

## ORDINANCE 2024-32

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, BY REPEALING THE LAND DEVELOPMENT CODE IN ITS ENTIRETY; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR DELETION FROM THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1.** The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, is hereby repealed in its entirety.

### ~~“TITLE XVII: LAND DEVELOPMENT CODE~~

### ~~CHAPTER 169: LAND DEVELOPMENT CODE~~

#### ~~§ 169.001 PURPOSE AND INTENT.~~

~~The purpose of this subchapter is to:~~

~~(A) Specifically delineate the chapters of this code of ordinances to be known as the “City Land Development Code,” codified as Title XVII of this code of ordinances;~~

~~(B) Make provisions for printing and offering for sale of this land development code and to fulfill the requirements of F.S. §163.3202(3).~~

#### ~~§ 169.002 CONTENTS.~~

~~The following portions of this code of ordinances shall be compiled, printed and offered for sale to the public under the title “City Land Development Code”:~~

~~(A) Chapter 169: Land Development Code.~~

~~(B) Chapter 170: Construction Codes and Regulations.~~

~~(C) Chapter 171: Fair Share Impact Fees.~~

~~(D) Chapter 173: Adult Entertainment Code.~~

~~(E) Chapter 174: Floodplain and Stormwater Management.~~

- ~~(F) — Chapter 175: Mining/Excavation Operations.~~
- ~~(G) — Chapter 176: Fuel Storage Tank Systems.~~
- ~~(H) — Chapter 177: Fire Prevention and Protection.~~
- ~~(I) — Chapter 178: Signs.~~
- ~~(J) — Chapter 179: Streets and Other Rights-of-Way.~~
- ~~(K) — Chapter 180: Trees and Shrubbery; Landscaping.~~
- ~~(L) — Chapter 181: Water and Sewers.~~
- ~~(M) — Chapter 182: Public Improvements.~~
- ~~(N) — Chapter 183: Comprehensive Plan Regulations.~~
- ~~(O) — Chapter 184: Subdivisions.~~
- ~~(P) — Chapter 185: Zoning Code.~~
- ~~(Q) — Chapter 186: Communication Towers and Facilities.~~

#### **~~§ 169.003 LEGAL STATUS.~~**

~~This subchapter is not intended to modify, repeal or amend any existing provisions of this code of ordinances or any other ordinance of the city.~~

#### **~~§ 169.004 FEE SCHEDULE.~~**

~~Fees and other charges for Land Development Code applications, administration, reviews, and other related purposes shall be established by City Council by resolution. Such fees or charges, and their adoption by City Council, shall be considered administrative in nature and shall not be considered a part of the Land Development Code nor a Land Development Regulation.~~

#### **~~§ 169.005 CITIZEN PARTICIPATION PLANS.~~**

~~(A) — Purpose. The purpose of the citizen participation plan is to:~~

~~(1) — Ensure that applicants pursue early and effective citizen participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the community.~~

~~(2) — Ensure that citizens have an adequate opportunity to learn about applications that may affect them and to work with applicants to resolve concerns at an early stage of the review and decision-making process.~~

~~(3) Facilitate ongoing communication between the applicant, interested citizens, city staff, appointed and elected officials throughout the applicant review process.~~

~~(4) The citizen participation plan is not intended to produce complete consensus on all applications, but to encourage applicants to be good neighbors and to allow for informed decision-making.~~

~~(B) Applicability.~~

~~(1) Every application for development, unless specifically exempted by this subchapter, shall include a citizen participation plan and a citizen participation report that must be implemented prior to an application being deemed sufficient for staff review and scheduling of public hearings.~~

~~(2) When in compliance with all other city ordinances and regulations, the following projects are exempted from the other provisions of this section.~~

~~(a) Construction of one single-family detached dwelling.~~

~~(b) Construction of ten (10) or less multi-family dwelling units, regardless of density.~~

~~(c) Amendments to an approved Planned Unit Development (PUD) that are exempt per § 185.066(C)(2).~~

~~(C) Meeting notice and plan contents.~~

~~(1) At a minimum, the applicant shall host at least one citizen participation plan that shall be held within city limits and may be accompanied by a virtual meeting link.~~

~~(2) The citizen participation plan shall include the following information:~~

~~(a) A copy of the notice containing the date, time and location of the meeting that was mailed to all residents, property owners, interested parties, political jurisdictions and public agencies that may be affected by the application within five hundred (500) feet of the subject property and a copy of the mailing list. These requirements apply in addition to any notice provisions required elsewhere in the Land Development Regulations. Citizen participation plan meeting dates may not overlap with any City of Palm Bay Council meetings or Planning and Zoning Board meetings.~~

~~(b) — A brief statement introducing the request, identifying the location of the subject parcel(s), the total acreage, its current use, its current future land use designation, its current zoning designation and identifying whether it is improved or unimproved.~~

~~(3) — During the citizen participation plan meeting, the applicant shall provide an overview of the request describing the potential impact the proposed request may have on the surrounding properties.~~

~~(4) — Citizen participation plan meetings must be held within ninety (90) days of official submittal of a complete application to the City of Palm Bay.~~

~~(D) — Citizen participation report.~~

~~(1) — When a citizen participation plan is required, the applicant shall provide a written report, on a city prescribed form, documenting the results of the citizen participation plan meeting. This report shall be required as part of the complete application submittal package filed with the Growth Management Department.~~

~~(2) — The citizen participation report shall include a copy of any meeting notice(s) and any attachments or accompanying materials included with the notice.~~

~~(3) — The report shall identify the number of attendees, include a copy of the sign-in sheet, any materials distributed or presented at the meeting and summarize the substance of concerns, issues and problems expressed during the meeting.~~

~~(4) — The report shall describe how the applicant has addressed, or intends to address the concerns, issues and problems expressed during the process.~~

~~(5) — The report shall identify which concerns, issues and problems the applicant is unwilling or unable to address, if any, and shall state the applicant's justification.~~

#### **~~§ 169.006 ADMINISTRATIVE APPEALS.~~**

~~(A) — Administrative review. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Growth Management Director in the enforcement of the city's land development regulations.~~

~~(B) — Hearings; appeals; notice. Appeals to City Council may be taken by any person aggrieved by any decision of the Growth Management Director in the interpretation of any portion of these regulations. Such appeal shall be taken within a reasonable time not to exceed sixty (60) days, by filing with the city a notice of appeal specifying the grounds thereof. The Growth Management Director shall forthwith transmit to the City Clerk all papers constituting the record upon which the action appealed from was taken. The City Council shall hear the appeal at a regularly scheduled or special City Council meeting within thirty (30) days and give public notice thereof at least fifteen (15) days in advance of public hearing as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person or by agent or attorney.~~

~~(C) — Stay of proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the Growth Management Director from whom the appeal is taken certifies to the City Council, through the City Manager, after the notice of appeal is filed with the City Clerk, that by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed other than by a restraining order which may be granted by a court of competent jurisdiction.~~

~~(D) — In exercising any of the powers listed in this section, the City Council may, so long as the action is in conformity with the terms of the city's land development regulations, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as should be made and, to that end, shall have all of the powers of the Growth Management Director whose action is being appealed.~~

#### **~~§ 169.007 CODE VIOLATIONS AND PROCESSING OF APPLICATIONS.~~**

~~(A) — Applications for rezoning, conditional use, comprehensive plan amendments, preliminary subdivisions, final subdivisions, preliminary planned unit developments, final planned unit developments, preliminary planned community redevelopments, and final planned community redevelopments, shall not be processed or scheduled for hearings if properties involved in the applications have outstanding code violations as determined by the Code Enforcement Board.~~

~~(B) — Exceptions to the requirement in division (A) of this section shall be made for applications directly necessary to correct a violation. Such determination shall be made by the Growth Management Director.~~

**~~§ 169.008 ADOPTION OF STANDARDS BY REFERENCE.~~**

~~Adoption by reference of specific documents to be utilized for administration, review of development proposals, and other related purposes shall be established by City Council by resolution. Such documents shall be considered binding on all development occurring or being reviewed for approval by the City and its adoption by City Council shall be considered administrative in nature. Adoption by resolution for adopted by reference materials shall specify the document, standard, rule, or law being adopted by name, version, and date, as applicable. Specific reference to the documents does not require adoption within each applicable chapter of this code.~~

**~~§ 169.009 VARIANCES.~~**

~~(A) The City Council shall hear petitions for variances from the terms of the Land Development Code delineated in §§ 170.114, 170.142, and Chapters 178 and 185, as will not be contrary to the public interest where, owing to special conditions, the enforcement of the provisions of the City's land development regulations would result in unnecessary hardship.~~

~~(B) Upon receipt from the Planning and Zoning Board of a recommendation concerning disposition of a requested variance, the City Council shall hold a public hearing and may grant, deny or grant with conditions any variance request upon finding that the request meets the following criteria:~~

~~(1) Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structures or buildings in the same land use category, zoning district or situation.~~

~~(2) The special conditions and circumstances identified in paragraph (1) above are not the result of actions of the applicant.~~

~~(3) Literal interpretation and enforcement of the Land Development Code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district or situation, and would result in unnecessary and undue hardship on the applicant.~~

~~(4) The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure.~~

~~(5) Granting of the variance request will not confer on the applicant any special privilege that is denied by the development code to other~~

~~lands, buildings or structures in the same land use category, zoning district or situation.~~

~~(6) — The granting of the variance will be in harmony with the general intent and purpose of this code, and will not be injurious to the surrounding properties or detrimental to the public welfare.~~

~~(7) — The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.~~

~~The above criteria shall be used to determine the justification for granting of relief from requirements of the development code. All variance requests shall demonstrate the application of each criterion to the specific case.~~

~~(C) — Financial disadvantages or inconvenience to the applicant shall not of themselves constitute conclusive evidence of unnecessary and undue hardship and be grounds to justify granting of a variance.~~

~~(D) — Notwithstanding the foregoing criteria, variances may be granted under the authority of the Americans with Disabilities Act as reasonable accommodations based on the disabilities of any applicant or a member of the applicant's household. For purposes herein, "reasonable accommodation" and "disabilities" shall have the meanings provided under the Americans with Disabilities Act.~~

~~(E) — Conditions of approval.~~

~~(1) — Conditions and safeguards. In granting any variance, appropriate conditions and safeguards may be prescribed to ensure compliance with the requirements of the Land Development Code and the code in general. Such conditions may include time limits for the initiation of the variance, specific minimum or maximum limits to regular code requirements, or any other conditions reasonably related to the requirements and criteria of this chapter.~~

~~(2) — Transfer of Variances. Variances run with the property and the use of a variance may be transferred to another party for use on the same property.~~

~~(F) — Violation of variance terms or conditions. It is a violation of this code for any person to violate or to refuse to comply with any term or condition of a~~

~~variance. Violations may be enforced or prosecuted as provided for in the Palm Bay Code of Ordinances.~~

~~(G) — Administrative variance. An administrative variance involves matters such as setbacks, floor area ratios, frontage requirements, subdivision regulations, height limitations, lot coverage/size restrictions, yard requirements, parking, and other variances which have no relation to change of use of the property in question. An administrative variance may be granted by the City Manager, or designee, as authorized by the procedure set forth and shall be used for a variance from the provisions of this Code limited to improvements existing at the time of application as opposed to planned construction. Administrative variances will not be granted within easements. The maximum amount of the waiver is up to, but not greater than, twenty percent (20%) of the requirement. An application for an administrative variance shall be made by the fee owner of the property on a form prescribed by the Growth Management Department and shall be submitted to the Department with a processing fee which shall be set and may be amended from time to time by City Council in accordance with § 169.004 of the Palm Bay Code of Ordinances. The application shall include a recent survey of the property, a site plan showing the existing structures on the subject property, the general location and use of existing structures on the adjacent properties from which the administrative variance is being requested and a letter of intent explaining the reason and justification for the variance.~~

~~(1) — Upon receipt of the completed application, to include all supporting documentation as may be required, the Department, prior to making their decision, shall inspect the subject property and its surrounding properties to determine what impact, if any, the proposed request will have on the area.~~

~~(2) — The Department shall prepare a staff report and render a decision either approving, approving with modifications, or denying the request. In granting any administrative variance, the Department may prescribe any appropriate conditions and safeguards necessary to protect and further the interest of the area and abutting properties.~~

~~(3) — The City Manager shall review the staff report and recommendation of the Department and approve, approve with additional conditions, or deny the request.~~

~~(4) — The Department shall mail a courtesy notice containing the City Manager's decision to all property owners whose property abuts the applicant's property, and their tenants and/or agents as noted on the application.~~



~~(5) — Any aggrieved property owner may appeal the decision of the City Manager within thirty (30) days from the date of the letter. All appeals shall be in the written form prescribed by the Department. A building permit, if required, shall not be issued until the appeal period has expired.~~

~~(6) — An applicant may appeal the decision of the City Manager in accordance with § 169.006, Palm Bay Code of Ordinances.~~

~~(7) — Approval may be given for variances to any proposed principal, accessory, or other structure up to twelve (12) inches administratively. Approval may be given for variances to any existing principal, accessory, or other structure up to twenty percent (20%) of the applicable code section, administratively. Such requests will be made by the property owner in writing and supported by a current survey to the Growth Management Director for review and approval. A fee shall be assessed to the request as adopted in the latest fee resolution. All variances approved by the Growth Management Director shall be counter-signed by the Chief Building Official prior to City Manager's consideration. Approval of administrative variances shall be submitted to the City Clerk for recording in the official records of Brevard County at the sole expense of the property owner.~~

~~(H) — Voluntary inclusionary housing. The City may enter into an agreement with a developer to provide a specified number or percentage of affordable housing units, as defined by F.S. § 125.01055, to be included in a development or allow a developer to contribute to the city's housing fund or other alternatives in lieu of building the affordable housing units. In exchange for a developer fulfilling these requirements for residential or mixed-use residential development, the city may:~~

~~(1) — Allow the developer density or intensity bonus incentives; more floor space than allowed under the current or proposed future land use designation or zoning; or greater height;~~

~~(2) — Reduce or waive fees, such as building or development fees or water; or~~

~~(3) — Grant other incentives.~~

## **~~CHAPTER 170: CONSTRUCTION CODES AND REGULATIONS~~**

### **~~PROPERTY MAINTENANCE CODE~~**

**~~§ 170.050 [RESERVED.]~~**

**~~§ 170.051 ENFORCEMENT.~~**

~~The provisions of this subchapter shall be enforced by the City Manager, or designee, of the city.~~

**~~§ 170.052 DEFINITION.~~**

~~ARCHITECTURAL BLOCK. Any split face, ribbed or fluted masonry block.~~

**~~§ 170.053 EXTERIOR COVERING.~~**

~~(A) All new residential masonry construction not using architecturally designed block shall require an exterior covering of stone, brick, siding, stucco, or other approved material as determined by the Florida Building Code. The coverage shall be such that individual blocks may not be discerned.~~

~~(B) Exception. Additions to existing homes without siding as defined herein, are exempt from the requirements of this subchapter.~~

~~(C) Exterior coverings must be installed continuously around foundations on the outside perimeter of buildings with floors elevated above the ground and where more than twelve (12) inches of vertical open area exists from the ground to the building walls.~~

**WALLS AND FENCES**

**~~§ 170.110 DEFINITION.~~**

~~For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.~~

~~FENCE. A barrier made of approved materials contained herein serving as an enclosure or boundary.~~

**~~§ 170.111 PLANS, PERMIT, FEE.~~**

~~Plans showing the location of any proposed fence or wall and the type of construction shall be submitted to the Building Official and a permit obtained therefor from the Building Official, upon payment of a fee as set forth in § 170.007. Fences in residential districts accessory to a single-family residence may be exempted from the requirements of obtaining a building permit provided that the property owner can show on a to-scale plan that the fence is wholly located with the subject property and that such fence will not interfere with utilities, rights-of-way, public drainage and utility easements (except as provided for in § 170.116) or septic systems and will not block sight lines for driveways or intersections. All other provisions of this section shall be applicable.~~

**~~§ 170.112 REQUIRED CONSTRUCTION PRIOR TO INSPECTION OR  
ISSUANCE OF CERTIFICATE OF OCCUPANCY.~~**

~~(A) — Where a fence or visual screen is required to be constructed, such fence or visual screen shall be drawn on the plans of any new construction or alteration, and shall actually be constructed before the Building Official may make a final inspection or issue a certificate of occupancy for the premises.~~

~~(B) — Where the visual screen is to be made of plant material such as trees or shrubs, it shall meet the provisions of the zoning code set forth in Chapter 185 of this title and all information concerning it, such as plant name (common and botanical), planting size, size at maturity, quantity, and how transplanted to the site, shall be indicated on the plans of any new construction or alteration.~~

**~~§ 170.113 TYPES OF FENCES AND WALLS PERMITTED.~~**

~~Fences and walls constructed within the city shall conform to one (1) of the following:~~

~~(A) — Type A. Wood fences constructed of rot and termite-resistant species of wood or wood chemically pressure treated to resist rot and termite attack. All portions of a wooden fence shall display the finished face on the outside.~~

~~(B) — Type B. Posts of pressure treated wood or non-corrodible metal and wire fences with a fabric of a minimum of twelve and one-half (12½) gauge galvanized or other non-corrodible metal.~~

~~(C) — Type C. Ornamental iron.~~

~~(D) — Type D. Concrete or masonry.~~

~~(E) — Type E. Plastic.~~

~~(F) — Type F. Barbed Wire. Barbed wire may only be permitted upon lands that are zoned GC, General Commercial, LI, Light Industrial and Warehousing and HI, Heavy Industrial Zoning Districts.~~

**~~§ 170.114 RESIDENTIAL AREA LIMITATIONS AND RESTRICTIONS ON  
HEIGHT.~~**

~~(A) — All walls, fences, hedges, shrubs or dense planting of trees or other plant material hereafter located, erected, constructed, reconstructed or altered outside of the building lines of property situated in the city shall not be over four (4) feet in height when placed in the front setback, and not more than six (6) feet in height at any other location. For corner lots, a maximum fence height of six (6) feet~~

~~may be permitted within the side corner yard area, provided the requirements in provision (B) below are met.~~

~~(B) — On a corner lot, no wall, fence or hedge shall be erected, placed or planted, or allowed to grow in such a manner as to obstruct vision between a height of two and one-half (2½) feet and ten (10) feet above the centerline grade of the abutting street within the triangular area formed by the street right-of-way lines (or in the case of an arc, extensions of the right-of-way lines) on a line connecting them at points twenty-five (25) feet from the intersection of the street right-of-way lines.~~

**~~§ 170.115 (RESERVED).~~**

**~~§ 170.116 FENCING OF EASEMENTS.~~**

~~(A) — It shall be unlawful for any person to fence any utility or drainage easements unless the proposed fence is properly permitted, limited to Type A, Type B, or Type E as set forth in § 170.113 and constructed in accordance with the following:~~

~~(1) — Any fence proposed to be installed within a utility or drainage easement that accesses, abuts or provides the city or any utility company with a maintenance area to lot line ditches, canals, drainage tracts, drainage rights-of-way, shall be so constructed so that it can be easily removed. Such removal shall be the responsibility of the property owner within five (5) days after written notice from the city or utility company and all costs incurred in such removal and replacement shall be the responsibility of the property owner.~~

~~(2) — Any fence proposed to be installed within a utility drainage easement not included in division (1) above may be of permanent nature, with the understanding that if the removal of such fence is necessitated for the installation, repair or replacement of any drainage or utility facility, it will be the owner's responsibility and at the owner's expense. Such removal shall be accomplished within five (5) days of written notice by the city or utility company.~~

~~(B) — The property owner shall be responsible to maintain the area within the easement of this property regardless of the placement of the fence. The city may remove any fence within an easement, as needed, in case of emergency.~~

**~~§ 170.117 FENCING RIGHTS-OF-WAY PROHIBITED.~~**

~~It is prohibited to construct or install a fence or wall upon a drainage or street right-of-way, nor shall a fence or wall preclude access to the drainage or street right-of-way.~~

**~~§ 170.118 EXEMPTIONS.~~**

~~Any property owner required by Fla. Stat. Ch. 588, to prevent livestock from running at large, and whose property is zoned GU General Use, or RR Rural Residential, shall be exempt from the requirements of §§ 170.113 and 170.114.~~

**~~§ 170.119 FENCE AND WALL MAINTENANCE.~~**

~~(A) — All fences shall be maintained in their original upright condition.~~

~~(B) — Fences and walls designed for painting or similar surface finishes shall be maintained in their original condition as designed or erected.~~

~~(C) — Missing boards, iron work, wire fabric or posts shall be replaced in a timely manner with material of the same type and quality.~~

~~(D) — All fences will be secured and held upright with the same materials as originally constructed and indicated on miscellaneous structure application.~~

**~~§ 170.120 USE OF CERTAIN WIRE PROHIBITED.~~**

~~The utilization or installation of barbed tape, razor tape and/or razor wire and concertina barbed wire, for fencing, partitions or obstacles is prohibited within the city limits of the City of Palm Bay, except as permitted herein.~~

**~~§ 170.121 DEFINITIONS.~~**

~~For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~BARBED TAPE shall mean a usually flexible, metallic strand or rod, without regard to the gauge thereof, made in many lengths and diameters but generally machined to produce clusters of sharp points or barbed obstacles at evenly located, regular intervals along the strand or rod to cause and create injury and to prevent people or animals from passing beyond the point of where the wire is placed. The word BARBED TAPE shall include the words RAZOR WIRE and RAZOR TAPE.~~

~~BARBED WIRE shall mean two strips of interwoven, flexible, metallic strands, without regard to the gauge thereof (hereinafter WIRE), with clusters of sharp points added and placed at evenly located, regular intervals along the interwoven strips.~~

~~BARBED TAPE shall mean a usually flexible, metallic strand or rod, without regard to the gauge thereof, made in many lengths and diameters but generally machined to produce clusters of sharp points or barbed obstacles at evenly located, regular intervals along the strand or rod to cause and create injury and to prevent people or animals from passing beyond the point of where the wire is placed. The word BARBED TAPE shall include the words RAZOR WIRE and RAZOR TAPE.~~

~~CONCERTINA shall mean to create an accordion-type pattern of barbed wire, barbed tape, razor wire or razor tape by attaching coils of them together at specified points and thereby allowing for the coils to be stretched across areas in a manner so as to cause injury to humans or animals that attempt to pass beyond the point(s) across which the coils are placed or stretched and/or to prevent either ingress or egress into or out of any area or structure.~~

#### **~~§ 170.122 EXCEPTIONS.~~**

~~The following is excepted from the provisions of this chapter:~~

~~Those uses presently in place on the date of the passage of this chapter (09-17-98) and those uses that are authorized or permitted by state laws that pertain to the use of wire fences/enclosures to restrain/retain livestock and for other authorized or permitted agricultural purposes.~~

### **MANUFACTURED HOUSING**

#### **~~§ 170.130 DEFINITIONS.~~**

~~FOUNDATION. Supporting parts upon which the manufactured or mobile home is placed, which meet all local, state and federal standards.~~

~~MANUFACTURED HOME. A dwelling unit fabricated in an off-site manufacturing facility for installation or assembly at the building site, bearing a label certifying that it is built in compliance with a standard or code. Manufactured homes fall into two categories:~~

~~(1) — Residential design manufactured homes, hereinafter referred to as RDMH, are manufactured homes meeting Department of Community Affairs specifications and Residential Design Standards, contained herein, and constructed on or after July 13, 1994.~~

~~(2) — Standard design manufactured homes, hereinafter referred to as SDMH, are manufactured homes meeting the Housing and Urban Development~~

~~Code and which have been manufactured on or after June 15, 1976, but do not meet the Residential Design Standards contained herein.~~

~~MOBILE HOME. A structure fabricated prior to June 15, 1976, which is transportable in one or more sections, which is eight (8) feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities that include the plumbing, heating, air conditioning and electrical systems contained therein.~~

**~~§ 170.131 RESIDENTIAL DESIGN MANUFACTURED HOMES.~~**

~~(A) Standards to determine similarity in exterior appearance of residential design manufactured homes. The following standards shall be used to determine similarity in appearance between RDMH homes and site built homes.~~

~~(1) Minimum width of main body. When assembled on site, the body of the RDMH shall not be less than twenty (20) feet. This is not intended to prohibit the attachment of accessory structures to the main building.~~

~~(2) Minimum roof pitch, minimum roof overhang, roofing materials. The minimum pitch of the main roof of any RDMH shall be not less than one (1) foot of rise for four (4) feet of horizontal run, and the minimum roof overhang shall be six (6) inches. In cases where site built housing generally has been constructed in adjacent or nearby locations with roof pitches less than 1:4 and/or roof overhangs are less than six (6) inches, then the RDMH may have less roof pitch and overhang similar to the site built houses. Any roofing material for RDMH may be used which meets the specifications of the Florida Building Code used for site built houses.~~

~~(3) Exterior finish; light reflection. Any material may be used for exterior finish which is generally acceptable for housing provided the reflection for such exterior shall not be greater than the reflection from siding coated with clean white gloss exterior enamel.~~

~~(4) Foundation. RDMH shall be placed upon a permanent foundation. Permanent foundation shall mean:~~

~~(a) Installation of the home according to Chapter 15C-1, Florida Administrative Code; and~~

~~(b) Construction of a permanent, perimeter stem wall designed and constructed to comply with the Florida Building Code specifications~~

~~for exterior non-load bearing walls, extending at a minimum from the ground surface to the bottom of the exterior wall surfaces of the home.~~

~~(B) — Procedures for Approval of RDMH.~~

~~(1) — Applications for RDMH approval. Applications for approval of manufactured homes as RDMH shall be submitted to the Building Division of the City of Palm Bay.~~

~~(2) — Foundations specifications. Where there has been prior approval of a foundation proposed to be used, as provided in the standards herein, detailed specifications or descriptions of such foundations shall not be required. Where it is proposed to use foundations not previously approved, specifications shall be supplied in sufficient detail to determine if the proposed foundation meets the standards set out in § 170.133, Paragraphs (A) and (B) herein.~~

#### **~~§ 170.132 STANDARD DESIGN MANUFACTURED HOMES.~~**

~~(A) — To obtain a permit for SDMH placement, the applicant shall submit an inspection report certified by a professional engineer registered in the state of Florida, stating that all federal, state and local statutes with regard to housing are met.~~

~~(B) — Standard design manufactured homes shall bear all stickers, seals or registration as required by federal and state statutes.~~

#### **~~§ 170.133 MOBILE HOMES.~~**

~~(A) — Because of the absence of building and safety standards for mobile homes constructed prior to June 15, 1976, legally registered mobile homes lawfully existing in the city on the effective date of this section (10-21-99), may continue such use as provided herein and as provided in the City of Palm Bay Code of Ordinances, as a legal nonconforming use. The installation of a mobile home in violation of this section is strictly prohibited.~~

~~(B) — Mobile homes shall bear all stickers, seals or registration as required by federal and state statutes.~~

### **~~PIERS, DOCKS AND BOATHOUSES~~**

#### **~~§ 170.140 DEFINITIONS.~~**

~~For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~



~~BOATHOUSE. Any structure designed to accommodate the storage of a boat on or above the water. Roofed structures without any walls are boathouses.~~

~~DOCKS AND PIERS. A platform extending from a seawall or the shore which is used to secure or provide access to boats. A dock or pier is attached or supported by piles or pillars and has no sides or roof.~~

~~MARINA. A place for docking boats or providing services to boats and the occupants thereof, including servicing and repair to boats, sale of fuel and supplies, and provision of food, beverages, and entertainment and accessory uses.~~

~~WIDTH OF DOCKS AND PIERS. The distance from one outer edge of the dock or pier to the other outer edge of the dock or pier, including support posts, if any. Similarly when measuring for compliance with square footage requirements the marine facilities shall be measured from outer edge to outer edge to include roofing and support posts.~~

~~WIDTH OF WATERWAY. The distance measured perpendicular to the centerline of such waterway from the mean or ordinary high water line on one shore thereof to the mean or ordinary high water line on the opposite shore thereof. If either shore consists of a bulkhead or seawall, the width of such waterway shall be measured from the seawall or bulkhead.~~

#### **~~§ 170.141 APPLICATION PERMITS.~~**

~~(A) City permits. A city building permit shall be obtained for the construction of any pier, dock, or boathouse. A marina requires a conditional use permit through the Community Planning & Economic Development Department along with a building permit. No building permit application shall be deemed complete when filed, unless the following items are appended thereto:~~

~~(1) A survey prepared by a State of Florida registered land surveyor (showing the straight-line water frontage of the lot subject to the permit application, mean high or ordinary water lines, seawalls, bulkheads, property lines, and the width of waterway).~~

~~(2) Plans showing the height, width and length of all proposed structures to include pilings, boat lifts, platforms, pavilions, seawalls, detail and construction specifications and all other information deemed necessary by the Building Official to properly evaluate the plan. The design, construction, alteration and repair of the pier, dock or boathouse shall conform to the provisions of this~~

~~chapter as amended or superseded from time to time. Pile dimensions, spacing and embedment shall be designed according to engineering practices.~~

~~(B) — Federal and state permits. A dock permit and submerged land lease or exemption letter shall be obtained for all proposed construction of piers, docks, or boathouses from the St. Johns River Water Management District, Army Corps of Engineers, and the Florida Department of Environmental Protection.~~

**~~§ 170.142 SETBACK REQUIREMENTS.~~**

~~(A) — Side. No piers, docks, or boathouses shall be constructed so as to encroach upon the riparian rights of other property owners.~~

~~(B) — (1) — Permitted uses. Only the mooring of boats, and recreational, pleasure, or sport fishing use of the docks, piers, and boathouses as an accessory use shall be permitted. Boathouses or other structures with walls or sides shall be prohibited.~~

~~(2) — Only one (1) covered boathouse, without walls or sides, shall be permitted on, abutting or serving a lot. Overhangs shall be included in square footage calculations. Only one (1) dock shall be permitted per lot, on, or abutting or serving said lot.~~

~~(C) — Conditional uses. More than one (1) dock, pier, or boathouse shall be considered a marina and must obtain conditional use approval per Chapter 185.~~

~~(D) — Length. Piers, docks and boathouses, alone or together in combination to include the boat, boat mooring spaces and pilings, shall not project into a waterway more than thirty three percent (33%) of the minimum width of the waterway or two hundred fifty (250) feet, whichever is less, measured from the point at which the pier, dock or boathouse is proposed to be extended into the waterbody. Piers, docks, and boathouses shall also be set back at least twenty five (25) feet from any channel established and physically marked by either an agency of the State of Florida or the federal government.~~

~~(E) — Width. All docks, piers and boathouses shall be limited to a minimum width of three (3) feet.~~

~~(F) — Height. No pier or dock deck shall be higher than four (4) feet above the mean or ordinary high water line. Piles and pilings and a guard rail may be permitted up to four (4) feet above the height of the pier or dock deck. The guard rail may be no more than twenty five percent (25%) opaque. No boat lift or~~

~~boathouse shall exceed twenty (20) feet in height, as measured from the mean or ordinary high water line to the highest point of a boat lift or boathouse.~~

~~(G) — Maximum square footage for docks. The maximum square footage of the surface area of any dock or pier (including walkways), shall be limited to twelve (12) times the total length of the pier or dock permitted or eight hundred (800) square feet, whichever is greater. Marinas approved by the City Council as a conditional use are exempt from this subsection.~~

~~(H) — Maximum square footage for boathouses. The maximum square footage of the surface allowed shall be one thousand (1,000) square feet for a covered boathouse.~~

~~(I) — Lighting. All lighting of any pier, dock or boathouse shall be shielded or shaded in such a manner that the light source does not shine directly into adjacent homes.~~

~~(J) — Completion. Upon completion of the pier, dock or boathouse, a final survey prepared and certified by an engineer or surveyor showing the as-built location and depicting compliance with the minimum setback requirements of the pier, dock or boathouse shall be submitted to the Building Division for final approval.~~

~~(K) — Maintenance. — No owner, lessee, or other person otherwise occupying any lot shall permit any piers, docks, or boathouses under said person's control or ownership located on or adjacent to said lot under said owner's control to become dilapidated, deteriorated, structurally unsound or a safety hazard. Piers, docks, and boathouses shall be kept free from debris, signage or other conditions which would otherwise cause an unsightly appearance.~~

~~(L) — Marking. All pilings and other mooring devices located in a waterway shall be marked with red or yellow reflectors or other acceptable reflectorized markings on each side.~~

## **~~GREEN BUILDING INCENTIVE PROGRAM~~**

### **~~§ 170.150 PURPOSE AND INTENT.~~**

~~The Palm Bay Green Building Incentive Program is designed to promote sustainable construction and design practices. Participation in the program is voluntary.~~

### **~~§ 170.151 DEFINITIONS.~~**

~~For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~CITY. The City of Palm Bay, Florida.~~

~~LEED. The Leadership in Energy and Environmental Design Rating System of the U.S. Green Building Council.~~

~~PROGRAM. The City of Palm Bay Green Building Incentive Program.~~

#### **~~§ 170.152 STANDARDS.~~**

~~(A) Certification under the program shall require that a participant's building obtain certification under one or more of the following standards:~~

~~(1) Certification under the Florida Green Home Certification Standard of the Florida Green Building Coalition;~~

~~(2) Certification under the Green Commercial Building Standard of the Florida Green Building Coalition;~~

~~(3) Certification under the Green Hi-Rise Residential Standard of the Florida Green Building Coalition; or~~

~~(4) Certification under the LEED Commercial Rating System administered by the Green Building Certification Institute.~~

~~(B) The city will recognize certification upon receipt of a copy of the official certificate from the appropriate rating agency.~~

#### **~~§ 170.153 INCENTIVES.~~**

~~The program shall provide the following incentives for participants:~~

~~(A) Submittal, Review, and Construction Phase.~~

~~(1) Expedited Permitting. Applications for building permits and site plan reviews shall be reviewed on an expedited basis by city staff. Expedited shall be prioritizing such permitting and review ahead of non-participant projects.~~

~~(2) Signage. Participants shall be permitted to erect signage promoting their participation in the program as well as the certifying agency promotional materials on the site. Said signage shall not count toward the number of construction or future improvement signage normally permitted by the Sign Code.~~

~~(3) — Web Page Promotion. The participant's project shall be listed on the city's website under the program's heading for a minimum of one year. City staff will develop the promotion with input from the participant.~~

~~(4) — Reduction in Building Permit Fees. The calculation of building fees due shall exclude the marginal cost for compliance with the program standards. Therefore, only standard valuations as are typically utilized to calculate value shall be employed. Alternatively, the contractor may provide specific cost differential calculations for use by the Building Division when calculating fees.~~

~~(B) — Upon Completion.~~

~~(1) — Fee Refunds. The participant shall be entitled to a refund of 50% of the administrative site plan fee upon provision of the final certification from the appropriate rating agency.~~

~~(2) — Green Building Program Proclamation. The participant shall receive a proclamation from the city at a City Council meeting recognizing the achievement under the City of Palm Bay Green Building Incentive Program.~~

#### **~~§ 170.154 ADMINISTRATION.~~**

~~The program shall be administered by the Growth Management Department. Annually, subject to funding availability, the Growth Management Department shall sponsor or co-sponsor a Green Building Seminar/Workshop within Palm Bay. The purpose of this seminar shall be to promote green building and construction practices within the City and to promote the Palm Bay Green Building Incentive Program.~~

#### **~~§ 170.999 PENALTY.~~**

~~Any person, firm, corporation or agent who shall violate the provisions of this chapter for which no other penalty is set forth, or shall fail to comply with any of the requirements of this chapter, shall, upon conviction, be punished as provided for in § 10.99.~~

