

ORDINANCE 776

FAILED

**VOTE 3-2 NOT TO READ BY TITLE ONLY
12-14-21**

ORDINANCE NO. 776

AN ORDINANCE OF THE CITY OF MEXICO BEACH, FLORIDA AMENDING SECTION 3.05.03 OF THE LAND DEVELOPMENT CODE TO ALLOW CERTAIN OBSTRUCTIONS TO REMAIN TEMPORARILY IN CITY RIGHTS-OF-WAY; PROVIDING FOR CODIFICATION; REPEALING RESOLUTION 21-42 AND ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY AND AN IMMEDIATELY EFFECTIVE DATE.

WHEREAS, as provided in section 2(b), Article VIII of the Constitution of the State of Florida, and section 166.021(1), Florida Statutes, the City of Mexico Beach, Florida, (the "City") enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, Chapters 163 and 166 of the Florida Statutes provide for the City to regulate zoning and development and implement its Comprehensive Plan through land development regulations; and

WHEREAS, various rights-of-way have been dedicated or granted to the City by deed, plat, other public records, or by Florida Statute; and

WHEREAS, except as limited by the document creating the right-of-way, the City is entitled to keep rights-of-way clear for current use and for future public uses such as transportation or utility projects; and

WHEREAS, the Land Development Code says that no encroachment shall be permitted in existing rights-of-way, except for temporary uses authorized by the City or the Florida Department of Transportation; and

WHEREAS, despite this, many obstructions have been placed by property owners in the rights-of-way abutting their property, generally consisting of posts, fences, landscaping and other similar items often intended to prevent automobiles from driving on an unpaved portion of the right-of way; and

WHEREAS, generally the City has not granted permission for these obstructions to be placed and has been unaware of them initially and not prioritized their removal once they were discovered; and

WHEREAS, as utility and public works projects progress in the future, such as underground utility repair and installation, road widening, and sidewalk construction, these obstructions gradually will need to be removed; and

WHEREAS, nothing herein or in the Land Development Code guarantees permanent placement of an obstruction in a right-of-way or prevents the City or utility companies from using a City right-of-way; and

WHEREAS, the City, utility companies, utility associated companies, and their contractors may remove any obstruction from the right-of-way without liability as part of a public works or utility project or repair; and

WHEREAS, based on the foregoing, the City has chosen to allow obstructions installed prior to September 14, 2021 to remain in place as provided herein until such time that it is necessary or helpful to remove the obstruction to accomplish a utility or public works project; and

WHEREAS, this Ordinance does not apply to Florida Department of Transportation and Bay County rights-of-way located within the City due to the City's limited jurisdiction over those rights-of-way; and

WHEREAS, the City Council previously adopted Resolution 21-42 that addressed the same topic as this Ordinance, so the September 24, 2021 date used by Resolution 21-42 has been used in this Ordinance and Resolution 21-42 is repealed by this Ordinance; and

WHEREAS, the City's Planning & Zoning Board considered the revisions to the Land Development Code proposed by this Ordinance and has recommended denial to the City Council; and

WHEREAS, the Mayor does not support the adoption of this Ordinance and the City Attorney does not recommend the adoption of this ordinance.

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

SECTION 1. Amendments to Land Development Code Regarding Protection and Use of Rights-of-way. The City of Mexico Beach hereby amends Section 3.05.03 of the Land Development Code as follows, with new text **bold and underlined** and deleted text ~~stricken~~:

3.05.03 Rights-of-Way

C. Protection and Use of Rights-of-Way

1. No encroachment shall be permitted into existing rights-of-way, except for temporary ~~use~~ **uses** authorized by the City or the Florida Department of Transportation. **Posts, fences, landscaping, and other similar obstructions that exist within City of Mexico**

Beach rights-of-way prior to September 14, 2021 may remain in place, but not be enlarged, so long as the owner of the abutting property agrees in writing to hold the City harmless and indemnify it pursuant to a written agreement provided by the City. Upon execution of such agreement by the owner, the obstruction may remain until such time that the City or a utility related business will use that portion of right-of-way in such way that the removal of the obstruction is necessary or helpful to accomplish their work. In such cases, the obstruction may be removed by the property owner or by the City, a utility company, a utility related company that is permitted to work in the right-of-way under Florida law, or a contractor of the City or any such company and the property owner will not be entitled to any compensation for damage to the obstruction or the loss of use of the obstruction. Following such removal, the property owner may not reinstall the obstruction within the right-of-way. When it is unclear whether an obstruction was installed prior to September 14, 2021, the burden shall be on the property owner to provide documentation, photographs, or other evidence that the obstruction was in place prior to September 14, 2021 in generally the same size and condition that it currently exists. This paragraph does not permit any obstruction to be placed within rights-of-way under Florida Department of Transportation or Bay County jurisdiction. Notwithstanding the foregoing, the City Administrator may require any obstruction to be removed that is deemed dangerous by law enforcement or the City Administrator or that has been excluded from liability coverage by the City's insurance provider. Nothing herein shall prevent the City Council from entering into a written right-of-way use agreement with a property owner that has terms that differ from this paragraph.

2. Use of the right-of-way for public or private utilities, including, but not limited to, sanitary sewer, potable water, telephone wires, cable television wires, gas lines, or electricity transmission, shall be allowed subjects to Florida Department of Transportation utility placement regulations (U.S. 98) and applicable City regulations.

3. Sidewalks and bicycle ways shall be placed within the right-of-way.

SECTION 2. Codification. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the Mexico Beach Land Development Code. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 3. Repeal. Resolution 21-42 is hereby repealed in its entirety. All Codes, Ordinances and/or Resolutions or parts of Codes, Ordinances and/or Resolutions in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4. Survival. If any section, subsection, sentence, clause, phrase of this Ordinance, or any particular application thereof shall be held invalid by any court, administrative

agency, or other body with appropriate jurisdiction, the remaining sections, subsections, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 5. Effective Date. This Ordinance shall take effect immediately upon passage.

The above and foregoing Ordinance was introduced and had first reading at the meeting of the City Council on the ____ day of _____, 2021. PASSED, APPROVED AND ADOPTED at the meeting of the City Council of the City of Mexico Beach, Florida, this ____ day of _____, 2021.

CITY OF MEXICO BEACH

ATTEST:

William A. Cathey, Mayor

Tammy Brunson, City Clerk