

ORDINANCE NO. 2019-15

**AN ORDINANCE TO APPROVE THE REPLAT LOTS 9, 10 AND 11 OF THE  
SYNDER GROVE SUBDIVISION**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRAIRIE  
GROVE, ARKANSAS, THAT:**

Section One: Title. This Ordinance shall be known as the 2019 Synder Grove Replat Ordinance.

Section Two: Replat Approved. The replat of lots 9, 10 and 11 of the Synder Grove Subdivision to the City of Prairie Grove, as approved by the Prairie Grove Planning Commission, required to accommodate a high-pressure gas line is hereby approved, and the Mayor and Clerk are authorized to affix their names and seal of the City thereto.

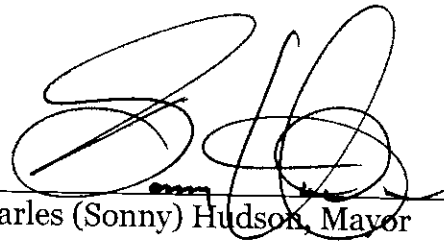
Section Three: Effective Date. This Ordinance shall become effective from and after 60 days of its posting unless an Emergency Clause is affixed.

Section Four: Repealing Clause. Ordinances or parts thereof in force at the time that this ordinance shall take effect that are in conflict herewith, are hereby repealed.

Section Five: Saving Clause. Nothing herein shall be deemed to affect any rights or obligations existing at the time of the passage of this ordinance.

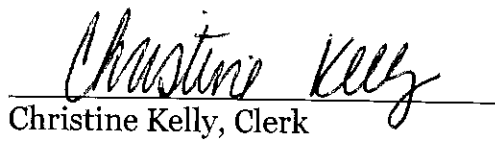
Section Six: Severability Clause. In the event any portion of this ordinance is declared inoperative or invalid as a result of a statute or judicial decision, then only that portion expressly so declared to be inoperative or invalid shall be affected thereby and all other provisions hereof shall remain in full force and effect.

Approved this 20th day of May 2019.

A handwritten signature in black ink, appearing to read "S. Hudson", written over a horizontal line.

Charles (Sonny) Hudson, Mayor

(Attest)

A handwritten signature in black ink, appearing to read "Christine Kelly", written over a horizontal line.

Christine Kelly, Clerk

ORDINANCE NO. 2019- 116

AN ORDINANCE TO CLARIFY/CORRECT ORDINANCE 2002-17

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRAIRIE GROVE, ARKANSAS, THAT:

Section One: Title. This Ordinance shall be known as the Grover Street Closing Correction Ordinance.

Section Two: Ordinance 2002-17 Corrected. Ordinance 2002-17, that closed a portion of Grover Street, stated it was closing a portion of Grover Street between Blocks 9 and 10 of the Cummings Addition to the City of Prairie Grove. The intent was to close such street between Center Street and Graham Street, which is between Blocks 3 and 4.

Section Three: Street Closed. The City Council of the City of Prairie Grove hereby finds that Grover Street should be closed from Center Street South to Graham Street; between Block 3 of the Cummings Addition on the West and Block 4 of Cummings Addition on the East. Therefore, the City Council hereby vacates and abandons such portion of the right-of-way as described herein and closes said street.


Section Four: Effective Date. This Ordinance shall become effective from and after 60 days of its posting unless an Emergency Clause is affixed.

Section Five: Repealing Clause. Ordinances or parts thereof in force at the time that this ordinance shall take effect that are in conflict herewith, are hereby repealed.

Section Six: Saving Clause. Nothing herein shall be deemed to affect any rights or obligations existing at the time of the passage of this ordinance.

Section Seven:      Severability Clause. In the event any portion of this ordinance is declared inoperative or invalid as a result of a statute or judicial decision, then only that portion expressly so declared to be inoperative or invalid shall be affected thereby and all other provisions hereof shall remain in full force and effect.

Approved this 20th day of May 2019.



Charles (Sonny) Hudson, Mayor

(Attest)



Christine Kelly, Clerk

ORDINANCE NO. 2019- 17

AN ORDINANCE TO ADOPT PROVISIONS REQUIRING  
TELECOMMUNICATIONS FRANCHISE AGREEMENTS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRAIRIE  
GROVE, ARKANSAS, THAT:

Section One: Title. This Ordinance shall be known as the 2019  
Telecommunication Franchise Ordinance.