### **~~CHAPTER 171: FAIR SHARE IMPACT FEES~~**

#### **~~PARK, POLICE AND FIRE IMPACT FEES~~**

#### **~~§ 171.01 SHORT TITLE, AUTHORITY AND APPLICABILITY.~~**

~~(A) — This subchapter shall be known and may be cited as the "City of Palm Bay Fair Share Impact Fee Ordinance."~~

~~(B) — The City Council has the authority to adopt this part pursuant to Fla. Const. Art. VIII and Fla. Stat. Ch. 166 and Fla. Stat. §§ 163.3201, 163.3202 and 380.06(16).~~

~~(C) — This subchapter shall apply to all lands in the city.~~

#### **~~§ 171.02 INTENT AND PURPOSE.~~**

~~(A) — This subchapter is intended to implement and be consistent with the city comprehensive plan pursuant to Fla. Stat. §§ 163.3161 et seq., the Florida Local Government Comprehensive Planning and Land Development Regulation Act.~~

~~(B) — This objective is accomplished by requiring all new impact generating land development activity to contribute its proportionate share of the funds, land, or public facilities/equipment necessary to accommodate any impacts on public park, police and fire facilities/equipment having a rational nexus to the proposed land development for which the need is reasonably attributable to the proposed development.~~

~~(C) — This subchapter is intended to be consistent with the principles for allocating a fair share of the cost of new public facilities equipment to new users as established by the Florida Supreme Court in the case of Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So. 2d 314 (Fla. 1976).~~

#### **~~§ 171.03 DEFINITIONS.~~**

~~For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~BUILDING PERMIT. Any development permit issued by the Building Department of the city or any other city office before any building or construction activity can be initiated on a parcel of land.~~

~~CAPITAL FIRE FACILITIES. Fire facilities planning and any land, land improvements, building and fire equipment (vehicles and manpower equipment) and associated costs.~~

~~CAPITAL PARK FACILITIES. Park planning and any land, land improvements, building and park facilities/equipment costs.~~

~~CAPITAL POLICE FACILITIES. Police facilities planning and any land, land improvements, buildings and police equipment (patrol cars, furniture and manpower equipment) and associated costs.~~

~~COMMENCEMENT OF LAND DEVELOPMENT. Activity occurs upon any of the following events:~~

- ~~(1) — The approval of a development of regional impact.~~
- ~~(2) — The issuance of any permit to authorize building or construction of any kind on the property.~~
- ~~(3) — The issuance of any building permit.~~

~~DEVELOPER. Any person, corporation, partnership, association, trust, estate, business trust, agency, two (2) or more persons having a joint or common interest, governmental entity, or any other entity undertaking the development of land.~~

~~EXISTING LAND DEVELOPMENT ACTIVITY. The most intense use of land within the twelve (12) months prior to the time of commencing land development activity.~~

~~FEE PAYER. A developer commencing impact-generating land development activity who is obligated to pay an impact fee in accordance with the terms of this subchapter.~~

~~IMPACT-GENERATING LAND DEVELOPMENT ACTIVITY. Land development that increases the demand on capital park, police or fire facilities/equipment.~~

~~LAND. The same meaning as set forth in Fla. Stat. § 380.031.~~

~~NONCOMMENCEMENT. The cancellation of construction activity that is proposed to make a material change in a structure.~~

~~PERSON. An individual, corporation, governmental agency, business trust, estate, trust, partner ship, association, two (2) or more persons having a joint or common interest, or any other entity.~~

#### **~~§ 171.04 RULES OF CONSTRUCTION.~~**

~~In the construction of this subchapter, the rules set out in this section shall be observed unless such construction is inconsistent with the manifest intent of the City Council. The rules of construction and definitions set out here shall not be applied to any section of this subchapter which contains any express provisions excluding such construction, or where the subject matter or content of such section would be inconsistent with this section.~~

~~(A) — Generally. All provisions, terms, phrases and expressions contained in this subchapter shall be liberally construed in order that the true intent and meaning of the City Council may be fully carried out. Terms used in this subchapter, unless otherwise specifically provided, shall have the meanings prescribed by the statutes of this state for the same terms.~~

~~(B) — Text. In case of any difference of meaning or implication between the text of this subchapter and any figure, the text shall control.~~

~~(C) — Delegation of authority. Where there is a provision requiring the head of a department or some other city officer to perform some duty, it is to be construed to authorize that person to delegate professional-level subordinates to perform the duty, unless the terms of the provision or section specify otherwise.~~

~~(D) — Gender. Words of the masculine gender shall be construed to include the feminine and neuter.~~

~~(E) — Month. A calendar month.~~

~~(F) — Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.~~

~~(G) — Number. A word of the singular number only, may extend and be applied to several persons and things as well as to one (1) person and thing. The use of the plural number shall be deemed to include any single person or thing.~~

~~(H) — Shall, may. "Shall" is mandatory; "may" is permissive.~~

~~(I) — Tense. Words used in the past or present tense include the future as well as the past or present.~~

~~(J) — Written or in writing. The terms "written" or "in writing" shall be construed to include any representation of words, letters or figures whether by printing or otherwise.~~

~~(K) — Year. A calendar year, unless a fiscal year is indicated.~~

~~(L) — Boundaries. Where a road right-of-way is used to define construction district boundaries, that portion of the road right-of-way demarcating the boundary shall be considered as part of the district it bounds.~~



**~~§ 171.05 FEE TO BE IMPOSED ON IMPACT GENERATING LAND DEVELOPMENT ACTIVITY.~~**

~~(A) — Fee obligation at commencement of land development activity; fee determined and paid at issuance of building permit.~~

~~(1) — After the effective date of this subchapter, any person who shall commence any impact-generating land development activity as herein defined shall be obligated to pay an impact fee upon the commencement of such land development activity. The fee shall be determined and paid to the city at the time of issuance of a building permit for the development. If the building permit is for less than the entire development, the fee shall be computed separately for the amount of development covered by the permit. If the fee is exacted for impact generating land development activity that increases impact because of a change or increase in use, the fee shall be determined by computing the difference in the fee schedule between the new land development activity and the existing land development activity.~~

~~(2) — Any developer who prior to the effective date of this subchapter agreed as a condition of development approval to pay impact fees, shall be responsible for the payment of the fees under the terms of such agreement and the payment of such fees by the developer will be offset against any impact fees otherwise due at later stages of the land development activity for which the fee was paid. Any portion of impact fees agreed to be paid pursuant to a prior agreement that is greater than the fee established in this subchapter shall be refunded.~~

~~(3) — Any land or facilities agreed to be dedicated to the city as a condition of development approval shall be dedicated by either easement or deed, at the discretion of the City Manager, no later than the time of building permit issuance.~~

~~(B) — Fee agreement providing for payment of fee. At any time prior to issuance of a building permit, the owner of property may enter into a fee agreement with the city providing for a credit or payment of the fee pursuant to the terms of this subchapter.~~

~~(C) — Establishment of fee schedule.~~

~~(1) — (a) — Any person who shall initiate any new impact-generating land development activity, except those preparing an individual assessment of fiscal impact or those receiving an interpretation of the impact of~~

~~their proposed land development activity shall pay an impact. Impact fees shall be established by the City Council by resolution.~~

~~(b) — The fees identified in the resolution shall be adjusted annually by the change reflected in the Implicit Price Deflator for State and Local Government Consumption Expenditures and Investment as prepared by the United States Department of Commerce from the previous year. The adjustment shall take effect October 1 each year.~~

~~(c) — If a building permit is requested for mixed uses, then the fee shall be determined according to the impact fee schedule within the resolution by apportioning the space committed to uses specified on the schedule.~~

~~(2) — Biannually, and at the same time the City Council reviews the budget and capital improvement element of the Palm Bay Comprehensive Plan, the City Manager shall recommend to the City Council whether any changes should be made to the impact fee schedule to reflect changes in the factors that affect the fee schedule. The purpose of this review is to analyze the effects of inflation on the actual costs of facilities and to insure that the fee charged new impact generating land development activity will not exceed its pro rata share for the reasonably anticipated expansion costs of facilities necessitated by its presence.~~

~~(3) — The fees identified in the impact fee schedule within the resolution shall be adjusted annually by the amount of change reflected in the Florida Department of Transportation Price Trends Index from the previous year. The adjustment shall take effect October 1 each year.~~

#### **~~§ 171.06 INDIVIDUAL ASSESSMENT OF FISCAL IMPACT.~~**

~~(A) — General.~~

~~(1) — The impact fee shall be computed by the use of an individual assessment of fiscal impact if:~~

~~(a) — The type of land development being commenced is not one of those types listed on the fee schedule in § 171.05(C); or~~

~~(b) — The feepayer chooses to have the amount of the fee determined by the use of an individual assessment of fiscal impact; or~~

~~(c) — The city staff's analysis of the proposed land development activity concludes that the nature, timing or location of the proposed development makes it likely to generate impacts costing substantially more to~~

~~remediate than the amount of the fee that would be generated by the use of the fee schedule.~~

~~(2) — The developer shall be responsible for preparation of the individual assessment of fiscal impact if the developer chooses to conduct the analysis. The City Manager shall be responsible for preparation of the individual assessment of fiscal impact if the type of land development being proposed is interpreted not to be one of those types listed in the fee schedule or analysis of the proposed land development activity concludes that the nature, timing or location of the proposed development make it likely to generate impacts costing substantially more than the amount of the fee generated by the use of the fee schedule. The person who prepares the individual assessment of fiscal impact shall be a qualified professional in the preparation of impact analysis, and shall be approved by the City Manager on the basis of professional training and experience. If the City Manager is responsible for preparation of the assessment, the City Manager may request the developer to prepare the individual assessment of fiscal impact, and credit the cost for such preparation against the impact fee.~~

~~(B) — The park component. The individual assessment of fiscal impact for the park component shall determine if the proposed land development activity is designed or located so that the occupants of the development will use capital park facilities less than that projected in the park component.~~

~~(C) — The police component. The individual assessment of fiscal impact for the police component shall determine if the proposed land development activity is designed or located so that the development will not demand the use of capital police facilities from that projected in the police component.~~

~~(D) — The fire component. The individual assessment of fiscal impact for the fire component shall determine if the proposed land development activity is designed or located so that the development will not demand the use of capital fire facilities other than that projected in the fire component.~~

~~(E) — Procedure for review of application for assessment of fiscal impact.~~

~~(1) — An individual assessment of fiscal impact shall be undertaken through the submission of an application of assessment of fiscal impact for the facility component for which an assessment is requested. A developer may submit such an application at his discretion. The city shall submit such an application for any proposed land development activity interpreted as not one of those types listed on the fee schedule, and for any proposed land development activity for which it~~

~~concludes the nature, timing, or location of the proposed development make it likely to generate impacts costing substantially more to remediate than the amount of the fee that would be generated by the use of the fee schedule.~~

~~(2) Within twenty (20) days of receipt of an application of assessment of fiscal impact, the City Manager shall determine if the application is complete. If the City Manager determines that the application is not complete, a written statement specifying the deficiencies shall be mailed to the person submitting the application. The application shall be deemed complete if no deficiencies are specified. The City Manager shall take no further action on the application until it is deemed complete.~~

~~(3) When the City Manager determines the application is complete, a written decision shall be rendered in thirty (30) days on whether the fee should be modified, and if so, what the amount should be.~~

~~(4) If on the basis of generally recognized principles of impact analysis it is determined the data, information and assumptions used by the applicant to calculate the assessment of fiscal impact for either the park, police or fire component satisfies the requirements of this section, the fee determined in the assessment of fiscal impact shall be deemed the fee due and owing for the proposed land development activity. The adjustment shall be set forth in a fee agreement which shall be entered into pursuant to § 171.05(B).~~

~~(F) Appeal of decision on application of assessment of fiscal impact. Any person may appeal the City Manager's decision on the applicant's application for assessment of fiscal impact, or on an application for assessment of fiscal impact initiated by the city staff on any proposed land development activity, by filing a petition with the City Council. In reviewing the City Manager's decision, the City Council shall make written findings of fact and conclusions of law and use the standards established in divisions (B) through (D) above, whichever is applicable.~~

#### **~~§ 171.07 CREDITS.~~**

~~(A) General.~~

~~(1) Any person who shall initiate any impact-generating land development activity may apply for a credit against any fee for capital park, police or fire facility impacts proposed to be paid pursuant to the provisions of this subchapter for any contribution, payment, construction, or dedication of land accepted and received by the city for capital park, police or fire facilities, as defined in § 171.03, including any contribution, payment, construction or dedication made~~

~~pursuant to a development order issued by the city pursuant to its local development regulations, Fla. Stat. § 380.06, or any additional development requirement imposed by the Florida Land and Water Adjudicatory Commission on a development of regional impact.~~

~~(2) — Credit for contributions, payments, construction or dedications of an impact fee component shall not be transferable to another component. Credit shall be transferable within the same component and within the same development. No credit shall be greater than the fee imposed for the land development.~~

~~(B) — Credit for park component. For any credit against any park fee proposed to be paid, the contribution, payment, construction or dedication shall be credited for one hundred percent (100%) of the fair market value for any contribution, payment, construction or dedication for a capital park facility identified as part of the parks and open space element of the Palm Bay Comprehensive Plan, and determined by the city to be needed for expansion of its park capital facilities.~~

~~(C) — Credit for police component. For any credit against any police fee to be paid, the contribution, payment, construction or dedication shall be credited for one hundred percent (100%) of the fair market value for any contribution, payment, construction or dedication for any capital police facility or land identified as part of police facilities fiscal impact report.~~

~~(D) — Credit for fire component. For any credit against any fire fee to be paid, the contribution, payment, construction or dedication shall be credited for one hundred percent (100%) of the fair market value for any contribution, payment, construction or dedication for capital fire facilities identified as part of fire facilities fiscal impact report.~~

~~(E) — Procedures for review of application for credit agreement.~~

~~(1) — The determination of any credit shall be undertaken through the submission of an application for credit agreement, which shall be submitted to the City Manager. The application for credit agreement shall include the following information:~~

~~(a) — If the proposed application for credit agreement involves credit for the dedication of land:~~

~~1. — A drawing and legal description of the land;~~

~~2. The appraised fair market value of the land at the date a building permit is proposed to be issued for the impact generating land development activity, prepared by a professional real estate appraiser who is a member of the Member Appraisal Institute (MAI) or who is a member of Senior Residential Appraisers (SRA); and if applicable,~~

~~3. A certified copy of the development order in which the land was agreed to be dedicated.~~

~~(b) If the proposed application for credit agreement involves construction:~~

~~1. The proposed plan of the specific construction prepared and certified by a duly qualified and licensed Florida engineer or contractor for the proposed construction;~~

~~2. The projected costs for the suggested improvement, which shall be based on local information for similar improvements, along with the construction timetable for the completion thereof. Such estimated cost shall include the cost of construction or reconstruction, the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one (1) year after completion of construction, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of professional services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction.~~

~~(c) If the proposed application for credit agreement involves a credit for any other contribution or payment:~~

~~1. A certified copy of the development order in which the contribution or payment was agreed;~~

~~2. If payment has been made, proof of payment; or~~

~~3. If payment has not been made, the proposed method of payment.~~

~~(2) Within twenty (20) days of receipt of the proposed application for credit agreement, the city manager shall determine if the application is complete. If it is determined that the proposed agreement is not complete, the City Manager shall send a written statement to the applicant outlining the deficiencies.~~

~~The City Manager shall take no further action on the proposed application for credit agreement until all deficiencies have been corrected or otherwise settled.~~

~~(3) — Once the City Manager determines the proposed application for credit agreement is complete, proposed credit shall be granted within twenty (20) days if it meets the standards set forth in section § 171.08(B) through (F), whichever is applicable.~~

~~(4) — If the application for credit agreement is approved by the City Manager, a credit agreement shall be prepared and signed by the applicant and the city. It shall specifically outline the contribution, payment, construction or land dedication, the time by which it shall be completed, dedicated, or paid, and any extension thereof, and the dollar credit the applicant shall receive for the contribution, payment or construction.~~

~~(F) — Appeal of application for credit agreement. Any person may appeal the City Manager's decision on the application for credit agreement by filing a petition with the City Council within thirty (30) days of a decision. In reviewing the City Manager's decision, the City Council shall use the standards established in divisions (B) through (D) above, whichever is applicable.~~

#### **~~§ 171.08 USE OF FUNDS.~~**

~~(A) — Intent. Any fees collected under this subchapter are expressly designated for the accommodation of impacts reasonably attributable to the proposed development as hereinafter provided in this section.~~

~~(B) — Establishment of trust fund and trust accounts. There is established the Palm Bay Impact Fee Trust Fund for the purpose of insuring that the fees collected pursuant to this subchapter are designated for the accommodation of impacts reasonably attributable to the proposed land development activity. The impact fee trust fund shall be divided into three (3) trust accounts, one (1) for the park component, one (1) for the police component and one (1) for the fire component.~~

~~(C) — Expenditure of fees in trust accounts.~~

~~(1) — Park impact component.~~

~~(a) — Proceeds collected from the community park impact component of the fee and all interest accrued on such funds shall be used for capital park facilities, within the city. In locating and constructing park capital~~

facilities, the city shall be guided by the standards of the Palm Bay Comprehensive Plan.

~~—(b) Proceeds collected from the urban district impact component of the fee and all interest accrued on such funds shall be used for urban district park capital facilities within the city.~~

~~—(2) Police impact component. Proceeds collected from the police impact component of the fee and all interest accrued on such funds shall be used for police capital facilities within the city.~~

~~—(3) Fire impact component. Proceeds collected from the fire impact component of the fee and all interest accrued on such funds shall be used for fire capital facilities within the city.~~

~~—(4) Proceeds collected from the parks, police and fire impact component of the fee and all interest accrued on such funds may also be used for periodic engineering and planning studies to update the fee structure as may be required from time to time.~~

~~—(D) Investment of fees in interest bearing accounts. Any proceeds in each of the trust accounts on deposit, not immediately necessary for expenditure, shall be invested in interest bearing assets. All income derived from these investments shall be retained in the applicable trust account.~~

~~—(E) Annual recommendation for expenditure of fees. At least once each year the City Manager or his designee shall propose appropriations to be spent from the individual trust accounts to the City Council. After review of the City Manager's recommendation, the City Council shall either approve, modify, or deny the recommended expenditures of the trust account monies. Any amounts not appropriated from the trust accounts together with any interest earnings shall be carried over in the specific trust account to the following fiscal period.~~

~~—(F) Return of fees if not spent for capital improvements.~~

~~—(1) (a) Any fees collected shall be returned to the feepayer or his successor in interest if the fees have not been spent within seven (7) years from the date the building permit for the development was issued, along with interest of six percent (6%) a year. Provided, however, that the City Council may by resolution extend for up to three (3) years the date at which fees must be refunded. Such an extension shall be made upon a finding that within such three (3) year period, specific capital improvements are planned and evidenced by the adoption and incorporation into the city's comprehensive plan, that these capital improvements shall be~~



~~constructed within the next three (3) years, that these improvements are reasonably attributable to the feepayer's land development activity, and that the fees whose time of refund is extended shall be spent for these capital improvements. Fees shall be deemed to be spent on the basis of the first fee collected shall be the first fee spent.~~

~~—— (b) The refund of fees shall be undertaken through the following process:~~

~~—— 1. A refund application shall be submitted within one (1) year following the end of the sixth year from the date on which the building permit was issued on the proposed development. If the time of refund has been extended pursuant to this division (F), the refund application shall be submitted within one (1) year following the end of this extension.~~

~~—— 2. The refund application shall include the following information:~~

~~—— a. A copy of the dated receipt issued for payment of the fee;~~

~~—— b. A copy of the building permit;~~

~~—— c. A copy of the receipt issued by the City Council for payment of the fee; and if applicable,~~

~~—— d. Evidence that the applicant is the successor in interest to the feepayer.~~

~~—— (2) Within thirty (30) days of the receipt of the refund application, the City Manager shall determine if it is complete. If the City Manager determines the application is not complete, a written statement specifying the deficiencies shall be mailed to the person submitting the application. Unless the deficiencies are corrected, the City Manager shall take no further action on the refund application.~~

~~—— (3) When the City Manager determines the refund application is complete, the refund shall be approved within thirty (30) days if it is determined the feepayer or any successor in interest has paid a fee that the city has not spent within the period of time permitted under this section. The refund shall include the fee paid plus interest of six percent (6%) a year.~~

~~—— (4) Any feepayer, or any successor in interest, may appeal the decision of a refund application by filing a petition with the City Council within thirty (30) days of the decision. In reviewing the City Manager's decision, the City Council shall use the standards established in division (1) above.~~

**~~§ 171.09 LIBERAL CONSTRUCTION; SEVERABILITY; VIOLATIONS.~~**

~~—(A) The provisions of this subchapter shall be liberally construed to effectively carry out its purposes in the interest of the public health, safety, welfare and convenience.~~

~~—(B) If any section, phrase, sentence or portion of this subchapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions.~~

~~—(C) A violation of this subchapter shall be a misdemeanor punishable according to law; however, in addition to or in lieu of any criminal prosecution, the city shall have the power to either sue in civil court to enforce the provisions of this subchapter, or initiate proceedings before the City Code Enforcement Board to enforce compliance.~~

#### **~~TRANSPORTATION FACILITIES IMPACT FEE~~**

##### **~~§ 171.25 SHORT TITLE, AUTHORITY, APPLICABILITY.~~**

~~—(A) This subchapter shall be known and may be cited as the “City of Palm Bay Fair Share Transportation Facilities Impact Fee Ordinance.”~~

~~—(B) The City Council has the authority to adopt this subchapter pursuant to Fla. Const. Art VIII, Fla. Stat. Ch. 166 and Fla. Stat. §§ 163.3201, 163.3202, and 380.06(16).~~

~~—(C) This subchapter shall apply to all lands within the municipal boundaries of the city.~~

##### **~~§ 171.26 INTENT AND PURPOSE.~~**

~~—(A) Planning for the necessary capacity expansion of the city's major transportation system to ensure the safety and efficiency of the city's roads and to provide for the health, safety, welfare, and economic well being of the citizens of the city is the mandated responsibility of the city pursuant to Fla. Stat. §§ 163.3161 et seq., the Florida Local Government Comprehensive Planning and Land Development Regulation Act, and Fla. Stat. §§ 166.011 et seq., the Municipal Home Rule Powers Act.~~

~~—(B) This subchapter is intended to implement and be consistent with the city comprehensive plan adopted pursuant to Fla. Stat. §§ 163.3161 et seq., the Florida Local Government Comprehensive Planning and Land Development Regulation Act.~~

~~—(C) This objective is accomplished by requiring all new land development activity generating traffic that places additional demand on the major transportation system to contribute its proportionate share of the funds, land, or public facilities to accommodate any transportation impacts having a rational nexus to the proposed development and for which the need is reasonably attributable to the proposed development.~~

~~—(D) It is not the purpose of this subchapter for the city to collect any funds, land or public facilities from new land development activity generating traffic in excess of the actual amount necessary to offset the increased demand on the major transportation system generated by the new land development activity generating traffic. This subchapter is intended to be consistent with the principles for allocating a fair share of the cost of the new public facilities to new users as established in Contractors and Builders Association of Pinellas County v. City of Dunedin, 324 So. 2d 314 (Fla. 1976), and Homebuilders and Contractors Association of Palm Beach County v. Palm Beach County, 446 So. 2d 140 (Fla. 4th DCA 1983).~~

#### **~~§ 171.27 DEFINITIONS.~~**

~~—For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—ARTERIAL ROAD. A road as defined in the future traffic-circulation map of the city's comprehensive plan.~~

~~—BUILDING PERMIT. Any development permit issued by the City Building Division or any other city office before any building or construction activity can be initiated on a parcel of land.~~

~~—CAPITAL IMPROVEMENTS. The outlay of capital dollars for the planning of, engineering for, acquisition of land for, and construction of roads, turn lanes, intersection improvements and signalization, but does not include maintenance.~~

~~—CERTIFICATE OF OCCUPANCY (CO). A written permission to occupy a structure granted by the Building Official. In the case of land development activity generating traffic not requiring a building permit, a certificate of completion or other final written approval shall substitute for the certificate of occupancy.~~

~~—COLLECTOR ROAD. A road as defined in the future traffic-circulation map of the city's comprehensive plan.~~

~~—COMMENCEMENT OF LAND DEVELOPMENT ACTIVITY. The date of the issuance of any building permit.~~

~~—DEVELOPER. Any person, corporation partnership, association, trust, estate, business trust, agency, two (2) or more persons having a joint or common interest, governmental entity, or any other entity undertaking the development of land.~~

~~—EXISTING LAND DEVELOPMENT ACTIVITY. The most intense use of land within the twelve (12) months prior to the time of commencing land development activity generating traffic.~~

~~—FAIR SHARE TRANSPORTATION FACILITIES IMPACT FEE or IMPACT FEE. The fee required to be paid in accordance with the terms of this subchapter.~~

~~—FEEPAVER. A developer commencing land development activity generating traffic that places additional demand on the major transportation system and who is obligated to pay a fair share transportation facilities impact fee in accordance with the terms of this subchapter.~~

~~—IMPACT FEE PAYMENT AGREEMENT. An agreement between the Developer and the City that defines the terms under which the City may accept deferred payment of impact fees. The City may charge a fee for this service as may be adopted by Resolution of the City Council. The agreement will be recorded at the Developer's expense and will include sufficient security to ensure payment of the impact fees. The City Manager is authorized to negotiate and execute the agreement.~~

~~—LAND. The earth, water, and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land.~~

~~—LAND DEVELOPMENT ACTIVITY GENERATING TRAFFIC. The carrying out of any building activity or the making of any material change in the use of any structure or land that attracts or produces vehicular trip(s) over and above that produced by the existing land development activity, and consequently places an additional demand on the major transportation system.~~

~~—LEVEL OF SERVICE. A qualitative measure that represents the collective factors of speed, travel time, traffic interruption, freedom to maneuver, safety, driving comfort and convenience, and operating costs provided by a highway facility under a particular volume condition. Levels of service vary from A to F. "Level of service C" shall mean a roadway condition as determined and established by the 2002 Quality/Level of Service (QLOS) Handbook as updated on August 21, 2007, Florida Department of Transportation.~~

~~— LOCAL ROAD. A road designated and main- tained primarily to provide access to abutting property. A local road is of limited continuity and is not for through traffic. A local road is not considered as part of the major transportation system.~~

~~— MAJOR TRANSPORTATION SYSTEM. All arterial and collector roads, intersections, and multi-modal transportation facilities within the City, and those providing significant service to the City, including proposed arterial and collector roads and multi-modal transportation facilities necessitated by new land development activity generating traffic.~~

~~— MIXED USE LAND DEVELOPMENT ACTIVITY. Land development activity that includes a combination of non-residential and multi-family residential uses in a single building.~~

~~— MULTI-FAMILY LAND DEVELOPMENT ACTIVITY. Residential land development activity that provides four (4) or more residential units in one (1) building. This includes facilities such as nursing homes, adult-congregate living facilities, apartment complexes and condominium complexes.~~

~~— MULTI-MODAL TRANSPORTATION FACILITIES. Includes bikepaths, sidewalks, transit and other transportation facilities that will provide alternative transportation capacity.~~

~~— NONCOMMENCEMENT. The cancellation of construction activity that is proposed to make a material change in a structure or land.~~

~~— NON-RESIDENTIAL LAND DEVELOPMENT ACTIVITY. All land development activity that specifically excludes any residential uses.~~

~~— PERSON. An individual, developer, corpora- tion, governmental agency, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest, or any other entity.~~

~~— SHOPPING CENTER. For the purpose of calculating the traffic impact fee for shopping centers, a SHOPPING CENTER USE is defined to include restaurants, such that there is no differential traffic impact fee for restaurant uses locating in shopping centers. This definition does not apply to freestanding restaurant buildings.~~

#### **~~§ 171.28 RULES OF CONSTRUCTION.~~**

~~— In the construction of this subchapter, the rules set out in this section shall be observed unless such construction is inconsistent with the manifest intent of the City Council. The rules of construction and definitions set out herein shall not be~~

~~applied to any section of this subchapter which contains any express provisions excluding such construction or where the subject matter or content of such section would be inconsistent with this section.~~

~~—(A) Generally. All provisions, terms, phrases, and expressions contained in this subchapter shall be liberally construed in order that the true intent and meaning of the City Council may be fully carried out. Terms used in this subchapter, unless otherwise specifically provided, shall have the meanings prescribed by the Florida Statutes for the same terms.~~

~~—(B) Text. In case of any difference of meaning or implication between the text of this subchapter and any figure, the text shall control.~~

~~—(C) Delegation of authority. Where there is a provision requiring the head of a department or some other city officer to do some act or to perform some duty, it is to be construed to authorize that person to delegate professional level subordinates to perform the duty, unless the terms of the provision or section specify otherwise.~~

~~—(D) Gender. Words of the masculine gender shall be construed to include the feminine and vice versa.~~

~~—(E) Month. A calendar month.~~

~~—(F) Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.~~

~~—(G) Number. A word of the singular number only, may extend and be applied to several persons and things as well as to one (1) person and thing. The use of the plural number shall be deemed to include any single person or thing.~~

~~—(H) Shall, may. "Shall" is mandatory; "may" is permissive.~~

~~—(I) Tense. Words used in the past tense include the future as well as the past or present.~~

~~—(J) Written or in writing. Any representation of words, letters or figures whether by printing or otherwise.~~

~~—(K) Year. A calendar year unless a fiscal year is indicated.~~

**~~§ 171.29 FEE TO BE IMPOSED ON LAND DEVELOPMENT ACTIVITY GENERATING TRAFFIC.~~**

~~—(A) Fee determined and paid at issuance of building permit.~~

~~—(1) After the effective date of this subchapter, any person who shall commence any land development activity generating traffic that creates an increased demand on the major road network system shall be obligated to pay a fair share transportation facilities impact fee upon the commencement of such land development activity generating traffic in the manner and the amount set forth herein. The impact fee shall be determined and paid to the city at the time of issuance of a building permit for the development unless otherwise provided herein. No building permit shall be final until any applicable impact fee has been paid and the development complies with all provisions of this code of ordinances. If the building permit is for less than the entire development, the impact fee shall be computed separately for the amount of development covered by the building permit. The obligation to pay the impact fee shall run with the land. If the impact fee is due to be paid for land development activity generating traffic that increases the impact because of a change or increase in use, the impact fee shall be determined by computing the difference in the fee schedule between the new land development activity generating traffic and the existing land development activity.~~

~~—(a) Agreement in lieu of payment.~~

~~—1. In lieu of payment at the time of issuance of the building permit, non-residential, mixed use and multi-family land development activity may defer payment until the time of the certificate of occupancy, providing such payment is guaranteed through the execution of an Impact Fee Payment Agreement. In this case, the City will not issue the Certificate of Occupancy until the impact fee due has been paid.~~

~~—2. The Developer shall be required to pay the impact fee rates applicable at the time the payment is made.~~

~~—(b) Shell building. In those instances where a Developer has constructed a non-residential shell building, the payment may be deferred until the time of occupancy or three (3) years from the date of the Certificate of Occupancy, whichever comes first, providing such payment is guaranteed through the execution of an Impact Fee Payment Agreement.~~

~~—(c) Economic development incentives. The City Council may, by Resolution, establish criteria for impact fee mitigation.~~

~~—(d) Early payment. Payments made in full prior to issuance of a building permit may be made. Such payment amount shall be calculated based on the applicable fees effective at the time of payment. Fee increases following such payment shall not be retroactive for the project paying such fees. Any differential due at building permit issuance because of change in use or size of the project shall be calculated at the time of permit issuance. Such early payments are not subject to refund but may be credited to the land for a future project.~~

~~—(2) Any developer who, prior to the effective date of this subchapter, agreed as a condition of development approval to pay city transportation impact fees, shall be responsible for the payment of the impact fees under the terms of such agreement, and the payment of such impact fees by the developer to the city will be offset against any transportation impact fees otherwise due at later stages of the land development activity for which the impact fee was paid. Any portion of transportation impact fees agreed to be paid to the city pursuant to a prior agreement that are greater than the impact fee established in this subchapter shall be refunded.~~

~~—(3) Any traffic-related land agreed to be dedicated to the city as a condition of development approval shall be dedicated by either easement deed or warranty deed, at the option of the city, no later than the time of building permit issuance, and shall be eligible for a credit in accordance with the provisions of § 171.31.~~

~~—(B) Fee agreement providing for credit towards the payment of fee. At any time prior to issuance of a building permit, the developer may enter into a fee agreement with the city providing for a credit towards the payment of the impact fee pursuant to the terms of this subchapter.~~

~~—(C) Establishment of fee schedule.~~

~~—(1) Any developer who is issued a building permit, except those preparing an individual traffic impact analyses of their proposed land development activity, shall pay an impact fee. Impact fees shall be established by the City Council by resolution.~~

~~—(2) Biannually, and at the same time the City Council reviews the budget and capital improvement element of the city comprehensive plan, the City Manager or his designee shall recommend to the City Council whether any changes should be made to the impact fee schedule to reflect changes in the factors that affect the impact fee schedule. The purpose of this review is to insure that the impact fee charged of new land development activity generating traffic will not exceed its pro~~



~~rata share for the reasonably anticipated expansion costs of transportation facilities necessitated by its presence.~~

~~—(3) The fees identified in the impact fee schedule within the resolution shall be adjusted annually by the amount of change reflected in the Florida Department of Transportation Price Trends Index from the previous year. The adjustment shall take effect October 1 each year.~~

#### **~~§ 171.30 INDIVIDUAL TRAFFIC IMPACT ANALYSIS.~~**

~~—(A) General.~~

~~—(1) The impact fee shall be computed by the use of an individual traffic impact analysis of land development activity generating traffic on the major road network system, if:~~

~~—(a) The type of land development being commenced is not one of those types listed on the impact fee scheduled in § 171.29(C); or~~

~~—(b) The feepayer chooses to have the amount of the impact fee determined by the use of an individual traffic impact analysis; or~~

~~—(c) The city's analysis concludes that the proposed development is likely to generate impacts costing more to remediate than the amount of the impact fee established by the impact fee schedule.~~

~~—(2) The developer shall be responsible to prepare the individual traffic impact analysis if the developer chooses to conduct the analysis. The city shall prepare the individual traffic impact analysis if the proposed development is interpreted not to be one listed in the impact fee schedule or if the analysis of the proposed development concludes that it is likely to generate impacts costing substantially more than the amount of the impact fee established by the impact fee schedule. The person who prepares such analysis shall be a qualified professional in the preparation of impact analysis and shall be approved by the City Manager or his designee on the basis of professional training and experience. If the city is responsible to prepare the individual traffic impact analysis, it may require the developer to prepare it and credit the cost of such preparation against the impact fee. If the city pays such cost, it shall be deducted from the cost of the developer's impact fee.~~

~~—(B) Procedure for review of application for traffic impact analyses.~~

~~— (1) The individual traffic impact analysis shall be undertaken through the submission of an application of traffic impact analysis which shall include the following information:~~

~~— (a) The projected trip generation rates for the proposed land development activity. Trip generation rates shall be assessed on an average daily trip. The trip generation rates shall be based upon either local empirical surveys of trip generation rates for the same or similar land use types or state or national trip generation rate information, if applicable; and~~

~~— (b) The proposed trip length of the trips generated from the proposed land development activity onto the major road network system. Trip length information shall be based upon local empirical surveys of similar land use types or trip length data compiled by the City Manager or his designee for average trip length for similar land use types; and~~

