



City of Stuart

AGENDA

REGULAR MEETING OF THE STUART CITY COMMISSION

JULY 11, 2022

AT 4:00 PM

COMMISSION CHAMBERS

121 SW FLAGLER AVE.

STUART, FLORIDA 34994

CITY COMMISSION

Mayor Merritt Matheson

Vice Mayor Troy McDonald

Commissioner Becky Bruner

Commissioner Eula R. Clarke

Commissioner Mike Meier

ADMINISTRATIVE

City Manager, David Dyess

City Attorney, Michael J. Mortell

City Clerk, Mary R. Kindel

Agenda items are available on our website at <http://www.cityofstuart.us>
Phone: (772) 288-5306. Fax: (772) 288-5305. E-mail: mkindel@ci.stuart.fl.us

In compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation to attend this meeting should contact the City's ADA coordinator at 772-288-5306 at least 48 hours in advance of the meeting, excluding Saturday and Sunday.

If a person decides to appeal any decision made by the Board with respect to any matter considered at this meeting, he will need a record of the proceeding, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

(RC) next to an item denotes there is a City Code requirement for a Roll Call vote.

(QJ) next to an item denotes that it is a quasi-judicial matter or public hearing.

WHAT IS CIVILITY? Civility is caring about one's identity, needs and beliefs without degrading someone else's in the process. Civility is more than merely being polite. Civility requires staying "present" even with those persons with whom we have deep-rooted and perhaps strong disagreements. It is about constantly being open to hear, learn, teach and change. It seeks common ground as a beginning point for dialogue. It is patience, grace, and strength of character. Civility is practiced in our City Hall.

PUBLIC COMMENT: If a member of the public wishes to comment upon ANY subject matter, including quasi-judicial matters, please submit a Request to Speak form. These forms are available in the back of the Commission Chambers, and should be given to the City Clerk prior to introduction of the item number you would like to address.

CONSENT CALENDAR: Those matters included under the Consent Calendar are self-explanatory, non-controversial, and are not expected to require review or discussion. All items will be enacted by one motion. If discussion on an item is desired by any City Commissioner that item may be removed by a City Commissioner from the Consent Calendar and considered separately. If an item is quasi-judicial it may be removed by a Commissioner or any member of the public from the Consent Calendar and considered separately.

QUASI-JUDICIAL HEARINGS: Some of the matters on the Agenda may be "quasi-judicial" in nature. City Commissioners will disclose all ex-parte communications, and may be subject to voir dire by any interested party regarding those communications. All witnesses testifying will be "sworn" prior to their testimony. However, the public is permitted to comment without being sworn. Unsworn testimony will be given appropriate weight and credibility by the City Commission.

ROLL CALL

PLEDGE OF ALLEGIANCE

1. ARTS MOMENT - AUDOBON OF MARTIN COUNTY BIRD PHOTOGRAPHY BY JOHN NELSON

PROCLAMATIONS

2. TREASURE COAST WATERWAY CLEANUP WEEK - JULY 16-24, 2022
3. PARKS AND RECREATION MONTH - JULY 2022

PRESENTATIONS

4. LEGISLATIVE APPROPRIATION PRESENTATION CHECK FOR ALTERNATIVE WATER SUPPLY PROJECT
5. SERVICE AWARDS - JULY 2022
6. BRIGHTLINE UPDATE

COMMENTS BY CITY COMMISSIONERS

COMMENTS BY CITY MANAGER

APPROVAL OF AGENDA

COMMENTS FROM THE PUBLIC (3 Minutes Max.)

CONSENT CALENDAR

7. APPROVAL OF 06/27/2022 CCM MINUTES (RC)
8. LICENSE AGREEMENT - HOUSE OF HOPE COMMUNITY GARDEN (RC):

RESOLUTION No. 62-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE CITY MANAGER TO EXECUTE LICENSE AGREEMENT RENEWAL NO. 2 BETWEEN THE CITY OF STUART AND HOUSE OF HOPE FOR THE OPERATION OF A COMMUNITY GARDEN ON CITY OWNED PROPERTY AT 520 SE FLORIDA STREET; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

END OF CONSENT CALENDAR

COMMISSION ACTION

9. DAR REQUEST FOR AUTHORIZATION TO PLACE AMERICA 250 MARKER (RC):

RESOLUTION No. 63-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AUTHORIZING THE LOCATION OF AN AMERICA 250 MARKER WITHIN THE CITY OF STUART'S MEMORIAL PARK, GIVEN THE PHYSICAL FORMAT AND CONTEXT OF THE MARKER WILL BE IN COMPLIANCE WITH REGULATIONS AND STANDARDS OF THE OFFICE OF THE HISTORIAN GENERAL, THROUGH A PARTNERSHIP WITH THE HALPATIOKEE CHAPTER OF THE DAUGHTERS OF THE AMERICAN REVOLUTION.

ORDINANCE SECOND READING

10. PROPERTY MAINTENANCE CODE CHANGES (RC):

ORDINANCE No. 2496-2022; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE EXISTING SECTION 10-59 THROUGH 10-84; SECTION 26-30; AND SECTIONS 42-38 THROUGH 42-305; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

ORDINANCE FIRST READING

11. REPEAL & REESTABLISH CHAPTER 36, ARTICLE V, CODE OF ORDINANCES (RC):

ORDINANCE No. 2488-2022; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REPEALING AND REESTABLISHING CHAPTER 36, ARTICLE V, COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS OF WAY, OF THE CITY OF STUART CODE OF ORDINANCES; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE OF TRANSFER, SALE, OR ASSIGNMENT OF ASSETS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING THE REQUIREMENT OF A PERMIT; PROVIDING FOR APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR CONSTRUCTION METHODS FOR PLACING OR MAINTAINING FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR FEES AND TAXES; PROVIDING FOR A RESERVATION OF RIGHTS AND REMEDIES; PROVIDING

ENFORCEMENT AUTHORITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITIES; PROVIDING FOR AN EFFECTIVE DATE.

DISCUSSION AND DELIBERATION

ADJOURNMENT

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 7/11/2022

Prepared by: Susej Meleqi

Title of Item:

ARTS MOMENT - AUDOBON OF MARTIN COUNTY BIRD PHOTOGRAPHY BY JOHN NELSON

Summary Explanation/Background Information on Agenda Request:

ARTS MOMENT - PHOTOGRAPHY BY JOHN NELSON.

Funding Source:

N/A

Recommended Action:

Enjoy!

ATTACHMENTS:

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 7/11/2022

Prepared by: Ryanne Cavo

Title of Item:

TREASURE COAST WATERWAY CLEANUP WEEK - JULY 16-24, 2022

Summary Explanation/Background Information on Agenda Request:

The 15th Annual Treasure Coast Waterway Cleanup will be held on Saturday, July 23, 2022.

Funding Source:

N/A

Recommended Action:

Issue the Proclamation.

ATTACHMENTS:

1. Treasure Coast Waterway Cleanup Week 2022

**PROCLAMATION
TREASURE COAST WATERWAY CLEANUP WEEK
JULY 16-24, 2022**

- WHEREAS,** the Marine Industries Association of the Treasure Coast, Inc. and the Florida Inland Navigation District (F.I.N.D.) are deeply concerned with keeping the Treasure Coast waterways clean for all to enjoy, and;
- WHEREAS,** since the beginning, over 10 tons of trash have been collected from approximately 125 miles of waterways, and;
- WHEREAS,** the 15th Annual Treasure Coast Waterway Cleanup will be held on Saturday, July 23, 2022, and;
- WHEREAS,** this event will attract over 1,000 volunteers, as well as numerous waterfront homeowner associations who will participate in cleaning the waterways of Martin, St. Lucie, and Indian River Counties. There will be 31 designated sites throughout the three counties that will serve as registration and disposal sites for the volunteers to work out of. There will also be a virtual cleanup that allows volunteers to clean up on their own and report their progress online.

NOW, THEREFORE, I, MERRITT MATHESON, Mayor of the City of Stuart, Florida do hereby proclaim the week of July 16-24, 2022, as:

TREASURE COAST WATERWAY CLEANUP WEEK

in the City of Stuart, Florida and urges our citizens to volunteer and participate in this event.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Stuart, Florida to be affixed this 11th day of July, 2022.

MERRITT MATHESON
MAYOR

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 7/11/2022

Prepared by: Ryanne Cavo

Title of Item:

PARKS AND RECREATION MONTH - JULY 2022

Summary Explanation/Background Information on Agenda Request:

Parks and recreation is an integral part of communities throughout this country, including the City of Stuart.

Funding Source:

N/A

Recommended Action:

Issue the Proclamation.

ATTACHMENTS:

1. Parks and Recreation Month 2022

**PROCLAMATION
PARKS AND RECREATION MONTH
JULY 2022**

WHEREAS, parks and recreation is an integral part of communities throughout this country, including the City of Stuart; and

WHEREAS, parks and recreation promotes health and wellness, improving the physical and mental health of people who live near parks; encourages physical activities by providing space for popular sports, hiking trails, fitness programs and many other activities designed to promote active lifestyles; and

WHEREAS, parks and recreation programming and education activities, such as out- of-school time programming, youth sports, environmental education, and socialization, are critical to childhood development; and

WHEREAS, parks and recreation increases a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction; and

WHEREAS, parks and recreation areas are fundamental to the environmental well-being of our community. Parks and natural recreation areas improve water quality, protect groundwater, prevent flooding, improve the quality of the air we breathe, provide vegetative buffers to development, and produce habitat for wildlife; and

WHEREAS, our parks and natural recreation areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors.

NOW THEREFORE, the City of Stuart recognizing that planned recreational activities benefit the health and wellbeing of the community, I, Merritt Matheson, Mayor of the City of Stuart, do hereby proclaim July 2022 as:

PARKS AND RECREATION MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Stuart to be affixed this 11th day of July, 2022.

ATTEST:

MERRITT MATHESON
MAYOR

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 7/11/2022

Prepared by: Jim Chrulski

Title of Item:

LEGISLATIVE APPROPRIATION PRESENTATION CHECK FOR ALTERNATIVE WATER SUPPLY PROJECT

Summary Explanation/Background Information on Agenda Request:

Over the past four (4) years, the City of Stuart has received \$2,250,000 to assist with the design and construction of the Alternative Water Supply project.

Legislative Appropriation Sessions Summary

2019	\$ 250,000.00
2020	\$1,000,000.00
2021	\$ 500,000.00
2022	\$ 500,000.00 (this past session)

To date: \$ 2,250,000

Funding Source:

REVENUE: State of Florida Legislative Appropriation \$500,000

Recommended Action:

Accept a \$500,000 'ceremonial' check from the State of Florida and take pictures with Legislators and Lobbist Jordan. Senator Harrell, Representative Overdorf, (new Stuart district) Representative Snyder, and City of Stuart Lobbist Mr. Jordan Connors.

ATTACHMENTS:

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 7/11/2022

Prepared by: Karen Chambers-Cuffy

Title of Item:

SERVICE AWARDS - JULY 2022

Summary Explanation/Background Information on Agenda Request:

Michael Jacobson	Technology Services	20 years	(service award is for the month of
June, moved to			July so Mick
can be present.)			
Alaina Knofla	Procurement & Contracting Services	10 years	
Joseph Ponte	Police	5 years	

Funding Source:

General Fund

Recommended Action:

Present Awards

ATTACHMENTS:

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 7/11/2022

Prepared by: Michelle Vicat

Title of Item:
BRIGHTLINE UPDATE

Summary Explanation/Background Information on Agenda Request:
Brightline update

Funding Source:
N/A

Recommended Action:
N/A

ATTACHMENTS:

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 7/11/2022

Prepared by: Susej Meleqi

Title of Item:

APPROVAL OF 06/27/2022 CCM MINUTES (RC)

Summary Explanation/Background Information on Agenda Request:

APPROVAL OF 06/27/2022 CCM MINUTES (RC)

Funding Source:

N/A

Recommended Action:

Approve Minutes.

ATTACHMENTS:

1. 06272022 CCM Minutes

MINUTES
REGULAR MEETING OF THE STUART CITY COMMISSION
JUNE 27, 2022
AT 5:30 PM
COMMISSION CHAMBERS
121 SW FLAGLER AVE.
STUART, FLORIDA 34994

CITY COMMISSION

Mayor Merritt Matheson
Vice Mayor Troy McDonald
Commissioner Becky Bruner
Commissioner Eula R. Clarke
Commissioner Mike Meier

ADMINISTRATIVE

City Manager, David Dyess
City Attorney, Michael J. Mortell
City Clerk, Mary R. Kindel

ROLL CALL

5:30 PM

PRESENT: Mayor Matheson, Commissioner Bruner, Commissioner Clarke, Commissioner Meier

ABSENT: Vice Mayor McDonald

PLEDGE OF ALLEGIANCE

PRESENTATIONS

1. 2024 STRATEGIC PLAN PROGRESS UPDATE

Michelle Berger, Part-Time Project Manager, presented the past Strategic Plan and noted to the Commission that she would like this to be an interactive presentation, asking the Commissioners to participate with their thoughts. Mrs. Berger noted as an outcome, she would like to see staff given direction to begin planning the next 10-Year Strategic Plan. The presentation reviewed past community building goals and accomplishments, goal measurement, and future vision, mission and values.

Upon conclusion, City Manager David Dyess summarized the accomplishments and reported that he has had discussions with Human Resources and stated that the next steps would be for the Commission to move forward with a plan.

Commissioners agreed and are in favor of moving forward with a 10-Year Strategic Plan update.

COMMENTS BY CITY COMMISSIONERS

6:20 PM

Mayor Matheson

- Recognized Pinal Gandhi-Savdas and David Dyess for securing the award of the CDBG Grant of 4.8 million dollars.
- Reminded everyone that we are under the Fertilizer Ordinance and commented that there are magnets and brochures about proper fertilizer usage in the lobby.

Commissioner Meier

- Commented that he was in Colorado at the last meeting, stated that he was struck by how the perimeter of waterways is had by the use of the public, felt we have the opportunity to look into ways to acquire easements along Haney Creek, talked about the long term of the move for City Hall, and thinks we should start preserving the publics access to our waterways.
- Announced his decision not to run for re-election and stated it was a difficult decision to make.

Commissioner Bruner

- Invited everyone out for the 4th of July event in Downtown.

Commissioner Clarke

- Wishing everyone a Happy 4th of July.
- Commented that she was glad the Strategic Plan was brought up.

COMMENTS BY CITY MANAGER

City Manager Dyess

- Stated that the grant received was to purchase the Willie Gary property and to revitalize the property and enter into a relationship with IRC in order to run a trades training center and incubator businesses. However, the property is currently under contract for sale, therefore, working through those details.
- Provided an update on the corner of Florida and Dixie Hwy. All the reflector posts are being removed with the exception of the ones on the south side of the curve. It is agreed upon to take the south sidewalk and move it further south, approx. 3 to 5 ft., in order to have a wider roadway for vehicles; new plans will be brought before the public in approximately 2 months.
- A brief update on the dead-end on Park Ave., stated a new plan was brought forth for

more parking spaces.

