

MEMORANDUM

DATE: March 28, 2016

TO: Dave Bullock, Town Manager

FROM: Alaina Ray, AICP, Director
Planning, Zoning and Building

RE: Ordinance 2016-06, Amending Chapter 57, Rights-of-Way Use;
Establishing a New Chapter 58, Undergrounding of Utilities; and
Amending Chapter 98, Trees

On November 3, 2015, the Town's electors voted to authorize the Town's borrowing of up to \$25,250,000 for undergrounding utilities (electric, telephone, cable and fiber optic) and feeder lines on Gulf of Mexico Drive, including Binnacle Point in Spanish Main and on Broadway. Subsequently, on March 15, 2016, the Town's electors also voted to authorize the Town's borrowing of up to \$23,850,000 for undergrounding utilities in all neighborhoods where overhead utilities exist, as well as installation of fiber optics in all neighborhoods. The resulting projects to underground utilities and install fiber optics prompts amendments to the Town's Code of Ordinances (Code), Chapter 57, to address issues related to rights-of-way use. The projects also necessitate a new chapter to be added to the Code to establish regulations for underground utilities on the island, which are provided for in a new Chapter 58, Undergrounding of Utilities. Minor revisions are also proposed for Chapter 98, Trees, to include new terminology referenced in Chapters 57 and 58.

Ordinance 2016-06 was presented to the Town Commission at their January 19, 2016, Regular Workshop and was forwarded to the February 1, 2016, Regular Meeting for first reading and public hearing. At that time, the Commission reached consensus to delay the second reading and public hearing to April 4, 2016, in order to have the results of the March 15, 2016, Neighborhood Referendum.

Chapter 57: Rights-Of-Way

This Chapter regulates work performed in the Town's right-of-ways. Staff has identified several provisions, described below, which should be revised in order to accommodate the anticipated underground utilities project.

1. The definition of "utility" has been revised to encompass a more broad spectrum of services, while not limiting potential services to just the ones specifically listed.
2. A provision has been added to clarify that nothing within the Code will prevent the Town from entering into and contracts and/or agreements with any utility provider regarding the payment obligations related to the relocation of utilities.
3. The language regarding Right-Of-Way Permit exemptions has been revised to clarify that work performed by or on behalf of the Town, within Town owned or controlled rights-of-way and easements across private or public lands owned and/or controlled by

other agencies granted to the Town for such purposes, is exempt from obtaining a Rights-of-Way Permit.

4. The term “light fixtures” has been added to the Code, to allow Wi-Fi equipment to be located on light poles, bollards, and other structures used for lighting purposes.

Chapter 58: Undergrounding of Utilities

This is a new proposed Chapter within the Code and is designed to protect the public health, safety, and welfare of the town’s residents related to utilities provided on the island. The Town has recognized the benefits of improved reliability, safety, and aesthetics of eliminating overhead utility lines within the Town’s corporate limits by requiring the infrastructure for electrical power, telecommunications, video, cable, television, internet, broadband, and similar services be installed underground to the greatest extent possible. This Chapter establishes the requirement for all utilities on the island to be undergrounded. The Chapter requires that, within three (3) months after written notice is given by the Town or by the applicable utility provider that service is available from underground utility facilities, all owners of property where service is available from such facilities shall connect to the underground facilities.

A definition for “light fixture” has been established in this chapter that shall mean any above ground pole, bollard, ground-mounted pathway light, and other similar structure utilized exclusively for lighting or signalization, but which may also include Wi-Fi node facilities. This definition does not include wiring for street lighting, which is required to be underground. This definition and associated provisions will allow the installation of street and pedestrian in a variety of methods.

This Chapter provides some exceptions to the requirement for underground utilities, limited to the following:

- Light fixtures and associated structures used exclusively for street lighting or signalization, and which may also be equipped with Wi-Fi facilities. This exemption shall not apply to wiring for street lighting which is required to be underground.
- Overhead wires, electric supply conductors, cable, fiber, or similar facilities owned by the property owner and attached to the exterior surface of the property owner's building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street.
- Radio antennae, associated equipment, and supporting structures for such antennae, used by the town and/or a utility company for furnishing wireless communication services. Such installations shall be approved and permitted as required by the town (see sections 158.200 and 158.201 of the Code).
- Town owned and/or operated cameras, security equipment, weather monitoring devices, and other similar equipment.

- Pad mounted transformers, switches, junction boxes, and service terminals on pedestals above ground used to distribute electrical, communication, and community antenna television or similar or associated service in the underground systems.
- Pad mounted generators and pumps associated with town-owned and/or operated sewer lift stations.
- Temporary poles, overhead wires, and associated overhead structures located on private property used solely during the course of construction on that private property.
- Temporary poles, wires, electric conductors, telephone, or other communications cable, fiber optic cable, and associated overhead facilities to provide temporary or emergency service installed subject to the provisions of this Chapter.