~~— (c) The proposed percentage of new trips on the major road network system which are generated by the proposed land development activity. The percentage of new trips shall be based upon local empirical surveys of similar land use types or state or national percentage of new trips information if applicable or other reliable percentage of new trips information acceptable to the City Manager, if applicable; and~~

~~— (d) An assessment of the capital expansion of the major road network system necessitated by the proposed land development activity if it is to be maintained at level of service C on an average annual basis. Practices and methodological procedures generally accepted in the transportation planning and engineering profession acceptable by the City Manager or his designee shall be used to determine the capital expansion of the major road network system necessitated by the proposed land development activity; and~~

~~— (e) An assessment of the costs for providing the capital expansion necessitated by the proposed land development activity. The cost figures used shall be based upon recent empirical information of the costs in the city for the construction of a lane mile and shall include related right-of-way costs, and the planning, design, and engineering costs for the necessary capital improvements; and~~

~~— (f) An assessment of the projected gas and license tax revenues or any other revenues that will be derived from the proposed land development activity~~

~~that can be reasonably determined to be available to pay for new capital improvements to the major road network system over the planning horizon; and~~

~~— (g) The amount of any shortfall between the projected gas, license tax, any other revenues, and the capital expansion costs for the major road network system necessitated by the new land development activity generating traffic. Any shortfall shall be considered the proposed fair share transportation facilities impact fee for the proposed land development activity.~~

~~— (2) Within twenty (20) days of receipt of an application of traffic impact analysis or a revised application, the City Manager or his designee shall determine if it is complete. If the City Manager or his designee determines that an application or revised application is not complete, he shall send a written statement specifying the deficiencies by mail to the person submitting the application. Unless the deficiencies are corrected, the City Manager or his designee shall take no further action on the traffic impact analysis.~~

~~— (3) When the City Manager or his designee determines the application is complete, within thirty (30) days he shall review it and render a written report indicating whether the fee stated in § 171.29(C) is to be varied to accommodate the activity generated by the proposed development.~~

~~— (4) If, on the basis of generally accepted principles of traffic engineering, it is determined in the traffic impact analysis that the city's cost to accommodate the proposed land development activity is substantially different than the fee stated in § 171.29(C), the amount of the fair share transportation facilities impact fee shall be varied from that established in the impact fee schedule to an amount consistent with the amount determined in the traffic impact analysis.~~

~~— (C) Appeal of decision on application of traffic impact analysis. Any developer submitting an application for traffic impact analysis may appeal the City Manager's findings in the report submitted pursuant to division (B)(3) above, by filing a petition together with a thirty dollar (\$30.00) filing/ application fee with the City Council within thirty (30) days of the decision by the City Manager. In reviewing the City Manager's findings, the City Council shall, at a public hearing held within sixty (60) days from the date of the application, make written findings of fact and conclusions of law based upon the standards established in division (B) above.~~

### **~~§ 171.31 CREDITS.~~**

~~— (A) General.~~

~~— (1) A developer who shall commence any land development activity generating traffic may apply for a credit against any impact fee paid pursuant to the provisions of this subchapter for any transportation related contribution, payment, construction, or land accepted and received by the city, including any other transportation related contribution, payment or construction made to the city pursuant to a development order issued by the city pursuant to its local land development regulations or Fla. Stat. § 380.06, or any additional development requirement imposed by the Florida Land and Water Adjudicatory Commission on a development of regional impact.~~

~~— (2) The credit shall be in an amount equal to the market value of the contribution, payment, construction, or land at the time of the contribution, payment, construction or land dedication. No credit shall exceed the impact fee for the proposed land development activity generating traffic imposed by this subchapter.~~

~~— (B) Procedures for review of application for credit agreement.~~

~~— (1) The determination of any credit shall be undertaken through the submission of an application for credit agreement, which shall be submitted to the City Manager or his designee. The application for credit agreement shall include the following information:~~

~~— (a) If the proposed application for credit agreement involves credit for the dedication of land:~~

~~— 1. A drawing and legal description of the land;~~

~~— 2. The appraised fair market value of the land at the date a building permit is proposed to be issued for the land development activity generating traffic prepared by a professional real estate appraiser who is a member of the member appraisal institute (MAI) or who is a member of senior residential appraisers (SRA); and, if applicable~~

~~— 3. A certified copy of the development order in which the land was agreed to be dedicated.~~

~~— (b) If the proposed application for credit agreement involves construction:~~

~~— 1. The proposed plan of the specific construction prepared and certified by a duly qualified and licensed state engineer or contractor for the proposed construction.~~

~~2. The projected costs for the suggested improvement which shall be based on local information for similar improvements along with the construction timetable for the completion thereof. Such estimated cost shall include the cost of construction or reconstruction, the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one (1) year after completion of construction cost of plans and specifications, surveys of estimates of costs and of revenues, cost of professional services, and all other expenses necessary or incidental to determining the feasibility or practicability of such construction or reconstruction.~~

~~(c) If the proposed application for credit agreement involves a credit for any other contribution or payment:~~

~~1. A certified copy of the development order in which the contribution or payment was agreed;~~

~~2. If payment has been made, proof of payment; or~~

~~3. If payment has not been made, the proposed method of payment.~~

~~(2) Within twenty (20) days of receipt of the proposed application or revised application for credit agreement, the City Manager or his designee shall determine if the application is complete. If it is determined that the proposed agreement is not complete, the City Manager or his designee shall send a written statement to the applicant outlining the deficiencies. The City Manager or his designee shall take no further action on the proposed or revised application for credit agreement until all deficiencies have been corrected or otherwise settled.~~

~~(3) (a) Once the City Manager or his designee determines the proposed credit agreement is complete, he shall review it within thirty (30) days and grant the proposed credit agreement if the traffic related contribution, payment, construction or land dedication:~~

~~1. Meets an expansion need of the capital road improvements to the major road network system identified in Exhibit A which is attached to Ordinance No. 91-10 and incorporated herein by reference;~~

~~2. Provides a capital road improvement to the major road network system which provides capacity expansion necessitated by the proposed land development activity.~~

~~—(b) Credit shall be given for the contribution, payment, construction or land that is consistent with its market value at the time of contribution, payment or dedication.~~

~~—(4) If an application for credit agreement is approved by the City Manager or his designee, a credit agreement shall be prepared and signed by the applicant and the city. It shall specifically outline the contribution, payment, construction or land dedication, the time by which it shall be completed, dedicated, or paid, and any extensions thereof, and the dollar credit the applicant shall receive for the contribution, payment, or construction.~~

~~—(C) Appeal of application for credit agreement. An applicant for credit may appeal the City Manager's decision on the application for credit agreement by filing a petition with the City Council within thirty (30) days of the date of the decision of the City Manager on such application. In reviewing the City Manager's decision, the City Council shall use the standards established in division (B) above. Such review shall be conducted by the City Council at a public hearing and shall be heard by the City Council within sixty (60) days from the date of the filing of the petition.~~

#### **~~§ 171.32 IMPACT FEE DISTRICT.~~**

~~—There is established one (1) impact fee district which encompasses and is equal to the municipal boundaries of the city.~~

#### **~~§ 171.33 USE OF FUNDS.~~**

~~—(A) Intent. Any impact fees collected under this subchapter are expressly designated for the accommodation of impacts reasonably attributable to the increased demand of proposed land development activity generating traffic as hereinafter provided in this section.~~

~~—(B) Administrative costs. The city shall be entitled to actual administrative costs not to exceed two percent (2%) of the funds collected as compensation for the administrative expense of collecting and administering these impact fee regulations. All remaining funds collected from impact fees shall be deposited into the fair share transportation facilities impact fee trust fund.~~

~~—(C) Establishment of trust fund. There is established the Palm Bay Fair Share Transportation Facilities Impact Fee Trust Fund for the purpose of insuring that the impact fees collected pursuant to this subchapter are designated for the accommodation of impacts reasonably attributable to the proposed land development activity generating traffic.~~

~~—(D) Expenditure of fees in trust fund. Proceeds from the trust fund and interest accrued on such fund shall be used for capital expansion of the major road network system and in a manner consistent with the city comprehensive plan. Proceeds collected from the trust fund and all interest accrued on such funds may also be used for periodic engineering and planning studies to update the fee structure as may be required from time to time.~~

~~—(E) Investment of fees in interest bearing accounts. Any funds in the trust fund on deposit, not immediately necessary for expenditure, shall be invested in interest bearing accounts. All income derived from these investments shall be retained in the trust fund. These monies shall be utilized for the capital expansion of the major road network system.~~

~~—(F) Annual recommendation for expenditure of fees. At least once a year, at the time the annual city budget is reviewed, the City Manager shall propose to the City Council appropriations to be spent from the trust fund. After review of the City Manager's recommendation, the City Council shall either approve, modify, or deny the recommended expenditures of the trust fund monies for road improvements. Any amounts not appropriated from the trust fund together with any interest earnings shall be carried over in the trust fund to the next review period.~~

~~—(G) Return of fees if not spent for capital improvements.~~

~~—(1) Any impact fees collected shall be returned to the feepayer or his successor in interest if the impact fees have not been spent within seven (7) years from the date the building permit for the development was issued, along with interest of six percent (6%) a year; except that the city shall retain three percent (3%) of the fee to offset the costs of refunding. The City Council may, by resolution, extend for up to three (3) years the date at which fees must be refunded. Such an extension shall be made upon a finding that within such three (3) year period, specific capital improvements are planned and evidenced by the adoption and incorporation into the city's comprehensive plan that these capital improvements shall be constructed within the next three (3) years, that these improvements are reasonably attributable to the feepayer's land development activity generating traffic, and that the impact fees which time of refund is extended shall be spent for these capital improvements. Impact fees shall be deemed to be spent on the basis of the first impact fee collected shall be the first impact fee spent. The refund of impact fees shall be undertaken through the following process:~~

~~—(a) A refund application shall be submitted within one (1) year following the end of the seven (7) years from the date on which the building permit was issued~~

~~on the proposed development. If the time of refund has been extended pursuant to division (1) above, the refund application shall be submitted within one (1) year following the end of this extension.~~

~~—(b) The refund application shall include the following information:~~

~~—1. A copy of the dated receipt issued for payment of the fee;~~

~~—2. A copy of the building permit; and, if applicable;~~

~~—3. Evidence that the applicant is the successor in interest to the feepayer.~~

~~—(2) Within thirty (30) days of receipt of the refund application, the City Manager or his designee shall determine if it is complete. If the City Manager or his designee determines the application is not incomplete, a written statement specifying the deficiencies shall be mailed to the person submitting the application. Unless the deficiencies are corrected, the City Manager or his designee shall take no further action on the refund application.~~

~~—(3) When the City Manager or his designee determines the refund application is complete, the refund shall be approved within thirty (30) days if it is determined the feepayer or any successor in interest has paid an impact fee that the city has not spent within the period of time permitted under this section. The refund shall include the impact fee paid plus interest of six percent (6%) a year less the three percent (3%) administrative fee.~~

~~—(4) Any feepayer or any successor in interest may appeal the decision of a refund application by filing a petition with the City Council within thirty (30) days of the decision. In reviewing the City Manager's decision, the City Council shall use the standards established in division (1)(a) above.~~

~~—(H) Refund of impact fees paid upon non-commencement of development activity.~~

~~—(1) Any impact fees collected shall be returned to the feepayer or his successor in interest if the developer so requests and upon cancellation of all building permits. Such refund shall not include interest earned and a three percent (3%) administrative fee shall be retained by the City. Impact fees may be refunded for a period up to two (2) years from payment date. After that period, no refunds can be requested.~~

**§ 171.34 LIBERAL CONSTRUCTION; SEVERABILITY; VIOLATIONS.**



~~—(A) The provisions of this subchapter shall be liberally construed to effectively carry out its purposes in the interest of the public health, safety, welfare, and convenience.~~

~~—(B) If any section, phrase, sentence, or portion of this subchapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion.~~

~~—(C) A violation of this subchapter shall be a misdemeanor punishable according to law; however, in addition to or in lieu of any criminal prosecution, the city shall have the power to either sue in civil court to enforce the provisions of this subchapter or initiate proceedings before the City Code Enforcement Board to enforce compliance.~~

## **~~WATER AND WASTEWATER IMPACT FEES~~**

### **~~§ 171.50 WATER AND WASTEWATER IMPACT FEES.~~**

~~—(A) Adoption. The City hereby adopts and establishes pursuant to general law, a water capital charge, and a wastewater capital charge as set forth in paragraph (1) herein below, the purpose of which will be to finance capital expenditures and the payment of City indebtedness associated with the expansion of the City's water supply, treatment and transmission system, the wastewater transmission, treatment, and effluent disposal system, and the reclaimed treatment and transmission system.~~

~~—(1) Implementation. The amount of each capital charge per equivalent residential connection (ERC) shall be effective January 1, 2021 as follows:~~

<del>Date</del>	<del>Water Capital Charge</del>	<del>Wastewater Capital Charge</del>
<del>Jan. 1, 2021</del>	<del>\$2,049.00</del>	<del>\$3,300.00</del>

~~—(B) Applicability. Except for those customers who have previously paid plant capacity charges to the previous owner of the utility and having previously been connected to the System, the capital charges set forth herein shall be paid by those new customers who (1) connect to said System, (2) request service from the City, or (3) request an increase in water and/or wastewater service capacity. The City may exempt any customer from the payment of all or a portion of the water and wastewater capital charges to the extent that the City accepts a permanent contribution in aid of construction related to the water supply, treatment or transmission facilities or the wastewater transmission, treatment, or effluent~~

~~disposal facilities having a value of not less than the portion of the water or wastewater capital charges being exempted.~~

~~—(C) Time of payment. All water and wastewater capital charges shall be paid prior to connection of a structure or structures to be served by the City, or such other time as may be specifically provided by City resolution, by City ordinance, by agreement, or permit; provided, however, that the City may permit installment payments for owners of existing single-family residences where utility services are available for any water, or waste-water capital charges, and main line extension charges upon such terms and conditions as the City deems appropriate. Installment payments shall be paid in accordance with an Installment Payment Agreement approved by the City and such Installment Payment Agreement shall be and constitute a lien against the premises and shall become effective and binding as a lien from the date the owner of the property and the City enter into the said Installment Payment Agreement, such lien shall remain a lien co-equal with the lien of all state, county, district and municipal taxes, superior in dignity to all other liens, titles and claims, until paid and shall bear interest annually at a rate not to exceed the legal rate allowed for such liens and may be foreclosed pursuant to the procedure set forth in Fla. Stat. Chapter 173. Furthermore, the balance due on any such installment agreement shall become immediately due and payable upon the sale or transfer of interest of the property by the Customer to any other person or entity or upon refinancing of the property. For purposes of this subchapter, transfer of interest shall be defined as set forth in any Installment Payment Agreement entered into pursuant to this subchapter.~~

~~—(1) When the utility applicant is not required to obtain a State of Florida Department of Environmental Protection permit to connect proposed water, wastewater and/or reuse water treatment or transmission facilities to the City's utility system, all utility charges and fees shall be paid at or before the time of application for water, wastewater, and/or reuse service.~~

~~—(2) When the applicant must obtain a Florida Department of Environmental Protection permit to connect proposed facilities to the utility system for a residential project equal to or greater than 100 Equivalent Residential Connections (ERCs), a payment in an amount equal to twenty-five percent (25%) of the amount of capital connection charges as set forth by City Code attributable to a proposed development to be ultimately constructed shall be payable to the City within thirty (30) days after final approval of the Florida Department of Environmental Protection application. In the event a permit application is denied by the Florida Department of Environmental Protection, the City shall, upon request of the~~

~~applicant, refund only the capital connection charges paid by the applicant for the denied permit application. If a valid Department of Environmental Protection permit expires prior to construction of the utility system and acceptance of conveyance thereof by the City, or if a permit has expired, then the applicant shall be entitled to a refund less a five percent (5%) administrative fee based on total funds paid to the City. The City shall not be further obligated to the applicant or the applicant's heirs, assigns or successors to provide the utility capacity. Additionally, upon denial or expiration of a permit, and upon request of the applicant, all bonds or letters of credit posted hereunder shall be released by the City. The remainder seventy-five percent (75%) of all fees and charges due the City for connecting the development to the utility system is due and payable within five (5) business days after final plat approval by the City. Residential projects of less than 100 Equivalent Residential Connections shall be exempt from the previously stated requirement.~~

~~— (3) The City shall be entitled to recover all costs, including but not limited to reasonable attorney's fees and/or collection service charges, incurred in collecting delinquent utility fees and charges. Any fee or charge due under this section which shall not be paid when due may be recovered by referring the account to a third party collection agency and/or by bringing an action at law.~~

~~— (4) Commitments and permits are not transferable or negotiable for properties other than as shown on the original application approved by the City.~~

~~— (5) No building permit shall be issued prior to the receipt of all utility capital connection fees and charges, or such other time as may be specifically provided for by ordinance, resolution or agreement.~~

~~— (D) Determination of equivalent residential connection factors for water and wastewater services.~~

~~— (1) For purposes of calculating and imposing the water and wastewater capital charge provided for in this Section (D), the ERC factor for any particular connection shall be calculated and imposed in the manner provided as follows:~~

Establishment	Unit	ERC Factor
Establishment	Unit	ERC Factor
Residential	-	-
—Single Family Home	Per Unit	1.000

<del>—Duplex (1 or 2 bedrooms)</del>	Per Unit	0.833
<del>—Duplex (3 or more bedrooms)</del>	Per Unit	1.000
<del>—Multi-Family (1 or 2 bedrooms)</del>	Per Unit	0.833
<del>—Multi-Family (3 or more bedrooms)</del>	Per Unit	1.000
<del>—Mobile Home (1 or 2 bedrooms)</del>	Per Unit	0.667
<del>—Mobile Home (3 or more bedrooms)</del>	Per Unit	0.833
<del>-</del>	-	-
<del>Commercial</del>	-	-
<del>—Auditorium/Meeting Rooms</del>	Per Seat	0.019
<del>—Barber/Beauty Shop</del>	Per Opr. Sta.	0.340
<del>-</del>	-	-
<del>Food Service</del>	-	-
<del>—Restaurant/Cafeteria</del>	Per Seat	0.113
<del>—Restaurant (24 hours)</del>	Per Seat	0.189
<del>—Restaurant ("Fast Food")</del>	Per Seat	0.057
<del>—Bar/Cocktail Lounge</del>	Per Seat	0.075
<del>Hotel/Motel (not including food service banquet &amp; meeting rooms, &amp; guest laundry)</del>	Per Room	1.000
<del>Motel (See Hotel)</del>	-	-
<del>Office Building (not including food service and retail space)</del>	Per 100 Sq. Ft.	0.038
<del>Service Station</del>	Per Bay	1.132
<del>—Add</del>	Per Wash Bay	3.663

<del>—Add</del>	<del>Per</del>	<del>1.132</del>
	<del>Toilet</del>	
<del>Theater</del>	<del>Per</del>	<del>0.012</del>
	<del>Seat</del>	
<del>Dinner Theater</del>	<del>Per</del>	<del>0.075</del>
	<del>Seat</del>	
<del>Trailer Park (Overnight)</del>	<del>Per</del>	<del>0.377</del>
	<del>Space</del>	
<del>Dentist Office</del>	<del>Per</del>	<del>0.943</del>
	<del>Dentist</del>	
<del>-</del>	<del>Per Wet</del>	<del>0.755</del>
	<del>Chair</del>	
<del>Doctor Office</del>	<del>Per</del>	<del>0.943</del>
	<del>Doctor</del>	
<del>Church</del>	<del>Per</del>	<del>0.011</del>
	<del>Seat</del>	
<del>Schools (Middle &amp; High)</del>	<del>Per</del>	<del>0.075</del>
	<del>Student</del>	
<del>Schools (Elementary, Day Care &amp; Nursery)</del>	<del>Per</del>	<del>0.028</del>
	<del>Student</del>	
<del>Schools (Boarding)</del>	<del>Per</del>	<del>0.472</del>
	<del>Student</del>	
<del>Laundry (Self-Service)</del>	<del>Per</del>	<del>1.510</del>
	<del>Machine</del>	
<del>Retail Store/w Self Service Gas Pumps</del>	<del>Per</del>	<del>1.500</del>
	<del>Restroom</del>	
<del>—(Add remaining fixture units)</del>	<del>-</del>	<del>-</del>
<del>—(Without pumps use fixture units)</del>	<del>-</del>	<del>-</del>
<del>Automotive Repair &amp; Maintenance Stores</del>	<del>Per Bay</del>	<del>0.500</del>
<del>Hospital (Medical)</del>	<del>Per Bed</del>	<del>0.730</del>

-	Per Employee	0.055
Hospital (Mental)	Per Bed	0.480
-	Per Employee	0.055
Prison	Per Inmate	0.480
-	Per Employee	0.055
Nursing Home	Per Resident	0.370
-	Per Employee	0.055

~~— (2) One equivalent residential connection (ERC) shall, for purposes of this Section, have an assigned value of 1.00. For wastewater service capacity, one ERC is hereby established and determined to be equal to a flow of 210 gallons per day, average annual basis (210 GPD), or such other value as may be later, approved or determined by the Florida Department of Environmental Regulation.~~

~~— (3) For water service capacity, one ERC is hereby established and determined to be equal to a flow of 225 gallons per day, average annual basis (225 GPD).~~

~~— (4) The "total equivalent residential connection value" for an establishment shall be calculated by multiplying the ERC factor listed above by the number of units. The minimum ERC factor for each non-residential establishment shall be one (1).~~

~~— (5) For all establishments not listed above, the total wastewater equivalent residential connection (ERC) value for wastewater service capacity shall be determined by multiplying the number of fixture units, as published in the Standard Plumbing Code, by fifteen (15), and then dividing that numerator by two hundred ten (210). For example:~~

~~Total Wastewater ERC Value = Number of Fixture Units x 15~~

~~———— 210 GPD/ERC~~

~~The wastewater capital charge shall be determined by using the following formula:~~

~~Total ERC Value x wastewater prevailing rate = wastewater capital charge~~

~~— (6) For all establishments not listed above, the total water equivalent residential connection (ERC) value for water service capacity shall be determined by multiplying the number of fixture units, as published in the Standard Plumbing Code, by fifteen (15), and then dividing that numerator by two hundred twenty-five (225). For example:~~

~~Total ERC Value = Number of Fixture Units x 15~~

~~— 225 GPD/ERC~~

~~The water capital charge shall be determined by using the following formula:~~

~~Total ERC Value x water prevailing rate = water capital charge~~

~~— (7) Connections that have not paid the wastewater capital charge and are not specifically exempt from paying the wastewater capital charge are required to pay a wastewater capital charge recovery usage component. The wastewater capital charge recovery usage component shall be the rate as set forth in Table 1 below per one thousand (1,000) gallons of water metered for wastewater billing purposes. These charges will continue to be paid until such time that the wastewater capital charges in effect at time of connection to the system are satisfied.~~

~~— (8) Connections that have not paid the water capital charge and are not specifically exempt from paying the water capital charge are required to pay a water capital charge recovery usage component. The water capital charge recovery usage component shall be the rate as set forth in Table 1 below per one thousand (1,000) gallons of water metered for water billing purposes. These charges will continue to be paid until such time that the water capital charges in effect at time of connection to the system are satisfied.~~

~~— (9) The amount of each capital charge recovery usage component shall be effective January 1, 2021 as follows:~~

<del>Date</del>	<del>Water Capital Charge Recovery Usage Component</del>	<del>Wastewater Capital Charge Recovery Usage Component</del>
<del>January 1, 2021</del>	<del>\$1.28</del>	<del>\$1.94</del>

~~— (10) The above ERC Schedule applies to establishments being connected to the City of Palm Bay Utilities Water and Wastewater System.~~

~~—(E) Capital improvement funds; establishment; expenditure guidelines; application and pledge to revenue bonds.~~

~~—(1) The water and water with reclaimed water capital charges and capital charge recovery usage components collected pursuant to this tariff shall be deposited into a fund called the "Connection Fee Fund". The wastewater and wastewater with reclaimed water capital charges and capital charge recovery usage component shall likewise be deposited into a fund called the "Connection Fee Fund". The water and water with reclaimed water capital charges and capital charge recovery usage component so deposited shall be used only for the acquisition of the City's water system and all components thereof and additions thereto, and the construction and acquisition of additions and extensions to the City's water system and all components thereof including raw water supply facilities, transmission facilities, mains, ground storage facilities, new pumping facilities, water treatment plants, and distribution facilities in order to provide additional water treatment capacity or water service capacity to those new customers who connect to the City's water system. The wastewater and wastewater with reclaimed water capital charges and capital charge recovery usage component so deposited in the above-mentioned fund shall be used only for the acquisition of the City's wastewater system and all components thereof and additions thereto, and the construction and acquisition of additions and extensions to the City's wastewater system and all components thereof, including collection facilities, transmission facilities, treatment facilities, and effluent disposal facilities, in order to provide additional sewage treatment capacity, effluent disposal capacity, or wastewater service capacity to those new customers who connect to the City's wastewater system. The reclaimed water capital charges and capital charge recovery usage components collected pursuant to this Tariff shall be deposited into a fund called the "Connection Fee Fund". The reclaimed water capital charges and capital charge recovery usage component so deposited shall be used only for the acquisition of the City's reclaimed system and all components thereof and additions thereto, and the construction and acquisition of additions and extensions to the City's reclaimed system and all components thereof including filtration facilities, disinfection facilities, storage tanks, transmission facilities, mains, remote storage facilities, new pumping facilities, and distribution facilities in order to provide additional reclaimed treatment capacity or reclaimed service capacity to those new customers who connect to the City's reclaimed system.~~

~~—(2) The City may by resolution provide for the application of some or all of the water, wastewater, and/or reclaimed water capital charges to the payment or~~



~~security for the payment of revenue bonds issued in whole or in part for the purpose set out in Subsection (E)(1) hereof, provided that the amount of water and/or wastewater capital charges applied to the payment of such bonds shall not exceed the amount of bond proceeds actually expended for such purpose with interest at the average rate borne by said bonds. Such application or pledge may be made directly in the proceedings authorizing such bonds or in an agreement with an insurer of bonds to assure such insurer of additional security there for.~~

~~—(F) Application; allocation of water and/or wastewater service capacity. The City may require all information on said application that it deems reasonable and necessary, and may reject applications it determines are incomplete. Any application for water and/or wastewater service shall contain a legal description of the land constituting the service area for which the said permit is to be issued. The legal description shall include only those lands owned by the applicant for which the water and/or wastewater developer's agreement is to serve. If any such person described hereinabove fails to apply for and purchase water and/or wastewater service capacity under these rules, the City Council may consider said failure in determining whether or not to grant or deny any connection to the system. The City Council shall by separate ordinance establish rules for the allocation of water and/or wastewater service capacity, and may by resolution establish a fee for application review payable by applicants.~~

## **CHAPTER 172: ENVIRONMENTAL REGULATIONS**

### **ENVIRONMENTAL FEES**

#### **~~§ 172.01 TITLE.~~**

~~—This subchapter shall be known and may be cited as "The City of Palm Bay Environmental Fee Ordinance".~~

#### **~~§ 172.02 ESTABLISHMENT OF FEE.~~**

~~—Upon issuance of a city-wide Incidental Take Permit and approval of a city-wide Habitat Conservation Plan by the United States Fish and Wildlife Service, a minimum fee, as established by City Council by resolution will be affixed to each building permit issued by the Palm Bay Building Division for any new structure on previously unimproved land.~~

#### **~~§ 172.03 USE OF FUNDS.~~**

~~—(A) Establishment of Environmental Fee Fund account. There is hereby established the Environmental Fee Fund account for the purpose of insuring that~~

~~the fees collected pursuant to this chapter are utilized solely and specifically to comply with the Habitat Conservation Plan, Incidental Take Permit issued by the United States Fish and Wildlife Service and related activities adopted by the City of Palm Bay.~~

~~—(B) Expenditure of fees. Monies in the Environmental Fee Fund account may be utilized to fulfill commitments and pay all legal fees and administrative costs related to and set forth in the Habitat Conservation Plan and/or any permit issued by the United States Fish and Wildlife Service.~~

## **CHAPTER 173: ADULT ENTERTAINMENT CODE**

### **GENERAL PROVISIONS**

#### **~~§ 173.001 PURPOSE, FINDINGS, INTENT, AND INCORPORATION OF RECITALS.~~**

~~—(A) Purpose. It is the purpose of this chapter to regulate sexually-oriented businesses and adult entertainment establishments in order to promote and protect the public health, safety, good order, morals and general welfare of the citizens of the city, to establish reasonable and uniform regulations of adult entertainment establishments and sexually-oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing an unreasonable limitation or unreasonable restriction on the content of any lawful communicative materials including sexually-oriented materials. Similarly, it is neither the intent nor effect of this chapter to unreasonably restrict or deny access by adults to sexually-oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually-oriented entertainment protected by the First Amendment to their intended market. Neither is it the intent nor effect of this subchapter to condone or legitimize the distribution of obscene or otherwise illegal material.~~

~~—(B) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Council, and on findings incorporated in Supreme Court cases presented for consideration by the City Council in the record supporting this chapter, including but not limited to City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986); Young v. American Mini Theaters, 427 U.S. 50 (1976); Barnes v. Glen Theater, Inc., 501 U.S. 560 (1991), on materials made of record relating to the St. Johns County Public Nudity Ordinance, and on the substance of and findings made or incorporated in studies accomplished in other communities and ordinances~~

~~enacted in other communities, including, but not limited to, New York, New York; City of Houston Ordinance Number 97-75; Senate Bill Number 232, as passed by the Kansas State Legislature; Phoenix, Arizona; Tucson, Arizona; St. Paul, Minnesota; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Austin, Texas; Macon-Bibb County, Georgia; Palm Beach County, Florida; Manatee County, Florida; the findings of the Attorney General of the State of Minnesota; the report of United States Attorney General's Commission on Pornography (1986); Jacksonville, Florida; Detroit, Michigan; and "A Summary of a National Survey of Real Estate Appraisers Regarding the Effect of Adult Bookstores on Property Values," conducted by the Division of Planning, Department of Metropolitan Development, Indianapolis, January 1984; the publication entitled "Protecting Communities From Sexually-Oriented Businesses" (Southwest Legal Press, Inc.); the publication entitled "Local Regulation Of Adult Businesses" (Clark, Boardman and Callaghan); publications prepared by the Florida Family Association, Inc. (Tampa, Florida) relating to the regulation of sexually-oriented businesses and adverse secondary effects of sexually-oriented businesses; the "Report to: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses", Peter R. Hecht, Ph.D. (1996); and the findings of fact relating to the Adult Entertainment Code of Orange County, Florida, and the findings of fact relating to the Sexually-Oriented Business and Adult Entertainment Establishment Ordinance of Seminole County, Florida, matters and materials submitted at the public hearings relating to this Ordinance and other matters and documents relating to all of the above; the City Council finds:~~

~~— (1) Sexually-oriented businesses and adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled or not adequately controlled by the operators of the establishments or businesses. Further, there are presently no mechanisms or inadequate mechanisms to make the owners of these businesses or establishments responsible for the activities that occur on their premises.~~

~~— (2) Certain workers of certain sexually-oriented businesses and adult entertainment establishments defined in this chapter engage in a higher incidence of certain types of illicit sexual behavior than workers of other business establishments.~~

~~— (3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually-oriented businesses and adult entertainment establishments, especially those which provide private or semi-private areas, booths or cubicles for viewing~~

~~films, videos, live sex shows and those having physical interaction between workers and customers.~~

~~— (4) Offering and providing such private spaces encourages such previously mentioned activities, which create unhealthy conditions.~~

~~— (5) Persons frequent certain adult theaters, adult arcades, and other sexually-oriented businesses and adult entertainment establishments for the purpose of engaging in sex within the premises of such businesses and establishments.~~

~~— (6) At least fifty (50) communicable diseases may be spread by activities occurring in sexually-oriented businesses and adult entertainment establishments, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV/AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.~~

~~— (7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982; 2,200 in 1983; 4,600 in 1984; 8,555 in 1985, 253,448 through December 31, 1992 and currently there are 1,400,000 people infected with the disease nationally with 40,000 people becoming infected annually.~~

~~— (8) As of December 31, 1995, there have been 51,838 reported cases of AIDS in the State of Florida with over 100,000 AIDS cases being reported in the State of Florida from 1983 – 2005. Florida ranks third in cumulative AIDS cases in the United States and has the second highest AIDS rate in the United States.~~

~~— (9) From 1981 to June 1996, the number of living persons testing positive for the HIV antibody with AIDS symptoms has risen to 73,217 in the twenty-eight (28) states having confidential reporting requirements.~~

~~— (10) The number of cases of early (less than one (1) year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990 and between 2004 and 2005, the national syphilis rate increased eleven and one-tenths percent (11.1%).~~

~~— (11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over 500,000 cases being reported in 1990 and currently 350,000 cases of gonorrhea are reported annually with Florida reporting over 20,000 cases of gonorrhea annually.~~

~~— (12) The Surgeon General of the United States, in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.~~

~~— (13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.~~

~~— (14) Sanitary conditions in some sexually-oriented businesses and adult entertainment establishments are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of owners and operators of the facilities to self-regulate those activities and maintain those facilities.~~

~~— (15) Numerous studies and reports have determined that semen is found in the areas of sexually-oriented businesses and adult entertainment establishments where persons view "adult" oriented films which gives rise to health and aesthetic concerns.~~

~~— (16) The findings noted in divisions (B)(1) through (15) above and as set forth hereinafter raise substantial governmental concerns.~~

~~— (17) Sexually-oriented businesses and adult entertainment establishments have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.~~

~~— (18) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually-oriented businesses and adult entertainment establishments. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the business or establishment is run in a manner consistent with the good order, health, safety and welfare of its patrons and workers, as well as the citizens of the city. It is appropriate to require reasonable assurances that the licensee is the actual operator of the business or establishment, fully in possession and control of the premises and activities occurring therein.~~

~~— (19) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.~~

~~— (20) Requiring licensees of sexually-oriented businesses and adult entertainment establishments to keep information regarding current workers and certain past workers will help reduce the incidence of certain types of criminal~~

~~behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working at such businesses and establishments.~~

~~—(21) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually-oriented business and adult entertainment establishments, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.~~

~~—(22) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain workers who may engage in the conduct which this chapter is designed to prevent or who are likely to be witnesses to such activity.~~

~~—(23) The fact that an applicant for an adult entertainment establishment or sexually-oriented business license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this chapter.~~

~~—(24) Commercial establishments exist or may exist within the city and other nearby cities and counties in central Florida where adult entertainment material is possessed, displayed, exhibited, distributed and/or sold for commercial purposes in the form of books, magazines, periodicals or other printed material, or photographs, films, motion pictures, prints, videotapes, slides, computer digital graphic recordings or other visual representations or recordings, or recordings or other audio matter, or instruments, novelties, devices, or paraphernalia which depict, illustrate, describe or relate to specified sexual activities or specified anatomical areas.~~

~~—(25) Commercial establishments exist or may exist within the city and other nearby cities or counties in Florida where adult entertainment and sexually-oriented commercial activities in the form of nude, semi-nude, or topless dancers, entertainers, performers, or other individuals, who, for commercial gain, perform or are presented while displaying or exposing specified anatomical areas; or engage in straddle dancing or touching with customers.~~

~~—(26) Commercial sexually-oriented businesses exist or operate or may exist or operate within the city or other nearby cities or counties in Florida where sexually-oriented services are offered for commercial or pecuniary gain in the form of commercial physical contact, escort services and other services providing sexual encounters. The workers of such sexually-oriented businesses operating in~~

~~Florida engage in physical contact or touching with customers including, but not limited to, acts of prostitution, or encourage or entice the customers to engage in lewdness.~~

