, and is not

subject to public hearing review, if the overall height of the tower is not

increased and, if a replacement, the replacement tower is a monopole tower

or, if the existing tower is a camouflaged tower, the replacement tower is a

like-camouflaged tower. The subparagraph shall not preclude a public

hearing for any appeal of the decision on the application.

g. An existing tower may be structurally modified or rebuilt up to the same

height or to a taller height, to accommodate the co-location of an additional

antenna(s), only if the modification or reconstruction is in full compliance

with the building code and requirements consistent with the original site

approval process including but not limited to submission of a site plan and

compliance with any camouflage requirements. The City shall require a

modified setback based on the modification or increased height of the tower
to accommodate structural safety or aesthetic concerns. The City shall

review an application to increase the height of an existing tower or

substantially modify an existing tower under the City's regulations, including, but not limited to, land development regulations applicable to the

placement of a new tower, to the extent not inconsistent with applicable law.
h. Antennas to be attached to an existing tower or an alternative support structure that do not satisfy the requirements herein for co-location on an existing tower or alternative support structure shall be subject to review consistent with the review procedures for new towers. Antennas proposed to be attached to an alternative support structure in a zoning district that prohibits new towers shall require a variance to the zoning district as provided in this Chapter 16, Section 9(d)(10). Such antennas proposed to be attached to an alternative support structure shall be camouflage, and finished, screened or designed using architectural features consistent with the structure, or landscaping of sufficient density and maturity at planting to provide opaque screening. Wall-mounted antennas shall be painted to match the wall on which it is mounted or otherwise consistent with the color(s) of the alternative support structure.

(18) Equipment Storage Facilities. It is recognized that antennas will have some type of associated electronic support and equipment buildings at or near the communications facility. Depending on the type of facility being erected, the following general standards shall apply, in addition to the other general provisions of the code.

a. Rooftop mounted wireless communications facilities shall comply with the following requirements:

1. Rooftop equipment buildings and storage cabinets shall be set back a minimum of fifteen (15) feet from the edge of the roof or one-quarter of the distance along the perpendicular axis of the roof, whichever is less. The height of a roof for the installation of wireless communications facilities must be at least forty-five (45) feet.

2. All rooftop wireless communications facilities associated with antennas including cabinets and equipment buildings shall be camouflage, and finished, screened or designed so that they blend into the architecture of the building on which they are located using architectural features consistent with the structure, or landscaping of sufficient density and maturity at planting to provide opaque screening. Wall-mounted facilities and equipment shall be painted to match the wall on which they are mounted or otherwise consistent with the color(s) of the alternative support structure.

3. All cabinets and equipment buildings shall meet all City design standards and comply with the building codes.

4. No commercial advertising or logo shall be allowed on an antenna, screen or equipment building.
5. No signals, lights, or illumination shall be permitted on an antenna or equipment building unless required by the FCC, OSHA, or the FAA. Security lighting around the base of the antenna and equipment building may be provided if such light conforms to the overspill requirement in the City Code.

b. The only signage that may be permanently attached to the equipment building shall be for the purpose of identifying the party responsible for operation and maintenance of the facility, its address, and telephone number for safety and security and shall comply with this Section.

c. Mobile or stationary equipment not located within the building upon which the antenna is mounted, or in an equipment building or cabinet, shall not be stored or parked on the site of a building mounted antenna, unless repairs to the antenna are being made.

d. Generators may be used only when other power sources are not available, and as an emergency back-up power source. Generators and fuel storage shall comply with the City Code, including Chapter 14, Section 4(g) of the Land Development Code. Noise emitted by generators shall be limited to allowable thresholds set forth in Chapter 42, Article IV of the Code of Ordinances.

Notwithstanding other provisions of this Chapter 16, Section 9, the City may process an application for a wireless facility support pole on municipal use property subject to a lease approved by the City and in Light Industrial and Commercial Industrial Districts (LI & CI) through a building permit review only. Wireless facility support poles shall be subject to setback requirements as set forth in this Chapter 16, Section 9(b). Wireless facility support poles may be approved in other zoning districts pursuant to a variance in accordance with Chapter 16, Section 9(d)(10).

(d) Procedural requirements.

(1) Any person proposing to construct a communication tower shall be required to comply with the site development plan approval process as set forth in chapter 3 of this land development code. The application for site plan approval shall include a full legal description of the lot, parcel, or specified area within a lot or parcel which the applicant proposes to use as a cell site, and a survey of the entire lot or parcel.

(2) For purposes of reviewing the application for site plan approval and determining the applicability of the provisions of this section, a cell site shall be deemed to be the lot or parcel legally described in the public records unless the applicant demonstrates that the applicant has leased a specified area of the lot or parcel from the owner thereof for the purpose of constructing a communication tower.
(3) Prior to submitting an application for a new communication tower or antenna, the applicant shall engage in a pre-application meeting with the administrative official or his/her designee consistent with Chapter 3, Section 3 of the Land Development Code, as amended. At the discretion of the administrative official, such meeting may be waived, or may be conducted via telephone or electronic communications. Applicants may request a subsequent or additional pre-application conference with the City.

(4) Requirement of Site Plan and Engineering Report. All applicants for new communication towers and communication towers which are modified or reconstructed to accommodate additional antennas shall submit a written report certified by a licensed engineer. The report shall include: all information required by Chapter 6 and Chapter 16, Section 9 of the Land Development Code except to the extent such information is determined to be not applicable by the City or otherwise prohibited by applicable state or federal law. In addition, the report shall include the following:

a. Site plan development consistent with chapter 6 including, but not limited to:
   1. A tax parcel number, legal description of the parent tract and leased parcel, and total acres of the subject property;
   2. The entire parcel including the leased parcel fully dimensioned, including property lines, setbacks, roads on or adjacent to the subject property, easements;
   3. Outline of all existing buildings, including a purpose (i.e., residential buildings, garages, accessory structures, etc.) located within a radius of three times the communication tower height of the proposed tower;
   4. All existing vegetation, by mass or individually by diameter, measured four (4) feet from the ground and each stand-alone tree with a six inch (6”) caliper DBH (diameter at breast height) located within a radius of three times the communication tower height of the proposed tower;
   5. Proposed/existing security barrier, indicating type, height, and extent as well as point of controlled entry;
   6. Proposed/existing access easements, utility easements, and parking for the communication tower;
   7. All proposed changes to the subject property, including grading, vegetation removal, temporary or permanent roads and driveways, storm water management facilities and any other construction or development attendant to the communication tower;

b. Type of tower and specifics of design. Such information shall include all of the following:
1. Scaled renderings of elevations depicting the design of the tower and associated equipment including but not limited to the antennas, mounts, equipment shelters, cable as well as cable runs, fencing, landscaping and security barrier, if any.

2. A statement that the proposed tower, within a reasonable period following the completion of construction, will be used for the provision of wireless communications services. If the applicant or tower owner is not a carrier or provider of wireless communications services, the application shall include appropriate documentation confirming that the tower will be used for the attachment of wireless communications facilities for the provision of wireless communications services. Such documentation may include a lease or license, with confidential information redacted, between the tower owner and a carrier or provider of wireless communications services. The Administrative Official may deny an application that does not contain satisfactory information to demonstrate that a communication tower will be used for wireless communications service.

3. Materials of the proposed tower specified by generic type and specific treatment (i.e., anodized aluminum, stained wood, painted fiberglass, etc. These shall be provided for the antennas, mounts, equipment shelters, cable as well as cable runs, and security barrier, if any.

4. Colors of the proposed tower represented by a color board or equivalent showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment buildings, cable as well as cable runs, and security barrier, if any.

5. Dimensions of the tower specified for all three (3) directions: height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters and security barrier, if any; and

6. An accurate visual impact analysis, with a minimum of two (2) photo digitalization or photographic superimpositions of the tower within the subject property. The photo digitalization or photographic superimpositions shall be provided for all attachments, including: the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any for the total height, width and breadth, as well as at a distance of two hundred fifty (250) feet and five hundred (500) feet from the subject property line or leased area from all properties within that range, or at other points agreed upon in a pre-application conference.
7. Prior to issuance of a building permit, current wind-loading capacity and a projection of wind-loading capacity using different types of antennas as contemplated by the applicant. No communication tower shall be permitted or be permitted to be modified so as to exceed its wind-loading capacity.

8. A statement that the proposed tower, including reception and transmission functions, will not interfere with the customary transmission or reception of radio, television or similar services as well as other wireless services enjoyed by adjacent residential and nonresidential properties.

9. Specification on decibel levels produced by on-site generator and statement that the proposed generator as constructed will not exceed the applicable noise threshold set forth in Chapter 42, Article IV of the Code of Ordinances.

c. Non-interference with Public Safety Communications Facilities. A wireless communication facility shall not create interference with any public safety communication facility. Any application for a wireless communications facility or tower pursuant to this Chapter 16, Section 9 shall include a certification from a licensed engineer that the proposed facility is not expected to interfere with or obstruct transmissions to and from existing public safety communications facilities. In the event that the city manager or his/her designee determines that a proposed wireless communications facility or tower interferes with a public safety communications facility or public safety communications, the city manager or his/her designee may recommend denial of the application and set forth in writing the reasons for the recommendation of denial. In the event that a constructed wireless communications facility or tower does interfere with public safety communication facilities, it shall be the responsibility of the owner and/or permittee of the wireless communications facility or tower which creates the interference or obstruction to make all necessary repairs, and/or accommodations to alleviate the problem at the owner/permittee's expense. The City shall be held harmless in this occurrence. To the extent not inconsistent with applicable law, if the service provider refuses to rectify interference within twenty-four (24) hours of receiving notice, said violation shall be considered a zoning violation and all applicable remedies thereto may be imposed for such violation. In addition, the City may, in addition to the foregoing, file a complaint with the FCC for resolution and/or seek an injunction and pursue other actions including criminal sanctions against the service provider pursuant to Florida law, including but not limited to Florida Statutes, §§ 843.025 and 843.165. Any person who is found to have violated this chapter shall be subject to sanctions as provided by applicable law.
d. For all towers and antennas attached to existing structures, a statement shall include certification that the structure can support the load superimposed from the communication tower and antennas. Except where provided herein, all towers shall have the capacity to permit multiple users; at a minimum, monopole towers shall be able to accommodate two (2) users and, at a minimum, lattice or guyed towers shall be able to accommodate three (3) users.

e. Any additional information reasonably deemed necessary by the City to assess compliance with this Code and applicable law.

(5) Special fee. In addition to the application fee, the City shall have the right to retain independent consultants and/or experts that it deems necessary to properly evaluate applications for communication towers. The special fee shall be based upon the reasonable hourly rate of the independent consultant and/or expert the City deems necessary to properly evaluate applications for a tower or towers. The special fee shall be applied to those applications requiring special assistance, review or evaluation. The special fee shall be paid by the applicant to the City by the deadline established by the City. An application in which the applicant has not paid the special fee by the deadline established by the City shall be considered incomplete and the City may suspend processing such application or may deny such application.