This Chapter also establishes penalties for failure to comply with provisions of the Chapter, to include prosecution, injunctive relief, recovery of damages, and revocation, suspension, modification and/or withholding of permits.

Chapter 98: Trees

The Town's Tree Protection ordinance provides provisions that are designed to ensure trees are not planted so that the mature canopy will interfere with any overhead electrical facilities. Ordinance 2016-06 includes the addition of the aforementioned "light fixtures" to this Chapter so as to ensure trees will not interfere with street and pedestrian lighting provided to protect the health, safety, and welfare of the public.



Ordinance 2016-06
Chapter 57: Rights-Of-Way Use
Chapter 58: Undergrounding of Utilities
Chapter 98: Trees

Town Commission
Regular Meeting
April 4, 2016



Background

- November 3, 2015: Funding for GMD Undergrounding Project approved by electorate
- January 19, 2016: Ordinance 2016-06 presented at Town Commission Regular Workshop
- February 1, 2016: First Reading and Public Hearing of Ordinance 2016-06
- March 15, 2016: Funding for Neighborhood Undergrounding Project approved by electorate
- April 4, 2015: Second Reading and Public Hearing of Ordinance 2016-06



Chapter 57: Rights-Of-Way Use

- Expands and clarifies the definition of “Utility”
- Adds language regarding relocation to be consistent with Florida Law and any other applicable contracts and/or agreements the Town may enter into
- Adds the term “light fixtures” to accommodate WiFi equipment, as specified in the Town’s Land Development Code, to be located on light poles, light bollards, and other structures used for lighting purposes
- Clarifies provision for utility work across easements
- Clarifies that utility work performed by or on behalf of the town within rights-of-way is exempt from obtaining a Rights-Of-Way Permit



Chapter 58: Undergrounding of Utilities

- Creates new chapter for the regulation of underground utilities
- Establishes new definitions:
 - “Light fixture” shall mean any above ground pole, bollard, ground-mounted pathway light, and other similar structure utilized exclusively for lighting or signalization, but which may also include Wi-Fi node facilities. This definition does not include wiring for street lighting, which is required to be underground.
 - “Utility facilities” within this chapter shall mean all facilities for providing electrical power, telecommunications, video, cable television, internet, broadband, Wi-Fi, and similar services.



Chapter 58: Undergrounding of Utilities

- Establishes the requirement for all utilities to be located underground
- Establishes that, within three (3) months after written notice is given by the Town or by the applicable utility provider that service is available from underground utility facilities, all owners of property where service is available from such facilities shall connect to the underground facilities
- Establishes certain limited exemptions from the Chapter
- Established penalties for noncompliance with the provisions of the Chapter



Chapter 98: Trees

- Provides for the protection of “town installed light fixtures,” to prevent trees from being planted in locations that would interfere with the function of the light fixtures

ORDINANCE 2016-06

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING WITHIN TITLE 5 PUBLIC WORKS, CHAPTER 57, RIGHTS-OF-WAY USE; SECTION 57.01, DEFINITIONS; 57.04 RELOCATION; SECTION 57.06 EXEMPTIONS; ESTABLISHING WITHIN TITLE 5 PUBLIC WORKS, CHAPTER 58, UNDERGROUNDING OF UTILITIES; PROVIDING THAT ALL FACILITIES FOR PROVIDING ELECTRICAL POWER, TELECOMMUNICATIONS, VIDEO, CABLE TELEVISION, INTERNET, BROADBAND, AND SIMILAR DEVICES (COLLECTIVELY KNOWN AS “UTILITY FACILITIES”) SHALL BE PLACED UNDERGROUND; ESTABLISHING 58.00, DEFINITIONS; ESTABLISHING SECTION 58.01, PURPOSE; ESTABLISHING SECTION 58.02, POLES, OVERHEAD WIRES, AND ASSOCIATED STRUCTURES UNLAWFUL; ESTABLISHING SECTION 58.03, EXISTING UTILITIES; ESTABLISHING SECTION 58.04, PRIVATE PROPERTY OWNER’S RESPONSIBILITIES; ESTABLISHING SECTION 58.05, PERMIT REQUIRED; ESTABLISHING SECTION 58.06, TIME LIMITATION ON CONNECTION; ESTABLISHING SECTION 58.07, EXCEPTIONS; ESTABLISHING SECTION 58.08, PENALTIES; AMENDING CHAPTER 98, TREES; AMENDING SECTION 98.08, PROHIBITED PLANTINGS, REMOVAL OF NUISANCE EXOTIC SPECIES, PROTECTION OF UTILITY FACILITIES TO PROVIDE PROTECTION FOR TOWN INSTALLED LIGHT FIXTURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Town of Longboat Key (Town) is a barrier island with unique natural attributes and limited development; and