Section Two: New Chapter 4.18 Adopted. From and after the effective date of  
this Ordinance, a new Chapter 4.18 to the Prairie Grove Municipal Code is  
adopted to read as follows:

**CHAPTER 4.18**

**TELECOMMUNICATIONS FRANCHISE**

Section 4.18.01 Definitions. As used in Chapter 4.18, the following terms shall have  
the meanings set out:

***Applicant*** means a telecommunications provider or telecommunications lessee that  
applies for a franchise or license pursuant to this ordinance.

***Franchise fee*** means compensation paid to the City by the telecommunications  
provider or lessee in exchange for the use of the City's streets to deliver  
telecommunications services.

***Gross revenues*** means all revenues from basic local service, excluding, among other  
things, extension, terminal equipment, toll, access, yellow pages, and other  
miscellaneous equipment revenues pursuant to Arkansas Code Ann. §14-200-101.

***Person*** means any individual, resident, citizens, business firm, corporation,  
partnership, governmental agency, or institution.

***Streets*** means all streets, roads, highways, alleys, rights-of-way, public utility  
easements, public property, public ways and air space over such streets, roads, alleys,  
public rights-of-way, public utility easements, public property and public ways located  
within the geographic limits of the City.

**Telecommunications** means the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information sent and received.

**Telecommunications facilities or facilities** means all conduits, manholes, poles, antennas, transceivers, wires, cable (including fiber optic cable) and appurtenances owned or utilized by a telecommunications provider or telecommunications lessee and located in, under or over the streets of the city and utilized in the provision of telecommunications services.

**Telecommunications lessee or lessee** means any person, firm, corporation, partnership, or other business entity, including resellers, that provides telecommunications services within the geographic boundaries of the city, including long-distance services that originate or terminate in the city, but utilizing, purchasing or leasing a telecommunications facility of a telecommunications provider or any element thereof, whether through purchase, lease, contract, interconnection agreement, or other business arrangement; provided that a person that owns its own telecommunications facilities in the city and utilizes, purchases or leases telecommunications facilities or elements thereof of other telecommunications providers in the city shall be classified as a telecommunications provider under the terms of this ordinance.

**Telecommunications provider or provider** means any person, firm, corporation, partnership or other business entity, other than the city, that provides telecommunications services within or without the geographic boundaries of the City by utilizing its own telecommunications facilities to provide telecommunications services.

**Telecommunications services or services** means any service delivering telecommunications by a telecommunications provider or lessee that the provider or lessee is authorized to provide under federal, state and local law, except that these terms do not include cable service as defined by the Cable Communications Policy Act of 1984, as amended by the Cable television Consumer Protection and Competition Act of 1992, 47 U.S.C. §521 et seq., and the Telecommunications Act of 1996.

**Transmission line** means a telecommunications facility that is used solely for the purpose of transmitting signals from one point to another point and does not include a line for the purpose of delivering telecommunications services to any person in the City.

Section 4.18.02 *Requirement of City's Consent.* Every telecommunications provider and telecommunications lessee that utilize a telecommunications facility must obtain a franchise or license from the city in accordance with Chapter 4.18 in order to provide telecommunications services. Prior to providing any telecommunications facility, or utilizing any telecommunications facility, the provider or lessee must agree in writing to comply with the terms and conditions of this ordinance and enter into a franchise agreement or license agreement.

Section 4.18.03 *Application Process.* Any telecommunications provider or lessee who has not yet been awarded a franchise seeking to utilize the streets to provide telecommunications service shall complete a brief application form approved by the City. Such application form shall briefly describe the general nature of the service to

be provided, the type of construction or use of the facilities required, the name, address and telephone number of the person or entity seeking to provide the service, and the name, address and telephone number of an authorized representative of the person or entity.