(6) The City shall grant or deny each properly completed application for a communication tower or any wireless communications facility, that does not constitute an eligible facilities modification, based on the applicant's compliance with the City's applicable regulations, including but not limited to land development regulations, consistent with this subsection and within the normal time frame for a similar type of review but in no case later than ninety (90) business days for a new communication tower or antenna and forty-five (45) business days for co-location of an antenna after the date the application is determined to be properly completed in accordance with this section.

(7) Completeness of Applications.
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 the City's regulations within twenty (20) business days after the date the application is initially submitted or additional information resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination shall not be deemed as an approval of the application. If the application is not completed in compliance with the City's regulations, the City shall so notify the applicant in writing and the notification must indicate with specificity any deficiencies in the required documents or deficiencies in the content of the required documents or deficiencies in the content of the required documents which, if cured, make the application properly completed. Upon resubmission of
information to cure the stated deficiencies, the City shall notify the applicant, in writing, within the normal time frame of review, but in no case longer than twenty (20) business days after the additional information is submitted, of any remaining deficiencies that must be cured. Deficiencies in document type or content not specified by the City do not make the application incomplete. Notwithstanding this subparagraph, if a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the City may continue to request the information until such time as the specified deficiency is cured. The City may establish reasonable time frames within which the required information to cure the application deficiency is to be provided or the application will be considered withdrawn or closed.

(8) Supplements to Applications.
If an application is subject to a state or federal timeframe for review and determination (i.e. “shot clock”), to allow sufficient time for review, an applicant may not submit corrected, new or supplemental materials without the consent of the administrative official, unless an applicant was notified that the application was incomplete. The administrative official may determine not to review or to provide comment on corrected, new or supplemental materials after the application is scheduled for a public hearing without good cause.

(9) The time frames specified in this Chapter 16, Section 9 may be extended by the City only to the extent that the application has not been granted or denied because the City's procedure generally applicable to all other similar types of applications permits, require action by the city manager and such action has not taken place within the time frames specified. Under such circumstances, the City will act to either grant or deny the application at its next regularly scheduled meeting. The City may request, but not require, a waiver of the timeframes by the applicant, except that, with respect to a specific application, a one-time waiver may be required in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the City. The applicant and City may mutually agree to waive the timeframes set forth in this Section.

(10) Variances.
(a) Applicants may file an application for a variance to the setback, separation and other provisions of this Chapter 16, Section 9, on the form that may be provided by the City with the appropriate review fee. A pre-application conference is required prior to submitting the variance application. The City Administrative Official may waive this mandatory pre-application conference when the application is simple and good cause is shown by the applicant. Notwithstanding other provisions of the City Land Development Code, the City Council shall hear applications for variances to the provisions of this Chapter 16, Section 9, at a public hearing to the extent not prohibited by applicable law.
(b) A request for a variance shall be filed either prior to or contemporaneously with the application. The request for variance shall contain each provision
for which a variance is sought. A request for a variance shall include the following information:

1. A detailed explanation, with supporting engineering information by a licensed engineer or other data as applicable, as to why a variance from the requirements of this Chapter 16, Section 9 is required, including a detailed explanation addressing the relevant engineering criteria;

2. What special conditions exist that create an unreasonable hardship or practical difficulty with complying with the specific requirements for which a variance is requested;

3. Nature and characteristics of the surrounding neighborhood;

4. The impact the variance would have on the surrounding neighborhood, including photo simulations if applicable;

5. Whether the variance requested arises from a condition that is unique and peculiar to the land involved and is not created by the actions of the property owner or applicant;

6. If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed wireless communications facility or within the surrounding neighborhood;

7. Design of the proposed wireless communications facility with particular reference to achieving compatibility with the surrounding neighborhood and eliminating adverse visual impacts;

8. Whether there is an alternative location or wireless communications facility that would not require a variance or would have less impact than the requested variance;

9. Any other information the City may reasonably require to process the request for variance.

c. It is the City’s intention that the City’s requirements shall not prohibit or have the effect of prohibiting the provision of personal wireless services in violation of federal law, specifically 47 U.S.C. Sections 253(a) and 332(c)(7)(B)(i)(II). If an applicant maintains that compliance with one or more of the provisions of this Chapter 16, Section 9 will prohibit or have the effect of prohibiting the provision of wireless services in violation of federal law, in addition to addressing the criteria above in the application for a variance, the applicant shall include an affidavit from a licensed engineer specifying in detail why such restriction would prohibit or have the effect of prohibiting the provision of personal wireless service and what modifications or exemptions, if any, to the provisions of this Chapter 16, Section 9 may be necessary.

d. Procedures for Processing Variance Applications.

1. To the extent consistent with applicable law, the timeframes set forth in this Chapter 16, Section 9 for processing applications for wireless communications facilities shall not apply to applications for variances. If the applicant takes the position that applicable state or
federal law mandates a specific timeframe for processing the application for a variance, the applicant shall include such information in its application, with citation to the applicable provision setting the timeframe. The timeframes set forth in this Section 9(d)(10) may be extended by mutual consent of the applicant and City or by the City in the event of a force majeure event with impacts the City’s permitting processes. Applications that have been scheduled for a hearing by the City Council may be continued by the City Council. The City may engage its own licensed engineer and consultants, at the applicant’s expense, to assist the City’s review and processing of the application.

2. The City Administrative Official shall review an application for a variance for completeness and shall notify the applicant as to whether the application is complete or additional information is required within thirty (30) days.

3. Notwithstanding the language in Chapter 19 of the City Land Development Code, the City Council shall consider the information as applicable identified above in Chapter 16, Section 9(d)(10)b. for a variance to Chapter 16, Section 9.

4. Special requirements for variances from the setback requirements or to the separation requirements to habitable residential structures, and to vacant residentially zoned land. No variance shall permit a separation or setback distance that will be detrimental or injurious to surrounding properties or will endanger public safety.

5. The City Administrative Official, may, in the exercise of discretion, or at the request of the applicant, schedule a variance application for a public hearing by the Planning Commission to make a recommendation to the City Council. Applications to construct a communications tower or antennas in a zoning district where such wireless communications facility may only be permitted by variance shall require a public hearing before the Planning Commission, which shall make a recommendation to the City Council.

6. The City Council shall consider an application for a variance at a public hearing to be held within ninety (90) days of submission of a complete application. The City Council may grant, grant with conditions or deny the application for variance by resolution that shall be provided to the applicant substantially contemporaneously with the decision. If denied, the resolution shall include a basis for the denial.

(11) No person shall commence construction of a wireless communications facility including a communications tower prior to obtaining a building permit.
Specific Regulations and Procedures for Proposed Facilities Modification Applications.

(1) The City shall approve Proposed Facilities Modification Applications that do not result in a substantial change of a tower or base station and comply with the requirements as set forth in this subsection.

(2) This subsection shall not apply to proposed facility modifications to an eligible support structure that is not a legal conforming, or legal nonconforming structure at the time a completed eligible facilities modification application is filed with the City.

(3) This subsection shall not apply to a proposed facility modification to a structure, other than a tower, that does not, at the time of submittal of the application, already house or support transmission equipment lawfully installed within, or upon, or attached to, the structure.

(4) Eligible Facilities Modification Application Requirements. Applications for eligible facilities modification must meet the following standards:

a. All applications for eligible facilities modification shall be in writing and accompanied by the applicable application and fee established by resolution of the City Council and attested to by the authorized person submitting the application on behalf of the applicant, certifying the truth and accuracy of the information provided in the application.

b. No application for eligible facilities modification shall be approved unless it includes the following information:
   1. The legal and dba names, mailing address, tax Identification number, and contact phone number(s) of applicant.
   2. If a corporation, the name and address of the registered agent of applicant in the State of Florida and the State of incorporation of the applicant.
   3. If applicant is an entity, other than a corporation, such a partnership or limited liability company, the names and business addresses of the principles.
   4. An assertion that the proposed facilities modification is subject to review under Section 6409 of the Spectrum Act and that the modification does not constitute a substantial change to the tower or base station.
   5. If the applicant is not the owner or person in control of the eligible support structure and/or site, the following shall be required:
(i) An attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facilities modification.

(ii) If the eligible support structure is located in a public right of way, the Applicant must also attest that Applicant has authorization to install, maintain and operate transmission equipment in, under and above the public right of way.

6. If the applicant proposes a modification that will result in an increase in height of the eligible support structure, the application shall include record drawings, as built plans, or the equivalent, showing the height of the eligible support structure, (1) as originally constructed and granted approval by the City or other applicable local zoning or similar regulatory authority, or (2) as of the most recent modification that received City, or other local zoning or regulatory approval, prior to the passage of the Spectrum Act, whichever height is greater.

7. If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by a reviewing official or decision-making body pursuant to authority granted under the City Code, or an ordinance or a municipal code of another local government authority, the application shall include a copy of the document (e.g., permit or conditional approval) setting forth such pre-existing restrictions or requirements together with a certification that the proposed facilities modification conforms to such restrictions or requirements; provided that, such certification shall have no application to the extent the proposed facilities modification relates solely to an increase in height, increase in width, addition of cabinets, or new excavation, that does not result in a substantial change in the physical dimensions of the eligible support structure.

8. If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the following shall be required:

(i) Applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure.

(ii) If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure.
applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.

9. If the applicant proposes a modification that will protrude from the edge of a non-tower eligible support structure, the application shall include record drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification.

10. If the applicant proposes a modification to an eligible support structure that will include any excavation or would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower, or would protrude from the edge of a non-tower eligible support structure, the following shall be required:

   (i) A description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in relation to the tower or base station proposed to be modified and depicting the proposed location, elevation and dimensions of the new or replacement transmission equipment.

   (ii) The City may require a survey by a land surveyor licensed in the state of Florida when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure.

11. If the applicant proposes a modification to the eligible support structure that includes hardening through structural enhancement, the following shall be required:

   (i) A technical report by a qualified licensed engineer, demonstrating that the structural enhancement is performed in connection with and is necessary to support the proposed co-location, removal, or replacement of transmission equipment and conforms to applicable code requirements.

   (ii) The City may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant’s demonstration of necessity.
12. If the applicant proposes a modification to a tower, the following shall be required:
   (i) A stamped report by a licensed engineer demonstrating that the tower with the proposed modifications will comply with applicable structural, electrical and safety codes, including by way of example, and not limitation, EIA/TIA-222-Revision G, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications, including:
      i. The number and type of antennas that can be accommodated;
      ii. The basis of calculation of capacity; and
      iii. A written statement that the proposed complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC, including but not limited to nonionizing electromagnetic radiation (NIER) standard.
   (ii) The City may retain, at the expense of the applicant, the services of an independent technical expert to review, evaluate and provide an opinion regarding the applicant’s demonstration of compliance.

13. If the applicant proposes a modification to a base station, the application shall include a stamped report by a Florida licensed engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical and safety codes.