- Stated that Brightline will be here at the Regular Commission Meeting on July 11, 2022.

APPROVAL OF AGENDA

6:32 PM MOTION: Approve.

MOVED BY: Mike Meier

SECONDED BY: Eula Clarke

Motion approved unanimously.

COMMENTS FROM THE PUBLIC (3 Minutes Max.)

1) Helen McBride - Flamingo Ave.; Commented on the lack of communication with the public on various items and stated we should have workshops to hear the public's input and stated that Hudson's on the River Restaurant has blocked off public access on the patio with chairs, tables, and stairways.

2) Tom Campenni - St. Lucie Crescent.; Thanked David for the policing program that he started as Police Chief and stated the City would not be as safe if it wasn't for that program.

CONSENT CALENDAR

6:39 PM

* Commissioner Meier made a motion to remove Item #4 from the Consent Calendar.

2. APPROVAL OF 06/13/2022 CCM MINUTES (RC)

3. DECLARING THE 2022 ELECTION AND EARLY VOTING SCHEDULE (RC):

RESOLUTION No. 57-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, DECLARING THE GENERAL MUNICIPAL ELECTION FOR AUGUST 23, 2022; PROVIDING FOR EARLY VOTING BEGINNING ON AUGUST 13, 2022 AND ENDING ON AUGUST 20, 2022 AT THE SUPERVISOR OF ELECTIONS OFFICE, 135 SE MARTIN LUTHER KING, JR. BOULEVARD, STUART, FL; AND PROVIDING FOR VOTING AT REGULAR PRECINCTS ON ELECTION DAY; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

5. APPENDIX A; RATES AND FEE ADJUSTMENTS (RC):

RESOLUTION No. 61-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA ADOPTING APPENDIX "A" BY AMENDING CHAPTER 10 AND CHAPTER 36 OF THE CITY'S CODE OF ORDINANCES, AND PROVIDING AN EFFECTIVE DATE.

END OF CONSENT CALENDAR

6:39 PM MOTION: Approve, less Item #4.

MOVED BY: Mike Meier

SECONDED BY: Eula Clarke

Motion approved unanimously.

COMMISSION ACTION

4. REQUEST TO SEEK APPROPRIATIONS FUNDING (RC):

RESOLUTION No. 60-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE PUBLIC WORKS DEPARTMENT TO RETAIN JORDAN CONNORS ON BEHALF OF THE CITY TO ASSIST THE CITY IN ITS PURSUIT TO OBTAIN FUNDING FROM THE FREEDOM FIRST BUDGET FUNDS REMAINING AFTER DISBURSEMENT TO THE FIRST RESPONDERS; AND SUBSEQUENTLY APPROVE THE EXPENDITURE OF ANY ADDITIONAL FUNDS ALLOCATED BY THE STATE FROM THE 2022-2023 BUDGET TO FUND THE STORM WATER PROGRAMS THAT ARE CURRENTLY SHOVEL READY; PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

ITEM #4 PULLED

6:40 PM

City Attorney Mike Mortell reviewed the Resolution and gave a brief summary of what Mr. Jordan Connors does for the City.

Commissioner Meier spoke about the outstanding lobbying work that Mr. Jordan Connors does and stated he wanted to pull it for the benefit of the public.

6:42 PM MOTION: Approve.

MOVED BY: Mike Meier

SECONDED BY: Eula Clarke

Motion approved unanimously.

6. LETTER TO USCG RELATED TO A PROPOSED RULE CHANGE TO OPERATION OF THE ST. LUCIE RIVER DRAWBRIDGE (RC):

RESOLUTION No. 59-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AUTHORIZING A LETTER TO THE UNITED STATES COAST GUARD (USCG) EXPRESSING ITS POSITION ON A PROPOSED RULE CHANGE TO THE OPERATION OF THE DRAWBRIDGE OVER THE SAINT LUCIE RIVER; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Mayor Matheson commented on the importance of the letter and thanked everyone for allowing him to speak on behalf of water quality.

6:46 PM MOTION: Approve.

MOVED BY: Mike Meier

SECONDED BY: Becky Bruner

Motion approved unanimously.

ORDINANCE SECOND READING

7. TREE REMOVAL PENALTIES TEXT AMENDMENT (RC):

ORDINANCE No. 2491-2022; AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING CHAPTER V, RESOURCE PROTECTION STANDARDS OF THE CITY'S LAND DEVELOPMENT CODE; AMENDING SECTION 5.05.08 PENALTIES FOR THE WRONGFUL REMOVAL OF TREES; REPLACING ORDINANCE 2478-2022; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

6:47 PM

Commissioner Meier commented on the law SB 518 that was passed in the last legislative session for tree trimming. Stated that there still is a prohibition in state statute that still provides some situations in which a local government may not require permits notice. Commissioner Meier read section 1(A)(B) in the City Ordinance and stated that our ordinance and state statute state something different.

Attorney Mortell stated he will remove Section B and our Ordinance will follow FS.163.045, Tree pruning, trimming, or removal on residential property.

PUBLIC COMMENT:

1) Mark Brechbill - SE Osceola St; Commented that provisions should be made in regards to developers and stated that developers will just trim or remove the trees and then come ask for forgiveness. Does not think this ordinance is strong enough.

2) Campbell Rich - Flamingo Ave; Commented about a friend's tree removal and questioned the Commission on how they are seeking to enforce this Ordinance.

3) Gail Goldy - 12th Terrace; Commented on being curious about the fines, referring to the fines for the past developer, and noted a developer being removed from a City vendor listing for a period of time if a violation occurs.

Attorney Mortell spoke about the violation fees and how they work.

6:49 PM MOTION: Approve with amended motion, removing section B to coincide with the Florida Statute.

MOVED BY: Becky Bruner

SECONDED BY: Eula Clarke

Motion approved unanimously.

8. (CONTINUED TO DATE CERTAIN OF JULY 11, 2022 CCM) REPEAL & REESTABLISH CHAPTER 36, ARTICLE V, CODE OF ORDINANCES (RC):

ORDINANCE No. 2488-2022; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REPEALING AND REESTABLISHING

CHAPTER 36, ARTICLE V, COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS OF WAY, OF THE CITY OF STUART CODE OF ORDINANCES; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE OF TRANSFER, SALE, OR ASSIGNMENT OF ASSETS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING THE REQUIREMENT OF A PERMIT; PROVIDING FOR APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR CONSTRUCTION METHODS FOR PLACING OR MAINTAINING FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR FEES AND TAXES; PROVIDING FOR A RESERVATION OF RIGHTS AND REMEDIES; PROVIDING ENFORCEMENT AUTHORITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITIES; PROVIDING FOR AN EFFECTIVE DATE.

7:09 PM MOTION: Approve.
MOVED BY: Mike Meier
SECONDED BY: Becky Bruner
Motion approved unanimously.

ORDINANCE FIRST READING

9. PROPERTY MAINTENANCE CODE CHANGES (RC):

ORDINANCE No. 2496-2022; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE EXISTING SECTION 10-59 THROUGH 10-84; SECTION 26-30; AND SECTIONS 42-38 THROUGH 42-305; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

City Attorney Mortell reviewed the code changes with the Commission.

Commissioner Meier commented that he would like to strike the painting of the shutters.

Attorney Mortell explained the reason for the code and painted shutters. The code does not allow human habitation to be in a home with shutters up for a period of time.

The Commission continued discussion of the Ordinance.

PUBLIC COMMENT:

1) Campbell Rich - Commented on why the City has Ordinances that are frequently violated and pointed out several items within the Ordinance.

7:13 PM MOTION: Approve with moving the shutters to C(1).
MOVED BY: Becky Bruner
SECONDED BY: Eula Clarke
Motion approved unanimously.

DISCUSSION AND DELIBERATION

ADJOURNMENT

7:31 PM

Mary R. Kindel, City Clerk

Merritt Matheson, Mayor

**Minutes to be approved at the Regular Commission
Meeting this 11th day of July, 2022.**

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 7/11/2022

Prepared by: Jim Chrulski

Title of Item:

LICENSE AGREEMENT - HOUSE OF HOPE COMMUNITY GARDEN (RC):

RESOLUTION No. 62-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE CITY MANAGER TO EXECUTE LICENSE AGREEMENT RENEWAL NO. 2 BETWEEN THE CITY OF STUART AND HOUSE OF HOPE FOR THE OPERATION OF A COMMUNITY GARDEN ON CITY OWNED PROPERTY AT 520 SE FLORIDA STREET; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

A renewal license agreement with 'House of Hope' to manage and operate the Community Garden, located at 530 SE Florida Street for three (3) additional years.

Funding Source:

Revenue: \$10.00 annually for the 3 year license agreement period.

Recommended Action:

Approve R62-2022

ATTACHMENTS:

1. R62-2022 Authorizing a License Agreement with House of Hope for a Community Garden Renewal 2
2. R62-2022 License Agreement with House of Hope for Community Garden Renewal 2



BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 62-2022

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE CITY MANAGER TO EXECUTE LICENSE AGREEMENT RENEWAL NO. 2 BETWEEN THE CITY OF STUART AND HOUSE OF HOPE FOR THE OPERATION OF A COMMUNITY GARDEN ON CITY OWNED PROPERTY AT 520 SE FLORIDA STREET; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the City owns certain lands located within the corporate limits of Stuart, Florida, which shall hereinafter be called the "Subject Property." The legal address for the Subject Property is 520 SE Florida Street, Stuart, Florida.; and

WHEREAS, the Licensee desires to locate and operate a Community Garden on the Subject Property.

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, THAT:

SECTION 1: The foregoing precatory language is adopted as if set forth below.

SECTION 2: The City Manager is hereby authorized to execute the first renewal of a Non-Exclusive License to House of Hope for the operation of a community garden on city property at 520 SE Florida Street, Stuart Florida 34994.

SECTION 3: This Resolution shall become effective upon its adoption

Resolution No. 62-2022

Authorizing a License Agreement with House of Hope for a Community Garden

Commissioner _____ offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

MERRITT MATHESON, MAYOR
TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
MIKE MEIER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED this ____ day of _____, 2022.

ATTEST:

MARY R. KINDEL
CITY CLERK

MERRITT MATHESON
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY



**LICENSE AGREEMENT CITY
OF STUART, FLORIDA**

**LICENSE AGREEMENT RENEWAL NO. 2
FOR HOUSE OF HOPE**

THIS LICENSE AGREEMENT, hereinafter the "Agreement" is made and entered into this 11th day of July, 2022 by the CITY OF STUART, FLORIDA, a municipal corporation of the State of Florida, 121 S.W. Flagler Avenue, Stuart, Florida 34994, hereinafter the "City", and HOUSE OF HOPE, d/b/a "House of Hope" a Florida Non-For-Profit Corporation, hereinafter the "Licensee."

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, THE CITY DOES HEREBY GRANT THIS LICENSE to the Licensee to locate and operate a Community Garden on the Subject Property, including the placement of necessary structures, devices, and power connections, with the right of access to and egress from the Subject Property by Licensee's employees and agents, as necessary for the purposes of this Agreement, subject to the following terms and conditions:

1. As consideration to the City for the granting of this license, the Licensee shall pay the sum of \$10 Dollars each year hereafter until said agreement has been terminated.
2. The term of this Agreement shall be Three (3) years from the date of approval and may be revoked by either party with 120 days written notice.
3. Upon termination or upon expiration of this License, the Licensee shall forthwith remove all improvements installed by the licensee and restore the site to at least as good a condition as prior to its occupancy.
4. The Licensee shall maintain the site and shall prevent undesirable weeds; maintain healthy produce plants; and landscaping.
5. The City of Stuart agrees to provide City Water to the location without charge so long as the licensee continues to operate a Community Garden. There shall be no other uses allowed at the Subject Location without written agreement by the City.
6. City of Stuart responsibilities:
 - a. Provide shed, fencing, garden beds
 - b. Initial setup of water and fencing
7. House of Hope responsibilities:
 - a. Maintain property
 - b. Provide education to community
8. For the purposes of this Agreement, "Neglect" shall mean a state of disrepair to the point that it is reasonably deemed unsafe, or unusable or inoperable, for a period of more than

thirty (30) days following receipt of written notice of such condition from the City's Building Official. If such conditions of Neglect exist, the City may deem all improvements made by the licensee to be "Abandoned Property", as that term is used in Sec. 38-86 of the Stuart Code of Ordinances and may thereafter cause its removal by the Licensee.

9. The Licensee hereby fully indemnifies the City against any injury, tort, damage, or other claim, or amount due, arising out of this Agreement, and further agrees to provide a suitable defense for the City in the event that any legal action is instituted against the City for any injury, tort, damage, or claim arising out of this Agreement.
10. Must comply with the City of Stuart's fertilizer Code of Ordinance. Chapter 20, Article 8. No fertilizers that contain Nitrogen & Phosphorus from June 1 – November 30th.
11. The Licensee shall provide "all risk" liability insurance coverage for the City in an amount of not less than. One Million (\$1,000,000) Dollars per Individual *and* Two Million (\$2,000,000) Dollars per occurrence. A certificate of insurance showing the "City of Stuart, its officials, agents and employees" as "additional insured's" shall be provided to the City Clerk and shall be maintained throughout the term of this Agreement.

Witness our duly authorized signatures on this License Agreement, as executed on this day and year first above written.

CITY:

HOUSE OF HOPE:

David Dyess
City Manager

Robert Ranieri
Chief Executive Officer

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

Mary Kindel
City Clerk

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 7/11/2022

Prepared by: Michelle Berger

Title of Item:

DAR REQUEST FOR AUTHORIZATION TO PLACE AMERICA 250 MARKER (RC):

RESOLUTION No. 63-2022; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AUTHORIZING THE LOCATION OF AN AMERICA 250 MARKER WITHIN THE CITY OF STUART'S MEMORIAL PARK, GIVEN THE PHYSICAL FORMAT AND CONTEXT OF THE MARKER WILL BE IN COMPLIANCE WITH REGULATIONS AND STANDARDS OF THE OFFICE OF THE HISTORIAN GENERAL, THROUGH A PARTNERSHIP WITH THE HALPATIOKEE CHAPTER OF THE DAUGHTERS OF THE AMERICAN REVOLUTION.

Summary Explanation/Background Information on Agenda Request:

Daughters of the American Revolution are requesting authorization to place an America 250 Patriots Marker in honor of the 250th Anniversary of the United States in Memorial Park by the sidewalk leading to the gazebo. They must receive permission from the City before making application to the Office of the Historian General.

Funding Source:

N/A

Recommended Action:

Approval

ATTACHMENTS:

1. R63-2022 DAR request for marker
2. Exhibit A
3. America 250 Marker



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

RESOLUTION NUMBER 63-2022

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AUTHORIZING THE LOCATION OF AN AMERICA 250 MARKER WITHIN THE CITY OF STUART'S MEMORIAL PARK, GIVEN THE PHYSICAL FORMAT AND CONTEXT OF THE MARKER WILL BE IN COMPLIANCE WITH REGULATIONS AND STANDARDS OF THE OFFICE OF THE HISTORIAN GENERAL, THROUGH A PARTNERSHIP WITH THE HALPATIOKEE CHAPTER OF THE DAUGHTERS OF THE AMERICAN REVOLUTION.