- (1) The applicant shall also provide evidence in a form satisfactory to the City that it has the financial, legal and technical qualifications necessary to provide the service for which it seeks a franchise or license. The provision of authorization from the Arkansas Public Service Commission shall be deemed satisfactory evidence of these qualifications.
- (2) In considering whether to grant a franchise or license or impose terms and conditions on the grant of a franchise or license, the City may consider, without limitation, the following factors to the extent not already considered by the Arkansas Public Service Commission:
  - (a) The applicant's financial ability to pay the compensation and fees required by this ordinance;
  - (b) The applicant's ability to construct and operate the telecommunications facilities it seeks to utilize;
  - (c) The applicant's compliance with the terms and conditions of federal, state and local law including applicant's compliance in other jurisdictions in which it operates;
  - (d) The capacity of the streets to accommodate the applicant's proposed facilities;
  - (e) The damage or disruption, if any, of public or private facilities, improvements, or landscaping if a franchise or license is granted;
  - (f) The public interest in minimizing the cost and disruption of construction in, on, under and above the streets;
  - (g) The effect of public health, safety or welfare if a franchise or license is granted;
  - (h) The availability of alternate routes and/or locations for the proposed facilities;
  - (i) Whether the imposition of certain terms and conditions or the failure to grant the requested franchise or license would prohibit or have the effect of prohibiting the ability of the applicant to provide any interstate or intrastate telecommunications services; and
  - (j) Any other factor relating to whether the grant of a franchise or license impinges on the city's right to manage its streets.

**Section 4.18.04 *Franchise or License Agreement.***

- (1) As a condition of the grant of a franchise or license, the provider or lessee shall enter into a franchise agreement or a license agreement with the City. A telecommunications provider shall enter into a franchise agreement. A telecommunications lessee shall enter into a license agreement.

- (2) The franchise agreement or license agreement shall contain such additional terms and conditions as are not in conflict with the terms of this ordinance as may be necessary and appropriate for the particular circumstances of the provider or lessee and its delivery of telecommunications services.

Section 4.18.05 *Construction Maintenance.*

- (1) *Construction Application.* Prior to the beginning construction, excluding routine maintenance or emergency repair, of any telecommunications facility, the telecommunications company shall apply to the City of Prairie Grove for permission to carry out construction activities in the city's streets, and shall comply with all requirements of that department and all applicable ordinances or Code sections.
- (2) *Construction Plan.* Prior to beginning construction, as defined above, the applicant shall submit a plan describing the proposed construction. The plan shall specify:
  - (a) The design of any telecommunications facilities to be construction or utilized;
  - (b) A map showing the precise location of any telecommunications facility to be constructed or utilized and any appurtenant facilities such as poles, attachments, guy wires, and the like;
  - (c) A description of any agreements that have been reached or are necessary with other telecommunications providers or providers of other utility services regarding use of existing facilities;
  - (d) The timetable for completion of construction, including any phases of construction;
  - (e) Such other information as well provide the city with pertinent information relating to the construction of the telecommunications facilities, including any pertinent information requested by the city.
- (3) *Prior Authority.* Prior to beginning construction, the applicant shall have received all necessary regulatory authority to construction a telecommunications facility or provide telecommunications service from the Arkansas Public Utilities Commission, the Federal Communications Commission, or other appropriate state or federal agency. Evidence that it has received such regulatory authority shall be filed with the City.
- (4) *Standards of Construction.* The method of construction, workmanship used, and materials utilized in the construction shall conform to all applicable federal, state and local statutes, rules, regulations and ordinances. All work shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality so as not to create a hazard or dangerous conditions on the streets. If, at any time, it is determined by the city or any other agency or authority of competent jurisdiction that any telecommunications facility presents a danger to the public health, safety or welfare, then the telecommunications provider or lessee shall, at its own cost and expense, upon



thirty (30) days advance written notice, at its own cost and expense, promptly correct all such conditions.