14. If the applicant proposes a modification requiring, alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, the following shall be required:
   (i) A detailed site plan and drawings, showing the true north point, a graphic scale and, drawn to an appropriate decimal scale, indicating and depicting:
      i. The location, elevation and dimensions of the existing eligible support structure;
      ii. The location, elevation and dimensions of the existing transmission equipment;
      iii. The location, elevation and dimensions of the transmission equipment, if any, proposed to be
collocated or that will replace existing transmission equipment.

iv. The location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each;

v. Any proposed modification to the eligible support structure,

vi. The location of existing structures on the site, including fencing, screening, trees, and other significant site features, and

vii. The location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

15. Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE), Section 1.1307, as amended, or, in the event that an FCC environmental assessment is not required, a statement that described the specific factors that obviate the requirement for an environmental assessment.

(5) Review of Application.

a. The City shall review applications for Eligible Facilities Modification pursuant to this section, to determine whether the application qualifies.

b. The City shall notify the applicant within thirty (30) days after the date the application is initially submitted or additional information resubmitted, whether the application is properly completed in compliance with the City’s requirements. If the application is not completed in compliance with the City’s requirements, the City shall so notify the applicant in writing delineating all missing documents and information required in the application that if are cured would deem the application properly completed.

c. Upon resubmission of information to cure the stated deficiencies, the City shall notify the applicant, in writing, no later than 10 days after the additional information is submitted, of any remaining deficiencies that must be cured, delineating missing information. If a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the City may continue to request the information until such time as the specified deficiency is cured, or may establish a reasonable time frame within which the required information to cure the application deficiency is to be provided. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified
herein. If the curative information is not provided within such time frame, the application will be considered withdrawn or closed and the application will be denied.

d. **Completeness review; time limitation.** The City shall grant or deny a properly completed application for Eligible Facilities Modification within sixty (60) days of the date of the applicant’s submission of an application seeking approval under this subsection (e), after it is determined to be properly completed. An application is deemed submitted or resubmitted on the date the application is received by the City. The sixty (60) day review period begins to run when the application is filed and may be tolled by mutual agreement of the City and the applicant or in cases where the City determines that the application is incomplete. The timeframe is not tolled by a moratorium on review of applications.

(6) Eligible Facilities Modification Permit: An eligible facilities modification permit issued pursuant to this subsection, and any deemed approved application, shall be valid for a term of 180 days from the date of issuance, or the date the application is deemed approved.

(f) **Public Safety Considerations.**

(1) **Building Codes/Safety Standards.** The construction, maintenance, operation and repair of communications facilities are subject to the supervision of the City to the extent not otherwise prohibited by F.S. § 365.172, the Telecommunications Act of 1996, or the Spectrum Act, and shall be performed in compliance with all applicable laws, ordinances, departmental rules and regulations and practices affecting such structures including, but not limited to, land development codes, building codes, and safety codes, and as provided below.

a. All communication towers must meet or exceed current standards and regulations of the FAA, the FCC, OSHA including radio frequency emission standards and regulations of the state or federal government with the authority to regulate towers. If such applicable standards and regulations are changed, then the owners or operators of the communication towers governed by this Ordinance shall bring such towers and antennas into compliance with such revised standards within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Unless otherwise prohibited by applicable federal or state law, failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute a violation of this Ordinance and grounds for the removal of the tower at the expense of the owner. All owners and operators of communication towers and their contractors shall comply with applicable Occupational Safety and Health Administration (OSHA) standards and
regulations and standards and regulations of any other agency of the federal
government with the authority to regulate communications facilities.

b. To ensure the structural integrity of communication towers, the owner shall
construct and maintain the communication tower in compliance with all
applicable building codes, other applicable codes and standards as amended
from time to time. A statement shall be submitted to the City by a licensed
engineer certifying compliance with this subsection. Where a preexisting
structure, including light and power poles, is requested as a camouflage
facility by the owner, the facility, and all modifications thereof, shall
comply with all requirements as provided in this section.

c. Although the City will not require wireless providers to provide evidence
of a wireless communication facility's compliance with federal regulations
except evidence of compliance with applicable FAA requirements, and
evidence of proper FCC license or other evidence of FCC authorized
spectrum use, the City may request the FCC to provide information as to a
wireless provider's compliance with federal regulations, as authorized by
federal law.

(2) Temporary communication towers.

a. Notwithstanding any other provisions of this Chapter 16, Section 9, the
administrative official may allow the installation of a temporary
communication tower including a cell-on-wheels in accordance with the
following:

1. During documented states of emergency as declared by the City,
2. To continue the provision of personal wireless service during
construction or maintenance of a wireless communications facility,
3. For testing purposes,
4. For city-recognized special events, or
5. As otherwise authorized by the FCC, the State or the City.

b. The administrative official is limited to allowing the installation of each
temporary communication tower for up to thirty (30) total days. Approval
by the administrative official of a COW or temporary communication tower
on City property shall not convey any title, equitable or legal, in City
property. The City Council may extend the period of time in which a
temporary communication tower is allowed for good cause by resolution.
The owner of the temporary communication tower shall agree to
indemnify the City and shall provide appropriate evidence of insurance
and the security fund in compliance with this chapter.

(3) Security Fund. Every communication facility operator or owner shall establish a
cash security fund, or provide the City with an irrevocable letter of credit acceptable
to the City Attorney in the same amount, to secure the cost of removing a
communication tower, an antenna, antenna array, or equipment cabinet that has
been determined to be abandoned, in the event the owner fails to comply with the
provisions of this chapter. The security fund shall be submitted to the City prior to
the issuance of a building permit and shall be returned to the operator or owner
upon the removal of the applicable communications facility, less any amounts
drawn down by the City as provided herein. The amount of the cash security fund
or letter of credit to be provided as follows:

<table>
<thead>
<tr>
<th></th>
<th>For each communication tower, cell-on-wheels, temporary communication tower</th>
<th>$25,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>For each set of co-located or attached communication provider’s antenna or antenna array; for each set of equipment enclosures, cabinets or buildings associated with antennas</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

(4) Indemnification and insurance requirements.

a. Indemnification

1. The City shall not enter into any lease agreement or otherwise allow tower siting by a communication service provider until and unless the City obtains adequate indemnification from such provider. This indemnification must at least:

2. Release the City from and against any and all liability and responsibility in or arising out of the construction, operation, or repair of the communication facility. Each communication facility operator must further agree not to use or seek any money or damages from the City in connection with the above-mentioned matter;

3. Indemnify and hold harmless the City, its elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorney's fees, liabilities, damages, orders, judgments or decrees, sustained by the City or any third party arising out of, or by reason of, or resulting from, or out of each communication facility operator's, or its agent's, employee's, or servant's negligent acts, errors, or omissions; and,
4. Provide that the covenants and representations relating to the indemnification provision shall survive the term of any agreement and continue in full force and effect as to the responsibility of the party to indemnify.

b. Insurance

1. The City may not enter into any lease agreement, or otherwise authorize a tower site by any communication service provider until and unless the City obtains assurance that such operator (and those acting on its behalf) have adequate insurance as determined by the City Risk Manager. At a minimum, the following insurance requirements shall be satisfied:

   (i) A communication facility operator shall not commence construction or operation of the facility without obtaining all insurance required under this section and approval of such insurance by the City Personnel/Risk Manager, nor shall a communication facility operator allow any contractor or subcontractor to commence work on its contract or subcontract until all similar such insurance required of the same has been obtained and approved by the City Personnel/Risk Manager. The required insurance must be obtained and maintained for the entire period the communications facility is in existence. If the operator, its contractors or subcontractors do not have the required insurance, the City may order such entities to cease operation of the facility until such insurance is obtained and approved.

   (ii) Certificate(s) of such insurance, reflecting evidence of the required insurance shall be filed with the City personnel/Risk Manager. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage.

   (iii) The certificate(s) of insurance shall contain a provision that coverages afforded under such policies shall not be cancelled until at least thirty (30) days prior written notice has been given to the City. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida.

   (iv) Where applicable, in the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the term of the lease agreement with the City, then in that event the communication facility operator shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of
insurance as proof that equal and like coverage remains in effect for the balance of the lease term.

(v) A communications facility operator and its contractors or subcontractors engaged in work on the operator's behalf, shall maintain minimum insurance, in the amounts determined by the City Personnel/Risk Manager, to cover liability, bodily injury and property damage. The insurance shall cover the following exposures: premises, operations, and certain contracts. Such coverage shall be written on an occurrence basis and shall also be required under any lease agreement between the City and the communication facility operator.

(5) **Removal of Abandoned Wireless Communication Towers, Facilities and Antennas.** Any communication tower, wireless communication facility or antenna that is not used or operated for a continuous period of six (6) consecutive months shall be considered abandoned, and the owner or operator of such communication tower, facility or antenna shall remove the same at its cost within ninety (90) days of receipt of notice from the City notifying the owner of such abandonment and in accordance with applicable permits. Failure to remove an abandoned communication tower, facility or antenna within the ninety (90) days shall be grounds for the City to remove the tower, facility, or antenna at the expense of the owner or for the City to allow another person to remove the facility at the owner’s expense. Following notice to the owner, the City may draw down the security fund to pay for the costs of removal. The owner of the communication facility shall be responsible for all damage to property, facilities or utilities damaged as a result of such removal and shall restore or pay for restoration as required in the City code. If there are two (2) or more users of a single communication tower or facility, the communication tower or facility shall not be considered abandoned until all users cease using the communication tower or facility for a continuous period of six (6) consecutive months. Upon determination by a tower, facility or antenna owner that its tower, facility or antenna is to be abandoned, the owner shall notify the City no later than ninety (90) days from such determination, or no later than thirty (30) days following such abandonment, whichever is sooner. The City may independently establish that a wireless communications facility has been abandoned. In reaching such determination, the City may request documentation and/or affidavits from the owner of the wireless communications facility regarding the active use of the facility. If the owner fails to provide the requested documentation within thirty (30) days, a rebuttable presumption shall exist that the owner has abandoned the wireless communications facility.