~~—(27) The activities occurring at sexually-oriented businesses and adult entertainment establishments occur at establishments and businesses which operate primarily for the purpose of making a profit and, as such, are subject to regulation by the city in the interest of the good order, health, safety, economy, property values, morals and general welfare of the people, businesses and industries of the city. A major industry which is important to the community's economic welfare is tourism by persons seeking to bring children to visit Palm Bay who wish to stay in a community with a family atmosphere not dominated by commercialized sexual themes.~~

~~—(28) When the activities occurring at sexually-oriented businesses and adult entertainment establishments are present in establishments and businesses, other activities which are illegal, unsafe, or unhealthful tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials and an unhealthy and unsanitary environment, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property.~~

~~—(29) When the activities occurring at sexually-oriented businesses and adult entertainment establishments are competitively exploited in establishments and businesses, they tend to attract an undesirable number of transients, blight neighborhoods, discourage wholesome tourism, adversely affect neighboring businesses, lower real property values, promote the particular crimes described above and, ultimately, lead residents and businesses to move to other locations.~~

~~—(30) Sexually-oriented businesses and adult entertainment establishments often have exterior signs or exterior appearance that are incongruous with other business signage, lower the surrounding property values and contribute to urban decline.~~

~~—(31) The activities occurring at sexually-oriented businesses and adult entertainment establishments sometimes occur in establishments and businesses concurrent with the sale and consumption of alcoholic beverages which concurrence leads to a further increase in criminal activity, unsafe activity, and disturbances of the peace and order of the surrounding community and creates~~

~~additional hazards to the health and safety of customers and workers and further depreciates the value of adjoining real property harming the economic welfare of the surrounding community and adversely affecting the quality of life, commerce, and community environment.~~

~~—(32) Physical contact or touching within sexually-oriented businesses and adult entertainment establishments between workers exhibiting specified anatomical areas and customers poses a threat to the health of both and promotes the spread of communicable and social diseases.~~

~~—(33) In order to preserve and safeguard the good order, health, morals, safety, and general welfare of the people of the city it is necessary and advisable for the city to regulate the conduct of owners, managers, operators, agents, workers, entertainers, performers, and customers at sexually-oriented businesses and adult entertainment establishments.~~

~~—(34) The potential dangers to the good order, morals, health, safety, and general welfare of the people of the city posed by permitting a sexually-oriented business or adult entertainment establishment to operate without first meeting the requirements for obtaining a license under this chapter are so great as to require the licensure of such establishments prior to their being permitted to operate.~~

~~—(35) Requiring operators of sexually-oriented businesses and adult entertainment establishments to keep records of information concerning workers and certain recent past workers as well as customer contracts and other matters and materials will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by making it difficult for minors to work at or be customers in such establishments.~~

~~—(36) Prohibiting sexually-oriented businesses and adult entertainment establishments from operating within set distances of educational institutions, religious institutions, residences, areas zoned or designated for residential use, and parks at which minors are customarily found, will serve to protect minors from the adverse affects of the activities that accompany such establishments and businesses.~~

~~—(37) Straddle dancing, unregulated private performances, and enclosed adult booths in sexually-oriented businesses and adult entertainment establishments have resulted in indiscriminate commercial sex between individuals and poses a threat to the health of the participants and promotes the spread of communicable~~



~~sexually transmitted diseases. Straddle dancing is primarily conduct rather than communication or expression.~~

~~—(38) Workers at sexually-oriented businesses and adult entertainment establishments engage in a higher incidence of certain types of unhealthy or criminal behavior than workers of other establishments and businesses including, but not limited to, a very high incidence of illegal prostitution or engaging in lewdness in violation of Fla. Stat. Chapter 796, operation without business tax receipts and illegal and unlicensed massage.~~

~~—(39) Physical contact or touching between workers of sexually-oriented businesses and adult entertainment establishments and customers poses a threat to the health of both and promotes the spread of communicable and sexually transmittable diseases.~~

~~—(40) The practice of not paying or underpaying workers at sexually-oriented businesses and adult entertainment establishments and requiring them to earn their entire income from tips or gratuities from their customers who are predisposed to want sexual activity has resulted in a high incidence of prostitution and crimes related to lewdness by workers.~~

~~—(41) Sexually-oriented businesses and adult entertainment establishments involve some activities that are pure conduct engaged in for the purpose of making a profit, rather than speech or expressive activity and, therefore, are subject to and require increased regulation to protect the health, good order, morals, welfare and safety of the community.~~

~~—(42) Requiring sexually-oriented businesses to post a listing of services provided and restrict services to those listed as well as maintaining a customer contract and transaction record in a daily register will discourage incidents of criminal behavior such as lewdness and prostitution thereby further safeguarding the health of both workers and customers and will assist facilitating the identification of potential witnesses or suspects if criminal acts do occur.~~

~~—(43) The general welfare, health, good order, morals and safety of the citizens of the city will be promoted by the enactment of this chapter.~~

~~—(C) Intent. It is the intent of this chapter to protect and preserve the good order, health, peace, morals, safety, and welfare of the citizens of the City of Palm Bay. This chapter regulates conduct and is not an ordinance that affects the use of land as contemplated by Fla. Stat. § 166.041.~~

~~—(D) Authority. This chapter is enacted under the constitutionally derived home rule power of the City of Palm Bay in the interest of the good order, health, morals, peace, safety, and general welfare of the people of the city.~~

~~—(E) Recitals. It is the City Council's further intention to accomplish those intents and purposes expressed by the City Council in the recitals of the ordinance from which this section derives, each of which are incorporated by reference into this section.~~

~~—(F) Speech protection. Nothing herein shall be construed to prohibit constitutionally protected expression or speech. This chapter is intended to reasonably regulate the adult entertainment industry and sexually-oriented businesses which engage in commercial activities involving acts or services of a sexually explicit nature or which involve acts or services involving matters which are sexual in nature.~~

#### **~~§ 173.002 CONSTRUCTION.~~**

~~—(A) This chapter shall be liberally construed to accomplish its purpose of reasonably regulating sexually-oriented businesses and adult entertainment establishments in order to reduce or eliminate adverse secondary effects of such businesses and establishments. See for example and not by way of limitation Barnes v. Glen Theater, Inc., 501 U.S. 560, 111 S. Ct. 2456, 115 L.Ed. 2d 504 (1991), Cafe 207, Inc. v. St. Johns County, 856 F. Supp. 641 (M.D. Fla. 1994); affirmed, Cafe 207, Inc. v. St. Johns County, 66 F. 3d 272 (11th Cir. 1995); cert. denied, 134 L Ed. 2d 647 (U.S. April 22, 1996). This chapter shall not be construed to authorize any illegal act under federal law, state law or city ordinance. This chapter is intended to reasonably regulate such matters in order to reduce or eliminate the adverse secondary effects of commercial establishments and businesses. The regulation of alcoholic beverage establishments is also addressed in the Code of Ordinances the City of Palm Bay and other provisions of law.~~

~~—(B) Unless otherwise indicated, all provisions of this chapter shall apply equally to all persons, regardless of sex. Masculine pronouns, such as "he," "his," and "him," as employed in this chapter, shall also be construed to apply to feminine pronouns and neutral pronouns, unless the context suggests otherwise. Words used in the singular number shall include the plural number, unless the context suggests otherwise.~~

#### **~~§ 173.003 DEFINITIONS.~~**

~~—The following words and phrases defined in this section and used in this chapter shall have the meaning herein prescribed, unless the context clearly suggests otherwise.~~

~~—ADULT BOOKSTORE/ADULT VIDEO STORE.~~

~~—(1) An establishment which, as its principal business purpose, sells or rents adult material or which offers adult materials for sale or rent as a significant portion of its stock and trade as defined more particularly herein below.~~

~~—(2) Any establishment in which any one (1) or more of the following five (5) elements occur shall be presumed to be an adult bookstore/adult video store:~~

~~——(a) The adult material is accessible to customers; "accessible to customers" means that the item can be physically touched, picked up, handled by a customer before being transferred from the control of a worker, or is visually displayed so that an adult or child present in the store can view substantially more than its name alone;~~

~~——(b) The individual items of adult material offered for sale and/or rental comprise more than ten percent (10%) of the unused individual items publicly displayed at the establishment as stock in trade in the following categories: books, magazines, periodicals, other printed matter, slides, photographs, films, motion pictures, videotapes, compact disks, DVDs, computer digital graphic recordings, other visual representations, audio recordings and other audio matter;~~

~~——(c) The gross income each month from the sale and rental of adult material comprises more than ten percent (10%) of that month's gross income from the sale and rental of the goods and material at the establishment;~~

~~——(d) The floor area used to display adult material comprises more than ten percent (10%) of the floor area used for display of all goods and material at the establishment; or~~

~~——(e) The establishment uses any of the following terms in advertisements or any other promotional activities relating to the adult material: "XXX," "XX," "X," or any series of the letter "X" whether or not interspersed with other letters, figures or characters; "erotic" or deviations of that word; "adult entertainment," "adult books," "adult videos" or similar phrases; "sexual acts" or similar phrases; "nude" or "nudies" or similar phrases which letters, words or phrases a reasonable person would believe to be promotional of the purchase or rental of adult material.~~

~~—(3) In recognition of the provisions of Fla. Stat. §§ 847.013 and 847.0133, which protects minors from exposure to obscene material, any business which is an adult bookstore/adult video store shall have in place at each entrance to such business a sign, no greater than one (1) square foot in size, stating "Persons under 18 years of age not permitted."~~

~~—ADULT BOOTH. A separate booth inside an adult entertainment establishment accessible to any person, regardless of whether a fee is charged for access. The term ADULT BOOTH includes, but is not limited to, a "peep show" booth or arcade, or other booth used to view "adult material." The term ADULT BOOTH does not include a foyer through which any person can enter or exit the establishment or a rest room.~~

~~—ADULT ENTERTAINMENT.~~

~~—(1) The display or exposure of any specified anatomical area by a worker to a customer to the extent permitted by §§ 173.060 et seq., regardless of whether the worker actually engages in performing or dancing or where workers wear or display to a customer any covering, tape, pastie, or other device which simulates or otherwise gives the appearance of the display or exposure of any specified anatomical areas regardless of whether the worker actually engages in performing or dancing;~~

~~—(2) Providing adult material for commercial or pecuniary gain;~~

~~—(3) The offering, soliciting or contracting to dance or perform by a worker with or for a customer with the acceptance of any consideration, tip, remuneration or compensation from or on behalf of that customer; or~~

~~—(4) The dancing or performing by a worker at or within three (3) feet of a customer with the acceptance of any consideration, tip, remuneration, or compensation from or on behalf of that customer.~~

~~—ADULT ENTERTAINMENT ESTABLISHMENT. An adult performance establishment, adult bookstore/adult video store, adult motel, or adult theater as those terms are defined in this section, which is operated for commercial or pecuniary gain. An establishment with an adult entertainment license shall be presumed to be an adult entertainment establishment.~~

~~—ADULT MATERIAL. One (1) or more of the following, regardless of whether it is new or used:~~

~~— (1) Books, magazines, periodicals, or other printed matter, photographs, films, motion pictures, DVDs, videotapes, video cassettes, slides, computer digital graphic recordings, or other visual representations, tape recordings, disks or other audio matter, which have as their primary or dominant theme matters depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or~~

~~— (2) Instruments, novelties, devices or paraphernalia which are designed for use in connection with specified sexual activities, excluding bona fide birth control devices.~~

~~— ADULT MODEL. Any person who, for commercial or pecuniary gain, offers, suggests, or agrees to engage in a private performance, modeling or display of male or female lingerie, bathing suits, under garments, or specified anatomical areas to the extent permitted by §§ 173.060 et seq. to the view of a customer.~~

~~— ADULT MOTEL. Any motel, hotel, boarding house, rooming house or similar commercial establishment which offers accommodations to the public for any form of consideration whose advertisements or business name includes the word "adult" or which advertises to the public outside of the premises of the establishment and visible from a public right-of-way the presentation of closed-circuit television transmissions, films, motion pictures, video tapes, DVDs, video cassettes, slides or other photographic reproductions, which have as their primary or dominant theme matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. The term ADULT MOTEL is included within the definition of ADULT THEATER.~~

~~— ADULT PERFORMANCE ESTABLISHMENT.~~

~~— (1) Any establishment where any worker:~~

~~— (a) Engages in a private performance, acts as an adult model, or displays or exposes any specified anatomical areas to a customer, regardless of whether the worker engages in dancing or any particular activity;~~

~~— (b) Wears and displays to a customer any covering, tape, pastie, or other device which simulates or otherwise gives the appearance of the display or exposure of any specified anatomical areas, regardless of whether the worker actually engages in performing or dancing;~~

~~— (c) Offers, solicits, or contracts to dance or perform with or for a customer and accepts any consideration, tip, remuneration or compensation from or on behalf of that customer; or~~

~~—(d) Dances or performs at or within three (3) feet of a customer and accepts any consideration, tip, remuneration, or compensation from or on behalf of that customer.~~

~~—(2) A bona fide private club whose membership as a whole engages in social nudism or naturalism as in a nudist resort or camp and at which specified sexual activities do not occur shall be presumed not to be an adult performance establishment.~~

~~—ADULT THEATER. An establishment which consists of an enclosed building, or a portion or part of an enclosed building, or an open-air area used for viewing by persons of films, motion pictures, DVDs, video cassettes, video tapes, slides, computer digital graphic recordings, or other photographic reproductions which have as their primary or dominant theme, matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. ADULT MOTELS, and ADULT BOOTHS are included within the definition of ADULT THEATER.~~

~~—ADULT VIDEO STORE. See ADULT BOOKSTORE.~~

~~—ALCOHOLIC BEVERAGES. All distilled spirits and all beverages containing one-half (1/2) of one (1) percent (.005) or more alcohol by volume. It shall be prima-facie evidence that a beverage is an alcoholic beverage if there is proof that the beverage in question was or is known as beer, wine, whiskey, moonshine whiskey, moonshine, shine, rum, gin, tequila, bourbon, vodka, scotch, scotch whiskey, brandy, malt liquor, or by any other similar name or names, or was contained in a bottle or can labeled as any of the above names, or a name similar thereto, and the bottle or can bears the manufacturer's insignia, name, or trademark. Any person who, by experience in the handling of alcoholic beverages, or who by taste, smell, or drinking of such alcoholic beverages has knowledge of the alcoholic nature thereof, may testify as to his or her opinion about whether such beverage is an alcoholic beverage.~~

~~—CITY COUNCIL. The City Council of the City of Palm Bay, Florida.~~

~~—COMMERCIAL BODILY CONTACT.~~

~~—(1) The manipulation, washing, scrubbing, stroking, or touching, for commercial or pecuniary gain, of the body of another person directly, or indirectly through a medium or using any object, instrument, substance, or device between a worker and a customer.~~

~~—(2) The following persons engaged in the bona fide performance of the following activities shall not be deemed to be engaging in commercial bodily~~

~~contact for the purposes of this chapter when they are engaged in the bona fide practice of their occupation or profession:~~

~~—— (a) Persons licensed as a massage therapist or apprentice massage therapist pursuant to Fla. Stat. Chapter 480, when providing massage services in an establishment licensed under Fla. Stat. Chapter 480;~~

~~—— (b) Persons licensed under the laws of the state to practice medicine, surgery, osteopathy, chiropractic, naturopathy, or podiatry;~~

~~—— (c) Persons licensed under the laws of the state as a physician's assistant or nurse;~~

~~—— (d) Persons holding a drugless practitioner's certificate under the laws of the state;~~

~~—— (e) Persons licensed as barbers or cosmetologists under the laws of the state;~~

~~—— (f) Persons performing authorized services in a hospital, nursing home, sanitarium, adult congregate living facility, group home, day care center, or similar place of business when owned and operated in accordance with the laws of the state;~~

~~—— (g) Persons who are instructors, coaches, or athletic trainers employed by, or on behalf of, any professional, amateur, Olympic, or similar athletic team engaging in bona fide athletic events, or when employed by a governmental entity or a bona fide educational institution; or~~

~~—— (h) Persons licensed as physical therapists under the laws of the state.~~

~~—COMMERCIAL BODILY CONTACT ESTABLISHMENT. Any establishment, business, or place operated for commercial or pecuniary gain or where for any form of consideration workers or customers engage in commercial bodily contact or any establishment, business or place any portion of which is set aside, advertised, promoted or used as a place where commercial bodily contact occurs or which is described or depicted as a "body scrub salon," "body wash salon," or "body relaxation salon."~~

~~—COMMERCIAL or PECUNIARY GAIN. Operated for commercial or pecuniary gain shall be presumed for any establishment which has received a business tax receipt. For the purposes of this chapter, operation for commercial or pecuniary gain shall not depend on actual profit or loss. An establishment which has a business tax receipt or an establishment which advertises itself as a type of adult~~

~~entertainment establishment shall be presumed to be operated for commercial or pecuniary gain.~~

~~—COMMERCIAL ESTABLISHMENT. Any business, location, or place which conducts or allows to be conducted on its premises any activity for commercial or pecuniary gain.~~

~~—CONVICTION. A determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.~~

~~—CUSTOMER.~~

~~—(1) Any person present at an adult entertainment establishment or sexually-oriented business, other than operators or workers, regardless of whether the person has given or paid any consideration to be present at the adult entertainment establishment or sexually-oriented business and regardless of whether the person has paid any money for goods or services at or to the adult entertainment establishment or sexually-oriented business; or~~

~~—(2) Any person, excluding a worker or operator, who has paid, or has offered, agreed, been solicited, or had someone else offer or agree on that person's behalf to pay any consideration, fee, or tip to an operator or worker of an adult entertainment establishment or sexually-oriented business.~~

~~—EDUCATIONAL INSTITUTION. A premises or site upon which there is an institution of learning for minors, whether public or private, which conducts regular classes and/or courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Secondary Schools, or the Florida Council of Dependent Schools. The term EDUCATIONAL INSTITUTION includes a premises or site upon which there is a nursery school, kindergarten, elementary school, junior high school, senior high school, Charter school, or any special institution of learning, a vocational institution, professional institution, an institution of higher education, a community college, junior college, four (4) year college or university.~~

~~—ENTITY. Any proprietorship, partnership, corporation, limited liability company, association, business trust, joint venture, joint stock company or other for profit and/not for profit organization by whatever name, title or description.~~

~~—ESCORT. Any person who, for commercial or pecuniary gain, compensation or tips, agrees to, offers to go, or goes to any place, including, but not limited to, a~~



~~business, hotel, motel, residence, boat, vessel, motor vehicle, or other mode of transportation to do any of the following acts:~~

- ~~— (1) Act as a companion or date for, or converse with a customer;~~
- ~~— (2) Engage in commercial bodily contact with another person;~~
- ~~— (3) Engage in a private performance;~~
- ~~— (4) Engage in adult modeling or act as an adult model;~~
- ~~— (5) Display specified anatomical areas, strip naked, or go topless; or~~
- ~~— (6) Engage in any specified sexual activity.~~

~~— Nothing in this definition shall be construed to legalize prostitution or other conduct prohibited by this Code or other law. Workers of a licensed adult-performance establishment for whom worker records are maintained pursuant to this chapter are excluded from the definition of escort when engaged in the expressive display of specified anatomical areas at a licensed adult-performance establishment.~~

~~— An escort who is a paid employee type worker of an escort service for whom taxes and social security payments are withheld and paid by the escort service, and who is not an independent contractor, is not required to obtain his or her own sexually-oriented business license for activities conducted pursuant to employment with the escort service.~~

~~— ESCORT SERVICE. A person, business, establishment, or place operated for commercial or pecuniary gain, which advertises as an "escort", "escort service" or "escort agency" or otherwise offers or advertises that it can furnish escorts, a private performance, or adult models; or offers or actually provides, arranges, dispatches, or refers workers or themselves to act as an escort or engage in a private performance for a customer. An affirmative defense to an allegation that any person, business or establishment or entity is acting as an escort service is that it is a bona fide dating or matching service which arranges social matches or dates for two (2) persons who each wish to meet a compatible companion when neither of said persons solicits, accepts, or receives any financial gain or any monetary tip, consideration, or compensation for the meeting or date is not an escort service.~~

~~— ESTABLISHMENT. Any place, site, or premises, or portion thereof, upon which any person, corporation, or business entity of any type conducts activities or operations for commercial or pecuniary gain including, but not limited to, any place,~~

~~site or premises from where an escort service dispatches or refers workers to other locations or at which an escort service receives business calls from customers.~~

~~—LAW ENFORCEMENT OFFICER. An officer who is on official duty for any law enforcement agency.~~

~~—LICENSEE. Any person, corporation, partnership, or other entity whose application for an adult entertainment establishment or sexually-oriented business license has been granted and any person, corporation, partnership or other entity who owns or operates or controls the establishment or business.~~

~~—OPERATOR. Any person who engages in or performs any activity which is necessary to or which facilitates the operation of a sexually-oriented business or an adult entertainment establishment including, but not limited to, the licensee, manager, owner, doorman, bouncer, bartender, disc jockey, sales clerk, ticket taker, movie projectionist, DVD operator, dispatcher, receptionist, attendant or supervisor.~~

~~—PARK. A tract of land within any jurisdiction which is kept for ornament or recreation and which is maintained as public property including, but not limited to, a playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land.~~

~~—PERSON. Includes, but is not limited to, an individual, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, limited liability companies and any and all other similar entities and all officers, directors and principal stockholders of such associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations or other similar entities.~~

~~—PRIVATE PERFORMANCE. Modeling, posing, or the display or exposure of any specified anatomical area by a worker to a customer while the customer is in an area not accessible during such display to all other persons in the establishment or, while the customer or worker is in an area which is not on the premises of the establishment, or in which the customer or worker is totally or partially screened or partitioned during such display from the view of persons outside of the area.~~

~~—SEXUAL ENCOUNTER BUSINESS.~~

~~—(1) Any person or entity which for any form of consideration or remuneration or which charges an admission fee and provides a place for the purpose of~~

~~providing, encouraging or allowing three (3) or more persons to engage in any specified sexual activity among themselves or with other persons.~~

~~— (2) The following shall be presumed not to be a sexual encounter business:~~

~~— (a) A bona fide private club whose membership as a whole engages in social nudism or naturalism as in a nudist resort or camp and at which specified sexual activities do not occur;~~

~~— (b) A state licensed sexual therapist; or~~

~~— (c) A bona fide hotel or motel licensed by the state.~~

~~— SEXUALLY-ORIENTED BUSINESS. A commercial bodily contact establishment, escort service, or sexual encounter business. A business shall be a sexually-oriented business, whether services are provided on the premises of an establishment or on an out-call basis at any other place and regardless of whether such business is licensed under this chapter. A business with a sexually-oriented business license shall be presumed to be a sexually-oriented business. An individual operating a sexually-oriented business is subject to the provisions of this chapter notwithstanding the fact that services are being provided at or from a residence, motor vehicle, vessel or any other location and a license pursuant to this chapter is required unless the individual is a paid employee for whom taxes and social security payments are withdrawn and paid by the licensed establishment, worker records are maintained, and the individual is not an independent contractor.~~

~~— POLICE CHIEF. The Chief of Police of the City of Palm Bay, Florida.~~

~~— SPECIFIED ANATOMICAL AREAS. Editor's note: The source of definitions of terms used below is The New Webster's Medical Dictionary (Bolander, 1991). The definitions of terms are a material part of this chapter and apply to the use of the term each time it is used in this chapter.~~

~~— (1) Any of the following:~~

~~— (a) The male or female genitals;~~

~~— (b) The male or female pubic area;~~

~~— (c) The vulva;~~

~~— (d) The anus;~~

~~— (e) The penis;~~

- ~~—— (f) The scrotum;~~
- ~~—— (g) The cleavage of the buttocks;~~
- ~~—— (h) The buttocks;~~
- ~~—— (i) The anal cleft;~~
- ~~—— (j) The anal cleavage;~~
- ~~—— (k) The areola on the breast of a female;~~
- ~~—— (l) The nipple on the breast of a female; or~~
- ~~—— (m) The female breast below a line immediately above the top of the areola said line running horizontal across the top of the entire breast, but shall not include any portion of the cleavage between the human female breasts typically exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided that the areola is not exposed;~~

~~—— (2) Body paint, body dyes, tattoos, liquid latex whether wet or dried, dental floss, G-Strings, thongs, and similar coverings shall not be considered an opaque covering.~~

~~—— SPECIFIED CRIMINAL ACT.~~

- ~~—— (1) A violation of this chapter;~~
- ~~—— (2) Any felony not otherwise specified in this definition;~~
- ~~—— (3) An offense under Fla. Stat. Chapter 794, (Sexual Battery);~~
- ~~—— (4) An offense under Fla. Stat. Chapter 796, (Prostitution);~~
- ~~—— (5) An offense under Fla. Stat. Chapter 800, (Lewdness; Indecent Exposure);~~
- ~~—— (6) An offense under Fla. Stat. Chapter 826, (Bigamy; Incest);~~
- ~~—— (7) An offense under Fla. Stat. Chapter 847, (Obscene Literature; Profanity);~~
- ~~—— (8) An offense under Fla. Stat. Chapter 775, §§ 775.21 et.seq. (Sexual Predators Act); or~~
- ~~—— (9) An offense against an analogous federal statute.~~

~~—— SPECIFIED SEXUAL ACTIVITIES. Editor's note: The sources of definitions of terms used below are (1) Taber's Cyclopedic Medical Dictionary, T.A. Davis Co., Philadelphia, 1997 (ed. 18); (2) Oxford Dictionary of the English Language (multi-volume); (3) Florida Statutes. The definitions of terms are a material part of this chapter and apply to the use of the term each time it is used.~~

~~—(1) Human genitals in a state of sexual stimulation, arousal or tumescence;~~

~~—(2) Acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellatio, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sapphism, sexual intercourse, sodomy, urolagnia, or zoöerasty;~~

~~—(3) Fondling or other touching of human genitals, pubic region, any part of the buttocks, anus or female breast;~~

~~—(4) Oral, anal, or vaginal penetration by, or union with, the sexual organ or any other part of the body of another;~~

~~—(5) Anal or vaginal penetration of another or oneself with any object;~~

~~—(6) The handling or fondling of the sexual organ of another for the purpose of masturbation directly or through a medium; or~~

~~—(7) Excretory functions as part of or in connection with any of the activities set forth in divisions (1) through (6) above.~~

~~—STRADDLE DANCE.~~

~~—(1) The use by a worker of any part of his or her body to touch the genital or pubic area of another person, or the touching of the genital or pubic area of any worker by another person; or the straddling of the legs of a worker over any part of the body of a customer at the establishment, regardless of whether there is a touch or touching; or the use by a worker, of any part of his or her body to touch the genital, pubic region, buttock, anus or female breast of another person while at the establishment, or the touching of the genital, pubic region, buttock, anus or female breast of any worker by a customer while at the establishment.~~

~~—(2) Conduct shall be a STRADDLE DANCE regardless of whether the "touch" or "touching" occurs while the worker is displaying or exposing any specified anatomical area.~~

~~—(3) Conduct shall also be a STRADDLE DANCE regardless of whether the "touch" or "touching" is direct or through a medium.~~

~~—(4) The terms "lap dance," "table dance," and "face dance" are included within the term STRADDLE DANCE.~~

~~—WORKER. A person who works, performs, or provides services at an adult entertainment establishment or at or for a sexually-oriented business, irrespective of whether said person is paid a salary or wage and shall include, but is not limited~~

~~to, employees, independent contractors, subcontractors, lessees, or sub-lessees who work or perform at an adult entertainment establishment or at or for a sexually-oriented business. An operator is a type of worker.~~

## **REGULATORY PROVISIONS**

### **~~§ 173.010 OBSCENITY; INDECENT EXPOSURE UNLAWFUL.~~**

~~—As a matter of state and federal law, obscenity is unlawful in the city. Likewise, state law prohibits indecent exposure. Nothing in this chapter shall be construed to allow or permit the possession, distribution and transportation of obscene materials; to authorize the exposing of persons under eighteen (18) years of age to motion pictures, exhibitions, shows, representations and presentations of specified sexual activities or persons displaying or exhibiting specified anatomical areas; or the indecent exposure of a person as prohibited by state law.~~

### **~~§ 173.011 NOTICE.~~**

~~—Any notice required under this chapter shall, unless otherwise provided in this chapter, be accomplished by posting upon the subject premises and sending a written notification by certified mail to the mailing address set forth on the application for the license or a permit. This mailing address shall be considered the correct mailing address unless the City Manager or his or her designee has been otherwise notified in writing.~~

### **~~§ 173.012 LICENSE REQUIRED.~~**

~~—(A) Requirement. It is unlawful for any person to operate or to be an operator of or worker at a sexually-oriented business or an adult entertainment establishment which has not first obtained a license which is applicable for said establishment or business pursuant to this chapter; or to continue to operate or be an operator of or worker at a sexually-oriented business or an adult entertainment establishment where that person knows or has reason to know that the license of the establishment or business is under suspension, has been revoked or has lapsed. The operation of a sexually-oriented business or an adult entertainment establishment without a valid license, where applicable, is unlawful and shall be grounds for the closing of the establishment or business upon a finding of fact by a court or other body with proper jurisdiction that the establishment does not have a valid license.~~

~~—(B) Licensing office. Unless the City Manager designates in writing an office to administer the provisions of this chapter, he or she shall serve as the licensing office. The City Manager may modify his or her designation from time to time in~~

~~writing. When the phrase "City Manager or his or her designee" is used in this chapter, the designee referred to shall be the office designated in writing pursuant to this division.~~

~~—(C) Classifications. Adult entertainment establishment and sexually-oriented business licenses referred to in this chapter shall be classified as follows:~~

- ~~—(1) Adult bookstore/adult video store;~~
- ~~—(2) Adult performance establishment;~~
- ~~—(3) Adult motel;~~
- ~~—(4) Adult theater;~~
- ~~—(5) Commercial bodily contact establishment; or~~
- ~~—(6) Escort service.~~

~~—(D) Single license/single classification of license. Only one (1) license may be issued for a location and only under a single classification.~~

#### **~~§ 173.013 LOCATION GENERALLY.~~**

~~—Locations of all sexually-oriented businesses and adult entertainment establishments within the city shall comply with the provisions of this chapter, and all sexually-oriented businesses and adult entertainment establishments shall be subject to the restrictions enumerated in this Code.~~

#### **~~§ 173.014 RESPONSIBILITIES OF OTHER OFFICES AND DEPARTMENTS.~~**

~~—The City Council is the legislative branch of the City of Palm Bay government. Ultimate responsibility for the administration of this chapter is vested in the City Manager or his or her designee as set forth in this chapter. Other departments having responsibility under this chapter are as follows:~~

~~—(A) The Finance Department is responsible for granting, denying, revoking, renewing, suspending and canceling business tax receipts in accordance with state law.~~

~~—(B) The Police Chief is responsible for verifying information contained on applications for inspecting proposed or existing adult entertainment establishments and sexually-oriented businesses in order to ascertain compliance with applicable criminal statutes and ordinances including, but not limited to, those set forth in this chapter, for determining whether license applicants have been convicted of a felony or a specified criminal act within the previous five (5) years~~

~~and for enforcing applicable criminal statutes and ordinances including, but not limited to, those set forth in this chapter. The Police Chief is responsible for keeping all information processed by each application and his or her department will serve as a document repository for inspection of any information by any applicant.~~

~~—(C) The Building Official is responsible for inspecting establishments in order to ascertain compliance with all applicable building codes, statutes, ordinances and regulations.~~

~~—(D) The Fire Chief is responsible for inspecting establishments and businesses in order to ascertain compliance with all applicable fire codes, statutes, ordinances and regulations.~~

~~—(E) The Growth Management Department is responsible for ascertaining whether the location of proposed sexually-oriented businesses or adult entertainment establishments comply with all separation, distance, zoning and location requirements of the Land Development Regulations of the City of Palm Bay and whether compliance with all applicable zoning regulations and land use laws is maintained.~~

#### **~~§ 173.015 LICENSE APPLICATION AND APPLICATION FEE.~~**

~~—Any person desiring to engage in the business of operating an adult entertainment establishment or a sexually-oriented business shall file with the City Manager or his or her designee a sworn application on forms supplied by the city. The application shall contain the information and documents as provided in this chapter and shall be accompanied by an application fee as established in this chapter. The application shall be signed by the applicant and verified by the applicant before an officer authorized to take oaths and acknowledgments.~~

#### **~~§ 173.016 ADVERTISING.~~**

~~—(A) Advertisements, displays or other promotional materials for any adult entertainment establishments, except as authorized and described within this section, shall not be shown or exhibited so as to be visible to the public from any street, sidewalk or other public place.~~

~~—(B) This shall not prohibit the use of a sign displaying the name of the business on the business premises as regulated by this section.~~

~~—(C) Except as provided in this section, such signs shall be subject to any sign ordinance currently existing in the city.~~



~~—(D) A sign shall not contain any flashing lights, photographs, silhouettes, drawings or pictorial representations of any type or manner and shall be limited in content as follows:~~

~~—(1) The name of the establishment;~~

~~—(2) One (1) or more of the following applicable phrases:~~

~~—(a) "Adult Bookstore."~~

~~—(b) "Adult Theater."~~

~~—(c) "Adult Dancing Establishment."~~

~~—(d) "Adult Motel."~~

~~—(e) "Adult Entertainment."~~

~~—(f) "Movie Titles Posted Within Premises."~~

~~—(g) Food or drink specials, show times, welcome notices, and names of entertainers;~~

~~—(3) No sign shall include the words "nude," "nudity," "naked," "topless," "go-go" or "dancers," or words including slang substitutes or materials depicting, describing or relating to "specified anatomical areas of the human body" or "specified sexual activities" as defined in this chapter;~~

~~—(4) Each letter forming a word on a sign shall be of a solid color, and each such letter shall be the same print type, size and color. The background behind such lettering on the display surface shall be of a uniform solid color; and~~

~~—(5) Any changeable copy sign or portable or temporary advertisement for an adult entertainment establishment shall be brought into immediate compliance with the restrictions of this section.~~

#### **~~§ 173.017 CONTENTS OF APPLICATION.~~**

~~—(A) The completed application shall be accompanied by the following documents and shall be accompanied by a non-refundable application fee of \$500 which shall be used to defray the costs of the application review process by various offices and departments; provided, however, that the unused portion of the fee after deducting the costs associated with processing the fee shall be applied as a credit toward the annual license fee for licensing under this chapter.~~

~~—(B) If the applicant is:~~

~~—(1) An individual, the individual shall state his or her legal name to include any and all aliases, residential street address, residential telephone number, an address where all correspondence from the city should be mailed, and submit proof that he or she is eighteen (18) years of age or older by providing a copy of a valid driver's license, voter's registration card or another state issued identification card; or a certified copy of a birth certificate;~~

~~—(2) A partnership or trust, the partnership or trust shall state its complete name, and the names, residential street addresses, and telephone numbers of all partners, whether the partnership is general or limited or trustees, the name and residential street address of at least one (1) person authorized to accept service of process and, if in existence, a copy of the partnership agreement;~~

~~—(3) A corporation, the corporation shall provide a copy of its articles of incorporation stating its complete name, the date of its incorporation, evidence that the corporation is in good standing, the names, residential street addresses, telephone numbers and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the legal street address of the registered office for service of process;~~

~~—(4) A limited liability company, the company shall provide a copy of its articles of organization and operating agreement stating its complete name, the date of its organization, evidence that the company is in good standing, the names, residential street addresses, telephone numbers and capacity of all members, including its managing member(s), and the name of the registered corporate agent and the legal street address of the registered office for service of process; or~~

~~—(5) Any other entity, the entity shall state its complete name, the date of formation, the names, residential address, telephone numbers and capacity of all principal owners, and the name and residential street address of one (1) person authorized to accept service of process.~~

~~—(C) If the applicant intends to conduct activities in the establishment or business under a name other than that of the applicant, the applicant shall state the establishment's or business' fictitious name or names and the county of registration under Fla. Stat. § 865.09, or its successor and all business names and telephone numbers to be used by the establishment or business.~~

~~—(D) The applicant shall state whether the applicant or any of the other individuals listed on the application has, within the five (5) year period immediately preceding the date of the application, been convicted of a specified criminal act,~~

and, if so, the specified criminal act involved, the date of conviction and the place of conviction.