- (5) *Maintenance and Repair.* Any telecommunications facility constructed or utilized pursuant to a franchise or license shall be maintained and repaired in accordance with the standards and under the terms and conditions set out in the preceding paragraph and such other terms and conditions as shall appear in this ordinance or the franchise agreement or license agreement.
- (6) *Minimal Disruption.* Construction, maintenance and repair of the telecommunications facilities shall be conducted in such a manner as to minimize any interference with or disruption of the City's streets, traffic, residences, businesses and institutions. The provider shall at all times endeavor to use trenchless technology in appropriate circumstances.
- (7) *Restoration.* Any disturbance of the city's streets shall be repaired and restored by the telecommunications provider or lessee at its expense and to a condition at least as good as that prevailing before the work causing such disturbance was commenced.
- (8) *Location of Facilities.* New poles and other new facilities shall be located to the extent feasible in such a way as to minimize their effect on the visual landscape and on other aesthetic considerations and so as to minimize inconvenience.
- (9) *Burial of Transmission Lines.* A telecommunications provider shall place its transmission line or other facilities underground where feasible and desirable from an aesthetic perspective.
- (10) *Co-location; Sharing of Pole Space.* To the maximum extent feasible, a telecommunications provider constructing a new transmission line or other facility, or expanding an existing line or facility, shall utilize existing facilities or place its facilities underground. The owner of any existing facility shall to the extent permitted by law and consistent with any pole attachment regulations of the Public Service Commission, the Federal Communications Commission or other appropriate agency, permit the telecommunications provider to utilize its pole.
- (11) *Movement of Facilities.* A telecommunications provider shall be required to temporarily disconnect or relocate any of its facilities located in the streets at its own expense when required by the city by reason of traffic conditions, public safety, or the construction, installation or repair of any public road, highway, building, park or other public project. The provider shall cooperate with any other public utility authorized by the city to provide utility service utilizing the city's streets. If a private entity is required by city to modify or affect the streets, that entity shall compensate the provider for its costs for the disconnection or relocation of any of the provider's facilities. Provider shall be notified by said private entity as soon as practical of any plan affecting provider's facilities.
- (12) *Tree Trimming.* A telecommunications provider is authorized to trim trees in the city's streets to the extent necessary to properly maintain its transmission line or other facility, but prior to major trimming projects, it shall provide at

reasonable necessary for the city to determine compliance with subsection G. A telecommunications provider or lessee shall maintain sufficient financial records governing its operation in the city to allow the determination of gross Revenues and to otherwise document accurate payment of fees.

- (5) *Fees not a Tax.* Unless otherwise inconsistent with applicable law, the fees provided in this Section are not taxes and are separate from, and in addition to, any and all federal, state, local and city taxes as may be levied, imposed or due from a telecommunications provider or lessee, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services; provided that no fee imposed by this section shall be imposed in violation of state or federal law.

#### Section 4.18.08 *Removal.*

- (1) Within thirty (30) days following written notice from the City, any telecommunications provider or other person that owns, controls or maintains any obsolete or unusable telecommunications facility or related appurtenances that the city determines is a visual blight or nuisance to the public on, in, under or above the streets shall, at its own expense, remove such facilities and appurtenances from the streets.
- (2) A telecommunications facility need not be removed if renovation or restoration is planned within a reasonable period of time by the telecommunications franchisee or licensee or if the telecommunications facility is being utilized for telecommunications services. In such case, prompt written notice shall be provided to city specifying why such telecommunications should not be removed and the specific time frame, if applicable, for any planned renovations or restoration.

Section 4.18.09 *Transfer; Transfer of Control.* A grantee or transferee of a telecommunications provider or licensee shall notify, at the same time it applies to the Arkansas Public Service Commission for a transfer or change of control, the City of Prairie Grove of: 1) its intent to be a telecommunications provider or licensee; 2) its intent to comply with Chapter 4.18 Telecommunication Franchises; 3) its intent to promptly provide such information pertinent to the proposed transaction as may reasonably be required by the city.

Section 4.18.10 *Existing Telecommunications Providers.* A telecommunications provider delivering service in the city as of May 1, 2019, such as Ozarks Electric and the Prairie Grove Telephone Company need not apply for a franchise and are deemed to hold a franchise in conformity with Chapter 4.18. All previous franchise ordinances are deemed superseded by this Code section so that all existing or new telecommunication companies in Prairie Grove must comply with all of the terms of Chapter 4.18 upon its effective date.

Section Three:      Effective Date. This Ordinance shall become effective from and after 60 days of its posting unless an Emergency Clause is affixed.

least twenty-four (24) hours' notice to the city. The city, at its option, may choose to supervise such tree trimming. Upon conclusion of the tree trimming, the provider shall immediately clean up and remove all debris.

- (13) *Curb Cuts.* No provider shall make paving cuts or curb cuts without the written consent of the Director of the Department of Transportation Services.