(6) **Amateur Radio Antennas And Support Apparatus Utilized By FCC Licensed Amateur Radio Operator.**

a. Applicability and Findings: Amateur radio antennas and their support apparatus are subject solely to the regulations contained in this subsection to the extent not inconsistent with applicable federal or state law, and are
not subject to other provisions of this Chapter, including but not limited to priority siting, setback, camouflage and separation requirements. The City Council recognizes that the amateur radio service is a voluntary, noncommercial communication service that plays an important role in providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. Accordingly, the regulations adopted herein are designed to protect the ability to operate amateur radio antennas while protecting important public safety and aesthetic interests.

b. Amateur radio antennas and their support apparatus shall be limited to maximum height measured from the finished grade of the parcel to the highest point of the amateur radio antenna of 70 feet except where a higher antenna is allowed pursuant to the FCC’s preemptive ruling PRB-1 (Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, Memorandum Opinion and Order, PRB-1, 101 FCC 2d 952 (1985) (PRB-1)) and provided that an administrative determination is made by the City Administrator or designee, based on evidence submitted by the applicant, that the proposed height is technically necessary to engage in amateur radio communications.

c. A building permit from the City shall be required for the installation or substantial modification to the installation of an amateur radio antenna and its support apparatus. A building permit shall not be required for:
   1. Adjustment, replacement or repair of the elements of an amateur radio antenna array affixed to the antenna support apparatus;
   2. Amateur radio antenna facilities erected temporarily for less than 24 hours for test purposes or for emergency communications; or
   3. Co-location of additional amateur radio antenna on an existing amateur radio antenna support apparatus installed pursuant to a permit or pre-existing amateur radio antenna support apparatus installed prior to the effective date of this Ordinance.

d. The following requirements shall apply provided they do not prohibit the operation of the amateur radio antennas.
   1. Building site location. Amateur radio antennas and their support apparatus shall be located behind the required primary/principal building within the rear and interior side yard of the property. They are prohibited within the front and side street yard areas. Amateur radio antennas and their support apparatus shall not be installed in City public rights-of-way.
   2. Setbacks. Amateur radio antennas and their support apparatus shall maintain the same rear and side setbacks as required for the principal
building of the building site and shall be installed a minimum of eight (8) feet from any overhead utility line(s) and power line(s). Where such amateur radio antennas and their support apparatus are located on a building site which is fronting upon two or more streets and/or alleys, the amateur radio antennas and support apparatus shall maintain the same primary/principal building setback as required from each such street or alley.

3. As with the height limit, the administrative official or designee may allow an exception to the building site location and setback requirements if technically necessary to engage in amateur radio communications.

e. Installation. The installation or substantial modification of an amateur radio antennas and their support apparatus and foundation shall be in accordance with the manufacturer's prescribed installation and safety procedures and shall meet all applicable City, State and Federal requirements, as amended including but not limited to the Florida Building Code, City Code, National Electric Code and FCC regulations.

f. Notwithstanding the provisions of this subsection, existing amateur radio antennas and their support apparatus, installed prior to the effective date of this Ordinance shall be allowed to continue operations and to undergo routine maintenance without having to comply with the provisions of this Ordinance. Existing amateur radio antennas and their support structures installed prior to the effective date of this Ordinance shall not require a permit unless they are being replaced or substantially modified.

(g) Enforcement. Any person, firm or corporation who knowingly breaches any provision of this Chapter 16, Section 9, as it may be amended shall upon receipt of written notice from the City be given a time schedule to cure the violation. Failure to commence to cure within thirty (30) days and to complete a cure, to the City's satisfaction, within sixty (60) days, or such longer time as the City may specify, shall result in revocation of any permit or license and the City shall seek any remedy or damages to the full extent of the law. This shall not preclude other penalties allowed by law.

SECTION 4. The City Council hereby amends CHAPTER 18, Conditional Uses, Special Exceptions and Permitted Uses with Special Development Requirements, SECTION 3, Special requirements for special exception uses, (b) Special requirements, (25) Communication towers (guayed, lattice and monopole) (A, AP, RR, RMH, R-2D, NP, R-7SF, R-8SF, R-10SF, R-20SF, R-3L, R-3M, R-3H, PO, NC, CC, HC, ICD, CI, RD, GPU), to delete subsection 25 in its entirety as follows:

3 Words stricken through are intended to be deleted; words underlined are intended to be added.
(25) Communication towers (guyed, lattice and monopole) (A, AP, RR, RMH, R-2D, NP, R-7SF, R-8SF, R-10SF, R-20SF, R-3L, R-3M, R-3H, PO, NC, CC, HC, ICD, CI, RD, GPU).

In residential districts (A, AP, RR, RMH, R-2D, NP, R-7SF, R-8SF, R-10SF, R-20SF, R-3L, R-3M, R-3H), the design of the communication tower shall be camouflaged, unless a camouflaged design is impractical due to structural height limitations associated with the camouflaged communication tower design. If the city determines that a camouflaged design is impractical due to such limitations, the permitted tower shall be monopole unless a monopole design is impractical due to structural height limitations associated with the monopole design. If the city determines that a monopole design is impractical due to such limitations, the permitted tower shall be lattice unless a lattice design is impractical due to structural height limitations associated with the lattice design.

SECTION 5. The City Council hereby amends CHAPTER 16, Miscellaneous Regulations, SECTION 4, Height, to delete the following:

(b) Established height for specific structures:

<table>
<thead>
<tr>
<th>Structure Type</th>
<th>Height</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antenna and tower:</td>
<td></td>
</tr>
<tr>
<td>(receive only, two-way dispatch and amateur radio)</td>
<td></td>
</tr>
<tr>
<td>Residential uses</td>
<td>40 feet</td>
</tr>
<tr>
<td>Nonresidential uses</td>
<td>70 feet</td>
</tr>
</tbody>
</table>

| Communication tower (including mounted antenna) | 300 feet, except as provided in Section 9 paragraph 9(c)(4) of this chapter |

SECTION 6. The City Council hereby amends CHAPTER 16, Miscellaneous Regulations, SECTION 5, Special Setbacks, as follows:

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4 Words **stricken through** are intended to be deleted; words **underlined** are intended to be added.

5 Words **stricken through** are intended to be deleted; words **underlined** are intended to be added.
SECTION 7. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 1, as follows:

Section 1: - In general.

(a) Dimensional requirements for each zoning district, except NP and GPU districts, are specified in the table in section 27 of this chapter, entitled "schedule of dimensional requirements."

(b) Accessory uses and structures for each zoning district are those customarily associated with, dependent on, and incidental to the principle uses permitted in that district. Provisions regarding accessory uses and structures are addressed in chapter 16 of this code.

(c) Special exception uses for each district shall be permitted in accordance with provisions for such in chapter 18, sections 2 and 3 of this code. The subsection number indicated in parenthesis following each use listed below in this chapter refers to the additional criteria for that use, described in chapter 18, section 3.

(d) Permitted uses with special development requirements shall be permitted in accordance with the applicable provisions of chapter 18, section 4 of this code. The subsection number indicated in parentheses following each use listed below in this chapter refers to the special development requirements for that use described in chapter 18, section 4.

(e) No more than one single-family dwelling is permissible on any lot or lot of record within the following zoning districts: Agriculture (A), Agricultural Preservation (AP), Rural Residential (RR), Single-Family Residential (R-20SF), (R-10SF), (R-8SF), (R-7SF), Residential Mobile Home (RMH), Neighborhood Preservation (NP) and Planned Unit Development (PUD), unless specifically stated in the Master Development Agreement.

(f) Interim permitted use for agriculture uses. Any property that is in agricultural use at the time of rezoning shall be allowed to continue said agriculture uses, including agriculture: field crops/wholesale nurseries and/or agriculture: pasture/forestry, as an interim use on land that has not received final site plan or subdivision approval. However, livestock feeding pens, livestock feed lots, and poultry operations to include any feathered animals (e.g. chickens, emus, ducks, ostriches, etc.) are prohibited within 1,000 feet of proposed or existing development. Agricultural uses on any portion of land rezoned to a nonagricultural zoning category that has received final site plan and/or subdivision approval shall cease within 90 days after such approval.

(g) All land development regulations related to wireless communications facilities siting, including but not limited to a list of zoning districts in which such facilities are a permitted use, are only set forth in Chapter 16, Section 9 of this code.

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6 Words stricken through are intended to be deleted; words underlined are intended to be added.
Any use not specifically permitted herein shall be prohibited and any use prohibited by the Florida Statutes, the City of Port Orange, Florida, Code of Ordinances and Land Development Code shall be prohibited.

SECTION 8. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 4, as follows:

Section 4: - Agricultural preservation (AP) district.

(a) Purpose and intent. The agricultural preservation (AP) district is intended to preserve prime agricultural lands and provide opportunities for the continuance of agricultural pursuits.

(b) Permitted uses.

(1) Agriculture: field crops/wholesale nurseries.
(2) Agriculture: pasture/forestry.
(3) Agriculture: processing/hatcheries.
(4) Antennas.
(5) Camouflaged communication towers.
(6) Commercial stables.
(7) Single-family detached dwellings.

(bb) Permitted uses with special development requirements (chapter 18, section 4).

(1) Kennels (subsection 8).
(2) Community gardens (subsection 5.1).

(c) Special exception uses (chapter 18, section 3).

(1) Cemeteries (subsection 4).
(2) Farmers/flea markets (subsection 5).
(3) Guyed, lattice and monopole communication towers (subsection 5).
(4) Houses of worship (subsection 8).
(5) Mobile homes (subsection 11).
(6) Retail nurseries and garden supplies (subsection 19).
(7) Veterinary clinics (subsection 24).

SECTION 9. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 5, as follows:

Section 5: - Agricultural (A) district.

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Words **stricken through** are intended to be deleted; words **underlined** are intended to be added.

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Words **stricken through** are intended to be deleted; words **underlined** are intended to be added.
(a) **Purpose and intent.** The agricultural (A) district is intended to serve as an interim use agriculture area until development is proposed to a higher intensity land use, as indicated on the future land use map in the comprehensive plan.

(b) **Permitted uses.**
   
   (1) Agriculture: field crops/wholesale nurseries.
   
   (2) Agriculture: pasture/forestry.
   
   (3) Antennas.
   
   (4) Camouflaged communication towers.
   
   (5) Commercial stables.
   
   (6) Single-family detached dwellings.

(bb) **Permitted uses with special development requirements (chapter 18, section 4).**

   (1) Kennels (subsection 8).
   
   (2) Community gardens (subsection 5.1).

(c) **Special exception uses (chapter 18, section 3).**

   (1) Cemeteries (subsection 4).
   
   (2) Farmers/flea markets (subsection 5).
   
   (3) Guyed, lattice and monopole communication towers (subsection 5).
   
   (4) Houses of worship (subsection 8).
   
   (5) Private schools (subsection 16).
   
   (6) Retail nurseries and garden supplies (subsection 19).
   
   (7) Veterinary clinics (subsection 24).

**SECTION 10.** The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 6**, as follows:

Section 6: - Rural residential (RR) single-family residential district.

(a) **Purpose and intent.** The rural residential (RR) district is intended to provide low-density residential development in those areas only suitable for such development due to their location adjacent to agricultural areas, environmentally sensitive areas, or existing large lot residential development; or in those areas that, due to their inaccessibility from adequate urban services, fail to justify higher densities.

(b) **Permitted uses.**

   (4) **Antennas.**
Camouflaged communication towers.

Single-family detached dwellings.

(b) Permitted uses with special development requirements (chapter 18, section 4).

(1) Horses (subsection 7).

(2) Community gardens (subsection 5.1).

(c) Special exception uses (chapter 18, section 3).

(1) Guyed, lattice and monopole communication towers (subsection 5).