~~—(E) The applicant shall state whether the applicant or any of the other individuals listed pursuant to division (B) of this section has had a previous license under this chapter, or Chapter 110 of the Code of Ordinances, suspended or revoked including the name and location of the establishment for which the license was suspended or revoked, the date of the suspension or revocation, and whether the applicant or any other individuals listed pursuant to division (B) of this section has been a partner in a partnership or an officer, director or principal stockholder of a corporation, or a managing member or member of a limited liability company whose license under this chapter has previously been suspended or revoked including the name and location of the establishment for which the license was suspended or revoked, or has been a member, officer, director or managing member of a limited liability company whose license under this chapter has previously been suspended or revoked including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation.~~

~~—(F) The applicant shall state whether the applicant or any other individuals listed pursuant to division (B) of this section holds any other licenses under this chapter and, if so, the names and locations of such other licensed establishments.~~

~~—(G) The applicant shall state the single classification of license for which the applicant is filing. No applicant shall apply for more than one (1) classification in one (1) location.~~

~~—(H) The applicant shall state the location of the proposed establishment or business including a street address, the name and address of the real property owner of the site, a notarized statement of consent from the real property owner authorizing a sexually-oriented business or adult entertainment establishment on the site, and a legal description of the property on which the establishment is to be located.~~

~~—(I) The applicant shall provide the names of the workers for the proposed establishment or business, if known, or, if presently unknown a statement to that effect.~~

~~—(J) The applicant shall submit a plan drawn to appropriate scale of the proposed licensed premises indicating the areas to be covered by the license, all windows, doors, entrances and exits and the fixed structural features, walls, stages,~~

~~partitions, projection booths, admission booths, adult booths, concession booths, stands, counters and similar structures of the establishment or business to which the proposed license pertains. The term "fixed structural features" shall include immovable partitions and counters and similar structures that are intended to be permanent.~~

~~—(K) The applicant shall provide a mailing address, and, if different, a designated return address where all future correspondence from the city may be sent and the applicant's telephone number where communications and inquiries can be made.~~

~~—(L) The applicant shall provide a recent color photograph of the applicant in passport size if an individual and of each officer, director and principal stockholder if a partnership, corporation or other similar entity.~~

~~—(M) The applicant shall provide the weight, height, color of eyes, date of birth and gender of the applicant if an individual and of each officer, director and principal stockholder or owner if a partnership, corporation or other similar entity.~~

~~—(N) The applicant shall provide the applicant's Social Security account number or employer's tax identification number and either the applicant's drivers license number or the number of a federal or state issued identification card if an individual and of each officer, director and principal stockholder or owner if a partnership, corporation or other similar entity.~~

~~—(O) The applicant shall provide a complete set of the applicant's fingerprints if an individual and of each officer, director and principal stockholder or owner if a partnership, corporation or other similar entity.~~

~~—(P) The applicant shall provide a copy of the most recent lease or deed of conveyance, whichever is applicable, indicating the applicant's interest in the proposed establishment.~~

~~—(Q) The applicant shall provide a statement of the hours of operations of the establishment or business.~~

~~—(R) The applicant shall provide a notarized statement that the applicant has complied with the applicable laws of Florida relating to corporations, partnerships and fictitious names.~~

~~—(S) It is unlawful for any person applying for an adult entertainment establishment or sexually-oriented business license to make a false statement which is intended to facilitate the issuance of a license or to provide false information which is intended to facilitate the issuance of a license.~~

**~~§ 173.018 CONTINUING DUTY; FALSE OR MISLEADING INFORMATION.~~**

~~—(A) Each applicant shall be under a continuing duty and obligation to disclose to the City Manager or his or her designee any and all changes or alterations in the information or disclosures required by this chapter. It is the duty of each applicant to correct changed, false or erroneous information provided in an application. It is unlawful for an applicant to fail to disclose changes in information provided or to fail to correct false or erroneous information given in an application immediately upon the applicant knowing or being in such a position that he or she should have known that the information provided has changed or was false or erroneous when provided.~~

~~—(B) It is unlawful for any person applying for an adult entertainment establishment or sexually-oriented business license to make a false or misleading statement or provide false or misleading information which is intended to facilitate the issuance of a license.~~

**~~§ 173.019 CONSENT.~~**

~~—By applying for a license under this chapter, the applicant shall be deemed to have been provided a copy of this chapter, to understand it by having the opportunity to have consulted with counsel or otherwise, and to have consented to the provisions of this chapter.~~

**~~§ 173.020 INVESTIGATION OF APPLICATION.~~**

~~—Upon receipt of an application properly filed with the City Manager or his or her designee and upon payment of the non-refundable application fee, the application shall be time and date stamped and a copy of the application shall be forwarded to the Police Chief, the Fire Chief, the Building Official, and the Growth Management Department. Each recipient entity shall promptly conduct an investigation of the applicant, application and the proposed establishment within fifteen (15) days from the date that the application was filed. At the conclusion of its investigation, each recipient entity shall indicate to the City Manager or his or her designee its investigative findings relating to the application and the reasons therefor.~~

**~~§ 173.021 ISSUANCE OR DENIAL OF LICENSE.~~**

~~—(A) Upon the completion of the investigation and a review of the application as required, upon determination that the applicant meets the requirements of this chapter, and upon payment of the appropriate license fee by the applicant, the City~~

~~Manager or his or her designee shall within thirty (30) days of the application being filed issue the license.~~

~~—(B) If after review and investigation as provided herein the City Manager or his or her designee determines that one (1) or more of the reasons for denial set forth in § 173.022 exist, the application shall be denied, within thirty (30) days of the date that the application is filed, and the City Manager or his or her designee shall issue a written and dated notice of the denial and the reasons therefor. A copy of the notice shall be sent to the applicant by certified mail to the designated return address on the application within five (5) days of the date of denial.~~

~~—(C) The denial of an application shall be final. No further exhaustion of administrative remedies shall be necessary for judicial review of the administrative action.~~

~~—(D) An applicant whose application is denied may immediately appeal as a matter of right to a court of competent jurisdiction, which court shall promptly review said application.~~

#### **~~§ 173.022 REASONS FOR DENIAL OF APPLICATION OF LICENSE.~~**

~~—The application for a license shall be denied if one (1) or more of the following reasons is found:~~

~~—(A) The application does not comply with the requirements of this chapter and/or statutes expressly made applicable to adult entertainment establishments and sexually-oriented businesses such as Fla. Stat. § 847.0134.~~

~~—(B) The application contains material false information.~~

~~—(C) The applicant or any of the individuals stated in § 173.017 has a license under this chapter which is under suspension.~~

~~—(D) The applicant or any of the individuals stated in § 173.017 is or was at the time of suspension an officer, director, managing member, or majority stockholder in an entity who has a license under this chapter which is under suspension.~~

~~—(E) The applicant or any of the individuals stated in § 173.017 had a license under this chapter which had been revoked within the preceding two (2) years.~~

~~—(F) The applicant or any of the individuals stated in § 173.017 is or was at the time of suspension an officer, director, managing member, or principal stockholder in an entity who had a license under this chapter which had been revoked within the preceding two (2) years.~~

**~~§ 173.023 REAPPLICATION AFTER DENIAL.~~**

~~—The applicant may not reapply for a license for a period of nine (9) months from the date of denial unless there has been an intervening change in the circumstances which may lead to a different decision regarding the former reason(s) for denial.~~

**~~§ 173.024 ANNUAL LICENSE FEE.~~**

~~—(A) There shall be collected under this chapter annual license fees for the following classifications of adult entertainment establishments and sexually-oriented businesses:~~

- ~~—(1) Adult bookstore/adult video store, three hundred dollars (\$300.00);~~
- ~~—(2) Adult theater, three hundred dollars (\$300.00);~~
- ~~—(3) Adult performance establishments, three hundred fifty dollars (\$350.00);~~
- ~~—(4) Adult motel, three hundred dollars (\$300.00);~~
- ~~—(5) Commercial bodily contact establishment, three hundred dollars (\$300.00); and~~
- ~~—(6) Escort service, three hundred dollars (\$300.00).~~

~~—(B) The annual license fees are declared regulatory in nature, collected for the purpose of examination and inspection of adult entertainment establishments and sexually-oriented businesses under this chapter and the administration thereof. These regulatory fees are in addition to, and not in lieu of, the business taxes imposed by the Palm Bay City Code or state law and other land development regulations or regulatory fees associated with general commercial activities and locations.~~

**~~§ 173.025 CONTENTS OF LICENSE, TERM OF LICENSE, RENEWALS, EXPIRATION, LAPSE.~~**

~~—(A) Contents. An adult entertainment establishment or sexually-oriented business license shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the classification of the license, the date of issuance, and the date of expiration.~~

~~—(B) Term. All licenses issued under this chapter shall be annual licenses which shall commence running on October 1, on which date they shall have been paid for, and shall expire on September 30 of the following year. If a license is issued after October 1, but by March 31 of the following year, the applicant shall pay the~~

~~appropriate license fee in full. If a license is issued after March 31, but by October 1 of the same year, the applicant shall pay one-half (1/2) the appropriate license fee.~~

~~—(C) Expiration/renewal/lapse. Each license shall expire on September 30 of each year and may be renewed only by making an application for a license in accordance with the provisions of this chapter. Applications for renewal shall be made at least thirty (30) days before the expiration date of the license. Failure to make application at least thirty (30) days before the expiration date will not suspend the expiration of the license. If the application for a renewal is denied, the applicant may immediately appeal to a court of competent jurisdiction, which court shall provide prompt judicial review of said appeal.~~

#### **~~§ 173.026 RECORDS AND REPORTS.~~**

~~—Each licensee shall keep such records and make such reports as may be required by this chapter.~~

#### **~~§ 173.027 TRANSFER OF LICENSE.~~**

~~—It is unlawful for a licensee to transfer his, her or its license to another person or entity or surrender possession, control, and operation of the licensed establishment to such other person or entity unless the licensee and the transferee have fully complied with the licensing and all other provisions of this chapter.~~

#### **~~§ 173.028 ESTABLISHMENT NAME CHANGE.~~**

~~—(A) It is unlawful for a licensee to change the name of an adult entertainment establishment or sexually-oriented business unless and until the following requirements are satisfied:~~

~~—(1) The City Manager or his or her designee is given thirty (30) days' notice in writing of the proposed name change;~~

~~—(2) The change of name fee in the amount of three dollars (\$3.00) is paid;~~

~~—(3) The licensee has complied with Fla. Stat. § 865.09;~~

~~—(4) The licensee has complied with the provisions of Fla. Stat. Chapter 607; and~~

~~—(5) The licensee has complied with the provisions of Fla. Stat. Chapter 620.~~

#### **~~§ 173.029 SUSPENSION AND REVOCATION OF LICENSE.~~**



~~—The City Manager or designee shall suspend a license when he or she or designee determines that any one (1) of the following has occurred:~~

~~—(A) For purposes of this section, the term "violation" shall mean an incident having occurred at, or by, an adult entertainment establishment or sexually-oriented business which is prohibited by the provisions of this chapter or made unlawful by Fla. Stat. Chapters 561, 562, 563, 564, 565, 794, 796, 800, 826, 827, 847, 893 or 895, and § 775.21 or an analogous federal statute.~~

~~—(B) Inspection of records and premises. In the event that the City Manager or his or her designee determines that the licensee or an operator at or of the licensee has refused to allow any inspection of records or premises as required by this chapter, the City Manager or his or her designee may suspend the license for a period not to exceed thirty (30) days.~~

~~—(C) Illegal activity/suspension:~~

~~—(1) In the event three (3) or more violations occur within a two-year period, and convictions result from at least three (3) of the violations, the City Manager or his or her designee shall, upon the date of the third conviction, notify the licensee that the license shall be suspended for a period of thirty (30) days unless good cause is shown in accordance with this chapter, that the violations have not occurred. For purposes of calculating this two (2) year period, the two (2) year period shall be deemed to be those twenty-four (24) months occurring immediately prior to the violation occurrence date for which the thirty (30) day suspension is sought.~~

~~—(2) In the event one (1) or more violations occur within a two (2) year period from the date of the last violation occurrence date from which the conviction resulted in a thirty (30) day suspension pursuant to division (C)(1) above, but not including any time during which the license was effectively suspended, and a conviction results from one (1) or more of the violations, the City Manager or his or her designee shall, upon the date of the latest conviction, provide notice to the licensee that the license shall be suspended for a period of ninety (90) days unless good cause is shown in accordance with this chapter that the violation has not occurred.~~

~~—(3) In the event one (1) or more violations occur within a two (2) year period from the date of the last violation occurrence date from which the conviction resulted in a ninety (90) day suspension pursuant to division (C)(2) above, but not including any time during which the license was effectively suspended, and a~~

~~conviction results from one (1) or more of the violations, the City Manager or his or her designee shall, upon the date of the latest conviction, provide notice to the licensee that the license shall be suspended for a period of one hundred eighty (180) days unless good cause is shown in accordance with this chapter that the violation has not occurred.~~

~~—(D) Revocation. The City Manager or his or her designee shall revoke a license when he or she or designee determines that any one (1) of the following has occurred:~~

~~—(1) There has been one (1) or more violations that have occurred within a two (2) year period from the date the last violation occurrence date from which the conviction resulted in a one hundred eighty (180) days suspension pursuant to division (C)(3) of this section, but not including any time during which the license was effectively suspended, and a conviction results from one (1) or more of the violations, the City Manager or his or her designee shall, upon the date of the latest conviction, provide notice to the licensee that the license shall be revoked unless good cause is shown in accordance with this part that the violation has not occurred.~~

~~—(2) The licensee or any person on its or his or her behalf or any person listed on the application pursuant to § 173.017 gave false or misleading information in the material submitted during the application process.~~

~~—(3) The licensee or any person on its or his or her behalf or any person listed on the application pursuant to § 173.017 has knowingly allowed possession, use, or sale of controlled substances on the premises of the establishment or business or when with a customer.~~

~~—(4) The licensee or any person on its or his or her behalf or any person listed on the application pursuant to § 173.017 has knowingly allowed prostitution on the premises of the establishment or business or when with a customer.~~

~~—(5) The licensee or any person on its or his or her behalf or any person listed on the application pursuant to § 173.017 knowingly operated the adult entertainment establishment or sexually-oriented business during a period when the licensee's license was suspended.~~

~~—(6) Except in the case of an adult motel, the licensee or any person on its or his or her behalf or any person listed on the application pursuant to § 173.017 has knowingly allowed any specified sexual activities to occur on the premises of the establishment or business.~~

~~—(E) Effective dates of suspensions and revocations.~~

~~—(1) Except as otherwise provided in this chapter, all periods of suspension and revocation shall become effective fifteen (15) days after the City Manager or his or her designee posts the notice of suspension or revocation at the licensee's establishment, or on the date that the licensee turns in his, her or its license, whichever happens first.~~

~~—(2) The suspension or revocation shall be abated in the event that the licensee files a timely challenge to the suspension or revocation in accordance with the procedures set forth in this chapter or upon order of a court of competent jurisdiction.~~

~~—(3) If an adult entertainment establishment or sexually-oriented business license is revoked for the first time, the licensee shall not be issued another adult entertainment establishment or sexually-oriented business license for a period of two (2) years running from the date the revocation actually takes effect after all abatement periods have lapsed.~~

~~—(4) If an adult entertainment establishment or sexually-oriented business license held by any of the entities or individuals listed in § 173.017 is revoked for the second time and the license is held by any one (1) or more of the entities or individuals holding the prior license, the licensee shall not be issued another adult entertainment establishment or sexually-oriented business license for a period of four (4) years running from the date the revocation actually takes effect after all abatement periods have lapsed.~~

~~—(5) If an adult entertainment establishment or sexually-oriented business license held by any of the entities or individuals listed in § 173.017 is revoked for a third time and the license is held by any one (1) or more of the entities or individuals holding the prior license, the licensee shall not be issued another adult entertainment establishment or sexually-oriented business license for a period of six (6) years running from the date the revocation actually takes effect after all abatement periods have lapsed.~~

~~—(F) Other remedies. Notwithstanding the provisions of this section, the city may pursue any and all other available remedies through any and all other available processes and procedures available to correct violations of city codes. Included within such remedies are the enforcement actions set forth in this chapter, actions in a court of competent jurisdiction for injunctive or other appropriate relief, criminal prosecution, code enforcement proceedings, the issuance of citations, the~~

~~suspension or revocation of permits relating to health or safety matters, and any and all other remedies available under the laws of the state and the United States.~~

**~~§ 173.030 SUSPENSION AND REVOCATION PROCEEDINGS.~~**

~~—(A) Challenge to suspension or revocation. If the City Manager or his or her designee notifies a licensee in writing of the pending suspension or revocation of a license as provided in § 173.021, then the suspension or revocation shall become final and effective fifteen (15) days after mailing to the licensee's record address, posting at the licensed establishment, or actual delivery of the notice to the licensee, unless within fifteen (15) days of the date of the notice of suspension or revocation the licensee first files with the City Manager or his or her designee a written response stating the reasons why the suspension or revocation is alleged to be in error or inappropriate and a written notice of intent to challenge the suspension or revocation requesting a hearing to determine whether the suspension or revocation will become effective. The suspension or revocation shall be abated in the event that a licensee files a timely challenge to the suspension or revocation in accordance with the procedures of this chapter or upon an order of a court of competent jurisdiction. A suspension or revocation already in effect, but not previously challenged in a suspension or revocation hearing, may be challenged in the same manner but is not abated during the proceedings.~~

~~—(B) Hearing on suspension or revocation. When a licensee files a written response and notice of intent to challenge a pending or existing suspension or revocation then a public hearing to determine if the pending suspension or revocation will become effective and final shall be held by a hearing officer appointed by the City Council. The City Manager or his or her designee shall notify the City Attorney and any appropriate city officers who shall schedule and provide notice of the hearing date and time.~~

~~—(1) Appointment, term and compensation of hearing officer:~~

~~—(a) Three (3) hearing officers shall be appointed by the City Council, and they shall be attorneys duly licensed to practice law in the state, who have practiced in the state for at least five (5) years.~~

~~—(b) Hearing officers shall be subject to removal with or without cause, by the City Council. Hearing officers shall not be considered to be city employees, although they may receive compensation for their services and also may be reimbursed for such travel, mileage and per diem expenses as may be authorized.~~

~~—— (c) Because only attorneys may hold the position of hearing officer, the City Council shall not be required to retain an attorney to represent the hearing officer.~~

~~—— (d) It shall be unlawful for a hearing officer to act as an agent or an attorney for a party involved in a determination under the provisions of this section or to be otherwise involved with any matter arising under this section which will come before the city during the term of the hearing officer's appointment. Further, a hearing officer shall not initiate or consider ex parte communications or other communications with any party of interest to a hearing officer concerning the substance of any proceeding to be heard by a hearing officer. However, the foregoing does not prohibit discussions between the hearing officer and city staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the application. If a person engages in an ex parte communication with the hearing officer, the hearing officer shall place on the record of the pending case all ex parte written communications received, all written responses to such communications, a memorandum stating the substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be entitled to do so but only if such party requests the opportunity for rebuttal within ten (10) days after notice of such communication. If he or she deems it necessary due to the effect of an ex parte communication received by him or her, the hearing officer may withdraw from the case and the City Council shall appoint another hearing officer to handle the case.~~

~~—— (e) Selection of hearing officer. The City Manager and licensee shall each have the right to eliminate one (1) of the three (3) hearing officers selected by the City Council. The one (1) hearing officer not eliminated by either party shall act as the hearing officer for the license revocation hearing. In the event licensee objects to all three (3) hearing officers, then the City Council shall choose the hearing officer from the list of three (3) hearing officers absent a showing of clear prejudice by the licensee.~~

~~—— (2) The hearing officer shall have the power to:~~

~~—— (a) Adopt rules for the conduct of the hearing;~~

~~—— (b) Subpoena licensees and witnesses to its hearings. Subpoenas may be served by the Police Department and/or other law enforcement agencies with jurisdiction to serve subpoenas;~~

~~—— (c) Subpoena evidence to its hearings;~~

~~—— (d) Administer oaths and take testimony under oath; and~~

~~—— (e) Issue an order having the force of law suspending or revoking the license.~~

~~—— (3) The suspension or revocation hearing shall be held within thirty (30) days of the City Manager's receipt of a written challenge and request for a hearing by the aggrieved licensee.~~

~~—— (4) The participants before the hearing officer shall be the licensee, any witnesses of the licensee, the City Manager or his or her designee and any witnesses of the City Manager or his or her designee. All witnesses shall provide their legal name, mailing addresses and telephone number.~~

~~—— (5) The procedures used shall be those typically used in a civil case with the City Manager or his or her designee having the burden of proof by clear and convincing evidence.~~

~~—— (6) Testimony and evidence may be submitted by any witness but shall be limited to matters directly relating to the grounds for suspension or revocation. Irrelevant, immaterial, or unduly repetitious testimony or evidence shall be excluded.~~

~~—— (7) All testimony shall be under oath. The hearing officer shall decide all questions of evidence, procedure and standing. All hearings shall be open to the public. Minutes shall be kept at all hearings. Unless otherwise mutually agreed to between the licensee and the City Manager or his or her designee, the order of presentation of testimony and evidence shall be as follows:~~

~~—— (a) The City Manager or his or her designee and any witnesses of the City Manager or his or her designee.~~

~~—— (b) The licensee and any witnesses of the licensee.~~

~~—— (c) Rebuttal witnesses from the City Manager or his or her designee.~~

~~—— (d) Rebuttal witnesses from the licensee.~~

~~—— (e) Summation by the City Manager or his or her designee.~~

~~—— (f) Summation by the licensee.~~

~~—— (8) The hearing officer may also call and question witnesses or request additional evidence as the hearing officer deems necessary and appropriate.~~

~~—(9) The city shall provide a hearing room and clerical staff as may be reasonably required by the hearing officer to conduct hearings and perform his or her duties.~~

~~—(10) Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence.~~

~~—(11) The licensee has the right, at his or her own expense, to be represented by an attorney at any hearing.~~

~~—(12) All testimony before the hearing officer shall be under oath and shall be recorded. The licensee or the city may cause a verbatim record of the proceedings to be made.~~

~~—(13) If the hearing officer comes to believe that any facts, claims, or allegations necessitate additional review or response by either the licensee or the City Manager or his or her designee, then the hearing officer may order the hearing continued until an announced date certain, not to exceed thirty (30) days from the date of continuance. The hearing officer shall render a final decision on the appeal within sixty (60) days of the City Manager's receipt of licensee's written notice of challenge.~~

~~—(14) Hearing officers may allow the parties to submit written proposed findings of fact and conclusions of law following the hearing and shall advise the parties of the timetable for so doing, if allowed.~~

~~—(15) At the conclusion of the hearing within the time prescribed herein, the hearing officer shall issue an order setting forth findings of fact, based on evidence of record, and issue conclusions of law regarding whether the suspension or revocation will become or remain effective, and shall render relief in the order affording the proper relief consistent with powers granted in this section.~~

~~—(C) Filing of decision. The original of the written decision of the hearing officer shall be filed with the City Clerk and copies shall be delivered or mailed to the licensee, the City Manager or his or her designee and the Police Department.~~

~~—(D) Judicial review. Any person who participated in a suspension or revocation hearing before the hearing officer and who is aggrieved by the decision of the hearing officer may immediately challenge the decision in any court of competent jurisdiction pursuant to the Rules of Procedure of that court. The record of the hearing shall consist of the complete record of the proceedings before the hearing officer. The hearing officer's decision shall be promptly reviewed by the court.~~

~~—(E) Requirement of exhaustion procedures. Judicial review of a suspension or revocation, or related hearing or appeal proceedings, shall be available only after the administrative procedures and remedies set forth in this section have been exhausted.~~

~~—(F) Notice of final suspension or revocation. If no response or request for a suspension or revocation hearing is filed within fifteen (15) days of the notice of a pending suspension or revocation, or if the licensee who requested the hearing does not appear at the suspension or revocation hearing after notice, or if the hearing officer decides after a hearing that a pending suspension or revocation will become final, then the City Manager or his or her designee shall issue to the licensee notice of final suspension or revocation of the adult entertainment license and mail or arrange delivery of the notice to the licensee's record address.~~

~~—(G) Effective date of suspension or revocation. The suspension or revocation of a license shall take effect the day after delivery of a notice of final suspension or revocation to the licensee in person, by posting on the licensed establishment, or by mail to the licensee's record address, or on the date the licensee surrenders the license, whichever happens first. The licensee shall immediately return and surrender a revoked license to the City Manager or his or her designee or surrender the revoked license, upon demand, to a member of the Police Department.~~

#### **~~§ 173.031 WORKER RECORDS.~~**

~~—(A) Each adult entertainment establishment and sexually-oriented business, regardless of whether it is licensed under this chapter, shall create, establish and maintain a record of all workers of the establishment or business. The record shall contain the worker's full legal name and any aliases and all past or current aliases of the worker; his or her date of birth; his or her residential address; his or her email address; his or her residential telephone number (if any) and all pager numbers, cell phone numbers, and other similar numbers used; his or her driver's license number and a photocopy of the license; his or her state or federally issued identification card number including the worker's Social Security account number; the employment status of the worker including, but not limited to, whether the worker is a salaried employee, an independent contractor, a lessee, a sub-lessee, a subcontractor allowed to work at the establishment, or such other arrangement as may be in place; whether income taxes are withheld for the worker; and a recent passport type photograph of the worker as of the date of association with the establishment which accurately reflects the date on which the photograph was~~



~~taken. Said records shall be maintained for a period of no less than two (2) years from the date the worker is separated from employment.~~

~~—(B) The original records required by division (A) of this section or true and exact photocopies thereof, shall be kept at the adult entertainment establishment or sexually-oriented business at all times including clear photographs.~~

~~—(C) All operators of an adult entertainment establishment or sexually-oriented business shall be responsible for knowing the location of the original records, or the true and exact photocopies thereof.~~

~~—(D) All operators of an adult entertainment establishment or sexually-oriented business shall, upon request by a law enforcement officer or the City Manager or his or her designee, make available for immediate inspection the original records or the true and exact photocopies thereof at any time when the establishment or business is open for business.~~

#### **~~§ 173.032 GENERAL REQUIREMENTS FOR ALL ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES.~~**

~~—Each adult entertainment establishment and sexually-oriented business, regardless of whether it is licensed under this chapter, shall observe the following general requirements:~~

~~—(A) Conform to, comply with and abide by all applicable safety, employer related, building, fire, health, zoning or land use statutes, codes, ordinances, rules and regulations, whether federal, state or local.~~

~~—(B) Keep the adult entertainment establishment or sexually-oriented business license posted and prominently displayed in a conspicuous place at the establishment or business at all times, which license shall be available for inspection upon request at all times by the public, any law enforcement officer and the City Manager, or his or her designee, when the establishment or business is open for business.~~

~~—(C) Opaquely cover each non-opaque area where a person outside the adult entertainment establishment or sexually-oriented business may otherwise see inside the establishment or business.~~

~~—(D) Provide to any law enforcement officer and the City Manager or his or her designee, during all hours of operation or when an operator is present at the establishment, access through the main entrance and into all areas of the establishment where customers are permitted without the necessity of using a key,~~

~~computer entry, password or seeking clearance from a worker or customer to obtain entry through an electronically operated door or entryway.~~

~~—(E) Install, construct, keep, maintain or allow only those signs at the establishment or building exterior which comply with the provisions relating to signage in the Land Development Regulations of the City of Palm Bay.~~

~~—(F) Not allow any person under eighteen (18) years of age to be present when services are provided to or performed for a customer or when the establishment or business is open for business.~~

~~—(G) Not employ or provide goods or services to any person under eighteen (18) years of age.~~

~~—(H) Not provide, offer or engage in any services to any person when not licensed to do so under this chapter.~~

~~—(I) Not operate when a license issued pursuant to this chapter has been suspended, revoked or canceled or when the license is expired.~~

~~—(J) Not permit any animal except seeing eye dogs accompany a worker or customer when services are provided or performed.~~

~~—(K) Not place, operate or contain video cameras, transmitting or taping equipment anywhere on the premises except where customers are advised in advance by posted notice.~~

~~—(L) Not advertise the presentation of any activity prohibited by any law, rule or regulation whether federal, state or local.~~

~~—(M) Ensure that the view areas specified in this chapter remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any customer is present in the premises so as to ensure that no customer is permitted access to any area of the premises which has been designated as an area in which non-workers will not be permitted.~~

~~—(N) Ensure that at least one (1) operator is on duty and present at the establishment or business when the establishment or business is open for business who is responsible and knows the whereabouts of all records required by this chapter. Said operator's name shall be conspicuously posted on the premises at all times the business or establishment is open for business.~~

~~—(O) Ensure that at least one (1) operator is situated in each manager's station, when required by this chapter, at all times that any customer is present inside the premises.~~

~~—(P) Ensure that the premises are equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than 15–20 average maintained foot candles as measured thirty-five (35) inches above the floor level. The light shall be maintained at all times any customer is present in the premises.~~

~~—(Q) Not alter or otherwise change the contents of an adult entertainment establishment or sexually-oriented business license.~~

~~—(R) Ensure that each exterior entrance and exit door for use by customers and interior doors which permit entrance to the interior and exit to the interior from any interior foyer area shall remain unlocked when any person who is not a worker is inside the establishment.~~

~~—(S) Establish, create and maintain worker records as required by this chapter.~~

~~—(T) Ensure that no alcoholic beverages shall be bought, sold, given away or consumed on the premises of any adult entertainment establishment or sexually-oriented business.~~

### **§ 173.033 SEXUALLY-ORIENTED BUSINESS REGULATIONS.**

~~—In addition to the general requirements for adult entertainment establishments and sexually-oriented businesses contained in this chapter, a sexually-oriented business shall, regardless of whether it is licensed thereunder, comply with the following general requirements:~~

~~—(A) Post in an open and conspicuous place a list of services provided by the sexually-oriented business which services shall be described clearly in the English language along with a specification as to the cost of each service.~~

~~—(B) Provide each customer, in advance of any service being provided, with a written customer contract, written clearly in the English language, setting forth the service or services to be rendered, the cost of such service or services, the actual full name of the worker providing the service and actual full name, address and date of birth of the customer as reflected on a state or federally issued identification card or drivers license and the customer's telephone number.~~

~~—(C) Create, establish and maintain a daily register in a format provided by the City Manager, or his or her designee, containing the actual full names and addresses of all customers as reflected on a state or federally issued identification card or drivers license, the services performed, the time expended, the mode of payment and the full name of the worker providing the service.~~

~~—(D) Not allow any worker of the sexually-oriented business to accept any tip or gratuity, directly or indirectly, from a customer in addition to the service fee specified in the customer contract.~~

~~—(E) Maintain all customer contracts and daily registers for a period of two (2) years following the customer's date of service.~~

#### **~~§ 173.034 ADULT THEATER REGULATIONS.~~**

~~—In addition to the general requirements relating to adult entertainment establishments and sexually-oriented businesses contained in this chapter, an adult theater, regardless of whether it is licensed under this chapter, shall:~~

~~—(A) If the adult theater contains an auditorium or hall, comply with each of the following provisions:~~

~~—(1) Have individual and separate seats (not couches, benches, or other seating configurations allowing or providing for the seating of multiple persons on the same item of furniture) to accommodate the maximum number of persons who may occupy the area;~~

~~—(2) Have a continuous main aisle alongside of the seating areas in order that each person seated in the areas shall be visible from the aisle at all times;~~

~~—(3) Have a sign posted in a conspicuous place at or near each entrance to the auditorium or hall which lists the maximum number of persons who may occupy the auditorium or hall area, which number shall not exceed the number of seats within the hall or auditorium area; and~~

~~—(4) Be illuminated at an illumination of not less than 15-20 foot candles average maintained as measured at thirty (35) inches above the floor level and shall maintain the light at all times so that any customer present in the hall or auditorium may be seen.~~

~~—(B) If the adult theater contains adult booths, each adult booth shall comply with each of the following provisions:~~

~~—(1) Have a sign posted in a conspicuous place at or near the entrance which states the maximum number of persons who may occupy the booth, which number shall correlate with the number of seats in the booth;~~

~~—(2) Have a permanently open entrance not less than three (3) feet wide and not less than six (6) feet high, not capable of being closed or partially closed by any curtain, door, or other partition which would be capable of wholly or partially~~

~~obscuring any person situated in the booth; provided, however, that the requirements of all building and related codes shall also be complied with;~~

~~— (3) Have individual, separate seats (which are not couches, benches, or other seating configurations allowing or providing for the seating of multiple persons on the same item of furniture) which correlate with the maximum number of persons who may occupy the booth;~~

~~— (4) Have a continuous main aisle alongside the booth in order that each person situated in the booth shall be visible from the aisle at all times;~~

~~— (5) Have an illuminated and continuous main aisle in which workers and customers can be seen from one end to the other; and~~

~~— (6) Have, except for the entrance, walls or partitions of solid construction without any holes or openings in such walls or partitions.~~

~~— (C) Have one (1) or more manager's stations.~~

~~— (D) Configure the interior of the premises in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any customer is permitted access for any purpose excluding restrooms.~~

~~— (E) If the premises have two (2) or more manager's stations designated, configure the interior of the premises in such a manner that there is an unobstructed view of each area of the premises to which any customer is permitted access for any purposes from at least one (1) of the manager's stations. The view required in this division shall be by direct line of sight from the manager's station.~~

~~— (F) If the adult theater is designed to permit outdoor viewing by persons seated in automobiles, cause the motion picture screen so situated, or the perimeter of the establishment so fenced, such that the material to be seen by those persons may not be seen from any public right-of-way, property assigned a residential zoning classification or assigned a residential land use designation, any religious institution or church, any educational institution or school, or from a park.~~

~~— (G) Cover the floors of areas accessible to customers with smooth and non-permeable flooring material which can withstand frequent effective cleaning with industrial strength cleaning agents. Carpeting of any type is prohibited.~~

~~— (H) Use smooth and non-permeable upholstery material, which can withstand frequent cleaning with industrial strength cleaning agents, to cover furniture permitted by this chapter for the use of customers.~~

- ~~—(I) Have, in areas accessible to customers, interior wall surfaces which can withstand frequent cleaning with industrial strength cleaning agents.~~
- ~~—(J) Use only those shades and blinds which can withstand frequent cleaning with industrial strength cleaning agents. (Draperies are prohibited.)~~
- ~~—(K) Maintain areas accessible to customers in a clean and sanitary condition.~~
- ~~—(L) Keep all furniture upholstery material free from holes and rips.~~
- ~~—(M) Utilize an appropriate and effective adaptation of the U.S. Center for Disease Controls universal precautions for the storage and transmission of the HIV virus and other diseases when cleaning or sanitizing the establishment.~~