WHEREAS, Policy 1.1.7 of the Town’s Comprehensive Plan mandates that, in development planning efforts, emphasis will be placed upon the protection of the visual and aesthetic character of neighborhoods, including open space; and

WHEREAS, an Urban Land Institute study was performed for the Town in October 2013 which recommended streetscape enhancements to Gulf of Mexico Drive, to include landscape options that would necessitate removal of overhead wires, as part of a transformation of Gulf of Mexico Drive into a more pedestrian-friendly system; and

WHEREAS, the Town recognizes the benefits of improved reliability, safety, and aesthetics of eliminating overhead utility lines within the town’s corporate limits; and

WHEREAS, the Town seeks to achieve these benefits by requiring the infrastructure for electrical power, telecommunications, video, cable, television, internet, broadband, and similar services be installed underground to the greatest extent possible; and

WHEREAS, the Town finds it necessary to revise its Code of Ordinances to incorporate uniform guidelines, standards, and procedures for these underground services.

THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, AS FOLLOWS

SECTION 1. The above recitals are true and correct and are hereby incorporated fully by reference.

SECTION 2. Chapter 57, Rights-of-Way Uses, Sections 57.01, Definitions; 57.04, Relocation; and 57.06, Exemptions, telecommunication antennae located on existing or replacement utility poles; are hereby amended as follows:

Chapter 57 - RIGHTS-OF-WAY USE

57.01. Definitions.

For the purpose of this chapter, the following definitions shall be used:

"Installation" shall mean any equipment, facility, apparatus thereto, barrier, pavement or structure that is placed within, on, under, or over the rights-of-way and shall also include, but not be limited to, access connections and landscape work performed within the rights-of-way.

"Rights-of-way" shall mean lands owned or controlled by the town that are dedicated, deeded, used or to be used for a street, road, alley, walkway, boulevard, utility, drainage facility, access or egress, or other public purpose. It does not include private lands used or to be used as a private street, road, alley, walkway, boulevard, utility, drainage facility, access, or egress.

"Rights-of-way use permit" shall refer to the permit used by the town for work to be performed within, on, above, or under the rights-of-way.

"Utility" shall mean a community service provided by any public or private entity that is available to the general public which includes any public or private entity such as, but not limited to, storm drainage, sanitary sewers, electrical power, water service, gas service, cable television service, telephone lines and telecommunications services all facilities for providing electrical power, telecommunications, video, cable television, internet, broadband, Wi-Fi, fiber optic, and similar services.

57.04 Relocation

- (A) Subject to applicable Florida law, in the event of any widening, repairs, construction, or reconstruction, by or for on behalf of the town, of any road, bridge, canal, culvert, traffic signal, street light, sidewalk, water distribution system, sewage collection system, storm drainage system, or any town owned

and/or controlled facility within the rights-of-way in which the permittee or owner has placed any utility or installation, the permittee or owner shall move, remove, or relocate such utility or installation as may be required for the public convenience as and whenever specified by the town and at the permittee's or owners' own expense.

- (B) Subject to applicable Florida law, if a utility or installation is determined by the town to be unreasonably interfering in any way with the convenient, safe, or continuous use of the rights-of-way, or with the maintenance, improvement, extension, or expansion of the rights-of-way, then the utility or installation shall be removed or relocated at the expense of the permittee or owner of the utility or installation.
- (C) When relocation is required, ~~town-owned and maintained~~ owned and/or controlled facilities shall be given priority in establishing new utility and installation alignments within the rights-of-way.
- (D) Notwithstanding the foregoing, nothing herein shall preclude the town from entering into any contracts and/or agreements with any utility provider regarding the payment obligations related to the relocation of utilities.