* * * * *

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, that:

WHEREAS: In July 2026, the United States will mark its 250th anniversary – and the Daughters of the American Revolution (DAR) organization is preparing to celebrate; and

WHEREAS: The National Society has established the America 250! Committee to plan DAR's involvement during our nation's upcoming 250th birthday, providing an exceptional opportunity for community involvement; and

WHEREAS: DAR chapters throughout America will work to leave a lasting impact on their communities through meaningful local projects and events during this anniversary; and

WHEREAS: DAR members are women who come from diverse backgrounds and hold a variety of interests. Their common bond is their lineal descent from Patriots of the American Revolution; and

WHEREAS: DAR is the first heritage society to formally partner with America 250, the nationwide commemoration of America's 250th anniversary in 2026 led by the U.S. Semi-quincentennial Commission; and

WHEREAS: The Halpatiokee Chapter of the DAR is making application to gain approval of a DAR America 250 Patriots Marker in honor of the 250th anniversary of the United States; and

WHEREAS: Advanced permission must be obtained from the Office of the Historian General before approval of an America 250 Patriots Marker; and

WHEREAS: The location of this marker request is within the City of Stuart's Gazebo Park, along the sidewalk to the gazebo; and

WHEREAS: Physical format and context of the marker will be in compliance with regulations and standards of the Office of the Historian General; and

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, THAT:

SECTION 1: The foregoing precatory language is adopted as if set forth below.

SECTION 2: The City of Stuart, City Commission hereby approves the placing of an America 250 Patriots Marker in Gazebo Park as indicated in Exhibit A.

SECTION 3: This Resolution shall become effective upon its adoption.

Commissioner _____ offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

MERRITT MATHESON, MAYOR
TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
MIKE MEIER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED this 11th day of July, 2022.

ATTEST:

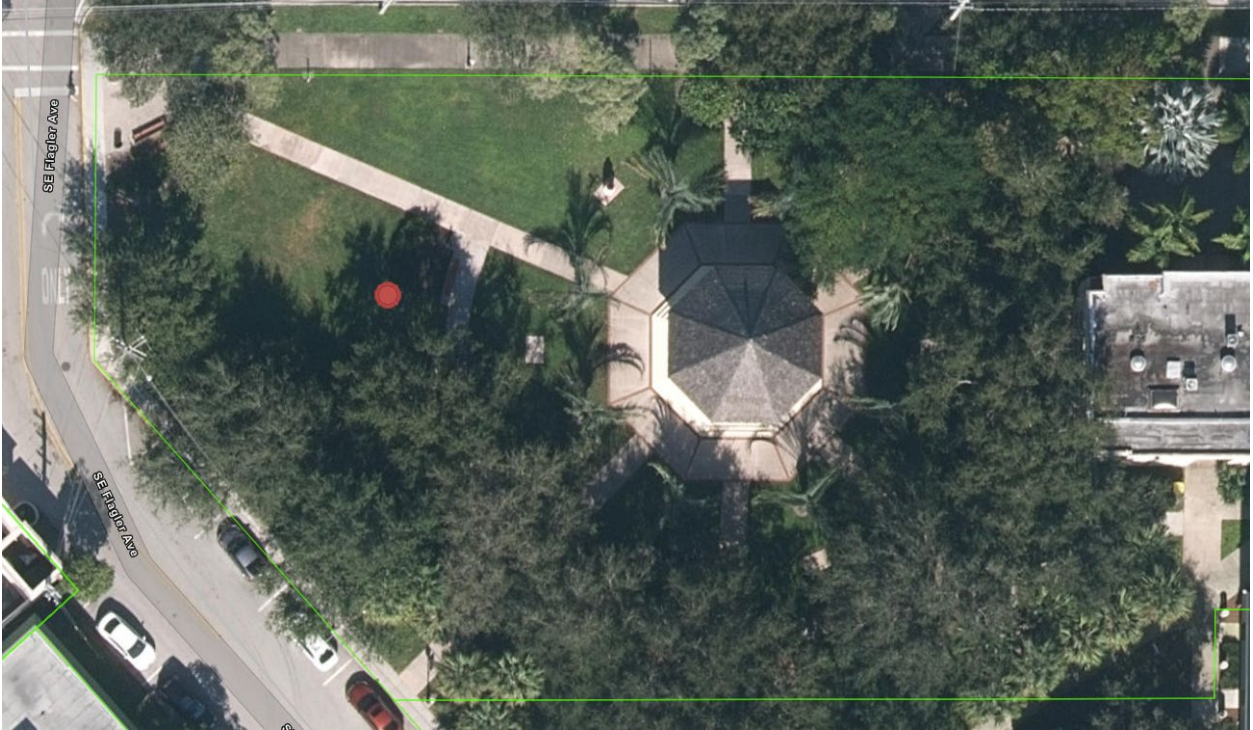
MARY R. KINDEL
CITY CLERK

MERRITT MATHESON
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

Exhibit A



AMERICA 250 PATRIOTS MARKER
APPLICATION AND INSTRUCTIONS FOR APPROVAL OF A
DAR AMERICA 250 PATRIOTS MARKER
IN HONOR OF THE 250TH ANNIVERSARY OF THE UNITED STATES

ADVANCE PERMISSION must be obtained from the Office of the Historian General before approval of an America 250 Patriots Marker. Firm plans for dedication should not be made until after the Historian General's letter of permission has been received by the applicant.

DAR applicant: _____
(NAME)

DAR sponsor: _____
(CHAPTER / CLUB / STATE SOCIETY / STATE ORGANIZATION)

Address: _____
(STREET) (CITY) (STATE) (ZIP CODE)

Daytime phone: (____) _____ E-mail: _____

Revolutionary War Patriots

This marker commemorates the men and women who achieved
American independence.

These Patriots, believing in the noble cause of liberty,
fought valiantly to found a new nation.

1775 - 1783

Presented by

(Name of Sponsoring Entity)

Daughters of the American Revolution
in honor of the 250th anniversary of the United States.

NAME OF CHAPTER/CLUB/STATE SOCIETY/STATE ORGANIZATION AS IT
SHOULD APPEAR ON AMERICA 250 PATRIOTS MARKER:

PHYSICAL DESCRIPTION OF MARKER: *(Check one)*

30" x 30" Post and Cap Mounted Bronze Plaque ☐

24" x 24" Bronze Plaque for Mounting on Walls or Stone ☐

PROPOSED DATE OF DEDICATION: _____

PLEASE INCLUDE ALL OF THE FOLLOWING ITEMS WITH THIS APPLICATION.

- 1) A letter of support from the sponsoring chapter/club/state society/state organization.
- 2) A precise description of where the marker is to be located. If possible include sketches, photographs, and/or maps of the site.
- 3) Written statement authorizing installation of the marker from the property owner/custodian of land where the marker is to be placed. The letter must be dated within the past year. The signed, dated letter should include a statement explaining by what right the writer has the authority to grant permission.

**This form may be submitted electronically to historian@dar.org or by mail to
Office of the Historian General, NSDAR, 1776 D Street NW, Washington, DC 20006-5303.**

SUBMITTED BY

APPROVED BY (For Office Use Only)

Signature of Applicant: _____

National Number: _____

Date: _____

Office of the Historian General

Date: _____

Initials: _____

NATIONAL SOCIETY DAUGHTERS OF THE AMERICAN REVOLUTION
OFFICE OF THE HISTORIAN GENERAL
APPLICATION AND INSTRUCTIONS FOR PERMISSION TO PLACE A DAR HISTORICAL OR
COMMEMORATIVE MARKER

★ Advance permission MUST be obtained from the Historian General to place a DAR Marker. ★

★★ Please allow a **MINIMUM of SIX MONTHS** to process this request, and allow approximately **TWO ADDITIONAL MONTHS** (for a total of **eight months**) processing time if the marker mentions Revolutionary War soldiers, sailors, or patriots. These time periods do **NOT** include the time involved with the ordering and manufacturing of the marker. ★ A **REVOLUTIONARY WAR GRAVE MARKER APPLICATION** must be completed for each soldier, sailor, or patriot, or their wives or daughters mentioned in a historical/ commemorative marker text. ★ ★

This is an application to ☒ **Place** ☐ **Rededicate** ☐ **Replace** or ☐ **Move** a historical or commemorative marker.

DATE OF APPLICATION: July 4, 2022

PROPOSED DATE OF DEDICATION: July 4, 2026

DAR CHAPTER, DIVISION, OR STATE SOCIETY APPLYING FOR MARKER: Halpatiokee Chapter 3035

CONTACT PERSON: Carolyn M. Jensen

PHONE: (772) 781-4257

E-MAIL: lbjensen@aol.com

MAILING ADDRESS: 1701 SW Capri Street Apt 168

Palm City

FL

34990-4539

(Street)

(City)

(State)

(Zip)

PLEASE INCLUDE ALL OF THE FOLLOWING ITEMS WITH THIS FORMAL DAR HISTORICAL/ COMMEMORATIVE MARKER APPLICATION. FAILURE TO PROVIDE ANY OF THE ITEMS COULD RESULT IN A SIGNIFICANT DELAY IN THE PROCESSING OF THIS APPLICATION.

- ☒ (1) Detailed description of the location and physical format of the proposed DAR marker.
- (a) A copy of the proposed text and the placement of the DAR Insignia (if incorporated into the design).
 - (b) A precise description of where the marker is to be located. If possible, include sketches, photographs, and/or maps of the site.
 - (c) If there are already any other markers or plaques at the site, please include either a photograph or a transcription of the text of the other marker(s); it is important that the text of a new DAR marker **not duplicate** that of any pre-existing markers.
- ☒ (2) Verification of the historical facts associated with the proposed marker. Verification must include:
- (a) Documentation, drawn from primary source materials and/or scholarly secondary source materials, that verifies the historical and geographical accuracy of **each and every one** of the statements that appear in the wording of the marker. It is the responsibility of the DAR sponsoring organization to obtain the necessary proof for inclusion in a marker application package.
 - (b) **At least two** letters from non-DAR historical experts. Letters may be written by such people as university professors and/or professional staff members at historical societies and other historical institutions who have in-depth, scholarly knowledge of the subject matter, indicating the accuracy and significance of the facts presented in the wording of the marker. These letters **must** include a complete copy of the exact wording that the person is approving. Please keep in mind that this is not a letter of support and letters that simply are in support of an application will not fulfill this requirement.
- ☒ (3) Written statement authorizing installation of the marker from the property owner/custodian of land where marker is to be placed. The letter must be dated within the past year. The signed, dated letter should include a statement explaining by what right the writer has the authority to grant permission. If this is an application to **rededicate, replace, or move** a marker, this letter should authorize the rededication or reinstallation of this marker.
- ☒ (4) Table-of-contents page—a list of every item in the application dossier.

Please send this completed form and application materials to:

The Office of the Historian General, NSDAR
1776 D Street NW
Washington, DC 20006-5303

★★ You will be notified when the application is approved. E-mail notification will be used when possible.
The permission letter will allow you to purchase a marker from one of the firms authorized to reproduce the DAR insignia. ★ ★

If you have questions, please contact the Office of the Historian General. PHONE: (202) 879-3256 E-MAIL: historian@dar.org

From: classicbronzeresources@fuse.net,

To: lbijensen@aol.com,

Subject: Re: DAR Halpatiokee Chapter America 250! Patriots Marker

Date: Tue, Mar 8, 2022 7:16 am

Attachments: Ohio State Society America 250 posst and cap.jpg (1382K), Henry Knox chapter 1.jpg (2058K), Butler PA 250 plaque 3.jpg (422K)

Good morning Lynne,

Thank you for your inquiry for a DAR America 250 Patriot marker. Below is the pricing information that you requested. I have also attached some pictures of recent castings for your review.

2022 Price

Post and Cap Mounted Bronze Plaques 30"w x 30"h

DAR Revolutionary War Patriot Post and Cap specifications include:

- Bronze
- 1/2" thick
- Times New Roman font – upper and lower case
- Raised copy and single line border satin finished
- Background painted brown
- DAR emblem top center
- America 250 logo bottom center
- Baked-on gloss clear coat
- Includes 8' post
- Includes mounting hardware
- Digital proof for approval prior to production
- 60-day turnaround time frame after date of final approval
- We suggest dedication date should be scheduled 10 weeks out from date of final approval

Sizes and delivered prices:

- 30"w x 30"h: \$5,555.00
- or
- 30"w x 30"h: \$5,207.00
- Plus shipping cost: \$348.00
- Total delivered price: \$5,555.00

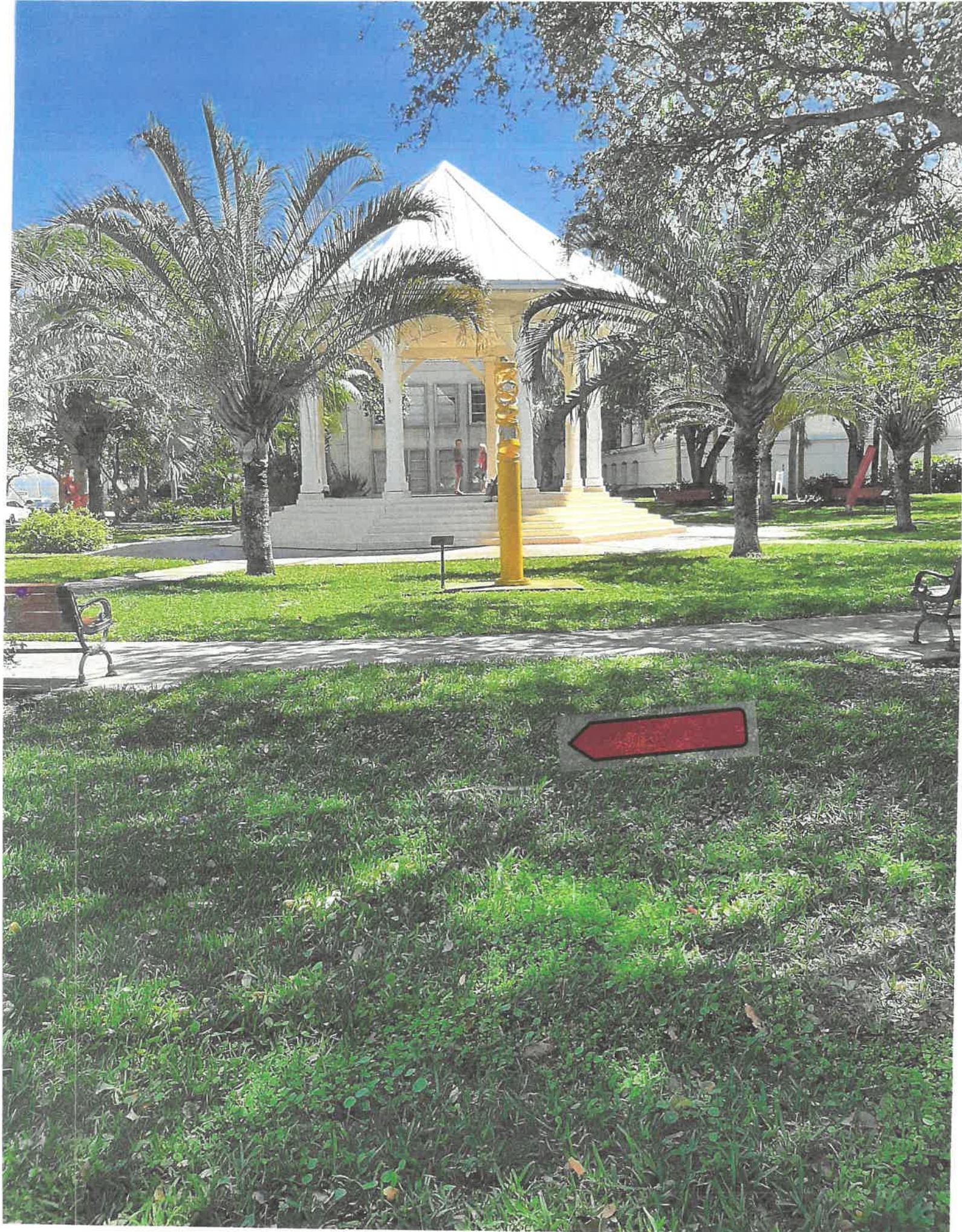
A tracking number will be provided after shipping

Our credit department requires a 50% down payment on all orders. All orders must be paid-in-full before shipment. Payment may be made by check or all major credit cards. A copy of the letter of approval from the DAR Historian General is required to produce this plaque.