Section 4.18.06 *Performance Bond.*

- (1) Prior to the provision of service, the provider shall post a performance bond, satisfactory to the City, in the City's favor to ensure faithful performance of the terms and provisions of the franchise agreement and any planned construction as designated to the construction plan the provider has filed with the city pursuant to subsection (E)(2). The bond shall be equivalent to 10% of the total cost of the construction as provided in the construction plan, or \$25,000.00, whichever is greater.
- (2) In the event the provider fails to comply with the U.D.C. or to complete the construction in a safe, timely, and competent manner, after notice and a reasonable opportunity to cure, the city may recover, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment or any property of the provider, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.
- (3) The City in its sole discretion may waive this requirement of a bond upon provider demonstrating sufficient financial resources or upon good cause shown to the City of Prairie Grove.

Section 4.18.07 *Fees.* Amount. In consideration of the City's grant of authority to utilize the City's streets for the provision or lease of telecommunications services, the telecommunications provider or lessee shall pay a franchise fee to the City in the following amounts:

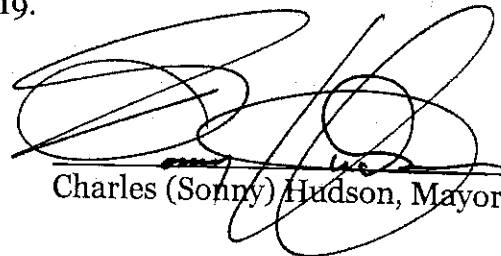
- (1) *In the City.* A telecommunications provider or lessee who provides service to residents, businesses or institutions in the City shall pay monthly an amount equal of 4.25% of its gross revenues within the corporate limits of the city during the preceding month.
- (2) *Outside the City.* A telecommunications provider who provides service solely to persons outside the geographic boundaries of the City by utilizing a transmission line that uses city right-of-way or streets shall pay the City a reasonable annual fee based upon an installation fee and charge per linear feet of transmission line that traverses the city or based upon such other method as the city deems appropriate. Such a fee may be paid in a lump sum in advance or in a combination of a lump sum plus annual payment as the city deems fit;
- (3) *Calculation of Payments.* All payments made to the city shall be accompanied by a statement certified as true by an appropriate employee of the provider or lessee explaining the basis of the calculation on which the payment was made.
- (4) *Audit.* Upon reasonable notice, the City shall have the right to inspect and copy the telecommunications provider's or lessee's books and records that are

Section Four: Repealing Clause. Ordinances or parts thereof in force at the time that this ordinance shall take effect that are in conflict herewith, are hereby repealed.

Section Five: Saving Clause. Nothing herein shall be deemed to affect any rights or obligations existing at the time of the passage of this ordinance.

Section Six: Severability Clause. In the event any portion of this ordinance is declared inoperative or invalid as a result of a statute or judicial decision, then only that portion expressly so declared to be inoperative or invalid shall be affected thereby and all other provisions hereof shall remain in full force and effect.

Approved this 20 day of May 2019.



Charles (Sonny) Hudson, Mayor

(Attest)



Christine Kelly, Clerk

ORDINANCE NO. 2019- 18

AN ORDINANCE TO AMEND THE ZONING ORDINANCE TO COMPLY  
WITH ACT 446 OF 2019

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRAIRIE  
GROVE, ARKANSAS, THAT:

Section One: Title. This Ordinance shall be known as the 2019 Zoning  
Amendment Ordinance.

Section Two: Zoning Ordinance Amended. From and after July 23, 2019, Section  
4.1.3.5 of the Prairie Grove Zoning Ordinance is hereby amended to read as  
follows:

4.1.3.5 Effective September 1, 2008, the following sub-zones will be available for  
use in addition to the existing R-1, R-1.5, & R-1.75 zones: R-1/12, R-1/14, R-1/16,  
R-1/18, R-1/20, R-1.5/12, R-1.5/14, R-1.5/16, R-1.5/18, R-1.75/12, R-1.75/14, R-  
1.75/16. All standards applicable to residential zones R-1, R-1.5, & R-1.75 shall  
apply to these sub-zones, with the exception of the minimum size, heated space  
found at table 4.4.9.a. A property owner/developer may elect to utilize a sub-zone  
by signing a cooperative contractual agreement with the City. Once signed, the  
property owner/developer shall file such cooperative contractual agreement with  
the Circuit Clerk and Ex-Officio Recorder of Washington County and is  
responsible for any filing fee required.