57.06 Exemptions, telecommunication antennae located on existing or replacement utility poles and/or light fixtures.

The following activities are exempt from the provisions of sections 57.03 and 57.05, except that those who engage in these activities must obtain permission (which may involve conditions related to traffic, safety, and other health and/or safety-related concerns, and returning any disturbance of the ground to a condition equal to or better than the condition prior to the disturbance) from the public works department prior to working in or using ~~public~~ town owned and/or controlled rights-of-way and easements across private or public lands owned and/or controlled by other agencies granted to the town for such purposes:

- (A) Federal, state, county or town projects and projects conducted on behalf of these agencies;
- (B) Work by a communications company or other utility pursuant to a valid franchise agreement executed by the town;
- (C) Replacement of existing equipment and materials by a utility company so long as the work performed meets all legal requirements;
- (D) Special events sponsored by the town or governed by a special events permit; ~~and~~
- (E) Personal wireless service facilities primarily mounted on utility poles and/or light fixtures that meet the requirements of subsection 158.201(B) or freestanding facilities meeting the requirements of subsection 158.201(C); ~~and~~
- (F) Installation, maintenance, and/or replacement by or on behalf of the town of underground utilities and associated facilities and/or services.

SECTION 3. The Code of Ordinances of the Town of Longboat Key is hereby amended at Title 5 to establish a new Chapter 58, titled Undergrounding of Utilities, to read as follows:

Chapter 58 - UNDERGROUNDING OF UTILITIES.

58.00 Definitions.

58.01 Purpose.

58.02 Poles, overhead wires and associated structures unlawful.

58.03 Existing utilities.

58.04 Private property owner's responsibility.

58.05 Permit required.

58.06 Time limitation on connection.

58.07 Exceptions.

58.08 Penalties.

58.00 - Definitions.

"Light fixture" shall mean any above ground pole, bollard, ground-mounted pathway light, and other similar structure utilized exclusively for lighting or signalization, but which may also include Wi-Fi node facilities. This definition does not include wiring for street lighting, which is required to be underground.

"Utility facilities" within this chapter shall mean all facilities for providing electrical power, telecommunications, video, cable television, internet, broadband, Wi-Fi, and similar services.

58.01 - Purpose.

The purpose of this chapter is to protect the public health, safety and welfare of the town's residents. The town recognizes the benefits of improved reliability, safety, and aesthetics of eliminating overhead utility lines within the town's corporate limits by requiring the infrastructure for electrical power, telecommunications, video, cable, television, internet, broadband, and similar services be installed underground to the greatest extent possible.

58.02 - Poles, overhead wires, and associated structures unlawful.

- (A) Except as otherwise specifically provided in this chapter, all utility facilities for providing electrical power, telecommunications, video, cable television, internet, broadband, and similar services (collectively, as used herein, "utility facilities") located within the jurisdiction of the town shall be placed underground. Utility poles, overhead wires, and associated overhead structures for such utility facilities shall not be permitted except as specifically provided in this chapter.
- (B) This section shall apply to all new utilities facilities located or desiring to locate within town or State rights-of-way within the town, as well as in easements or on private properties, as well as to any relocation, refurbishment, reconstruction, or restoration of such utilities already located within the town, except for temporary restoration of service under emergency conditions, e.g., following a hurricane or similar natural event that damages such utility facilities.

58.03 - Existing utilities.

Utilities facilities existing within the town as of the date of the adoption of this ordinance pursuant to franchise, license, or agreement with the town shall be required to be placed underground upon expiration of the franchise, license, or agreement with the town, or in the event of replacement of such utilities or a substantial portion of such utilities, whichever occurs sooner. Above ground utilities facilities existing as of the date of the adoption of this ordinance pursuant to franchise, license, or agreement with the town may be placed underground before expiration of the franchise, license, or agreement with the town, subject to negotiation and agreement with the town and the utility, or, if and to the extent applicable, pursuant to applicable rules of the Florida Public Service Commission and a public utility's tariffs implementing those rules.

58.04 - Private property owner's responsibility.

All utility facilities for all new construction and for reconstruction shall be required to be placed underground. In addition, utility facilities for properties subdivided subsequent to the adoption of this chapter shall be placed underground, including all distribution lines, service laterals, and other appurtenances associated with connecting the property owner's property to the utility's facilities. The property owner is also required to arrange for the service entrances for all utility services to be constructed so as to accept and be fully compatible with underground service.

58.05 - Permit required.

Except as exempted by Chapter 57 of this code, all applicable permits as set forth by this code shall be required from the town for the placement of any utility located within any town owned and/or controlled rights-of-way. The permit shall be nonexclusive and consistent with federal, state, and local law, shall be conditioned upon the payment by the utility to the town an amount to be determined by subsequent resolution, as may be amended from time to time, for use of the town owned and/or controlled rights-of-way, said fee to be determined in a nondiscriminatory manner.

58.06 - Time limitation on connection.

Within three (3) months after written notice is given by the town or by the applicable utility provider that service is available from underground utility facilities, all owners of property where service is available from such facilities shall connect to the underground facilities.

58.07 - Exceptions.