Thank you for your inquiry.

Looking forward to working with you again as well.

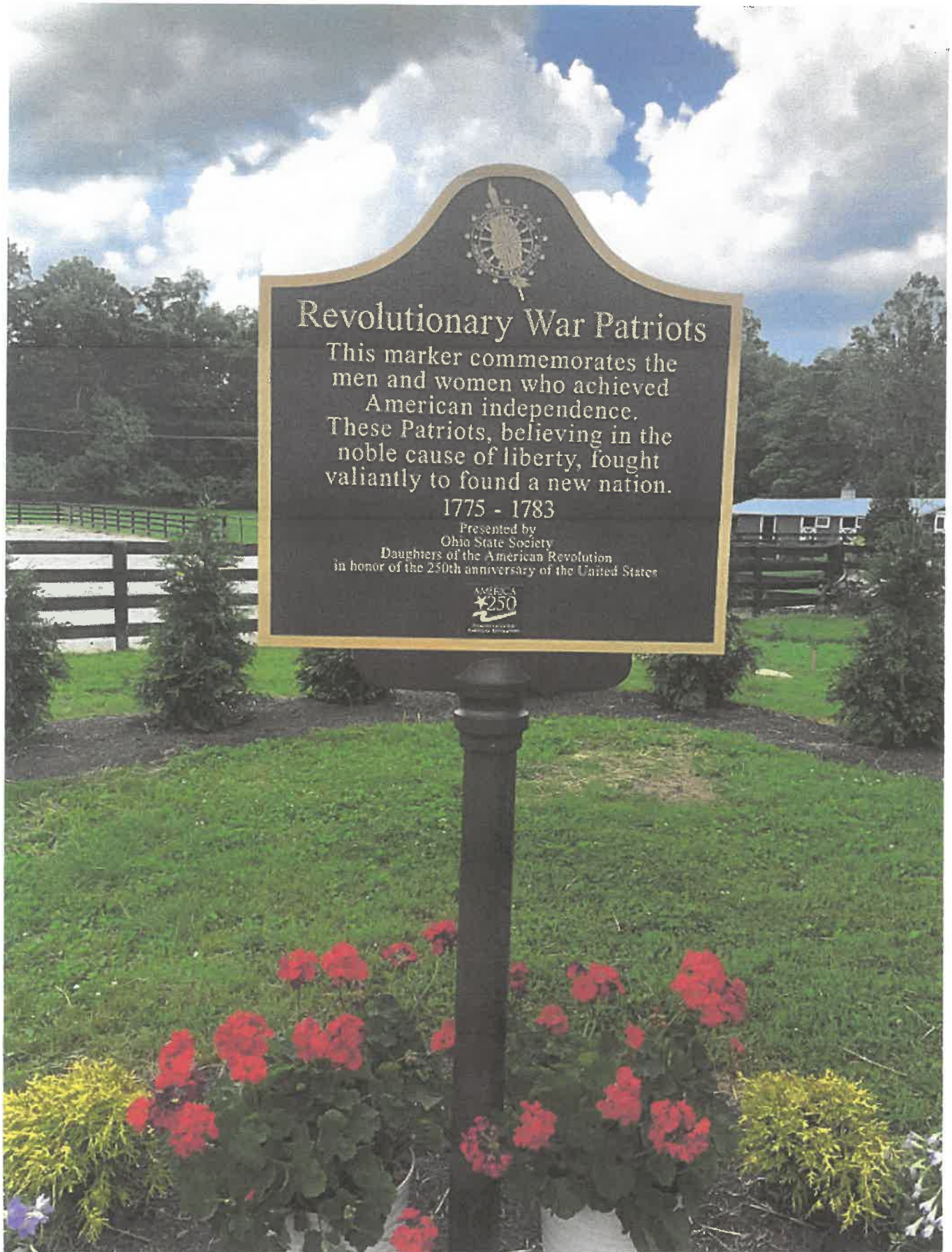
Dick Stein
Classic Bronze Resources LLC
4628 Whispering Oak Trail
Cincinnati, OH 45247
513-600-9048





25

July 4, 2026







Chartered April 1, 1938

DOWNTOWN "BANDSTAND" MADE POSSIBLE
BY A GIFT TO THE CITY OF STUART
FROM THE KIWANIS CLUB OF STUART, FLORIDA

JULY 199

CITY OF STUART, FLORIDA AGENDA ITEM REQUEST

Meeting Date: 7/11/2022

Prepared by: Michael Mortell

Title of Item:

PROPERTY MAINTENANCE CODE CHANGES (RC):

ORDINANCE No. 2496-2022; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE EXISTING SECTION 10-59 THROUGH 10-84; SECTION 26-30; AND SECTIONS 42-38 THROUGH 42-305; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

Code Enforcement staff was seeking clarification and revision of portions of the City Code of Ordinances to provide clarity to residents and to remove ambiguous language. In addition, the revisions are intended to create uniformity because there were portions of the code that would apply to houses on one side of the street but due to a zoning difference, did not apply to the identical houses across the street. During first reading, the Commission directed staff to move the language regarding painting storm shutters back to its original location. There are no other changes since first reading.

Funding Source:

NA

Recommended Action:

Move approval on Second Reading

ATTACHMENTS:

1. Ordinance 2496-2022 Amend Chapter 10-59-10-84 Code Enforcement
2. Ordinance 2496-2022 Exhibit A



**BEFORE THE CITY COMMISSION
CITY STUART, FLORIDA**

ORDINANCE NUMBER 2496-2022

**AN ORDINANCE OF THE CITY COMMISSION OF
THE CITY OF STUART, FLORIDA, AMENDING
THE EXISTING SECTION 10-59 THROUGH 10-84;
SECTION 26-30; AND SECTIONS 42-38 THROUGH
42-305; PROVIDING FOR REPEAL OF
CONFLICTING ORDINANCES; PROVIDING FOR
AN EFFECTIVE DATE, AND FOR OTHER
PURPOSES.**

WHEREAS, the City of Stuart has adopted a Code of Ordinances encompassing regulations adopted by the City Commission which are intended to serve and provide public benefit to the residents and visitors of the City of Stuart; and

WHEREAS, the City Commission of the City of Stuart has regulations in place pertaining to the parking and storage of vehicles as well as the occupation and maintenance of structures within the geographic boundaries of the City; and

WHEREAS, the City Commission updates its regulations from time to time to provide benefit to the community and clarify any ambiguities; and

WHEREAS, the City Commission finds that the code needs to be updated to remain consistent with the policies and regulations adopted by the Commission.

WHEREAS, the City Commission wishes to revise portions of the Code in order to provide clarity and assist the Code Enforcement staff.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE
CITY OF STUART, FLORIDA THAT:**

SECTION 1. The foregoing WHEREAS clauses are ratified and incorporated as the legislative intent of this Ordinance. The Regulation of Communications Facilities on Private Property is found within Chapter 36, Article V, of the City of Stuart Code of Ordinances.

SECTION 2. That CHAPTER 10, BUILDINGS AND BUILDING REGULATIONS, ARTICLE III, PROPERTY MAINTENANCE, SECTIONS 10-59 through 10-84; CHAPTER 26, LAW ENFORCEMENT, ARTICLE II, CODE COMPLIANCE, SECTION 26-30, Schedule of fines and costs; and CHAPTER 42, UTILITIES, ARTICLE II, WATER, SECTION 42-38, 42-180 and 42-305 Tampering with water system and illicit connections are hereby repealed and replaced with such language attached as **Exhibit “A”**;

SECTION 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby revoked.

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

SECTION 5. This ordinance shall become effective upon passage.

Passed on first reading the __ day of _____ 2022.

PASSED on first reading this _____ day of _____.

Commissioner _____ offered the following ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

MERRITT MATHESON, MAYOR
TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
MIKE MEIER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second reading this _____ day of _____.

ATTEST:

MARY R. KINDEL
CITY CLERK

MERRITT MATHESON
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

Sec. 10-59. Occupancy of certain buildings, dwelling units and roominghouses.

- (a) It shall be unlawful for any person to occupy or permit to be occupied any building or portion of a building, dwelling unit or rooming house which is not free of all sanitary nuisances defined in F.S. ch. 386.
- (b) It shall be unlawful for any person to occupy or permit to be occupied any building or portion of a building, dwelling unit or rooming house which is not free of all nuisances defined in section 10-58.
- (c) Any person, who occupies a building after being ordered to vacate or not to occupy such building by the building official because it is unsanitary pursuant to ch. 386, F.S., or is a nuisance pursuant to sec. 10-58, city code, shall be guilty of a state misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days, or a fine of not more than \$500, or both a fine and imprisonment.

(Code 1995, § 18-305; Ord. No. 2156-08, § 1(18-305), 4-14-2008; Ord. No. 2440-2020 , § 1, 5-26-2020;[Ord.](#))

Sec. 10-61. Maintenance of structures, equipment and exterior property.

- (a) *Scope.* The provisions of this section shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior of all residential and commercial property.
- (b) *Responsibility.* The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this article. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this section. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises which they occupy and control.
- (c) *Vacant structures and land.* All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein, including soil stabilization so as not to cause a blighting problem or adversely affect the public health or safety.
- (d) *Sanitation.* All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.
- (e) *Grading and drainage.* All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon. All rain gutter down spout and roof discharge water must be directed in a manner not to cause water accumulation or create flooding conditions to abutting properties. This requirement shall not apply to required retention areas.
- (f) *Sidewalks and driveways.* All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair and maintained free from hazardous conditions.
- (g) *Rodent harborage.* All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent infestation. (See also subsection 10-64(a), pertaining to extermination of infestations.)

(Supp. No. 34)As of 09/10/21

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- (h) *Exhaust vents.* Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.
- (i) *Accessory structures.* All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.
- (j) *Exterior property and storage prohibited:*
 - (1) General storage, of materials shall be located entirely within an enclosed building or screened from view of the surrounding properties with a sight obscuring fence and/or landscaping, except as otherwise required by this Code.
 - (2) No accumulation or storage of the following materials shall be located within any required front, ~~side or rear~~ yard, ~~side yard~~ or carport that is visible from public view:
 - (2) a. Solid waste, rubbish, white goods (washers, dryers, refrigerators, other appliances), mattresses, household furniture typically not for outdoor use, scrap lumber, metals, concrete pieces and concrete block, glass, tires, machinery, auto parts, construction materials and equipment, paint cans and buckets, dead flora potted or un-potted, ~~junk or abandoned~~: play gym equipment, merchandise, and landscape equipment
- (k) *Defacement of property.* No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti. It shall be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.
- (l) *Temporary storage containers, pertaining to residential use.*
 - (1) All portable on-demand storage containers must be of an approved type such as pods, etc. Special "emergency disaster pods" are not permitted for storage and are only to be used in prescribed areas that are designated by federal, state, or local emergency management authorities.
 - (2) Truck beds or truck bodies are considered not to be approved storage containers and therefore not permitted for use in either commercial or residential zoning districts.
 - (3) A permit is required and will expire within six months of issue. An extension may be granted on a case by case basis, not to exceed 12 consecutive months and is limited to only one container per residence, placed on the premise's driveway; only.
- (m) *Exterior structure.*
 - (1) *Generally.* The exterior of a structure shall be maintained in good repair, structurally sound, and sanitary so as not to pose a threat to the public health, safety or welfare.
 - (2) *Protective treatment.* All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition and free from mold and mildew. Exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and watertight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

-
- (3) *Structural members.* All structural members shall be maintained free from deterioration and shall be capable of safely supporting the imposed dead and live loads.
 - (4) *Foundation walls.* All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.
 - (5) *Exterior walls.* All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration and must be free from loose materials subject to becoming projectiles under high wind conditions.
 - (6) *Roofs and drainage.* The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance. Roofs must be free from loose materials subject to becoming projectiles under high wind conditions.
 - (7) *Temporary coverings.* Temporary or emergency roof covering, tarps and the like must be removed within 12 months from the event causing damage; it being the intent of this section that damaged roofs be repaired or replaced within the same time period.
 - (8) *Decorative features.* All cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition and free from loose materials subject to becoming projectiles under high wind conditions.
 - (9) *Overhang extensions.* All overhang extensions including, but not limited to canopies, marquees, signs, metal awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.
 - (10) *Stairways, decks, porches and balconies.* Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.
 - (11) *Chimneys and towers.* All chimneys, cooling towers, smokestacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.
 - (12) *Handrails and guards.* Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.
 - (13) *Window, skylight and door frames.* Every window, skylight, door and frame shall be kept in sound condition, good repair and weathertight.
 - (3) a. *Glazing.* All glazing materials shall be maintained free from cracks and holes.
 - (4) b. *Openable windows.* Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.
 - (14) *Insect screens.*
 - (5) a. Every door, window and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per

25 millimeters), and every screen door used for insect control shall have a self-closing device in good working condition.

(6) b. *Exception:* Screens shall not be required where other approved means, such as air curtains or insect repellent fans, are employed.