Section Three: Zoning Ordinance Amended. From and after July 23, 2019,  
Table 4.4.9 of the Prairie Grove Zoning Ordinance is hereby amended to read as  
follows:

4.4.9

Minimum Standards for Residential Structures

	A-1	R-1	R1.5	R1.75	R-2	R-3
a. Minimum size, heated space, for single family construction (sub-zone requirements)	N/A	N/A	N/A	N/A	N/A	N/A
		/12	/12	/12		
		1200	1200	1200		
		/14	/14	/14		

1400	1400	1400
/16	/16	/16
1600	1600	1600
/18	/18	
1800	1800	
/20		
2000		

- b. Minimum size, for two-family construction (per dwelling unit)      n/a      n/a      n/a      n/a      600      600
- c. Minimum size, for multi-family construction (per dwelling unit)      n/a      n/a      n/a      n/a      n/a      480
- d. Minimum foundation requirements; all residential structures shall have a continuous footing and foundation system, excluding access openings, ventilation openings, or flood control openings, of concrete block, concrete, masonry stone, or other cementitious products, meeting applicable requirements for building code, in all zones with the exception of areas classified as flood plain.

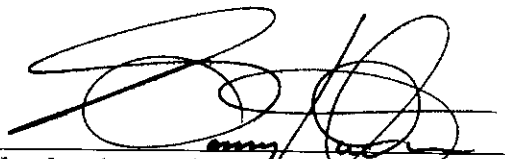
Section Four: Effective Date. This Ordinance shall become effective July 23, 2019.

Section Five: Repealing Clause. Ordinances or parts thereof in force at the time that this ordinance shall take effect that are in conflict herewith, are hereby repealed.


Section Six: Saving Clause. Nothing herein shall be deemed to affect any rights or obligations existing at the time of the passage of this ordinance.

Section Seven: Severability Clause. In the event any portion of this ordinance is declared inoperative or invalid as a result of a statute or judicial decision, then only that portion expressly so declared to be inoperative or invalid shall be affected thereby and all other provisions hereof shall remain in full force and effect.

Approved this 20th day of May 2019.

  
Charles (Sonny) Hudson, Mayor

(Attest)

  
Christine Kelly, Clerk

**ORDINANCE NO. 2019-19**

**AN ORDINANCE TO INCREASE THE ARKANSAS DEPARTMENT OF  
HEALTH FEE IN SECTION 10.12.01(N)**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRAIRIE  
GROVE, ARKANSAS, THAT:**

Section One: Title. This Ordinance shall be known as the 2019 ADH Fee Ordinance.

Section Two: Section 10.12.01(N) Amended. From and after the effective date of this Ordinance, Section 10.12.01 (N) of the Prairie Grove Municipal Code is hereby amended to read as follows:

N. Health Department Fee Every water customer shall pay an additional fee of Forty Cents (\$0.40) per meter per month to be remitted to the Health Department.

Section Three: Effective Date. This Ordinance shall become effective from and after 60 days of its posting unless an Emergency Clause is affixed.

Section Four: Repealing Clause. Ordinances or parts thereof in force at the time that this ordinance shall take effect that are in conflict herewith, are hereby repealed.

Section Five: Saving Clause. Nothing herein shall be deemed to affect any rights or obligations existing at the time of the passage of this ordinance.

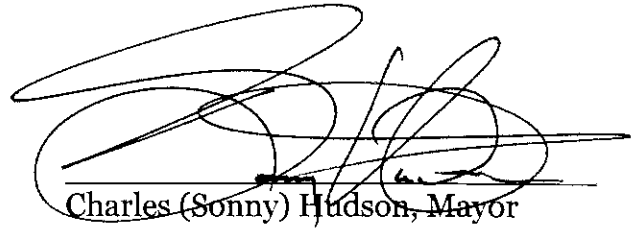
Section Six: Severability Clause. In the event any portion of this ordinance is declared inoperative or invalid as a result of a statute or judicial decision, then only that portion expressly so declared to be inoperative or invalid shall be



affected thereby and all other provisions hereof shall remain in full force and effect.

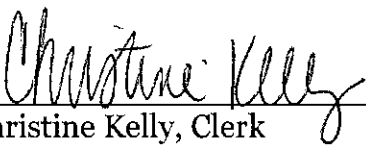
Section Seven:

Approved this 20th day of May 2019.



Charles (Sonny) Hudson, Mayor

(Attest)



Christine Kelly, Clerk