

**RESOLUTION 21-42**

**A RESOLUTION OF THE CITY OF MEXICO BEACH,  
FLORIDA ALLOWING CERTAIN OBSTRUCTIONS TO  
REMAIN TEMPORARILY IN CITY RIGHTS-OF-WAY;  
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, there has been confusion amongst the public about what may be placed in the rights-of-way; and

WHEREAS, these obstructions vary considerably from property to property and it would be difficult for staff to evaluate them on a case-by-case basis to allow some, but require others to be removed; 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 certain obstructions 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 Resolution 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;

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

1. Posts, fences, landscaping, and other similar obstructions that exist within City of Mexico Beach rights-of-way prior to 9-14, 2021 may remain in place, but not be enlarged, 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.
2. City staff is directed not to remove such obstructions from a City right-of-way except according to this resolution and is directed not to initiate code enforcement proceedings due to an obstruction in a City right-of-way that complies with this Resolution.
3. 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.
4. Following such removal, the property owner may not reinstall the obstruction within the right-of-way.

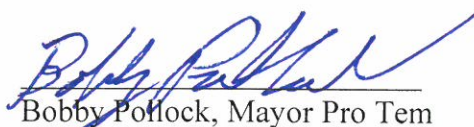
5. When it is unclear whether an obstruction was installed prior to 9-14, 2021, the burden shall be on the property owner to provide documentation, photographs, or other evidence that the obstruction was in place prior to 9-14, 2021 in generally the same size and condition that it currently exists.
6. This Resolution does not permit any obstruction to be placed within rights-of-way under Florida Department of Transportation or Bay County jurisdiction.
7. 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 Resolution.
8. If any section, subsection, sentence, clause, phrase of this Resolution, 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.

**This Resolution shall take effect immediately upon passage.**

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of The City of Mexico Beach, Florida this 14th day of September 2021.

CITY OF MEXICO BEACH

ATTEST:

  
Bobby Pollock, Mayor Pro Tem

  
Tammy Brunson, City Clerk