- (15) *Doors.* All exterior doors, door assemblies and hardware shall be maintained in good condition. Locks at all entrances to dwelling units and sleeping units shall tightly secure the door. Locks on means of egress doors shall be in accordance with NFPA-1.
- (16) *Basement hatchways.* Every basement hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water. Basement hatchways that provide access to a dwelling unit, rooming unit or housekeeping unit let shall be equipped with devices that secure the units from unauthorized entry.
- (17) *Guards for basement windows.* Every basement window that is openable shall be supplied with rodent shields, storm windows or other approved protection against the entry of rodents.
- (18) *Doors.* Doors providing access to any dwelling unit, rooming unit or housekeeping unit shall be equipped with a deadbolt lock designed to be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort and shall have a lock throw of not less than one inch (25 millimeters). Such deadbolt locks shall be installed according to the manufacturer's specifications and maintained in good working order. For the purpose of this section, a sliding bolt shall not be considered an acceptable deadbolt lock.
- (19) *Windows.* Operable windows located in whole or in part within six feet (1,828 millimeters) above ground level or a walking surface below that provide access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a window sash locking device.
- (20) *Storm shutter regulations.*

(7) a. Protection from windborne debris is encouraged for all structures certified for occupancy in the city. Storm shutters, or hurricane protection devices, shall be designed and installed in conformance with the state building code in effect at the time such hurricane protection was permitted by the building department of the city. Plywood shutters shall be painted to match the color of the structure.

(8)(7) b. Except during the period from June 1 through November 30 each calendar year, hurricane protective devices are not permitted to be in the closed/secured position, except during the period unless there is a hurricane or tropical storm watch or warning outside of the designated hurricane season. Placement of storm shutters during the allowed period shall be as provided in subsection c., below.

(9)(8) c. *Storm shutter placement.* Hurricane protective devices that impede egress, light, and/or ventilation in a closed/secured position on occupied buildings must be removed no later than 14 days after the termination of a hurricane event (watch, warning, or actual hurricane or tornado) Exceptions:

- 1. Unoccupied vacant/part-time residents will be permitted to hang shutters during the time of vacancy from June 1 through November 30, except for the front windows in public view. Upon return, occupants must remove shutters within 14 days. Plywood shutters are to be painted to match structure. Plywood shutters shall be painted to match the color of the structure.

- 2. A hurricane or tropical storm watch occurs in the 14 day period, at which point the 14 day period begins anew the day after the hurricane or tropical storm conditions have subsided; or
- 3. Hurricane or tropical storm watch conditions are predicted to occur within 48 hours after the fourteenth day; or
- 4. The structure is used for residential purposes, but no person is in residence; or the structure has been condemned by the building official, who has ordered that the structure not be occupied, as provided in sec. 10-84.

~~(10)(9)~~ d. Violation of the provisions in this section are a class 2 offense as provided in sec. 26-30. After 14 days a notice will be issued giving five additional days to remove the shutters or a schedule 2 fine as stated in section 26-30 will be levied.

(Code 1995, § 18-307; Ord. No. 2156-08, § 1(18-307), 4-14-2008; Ord. No. 2226-2011, § 1, 9-12-2011; Ord. No. 225-2013, § 1, 2-25-2013; Ord. No. 2261-2013, § 1, 2013; Ord. No. 2440-2020, § 1, 5-26-2020)

Sec. 10-84. Prohibited occupancy.

- ~~(a) — It is unlawful for any person to maintain or permit the existence of any unsafe building within the city. It is also unlawful for the owner, tenant or occupant of any unsafe building to permit such building to remain in an unsafe condition or to permit the occupancy of an unsafe building while it is or remains in an unsafe condition.~~
- ~~(b) — It is unlawful for any person to disobey an order of the building official issued pursuant to section 10-85 that an unsafe building be immediately vacated and not reoccupied until the specified repairs and improvements are completed.~~

~~(Code 1981, § 6-511; Code 1995, § 18-257; Ord. No. 1905, § 1, 12-9-2002; Ord. No. 2034, § 1, 6-13-2005; Ord. No. 2440-2020, § 1, 5-26-2020)~~

Sec. 10-69. Motor vehicle parking and storage.

~~(a) —~~

(a) Definitions. The definitions provided below are intended to supplement those definitions found in F.S. §§ 316.003, 327.02, and 330.27, as amended from time to time, all of which are incorporated herein. Any conflict between the state statutes and the definitions herein shall be resolved by using the more stringent definition. As used in this section, the following definitions shall apply, unless preempted by state statute:

Aircraft means any conveyance for travel through the air and for carrying persons or property, including, but not limited to, an airplane, helicopter, seaplane, amphibian, gyrocopter, balloon, blimp, glider, hovercraft and ultralight aircraft. The term aircraft shall also include any trailer when used to carry or cradle an aircraft.

Approved paved surface means a pervious or impervious surface constructed of concrete, asphalt, brick pavers, paver stones, turf blocks, or stabilized gravel, or ~~on~~ another similar surface acceptable and approved by the

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development director or designee Neighborhood Services, in an approved site plan or other approval document, in advance of the use. As provided in the land development code, turf may be acceptable parking surface for some uses. the public works director. to Under certain circumstances, the Neighborhood Services Department may authorize turf as an approved surface.

Commercial vessel means:

- (1) Any vessel primarily engaged in the taking or landing of saltwater fish or saltwater products or freshwater fish or freshwater products, or any vessel licensed pursuant to F.S. § 379.361. from which commercial quantities of saltwater products are harvested, from within and without the waters of this state for sale either to the consumer, retail dealer, or wholesale dealer; or
- (2) Any other vessel, except a recreational vessel as defined herein.

Canopy or canopy carport means an attached or detached fabric, fiberglass or metal structure used as a temporary cover for an aircraft, vessel or vehicle.

Driveway means an approved paved surface for the parking of vehicles, or vessels on trailers, which is continuously paved to a private or public right-of-way. Note: Driveways are included in calculating a site's maximum impervious surface area as set forth in section 2.04.01 of the Stuart Land Development Code, unless the surface and base are semi-pervious, and approved by the development public works director or designee.

Fully operable means a vehicle or vessel which is capable of performing its intended use or purpose, without further repair or reconstruction, and which has a current title and registration with the state or federal government, if the same is required by law to be registered.

Heavy truck means any truck which is not classified as a light or medium truck, as provided herein.

Light or medium truck means a pickup truck or a van of Classes 1, 2, or 3, with a maximum gross vehicle weight rating (GVWR) of 14,000 pounds or less, as provided in the table of US Gross Vehicle Weight Ratings published by the U.S. Department of Energy (see <https://afdc.energy.gov/data/10380>).

Light utility trailer means an open or closed trailer which can be towed by an automobile or light truck.

Noncommercial light truck means a light truck that has no painted or applied signs, advertisement, equipment, pipe racks, ladders, tanks, or other indicia of a vehicle used in the performance of a commercial activity.

Overnight parking means parking a vehicle in each location at any time during the hours from 32:00 a.m. to 6:00 a.m., daily.

Parking means to drive a vehicle and to stop it in a given location, such that the vehicle is standing, whether occupied or not, except when temporarily and actually engaged in loading or unloading merchandise or passengers; it denotes a temporary situation from which the vehicle shall be relocated or driven away within 72 hours.

Recreational vehicle means a motor home, travel trailer, pop-up camper, light truck camper top, recreational vessel on a trailer, closed or open utility trailer, house trailer (fifth wheel only), all-terrain vehicle, or similar vehicle (such as a tiny home trailer) for recreational or other noncommercial use.

Recreational vessel means any vessel:

- (1) Manufactured and used primarily for noncommercial purposes; or
- (2) Leased, rented, or chartered to a person for the person's noncommercial use.

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DONE! SEE BELOW:

Commented [2]: Reply to michael mortell (05/13/2021, 15:03):
" "

<https://afdc.energy.gov/data/10380>

**Federal Highway Administration
Table of US GVWR classifications
US truck class**

Duty classification Weight limit [1][7] Examples
Class 1 Light truck 0–6,000 pounds (0–2,722 kg) Chevrolet Colorado/GMC Canyon, Ford Ranger, Honda Ridgeline FWD[8], Jeep Gladiator, Nissan Frontier, Toyota Tacoma
Class 2a Light truck 6,001–8,500 pounds (2,722–3,856 kg) Chevrolet Silverado/GMC Sierra 1500, Ford F-150, Honda Ridgeline AWD[8][9][10], Ram 1500, Nissan Titan, Toyota Tundra
Class 2b Light/Medium truck 8,501–10,000 pounds (3,856–4,536 kg) Chevrolet Silverado/GMC Sierra 2500, Ford F-250, Nissan Titan XD, Ram 2500[8][9][10]
Class 3 Medium truck 10,001–14,000 pounds (4,536–6,350 kg) Chevrolet Silverado/GMC Sierra 3500, Ford F-350, Ram 3500, Isuzu NPR[11]

Commented [mm3]: Bad definition

Commented [4]: Reply to michael mortell (05/13/2021, 15:03):
" "

Depends on how it is used. For instance, "overnight parking" in your driveway at home, is permitted. This only defines the time, not the location!

Registration or registered means a state operating license on a vehicle or vessel which is issued with an identifying number, a certificate of registration, and a decal designating the year for which a registration fee is paid.

Sidewalk means any improved walkway on public or private property that is designed to be used by pedestrians, and which is open to use by the public or by invitees, and specifically includes outdoor walkways for pedestrian use.

Storage or *storing* means to put away, or maintain an aircraft, vehicle, ~~or vessel~~ or other ancillary equipment or object ~~or object~~ away or into safekeeping, such as to be available for later use; ~~and it denotes no active use for 72 hours or more.~~

Vehicle means a conveyance for travel on land and for carrying persons or property, including but not limited to an automobile, bus, school bus, motorcycle, farm tractor, road tractor, truck tractor, farm labor vehicle, light or heavy truck, tractor, golf cart, go-cart, straight truck, tri-vehicle, pop-up camper trailer, motor home, house trailer, recreational vehicle, pole trailer, utility trailer, semi-trailer, all-terrain vehicle, hovercraft, and including any motor vehicle, but not including any bicycle, motorized scooter, electric personal assistive mobility device, or moped.

Vessel means any conveyance for travel over or under water and for carrying persons or property, including but not limited to a motorboat, sailboat, barge, floating structure, houseboat, raft, yacht, canoe, racing shell, kayak, submersible, airboat, personal watercraft, or hovercraft or as otherwise defined in section 10-58, Stuart City Code. The term "vessel" shall also include any trailer when used to carry or cradle a vessel.

- (b) *Parking and storing; generally.*

(1) This section shall apply broadly to the parking or storage of aircraft, vehicles and vessels in ~~the R-1A, R-1, R-2, and R-3 residential land use (zoninany residential zoning district including PUD and Condition Useall zoning districts, and on any real property in the city specified herein, where the primary use is residential; regardless of zoning district, unless otherwise provided herein, and it and~~ shall apply to ~~both the owners, and occupants, and visitors to of~~ the property.

(2) ~~Notwithstanding anything contained in this section to the contrary, p~~Parking and storing of recreational vehicles ~~in the R-3 multifamily land use district shall be in accordance with anthe~~ approved site plan or planned unit development ~~ordinance~~ approved for the site. To the extent that an approved site plan or planned unit development ~~ordinance~~ is silent as to parking and storing of recreational vehicles, or in the event that no site plan or planned unit development exists for the property, then parking only (not including storage) shall be permitted for recreational vehicles in designated parking spaces appropriately dimensioned for the vehicle being parked. I-and-n ~~multifamily or commercial zoning districts, such parking areas shall also be appropriately signed for the use of such vehicles, if any. No other parking or storage of aircraft, recreational vehicles or vessels shall be permitted.~~

(Notice: condominium and homeowners' associations may have separate covenants, bylaws, or rules and regulations regarding parking and storage, which are more stringent than the city code, and while the city does not enforce those covenants, bylaws or rules and regulations, the condominium or homeowners' association may enforce them.)

(3) No ~~heavy dump~~ trucks, motorized construction equipment, including but not limited to motorized cranes, motorized excavators, shovels, rollers, dozers, special mobile equipment, loaders, other vehicles ~~designed for the transportation of persons or property~~ to which machinery has been attached, ~~heavy trucks,~~ commercial vessels, commercial vessels on trailers, ~~or aircraft, or construction vehicles or equipment~~ shall be stored on any residential property, and the same shall not be parked on any residential property unless such equipment or vehicle is being actively used on the property

Commented [mm5]: Better define: Such as maintain available for use while not in use.

FIXED

Commented [6]: Reply to michael mortell (05/13/2021, 15:03): "..."

Okay... see major changes; but remember this section only applies to vehicles, and not items such as refrigerators or building materials, which should be considered elsewhere in the code.

Commented [mm7]: Need to address entire paragraph

for a permitted construction activity, or unless such equipment, vehicle, vessel or aircraft is parked or stored in a fully enclosed garage. A garage does not include a carport or canopy. This provision shall not ~~apply to affect~~ bona fide delivery vehicles while ~~making being used to make such~~ deliveries to a residential property.

(4) No aircraft, vehicle or vessel shall be:

- a. Disassembled or dismantled, except in a fully enclosed ~~building garage; or-~~ A garage does not include an attached or detached carport or a canopy;
- b. Spray-painted, except in a fully enclosed and approved spray paint booth; ~~or-~~
- c. Stored ~~or parked overnight~~ on the public right-of-way, ~~unless otherwise permitted in this code; or-~~
- d. Parked or stored over ~~or on~~ a sidewalk, at any time; ~~or-No withstanding the definitions of parked or stored, it shall be a violation of ordinance to block the public access to a sidewalk-~~
- e. ~~Parked or s~~Stored on a vacant lot, or on real property which is under a condemnation order, or which has no legal primary use, or on real property where the legal primary use does not permit outdoor storage as an accessory use.

~~f)Notwithstanding this provision- Parked on a vacant lot, or on real property which is under condemnation order or which has no legal primary use, except that owners, agents and owners, agents and contractors may can park vehicles, or construction equipment by trucks, light trucks or other vehicles only automobiles, light and heavy trucks, motorcycles, commercial motor vehicles, dump trucks, motorized cranes, motorized shovels, special mobile equipment, other vehicles designed for the transportation of persons or property to which machinery has been attached, heawhen required to be on such property during the bonafide performance of bona fide construction, sales, or rental activities; or-~~

~~(11) —Automobiles and light trucks may be parked on a property for the purpose of allowing the property to be shown to bona fide buyers or lessees-~~

~~(12)(10) (5) —~~

~~(5) No aircraft, or or~~ vessel shall be parked on the public right-of-way, at any time.

0

~~(6) —~~ No trailer, including any light utility trailer, shall be parked on a public right-of-way, unless it is attached to a fully operable vehicle, and only in an approved parking space, designated for such use.

~~8) —On corner properties, driveways may be on either or both side yards and automobiles, light trucks, motorcycles and light utility trailers may be parked on any approved driveway. However, only the side yard providing the least visibility to the adjacent public right-of-way shall be used for the parking and storage of recreational vehicles or the storage of vehicles. (7) No trailer shall be parked overnight on a public right-of-way-~~

~~(79) —~~ Only fully operable vehicles, vessels on trailers, or aircraft on trailers, shall be parked or stored on residential property.

~~(810)~~ No vehicle, vessel, or aircraft shall be parked or stored on ~~any any~~ front, side or rear lawn or front yard, except on an approved driveway or "approved surface, as defined herein".

(c) ~~Single-family and duplex R~~residential vehicle parking and storage.