(2) Houses of worship (subsection 8).

SECTION 11. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 7, as follows:\n
Section 7: - R-20SF single-family residential district.

(a) Purpose and intent. The R-20 single-family residential district is intended to serve as a transitional zone between rural low density areas and medium/high density areas, both to protect agricultural pursuits and rural residences as well as to provide for desirable suburban residential densities.

(b) Permitted uses.

(1) Antennas.

(2) Camouflaged communication towers.

(3) Single-family detached dwellings.

(bb) Permitted uses with special development requirements (chapter 18, section 4).

(1) Community gardens (subsection 5.1).

(c) Special exception uses (chapter 18, section 3).

(1) Guyed, lattice and monopole communication towers (subsection 5).

SECTION 12. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 8, as follows:\n
Section 8: - R-10SF single-family residential district.

(a) Purpose and intent. The R-10SF single-family residential district is intended to protect existing suburban development and provide for future development of a similar nature, where locations away from urban activity centers suggest suburban densities.

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10 Words **stricken through** are intended to be deleted; words *underlined* are intended to be added.

11 Words **stricken through** are intended to be deleted; words *underlined* are intended to be added.
(b) \textit{Permitted uses}.

(1) Antennas.

(2) Camouflaged communication towers.

(3) Single-family detached dwellings.

(bb) Permitted uses with special development requirements (chapter 18, section 4).

(1) Community gardens (subsection 5.1).

(c) \textit{Special exception uses} (chapter 18, section 3).

(1) Guyed, lattice and monopole communication towers (subsection 5).

\textbf{SECTION 13.} The City Council hereby amends \textsc{CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 9}, as follows:\textsuperscript{12}:

\textbf{Section 9:} - R-8SF single-family residential district.

(a) \textit{Purpose and intent}. The R-8SF single-family residential district is intended to provide for smaller lot single-family residences in areas located near urban activity centers.

(b) \textit{Permitted uses}.

(1) Antennas.

(2) Camouflaged communication towers.

(3) Single-family detached dwellings.

(bb) Permitted uses with special development requirements (chapter 18, section 4).

(1) Community gardens (subsection 5.1).

(e) \textit{Special exception uses} (chapter 18, section 3).

(1) Guyed, lattice and monopole communication towers (subsection 5).

\textbf{SECTION 14.} The City Council hereby amends \textsc{CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 9.5}, as follows:\textsuperscript{13}:

\textbf{Section 9.5:} - R-7SF single-family residential district.

(a) \textit{Purpose and intent}. The R-7SF single-family residential district is intended to provide for medium-density, smaller-lot residences in existing neighborhoods located near urban activity centers.

(b) \textit{Permitted uses}.

(1) Antennas.

\textsuperscript{12} Words \textit{stricken through} are intended to be deleted; words \textit{underlined} are intended to be added.

\textsuperscript{13} Words \textit{stricken through} are intended to be deleted; words \textit{underlined} are intended to be added.
(2) Camouflaged communication towers.

(31) Single-family detached dwellings.

(bb) Permitted uses with special development requirements (chapter 18, section 4).

(1) Community gardens (subsection 5.1).

(c) Special exception uses (chapter 18, section 3).

(1) Garage apartments (subsection 7.5).

(2) Guyed, lattice and monopole communication towers (subsection 25).

(32) Houses of worship (subsection 8).

(43) Private schools (subsection 16).

SECTION 15. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 10, as follows:

Section 10: - Two-family residential (R-2D) district.

(a) Purpose and intent. The two-family residential (R-2D) district is intended to provide relatively affordable, urban density housing, and it is intended to serve as a transitional zone between multifamily and single-family residential uses.

(b) Permitted uses.

(1) Antennas.

(2) Camouflaged communication towers.

(31) Two-family dwellings.

(bb) Permitted uses with special development requirements (chapter 18, section 4).

(1) Community gardens (subsection 5.1).

(2) Single-family dwellings (subsection 15.6).

(c) Special exception uses (chapter 18, section 3).

(1) Guyed, lattice and monopole communication towers (subsection 5).

(d) Single-family attached dwelling subdivision regulations.

(1) Utility easements allowing service to each unit shall be provided.

(2) Access easements for maintenance of common walls and other facilities shall be provided.

(3) Legal covenants, restrictions and similar provisions for the joint maintenance of structure shall be submitted to the department to be recorded contemporaneously with the plat.

14 Words struck through are intended to be deleted; words underlined are intended to be added.
(4) Where two-family dwelling development is proposed, plans shall be presented for both units simultaneously.

SECTION 16. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 11, as follows

Section 11: - Low density multifamily residential (R-3L) district.

(a) Purpose and intent. The low density multifamily residential (R-3L) district is intended to provide low density multifamily development on relatively large tracts of land in single or common ownership.

(b) Permitted uses.

(1) Antennas.

(2) Camouflaged communication towers.

(3) Multifamily dwellings (eight units per gross acre maximum allowable density).

(bb) Permitted uses with special development requirements (chapter 18, section 4).

(1) Assisted living facilities (subsection 1).

(2) Child care centers (subsection 4).

(3) Clubs, lodges, and fraternal organizations (subsection 5).

(4) Nursing homes (subsection 10).

(5) Community gardens (subsection 5.1).

(c) Special exception uses (chapter 18, section 3).

(1) Guyed, lattice and monopole communication towers (subsection 5).

(2) Houses of worship (subsection 8).

(3) Private schools (subsection 16).

(d) Project access. Any R-3L district development shall have direct access to an arterial or collector road as designated under the functional classification system in the comprehensive plan.

(e) Building spacing requirements. Twenty-five feet between sides of buildings, 25 feet between sides and rears of adjacent buildings, 25 feet between fronts and sides of buildings, 50 feet between any combination of fronts or rears of adjacent buildings.

SECTION 17. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 12, as follows:

Section 12: - Moderate density multifamily residential (R-3M) district.

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15 Words struck through are intended to be deleted; words underlined are intended to be added.
16 Words struck through are intended to be deleted; words underlined are intended to be added.
(a) **Purpose and intent.** The moderate density multifamily residential (R-3M) district is intended to provide moderate density multifamily development on relatively large tracts of land in single or common ownership.

(b) **Permitted uses.**

(1) Antennas.

(2) Camouflaged communication towers.

(3) Multifamily dwellings (12 units per gross acre maximum allowable density).

(bb) **Permitted uses with special development requirements (chapter 18, section 4).**

(1) Assisted living facilities (subsection 1).

(2) Child care centers (subsection 4).

(3) Clubs, lodges, and fraternal organizations (subsection 5).

(4) Nursing homes (subsection 10).

(5) Community gardens (subsection 5.1).

(c) **Special exception uses (chapter 18, section 3).**

(1) Guyed, lattice and monopole communication towers (subsection 5).

(2) Houses of worship (subsection 8).

(3) Private schools (subsection 16).

(d) **Project access.** Any R-3M district development shall have direct access to an arterial or major collector road as designated under the functional classification system in the comprehensive plan.

(e) **Building spacing requirements.** Twenty-five feet between sides of buildings, 25 feet between sides and rears of adjacent buildings, 25 feet between fronts and sides of buildings, 50 feet between any combination of fronts or rears of adjacent buildings.

**SECTION 18.** The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 13,** as follows:

Section 13: - High density multifamily residential (R-3H) district.

(a) **Purpose and intent.** The high density multifamily residential (R-3H) district is intended to provide high density multifamily development on relatively large tracts of land in single or common ownership.

(b) **Permitted uses.**

(1) Assisted living facilities.

(2) Antennas.

(3) Camouflaged communication towers.

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17 Words *stricken through* are intended to be deleted; words *underlined* are intended to be added.
(42) Multifamily dwelling (16 units per gross acre maximum allowable density).

(bb) *Permitted uses with special development requirements (chapter 18, section 4).*

2. Clubs, lodges, and fraternal organizations (subsection 5).
3. Nursing homes (subsection 10).
4. Community gardens (subsection 5.1).

(c) *Special exception uses (chapter 18, section 3).*

1. Guyed, lattice and monopole communication towers (subsection 5).
2. Houses of worship (subsection 8).
3. Private schools (subsection 16).

(d) *Project access.* Any R-3H district development shall have direct access to an arterial road as designated under the functional classification system in the comprehensive plan.

(e) *Building spacing requirement.* Twenty-five feet between sides of buildings, 25 feet between sides and rears of adjacent buildings, 25 feet between fronts and sides of buildings, 50 feet between any combination of fronts or rears of adjacent buildings.

**SECTION 19.** The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 19,** as follows:

Section 19: - Professional office (PO) district.

(a) *Purpose and intent.* The professional office (PO) district is intended to provide areas for business, government, industry, medical, professional, or service offices.

(b) *Permitted uses.*

(1) Antennas.
3. Camouflaged and monopole communication towers.
(42) Financial services.
(53) Fleet-based services.
(64) Funeral homes (freestanding uses only).
(75) Medical office/clinics.
(86) Offices.
(97) Veterinary clinics.
(408) Xerographic and offset printing.

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18 Words *stricken through* are intended to be deleted; words *underlined* are intended to be added.
(bb) **Permitted uses with special development requirements (chapter 18, section 4).**

1. Assisted living facilities (subsection 1.5).
2. Banks (subsection 3).
5. Nursing homes (subsection 1.5).
6. Office supplies (subsection 11).
7. Office/warehouse facilities (subsection 12).
9. Personal services.
10. Restaurants.
11. Community gardens.

(c) **Special exception uses (chapter 18, section 3).**

1. Guyed and lattice communication towers.
2. Houses of worship (subsection 9).
3. Private schools (subsection 16).

**SECTION 20.** The City Council hereby amends [CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 20](#) as follows:

**Section 20: - Neighborhood commercial (NC) district.**

(a) **Purpose and intent.** The neighborhood commercial (NC) district is intended to provide for limited commercial uses within easy walking and biking distance of residential neighborhoods. Development standards and allowed uses are designed to insure compatibility with adjacent residential uses. Individual NC districts should generally be limited to a maximum area of two acres.

(b) **Permitted uses.**

1. **Antennas.**
2. Beauty/barber shops.
3. Camouflaged and monopole communication towers.
4. Convenience stores with or without fuel operations.
5. Laundry and dry cleaning retail stores.
6. Multi-tenant retail centers of six tenant spaces or less (the maximum size of any tenant space, excluding convenience stores, shall not exceed 2,500 square feet).

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Words **stricken through** are intended to be deleted; words **underlined** are intended to be added.
(75) Newsstands/bookstores.

(86) Offices.

(bb) **Permitted uses with special development requirements (chapter 18, section 4).**

   (1) Child care centers (subsection 4).
   (2) Restaurants (subsection (14).
   (3) Community gardens (subsection 5.1).

(c) **Special exception uses (chapter 18, section 3).**

   (1) Guyed and lattice communication towers.

(d) **Project access.** Any NC district development shall have direct access to an arterial or major collector road, as designated in the functional classification system in the comprehensive plan.