Unless otherwise provided, this chapter and any resolution adopted pursuant hereto shall not apply to the following types of facilities:

- (A) Light fixtures and associated structures used exclusively for street lighting or signalization, and which may also be equipped with Wi-Fi facilities. This exemption shall not apply to wiring for street lighting which is required to be underground.

- (B) Overhead wires, electric supply conductors, cable, fiber, or similar facilities owned by the property owner and attached to the exterior surface of the property owner's building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street.
- (C) Radio antennae, associated equipment, and supporting structures for such antennae, used by the town and/or a utility company for furnishing wireless communication services. Such installations shall be approved and permitted as required by the town (see sections 158.200 and 158.201 of the Code).
- (D) Town owned and/or operated cameras, security equipment, weather monitoring devices, and other similar equipment.
- (E) Pad mounted transformers, switches, junction boxes, and service terminals on pedestals above ground used to distribute electrical, communication, and community antenna television or similar or associated service in the underground systems.
- (F) Pad mounted generators and pumps associated with town-owned and/or operated sewer lift stations.
- (G) Temporary poles, overhead wires, and associated overhead structures located on private property used solely during the course of construction on that private property.
- (H) Temporary poles, wires, electric conductors, telephone, or other communications cable, fiber optic cable, and associated overhead facilities to provide temporary or emergency service installed subject to the provisions of this Chapter.

58.08 - Penalties.

The town shall have all recourse and remedies in law and equity as may be necessary to ensure compliance with the provisions of this chapter, including, but not limited to the following:

- (A) Prosecution by the state attorney's office in the same manner as misdemeanors;
- (B) Injunctive relief to enjoin or restrain any person from violating provisions of this chapter;
- (C) An action to recover any and all damages as a result of violation of this chapter;
- (D) Revocation, suspension, modification of any existing permit issued to the violator; and
- (E) Withholding the issuance of any permits to the same person, firm, corporation or legal entity either individually or through its agents, employees or independent contractors.

These remedies may be pursued concurrently and pursuing of one remedy shall not preclude pursuance of another.

SECTION 4. Chapter 98, Trees, is hereby amended at section 98.08 to read as follows:

98.08 - Prohibited plantings; removal of nuisance exotic species; protection of utility facilities and town light fixtures.

(A) It is unlawful to plant, transplant, or grow from seed, any nuisance exotic plant species listed below, and these species are exempt from permits for tree removal:

(1)	Schinus terebinthifolius	(Brazilian Pepper tree)
(2)	Melaleuca quinquenervia	(Punk tree)
(3)	Enterolobium cyclocarpum	(Ear tree)
(4)	Melia azedarach	(Chinaberry tree)
(5)	Ficus retusa	(Cuban Laurel)
(6)	Grevillea robusta	(Silk Oak)
(7)	All Eucalyptus Eucalyptus, except E. cinera	(Silver Dollar tree)
(8)	Ficus aurea	(Strangler Fig)
(9)	Dalbergia sissoo	(India Rosewood)
(10)	Casuarina	(Australian Pine)
(11)	Cupaniopsis anacardioides	(Carrotwood)

(B) *Protection of electric facilities.* No tree shall be planted where at mature height it may conflict with overhead electric facilities or town installed light fixtures.

- (1) Large trees (trees with a mature height of 30 feet or more) shall be planted no closer than a horizontal distance of 30 feet from any overhead electric facility or town installed light fixtures.
- (2) Medium trees (trees with a mature height of 20 to 30 feet) shall be planted no closer than a horizontal distance of 20 feet from any overhead electric facility or town installed light fixtures.
- (3) Palms shall be planted no closer than three feet from the mature maximum frond length from any overhead electric facility or town installed light fixtures.

(C) The Florida Department of Transportation, municipal utilities, and public utilities may remove trees without a permit when they endanger public safety and welfare and are located within utility easements and public rights-of-way or are interfering with utility service or town installed light fixtures.

(D) Removal of nuisance exotic species. The town shall require the removal of all trees in the genus Casuarina (Australian Pine), Schinus terebinthifolius (Brazilian Pepper tree), and Cupaniopsis anacardioides (Carrotwood) from all real property being prepared for development or redevelopment, including single-family lots.

SECTION 5. Severability. If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

SECTION 6. Repeal of Ordinances in Conflict. All other ordinances of the Town of Longboat Key, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

SECTION 7. Codification. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Longboat Key.

SECTION 8. Effective Date. This Ordinance shall take effect immediately upon its adoption, as provided by law.

Passed on first reading the ____ day of _____, 2016.

Adopted on second reading and public hearing the ____ day of _____, 2016.

Jack G. Duncan, Mayor

ATTEST:

Trish Granger, Town Clerk



End of Agenda Item