### **~~§ 173.035 ADULT PERFORMANCE ESTABLISHMENT REGULATIONS.~~**

- ~~—(A) In addition to the general requirements for adult entertainment establishments and sexually-oriented businesses contained in this chapter, an adult performance establishment shall, regardless of whether it is licensed under this chapter, have a stage provided for the expressive display or exposure of any worker's specified anatomical areas to a customer consisting of a permanent platform (or other similar permanent structure) raised a minimum of eighteen (18) inches above the surrounding floor and encompassing an area of at least one hundred (100) square feet. The stage shall be located at least three (3) feet from the nearest table, chair, area or other accommodation where customers are seated or otherwise located; provided, however, that a table at which any customer is seated or served shall not be used as a stage.~~
- ~~—(B) Notwithstanding the stage requirement in division (A) above, an adult performance establishment may also have smaller stages for the expressive display or exposure of a worker's specified anatomical areas to a customer consisting of permanent or removable platforms raised a minimum of eighteen (18) inches above the surrounding floor from where customers are seated or located; provided, however, that a table at which any customer is seated or served shall not be used as a stage.~~
- ~~—(C) In addition to the general requirements for adult entertainment establishments and sexually-oriented businesses contained in this chapter, an adult performance establishment shall, regardless of whether it is licensed under this chapter:~~
  - ~~—(1) In any area in which a private performance occurs, have a permanently open entrance not less than three (3) feet wide and not less than six (6) feet high,~~

~~which entrance shall not have any curtain rods, hinges, rails or the like which would allow the entrance to be closed or partially closed by any curtain, door, or other partition; provided, however, that the requirements of all building and related codes shall also be complied with; and~~

~~—(2) In any area in which a private performance occurs, have a wall to wall, floor to ceiling partition of solid construction without any holes or openings, which partition may be completely or partially transparent, and which partition separates the worker from the person viewing the displays.~~

~~—(3) Post a sign which is clearly legible and located in a conspicuous place setting forth that straddle dancing is strictly prohibited.~~

~~—(4) Not place or permit the placement of a bed or mattress in the establishment.~~

#### **~~§ 173.036 COMMERCIAL BODILY CONTACT ESTABLISHMENT REGULATIONS.~~**

~~—In addition to all general requirements of this chapter pertaining to adult entertainment establishments and sexually-oriented businesses, a commercial bodily contact establishment, regardless of whether it is licensed under this chapter, shall:~~

~~—(A) Operate only from a fixed physical location which is set forth on its sexually-oriented business license and all required business tax receipts.~~

~~—(B) Not advertise, offer or provide any other service other than services which are posted.~~

~~—(C) Provide clean linen and towels for each customer when towels and linens are used during the course of providing services to a customer; provided, however, that heavy white paper may be substituted for sheets if such paper is used for only one (1) customer and then discarded into a sanitary receptacle.~~

~~—(D) Store clean linen, towels and other materials used in connection with providing commercial bodily contact in closed cabinets.~~

~~—(E) Disinfect and sterilize non-disposable instruments after each use on a customer.~~

~~—(F) Cause all workers to conceal their specified anatomical areas with an opaque covering at all times when on the premises of the business by wearing an opaque surgical type gown.~~

~~—(G) Not encourage, allow or permit any customer to consume food or beverages in the business.~~

~~—(H) Provide commercial bodily contact in an area wherein such area is visible at all times from common areas in the establishment. No contact may occur in a separate or individual cubicle, room, booth or area which is not visible from common areas of the establishment and a receptionist area; provided, however, that if male and female customers are provided services at the same time, separate work areas shall be established for each gender.~~

~~—(I) Not advertise, display, publish, exhibit, place, distribute or promote on any advertising matter or signage services that are not posted or a suggestion that services not posted will be provided.~~

~~—(J) Not advertise, display, publish, exhibit, place, distribute or promote on any advertising matter~~

~~or signage any suggestion that workers will be dressed in any manner other than as required in this chapter.~~

~~—(K) Not begin a meeting or service with a customer between 10:00 p.m. of any day of the week and 9:00 a.m. the following day.~~

~~—(L) Not provide services at any place other than a physical location licensed to provide commercial bodily contact under the provisions of this chapter.~~

~~—(M) Not place or permit the placement of any bed, mattress or sofa at the business; provided, however, that a sofa may be placed in the reception area open to the public at the main entrance of the business and cots or padded mats may be used when providing commercial bodily contact.~~

#### **~~§ 173.037 ESCORT SERVICE REGULATIONS.~~**

~~—In addition to all general provisions of this chapter pertaining to adult entertainment establishments and sexually-oriented businesses, an escort service, regardless of whether licensed under this chapter, shall:~~

~~—(A) Not advertise, offer or perform any other service than services which are posted.~~

~~—(B) Cause all workers and escorts to conceal their specified anatomical areas with an opaque covering at all times when on the premises of the escort service.~~



~~—(C) Not advertise, display, publish, exhibit, place, distribute or promote on any advertising matter or signage services that are not posted or a suggestion that services not posted will be provided.~~

~~—(D) Not begin a meeting or service with a customer between 10:00 p.m. of any day of the week and 9:00 a.m. the following day.~~

~~—(E) If offering or providing escorts or escort service within the city, each escort service shall notify the Police Chief and the City Manager or his or her designee of an authorized physical location, which may or may not be within the city, from where the escort service operates and dispatches escorts.~~

~~—(F) Include in all advertising or promotional literature posted, placed, published, or distributed within the city the number of a valid sexually-oriented business license issued by the city unless the escort service does not refer, send, or dispatch escorts to any location within the jurisdictional limits of the city.~~

~~—(G) Each escort service shall ensure that every escort and worker of the escort service is provided with a copy of the escort service's license and carries it while working as an escort for the service, and displays said license upon the request of any law enforcement officer or the City Manager or his or her designee. In addition to a copy of the escort service's license, each escort service shall ensure that each escort has obtained a business tax receipt to engage in the occupation of escort within the city and that they carry said license while working, and displays said license upon the request of any law enforcement officer or the City Manager or his or her designee. Notwithstanding the foregoing, an escort or worker of an escort service who is a paid employee for whom taxes and Social Security payments are withheld and paid by the licensed escort service and who is not an independent contractor may substitute and carry a copy of the sexually-oriented business/escort service license of the employing escort service only, provided that worker records as required by this chapter are created and maintained by the licensed escort service.~~

~~—(H) If a meeting with or the service of a customer occurs at a location not open to the public, then the escort shall check in with the on duty manager of the premises in person where the meeting or service occurs or begins prior to meeting or servicing a customer and advise the manager of the following: names of the escort(s), the escort service and customer(s); the escort's time of arrival and estimated time of departure; and a copy of the escort service's sexually-oriented business license and the escort's own business tax receipt, if applicable, and the location of the meeting within the structure.~~

**~~§ 173.038 ENGAGING IN PROHIBITED ACTIVITY; CUSTOMERS.~~**

~~—(A) It is unlawful for any customer in or for an adult entertainment establishment or sexually-oriented business regardless of whether licensed pursuant to this chapter to do any of the following acts:~~

~~—(1) To engage or participate in a straddle dance at the establishment or business.~~

~~—(2) To offer, contract or otherwise agree to engage or participate in a straddle dance with a person at the establishment or business.~~

~~—(3) To engage or participate in any specified sexual activity at the establishment or business or while in the presence of a worker.~~

~~—(4) To display or expose while in the presence of a worker or when at the establishment or business any specified anatomical area except in accordance with §§ 173.060 et seq.~~

~~—(5) To offer or deliver a tip or gratuity to any worker of an establishment or business before, during or after the provision of services except at an adult performance establishment.~~

~~—(6) If a worker is a female, to intentionally touch, fondle or manipulate her on her clothed or unclothed breast(s), either directly or through a medium.~~

~~—(7) To intentionally touch, fondle, massage, or manipulate any specified anatomical area of a worker, a customer, or himself or herself, whether clothed or unclothed, on the premises of the establishment or business.~~

~~—(8) To intentionally touch, fondle, massage or manipulate a worker on any specified anatomical area when at or receiving services from the adult entertainment establishment or sexually-oriented business.~~

~~—(9) To intentionally touch, fondle, massage or manipulate the clothed or unclothed breast(s) of a female worker, or to touch the clothed or unclothed body of a worker at any point below the waist and above the knee of the worker when at an adult entertainment establishment or sexually-oriented business.~~

~~—(10) To occupy an adult booth in which booth there are more people than that specified on the posted sign required by this chapter.~~

~~—(11) To otherwise violate or aid or abet a violation of this chapter.~~

~~—(12) To encourage or solicit any worker to engage in any specified sexual activity.~~

~~—(13) To consume, or purchase alcoholic beverages on the premises of any adult entertainment establishment or sexually-oriented business.~~

~~—(B) It is unlawful for any customer at or of a sexually-oriented business to do any of the following acts regardless of whether the establishment is licensed pursuant to this chapter:~~

~~—(1) To intentionally touch, massage or manipulate, directly or indirectly or through a medium while on the premises of the establishment or when with a worker, the customer's specified anatomical areas.~~

~~—(2) To solicit any worker to provide a service not posted.~~

~~—(3) To solicit or receive any service not indicated and contracted for in the written customer contract.~~

~~—(4) To provide to the worker providing the service either directly, indirectly or through a medium, any tip, gratuity or other consideration beyond the fee specified in the customer contract.~~

~~—(5) To expose any specified anatomical area except in accordance with §§ 173.060 et seq., to the view of a worker.~~

**~~§ 173.039 ENGAGING IN PROHIBITED ACTIVITY; WORKERS/OPERATORS.~~**

~~—(A) It is unlawful for any worker of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed under this chapter, to do any of the following acts or for an operator of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed hereunder, to knowingly permit, suffer, aid, allow or encourage any worker to do any of the following acts:~~

~~—(1) To engage or participate in a straddle dance with a customer at the establishment or business.~~

~~—(2) To offer, contract or otherwise agree with a customer to engage or participate in a straddle dance with a person at the establishment or business.~~

~~—(3) To engage or participate in any specified sexual activity or activities at the establishment or business with a customer, himself or herself or a worker.~~

~~—(4) To display or expose at the establishment or business specified anatomical areas except in accordance with the provisions of this chapter and other applicable law.~~

~~—(5) To request or accept a tip or gratuity from a customer except at an adult performance establishment.~~

~~—(6) To work in an adult entertainment establishment or sexually-oriented business that he or she knows or should know is not licensed under this chapter, or which has a license which is under suspension, has been revoked or canceled, or has expired, regardless of whether he, she or it has applied for and obtained a license under this chapter.~~

~~—(7) To display or expose specified anatomical areas except in accordance with §§ 173.060 et seq., while engaging in personal advertising, pandering, or solicitation, whether passive or otherwise, on behalf of the worker, any other worker, or the establishment or business while situated outside any structure at the establishment or business, or at a place at the establishment or business where the worker is visible from any public right-of-way or sidewalk. "Personal advertising" means encouraging or enticing, by whatever direct or indirect means, potential customers outside the doors of the establishment or business to enter the establishment or business.~~

~~—(8) To suffer, permit, or allow any door of the business or establishment that is visible from a public right-of-way or sidewalk to be opened or remain opened except when a person is entering or exiting the establishment or business.~~

~~—(9) To allow or encourage a customer to intentionally touch or fondle, either directly or through a medium, any specified anatomical area of the customer, a worker or another customer.~~

~~—(10) If the worker is a female, to allow herself to be intentionally touched on her clothed or unclothed breast(s) by a customer.~~

~~—(11) If a worker is a female, to allow herself to be intentionally touched by a customer on any portion of her body below the waist and above the knee.~~

~~—(12) To display or expose any specified anatomical area unless and only to the extent permitted by §§ 173.060 et seq., and the stage on which the worker is located is not located between the legs of a customer.~~

~~—(13) To provide or engage in any private performance unless and only to the extent permitted by this chapter.~~

~~—(14) To remain in the presence of a customer who is exposing specified anatomical areas less covered than permitted by §§ 173.060 et seq., at the establishment or in the presence of a worker or another customer.~~

~~—(15) To violate or aid or abet in a violation of the provisions of this chapter.~~

~~—(16) To encourage or knowingly permit any customer to intentionally touch, fondle, massage or manipulate, either directly or indirectly through a medium, any of the customer's specified anatomical areas on the premises of the establishment or when in the presence of another customer or worker.~~

~~—(17) To encourage or solicit any customer to engage in any specified sexual activity.~~

~~—(18) To intentionally touch, fondle, massage or manipulate any customer on the customer's clothed or unclothed body between the waist and above the knee.~~

~~—(19) To provide or serve alcoholic beverages to any customer or worker for consumption on the premises of any adult entertainment establishment or sexually-oriented business.~~

~~—(B) It is unlawful for any worker of a sexually-oriented business, regardless of whether it is licensed under this chapter, to do any of the following acts, or for an operator of a sexually-oriented business, regardless of whether it is licensed under this chapter, to knowingly or with reason to know, permit, suffer or allow any worker to commit any of the following acts:~~

~~—(1) To accept a tip or gratuity from or on behalf of a customer in addition to the service fee stated in the written customer contract.~~

~~—(2) To begin a meeting or service, continue a meeting or service, solicit a meeting or service or make or solicit a sale between the hours of 10:00 p.m. of any particular day and 9:00 a.m. the following day.~~

~~—(3) Provide commercial bodily contact except at the physical structure of the establishment which has a commercial bodily contact establishment license.~~

~~—(4) To provide any service not posted as required by this chapter.~~

~~—(5) To provide any service without first executing a customer contract.~~

~~—(C) It is unlawful for any worker of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed pursuant to this chapter, to knowingly permit, suffer, aid, allow or encourage any customer to do any of the following acts:~~

~~—(1) To intentionally touch, fondle, massage or manipulate, either directly or indirectly through a medium, any of the customer's specified anatomical areas~~

~~when at the establishment or business or while in the presence of a worker or another customer.~~

~~—(2) To intentionally touch, fondle, massage or manipulate, either directly or indirectly through a medium, any specified anatomical area of another customer or a worker when at the establishment or business or while in the presence of a worker or customer.~~

~~—(3) To engage in any specified sexual activities at the establishment or business with a worker, customer, himself or herself or with another customer.~~

~~—(4) To expose the customer's specified anatomical areas at the establishment or business or when receiving services or when in the presence of a worker or another customer.~~

~~—(5) To engage or participate in a straddle dance.~~

~~—(6) To intentionally touch, fondle, massage or manipulate a worker at any point below the waist and above the knee.~~

~~—(7) To intentionally touch a female worker on the clothed or unclothed breast.~~

#### **~~§ 173.040 OPERATION WITHOUT LICENSE.~~**

~~—It is unlawful for any person to be an operator of or at or to be a worker for an adult entertainment establishment or sexually-oriented business where the person knows or should know:~~

~~—(A) That the establishment or business does not have an adult entertainment establishment or sexually-oriented business license for the applicable classification.~~

~~—(B) That the establishment or business has a license which is under suspension.~~

~~—(C) That the establishment or business has a license which has been revoked, canceled or has expired.~~

#### **~~§ 173.041 OPERATION CONTRARY TO OPERATIONAL REQUIREMENTS.~~**

~~—(A) It is unlawful for any person to be an operator of an adult entertainment establishment or sexually-oriented business which does not satisfy all of the general requirements of this chapter, regardless of whether the establishment is licensed thereunder.~~

~~—(B) It is unlawful for any person to be an operator of a sexually-oriented business which does not satisfy all of the general requirements of §§ 173.032 and 173.033 regardless of whether the establishment is licensed thereunder.~~

~~—(C) It is unlawful for any person to be an operator of an adult performance establishment which does not satisfy all of the special requirements of §§ 173.032 and 173.033 regardless of whether licensed thereunder.~~

~~—(D) It is unlawful for any person to be an operator of an adult theater which does not satisfy all of the special requirements of §§ 173.032 and 173.033 regardless of whether the establishment is licensed thereunder.~~

~~—(E) It is unlawful for any person to be an operator of an escort service which does not satisfy all of the special requirements of §§ 173.032, 173.033 and 173.037 regardless of whether licensed thereunder.~~

~~—(F) It is unlawful for any person to be an operator of a commercial bodily contact establishment which does not satisfy all of the special requirements of §§ 173.032 and 173.036 regardless of whether the establishment is licensed thereunder.~~

#### **~~§ 173.042 USE OF RESTROOMS OR DRESSING ROOMS.~~**

~~—(A) Notwithstanding any provision in this chapter indicating to the contrary, it is not unlawful for any worker of an adult entertainment establishment or sexually-oriented business, regardless of whether it is licensed under this chapter, to expose any specified anatomical area during the worker's bona fide use of a dressing room or bathroom which is occupied at the time only by workers of the same sex.~~

~~—(B) Notwithstanding any provision in this chapter indicating to the contrary, it shall not be unlawful for any customer of an adult entertainment establishment or sexually-oriented business, regardless of whether it is licensed under this chapter, to expose any specified anatomical area during the customer's bona fide use of a bathroom which is occupied at the time only by customers of the same sex.~~

~~—(C) It is unlawful to be an operator of an adult performance establishment that has a dressing room for use by its workers that is also accessible to customers.~~

~~—(D) It is unlawful to be an operator of a sexually-oriented business which has a dressing room for use by its customers that is accessible to workers.~~

~~—(E) Notwithstanding any provision of this chapter to the contrary, a worker engaged in the work of a restroom attendant or valet may occupy a restroom which is also occupied by customers provided that the valet or attendant does not expose~~

~~any specified anatomical area except in accordance with §§ 173.060 et seq., to the view of a customer and is of the same sex of the customer occupying the restroom.~~

~~—(F) Notwithstanding any provision of this chapter to the contrary, it is not unlawful for a worker or customer to touch their own specified anatomical areas during their bona fide use of a restroom, dressing room or bathroom when such touching is necessary and inherent to the activity of changing clothes or excretory functions.~~

#### **~~§ 173.043 UNLAWFUL ACTIVITIES; MINORS.~~**

~~—It is unlawful for an operator or worker of an adult entertainment establishment or sexually-oriented business regardless of whether licensed under this chapter, to knowingly or with reason to know, permit, suffer or allow:~~

~~—(A) Admittance to the establishment or business of a person under eighteen (18) years of age when the establishment or business is open for business.~~

~~—(B) A person under eighteen (18) years of age to remain at the establishment or business when the establishment or business is open for business.~~

~~—(C) A person under eighteen (18) years of age to purchase goods or services from the establishment or a worker at the establishment or business.~~

~~—(D) A person under eighteen (18) years of age to be a worker at or for the establishment or business.~~

#### **~~§ 173.044 UNLAWFUL ACTIVITIES; RECORDS.~~**

~~—(A) It is unlawful to be an operator or worker of an adult entertainment establishment or sexually-oriented business, regardless of whether it is licensed under this chapter, if the current and valid adult entertainment establishment or sexually-oriented business license is not conspicuously displayed on the premises of the establishment or business.~~

~~—(B) It is unlawful to be an operator of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed under this chapter, which does not create, establish and compile worker records, maintain worker records or where such records are not produced for inspection by a law enforcement officer upon request when the establishment or business is open for business.~~

~~—(C) It is unlawful to be an operator of a sexually-oriented business, regardless of whether it is licensed under this chapter, at which customer contracts, daily~~



~~registers and a list of services have not been compiled, maintained or are not produced for inspection by a law enforcement officer upon request when the establishment or business is open for business.~~

~~—(D) It is unlawful for a worker at or of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed under this chapter, to fail to obtain, carry or produce for inspection by a law enforcement officer upon request, a business tax receipt for the occupation in which the worker is engaged; provided, however, that a worker of an adult entertainment establishment or sexually-oriented business who is a paid employee for whom income taxes and Social Security payments are withheld and paid by the establishment and who is not an independent contractor shall not be required to obtain a business tax receipt or their own adult entertainment establishment/sexually-oriented business license.~~

~~—(E) It is unlawful for an escort, regardless of whether they are a paid employee for whom income taxes and Social Security payments are withheld and paid by the escort service, to fail to carry and produce for inspection by a law enforcement officer a copy of the sexually-oriented business license of the employing escort service when working as an escort or providing the services of escort.~~

~~—(F) It is unlawful for any person or any person on their behalf applying for a license under this chapter to make a false or misleading statement or provide false or misleading information which is intended to facilitate the issuance of a license.~~

~~—(G) It is unlawful for any worker, customer or operator to provide false or misleading information in any worker record, customer contract or daily register required by this chapter.~~

~~—(H) It is unlawful to be an operator or worker at an adult entertainment establishment or sexually-oriented business which does not have conspicuously posted the name of the operator on duty while the establishment is open for business.~~

~~—(I) It is unlawful for an operator of an adult entertainment establishment to fail to produce for inspection any worker record required by this chapter, when requested by a law enforcement officer or the City Manager or his or her designee when the establishment or business is open for business.~~

~~—(J) It is unlawful for an operator of a sexually-oriented business to fail to produce for inspection any worker record, customer contract or daily register required by this section when requested by a law enforcement officer or the City Manager or his or her designee when the establishment or business is open for business.~~

**~~§ 173.045 UNLAWFUL ACTIVITIES; HOURS OF OPERATION.~~**

~~—(A) It is unlawful for any operator of an adult entertainment establishment, regardless of whether licensed pursuant to this chapter, to allow such establishment to remain open for business or to knowingly allow any worker to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service between the hours of midnight and 9:00 a.m. of any particular day.~~

~~—(B) It is unlawful for any operator of a sexually-oriented business, regardless of whether licensed pursuant to this chapter, to allow such business to remain open for business or to permit any worker to engage in a performance, solicit a performance, make a sale, solicit a sale, begin, continue or provide a service or solicit a service between the hours of 10:00 p.m. and 9:00 a.m. of any particular day.~~

~~—(C) It is unlawful for any worker of an adult entertainment establishment, regardless of whether licensed pursuant to this chapter, to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service between the hours of midnight and 9:00 a.m. of any particular day.~~

~~—(D) It is unlawful for any worker of sexually-oriented business, regardless of whether licensed pursuant to this chapter, to provide a service, solicit a service, engage in a performance, solicit a performance, make a sale, solicit a sale, begin a service or continue a service between the hours of 10:00 p.m. and 9:00 a.m. of any particular day.~~

**~~§ 173.046 UNLAWFUL ACTIVITIES; SPECIAL PROHIBITIONS RELATING TO ESCORTS AND ESCORT SERVICES.~~**

~~—It is unlawful for any escort, escort service or worker of an escort service, regardless of whether licensed under this chapter, to commit any of the following acts or for an operator of an escort service regardless of whether licensed thereunder, to knowingly permit, suffer, aid, assist or allow any escort or escort service worker to commit any of the following acts:~~

~~—(A) To enter a hotel, motel or other place of temporary lodging for the purpose of meeting or providing services to a customer without immediately upon entering such hotel, motel or other place and prior to meeting the customer making personal face-to-face contact with the on-duty manager at the front desk or reception area and providing that person with the following information:~~

- ~~—(1) The time of arrival and estimated time of departure;~~
- ~~—(2) A copy of the escort service's sexually-oriented business license and, if applicable, the escort's business tax receipt;~~
- ~~—(3) The name of the escort, the escort service and the customer being met/served; and~~
- ~~—(4) The location of the meeting or service within the structure including the room number.~~
- ~~—(B) To require, entice or solicit any customer to remove any article of clothing.~~
- ~~—(C) To display or expose any specified anatomical area to a customer.~~
- ~~—(D) To begin a meeting or service without first meeting the customer in a public place such as a bar or restaurant before accompanying the customer to any place not open to the public such as a hotel room or residence.~~
- ~~—(E) To meet with or provide services to a customer in any place not open to the public such as a hotel room, motel room or residence without first executing the customer contract as required by this chapter.~~
- ~~—(F) To provide services to a customer even in a public place without first executing the customer contract as required by this chapter, immediately following the meeting of the customer.~~
- ~~—(G) To solicit a tip or gratuity from a customer in exchange for a promise or suggestion that any act or service not contracted for in the customer contract will be performed.~~
- ~~—(H) To accept any compensation or payment except that which is provided in the customer contract.~~

**~~§ 173.047 UNLAWFUL ACTIVITIES; SPECIAL PROHIBITIONS RELATED TO COMMERCIAL BODILY CONTACT.~~**

- ~~—It is unlawful for a worker of a commercial bodily contact establishment, regardless of whether licensed pursuant to this chapter, to commit any of the following acts or for the operator of a commercial bodily contact establishment, regardless of whether licensed thereunder, to knowingly or with reason to know, permit, suffer, aid, assist or allow any worker to commit any of the following acts:~~
- ~~—(A) To provide commercial bodily contact or to be present at the premises of the business when open for business unless covering their specified anatomical areas by wearing an opaque surgical type gown.~~

- ~~—(B) To display or expose any specified anatomical area except in accordance with §§ 173.060 et seq., to a customer.~~
- ~~—(C) To allow a customer to expose or display the customer's specified anatomical areas except in accordance with §§ 173.060 et seq., in the presence of a worker.~~
- ~~—(D) To allow a customer to engage in any specified sexual activity with him or herself, another customer or with a worker.~~
- ~~—(E) To perform or provide commercial bodily contact except at the premises of a commercial bodily contact establishment licensed under this chapter.~~
- ~~—(F) To engage in or offer to engage in private modeling or the activities of an escort with any customer.~~
- ~~—(G) To provide commercial bodily contact or service to a customer without first executing a customer contract as required by this chapter.~~
- ~~—(H) To intentionally touch, fondle, manipulate or massage the specified anatomical area of any customer.~~
- ~~—(I) To allow any customer to intentionally touch, fondle, manipulate or massage any specified anatomical area of any worker or the body of any worker below the waist and above the knee, directly, indirectly or through a medium.~~
- ~~—(J) To remain in the presence of any customer who is displaying, exposing, intentionally touching, fondling or manipulating any specified anatomical area.~~
- ~~—(K) To allow any customer to intentionally touch, massage or manipulate any specified anatomical area while on the premises of the business or when in the presence of a worker.~~
- ~~—(L) To solicit or require a customer to remove any item of clothing as a prerequisite to providing commercial bodily contact.~~
- ~~—(M) To accept or solicit any tip, remuneration, consideration or gratuity in excess of the fee provided in the executed customer contract.~~
- ~~—(N) To accept or solicit any tip, remuneration, consideration or gratuity in exchange for any enhanced service.~~
- ~~—(O) To fail to require a customer to cover such customers' specified anatomical areas with a towel, robe, undergarment, bathing suit or other similar fully opaque material while on the premises of the business.~~

~~—(P) To engage in or offer to engage in any private performance or act as an adult model.~~

**~~§ 173.048 COMMERCIAL BODILY CONTACT ESTABLISHMENTS PROHIBITED; SAVINGS PROVISION.~~**

~~—(A) Notwithstanding any provision of this chapter, it is unlawful to operate, or be a worker for or at a commercial bodily contact establishment which engages in commercial bodily contact.~~

~~—(B) Notwithstanding the provisions of division (A) above, in the event that division (A), prohibiting commercial bodily contact establishments is found to be unconstitutional, or otherwise invalid by a court of competent jurisdiction or should an injunction be issued relative to the enforcement of division (A), then all provisions set forth this chapter applicable to commercial bodily contact establishments and sexually-oriented business shall apply to businesses and establishments engaged in commercial bodily contact.~~

**~~§ 173.049 BUSINESS TAX RECEIPT; HOME OCCUPATIONS.~~**

~~—(A) The Finance Department may take such steps as may be necessary to ensure that the business tax is paid by only such individuals and entities that are lawfully permitted in accordance with the provisions of this chapter.~~

~~—(B) Adult entertainment establishments and sexually-oriented businesses shall not be approved as home occupations.~~

**~~§ 173.050 SEXUAL ENCOUNTER BUSINESSES PROHIBITED; PROHIBITED ACTS; UNLAWFUL PROVISIONS.~~**

~~—(A) It is unlawful to be an operator of or be a worker at a sexual encounter business.~~

~~—(B) It is unlawful to cause, encourage, or allow a person under eighteen (18) years of age to be present at a sexual encounter business.~~

~~—(C) It is unlawful to aid or abet a person causing, encouraging or allowing a person under eighteen (18) years of age to be present at a sexual encounter business.~~

**~~§ 173.051 IMMUNITY FROM PROSECUTION.~~**

~~—The city and any and all of its officers, departments or agents and any law enforcement officer shall be immune from prosecution, civil or criminal, for the reasonable, good-faith trespass upon an adult entertainment establishment or~~

~~sexually-oriented business while acting within the scope of the authority set forth in this chapter.~~

## **PUBLIC NUDITY**

### **~~§ 173.060 TITLE.~~**

~~—This subchapter shall be known as the "Palm Bay Public Nudity Ordinance".~~

### **~~§ 173.061 INTENT.~~**

~~—(A) It is the intent of this subchapter to protect and preserve the good order, health, safety, welfare, and morals of the citizens of Palm Bay by prohibiting a person from intentionally or recklessly appearing or being nude, or causing another person to appear or be nude, in a public place and in other places which may reasonably be expected to be observed by the public within Palm Bay in other places than those establishments defined in § 173.062.~~

~~—(B) It is the further intention of this subchapter to accomplish those intents and purposes expressed in the recitals ("Whereas" clauses) of Ordinance 2007-31, passed April 30, 2007, each of which are incorporated by reference in this section.~~

### **~~§ 173.062 DEFINITIONS.~~**

~~—The following words and phrases defined in this section and used in this subchapter shall have the meaning herein prescribed, unless the context clearly suggests otherwise.~~

~~—BREAST. A portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and areola (the darker colored area of the breast surrounding the nipple) and an outside area of such gland wherein such outside area is reasonably compact and contiguous to the areola, and contains at least the nipple and the areola and one-quarter (1/4) of the outside surface area of such gland.~~

~~—BUTTOCKS. (For a short general description, see the last sentence of this definition.) The area at the rear of the human body (sometimes referred to as the gluteus maximus) which lies between two (2) imaginary straight lines running parallel to the ground when a person is standing, the first or top such line being one-half (1/2) inch below the top of the vertical cleavage of the nates (i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom such line being one-half (1/2) inch above the lowest point of the curvature of the fleshy protuberance (sometimes referred to as the gluteal fold), and between two (2) imaginary straight lines, one (1) on each side~~

~~of the body (the "outside lines"), which outside lines are perpendicular to the ground and to the horizontal lines described above and which perpendicular outside lines pass through the outermost point(s) at which each nate meets the other side of leg. Notwithstanding the above, buttocks shall not include the leg, the hamstring muscle below the gluteal fold, the tensor fasciae latae muscle or any of the above-described portion of the human body that is between either: the left inside perpendicular line and the left outside perpendicular line, or the right inside perpendicular line and the right outside perpendicular line. For the purpose of the previous sentence the left inside perpendicular line shall be an imaginary straight line on the left side of the anus: that is perpendicular to the ground and to the horizontal lines described above, that is one-third (1/3) of the distance from the anus to the left outside line, and the right inside perpendicular line shall be an imaginary straight line on the right side of the anus that is perpendicular to the ground and to the horizontal lines described above, and that is one-third (1/3) of the distance from the anus to the right outside line. (The above description can generally be described as covering one-third (1/3) of the buttocks centered over the cleavage for the length of the cleavage.)~~

~~— ENTITY. Any proprietorship, partnership, corporation, association, business trust, joint venture, joint-stock company or other for profit and/or not for profit organization.~~

~~— NUDE. Any person insufficiently clothed in any manner or that any of the following body parts are not entirely covered with a fully opaque covering:~~

- ~~— (1) The male or female genitals;~~
- ~~— (2) The pubic area;~~
- ~~— (3) The vulva;~~
- ~~— (4) The penis;~~
- ~~— (5) The female breast (each female person may determine which one-quarter (1/4) of her breast surface area (see definition of BREAST) contiguous to and containing the nipple and the areola is to be covered);~~
- ~~— (6) The anus;~~
- ~~— (7) The anal cleft;~~
- ~~— (8) The anal cleavage;~~
- ~~— (9) The buttocks. Attire which is insufficient to comply with this requirement includes, but is not limited to, G-Strings, T-Backs, dental floss and thongs.~~

~~—(10) For the purposes of this section, body paint, body dyes, tattoos, liquid latex whether wet or dried, string and dental floss and similar substance shall not be considered an "opaque covering".~~

~~—PERSON. Any live human being aged ten (10) years of age or older.~~

~~—PLACES APPROVED OR SET APART FOR NUDITY. Enclosed single sex public restrooms, enclosed single sex functional shower, single sex locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals, the yard areas of private residences, and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein. The aforementioned places approved or set apart for nudity shall not be deemed to include places where a person's conduct of being nude is used for his or her profit or where being nude is used for the promotion of business or is otherwise for commercial gain.~~

~~—PUBLIC PLACE. Any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not for profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement or membership fee), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets, and meeting facilities utilized by any religious, social, fraternal or similar organization. Premises, or portions thereof such as motel or hotel rooms, used solely as a private residence, whether permanent or temporary in nature, shall not be deemed to be a public place.~~

#### **~~§ 173.063 FINDINGS.~~**

~~—In addition and supplemental to the findings and determinations contained in the recitals ("Whereas" clauses) of Ordinance 2007-31, passed April 30, 2007, which are incorporated by reference into this section, it is the intent of the citizens of Palm Bay to regulate the conduct of appearing nude in public places for the purpose of regulating nudity and other conduct, that considering what has happened in other communities, the acts prohibited in § 173.064 encourage or create the potential for the conduct of adverse secondary effects such as, but not limited to, prostitution, attempted rape, rape, assault, and the spread of sexually communicable diseases; that actual and simulated nudity and sexual conduct in public places, begets and has the potential for begetting undesirable and unlawful~~



~~behavior; that sexual, lewd, lascivious, and salacious conduct results in violation of law and creates dangers to the health, safety, morals, and welfare of the public and those who engage in such conduct; and, it is the intent of § 173.064 to specifically prohibit nudity, gross sexuality and the simulation thereof.~~

**~~§ 173.064 NUDITY, SEXUAL CONDUCT PROHIBITED.~~**

~~—(A) No person shall knowingly, intentionally or recklessly appear, or cause another person to appear nude, as defined in § 173.062, or expose to public view his or her genitals, vulva, penis, pubic area, or buttocks, or any simulation thereof.~~

~~—(B) No person shall knowingly, intentionally or recklessly expose, or cause a female person to expose her breasts or any simulation thereof to public view.~~

~~—(C) No person or entity maintaining, owning, or operating a public place shall encourage, allow or permit any person to appear nude or to expose to public view his or her genitals, pubic area, vulva, penis, anus, or any portion of the buttocks or simulation thereof. This section shall be violated if any portion of the buttocks is visible from any vantage point.~~

~~—(D) No person shall engage in and no person or entity maintaining, owning, or operating a public place shall encourage, allow or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, lap dancing, straddle dancing, any sexual act which is prohibited by law, touching, caressing, or fondling of the breasts, buttocks, anus, or genitals, or the simulation thereof.~~

~~—(E) Each female person may determine which one-quarter (1/4) of her breast surface area (see definition of breast) contiguous to and containing the areola is to be covered.~~

~~—(F) This section shall not be deemed to address photographs, movies, video presentations, or other non-live performances.~~

**~~§ 173.065 NUDITY PROHIBITED IN PUBLIC PLACES.~~**

~~—It shall be unlawful for any person to knowingly, intentionally, or recklessly appear, or cause another person to appear nude, as defined in § 173.062, in a public place or in any other place which is readily visible to the public, except as provided in § 173.066. It shall also be unlawful for any person or entity maintaining, owning, or operating any public place to encourage, suffer or allow any person to appear nude in such public place, except as provided in § 173.066.~~