(e) **Off-street parking and driveway requirements.** No parking area or internal driveways shall be permitted in the front or side yard setbacks. Driveway connections shall be permitted in the front yard setback, in accordance with chapter 12 of this code.

SECTION 21. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 21**, as follows:

Section 21: - **Community commercial (CC) district.**

(a) **Purpose and intent.** The community commercial (CC) district is intended to provide for community scale businesses that customarily require freestanding buildings on individual sites.

(b) **Permitted uses.**

   (1) Adult/vocational education.
   (2) Antennas.
   (3) Appliance/electronic repair shops.
   (4) Banks.
   (5) Business services.
   (6) Clubs, lodges, and fraternal organizations.
   (7) Camouflaged and monopole communication towers.
   (8) Convenience stores with or without fuel operations.
   (9) Financial services.
   (10) Fleet-based services.
   (11) Funeral homes.
   (12) Furniture and appliance stores.

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Words **stricken through** are intended to be deleted; words **underlined** are intended to be added.
(4311) Health/exercise clubs.
(4412) Medical offices/clinics.
(4513) Motor vehicle service stations.
(4614) Offices.
(4715) Office supplies.
(4816) Personal services.
(4917) Restaurants.
(2419) Retail nurseries and garden supplies.
(2220) Retail sales and services.
(2321) Veterinary clinics.

(bb) **Permitted uses with special development requirements (chapter 18, section 4).**

1. Athletic/sports facilities (subsection 2).
2. Brewery (subsection 3.7).
4. Craft food and beverage producer (subsection 5.15).
5. Community gardens (subsection 5.1).
7. Theaters (subsection 17).

(c) **Special exception uses (chapter 18, section 3).**

1. Bars, lounges, and night clubs (subsection 3).
2. Fortune tellers, astrologers, and palm readers (subsection 6).
3. Game/recreation facilities (subsection 7).

4. **Guyed and lattice communication towers.**

5. Marina, recreational (subsection 9.6).
7. Motor vehicle and boat storage facilities (subsection 12).

(d) **Project access.** Any CC district development shall have direct access to any arterial or major collector road, as designated in the functional classification system in the comprehensive plan.
SECTION 22. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 22, as follows:

Section 22: - Highway commercial (HC) district.

(a) *Purpose and intent.* The highway commercial (HC) district is intended to provide for highway oriented businesses, regional scale facilities, and those retail uses that are undesirable in close proximity to residential areas.

(b) *Permitted uses.*
   
   (1) Adult/vocational education.
   
   (2) **Antennas.**
   
   (3) Appliance/electronic repair shops.
   
   (4) Athletic/sports facilities.
   
   (5) Auction houses.
   
   (6) Banks.
   
   (7) Bars, lounges, and night clubs.
   
   (8) Boat sales.
   
   (9) Business services.
   
   (10) **Camouflaged and monopole communication towers.**
   
   (11) Commercial/industrial equipment and supplies.
   
   (12) Convenience stores with or without fuel operations.
   
   (13) Equipment rental.
   
   (14) Financial services.
   
   (15) Fleet-based services.
   
   (16) Fortune tellers, astrologers, and palm readers.
   
   (17) Furniture and appliance stores.
   
   (18) Game/recreation facilities.
   
   (19) Health/exercise clubs.
   
   (20) Hotels/motels.
   
   (21) Maintenance contractors.
   
   (22) Medical offices/clinics.
   
   (23) Mobile home sales.
   
   (24) Motor vehicle and boat storage facilities.

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21 Words *stricken through* are intended to be deleted; words *underlined* are intended to be added.
Motor vehicle sales.
Motor vehicle service centers.
Motor vehicle service stations.
Offices.
Office supplies.
Pawn shops.
Personal services.
Restaurants.
Retail home building materials.
Retail sales and services.
Tattoo establishment.
Theaters.
Truck/trailer/automobile rental.

(bb) Permitted uses with special development requirements (chapter 18, section 4).

(1) Brewery (subsection 3.7).
(2) Community gardens (subsection 1.5).
(3) Craft food and beverage producer (subsection 5.15).
(4) Laundry/dry cleaning plants (subsection 9).
(5) Microbrewery (subsection 9.57).
(6) Taxidermy (subsection 16).

(c) Special exception uses (chapter 18, section 3).

(1) Guyed and lattice communication towers (subsection 25).
(2) Mini-warehouses (subsection 10).
(3) Motor vehicle repair facilities (subsection 13).

(d) Project access. Any HC district development shall be located along or near the intersection of principal arterial roads where not adjacent to major residential areas and along an arterial road where adjacent to industrial areas, based on the functional classification system in the comprehensive plan.

SECTION 23. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 22.5, as follows:

Section 22.5: - Interchange commercial development (ICD) district.

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22 Words stricken through are intended to be deleted; words underlined are intended to be added.
(a) **Purpose and intent.** The interchange commercial development (ICD) district is intended to provide for a variety of land uses designed to meet the commercial needs of the local community, traveling motorist, and businesses within the adjoining commercial/industrial areas. The district is designed to meet the following objectives:

1. Provide for land uses generally situated at interstate interchanges;
2. Provide for land uses necessary for the development of sub-regional commercial nodes which serve both Port Orange and surrounding communities;
3. Provide for land uses necessary to accommodate the neighborhood and community commercial needs of the nearby residential neighborhoods;
4. Provide for the establishment of employment centers which offer professional, technical and skilled opportunities in addition to service-related positions;
5. Provide for flexibility to accommodate mixed-use development; and
6. Provide for innovative site and building design.

(b) **Permitted uses.**

1. **Antennas.**
2. Athletic/sports facilities.
4. Business services.
5. Camouflaged and monopole communication towers.
6. Clubs, lodges, and fraternal organizations.
7. Convenience stores with or without fuel operations.
8. Financial services.
10. Furniture and appliance stores.
11. Game/recreation facilities.
14. Medical offices/clinics.
15. Motor vehicle service stations.
17. Office supplies.
18. Personal services.
19. Restaurants.
20. Retail home building materials.
(219) Retail nurseries and garden supplies.

(220) Retail sales and services.

(221) Tattoo establishment.

(222) Theaters.

(223) Veterinary clinics.

(bb) Permitted uses with special development requirements (chapter 18, section 4).

(1) Brewery (subsection 3.7).

(2) Child care centers (subsection 4).

(3) Craft food and beverage producer (subsection 5.15).

(4) Community gardens (subsection 5.1).

(5) Microbrewery (subsection 9.57).

(6) Office/warehouse facilities (subsection 12.2).

(c) Special exception uses (chapter 18, section 3).

(1) Bars, lounges, and night clubs (subsection 3).

(2) Guyed and lattice communication towers.

(3) Mini-warehouses (subsection 10.5).

(4) Motor vehicle repair facilities (subsection 13).

(5) Truck stops (subsection 21).

(d) Project access and location. Any ICD district development shall have direct frontage on the roadway which accesses the interstate highway system and be located no more than one-half mile from the intersection of the centerlines of the interstate and the crossing roadway.

SECTION 24. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 23, as follows:

Section 23: - Commercial industrial (CI) district.

(a) Purpose and intent. The commercial industrial (CI) district is intended to provide development of those less intense storage, repair, industrial service and limited manufacturing uses that have fewer potential impacts on surrounding properties, yet are logically segregated from general commercial areas for aesthetic and economic reasons.

(b) Permitted uses.

(1) Adult/vocational education.

(2) Antennas.

(3) Appliance/electronic repair shops.

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23 Words stricken through are intended to be deleted; words underlined are intended to be added.
(4) Boat repair, engine.
(5) Business services.
(6) Camouflaged and monopole communication towers.
(7) Commercial/industrial equipment and supplies.
(8) Commercial/industrial services.
(9) Commercial/industrial warehouses.
(10) Construction contractor's yard and storage.
(11) Fleet-based services.
(12) Greenhouses and nurseries (wholesale and retail).
(13) Laboratory, research and development.
(14) Laundry and dry cleaning plants.
(15) Maintenance contractors.
(16) Manufacturing: craftsman shops.
(17) Manufacturing: fabrication.
(18) Manufacturing: limited.
(19) Mini-warehouses.
(20) Motor vehicle and boat storage facilities.
(21) Motor vehicle repair facilities.
(22) Motor vehicle service stations.
(23) Motor vehicle towing and impoundment.
(24) Offices.
(25) Taxidermy.
(26) Transportation services.
(27) Truck/trailer/automobile rental.
(28) Wholesalers and distributors.

(c) Permitted uses with special development requirements (chapter 18, section 4).
   (1) Brewery (subsection 3.7).
   (2) Kennels (subsection 8).
   (3) Health/exercise club (subsection 6).

(d) Special exception uses (chapter 18, section 3).
   (1) Adult entertainment (subsection 1).
   (2) Guyed and lattice communication towers.
(32) Used motor vehicle parts yards (subsection 23).

SECTION 25. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 24, as follows24:

Section 24: - Light industrial (LI) district.

(a) **Purpose and intent.** The light industrial (LI) district is intended to provide development for limited industrial operations engaged in the fabricating, repair, or storage of manufactured goods, where no objectionable by-products of the activity (such as odors, smoke, dust, refuse, electromagnetic interference, noise in excess of that customary to loading, unloading, and handling of goods and materials) are noticeable beyond the lot on which the facility is located. No hazardous materials may be utilized by the industrial operations permitted in this district.

(b) **Permitted uses.**

1. Airport and related activities.
2. Antennas.
5. Camouflaged, guyed, lattice and monopole communication towers.
7. Construction contractor's yard and storage.
8. Crematoriums.
9. Greenhouses and nurseries (wholesale only).
10. Laboratory, research and development.
11. Laundry and dry cleaning plants.
12. Manufacturing, craftsman shops.
13. Manufacturing, limited.
15. Manufacturing, processing.
17. Motor vehicle towing and impoundment.
18. Offices.

(c) **Permitted uses with special development requirements (chapter 18, section 4).**

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24 Words **stricken through** are intended to be deleted; words **underlined** are intended to be added.
(1) Brewery (subsection 3.7).
(2) Health/exercise club (subsection 6).
(d) Special exception uses (chapter 18, section 3).
(1) Marina, commercial/industrial (subsection 9.5).
(2) Truck stops (subsection 21).

SECTION 26. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 25, as follows:25:

Section 25: - Ridgewood development (RD) district.

(a) Purpose and intent. The Ridgewood Development District is designed to encourage the development and redevelopment, modernization, and beautification of the Ridgewood Avenue corridor, while maintaining its traffic capacity, and protecting the integrity of adjoining residential areas. It is intended to accommodate a mixture of office, commercial, warehouse/storage, and limited industrial uses based on a strategy for the corridor.

(b) Permitted uses.

