RESOLUTION 2020-05

A RESOLUTION OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA (“COMMISSION”); AUTHORIZING EMERGENCY DECLARATIONS; DECLARING A STATE OF EMERGENCY; AUTHORIZING AND DIRECTING THE CHIEF EXECUTIVE OFFICER TO TAKE WHATEVER PRUDENT ACTIONS WHICH MAY BE NECESSARY TO PROTECT THE HEALTH, SAFETY AND WELFARE OF THE CITIZENS OF THE CITY, CUSTOMERS OF THE CITY’S UTILITIES SYSTEMS, AND COMMISSION EMPLOYEES PURSUANT TO THIS DECLARATION; RATIFYING AND AFFIRMING SUCH ACTIONS TAKEN BY THE CHIEF EXECUTIVE OFFICER PRIOR TO THIS DECLARATION; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. FINDINGS AND INTENT. The Utilities Commission, City of New Smyrna Beach, Florida (the “Utilities Commission”) makes the following findings and declares the following legislative intent:

(1) The Utilities Commission was created and made a part of the government of the City of New Smyrna Beach by Section One of the Special Act, Chapter 67-1754, Laws of Florida, incorporated as Chapter 15 of the City of New Smyrna Beach Code of Ordinances, as amended by Chapter 85-503, Laws of Florida (hereafter the “Special Act”).

(2) The Special Act provides the Utilities Commission with full and exclusive authority over the management, operation and control of all the City’s utilities.

(3) Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza.

(4) On March 1, 2020, Ron Desantis, Governor of the State of Florida, issued Executive Order No. 20-51, directing the Florida Department of Health to issue a Public Health Emergency.

(5) On March 1, 2020, the State Surgeon General and State Health Officer declared that a Public Health Emergency exists in the State of Florida as a result of COVID-19., as well as Commission employees.

(6) On March 9, 2020, Governor Desantis declared that a state of emergency exists in the State of Florida as a result of the continued spread of COVID-19.

(7) COVID-19 has created or imminently threatens to create conditions that may severely affect the public health, safety, welfare and security of the citizens, residents
and visitors of the City of New Smyrna Beach, Florida, as well as Utilities Commission employees.

(8) On March 17, 2020, the Mayor of the City Commission of the City of New Smyrna Beach (the “City”) declared by Declaration Number 01-20 that a state of emergency exists within the boundaries of the City of New Smyrna Beach commencing on March 17, 2020, and continuing for a period of seven (7) days after the date of declaration and may be extended as necessary.

(9) Section 252.38, Florida Statutes, provides for emergency management powers of political subdivisions of the State of Florida, including, without limitation, counties such as Volusia County, municipalities such as the City of New Smyrna Beach, and political subdivisions like the Utilities Commission.

(10) Pursuant to Section 252.38(3)(a) Florida Statutes, the Legislature has empowered political subdivisions to declare a state of local emergency.

(11) Section 252.38(3)(a), Florida Statutes, empowers political subdivisions to waive the procedures and formalities otherwise required by law pertaining to:

- A. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;

- B. Entering into contracts;

- C. Incurring obligation;

- D. Employment of permanent and temporary workers;

- E. Utilization of volunteer workers;

- F. Rental of Equipment;

- G. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities;

- H. Appropriation and expenditure of public funds.

(12) COVID-19 is a direct threat to the public which may require expedient action to protect the health, safety and welfare of the community.

(13) It is important for the Utilities Commission to coordinate its emergency responses in conjunction with the Mayor, the City Commission, and the City staff, as well as other federal and state governmental agencies, during the pendency of this emergency.
(14) It is necessary and appropriate to take action to ensure that COVID-19 remains controlled and that residents and visitors in Florida remain safe and secure.

SECTION 2. DECLARATION OF EMERGENCIES; GENERALLY. The Utilities Commission and/or its Chief Executive Officer shall have the following powers, duties and responsibilities:

(1) To declare a state of emergency or to recommend the declaration of a state of emergency by the utilities commission, and to inform the Utilities Commission of the reasons for and status of events requiring the declaration;

(2) To direct the creation, revision and exercise of emergency response plans conforming to state and county emergency plans for the mitigation of, preparation for, response to, and recovery from emergencies;

(3) To direct the efforts of the various Utilities Commission employees in the preparation for, response to and recovery from emergency conditions; and

(4) To promulgate emergency regulations necessary for the protection of life and property, establishment of public order and control of adverse conditions affecting public welfare resulting from an emergency. Emergency or state of emergency means a condition which threatens or adversely affects the public health, safety or security and which is or threatens to be beyond the control of those public and private agencies normally responsible for the management of such a condition resulting from an act or threatened act of war, riot, terrorism, mob or other act of violence; from a weather event such as flood, hurricane or tornado; from a disruption of the city's utility system; or from any other cause. Any time the City of New Smyrna Beach declares an emergency, such an emergency will qualify to be declared an emergency by the Utilities Commission. The Utilities Commission may delegate to its Chief Executive Officer by resolution such powers and authority to deal with an emergency consistent with the powers and authority granted to the Utilities Commission by the Special Act.

SECTION 3. DECLARATION OF EMERGENCY FOR COVID-19. A state of local emergency is hereby declared for all of the service territory of the Commission effective March 23, 2020, for a period of seven (7) days. Given the risk of contracting the virus occurring by virtue of public meetings, the Commission also votes to extend the initial seven day period by five (5) additional seven (7) day periods until April 27, 2020, unless otherwise extended or shortened by the Commission. The Commission also hereby cancels any Commission meetings for the next twenty-eight (28) days. For the next sixty (60) days, the Commission also authorizes, directs, and delegates to the Chief Executive Officer take whatever prudent actions that may be necessary to protect the health, safety, and welfare of the citizens of the City, customers, and employees of the City’s utilities systems. This delegation shall expire on April 27, 2020, unless earlier terminated or modified by the Commission. The Chief Executive Officer is hereby authorized, directed, and delegated the power and authority to cooperate and coordinate all responses and actions to be taken under this emergency with the City of New Smyrna Beach, other local, state, and federal agencies, and appropriate officers of the City and these agencies.
SECTION 4. WAIVER OF PROCEDURES. The procedures and formalities otherwise required by law pertaining to the actions enumerated as A. through H. herein above are hereby waived for the duration of this declaration and any extensions thereof. The Chief Executive Officer may take such actions on behalf of the Commission.

SECTION 5. SEVERABILITY. If any provision or portion of this Resolution is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Resolution shall remain in full force and effect.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage by the Commission.

THIS RESOLUTION was introduced at a regular meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held this 23rd day of March, 2020, by Commissioner Conrad, who moved for its adoption, which motion was seconded by Commissioner Davenport, and upon roll call vote of the Commission was DULY ADOPTED as follows:

CHAIRMAN __________________________  _____
William Biedenbach

VICE CHAIRMAN _________________________  _____
Jack Holcomb

SECY.-TREAS. ___________________________  _____
Lillian Conrad

ASST. SECY.-TREAS. ___________________________  _____
Jason Davenport

COMMISSIONER ___________________________  _____
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APPROVED:  ATTEST:
William E. Biedenbach, Chairman  Lillian Conrad, Secretary-Treasurer

APPROVED AS TO FORM & LEGALITY:
Thomas A. Cloud, General Counsel