**~~§ 173.066 EXEMPTIONS.~~**

~~—(A) The prohibitions of § 173.064 shall not apply:~~

~~—(1) When a person appears nude in a place provided or set apart for nudity, as defined by this subchapter, provided:~~

~~—(a) Such person is nude for the sole purpose of performing the legal function(s) that is/are customarily intended to be performed within such place provided or set apart for nudity; and~~

~~—(b) Such person is not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity.~~

~~—(2) When the conduct of being nude cannot legally be prohibited by this subchapter because:~~

~~—(a) It constitutes a part of a bona fide live communication, demonstration or performance by a person wherein such nudity is expressive conduct incidental to and necessary for the conveyance or communication of a genuine message or public expression and is not a mere guise or pretense utilized to exploit the conduct of being nude for profit or commercial gain (see for instance Board of City Commissioners v. Dexterhouse, 348 So. 2d 916 (Fla. 2nd DCA 1977), and as such is protected by the United States Constitution or Florida Constitution; or~~

~~—(b) It is otherwise protected by the United States Constitution or Florida Constitution.~~

~~—(B) A mother's breast feeding of her baby does not under any circumstance violate the provisions of this subchapter.~~

~~—(C) In establishments or businesses denominated as adult entertainment establishments or sexually-oriented businesses and regulated by the Palm Bay Adult Entertainment Code.~~

#### **~~§ 173.067 INJUNCTIVE RELIEF.~~**

~~—In addition to the procedures provided herein, persons and entities that are not in conformity with these requirements shall be subject to appropriate civil action in the court of appropriate jurisdiction for abatement.~~

### **~~LOCATIONAL AND DISTANCE REQUIREMENTS~~**

#### **~~§ 173.075 DEFINITIONS.~~**

~~—The following words and phrases used in this ordinance shall have the meaning herein described, unless the context clearly suggests otherwise.~~

~~—DEVELOPED PUBLIC PARK. Any officially named city owned, county owned, state owned or federally owned park.~~

~~—DEVELOPED PUBLIC SCHOOL. Any school including a charter school which is owned, operated or approved by the City of Palm Bay or the Brevard County School Board, or the Florida Schools of Excellence.~~

~~—FEDERAL HIGHWAY. Any roadway having an official federal highway number or an interstate highway, including, but not limited to, U.S. Highway No. 1 (Dixie Highway NE) and Interstate 95.~~

~~—NON-PRIMARY COMMERCIAL ZONING DISTRICT. Any zoning district within the City of Palm Bay except CC, Community Commercial District, HC, Highway Commercial District or GC, General Commercial District.~~

~~—PRIMARY COMMERCIAL ZONING DISTRICT. The CC, Community Commercial District, HC, Highway Commercial District or GC, General Commercial District.~~

~~—PRIVATE SCHOOL. As defined under Fla. Stat. § 1002.01, with registration required as set forth in Fla. Stat. § 1002.42.~~

#### **~~§ 173.076 LOCATION OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES; RESTRICTIONS.~~**

~~—(A) Definitions. Where applicable, words or phrases not defined hereinabove and used in this subchapter shall be defined elsewhere according to the Adult Entertainment Code, of the City of Palm Bay.~~

~~—(B) Distance restrictions. All adult entertainment establishments or sexually-oriented businesses shall not be located within:~~

~~—(1) Two thousand five hundred (2,500) feet of a developed public school or a private school;~~

~~—(2) A non-primary commercial zoning district;~~

~~—(3) Two thousand five hundred (2,500) feet of a developed public park;~~

~~—(4) One thousand five hundred (1,500) feet of another adult entertainment establishment or sexually-oriented business;~~

~~—(5) One thousand (1,000) feet of a federal highway;~~

~~—(6) Three hundred (300) feet of a commercially zoned business serving alcoholic beverages for consumption on premises or a commercially zoned business permitting the consumption of alcoholic beverages on premises.~~

~~All measurements herein shall be made in accordance with subsection (C) of this section.~~

~~—(C) Measurement of distances. Measurement of distances as required herein pursuant to this section shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment establishment or sexually-oriented business to the closest property line of the establishment serving alcoholic beverages for consumption on premises. Measurement of distances as required herein pursuant to this section shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment establishment or sexually-oriented business to the closest exterior structural wall of the closest adult entertainment establishment or sexually-oriented business. Further measurement of distances as required herein pursuant to this section or § 173.077 shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment establishment or sexually-oriented business to the closest property line of the developed public park, developed public school, or private school as applicable.~~

~~—(D) Non-conforming establishments — distance requirements. Any adult entertainment establishments or sexually-oriented businesses existing and operating as of the effective date of this subchapter which are not located within the permissible locations identified as set forth herein shall be classified as non-conforming. If any such nonconforming adult entertainment establishment or sexually-oriented business either transfers any of its ownership interest (be it stock, membership units, partnership interest or any other indicia of ownership) or voluntarily ceases to do business for a period of ninety (90) consecutive days then it shall be deemed abandoned and thereafter shall not reopen except in conformance with these location, distance, and dispersal standards. A nonconforming adult entertainment establishment or sexually-oriented business shall not expand the square footage or cubic footage of the establishment or business beyond its existing dimensions. The city acknowledges that Club Goddess and Power Video are non-conforming uses as defined herein. All uses otherwise prohibited pursuant to the provisions of § 173.077 herein under are likewise grandfathered and permitted uses with respect to distance requirements related to Club Goddess and Power Video.~~

**~~§ 173.077 DISTANCES BETWEEN SCHOOLS, PUBLIC PARKS, AND BUSINESSES SERVING ALCOHOLIC BEVERAGES FOR CONSUMPTION ON PREMISES.~~**

~~—(A) Subsequent to the passage of this subchapter, no person or entity shall cause or permit the establishment of a developed public school or private school within two thousand five hundred (2,500) feet of an adult entertainment establishment or sexually-oriented business.~~

~~—(B) Subsequent to the passage of this subchapter, no person or entity shall cause or permit the establishment of a developed public park within two thousand five hundred (2,500) feet of an adult entertainment establishment or sexually-oriented business.~~

~~—(C) No person or entity shall cause or permit a commercial zoned business serving alcoholic beverages for consumption on premises or a commercial zoned business permitting the consumption of alcoholic beverages on premises within three hundred (300) feet of an adult entertainment establishment or sexually-oriented business.~~

~~—(D) All measurements herein shall be made in accordance with § 173.076(C).~~

**~~§ 173.999 PENALTY.~~**

~~—(A) Any person violating any of the provisions of §§ 173.010 through 173.051 shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the state in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days or by both fine and imprisonment as provided in Fla. Stat. § 62.22. Each incident or separate occurrence of any act that violates this chapter shall be deemed a separate offense. In addition to the penalties provided under this section, violators of this chapter shall be subject to any other appropriate civil or criminal action provided by law in a court of competent jurisdiction, including, but not limited to, injunctive relief.~~

~~—(B) Any person or entity violating any of the provisions of §§ 173.060 through 173.067 shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the state in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed sixty (60) days or by both such fine and imprisonment as provided in Florida Statutes or other applicable law. Each incident~~

~~or separate occurrence of an act that violates §§ 173.060 through 173.067 shall be deemed a separate offense.~~

## **~~CHAPTER 174: FLOODPLAIN AND STORMWATER MANAGEMENT~~**

### **~~FLOODPLAIN MANAGEMENT~~**

#### **~~PART 1 - ADMINISTRATION~~**

##### **~~§ 174.001 TITLE.~~**

~~—This ordinance shall be known as the “Floodplain Management” ordinance, hereinafter referred to as “this ordinance.”~~

~~—(A) Scope. The provisions of this ordinance shall apply to all development that is wholly within or partially within any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the Florida Building Code; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.~~

~~—(B) Intent. The purposes of this ordinance and the flood load and flood resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:~~

~~—(1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;~~

~~—(2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;~~

~~—(3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;~~

~~—(4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;~~

~~—(5) Minimize damage to public and private facilities and utilities;~~

~~—(6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;~~

~~—(7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and~~

~~—(8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the 44 C.F.R., § 59.22.~~

~~—(C) Coordination with the Florida Building Code. This ordinance is intended to be administered and enforced in conjunction with the Florida Building Code. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.~~

~~—(D) Warning. The degree of flood protection required by this ordinance and the Florida Building Code, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of 44 C.F.R., §§ 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this ordinance.~~

~~—(E) Disclaimer of Liability. This ordinance shall not create liability on the part of City Council of the City of Palm Bay or by any officer or employee thereof for any flood damage that results from reliance on this ordinance or any administrative decision lawfully made thereunder.~~

#### **~~§ 174.002 APPLICABILITY.~~**

~~—(A) Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.~~

~~—(B) Areas to which this ordinance applies. This ordinance shall apply to all flood hazard areas within the City of Palm Bay, as established in subsection (C) of this section.~~

~~—(C) Basis for establishing flood hazard areas. The Flood Insurance Study for Brevard County, Florida, and Incorporated Areas, dated January 29, 2021, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the City Hall Annex Building, 120 Malabar Road SE, Palm Bay, Florida 32907.~~

~~—(D) Submission of additional data to establish flood hazard areas. To establish flood hazard areas and base flood elevations, pursuant to § 174.005 of this ordinance the Floodplain Administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:~~

~~—(1) Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of this ordinance and, as applicable, the requirements of the Florida Building Code.~~

~~—(2) Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.~~

~~—(E) Other laws. The provisions of this ordinance shall not be deemed to nullify any provisions of local, state or federal law.~~

~~—(F) Abrogation and greater restrictions. This ordinance supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including but not limited to land development regulations, zoning ordinances, stormwater management regulations, or the Florida Building Code. In the event of a conflict between this ordinance and any other ordinance, the more restrictive shall govern. This ordinance shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this ordinance.~~

~~—(G) Interpretation. In the interpretation and application of this ordinance, all provisions shall be:~~

~~—(1) Considered as minimum requirements;~~

~~—(2) Liberally construed in favor of the governing body; and~~



~~—(3) Deemed neither to limit nor repeal any other powers granted under state statutes.~~

**~~§ 174.003 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR.~~**

~~—(A) Designation. The Floodplain Administrator in the Building Department is designated to administer the floodplain management program for the City of Palm Bay. The Floodplain Administrator may delegate performance of certain duties to other employees.~~

~~—(B) The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this ordinance. The Floodplain Administrator shall have the authority to render interpretations of this ordinance consistent with the intent and purpose of this ordinance and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this ordinance without the granting of a variance pursuant to § 174.007 of this ordinance.~~

~~—(C) Applications and permits. The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:~~

~~—(1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;~~

~~—(2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this ordinance;~~

~~—(3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;~~

~~—(4) Provide available flood elevation and flood hazard information;~~

~~—(5) Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;~~

~~—(6) Review applications to determine whether proposed development will be reasonably safe from flooding;~~

~~—(7) Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code, when compliance with this ordinance is demonstrated, or disapprove the same in the event of noncompliance; and~~

~~—(8) Coordinate with and provide comments to the Building Official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this ordinance.~~

~~—(D) Substantial improvement and substantial determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:~~

~~—(1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;~~

~~—(2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;~~

~~—(3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of “substantial improvement”; and~~

~~—(4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the Florida Building Code and this ordinance is required.~~

~~—(E) Modifications of the strict application of the requirements of the Florida Building Code. The Floodplain Administrator shall review requests submitted to the Building Official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the Florida Building Code to determine whether such requests require the granting of a variance pursuant to § 174.007 of this ordinance.~~

~~—(F) Notices and orders. The Floodplain Administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this ordinance.~~

~~—(G) Inspections. The Floodplain Administrator shall make the required inspections as specified in § 174.006 of this ordinance for development that is not subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. The Floodplain Administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.~~

~~—(H) Other duties of the Floodplain Administrator. The Floodplain Administrator shall have other duties, including but not limited to:~~

~~—(1) Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to § 174.003(D), of this ordinance;~~

~~—(2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);~~

~~—(3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within six (6) months of such data becoming available;~~

~~—(4) Review required design certifications and documentation of elevations specified by this ordinance and the Florida Building Code to determine that such certifications and documentations are complete;~~

~~—(5) Notify the Federal Emergency Management Agency when the corporate boundaries of City of Palm Bay are modified; and~~

~~—(6) Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."~~

~~—(I) Floodplain management records. Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain~~

~~and permanently keep and make available for public inspection all records that are necessary for the administration of this ordinance and the flood resistant construction requirements of the Florida Building Code, including Flood Insurance Rate Maps; Letters of Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the Florida Building Code and this ordinance; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance and the flood resistant construction requirements of the Florida Building Code. These records shall be available for public inspection at City Hall Annex Building, 120 Malabar Road SE, Palm Bay, Florida 32907.~~

**~~§ 174.004 PERMITS.~~**

~~—(A) Permits required. Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this ordinance, including buildings, structures and facilities exempt from the Florida Building Code, which is wholly within or partially within any flood hazard area shall first make application to the Floodplain Administrator, and the Building Official if applicable, and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until compliance with the requirements of this ordinance and all other applicable codes and regulations has been satisfied.~~

~~—(B) Floodplain development permits or approvals. Floodplain development permits or approvals shall be issued pursuant to this ordinance for any development activities not subject to the requirements of the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.~~

~~—(C) Buildings, structures and facilities exempt from the Florida Building Code. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. §§ 59 and 60), floodplain development permits or approvals shall be required for the following buildings, structures and facilities that are exempt from the Florida Building Code and any further~~

~~exemptions provided by law, which are subject to the requirements of this ordinance:~~

- ~~— (1) Railroads and ancillary facilities associated with the railroad.~~
- ~~— (2) Nonresidential farm buildings on farms, as provided in Fla. Stat. § 604.50.~~
- ~~— (3) Temporary buildings or sheds used exclusively for construction purposes.~~
- ~~— (4) Mobile or modular structures used as temporary offices.~~
- ~~— (5) Those structures or facilities of electric utilities, as defined in Fla. Stat. § 366.02, which are directly involved in the generation, transmission, or distribution of electricity.~~
- ~~— (6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term CHICKEE means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.~~
- ~~— (7) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.~~
- ~~— (8) Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.~~
- ~~— (9) Structures identified in Fla. Stat. § 553.73(10)(k), are not exempt from the Florida Building Code if such structures are located in flood hazard areas established on Flood Insurance Rate Maps.~~
- ~~— (D) Application for a permit or approval. To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the community. The information provided shall:~~
  - ~~— (1) Identify and describe the development to be covered by the permit or approval.~~
  - ~~— (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.~~
  - ~~— (3) Indicate the use and occupancy for which the proposed development is intended.~~

~~—(4) Be accompanied by a site plan or construction documents as specified in § 174.005 of this ordinance.~~

~~—(5) State the valuation of the proposed work.~~

~~—(6) Be signed by the applicant or the applicant's authorized agent.~~

~~—(7) Give such other data and information as required by the Floodplain Administrator.~~

~~—(E) Validity of permit or approval. The issuance of a floodplain development permit or approval pursuant to this ordinance shall not be construed to be a permit for, or approval of, any violation of this ordinance, the Florida Building Codes, or any other ordinance of this community. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions.~~

~~—(F) Expiration. A floodplain development permit or approval shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing and justifiable cause shall be demonstrated.~~

~~—(G) Suspension or revocation. The Floodplain Administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this ordinance or any other ordinance, regulation or requirement of this community.~~

~~—(H) Other permits required. Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:~~

~~—(1) The St. Johns River Water Management District; fla. stat. § 373.036.~~

~~—(2) Florida Department of Health for onsite sewage treatment and disposal systems; fla. stat. § 381.0065, and Chapter 64E-6, F.A.C.~~

~~—(3) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; fla. Stat. § 161.055.~~

~~—(4) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.~~

~~—(5) Federal permits and approvals.~~

~~—(6) The Melbourne-Tillman Water Control District; Chapter 2001-336, Laws of Florida as amended by Chapter 2003-334, Laws of Florida.~~

**~~§ 174.005 SITE PLANS AND CONSTRUCTION DOCUMENTS.~~**

~~—(A) Information for development in flood hazard areas. The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:~~

~~—(1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.~~

~~—(2) Where base flood elevations, or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with subsection (C)(2) or (3) of this section.~~

~~—(3) Where the parcel on which the proposed development will take place will have more than fifty (50) lots or is larger than five (5) acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with subsection (C)(1) of this section.~~

~~—(4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide.~~

~~—(5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.~~

~~—(6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.~~

~~—(7) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.~~

~~—(8) Existing and proposed alignment of any proposed alteration of a watercourse.~~

~~—(B) The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this ordinance but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this ordinance.~~

~~—(C) Information in flood hazard areas without base flood elevations (approximate Zone A). Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator shall:~~

~~—(1) Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices.~~

~~—(2) Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.~~

~~—(3) Where base flood elevation and floodway data are not available from another source, where the available data are deemed by the Floodplain Administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:~~

~~—(a) Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices; or~~

~~—(b) Specify that the base flood elevation is three (3) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than three (3) feet.~~

~~—(4) Where the base flood elevation data are to be used to support a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a Florida licensed engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.~~

~~—(D) Additional analyses and certifications. As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed~~



by a Florida licensed engineer for submission with the site plan and construction documents:

~~— (1) For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in § 174.005(E), of this ordinance and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.~~

~~— (2) For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.~~

~~— (3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in subsection (E) of this section.~~

~~— (4) For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V), an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage.~~

~~— (5) For new principal residential and non-residential structures proposed to be located in a special flood hazard area, the applicant shall submit an application for a Letter of Map Amendment (LOMA) or a Letter Of Map Revision based on Fill (LOMR-F) to FEMA, and a copy of the applicants' submitted application to FEMA shall be submitted to the Floodplain Administrator prior to issuance of the certificate of occupancy. Substantially improved or substantially damaged buildings or structures are exempt from this requirement.~~

~~—(E) Submission of additional data. When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.~~

#### **~~§ 174.006 INSPECTIONS.~~**

~~—(A) Development for which a floodplain development permit or approval is required shall be subject to inspection.~~

~~—(B) Development other than buildings and structures. The Floodplain Administrator shall inspect all development to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.~~

~~—(C) Buildings, structures and facilities exempt from the Florida Building Code. The Floodplain Administrator shall inspect buildings, structures and facilities exempt from the Florida Building Code to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.~~

~~—(D) Buildings, structures and facilities exempt from the Florida Building Code, lowest floor inspection. Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure, or facility exempt from the Florida Building Code, or the owner's authorized agent, shall submit to the Floodplain Administrator:~~

~~—(1) If a design flood elevation was used to determine the required elevation of the lowest floor, the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor; or~~

~~—(2) If the elevation used to determine the required elevation of the lowest floor was determined in accordance with § 174.005(C)(3)(b), of this ordinance, the documentation of height of the lowest floor above highest adjacent grade, prepared by the owner or the owner's authorized agent.~~

~~—(E) Buildings, structures and facilities exempt from the Florida Building Code, final inspection. As part of the final inspection, the owner or owner's authorized agent shall submit to the Floodplain Administrator a final certification of elevation~~

of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations shall be prepared as specified in § 174.006(D), of this ordinance.

~~—(F) Manufactured homes. The Building Official shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this ordinance and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted to the Floodplain Administrator.~~

#### **~~§ 174.007 VARIANCES AND APPEALS.~~**

~~—(A) The City Council shall hear and decide on requests for appeals and requests for variances from the strict application of this ordinance. Pursuant to Fla. stat. § 553.73(5), the City Council shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code.~~

~~—(B) Appeals. The City Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision of City Council may appeal such decision to the Circuit Court, as provided by Florida Statutes.~~

~~—(C) Limitations on authority to grant variances. The City Council shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in subsection (G) of this section, the conditions of issuance set forth in subsection (H) of this section, and the comments and recommendations of the Floodplain Administrator and the Building Official. The City Council has the right to attach such conditions as it deems necessary to further the purposes and objectives of this ordinance.~~

~~—(D) Restrictions in floodways. A variance shall not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in § 174.005(D), of this ordinance.~~

~~—(E) Historic buildings. A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter 11 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not~~

~~preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.~~

~~—(F) Functionally dependent uses. A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this ordinance, provided the variance meets the requirements of subsection (D) of this section, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.~~

~~—(G) Considerations for issuance of variances. In reviewing requests for variances, the City Council shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this ordinance, and the following:~~

- ~~—(1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;~~
- ~~—(2) The danger to life and property due to flooding or erosion damage;~~
- ~~—(3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;~~
- ~~—(4) The importance of the services provided by the proposed development to the community;~~
- ~~—(5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;~~
- ~~—(6) The compatibility of the proposed development with existing and anticipated development;~~
- ~~—(7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;~~
- ~~—(8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;~~

~~—(9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and~~

~~—(10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.~~

~~—(H) Conditions for issuance of variances. Variances shall be issued only upon:~~

~~—(1) Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this ordinance or the required elevation standards;~~

~~—(2) Determination by the City Council that:~~

~~—(a) Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;~~

~~—(b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and~~

~~—(c) The variance is the minimum necessary, considering the flood hazard, to afford relief.~~

~~—(3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and~~

~~—(4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25 for \$100 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.~~

#### **~~§ 174.008 VIOLATIONS.~~**

~~—(A) Any development that is not within the scope of the Florida Building Code but that is regulated by this ordinance that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this ordinance, shall be deemed a violation of this ordinance. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this ordinance or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.~~

~~—(B) Authority. For development that is not within the scope of the Florida Building Code but that is regulated by this ordinance and that is determined to be a violation, the Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.~~

~~—(C) Unlawful continuance. Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law.~~

## **PART 2 – DEFINITIONS**

### **§ 174.020 DEFINITIONS.**

~~—(A) Unless otherwise expressly stated, the following words and terms shall, for the purposes of this ordinance, have the meanings shown in this section.~~

~~—(B) Terms defined in the Florida Building Code. Where terms are not defined in this ordinance and are defined in the Florida Building Code, such terms shall have the meanings ascribed to them in that code.~~

~~—(C) Terms not defined. Where terms are not defined in this ordinance or the Florida Building Code, such terms shall have ordinarily accepted meanings such as the context implies.~~

~~—ALTERATION OF A WATERCOURSE. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.~~

~~—APPEAL. A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.~~

~~—ASCE 24. A standard titled Flood Resistant Design and Construction that is referenced by the Florida Building Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.~~

~~—BASE FLOOD. A flood having a one percent (1%) chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 1612.2.] The BASE FLOOD is commonly referred to as the “100-year flood” or the “one percent (1%)-annual chance flood.”~~

~~—BASE FLOOD ELEVATION. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section 1612.2.]~~

~~—BASEMENT. The portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in FBC, B, Section 1612.2.]~~

~~—COASTAL HIGH HAZARD AREA. A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal high hazard areas are also referred to as “high hazard areas subject to high velocity wave action” or “V Zones” and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1 V30, VE, or V.~~

~~—CRITICAL FACILITY. Hospitals, nursing homes, police stations, fire stations, and emergency operation centers that are needed for flood response activities before, during, or after a flood; and public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood; and structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic and/or water-reactive materials. The term includes facilities that are assigned Risk Category III and Risk Category IV pursuant to the Florida Building Code, Building.~~

~~—DESIGN FLOOD. The flood associated with the greater of the following two areas: [Also defined in FBC, B, Section 1612.2.]~~

~~—(1) Area with a floodplain subject to a one percent (1%) or greater chance of flooding in any year; or~~

~~—(2) Area designated as a flood hazard area on the community’s flood hazard map, or otherwise legally designated.~~

~~—DESIGN FLOOD ELEVATION. The elevation of the “design flood,” including wave height, relative to the datum specified on the community’s legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building’s perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to two (2) feet. [Also defined in FBC, B, Section 1612.2.]~~

~~—DEVELOPMENT. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.~~

~~—ENCROACHMENT. The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.~~

~~—EXISTING BUILDING AND EXISTING STRUCTURE. Any buildings and structures for which the “start of construction” commenced before September 3, 1980. [Also defined in FBC, B, Section 1612.2.]~~

~~—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.~~

~~—FLOOD OR FLOODING. A general and temporary condition of partial or complete inundation of normally dry land from: [Also defined in FBC, B, Section 1612.2.]~~

~~—(1) The overflow of inland or tidal waters.~~

~~—(2) The unusual and rapid accumulation or runoff of surface waters from any source.~~

~~—FLOOD DAMAGE-RESISTANT MATERIALS. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 1612.2.]~~

~~—FLOOD HAZARD AREA. The greater of the following two (2) areas: [Also defined in FBC, B, Section 1612.2.]~~



~~—(1) The area within a floodplain subject to a one percent (1%) or greater chance of flooding in any year.~~

~~—(2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.~~

~~—FLOOD INSURANCE RATE MAP (FIRM). The official map of the community on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 1612.2.]~~

~~—FLOOD INSURANCE STUDY (FIS). The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and Floodway Map (if applicable), the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 1612.2.]~~

~~—FLOODPLAIN ADMINISTRATOR. The office or position designated and charged with the administration and enforcement of this ordinance (may be referred to as the Floodplain Manager).~~

~~—FLOODPLAIN DEVELOPMENT PERMIT OR APPROVAL. An official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and that are determined to be compliant with this ordinance.~~

~~—FLOODWAY. The channel of a river or other riverine watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot. [Also defined in FBC, B, Section 1612.2.]~~

~~—FLOODWAY ENCROACHMENT ANALYSIS. An engineering analysis of the impact that a proposed encroachment into a floodway is expected to have on the floodway boundaries and base flood elevations; the evaluation shall be prepared by a qualified Florida licensed engineer using standard engineering methods and models.~~

~~—FLORIDA BUILDING CODE. The family of codes adopted by the Florida Building Commission, including: Florida Building Code, Building; Florida Building Code, Residential; Florida Building Code, Existing Building; Florida Building Code, Mechanical; Florida Building Code, Plumbing; Florida Building Code, Fuel Gas.~~

~~— FUNCTIONALLY DEPENDENT USE. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.~~

~~— HAZARDOUS MATERIALS. Those chemicals or substances that are physical hazards or health hazards as defined and classified in the Florida Building Code and the Florida Fire Prevention Code, whether the materials are in usable or waste condition. [Defined in FBC, B, Section 307]~~

~~— HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.~~

~~— HISTORIC STRUCTURE. Any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building, Chapter 11 Historic Buildings.~~

~~— LETTER OF MAP CHANGE (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:~~

~~— (1) Letter of Map Amendment (LOMA). An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.~~

~~— (2) Letter of Map Revision (LOMR). A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.~~

~~— (3) Letter of Map Revision Based on Fill (LOMR-F). A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.~~

~~— (4) Conditional Letter of Map Revision (CLOMR). A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and~~

~~approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.~~

~~— LIGHT-DUTY TRUCK. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of forty-five (45) square feet or less, which is:~~

~~— (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or~~

~~— (2) Designed primarily for transportation of persons and has a capacity of more than twelve (12) persons; or~~

~~— (3) Available with special features enabling off-street or off-highway operation and use.~~

~~— LOWEST FLOOR. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the Florida Building Code or ASCE 24. [Also defined in FBC, B, Section 1612.2.]~~

~~— MANUFACTURED HOME. A structure, transportable in one or more sections, which is eight (8) feet or more in width and greater than four hundred (400) square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term MANUFACTURED HOME does not include a "recreational vehicle" or "park trailer". [Also defined in 15C-1.0101, F.A.C.]~~

~~— MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.~~

~~— MARKET VALUE. The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this ordinance, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, Actual Cash Value (replacement cost depreciated for age and quality of construction), or tax assessment value~~

~~adjusted to approximate market value by a factor provided by the Property Appraiser.~~

~~— NEW CONSTRUCTION. For the purposes of administration of this ordinance and the flood resistant construction requirements of the Florida Building Code, structures for which the “start of construction” commenced on or after September 3, 1980 and includes any subsequent improvements to such structures.~~

~~— PARK TRAILER. A transportable unit which has a body width not exceeding fourteen (14) feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in Fla. Stat. § 320.01]~~

~~— RECREATIONAL VEHICLE. A vehicle, including a park trailer, which is: [see in Fla. Stat. § 320.01]~~

~~— (1) Built on a single chassis;~~

~~— (2) Four hundred (400) square feet or less when measured at the largest horizontal projection;~~

~~— (3) Designed to be self-propelled or permanently towable by a light-duty truck; and~~

~~— (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.~~

~~— SAND DUNES. Naturally occurring accumulations of sand in ridges or mounds landward of the beach.~~

~~— SPECIAL FLOOD HAZARD AREA. An area in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year. SPECIAL FLOOD HAZARD AREAS are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 1612.2.]~~

~~— START OF CONSTRUCTION. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual START OF CONSTRUCTION means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, or the construction of columns.~~

~~— Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a~~

~~basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual START OF CONSTRUCTION means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 1612.2.]~~

~~—SUBSTANTIAL DAMAGE. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the building or structure before the damage occurred. [Also defined in FBC, B Section 1612.2.]~~

~~—SUBSTANTIAL IMPROVEMENT. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a five (5)-year period, the cumulative cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the improvement or repair is started. For each building or structure, the five (5)-year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:~~

~~—(1) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.~~

~~—(2) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.~~

~~—VARIANCE. A grant of relief from the requirements of this ordinance, or the flood resistant construction requirements of the Florida Building Code, which permits construction in a manner that would not otherwise be permitted by this ordinance or the Florida Building Code.~~

~~—WATERCOURSE. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.~~

### **~~PART 3 -- FLOOD RESISTANT DEVELOPMENT~~**

#### **~~§ 174.030 BUILDINGS AND STRUCTURES.~~**

~~—Design and construction of buildings, structures and facilities exempt from the Florida Building Code. Pursuant to § 174.004(C), of this ordinance, buildings, structures, and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings shall comply with the requirements of § 174.036 of this ordinance.~~

#### **~~§ 174.031 SUBDIVISIONS.~~**

~~—(A) Minimum requirements. Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:~~

~~—(1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;~~

~~—(2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and~~

~~—(3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.~~

~~—(B) Subdivision plats. Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:~~

~~—(1) Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats and final plats;~~

~~—(2) Where the subdivision has more than fifty (50) lots or is larger than five (5) acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with § 174.005(C)(1) of this ordinance; and~~

~~—(3) Compliance with the site improvement and utilities requirements of § 174.032 of this ordinance.~~

#### **~~§ 174.032 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS.~~**

~~—(A) Minimum requirements. All proposed new development shall be reviewed to determine that:~~

~~—(1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;~~

~~—(2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage;~~

~~—(3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures; and~~

~~—(4) All new roads shall comply with the requirements of § 174.036(E) of this ordinance.~~

~~—(B) Sanitary sewage facilities. All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.~~

~~—(C) Water supply facilities. All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.~~

~~—(D) Limitations on sites in regulatory floodways. No development, including but not limited to site improvements, and land disturbing activity involving fill or regrading, shall be authorized in the regulatory floodway unless the floodway encroachment analysis required in § 174.005(D)(1) of this ordinance demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.~~

~~—(E) Limitations on placement of fill. Subject to the limitations of this ordinance, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the Florida Building Code.~~

~~—(F) Limitations on sites in coastal high hazard areas (Zone V). In coastal high hazard areas, alteration of sand dunes and mangrove stands shall be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by this ordinance demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with this ordinance.~~

**~~§ 174.033 MANUFACTURED HOMES.~~**

~~—(A) All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to Fla. Stat. § 320.8249, and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this ordinance.~~

~~—(B) Foundations. All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that:~~

~~—(1) In flood hazard areas (Zone A) other than coastal high hazard areas, are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.2 and this ordinance.~~

~~—(2) In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.3 and this ordinance.~~

~~—(C) Anchoring. All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.~~

~~—(D) Elevation. All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V).~~

~~—(E) Enclosures. Enclosed areas below elevated manufactured homes shall comply with the requirements of the Florida Building Code, Residential Section R322 or R322.3 for such enclosed areas, as applicable to the flood hazard area.~~



~~—(F) Utility equipment. Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the Florida Building Code, Residential Section R322, as applicable to the flood hazard area.~~

#### **~~§ 174.034 RECREATIONAL VEHICLES AND PARK TRAILERS.~~**

~~—(A) Temporary placement. Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:~~

~~—(1) Be on the site for fewer than 180 consecutive days; or~~

~~—(2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.~~

~~—(B) Permanent placement. Recreational vehicles and park trailers that do not meet the limitations in subsection (A) of this section for temporary placement shall meet the requirements of § 174.033 of this ordinance for manufactured homes.~~

#### **~~§ 174.035 TANKS.~~**

~~—(A) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.~~

~~—(B) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of subsection (C) of this section shall:~~

~~—(1) Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.~~

~~—(2) Not permitted in coastal high hazard areas (Zone V).~~

~~—(C) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.~~

~~—(D) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:~~

~~—(1) At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and~~

~~—(2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.~~

**~~§ 174.036 OTHER DEVELOPMENT.~~**

~~—(A) General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this ordinance or the Florida Building Code, shall:~~

~~—(1) Be located and constructed to minimize flood damage;~~

~~—(2) Meet the limitations of § 174.032(D) of this ordinance if located in a regulated floodway;~~

~~—(3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;~~

~~—(4) Be constructed of flood damage-resistant materials; and~~

~~—(5) Have mechanical, plumbing, and electrical systems above the design flood elevation, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.~~

~~—(B) Fences in regulated floodways. Fences in regulated floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of § 174.032(D) of this ordinance.~~

~~—(C) Retaining walls, sidewalks and driveways in regulated floodways. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of § 174.032(D) of this ordinance.~~

~~—(D) Roads and watercourse crossings in regulated floodways. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations~~

~~of § 174.032(D) of this ordinance. Alteration of a watercourse that is part of a road or watercourse crossing shall meet the requirements of § 174.005(D)(3) of this ordinance.~~

~~—(E) General requirement for installation of new roads. All new roads in flood hazard areas shall have all traffic lanes elevated to or above the base flood elevation.~~

~~—(F) Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V). In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:~~

~~—(1) Structurally independent of the foundation system of the building or structure;~~

~~—(2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and~~

~~—(3) Have a maximum slab thickness of not more than four (4) inches.~~

~~—(G) Decks and patios in coastal high hazard areas (Zone V). In addition to the requirements of the Florida Building Code, in coastal high hazard areas, decks and patios shall be located, designed, and constructed in compliance with the following:~~

~~—(1) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck.~~

~~—(2) A deck or patio that is located below the design flood elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.~~

~~—(3) A deck or patio that has a vertical thickness of more than twelve (12) inches or that is constructed with more than the minimum amount of fill necessary~~

~~for site drainage shall not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.~~

~~— (4) A deck or patio that has a vertical thickness of twelve (12) inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.~~

~~— (H) Other development in coastal high hazard areas (Zone V). In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:~~

~~— (1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;~~

~~— (2) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and~~

~~— (3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.~~

~~— (I) Nonstructural fill in coastal high hazard areas (Zone V). In coastal high hazard areas:~~

~~— (1) Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.~~

~~— (2) Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.~~

~~—(3) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.~~

#### **~~§ 174.037 STORAGE OF HAZARDOUS MATERIALS.~~**

~~—Storage of hazardous materials that do not meet the anchoring, design, and construction requirements of § 174.035 of this ordinance, shall:~~

~~—(A) Be elevated to or above the base flood elevation, or to the design flood elevation, whichever is higher;~~

~~—(B) Be stored indoors.~~

#### **~~§ 174.038 CRITICAL FACILITIES.~~**

~~—Location of Critical Facilities. New critical facilities shall, to the extent feasible, be located outside of the special flood hazard area (100-year floodplain) and outside of the 0.2% annual chance flood hazard area (500-year floodplain). If documentation is provided that feasible sites outside of the special flood hazard are not available that satisfy the objectives of a proposed critical facility, then the critical facility shall:~~