(1) Adult/vocational education.
(2) Antennas.
(3) Appliance/electronic repair shops.
(4) Athletic/sports facilities.
(5) Auction houses.
(6) Banks.
(7) Boat sales.
(8) Business services.
(9) Camouflaged and monopole communication towers.
(10) Clubs, lodges, and fraternal organizations.
(11) Commercial/industrial equipment and supplies.
(12) Convenience stores with or without fuel operations.
(13) Equipment rental.
(14) Financial services.
(15) Fleet-based services.
(16) Fortunetellers, astrologers, and palm readers.
(17) Funeral homes.

Words stricken through are intended to be deleted; words underlined are intended to be added.
(4816) Furniture and appliance stores.
(4917) Greenhouses and nurseries (wholesale and retail).
(2119) Hotels.
(2220) Houses of worship.
(2321) Laboratory, research and development.
(2422) Maintenance contractors.
(2523) Manufacturing: craftsman shops.
(2624) Manufacturing, limited.
(2725) Medical offices/clinics.
(2826) Mobile home sales.
(2927) Motor vehicle sales.
(3028) Motor vehicle service centers.
(3129) Motor vehicle service stations.
(3230) Offices.
(3331) Pawn shops.
(3432) Personal services.
(3533) Restaurants.
(3634) Retail home building materials.
(3735) Retail sales and services.
(3836) Tattoo establishment.
(3937) Taxidermy.
(4038) Theaters.
(4139) Veterinary clinics.
(4240) Wholesalers and distributors.
(4341) Xerographic and offset printing.

(bb) Permitted uses with special development requirements (chapter 18, section 4).

(1) Assisted living facilities (subsection 1).
(2) Brewery (subsection 3.7).
(3) Child care centers (subsection 4).
(4) Community gardens (subsection 5.1).
(5) Craft food and beverage producer (subsection 5.15).
(6) Microbrewery (subsection 9.57).
(7) Nursing homes (subsection 10).
(c) Special exception uses (chapter 18, section 3).
(1) Bars, lounges and night clubs (subsection 3).
(2) Boat repair, engine (chapter 18, paragraph 3(b)(3.5)).
(3) Farmers/flea markets (subsection 5.5).
(4) Game/recreation facilities (subsection 7).
(5) Guyed and lattice communication towers.
(6) Manufacturing: fabrication.
(7) Marina, recreational (subsection 9.6).
(8) Mini-warehouses (subsection 10).
(9) Motor vehicle repair facilities (subsection 13).
(10) Multifamily dwellings (16 units per gross acre maximum allowable density) (subsection 14).
(d) Reserved.
(e) Special landscape provisions.
(1) Special landscape provisions for development within this district are described in chapter 13, specifically subsection 3(c), subsection 3(d)(3), subsection 3(e), subsection 4(b) and subsection 5(d).
(f) Special signage provisions. Special signage provisions for development within this district are described in chapter 15, specifically subsection 6(b) and subsection 7(c)(1)(b).
(g) Special vehicular use provisions. The use of alternative surfaces for parking and other vehicular use areas shall be permitted as provided in subsection 6(f)(3) of chapter 12 of this Code.
(h) Special owner-occupancy provisions. The residential occupancy by a business owner and the owner's family of a structure being used for a permitted use or permitted use with special development requirements shall be permitted as provided in subsection 2(d) of chapter 20 of this Code.

SECTION 27. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 25, as follows:

Section 26: - Government/public use (GPU) district.

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26 Words stricken through are intended to be deleted; words underlined are intended to be added.
Purpose and intent. The government/public use (GPU) district is intended to provide for public and quasi-public uses in a setting which recognizes the special character and location requirements of such facilities.

Permitted uses. All uses proposed by any governmental entity or agency thereof shall be permitted in this district. In addition, the following quasi-public uses shall be permitted in this district:

1. Adult/vocational education.
2. Antennas.
3. Camouflaged and monopole communication towers.
5. Charitable organization offices.
6. Hospitals.
8. Nursing homes.

All proposed uses of land within the GPU district shall be advertised for public hearing at the time of rezoning, or prior to a change of use.

Permitted uses with special development requirements (chapter 18, section 4).

2. Community gardens (subsection 5.1).

Special exception uses (chapter 18, section 3).

1. Guyed and lattice communication towers.
2. Marina, recreational (subsection 9.6).

Violation of terms or conditions. It is a violation of this code for any person to violate or to refuse or fail to comply with any term or condition of a rezoning or a change of use in the GPU district. Violations may be prosecuted or enforced as provided by law for prosecution or enforcement of municipal ordinances.

SECTION 28. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 29, as follows:

Section 29: - Planned community—Agricultural (PC-A) district.

No changes to intro text, subsection (a), Figure 17:1, and Figure 17:2]

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27 Words stricken through are intended to be deleted; words underlined are intended to be added.
(b) **West Town Center District.**

(1) **Purpose and intent.** This district is established to create a compatible mixture of commercial, cultural, educational, governmental uses in a pedestrian-oriented town center. This district will be a focal point for the community and will draw all elements of the project together to form a cohesive mixed-use environment. The West Town Center is dedicated to collective social activity, education, and recreation in a traditional commercial and residential environment which nurtures a unified sense of community.

It is the goal of this district to provide for "traditional town development," bringing together a variety of housing types, offices, shopping and professional services, and public facilities to support a heterogeneous resident population. Planning, design, and development objectives of this district include:

(a) A strong sense of community identity, based upon a shared, coherent, and functionally efficient mixed-use environment.

(b) Building, open spaces, and other visual features that act as landmarks, symbols, and activity centers to establish community identity.

(c) On-street parking and centralized parking facilities to collectively support principal uses in the district.

(d) A coordinated transportation system with a hierarchy of facilities designed for pedestrians, bicycles, public transit, and the automobile.

(e) A built environment that is pedestrian-friendly and handicapped-accessible.

(f) Compatibility of buildings and other improvements as determined by their arrangement, bulk, form, character, landscaping, and architectural style to establish a diverse, livable and harmonious urban form.

(2) **Permitted uses.**

(a) Those uses permitted in the GPU zoning district, as described in section 26 of this chapter, including public schools, post offices, and municipal buildings.

(b) Agricultural uses as defined by section 29(f).

(c) Those uses permitted in R-3H, PO, and CC zoning districts, unless specifically prohibited herein.

(d) Multi-use buildings (provided that the individual uses are approved herein).

(e) Bed and breakfast inns of less than 10,000 s.f.

(f) Parking garages.

(g) Community recreational facilities.

(h) Camouflaged antennae.

[No changes to subsections 3 through 10]

[No changes to subsection (c) and all corresponding subsections]
[No changes to subsection (d) and all corresponding subsections]

[No changes to subsection (e) and all corresponding subsections]

(f) Agricultural uses. The entire planned community-agricultural area is currently in agricultural use. Said agricultural use shall be allowed to continue as an interim use on all lands throughout the PC-A area which have not received final site plan or subdivision approval. Agricultural uses on any portion of a micro region that has received final site plan and/or subdivision approval shall cease within 90 days after such approval.

(1) Permitted uses. Permitted uses shall be the same as for the "A" zoning district.

(2) Special exception uses. Special exception uses shall be limited to the following uses, unless otherwise specified under the requirements for each district. Such uses shall be consistent with the permitted uses in each district.

(a) Guyed, lattice and monopole communication towers.

(ba) Houses of worship.

(eb) Private schools.

(de) Retail nurseries and garden supplies.

(ed) Veterinary clinics.

Such uses shall meet all of the applicable special development criteria as outlined in chapter 18, section 3 of this code.

(3) Special restrictions. The following uses are prohibited within 1,000 feet of proposed or existing development within any micro region:

(a) Livestock feeding pens.

(b) Livestock feed lots.

(c) Poultry operations to include any feathered animals—e.g. chickens, emus, ducks, ostriches, etc.

(4) Prohibited uses.

(a) Cemeteries.

(b) Commercial stables.

(c) Farmers/flea markets.

[No changes to subsections (g) through (q) and all corresponding subsections, and Figure 17:3]
SECTION 29. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 30, as follows:

Section 30: - Planned community—Port Orange Riverwalk (PC-R) district.

[No changes to subsections (a) through (c)]

(d) Mixed-use. The mixed-use development shall comply with the district-wide regulations and the following regulations for onsite improvements.

[No changes to subsections (d)(1) through (3)]

(4) Prohibited uses.

   Adult entertainment
   Automobile oriented uses
   Discount and factory outlet stores
   Appliance/electronic repair shops
   Assisted living facilities
   Auction houses
   Boat repair
   Boat sales
   Cemeteries
   Childcare centers
   Commercial/industrial equipment and supplies
   Construction contractor's yard and storage
   Convenience stores with fuel operations
   Drive-thru facilities
   Equipment rentals
   Fleet-based services
   Fortunetellers, astrologers, and palm readers
   Funeral homes

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28 Words struck through are intended to be deleted; words underlined are intended to be added.
Greenhouses and nurseries (wholesale and retail)

Guyed and lattice communication towers

Hospitals

Houses of worship

Maintenance contractors

Manufacturing: fabrication

Mini-warehouses

Mobile home sales

Motor vehicle and boat storage facilities

Motor vehicle repair facilities

Motor vehicle sales

Motor vehicle service centers

Motor vehicle service stations

Nursing homes

Office/warehouse facilities

Pawn shops

Public utility stations/plants

Retail home building materials

Tattoo parlors

Taxidermy

Veterinary clinics

Wholesalers and distributors

Xerographic and offset printing

[No changes to subsection (d)(5)]

[No changes to subsections (e) through (g) and Figure 17:4]
SECTION 30. The City Council hereby amends CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 33, as follows:

Section 33: - Recreation (REC) district.

(a) Purpose and intent. The Recreation (REC) district is intended to provide areas for primarily outdoor recreational uses.

(b) Permitted uses. Those uses with special development requirements are identified with an asterisk (*). These special development requirements are identified in chapter 18, section 4.

1. Antennas.
2. Archery ranges.
4. Camouflaged and monopole communication towers.
5. Gymnasiums.
6. Marina, recreational *.
7. Outdoor facilities for civic and public functions.
8. Outdoor active recreation (public/private) facilities.

SECTION 31. It is the intention of the City Council that the provisions of this Ordinance shall become and be made a part of the City Land Development Code, which provisions may be renumbered or re-lettered and the ordinance be changed to “section,” “article,” or other appropriate word to accomplish such intention.

SECTION 32. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict. Ordinance No. 2018-25, imposing a moratorium, as it may have been extended, is hereby repealed upon the effective date of this Ordinance.

29 Words struck through are intended to be deleted; words underlined are intended to be added.
SECTION 33. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 34. This Ordinance shall become effective immediately upon final passage by the City Council.

_________________________________
MAYOR DONALD O. BURNETTE

ATTEST:

_______________________________
Robin L. Fenwick, CMC, City Clerk

Passed on first reading on the ___ day of ____________, 2019.

Passed and adopted on second and final reading on the ___ day of ____________, 2019.