(1) *Parking only.* Operators of ~~Only~~ fully operable; automobiles, recreational vehicles, light trucks, motorcycles, vessels ~~on trailers~~, and light utility trailers parked on properties otherwise permitted to be used for parking, in the ~~shall be parked in~~ R-1A, R-1, or R-2 residential land use (zoning) districts and on occupied single-family and duplex ~~on~~ residential properties wherever located in the city, subject to the following, shall park; their vehicles only in the following order:

- a. ~~;~~ First in a permitted garage or carport, or
- b. ~~on a designated and approved driveway, or approved surface such that no part of a vehicle overhangs a sidewalk; or and~~
- b. ~~Second, in when the City Right of Way if issued a revocable permit or in a legal designated parking space on the public right-of-way,~~ if any, subject to a revocable permit, if required by this Code; and ~~;~~ or
- c. ~~ed park~~ be may — Third, additional automobiles, light trucks, motorcycles and light utility trailers ~~on one side yard of the property in compliance with "motor vehicle pParking or storagering of vehicles and vessels" as set forth in subsection (3) of Table 10-69~~ this section.

(13)

(14)(11) D. — ~~No vehicle, trailer, vessel or aircraft automobiles, recreational vehicles, light trucks, motorcycles, vessels and light utility trailers, shall be hooked up to water or sewer, or used for habitation while parked or stored on anythe property, other than at a bonafide trailer park or area approved for the same by the city.~~

(15)

(16)(12) E. — ~~AAny vehicle, unregistered or inoperable automobile, recreational vehicle, light truck, motorcycle, vessel on a trailer, or trailer which is or light utility trailer stored or maintained on an occupied residential lot shall be properly completely covered with reasonably fitteding cover composed of opaque fabric.~~

(47)

(48) (2) — ~~Parking in R-1A districts.~~ Notwithstanding the provisions in subsection (1) of this section, the following additional regulations shall apply in the R-1A land use district:

(49) a. — ~~The only trucks allowed to be parked overnight in the R-1A land use district shall be noncommercial light trucks.~~

(50) b. — ~~Vessels, trailers, and recreational vehicles shall not be parked overnight in a front driveway or front yard.~~

(51) ~~residential properties wherever located in the city, and only as follows:~~

(52) ~~single-family and duplex-occupied properties otherwise permitted to be used for parking or storing, in the R-1A, R-1, and R-2 residential land use (zoning) districts, and ononly on their vehicles automobiles, light trucks, motorcycles, vessels, light utility trailers and recreational vehicles shall park or store~~ Operators of fully operable (3) — ~~Parking or storing of vehicles and vessels.~~ a. — ~~Each vehicle shall be parked or stored only in one side yard between the front and rear building lines, as shown in figure 10-69.~~ Reserved

(53)(45) b. — ~~.~~

(54) ~~No part of a vehicle, vessel or trailer shall be higher than the highest part of the building or roof on the subject property, whichever is higher.~~

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"..."

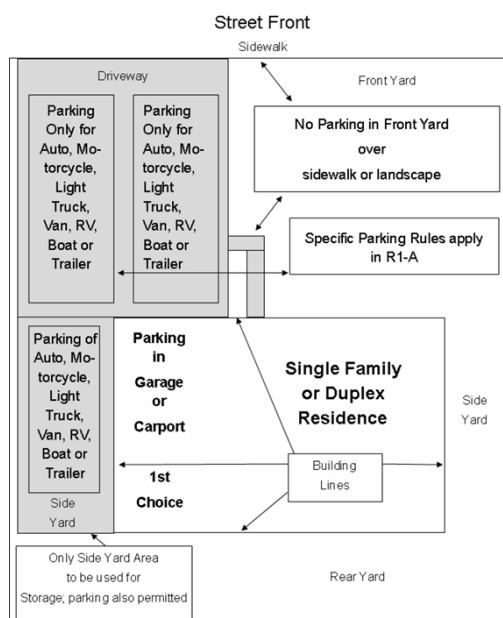
Fixed... to clarify type of material to be used.

- ~~c. No vehicle, vessel or trailer shall be hooked up to water or sewer.~~
- ~~d. No vehicle, vessel or trailer, shall be used for habitation while parked or stored on the property.~~
- ~~e.~~
 - (58) Electrical power supply to vehicles, vessels or trailers may be provided for operation of air conditioning, dehumidifying, or refrigerating equipment, and refrigeration for environmental purposes only, as provided in subsection 10-67(d)(4)a, City Code.
- ~~f.~~
 - (60) ~~Reserved. If vehicles, vessels, and trailers shall be parked or stored on an approved paved surface.~~
- ~~g.~~
 - Only automobiles, motorcycles, light trucks, and vessels shall be stored on a front yard driveway, and only with a property vehicle cover.
- (d) *Grandfathered driveways.* On ~~lots in the R-1A, R-1, and R-2 residential land use (zoning) districts and on~~ occupied single-family and duplex residential properties wherever located in the city, where parking has ~~historically occurred for more than (5) consecutive years prior to adoption of this ordinance (date: _____)~~ on a substandard or non-approved driveway surface, including turf, such parking shall be allowed to remain as a lawful nonconforming use, subject to ~~a determination by the development director or designee, applying~~ the provisions of section 8.03.01 et seq., Stuart Land Development Code. ~~For good cause shown, the development director or designee may issue an administrative variance for the use of turf as an approved pervious parking surface.~~
- (e) *Irregular lots.* On ~~occupied lots in the R-1A, R-1, and R-2 residential land use (zoning) districts and on occupied single-family and duplex residential properties~~ wherever located in the city that are irregularly dimensioned, parking and storing of vehicles and vessels shall occur in accordance with this section ~~10-69~~ to the greatest extent feasible and practical. The owners or occupants of such lots may apply for an administrative variance ~~for the minimum exception necessary to deviate from this section~~ where the dimensions of the lot make it unfeasible or impractical to comply with this section, and such finding shall constitute a reasonable of practical difficulty necessary for the granting of an administrative variance, when determined by the development director.
- (f) *Administrative variance.* For good cause shown by substantial competent evidence, which shall include a demonstration of hardship, or a reasonable avoidance of practical difficulties, and using the procedures provided in section 8.04.08, Stuart Land Development Code, the development director may vary the provisions of this section, but in considering such variance shall grant the least amount of variance and obtain compliance with as many applicable provisions of the section as can reasonably be achieved. The fee, if any, for said administrative variance shall be ~~as~~ established by resolution of the city commission, ~~as provided~~ from time to time. ~~"Good cause" for the use of turf or other pervious surface as a parking surface shall include, but shall not be limited to no rutting or other damage to the turf or other pervious parking surface.~~

Table: Sec. 10-69. Motor vehicle parking and storage.

Figure 10-69.

Parking in R-1A, R-1 and R-2 districts, and other areas where single-family and duplex residential uses are allowed.



(Ord. No. 2261-2013, § 2, 2013; Ord. No. 2440-2020, § 1, 5-26-2020)(Ord xxx-2021).

Editor's note(s)—Ord. No. 2261-2013, § 2, adopted in 2013, amended § 10-69Editor's note(s)—in its entirety to read as herein set out. Former § 10-69Editor's note(s)—pertained to similar subject matter and derived from Ord. No. 2226-2011, § 2, adopted Sept. 12, 2011.

Sec. 10-84. Prohibited occupancy.

- (a) It is unlawful for any person to maintain or permit the existence of any unsafe building within the city. It is also unlawful for the owner, tenant or occupant of any unsafe building to permit such building to remain in an unsafe condition or to permit the occupancy of an unsafe building while it is or remains in an unsafe condition.
- (b) It is unlawful for any person to disobey an order of the building official issued pursuant to section 10-85 that an unsafe building be immediately vacated and not reoccupied until the specified repairs and improvements are completed.
- (c) Any person, who occupies an unsafe building after being ordered to vacate or not to reoccupy such unsafe building by the building official, shall be guilty of a state misdemeanor of the second

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degree, punishable by a term of imprisonment not exceeding 60 days, or a fine of not more than \$500, or both a fine and imprisonment.

(Code 1981, § 6-511; Code 1995, § 18-257; Ord. No. 1905, § 1, 12-9-2002; Ord. No. 2034, § 1, 6-13-2005; Ord. No. 2440-2020, § 1, 5-26-2020)

Sec. 26-30. Schedule of fines and costs.

The city commission hereby establishes the following schedule of fines and costs for various violations of the city codes and ordinances. [See Inset Table "A".] In lieu of using the schedule of costs contained in the Appendix to this code, the city may present reasonable actual costs to the magistrate for approval. In such instance, the respondent may *voir dire* the city regarding the costs, and present argument regarding the same.

TABLE "A"

Code Section	Violation	Class
4-7	Consumption of alcohol on city property or rights-of-way without a permit	I
8-1	Sec. 9.96A, MC Code—Animal at large, barking or fouling	II
8-27	Hunting or killing animals	Mandatory
10-1	105.1.1 FBC—Building permit required	II
10-83	Unsafe building	II
10-84	Unsafe building—Occupancy	III <u>or class 2 misdemeanor</u>
10-60	Unsanitary or nuisance maintained building—Occupancy	II <u>or class 2 misdemeanor</u>
10-61	Maintenance of buildings . Required; harboring rats	II
10-63	Minimum living standards	Mandatory
10-200	Contractor license required	III
12-42	Outdoor sales—Permit required	II
18-64	Alarm system—Permit required	I
18-73	Excessive false alarms — 3rd and 4th violations	\$50.00
18-73	Excessive false alarms — 5th and 6th violations	\$100.00
18-73	Excessive false alarms — 7th and 8th violations	\$200.00
18-73	Excessive false alarms — 9th or more (\$400.00 each)	Mandatory
20-20	General sanitation of property	II

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20-21	Tall grass, weeds and underbrush (8 inches or more)	II
20-22	Trash and solid waste; mosquito breeding; nuisance	II
20-50	Abandoned, junked, inoperable vehicle and watercraft	II
20-78	Graffiti	II
20-151	Noise prohibited—Motor vehicles	I
20-151	Noise prohibited-- <u>Property</u> (1st, 2nd and 3rd violation)	III
20-151	Noise prohibited -- <u>Property</u> (4th & <u>Subsequent</u> violations <u>or more</u>)	Mandatory
20-157	Pet Waste — 1st Violation	\$25.00
20-157	Pet Waste — 2nd Violation	\$50.00
20-157	Pet Waste — 3rd & Subsequent Violations	\$100.00
20-170	Fertilizer — 1st Violation	\$50.00
20-170	Fertilizer — 2nd Violation	\$100.00
20-170	Fertilizer — 3rd Violation	\$200.00
20-170	Fertilizer — 4th & Subsequent Violations	\$500.00
22-68	Open burning without a permit	II
26-28	Costs of Magistrate action (minimum)—Notice of Violation	\$300.00
26-28	Costs of Magistrate action (minimum)—Citation	\$100.00
28-2	Discharge of fireworks without a permit	I
28-4	Discharge of air rifle, BB or pellet gun	I
30-3	Prohibited conduct in park	I
30-4	Prohibited conduct on city piers and riverwalk	I
34-2	Dumpster diving (<u>removal of solid waste from receptacle</u>)	I
34-2	<u>Other p</u> rohibited solid waste activities	II
34-9	Burial of debris <u>or solid waste</u>	Mandatory
34-41	Improper placement of garbage for collection	I
36-4	Sidewalk clearance (4 feet) required	I

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36-5	Swale area maintenance; required	I
36-31	Site address numbers; required	I
38-58, et seq.	Failure to pay local business tax	III
40-37	Prohibited parking/standing/stopping	\$25.00
40-37	Blocking a driveway	\$25.00
40-37	Parking on <u>or over</u> a sidewalk	\$25.00
40-37	Parking in a loading zone	\$25.00
40-37	Parking <u>in a direction against lawful lane traffic flow</u> <u>left-side to curb</u>	\$25.00
40-37	Parking by a yellow-marked curb	\$25.00
40-37	3 hour parking <u>violation</u> — first 3 violations in a 12-month period	\$25.00
40-37	3 hour parking <u>violation</u> — 4th & 5th violations in a 12-month period	\$50.00
40-37	3 hour parking <u>violation</u> — 6th or <u>subsequent</u> <u>more</u> violations in a 12-month period	\$200.00
40-37	Parking in an intersection or obstructing traffic	\$50 25.00
40-37	Parking within 15 feet of a fire hydrant	\$25.00
40-37	Parking in a fire lane	\$50 25.00
40-37	Parking in "Emergency vehicle only" space	\$50 25.00
40-37	Failure to display disabled (handicapped) parking permit	\$25.00
40-37	<u>Heavy</u> Truck (one-ton or more)(<u>more than 14,000 lbs. gvwr</u>) parking in a residential zone	\$50 25.00
40-37	Failure to park in a designated parking space	\$25.00
40-37	Parking in a "tow-away zone"	\$100.00
40-45	Illegal parking in <u>a designated</u> handicapped <u>parking</u> space or access aisle	\$250.00
40-48	Truck parking in residential area	\$25.00
40-151	<u>Illegal o</u> Operation of golf	\$25.00

(Supp. No. 34)As of 09/10/21

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	carts—1st and 2nd violation	
40-151	Illegal o Operation of golf carts—3rd violation (up to \$250.00) 4th violation (up to \$500.00 and revocation of permit)	Mandatory
10-69(b)	Other i llegal parking or storage in a residential area	I
40-167	Ready-mix concrete spill on street	III
42-38	Tampering and/or theft of water (up to \$1,000.00 and 1 year)	Mandatory Class 1 misdemeanor (up to \$1,000.00 and/or 1 year)
42-128	Illegal irrigation or watering (1st violation)	\$25.00
42-128	Illegal irrigation or watering (2nd & subsequent violations s or more)	\$50.00
42-305	Unlawful connection to sewer	Mandatory
44-23	Trespass by vessel (1st violation)	\$25.00
44-23	Trespass by vessel (2nd violation or more)	II
44-37	Vessel — Speeding or harmful wake (in creeks & canals)	I
Penalties for Certain Violations:		
Class I	1st violation (\$50.00); 2nd violation (\$100.00); 3rd or more violations (\$200.00); plus costs	
Class II	1st violation (\$100.00); 2nd violation (\$200.00); 3rd or more violation (\$400.00); plus costs	
Class III	1st violation (\$150.00); 2nd violation (\$300.00); 3rd violation (\$500.00); plus costs	
Mandatory	A mandatory appearance is required by the Respondent and subjects the violator to a fine of up to \$250.00 for a 1st violation, and a fine of up to \$500.00 for a repeat violation, as provided in this code; plus costs	

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(Code 1995, § 2-199; Ord. No. 2051, § 1, 11-28-2005; Ord. No. 2099-07, § 1, 2-12-2007; Ord. No. 2154-08, § 1(2-199), 3-24-2008; Ord. No. 2250-2012, § 3, 11-5-2012; Ord. No. 2318, § 1, 9-14-2015)

Sec. 42-38. Tampering, etc., with water system.