Reviewed and Approved: ________________________________
Matthew J. Jones, Deputy City Attorney

CA 6109
REQUEST: To amend Chapters 2, 16, and 18 of the Land Development Code (LDC) related to Wireless Communication Facilities Siting

APPLICANT: City of Port Orange

PLANNING COMMISSION RECOMMENDATION: APPROVAL

STAFF RECOMMENDATION: APPROVAL

STAFF CONTACT: Tim Burman, Community Development Director
(386) 506-5675

CITY COUNCIL DATE: January 8, 2019

SUMMARY OF PROPOSED AMENDMENT

In September 2018, a moratorium was approved for personal wireless communications governed by Chapter 16, Section 9 of the Land Development Code (LDC), in order to provide time to review existing regulations in the LDC related to personal wireless communications, and if necessary, to develop amendments to maintain reasonable and uniform regulations that protect the health, safety and general welfare of the residents of Port Orange.

The proposed amendment is intended to update the regulations in the LDC related to wireless communication facilities siting, to comply with federal and state law to regulate the siting of such communication towers, antennas and facilities, update local siting requirements, and minimizing adverse impacts on residential zoning districts from the construction of new communication towers and facilities through setbacks, separation requirements, and landscape/screening. The proposed amendments to the City’s code requirements for personal wireless communications would:

1. Update and add definitions to Chapter 2 related to terms associated with personal wireless communications;

2. Establish that the City’s first preference to siting new antennas is to co-locate on an existing communication tower or structure instead of constructing a new tower or structure;
3. Establish a hierarchy for siting antennas and communication towers and structures, to minimize the construction of towers or structures within Port Orange. The City’s first preference to siting new antennas is to co-locate on an existing communication tower or structure instead of constructing a tower or structure;

4. Establish that if co-location on an existing tower or structure is not an option, and is demonstrated by an applicant, an applicant can propose to construct a tower or structure according to the siting hierarchy outlined in the code. The tower hierarchy is designed to place towers on property located on municipal use property, industrial zoned property, and commercial zoned property and places a preference to camouflaged towers being constructed. If an applicant selects a lower ranked site on the siting hierarchy list, the applicant shall demonstrate that the higher ranked sites on the siting hierarchy list are not available. Specific criteria are provided in the code that the applicant must use to demonstrate that an existing tower to co-locate an antenna onto is not available or a higher ranked site on the siting hierarchy list is not available. The proposed siting hierarchy is as follows:

   a. Camouflaged communication tower on municipal use property;
   b. Non-camouflaged communication tower on municipal use property;
   c. Camouflaged communication tower on light industrial and commercial industrial zoning district private property;
   d. Non-camouflaged communication tower on light industrial and commercial industrial zoning district private property in the following preferred order: monopole, guyed and lattice;
   e. Camouflaged communication tower in other zoning districts on private or other governmental property other than residential; and
   f. Non-camouflaged communication tower in the following preferred order: monopole, guyed and lattice, in other zoning districts on private or other governmental property other than residential.

5. Restrict new tower construction in all residential zoning districts, the Port Orange Town Center Community Redevelopment Agency (CRA) boundary, the Floodplain Conservation (F-C) zoning district, the West Town Center, Neighborhood, and Community Districts of the Planned Community-Agricultural (PC-A) zoning district without a variance being approved by the City Council;

6. Provide dimensional requirements for a new tower or structure, along with associated equipment and buildings. The setback for a communication tower is 110% of the tower height or the minimum zoning setback, whichever is greater, from all property lines. The setback for any buildings, equipment, or generator associated with a tower and/or antenna is 10 feet or the minimum setback requirement for a specific zoning district, whichever is greater. The maximum height for a tower will remain at 300 feet;

7. Provide separation requirement between the base of a communication tower to the property line of a lot with a residential structure or vacant land with residential
zoning. New camouflaged towers would need to be separated at least two times its height and guyed, lattice, and monopole communication towers separated at least four times their height. In addition, all communication towers are to be separated a minimum of one-half mile from an existing communication tower;

8. Outline the review process and submittal requirements to co-locate an antenna on an existing communication tower or structure, construct a new communication tower, install or replace communication equipment or building, and re-build or structurally modify an existing communication tower, structure, or antenna;

9. Require the submittal of a visual impact analysis that consists of a photographic superimposition that includes the tower, antennas, equipment shelters, cables as well as cable runs, and security barrier, at a specified distance of from the subject property line;

10. Maintain requirement to install a wall or fence around the tower site and installation of perimeter landscaping along the wall or fence and landscape buffer adjacent to rights-of-way or property lines;

11. Establish a special fee in addition to a site plan or building permit processing fee so the City can hire an independent consultant and/or expert to assist in the evaluation of an application(s);

12. Establish a security fund that all applicants constructing a new tower or installing an antenna on an existing tower are required to pay into at the permitting stage. The security fund is for the City to use to remove or repair a tower, antenna, or equipment that is abandoned or determined to be a hazard or nuisance by the City and the owner fails to address the issue. The City would be able use this fund to remove the nuisance as the City pursues legal action with the property owner to recover the cost;

13. Establish guidelines and criteria for an applicant to request a variance to the setback, separation, specific zoning district where such use is not allowed, and other provisions in Chapter 16, Section 9, of the LDC. The procedures for processing a variance in Chapter 19 shall apply, with the exception that the Planning Commission shall consider the application for a variance at a noticed public hearing and shall make a recommendation to the City Council, which shall consider the application for a variance at a noticed public hearing; and

14. Remove setback and height requirements in Chapter 16, Section 4 (height) and Section 5 (special setbacks) to eliminate possible conflicting requirements in Chapter 16, Section 9 (wireless communication facilities siting).

**RECOMMENDATION**

Approval of the amendment to the LDC related to Wireless Communication Facilities Siting.
SUBJECT: (G18) First Reading - Ordinance No. 2019-7 - Amending Section 50-58 of the Code of Ordinances relating to the Parks & Recreation Advisory Board

DEPARTMENT: City Clerk

GOAL:

RECOMMENDED MOTION: Move to approve Ordinance No. 2019-7.

SUMMARY: Based on Council's previous discussion and the recommendation of the Parks & Recreation Advisory Board, the Parks & Recreation Advisory Board composition shall be reduced from ten (10) members to seven (7) members through attrition. The proposed Ordinance revision is attached for Council's review.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

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<td>Ord No 2019-7 - Reduction of Parks and Rec Board Members</td>
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Robin Fenwick Created/Initiated - 12/20/2018
Susan Lovallo Approved - 01/11/2019
Matthew Jones Approved - 01/24/2019
Jake Johansson Approved - 01/25/2019
Robin Fenwick Final Approval - 01/25/2019
WHEREAS, the City Council desires to reduce the membership on the Parks and Recreation Board from ten members to seven members; and

WHEREAS, the City Council desires to implement this reduction over time through attrition as the current board members reach their respective end of term.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. Section 50-58 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 50-58. - Composition, qualification of members.

(a) The parks and recreation board shall consist of seven members appointed by the city council. Each member of the board shall be a qualified elector residing in
the city. Members shall not hold any elective public office. Members may serve on other advisory boards, pension boards or other nonappointive boards.

(b) Members of the board shall be generally sympathetic to and knowledgeable of the principles and objectives of community recreation and parks planning. They should be guided by a sincere interest to help in developing and promoting a well-rounded, efficient, effective and progressive recreation program and park system for the community.

Section 2. Section 50-59 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 50-59. - Appointments, terms.

(a) The appointments to the board shall be as follows:

(1) Two Three members shall be appointed for a term expiring February 15, 2023.

(2) Two Four members shall be appointed for a term expiring February 15, 2024.

(3) Two members shall be appointed for a term expiring February 15, 2003.

(b) Thereafter all appointments, except to fill vacancies occurring during a term of office, shall be for a term of three years. All terms shall expire on February 15 in the year of their given expiration. A board member may be reappointed for any number of consecutive terms.

Section 3. Section 50-61 of the Code of ordinances, City of Port Orange, Florida is hereby amended to read as follows:
Sec. 50-61. – Organization, procedures.

(a) – (c) [Remain unchanged.]

(d) Quorum; rules of order. The presence of six four or more members shall constitute a quorum of the board necessary to take action or conduct business. The board shall adopt Robert's Rules of Order, Newly Revised, or such other written rules and procedures as may be desirable and necessary to promote and effectuate the purposes, objectives and business of the board in an orderly, timely and productive manner.

(e) [Remains unchanged.]

Section 4. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 5. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provision of this ordinance are declared severable.

Section 6. The reduction of board members shall be accomplished by attrition. During the attrition process described below, a simple majority of the current members of the board will constitute a quorum. There are currently nine board members serving on the Parks and Recreation Board (one seat is vacant). The vacant seat will not be filled. Once the terms expire for the four current board members whose term limits are set to expire on February 15, 2020, the City Council will only appoint three members. Once the terms expire for the five current board members whose term limits are set to
expire on February 15, 2021, the City Council will only appoint four members. The effective date of this ordinance shall be the date on which the final four board members are appointed by City Council.

________________________
MAYOR DONALD O. BURNETTE

ATTEST:

_______________________________
Robin L. Fenwick, CMC, City Clerk

Passed on first reading this _____ day of __________________, 2019.

Passed and adopted on second reading and final reading on the ____ day of ____________, 2019.

Reviewed and approved: _____________________________

Matthew J. Jones, Deputy City Attorney
SUBJECT: (H19) City Attorney Reports for Council consideration
DEPARTMENT: City Attorney
GOAL:

RECOMMENDED MOTION: No Motion Needed

SUMMARY: Council may expect to see an Ordinance coming forward in the spring relating to potable water service. The ordinance will be prepared to improve the efficiency of utility service delivery, the accountability for costs and the preservation of one of our most valuable resources.

Report on DEP Agreement

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

Robin Fenwick Created/Initiated - 01/17/2019
Margaret Roberts Approved - 01/25/2019
Robin Fenwick Final Approval - 01/28/2019
SUBJECT: (H20) City Manager

DEPARTMENT: City Manager

GOAL:

RECOMMENDED MOTION:

SUMMARY: FDEP recently determined that the outflow of the reclaimed lakes into the wetlands contained too much suspended solids. They have issued the city a consent order with a warning and request for how the city will mitigate the possible impacts to the damage. Staff lab technicians test the water and have indications that the suspended solid particles are algae. We are working on options to mitigate or remove the suspended solids from the water before allowing it to outflow into the wetlands. In the mean time we are diverting excess water out to the Halifax River. This diversion is within our permit and authorized by FDEP. It is not our policy to maintain this method of outflow and we intend to work on alternative methods to remove suspended solids from the Reclaimed Lakes and return to wetlands outflow when required. This issue needs to be briefed to council before the consent order is signed.

Project No.:    Funding Account No.:

Presenter:

ATTACHMENTS:

Robin Fenwick    Created/Initiated - 01/17/2019
Jake Johansson   Approved - 01/24/2019
Robin Fenwick    Final Approval - 01/24/2019