It shall be unlawful for any person to:

- (1) Alter, tamper with or damage any water meter or water pipe belonging to the city in such a manner as to prevent any meter from accurately registering the quantity of water which otherwise would pass through the same or in any way to hinder or interfere with the proper action or accurate registration of any such city water meter, or knowingly to use water, or suffer the waste of water passing through any such water meter or pipe after such water meter or pipe has been tampered with, altered, or damaged;
- (2) Change or replace any water meter owned by the city without the city's written consent;
- (3) Make any temporary or permanent connection or reconnection to the city water system without the city's written consent;
- (4) Alter, tamper with or damage any fire hydrant within the city limits;
- (5) Obtain water for private uses or purposes from any fire hydrant located within the city limits, without the city's written consent.
- (6) Any person, who violates this section shall be guilty of a state misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days, or a fine of not more than \$500, or both a fine and imprisonment.

(Code 1981, § 17-20; Code 1995, § 82-32)

State law reference(s)—Criminal mischief, F.S. § 806.13.

Sec. 42-180. Same—Illicit connections.

(1) No person may maintain, use or establish any direct or indirect connection to the stormwater system that results in any discharge in violation of this division. This prohibition is retroactive and applies to connections made in the past, regardless of whether made under a permit, or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.

(2) Any person, who violates this section shall be guilty of a state misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days, or a fine of not more than \$500, or both a fine and imprisonment.

(Code 1995, § 82-186; Ord. No. 2048, § 1, 11-14-2005)

Sec. 42-305. Unauthorized connections unlawful.

(a) No sanitary sewer collection system shall be connected to the city sanitary sewage system for the discharge of wastewater unless said system meets the city sanitary sewer collection design and constructions standards set forth in this division. A complete copy of the standards shall be maintained in the city public works department as a public record. All connections to the city sanitary sewage system for the discharge of wastewater shall be first approved by the city public works director.

(Supp. No. 34)As of 09/10/21

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(b) Any person, who violates this section shall be guilty of a state misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days, or a fine of not more than \$500, or both a fine and imprisonment.

(Code 1995, § 82-158; Ord. No. 1730, § 2, 6-12-2000)

(Supp. No. 34)As of 09/10/21

Created: 2021-05-10 10:42:36 [EST]

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 7/11/2022

Prepared by: Erin Wohlitka, Michael Mortell

Title of Item:

REPEAL & REESTABLISH CHAPTER 36, ARTICLE V, CODE OF ORDINANCES (RC):

ORDINANCE No. 2488-2022; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REPEALING AND REESTABLISHING CHAPTER 36, ARTICLE V, COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS OF WAY, OF THE CITY OF STUART CODE OF ORDINANCES; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE OF TRANSFER, SALE, OR ASSIGNMENT OF ASSETS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING THE REQUIREMENT OF A PERMIT; PROVIDING FOR APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR CONSTRUCTION METHODS FOR PLACING OR MAINTAINING FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR FEES AND TAXES; PROVIDING FOR A RESERVATION OF RIGHTS AND REMEDIES; PROVIDING ENFORCEMENT AUTHORITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITIES; PROVIDING FOR AN EFFECTIVE DATE.

Summary Explanation/Background Information on Agenda Request:

This ordinance has been drafted in order to address updates to the Florida State Statutes regarding small-cell wireless communications facilities in the public rights-of-way. This ordinance provides registration requirements and reasonable regulations for communications providers who wish to utilize public rights-of-way for the installation and maintenance of communications facilities. The Ordinance was first heard in June but due to changes was continued until July 11, 2022. Because the Ordinance has been rewritten to comply with updates to the State Statute, it has been reset as a First Reading to provide sufficient time and opportunity for public input.

Funding Source:

N/A

Recommended Action:

Approval of Ordinance No. 2488-2022

ATTACHMENTS:

1. Ordinance 2488-2022 - Repeal and Reestablish Chapter 36, Article V of Code of Ordinances
2. Ordinance 2488-2022 Exhibit 'A'



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

ORDINANCE NUMBER 2488-2022

*** * * * ***

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REPEALING AND REESTABLISHING CHAPTER 36, ARTICLE V, COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS OF WAY, OF THE CITY OF STUART CODE OF ORDINANCES; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE OF TRANSFER, SALE, OR ASSIGNMENT OF ASSETS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING THE REQUIREMENT OF A PERMIT; PROVIDING FOR APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR CONSTRUCTION METHODS FOR PLACING OR MAINTAINING FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR FEES AND TAXES; PROVIDING FOR A RESERVATION OF RIGHTS AND REMEDIES; PROVIDING ENFORCEMENT AUTHORITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITIES; PROVIDING FOR AN EFFECTIVE DATE.

*** * * * ***

WHEREAS, the City Commission of the City of Stuart, Florida has determined that the following amendments promote and protect the general health, safety and welfare of the residents

of the City of Stuart by providing reasonable regulations to communications facilities and utility poles within the public rights-of-way; and

WHEREAS, this Ordinance accommodates the growing needs and demand for communications services and new facilities and technologies; and

WHEREAS, Section 337.401, Florida Statutes, addresses *inter alia*, the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way; and

WHEREAS, rules and regulations imposed by a local government relating to communications service providers that desire to place or maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and

WHEREAS, in 2017, Florida enacted the Advanced Wireless Infrastructure Deployment Act, codified in Subsection 337.401(7), *Florida Statutes* (“the Small Cell Statute”); and

WHEREAS, the Small Cell Statute creates new requirements and allowances for local governments relating to the installation of utility poles in the public rights-of-way to support small wireless facilities, micro wireless facilities, and the collocation of small wireless facilities and micro wireless facilities in the public rights-of-way; and

WHEREAS, the Small Cell Statute provides that a local government may adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, camouflage and concealment requirements, objective design standards requiring a new utility pole intended to support the collocation of small wireless facilities that replace an existing facility to be of substantially similar design, material, and color, and reasonable spacing requirements concerning the location of ground-mounted equipment; and

WHEREAS, the Small Cell Statute also provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance construction bonds, force majeure, abandonment, and city liability provided such provisions are reasonable and nondiscriminatory; and

WHEREAS, in 2019, the Florida Legislature enacted and the Governor approved CS/CS/CS/SB 1000 (“SB 1000”), amending Section 337.401, Florida Statutes, including portions of the Small Cell Statute; and

WHEREAS, it is the City Commission’s intent to exercise its authority over the placement and maintenance of communications facilities in its rights-of-way to the full extent consistent with applicable state and federal law; and

WHEREAS, it is the City Commission’s further intent to treat each communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority to the extent consistent with applicable law; and

WHEREAS, it is the City’s intent that rules or regulations imposed by the City relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services; and

WHEREAS, the city’s rights-of-way are essential for the travel of persons and the transport of goods throughout the city and are a unique and physically limited resource requiring proper management by the city to ensure public safety, maximize efficiency, minimize costs to city taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and

WHEREAS, the City Commission has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the city's Comprehensive Plan; and

WHEREAS, the City Clerk submitted notice of the first hearing on this proposed Ordinance to the Florida Secretary of State, consistent with Section 337.401(3)(d), Florida Statutes; and

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA:

SECTION 1. The foregoing WHEREAS clauses are ratified and incorporated as the legislative intent of this Ordinance. The Regulation of Communications Facilities on Private Property is found within Chapter 36, Article V, of the City of Stuart Code of Ordinances.

SECTION 2. That CHAPTER 36, ARTICLE V; SECTION 36-128 through 36-153 COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT OF WAYS, is hereby repealed and replaced with such language attached as **Exhibit "A"**;

SECTION 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby revoked.

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

SECTION 5. This ordinance shall become effective upon passage.

Passed on first reading the ___ day of _____ 2022.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

MERRITT MATHESON, MAYOR
TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
MIKE MEIER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this _____ day of _____, 2022.

ATTEST:

MARY R. KINDEL
CITY CLERK MAYOR

MERRITT MATHESON

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

(The remainder of this page intentionally left blank)

CITY'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before The above Ordinance, Acceptance and Agreement was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2022 Merritt Matheson, Mayor, and Mary Kindel, City Clerk, respectively, of the City of Stuart, Florida, a Florida municipal corporation, who ☐ are personally known to me or ☐ have produced _____ as identification.

(Notary Seal)

Signature of Notary Public

Printed Name: _____

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CHAPTER 36 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE V. – Communications Facilities In The Public Rights-Of-Way.

Sec. 36-128. - Intent and purpose; Applicability; Authority to Implement.

It is the intent of the city to promote the public health, safety and general welfare by: providing for the placement or maintenance of communications facilities in the public rights-of-way within the city; adopting and administering reasonable rules and regulations consistent with state and federal law, including F.S. § 337.401, as it may be amended, the city's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities in the public rights-of-way by all communications services providers; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the city shall be governed by and shall comply with all applicable federal and state laws.

Sec. 36-129. - Definitions.

For purposes of this article, the following terms, phrases, words, and their derivations shall have the meanings given. Words not otherwise defined shall be construed to mean the common and ordinary meaning.

Abandonment means the cessation of all uses of a communications facility for a period of time not less than 90 days; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "abandonment" of a facility in public rights-of-way.

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

City means the City of Stuart, Florida.

Collocate or collocation means to install, mount, maintain, modify, operate, or replace one (1) or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

Communications services means the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Notwithstanding the foregoing, for purposes of this article "cable service", as defined in F.S. § 202.11(2), as it may be amended, is not included in the definition of "communications services," and cable service providers may be subject to other ordinances of the city.

Communications services provider means any person, including a municipality or county, providing communications services through the placement or maintenance of a communications facility in public rights-of-way. This definition shall also include any person, including a municipality or county, that places or maintains a communications facility in public rights-of-way but does not provide communications services.

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

FCC means the Federal Communications Commission.

In public rights-of-way or in the public rights-of-way means in, on, over, under, or across the public rights-of-way.

Micro wireless facility means a small wireless facility having dimensions no larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and an exterior antenna, if any, no longer than eleven (11) inches.

Person shall include any individual, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include the city to the extent the city acts as a communications services provider.

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

Public rights-of-way means a public right-of-way, public utility easement, highway, street, bridge, tunnel, or alley for which the city is the authority that has jurisdiction and control and may lawfully grant access pursuant to applicable law, and includes the surface, the air space over the surface, and the area below the surface. "Public rights-of-way" shall not include private property. "Public rights-of-way" shall not include any real or personal city property, except as described above, and shall not include city buildings, fixtures, poles, conduits, facilities, or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

Registrant means a communications services provider that has registered with the city in accordance with the provisions of this article.

Registration or register means the process described in this article whereby a communications services provider provides certain information to the city.

Small wireless facility means a wireless facility that meets the following qualifications:

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

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

Utility pole, with regard to Chapter 36, means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure fifteen (15) feet in height or less.

Wireless facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

- a. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- b. Wireline backhaul facilities; or
- c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider means a person who has been certified to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless service provider.

Wireless provider means a wireless infrastructure provider or a wireless services provider.

Wireless services mean any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

Wireless services provider means a person who provides wireless services.

Wireless support structure means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

Sec. 36-130. - Registration for placing or maintaining communications facilities in public rights-of-way.

- (a) A communications services provider that desires to place or maintain a communications facility in public rights-of-way in the city shall first register with the city's building department in accordance with this article. Subject to the terms and conditions prescribed in this article, a registrant may place or maintain a communications facility in public rights-of-way.
- (b) A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Registration under this article governs only the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes, or regulations may apply to the placement or maintenance in the public rights-of-way of facilities that are not communications facilities. Registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the city's or another entity's facilities. Registration does not excuse a communications services provider from complying with all applicable city ordinances, codes, or regulations, including this article.
- (c) Each communications services provider that desires to place or maintain a communications facility in public rights-of-way in the city shall file a single registration with the city, which shall include the following information:
 - (1) Name of the applicant;
 - (2) Name, address, and telephone number of the applicant's primary contact person in connection with the registration, and the person to contact in case of an emergency;
 - (3) For registrations submitted prior to October 1, 2001, the applicant shall state whether it provides local service or toll service or both;
 - (4) Evidence of the insurance coverage required under this article and acknowledgment that the registrant has received and reviewed a copy of this chapter, which acknowledgment shall not be deemed an agreement;
 - (5) The number of the applicant's certificate of authorization or license to provide communications services issued by the Florida Public Service Commission, the Federal Communications Commission, or other federal or state authority, if any; and
 - (6) For an applicant that does not provide a Florida Public Service Commission certificate of authorization number, if the applicant is a corporation, proof of authority to do business in the State of Florida, such as the number of the certificate from or filing with the Florida Department of State.

- (d) The city shall review the information submitted by the applicant. Such review shall be by the public works director or their designee. If the applicant submits information in accordance with subsection (c) above, the registration shall be effective, and the city shall notify the applicant of the effectiveness of the registration in writing. If the city determines that the information has not been submitted in accordance with subsection (c) above, the city shall notify the applicant, in writing, of the non-effectiveness of the registration, and reasons for the non-effectiveness. The city shall so reply to an applicant within thirty (30) days after receipt of registration information from the applicant. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration under the provisions of this section. An applicant has thirty (30) days after receipt of a notice of non-effectiveness of registration to appeal the decision as provided in Chapter 36 of the Code of Ordinances.
- (e) A registrant may cancel a registration upon written notice to the city stating that it will no longer place or maintain any communications facilities in public rights-of-way within the city and will no longer need to obtain permits to perform work in public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.
- (f) Registration does not in and of itself establish a right to place or maintain, or the priority for the placement or maintenance of a communications facility in public rights-of-way within the city but shall establish for the registrant a right to apply for a permit. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted.
- (g) A registrant shall renew its registration with the city's building department by April 1 of even numbered years in accordance with the registration requirements in this article, except that a registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (c), except, as of October 1, 2001, subsection (c)(3), a registrant shall provide updated information to the city. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the city restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this article.
- (h) An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.

Sec. 36-131. - Notice of transfer, sale, or assignment of assets in public rights-of-way.

If a registrant transfers, sells, or assigns its assets located in public rights-of-way incident to a transfer, sale, or assignment of the registrant's assets, the transferee, buyer, or assignee shall be obligated to comply with the terms of this article. Written notice of any such transfer, sale, or assignment shall be provided by such registrant to the city's building department within twenty (20) days after the effective date of the transfer, sale, or assignment. If the transferee, buyer, or assignee is a current registrant, then the transferee, buyer, or assignee is not required to re-register. If the transferee, buyer, or assignee is not a current registrant, then the transferee, buyer, or assignee shall register as provided in section 36-130 within sixty (60) days of the transfer, sale, or assignment. If permit applications are pending in the registrant's name, the transferee, buyer, or assignee shall notify the building official that the transferee, buyer, or assignee is the new applicant after the requirements of this section are satisfied.

Sec. 36-132. - Placement or maintenance of a communications facility in public rights-of-way.

- (a) A registrant shall at all times comply with and abide by all applicable provisions of the state and federal law and city ordinances, codes, and regulations in placing or maintaining a communications facility in public rights-of-way.
- (b) A registrant shall not commence to place or maintain a communications facility in public rights-of-way until all applicable permits, if any, have been issued by the city or other appropriate authority, except

in the case of an emergency. The term "emergency" shall mean a condition that affects the public's health, safety, or welfare, which includes an unplanned out-of-service condition of a pre-existing service. The registrant shall provide prompt notice to the city of the placement or maintenance of a communications facility in public rights-of-way in the event of an emergency and shall be required to obtain an after-the-fact permit if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency. The registrant acknowledges that, as a condition of granting such permits, the city may impose reasonable rules or regulations governing the placement, relocation, or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The city may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities that may otherwise require individual permits.

- (c) As part of any permit application to place a new or replace an existing communications facility in public rights-of-way, the registrant shall provide the following:
 - (1) The location of the proposed facilities, including a description of the facilities to be installed, where the facilities are to be located, and the approximate size of the facilities that will be located in public rights-of-way;
 - (2) A description of the manner in which the facility will be installed (i.e. anticipated construction methods or techniques);
 - (3) A maintenance of traffic plan for any disruption of the public rights-of-way, in accordance with the standards promulgated by the Florida Department of Transportation;
 - (4) Information on the ability of the public rights-of-way to accommodate the proposed facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons);
 - (5) If appropriate, given the facility proposed, a certified estimate of the cost of restoration to the public rights-of-way, subject to approval by the public works director or designee;
 - (6) The timetable for construction of the project, or each phase thereof, and the areas of the city which will be affected; and
 - (7) Such additional information as the city finds reasonably necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application to review such permit application.
- (d) To the extent not otherwise prohibited by state or federal law, the city shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of public rights-of-way.
- (e) All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin any of the public rights-of-way. The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way, as well as joint trenching or the co-location of facilities in existing conduit, is strongly encouraged and should be employed wherever feasible. The public works director or their designee may promulgate reasonable rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way consistent with this article and other applicable law.
- (f) All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.
- (g) After the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to their original condition before such work. If the registrant fails to make such restoration within thirty (30) days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the city may perform restoration and charge the costs of the restoration against the registrant in accordance with F.S. § 337.402, as it may be amended. For twelve (12) months following the original completion of the work, the registrant shall

guarantee its restoration work and shall correct, at its own expense, any restoration work that does not satisfy the requirements of this article.

- (h) Removal or relocation at the direction of the city of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, as they may be amended.
- (i) A permit from the city constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this article and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.
- (j) A registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.
- (k) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. ch. 556, as it may be amended.
- (l) The registrant shall use and exercise due caution, care, and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work-site areas. Further, the registrant shall be responsible for restoring the right-of-way and preventing damage to any other utilities or services in the right-of-way.
- (m) Upon the request of the city, and as notified by the city of the other work, construction, installation, or repairs referenced below, a registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation, or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject public rights-of-way, and the registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the public rights-of-way.
- (n) A registrant shall not place or maintain its communications facilities so as to interfere with, displace, damage, or destroy any facilities, including, but not limited to, sewers, gas or water mains, storm drains, pipes, cables, or conduits of the city or any other entity's facilities lawfully occupying the public rights-of-way of the city.
- (o) The city makes no warranties or representations regarding the fitness, suitability, or availability of the city's public rights-of-way for the registrant's communications facilities, and any performance of work, costs incurred, or services provided by the registrant shall be at the registrant's sole risk. Nothing in this article shall affect the city's authority to add, vacate, or abandon public rights-of-way, and the city makes no warranties or representations regarding the availability of any added, vacated, or abandoned public rights-of-way for communications facilities.
- (p) The city shall have the right to make such inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article.
- (q) A permit application to place a new or replace an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the city, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the city.
- (r) The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables, or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in public rights-of-way occupied by the registrant. The city further reserves without limitation the right to alter, change, or cause to be changed the grading, installation, relocation, or width of the public rights-of-way within the limits of the city and within said limits as same may from time to time be altered. Should the registrant be required to relocate its facilities in conjunction with such installation and alteration, the registrant shall be required to pay all costs associated with such relocation.

- (s) A registrant shall, on the request of any person holding a permit issued by the city, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than thirty (30) days' advance written notice to arrange for such temporary relocation.
- (t) A wireless facility that is a portion of a communication facility, such as an antenna ("wireless facility(ies)"), which is attached to a legally maintained vertical structure in the public rights-of-way, such as a light pole or utility pole ("vertical structure(s)"), shall be subject to the criteria below and processed in accordance with the timeframes specified in F.S. ch. 337.401:
 - (1) Such wireless facilities may not extend more than ten (10) feet above the highest point of the vertical structure (i.e., utility pole). Unless waived by the City Commission, the height of a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, measured from grade in place within five hundred (500) feet of the proposed location. If there is no utility pole within five hundred (500) feet, the height of the new utility pole shall be limited to fifty (50) feet;
 - (2) Such wireless facilities that are attached to a vertical structure located in public rights-of-way that is fifteen (15) feet or less in width and is located adjacent to real property used as a single-family residence shall be flush mounted to the vertical structure;
 - (3) Such wireless facilities shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation, or law;
 - (4) Such wireless facilities shall comply with any applicable Federal Communications Commission Emissions Standards;
 - (5) The design, construction, and installation of such wireless facilities shall comply with any applicable local building codes;
 - (6) No commercial advertising shall be allowed on such wireless facilities; and
 - (7) Any accessory equipment and related housing in the public rights-of-way that are used in conjunction with such a wireless facility shall comply with any applicable local rules, regulations, ordinances, or laws governing the placement and design of such equipment;
 - (8) Any new or replacement poles shall be of similar design, material, and color to the utility poles within two hundred fifty (250) feet in the same right-of-way, or as otherwise approved;
 - (9) Wireless facilities, including ground-mounted equipment, shall be placed so as to not interfere with the safe operation of traffic control equipment, sight lines or clear zones for transportation, pedestrians, public safety purposes, or the free flow of vehicular and pedestrian traffic;
 - (10) The city may request that ground-mounted equipment use materials, colors, textures, screening, and landscape that will blend into the natural setting and surrounding built environment to minimize the visual impact, as permitted by F.S. § 337.401;
 - (11) The city may request ground-mounted equipment be placed no closer than five hundred (500) feet from existing ground-mounted equipment servicing the same carrier, as permitted by F.S. § 337.401;
 - (12) Ground-mounted equipment shall be placed so as to not interfere with the intended purpose of the right-of-way, swales, or stormwater drainage features and appurtenances.
 - (13) The city may deny a proposed collocation of a new small wireless facility in the public rights-of-way if the proposed collocation materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
 - (14) The city may deny a proposed collocation of or a new small wireless facility in the public rights-of-way if it materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

- (u) Vertical structures, such as towers, having a sole purpose to serve as a mounting devise for antennae, are express prohibited from being placed in the public rights-of-way, except as permitted by F.S. § 337.401.

Sec. 36-133. - Suspension of permits.

- (a) The city may suspend a permit for work in the public rights-of-way for one (1) or more of the following reasons, subject to section 36-144 of this article:
 - (1) Violation of permit conditions, including conditions set forth in the permit, this article, or other applicable city ordinances, codes, or regulations governing placement or maintenance of communications facilities in public rights-of-way;
 - (2) Misrepresentation or fraud by registrant in a registration or permit application to the city;
 - (3) Failure to properly renew or ineffectiveness of the registration; or
 - (4) Failure to relocate or remove facilities as may be lawfully required by the city.
- (b) The building official shall provide notice and an opportunity to cure any violation of subsections (1) through (4) above, each of which shall be reasonable under the circumstances.

Sec. 36-144. - Appeals.

Final, written decisions of the building official or designee suspending or denying a permit, denying an application for a registration, or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the building official within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The board of adjustment shall hear the appeal as set forth in chapter VIII, section 8.00.02, of the city's land development code. The hearing shall occur within forty-five (45) days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within twenty (20) days of the hearing. Upon correction of the grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.

Sec. 36-145. - Involuntary termination of registration.

- (a) The city may terminate a registration if:
 - (1) A federal or state authority suspends, denies, or revokes a registrant's certification or license to provide communications services;
 - (2) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way, and the registrant fails to remedy the danger promptly after receipt of written notice; or
 - (3) The registrant ceases to use all of its communications facilities in public rights-of-way and has not complied with section 36-151 of this article.
- (b) Prior to termination, the registrant shall be notified by the building official with a written notice setting forth all matters pertinent to the proposed termination action, including which of subsections (1) through (3) above is applicable as the reason therefor, and describing the proposed action of the city with respect thereto. The registrant shall have sixty (60) days after receipt of such notice within which to address or eliminate the reason or within which to present a plan satisfactory to the building official to accomplish same. If the plan is rejected, the building official shall provide written notice of such rejection to the registrant and shall make a recommendation to the City Commission regarding a decision as to termination of registration. A decision by a city to terminate a registration may only be accomplished by an action of the City Commission. A registrant shall be notified by written notice of any decision by the City Commission to terminate its registration. Such written notice shall be sent within seven (7) days after the decision.
- (c) In the event of termination, the former registrant shall:

- (1) Notify the city of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in public rights-of-way; or
- (2) Provide the city with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a registrant fails to comply with this subsection (c), which determination of non-compliance is subject to appeal as provided in section 36-144, the city may exercise any remedies or rights it has at law or in equity, including, but not limited to, taking possession of the facilities where another person has not assumed the ownership or physical control of the facilities or requiring the registrant within ninety (90) days of the termination, or such longer period as may be agreed to by the registrant, to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to their original condition before the removal.
- (d) In any event, a terminated registrant shall take such steps as are necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the city.
- (e) In the event of termination of a registration, this section does not authorize the city to cause the removal of communications facilities used to provide another service for which the registrant or another entity that owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is registered with the city, if required.

Sec. 36-146. - Existing communications facilities in public rights-of-way.

A communications services provider with an existing communications facility in the public rights-of-way of the city has sixty (60) days from the effective date of this article to provide registration pursuant to this article or be in violation thereof.

Sec. 36-147. - Insurance.

- (a) A registrant shall provide, pay for, and maintain satisfactory to the city the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having a rating reasonably acceptable to the city. All liability policies shall provide that the city is an additional insured as to the activities under this article. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the city annually. Thirty (30) days' advance written notice by registered, certified mail, or facsimile must be given to the city of any cancellation, intent not to renew, or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the city.
- (b) The limits of coverage of insurance required shall be not less than the following:
 - (1) Workers' Compensation and Employer's Liability Insurance Workers' Compensation-Florida Statutory Requirements Employer's Liability—\$1,000,000.00 limit each accident.
 - (2) Comprehensive general liability bodily injury and property damage—\$1,000,000.00 combined single limit each occurrence.
 - (3) Automobile liability bodily injury and property damage—\$1,000,000.00 combined single limit each accident.

Sec. 36-148. - Indemnification.

- (a) A registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the city, its officials, boards, members, agents, and employees against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the city arising out of the placement or maintenance of its communications system or facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this article; provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence, or wanton or willful acts of the city. This provision

includes, but is not limited to, the city's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceedings. The city agrees to notify the registrant, in writing, within a reasonable time of the city receiving notice of any issue it determines may require indemnification. Nothing in this section shall prohibit the city from participating in the defense of any litigation by its own counsel and at its own cost if in the city's reasonable belief there exists or may exist a conflict, potential conflict, or appearance of a conflict. Nothing contained in this section shall be construed or interpreted: (a) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or (b) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, as it may be amended.

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

Sec. 36-149. - Construction surety.

- (a) Prior to issuing a permit where the work under the permit will require restoration of public rights-of-way, the city may require a construction surety to secure the restoration of the public rights-of-way. Notwithstanding the foregoing, a construction surety hereunder may only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security fund as provided in section 36-150.
 - (1) Twelve (12) months after the completion of the restoration in public rights-of-way in accordance with the surety, the registrant may eliminate the surety. However, the city may subsequently require a new surety for any subsequent work in the public rights-of-way.
 - (2) The construction surety shall be issued by a surety having a rating reasonably acceptable to the city; shall be subject to the approval of the finance director and city attorney; and shall provide that: "For 12 months after issuance of this surety, this surety may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the surety of intent to cancel or not to renew."
- (b) The rights reserved by the city with respect to any construction surety established pursuant to this section are in addition to all other rights and remedies the city may have under this article, or at law or equity.
- (c) The rights reserved to the city under this section are in addition to all other rights of the city, whether reserved in this article or authorized by other law, and no action, proceeding, or exercise of a right with respect to the construction surety will affect any other right the city may have.

Sec. 36-150. - Security fund.

- (a) At or prior to the time a registrant receives its first permit to place or maintain a communications facility in public rights-of-way after the effective date of this article, the registrant may be required to file with the city, for city approval, an annual surety, cash deposit, or irrevocable letter of credit in the sum equal to \$50,000.00, having a surety a company qualified to do business in the State of Florida, and acceptable to the finance director and city attorney, which shall be referred to as the "security fund."
- (b) The security fund shall be maintained from such time through the earlier of:
 - (1) The transfer, sale, assignment, or removal of all communications facilities in public rights-of-way; or
 - (2) Twelve months after the termination or cancellation of any registration.
- (c) The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties, and obligations imposed upon the registrant by the provisions of this article. The security fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this article, subject to section 36-154 of this article, there shall be recoverable, jointly and severally from the principal and surety of the security fund, any damages or loss suffered by the city as a result, including the full

amount of any compensation, indemnification or cost of removal, relocation or abandonment of any facilities of the registrant in public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund.

Sec. 36-151. - Abandonment of a communications facility.

- (a) At such time that a communications facility owned by a registrant in public rights-of-way ceases to be active for longer than thirty (30) days, the registrant shall notify the city within ninety (90) days.
- (b) The city may direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's sole expense if the city determines that the abandoned facility's presence interferes with the public health, safety, or welfare, which shall include, but shall not be limited to, a determination that such facility: (a) compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way; (b) prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available; or (c) creates a maintenance condition that is disruptive to the use of the public rights-of-way. In the event of (b), the city may require the third person to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.
- (c) In the event the city does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the city, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the city or another person at such third party's cost.
- (d) If the registrant fails to remove all or any portion of an abandoned facility as directed by the city within a reasonable time period as may be required by the city under the circumstances, the city may perform such removal and charge the cost of the removal against the registrant.

Sec. 36-152. - Reservation of rights and remedies.

- (a) The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
- (b) This article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this article and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of this article, to the full extent permitted by state and federal law.
- (c) The adoption of this article is not intended to affect any rights or defenses of the city or a communications services provider under any existing franchise, license, or other agreements with a communications services provider.
- (d) Nothing in this article shall affect the remedies the city or the registrant has available under applicable law.
- (e) Any person who uses the communications facilities of a registrant, other than the registrant that owns the facilities, shall not be entitled to any rights to place or maintain such facilities in excess of the rights of the registrant that places or maintains the facilities.

Sec. 36-153. - Enforcement authority.

It shall be unlawful for any person to violate the provisions of this chapter or fail to comply with any of its requirements. Any person who violates this chapter or who fails to comply with any of its requirements shall be subject to the provisions of this article, as well as the provisions of Chapter 26, Article II, of the City Code of Ordinances.

Secs. 36-154 – 36-173. – Reserved.