~~—(A) Have the lowest floors elevated to or above the 0.2% annual chance flood hazard area (500-year floodplain) elevation plus one (1) foot (305 mm), or to the design flood elevation, whichever is higher; and~~

~~—(B) Meet the applicable flood resistant requirements of the Florida Building Code and ASCE 24, and where elevation requirements are specified, the minimum elevation shall be the 0.2% annual chance flood hazard area (500-year floodplain) elevation plus one (1) foot (305 mm), or to the design flood elevation, whichever is higher; and~~

~~—(C) Have access routes that are elevated to or above the 0.2% annual chance flood hazard area (500-year floodplain) elevation.~~

#### **~~§ 174.039 APPLICABILITY.~~**

~~—For the purposes of jurisdictional applicability, this ordinance shall apply in the City of Palm Bay. This ordinance shall apply to all applications for~~

~~development, including building permit applications and subdivision proposals, submitted on or after March 17, 2014.~~

## **STORMWATER MANAGEMENT AND CONSERVATION**

### **PART 1: GENERAL PROVISIONS**

#### **~~§ 174.050 TITLE.~~**

~~—This subchapter shall be known as “The Stormwater Management and Conservation Ordinance.”~~

#### **~~§ 174.051 FINDING OF FACTS.~~**

~~—The City Council finds that uncontrolled drainage and development of land may have a significantly adverse impact upon the quality of the waters of the community, generally:~~

~~—(A) Stormwater runoff carries pollutants into receiving water bodies, degrading water quality;~~

~~—(B) The increase in nutrients accelerates eutrophication of receiving waters, adversely affecting fauna and flora;~~

~~—(C) Improper channeling of water increases the velocity of runoff, thereby increasing erosion;~~

~~—(D) Construction requiring the alteration of natural topography and removal of vegetation increases erosion;~~

~~—(E) Siltation of water bodies resulting from increased erosion decreases their capacity to hold and transport water, interferes with navigation and harms fauna and flora;~~

~~—(F) Impervious surfaces increase the quantity and velocity of stormwater runoff. Less water percolates into the soil and recharge of groundwaters is thereby decreased;~~

~~—(G) Uncontrolled stormwater runoff increases the incidence of flooding and the level of floods which occur, possibly destroying property and causing loss of life;~~

~~—(H) Uncontrolled stormwater runoff interferes with the maintenance of optimum salinity in estuarine areas.~~

#### **~~§ 174.052 OBJECTIVES.~~**

~~— In order to protect, maintain, and enhance both the immediate and the long term health, safety, and general welfare of the citizens of the city, this subchapter has the following objectives:~~

~~— (A) To encourage productive and enjoyable harmony between man and nature;~~

~~— (B) To provide protection of land, improvements, and natural resources through the use of responsible stormwater management and flood protection;~~

~~— (C) To prevent individuals, business organizations, and governments from causing harm to the community by activities which adversely affect water resources;~~

~~— (D) To encourage the construction of stormwater management drainage systems and functionally approximate the natural system;~~

~~— (E) To encourage the protection of natural conveyance systems and the use of them in ways which do not impair their beneficial functioning;~~

~~— (F) To encourage the use of stormwater management systems which minimize the consumption of electrical energy or petroleum fuels to move water, remove pollutants, or maintain the system;~~

~~— (G) To reduce pollution intrusion in stormwater runoff that cause adverse impact to the quality of receiving waters;~~

~~— (H) To maintain or restore groundwater levels;~~

~~— (I) To protect, restore and maintain natural salinity levels in estuarine areas;~~

~~— (J) To minimize erosion and sedimentation;~~

~~— (K) To prevent damage to and encourage protection of wetlands;~~

~~— (L) To protect, restore, and maintain the chemical, physical and biological integrity of groundwater and stormwater;~~

~~— (M) To prevent damage from flooding, while recognizing the natural fluctuations in water levels are beneficial;~~

~~— (N) To protect, restore, and maintain the habitat of fish and wildlife;~~

~~— (O) To provide for stormwater infiltration, settling of suspended solids and removal of pollutants from runoff prior to discharge into surface waters;~~

~~— (P) To prevent damage to hydrological and biological functions of wetlands;~~

~~—(Q) To minimize the impact of development on the water resources of the region; and~~

~~—(R) To minimize the production of nuisance and disease-carrying mosquitos.~~

**~~§ 174.053 DEFINITIONS.~~**

~~—Unless specifically defined below, words and phrases shall be interpreted so as to give them the meaning they have in common usage and to give this subchapter its most reasonable application. For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—AGRICULTURAL LANDS. Those lands in actual agricultural use and for which an agricultural tax exemption has been granted.~~

~~—APPLICANT. The person applying for a permit to proceed with a project.~~

~~—ARTERIAL STREETS AND HIGHWAYS. Those which are used primarily for fast or heavy traffic, as defined in the city's Comprehensive Plan.~~

~~—AQUIFER. An underground formation permeable enough to transmit, store, or yield quantities of salt or fresh water.~~

~~—AS-BUILT PLANS. The amended site plans specifying the locations, dimensions, elevations, capacities and capabilities of structures or facilities as they have been constructed.~~

~~—CHANNEL. A natural stream that conveys water or a ditch excavated for the flow of water.~~

~~—CITY ENGINEER. The City of Palm Bay City Engineer or his or her designee.~~

~~—CLEARING. The removal of surface features such as trees or brush from the land or artificial drainage system but shall not include mowing.~~

~~—COLLECTOR STREETS. Those streets which carry traffic from minor streets to the major system of arterial streets and highways, or as defined in the Comprehensive Plan of the city.~~

~~—CONSTRUCTION. Any activity including land clearing, earth moving, or the erection of structures which may result in the creation of a Stormwater Management System.~~

~~—CONTROL ELEVATION. The lowest elevation at which water can be released through the discharge structure.~~



- ~~—CONTROL STRUCTURE. The element of a stormwater discharge system which allows the gradual release of water under controlled conditions.~~
- ~~—CONTOUR. An imaginary line on the surface of the earth connecting points of the same elevation.~~
- ~~—CROSS SECTION SLOPE (STREET). The slope of pavement perpendicular to the centerline.~~
- ~~—CURB AND GUTTER SECTION. A curb section constructed integrally with gutter.~~
- ~~—CUT. A portion of land surface or area from which earth has been removed or will be removed by excavating; the depth below original ground surface of excavated surface.~~
- ~~—CUT AND FILL. A process of earth moving by excavating part of an area and using the excavated material for adjacent embankments or fill areas.~~
- ~~—DAM. A barrier to confine or raise water for storage, detention or diversion, to create a hydraulic head, to prevent erosion downstream, or for retention of soil or other debris.~~
- ~~—DATUM. A plane, level or line from which heights and depths are calculated or measured and referenced to the USGS, National Geodetic Vertical Datum (NGVD), 1929.~~
- ~~—DESIGN HIGHWATER. The elevation of the water surface as determined by the flow conditions of the design floods.~~
- ~~—DESIGN STORM. A selected rainfall pattern of specified amount, intensity, duration, and frequency that is used as a basis for design.~~
- ~~—DETENTION. To the collection and storage of surface water for subsequent controlled discharge at a rate which is less than the rate of inflow.~~
- ~~—DETENTION TIME. The theoretical time required to displace the contents of a tank or unit at a given rate of discharge (volume divided by rate of discharge).~~
- ~~—DETENTION VOLUME. The volume of water equal to the difference between overflow elevation and control elevation of a discharge structure times the average area of open surface storage (at the control elevation) behind the discharge structure.~~
- ~~—DEVELOPER. Any person who engages in development or development activity either in his or her own behalf or as the agent of an owner of property.~~

~~—DEVELOPMENT or DEVELOPMENT ACTIVITY.~~

~~—(1) The construction, installation, demolition, or removal of a structure, impervious surface, or drainage facility; or~~

~~—(2) Clearing, scraping, grubbing, killing, or otherwise removing the vegetation from a site;~~

~~—(3) Adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging, or otherwise significantly disturbing the soil, mud, sand or rock of a site.~~

~~—DIRECT DISCHARGE. Discharge of storm water through a control structure to the receiving water body.~~

~~—DISCHARGE OR DISCHARGE POINT. The point of outflow of water from a project, site, aquifer, drainage basin or facility.~~

~~—DISCHARGE STRUCTURE. A structural device through or over which water is discharged from a stormwater management system.~~

~~—DISTURBED AREA. The area of land disturbed by development or construction.~~

~~—DRAIN. A buried pipe or other conduit (closed drain) and/or a ditch (open drain) for carrying off surface water or groundwater.~~

~~—DRAINAGE FACILITY. The whole or any part of the drainage system.~~

~~—DRAINAGE PLAN. The detailed analysis required by § 174.066 for each activity described in § 174.065 of this subchapter.~~

~~—DRAINAGE SYSTEM. The system through which water flows; it includes all watercourses, water bodies, and wetlands.~~

~~—DRAWDOWN. Lowering of the water surface (in open channel flow), water table or piezometric surface (in ground water flow) resulting from a withdrawal of water.~~

~~—DRY RETENTION. A water storage area with the bottom elevation at least one (1) foot or more above the wet season water table elevation. Retention storage percolates into the ground and evaporates rather than being discharged to receiving waters.~~

~~—DURATION. The period of time from beginning of a rainfall event to the end of a rainfall event.~~

~~—ELEVATION. The height in feet expressed in relation to mean sea level and referenced to the USGS, National Geodetic Vertical Datum (NGVD), 1929.~~

- ~~— EMBANKMENT. A man-made deposit of soil, rock or other material used to form an impoundment.~~
- ~~— ENVIRONMENT. The sum total of all the natural external conditions that may act upon an organism or community to influence its development or existence.~~
- ~~— EROSION. The wearing or washing away of soil by the action of wind or water.~~
- ~~— EROSION VELOCITY. That velocity of water in a stream, channel, canal, ditch, and the like which, when exceeded will cause erosion of the banks and/or existing land.~~
- ~~— EVENT. The specific storm which is, or is to be, considered in the design of a stormwater management system.~~
- ~~— EXFILTRATION. On-site retention of storm water accomplished below ground. Stormwater runoff is collected for temporary storage and infiltration.~~
- ~~— EXISTING. The average physical condition of the land and buildings on site immediately before development or redevelopment commences.~~
- ~~— FDEP. Florida Department of Environmental Protection, a governmental entity which has overlapping jurisdiction.~~
- ~~— FDOT. Florida Department of Transportation, a governmental entity which has overlapping jurisdiction~~
- ~~— FILL. Soil, consolidated or unconsolidated material, deposited on land or in water.~~
- ~~— FIRST FLUSH. The first portion of runoff generated by a rainfall event and containing the main portion of the pollutant load resulting from the storm.~~
- ~~— FLOOD. A temporary rise in the level of any water body, watercourse, or wetland which results in the inundation of areas not ordinarily covered by water.~~
- ~~— FLOOD ROUTING. Determining the changes in the rise and fall of flood water in a lake or as it proceeds downstream through a channel, natural stream or reservoir.~~
- ~~— FLOOD STAGE. The stage at which overflow of the natural banks of a lake or stream begins.~~
- ~~— FREEBOARD. A vertical distance between the elevation of the design highwater and the top of the bank, control structure, dam, or levee.~~

~~—FREQUENCY OF STORM (DESIGN STORM FREQUENCY). The anticipated period in years that will elapse, based on average probability of storms in the design area, before a storm of a given intensity and/or total volume will recur or the probability that a storm of a given intensity and/or total volume will occur in any given year; thus a twenty-five (25) year storm can be expected to occur on the average one (1) every twenty-five (25) years or have a 1/25 (4%) chance of occurring in any given year.~~

~~—GRADE. The slope of a road, channel, pipe, drain, or natural ground. The finished surface of a canal bed, roadbed, top of embankment or bottom of excavation; any surface prepared for the support of construction such as paving or the laying of conduit pipe, etc.~~

~~—GRADIENT. The change of elevation, velocity, pressure or other characteristics per unit length; slope.~~

~~—GRADING. Any stripping, cutting, filling, stockpiling, or any combination thereof, including the land in its cut and fill condition.~~

~~—GROUNDWATER. Water beneath the surface of the ground whether or not flowing through known and definite channels.~~

~~—GROUNDWATER TABLE. The free surface of the groundwater, that surface subject to atmospheric pressure under the ground, generally rising and falling with the season, the rate of withdrawal, the rate of restoration, and other conditions. It is not a static condition.~~

~~—HYDROGRAPH. A graph that shows the time distribution of runoff at a point of interest. A typical hydrograph for a single storm consists of a curve with a rising limb, a peak, and a receding limb. The shape of the curve depends on the duration and intensity of the rainfall, and drainage characteristics of the basin.~~

~~—HYDRAULIC CONDUCTIVITY. See PERMEABILITY.~~

~~—IMPERVIOUS SURFACE. A surface which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. The term includes most conventionally surfaced streets, roofs, sidewalks, parking lots, and similar structures.~~

~~—IMPOUNDMENT. Retention of water by artificial means.~~

~~—INDIRECT DISCHARGE. Discharge of storm water from a system by other than a control structure.~~

— ~~INDIRECT RUNOFF~~. That portion of runoff that contributes to the total runoff that enters the receiving system by indirect means, i.e., grassed area, not directly connected to the receiving system.

— ~~INFILTRATION PERCOLATION~~. An approach to land application in which stormwater runoff is applied to the land, by natural or man-made means, infiltrates the surface and percolates through the soil pores.

— ~~INFILTRATION RATE~~. A soil characteristic determining or describing the rate at which water can enter the soil under specific conditions, including the presence of an excess of water. Rate normally is not constant.

— ~~INLET~~. The opening into a storm sewer system for the entrance of surface storm runoff.

— ~~INVERT~~. The lowest point on the inside of a sewer or other conduit.

— ~~LAND~~. The earth, water, air, above, below or on the surface, and includes any vegetation, improvements or structures.

— ~~LANDLOCKED~~. The condition of a permanent water body in which, under normal rainfall conditions, it has no definitive, surface or conduit outfall to the ocean.

— ~~LINING~~. Impervious material such as concrete, clay, plastic, etc., placed on the sides and bottom of a ditch or channel and other water bodies to prevent or reduce the seepage of water through the sides and the bottom and/or prevent erosion.

— ~~MTWCD~~. Melbourne-Tillman Water Control District, a governmental entity which has overlapping jurisdiction.

— ~~MAINTENANCE~~. That action taken to restore or preserve the functional intent of any facility or system.

— ~~MARGINAL ACCESS STREETS~~. Minor streets which are parallel to and adjacent to arterial streets and highways; and which provide access to abutting properties and protection from through traffic.

— ~~MINOR STREETS~~. Those which are used primarily for access to the abutting properties.

— ~~NGVD~~. The National Geodetic Vertical Datum as corrected in 1929 and is a vertical control used as a reference for establishing varying elevations.

— ~~NATURAL FLOW~~. The flow patterns of storm water runoff over the land in its pre-development state; elements of natural drainage include overland flow, depressions, natural watercourses, etc.

~~—NATURAL SYSTEMS. Systems which pre-dominantly consist of or use those communities of plants, animals, bacteria, and other life systems which naturally occur on the land, in the soil or in the water.~~

~~—OFF-LINE. The storage of a specified portion of the stormwater in such a way so that subsequent runoff in excess of the specified volume of storm water does not flow into the area storing the initial stormwater.~~

~~—OUTFALL. The point, location or structure where stormwater runoff discharges to a receiving body of water.~~

~~—OUTLET. A point of stormwater disposal from a stream, river, lake or artificial drain.~~

~~—OVERFLOW. A pipeline or conduit device together with an outlet pipe that provides for the discharge of portions of storm sewer flows into receiving water, or other points of disposal after a device has allowed the portion of the water which can be handled by the storm sewer lines be carried by.~~

~~—OVERFLOW ELEVATION. Design elevation of a discharge structure at which, or below which, water is contained behind the structure, for that which leaks out, or bleeds out, through a control device down to the control elevation.~~

~~—OWNER. The person in whom is vested the fee ownership, dominion, or title of property, that is the lawful proprietor. This term may also include a tenant, if, under his or her lease, he or she is responsible for the maintenance of the property; also any agent of the owner or of the tenant including a developer.~~

~~—PEAK DISCHARGE. The maximum instantaneous flow from a given storm condition at a specific location.~~

~~—PERCOLATION. The movement of water through soils.~~

~~—PERCOLATION RATE. The rate usually expressed as a velocity at which water moves through saturated granular material.~~

~~—PERMANENT POOL. That portion of a wet detention pond, which normally holds water, for example: between the normal water level and the pond bottom, excluding any water volume claimed as wet detention treatment volume.~~

~~—PERMEABILITY. The property of a soil which allows the seepage of fluids through its interconnected void spaces, or more simply, the permeability describes how water flows through a soil. Units commonly used are cm/sec. for laboratory work, or ft/day for the design of engineering works.~~

~~—PERSON. Any and all persons, including an individual, firm, corporation, government agency, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest, or any other legal entity.~~

~~—PERVIOUS. Allowing movement of water.~~

~~—POLLUTANTS. Dredge spoil, solid wastes, incinerator residue, sewage, garbage, sewage sludge, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, and industrial, municipal and agricultural waste discharged into water.~~

~~—POLLUTION. The presence in waters of the state of any substances, contaminants or man-made or man-induced impairment of waters or alteration of the chemical, physical, biological, or radiological integrity of water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life of property, including outdoor recreation unless authorized by applicable law.~~

~~—POST-DEVELOPMENT CONDITION FOR STORMWATER RUNOFF. Topography, vegetation, rate, volume, direction and pollution load of storm water or groundwater flow that will exist after development.~~

~~—PRE-DEVELOPMENT CONDITION FOR STORMWATER RUNOFF. Topography; vegetation; rate, volume, direction and pollution load of storm water or groundwater flow existing prior to development.~~

~~—PROFESSIONAL ENGINEER (PE). A person in the United States who has achieved a registration through an examination process by which the State of Florida Board of Engineering Licensing, (Department of Business and Professional Regulation) determines and certifies that person has achieved a minimum level of competence pursuant to Fla. Stat. §§ 471.001 through 471.037. This process protects the public by preventing unqualified individuals from offering engineering services.~~

~~—PROJECT. The particular structures and improvements to a site proposed by an applicant on a particular land area which may be part of a common plan of development and shall include the subdivision of land.~~

~~—PUBLIC WORKS MANUAL. The document referenced in and made a part of this subchapter of the City Code which, in part, outlines the Engineering design criteria and permitting procedures for stormwater management within the city.~~

- ~~— RAINFALL INTENSITY. The rate at which rain is falling at any given instant, usually expressed as inches per hour.~~
- ~~— RATE. Volume per unit of time.~~
- ~~— RECEIVING BODIES OF WATER. Any water bodies, watercourses, and wetlands into which surface waters flow.~~
- ~~— RECHARGE. The inflow of water into a project, site, aquifer, drainage basin or facility.~~
- ~~— REGISTERED LAND SURVEYOR. A person in the United States who has achieved a registration through an examination process by which the Department of Business and Professional Regulation of the State of Florida determines and certifies that person to engage in the practice of land surveying pursuant to Fla. Stat. §§ 472.001 through 472.039. This process protects the public by preventing unqualified individuals from offering surveying services.~~
- ~~— RETENTION. The collection and storage of runoff without subsequent surface discharge to surface waters.~~
- ~~— RETENTION/DETENTION AREA (DRY). Water storage area with bottom elevation at least one (1) foot above seasonal high groundwater table elevation.~~
- ~~— RETENTION/DETENTION AREA (WET). Water storage area with bottom elevation lower than one (1) foot above seasonal high groundwater table elevation.~~
- ~~— RETENTION STRUCTURE. A natural or artificial basin that functions similar to a detention structure except that it maintains a permanent storm water runoff.~~
- ~~— RETROFITTING. To improving the quality of urban stormwater runoff to whatever degree is achievable. The improvement can include the existing system modification, or the addition of new structures or stormwater management practices, or changes in activities or land uses.~~
- ~~— RIPRAP. The use of man-made or natural materials placed on earth surfaces for protection against the action of water.~~
- ~~— ROUTING. Storing, regulating, diverting or otherwise controlling the peak flows of stormwater runoff through a collection system according to some predetermined plan or design.~~
- ~~— RUNOFF. The portion of precipitation that flows from a drainage area on the land surface, in open channels or in stormwater conveyance systems.~~



~~— RUNOFF COEFFICIENT. A decimal number used in the Rational formula which defines the runoff characteristics of the drainage area under consideration. It may be applied to an entire drainage basin as a composite representation or may be applied to a small individual area such as a (1) residential or commercial lot.~~

~~— SJRWMD. St. Johns River Water Management District, a governmental entity which has overlapping jurisdiction.~~

~~— SEASONAL HIGH GROUNDWATER TABLE ELEVATION. The highest level of the saturated zone in the soil in a year with normal rainfall.~~

~~— SEDIMENT. Solid material, whether mineral or organic, that is in suspension, is being transported, or has moved from its site or origin by air, water, or gravity.~~

~~— SEDIMENT FACILITY. Any structure or area which is designed to hold runoff water until suspended sediments have settled.~~

~~— SITE. Any tract, lot or parcel of land or combination of tracts, lots, or parcels of land which are in one ownership, or are contiguous and in diverse ownership where development is to be performed as part of a unit, subdivision, or project.~~

~~— SLOPE. A degree of deviation of a surface from the horizontal; measured as a numerical ratio, percentage, or in degrees. Expressed as a ratio, the first number is the horizontal distance and the second is the vertical distance, such as two to one (2:1). A two to one (2:1) slope is a fifty percent (50%) slope.~~

~~— SOIL. The unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.~~

~~— STORAGE CAPACITY. The volume of water which can be impounded by the structure below the emergency spillway crest and above the wet season water table.~~

~~— STORM FREQUENCY. The time interval between major storms of predetermined intensity and volumes of runoff which storm drainage systems and such appurtenant structures are designed and constructed to handle hydraulically without surcharging and back flooding, e.g., a five (5) year, ten (10) year or twenty-five (25) year storm.~~

~~— STORM SEWER. A conduit that carries storm water.~~

~~— STORMWATER RUNOFF. The flow of water which results from, and which occurs during and immediately following a rainfall event.~~

~~—STORMWATER MANAGEMENT SYSTEM. A system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage environmental degradation, and water pollution or otherwise affect the quality and quantity of the discharges.~~

~~—STREET CURB. The lateral side of the pavement determined by either a vertical or a sloped section.~~

~~—STRUCTURE. Anything constructed, installed, or portable, the use of which requires a location on a parcel of land.~~

~~—SUB-BASIN. A physical division of a larger basin associated with one reach of the storm drainage system.~~

~~—SUBDIVISION. The division of a tract or parcel of land into three or more tracts or parcels.~~

~~—SURFACE WATER. All water the surface of which is exposed to the atmosphere.~~

~~—SUSPENDED SOLIDS. Solids either floating or suspended in water.~~

~~—SWALE. A natural or man-made drainage pathway, which if manmade has a top width to depth ratio of the cross-section equal to or greater than six to one (6:1) or side slopes equal to or greater than three (3) feet horizontal to one (1) foot vertical; and has a grade as flat as the topography and design conditions will allow; and only contains contiguous areas of standing or flowing water following the occurrence of rainfall or flooding; and is planted with vegetation suitable for soil stabilization, stormwater treatment, and nutrient uptake.~~

~~—TIME OF CONCENTRATION. The time required for storm runoff to flow from the most remote point of a drainage area to the outlet or point under consideration. It is not constant but varies with the depth of flow, grades, and conditions of conduit and/or channel.~~

~~—USGS. The United States Geological Survey.~~

~~—VEGETATION. All plant growth, especially trees, shrubs, vines, ferns, mosses, and grasses.~~

~~—VOLUME. Occupied space, measured in cubic units.~~

~~—WATER and COMMUNITY WATERS. Any and all water on or beneath the surface of the ground or in the atmosphere. It includes the water in any~~

~~watercourse, water body, or drainage system. It also includes diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as coastal waters.~~

~~—WATER BODY. Any natural or artificial pond, lake, reservoir, or other area which ordinarily or intermittently contains water and which has a discernable shoreline.~~

~~—WATER QUALITY. To describe the chemical, physical and biological characteristics of water usually in respect to its suitability for a particular purpose.~~

~~—WATER RESOURCES. A supply of ground water and water in a given area.~~

~~—WATER TABLE. The boundary between the zone of saturation and the zone of aeration. The water table varies with such factors as tides, amount of rainfall, and evaporation.~~

~~—WATERCOURSE. Any natural or artificial stream, creek, channel, ditch, canal, waterway, gully, ravine or wash in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed or banks.~~

~~—WATERSHED. The region drained by or contributing water to a stream, lake or other body of water.~~

~~—WATERSHED MANAGEMENT. Use, regulation and treatment of water and land resources of a watershed to accomplish stated objectives.~~

~~—WEIR. A device for measuring or regulating the flow of water.~~

~~—WETLANDS. Those areas saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a dominance of vegetation adapted for life in saturated soil conditions. For the purposes of these regulations, wetlands are those areas which meet the criteria of both (1) and (2) as follows:~~

~~—(1) Those areas which support a dominance of wetland vegetation types listed in the rules of the Florida Department of Environmental Protection;~~

~~—(2) Those areas associated with soil types as mapped in the latest edition of the soil survey of Brevard County by the United States Department of Agriculture Soil Conservation Service.~~

~~—WET DETENTION. The collection and temporary storage of stormwater in a permanently wet impoundment in such a way as to provide for treatment through physical, chemical and biological processes with subsequent gradual release of storm water.~~

**~~§ 174.054 VESTED RIGHTS; PRIOR LAW.~~**

~~—This subchapter shall not in any way limit or modify the vested rights of any person to complete any development or improvements to land based upon prior law where a previous permit or authorization has been granted or applied for and where such previous permit or authorization remains in effect.~~

**~~PART 2: DRAINAGE PLAN~~**

**~~§ 174.065 APPROVAL REQUIRED; EXCEPTIONS.~~**

~~—(A) A drainage plan must be approved by the City Engineer, unless exempted by divisions (B), (C), (D), (E) or (F) below, before:~~

~~—(1) Recording a plat or subdividing land;~~

~~—(2) Altering, rerouting, deepening, widening, obstructing or changing the channel configuration in any way of an existing drainage system;~~

~~—(3) Commencing development for subdivisions, shopping centers, commercial or industrial facilities; or~~

~~—(4) Commencing any other development which may:~~

~~—(a) Significantly increase or decrease the rate or quantity of stormwater runoff;~~

~~—(b) Degrade the quality of water;~~

~~—(c) Adversely affect any wetland, watercourse, or water body.~~

~~—(B) For the purpose of this section, development within a subdivision shall not require approval of a drainage plan if each of the following conditions have been met:~~

~~—(1) Drainage provisions for the subdivision were previously approved and remains valid as part of a final plat;~~

~~—(2) The development is conducted in substantial accordance with the drainage provisions contained in the development plan submitted with the final plan for approval.~~

~~—(C) Normal maintenance activities are exempt.~~

~~—(D) A single family or duplex residential dwelling to be built and inhabited by the applicant may be excluded from the requirements of this subchapter upon determination by the City Engineer that such construction will not adversely impact on the drainage system.~~

~~—(E) The City Council may grant a written variance from any requirement of this section using the following criteria:~~

~~—(1) There are special circumstances applicable to the subject property or its intended use; and~~

~~—(2) The granting of the variance will not:~~

~~—(a) Significantly increase or decrease the rate or volume of stormwater runoff;~~

~~—(b) Significantly contribute to the degradation of water quality;~~

~~—(c) Otherwise significantly impair attainment of the objectives of this subchapter.~~

~~—(F) An impervious surface may be excluded if less than five thousand (5,000) square feet is created, upon determination by the City Engineer that such construction will not adversely impact on the drainage system.~~

#### **~~§ 174.066 CONTENTS.~~**

~~—(A) It is the responsibility of an applicant to include in the drainage plan sufficient information for the Design Review Board, the Zoning Board and the City Council to evaluate the environmental qualities of the affected area, the potential and predicted impacts of the proposed activity on affected waters, and the effectiveness and acceptability of these measures proposed by the applicant for reducing adverse impacts. The drainage plan shall, when appropriate, contain maps, charts, graphs, tables, photographs, narrative descriptions and explanations, and citations to supporting references. The drainage plans and the calculations documentation shall be professionally presented. Substandard work shall not be accepted.~~

~~—(B) The drainage plan shall be separated from the construction plan and final plat, shall contain the name, address, and telephone number of the owner/developer. In addition, the legal description of the property shall be provided, and its location with reference to such landmarks as major water bodies, adjoining roads, railroads, subdivisions or towns shall be clearly identified by a map.~~

~~—(C) The existing environmental hydrologic conditions of the site and of receiving waters and wetlands shall be described and mapped where appropriate, including the following:~~

- ~~— (1) The direction, flow rate, and volume of flow of surface water runoff under predevelopment conditions;~~
- ~~— (2) The location of areas on the site where surface waters collect and percolate into the ground;~~
- ~~— (3) A description of all watercourses, water bodies, and wetlands on or adjacent to the site or into which surface waters flow. Information regarding their water quality and the current water quality classification, if any, given them by the Florida Department of Environmental Regulations shall be included;~~
- ~~— (4) Groundwater levels, including seasonal fluctuations, using U.S. Soil Conservation Service (SCS) methodology or other appropriate means;~~
- ~~— (5) A description of the topography, soils, vegetation, and location of the floodplain (according to the latest edition of the Flood Insurance Rate Map, FIRM).~~
- ~~— (D) Proposed alterations of the site shall be described and mapped where appropriate, including:~~
  - ~~— (1) Changes in topography;~~
  - ~~— (2) Areas where vegetation will be cleared or otherwise killed;~~
  - ~~— (3) Areas that will be covered with an impervious surface and description of the surfacing material;~~
  - ~~— (4) The size and location of buildings or structures; and~~
  - ~~— (5) Proposed drainage facilities.~~
- ~~— (E) Predicted impacts of the proposed development on existing conditions shall be described and mapped where appropriate, including:~~
  - ~~— (1) Changes in water quality;~~
  - ~~— (2) Changes in groundwater levels;~~
  - ~~— (3) Changes in the extent of flooding on the site and upstream and downstream from it;~~
  - ~~— (4) Impact on wetlands; and~~
  - ~~— (5) Impact on vegetation.~~
- ~~— (F) All other components of the drainage system that the Public Works Manual requires, and any measures for the detention, retention, or infiltration of water or~~

~~for the protection of water quality shall be described and mapped where appropriate, including:~~

~~— (1) The channel, direction, flow rate, volume and quality of stormwater that will be conveyed from the site, with a comparison to predevelopment conditions;~~

~~— (2) Detention and/or retention areas, including plans for the discharge of contained waters, maintenance plans, and logical predictions of water quality in the detention and/or retention areas. In addition, detention and/or retention areas shall be a separate and reserved area, and shall not be part of the front or back yards. Therefore, subdivisions shall have separate tracts of land dedicated to stormwater detention/retention;~~

~~— (3) These separate areas of the site shall be used or reserved for percolating water into the ground, including a prediction of the impact on groundwater quality;~~

~~— (4) A plan for the control of erosion and sedimentation, which specifies in detail the type and location of control measures, the stage of development at which they will be put into place or used and provisions for the maintenance of them;~~

~~— (5) Any other information which the developer, the Design Review Board, the Zoning Board and the City Council considers necessary for an evaluation of the proposed development.~~

~~— (G) The data required for submittal are considered the minimum in order for the Department of Public Works to properly evaluate the system and ascertain its impact on existing facilities.~~

~~— (H) All consultants should review the Public Works Manual for the requirements as it relates to the specific project. A preapplication meeting is not required, but is strongly recommended in order to avoid delays in the approval process.~~

#### **~~§ 174.067 PERFORMANCE STANDARDS.~~**

~~— Drainage plans shall be approved by the City Engineer when it can be demonstrated that the proposed development activity has been planned and designed and will be constructed and maintained to meet each of the following standards:~~

~~— (A) To maintain the natural flow regime and hydrologic characteristics of drainage basins each plan must include, at a minimum, the calculations for both predevelopment and postdevelopment conditions and the following design criteria:~~

~~— (1) Storm water runoff characteristics (e.g., curve number, runoff coefficient).~~

~~—(2) Seasonal high groundwater table elevations.~~

~~—(3) Curve number selection and infiltration potential shall be based on a recommendation from an on-site analysis of site soils by a qualified geotechnical engineer. Infiltration potential and the extent of each soil type found on the site must be included.~~

~~—(4) Time of concentration calculations. A minimum time of concentration of fifteen (15) minutes shall be used for commercial developments and minor street projects, and ten (10) minutes for all other developments.~~

~~—(5) Design storm, including duration, frequency, precipitation and type of distribution, and shall be selected as follows:~~

~~—(a) Ten (10) year, twenty-four (24) hour storm event for commencing development for subdivisions, shopping centers, commercial or industrial facilities.~~

~~—(b) Twenty-five (25) year, twenty-four (24) hour storm event for any arterial, collector or major road projects; and subdivisions, industrial or commercial development of forty (40) acres or more.~~

~~—(6) Stage-storage computations of any storage areas such as retention/detention facilities used, including the computations showing the effect of the design storm event.~~

~~—(7) Stage-storage-discharge computations for any retention/detention facilities at the control point or any other point as required, (e.g., weir), including the computations showing the effect of the design storm event.~~

~~—(8) Drawdown calculations for retention/ detention facilities to substantiate design. The drawdown calculation shall be based on a complete soils study by a qualified geotechnical engineer.~~

~~—(9) Post-development peak rate of discharge shall not exceed predevelopment peak rate of discharge for the ten (10) year, twenty-four (24) hour or twenty-five (25) year, twenty-four (24) hour storm, whichever is the appropriate design storm.~~

~~—(10) A description of the methodology, assumptions, parameters, and a copy of all such computations used to analyze the system shall be included with the submittal. If a computer program is used for the analysis, a copy of the computer printout shall be submitted to the city. The applicant must obtain approval from the City Engineer for any software used in the development of application materials.~~



- ~~— (11) Complete description of measures to be implemented during the construction period to mitigate adverse quantity and quality impacts off-site.~~
- ~~— (12) Any temporary construction which may affect the on-site and/or off-site storm water management system prior to completion of the project.~~
- ~~— (13) Wet detention storm water management systems shall:~~
  - ~~— (a) Provide a treatment volume of the following:~~
    - ~~— 1. One (1) inch of runoff from the entire site, or~~
    - ~~— 2. Two and one-half (2½) inches of runoff from the impervious area (whichever is greater of the two).~~
  - ~~— (b) Be designed so that the outfall structures shall bleed down one-half (½) the volume of storm water specified in (a) above, within forty-eight (48) to sixty (60) hours following a storm event, but no more than one-half (½) of this volume will be discharged within the first forty-eight (48) hours.~~
  - ~~— (c) Contain a permanent pool of water sized to provide an average residence time of at least fourteen (14) days.~~
  - ~~— (d) Provide a littoral zone to be designed as follows:~~
    - ~~— 1. The littoral zone shall be gently sloped (six to one (6:1) or flatter). At least thirty percent (30%) of the wet detention system surface area shall consist of a littoral zone. The percentage of littoral zone is based on the ratio of vegetated littoral zone to surface area of the pond at the control elevation.~~
    - ~~— 2. The treatment volume should not cause the pond level to rise more than eighteen (18) inches above the control elevation.~~
  - ~~— (e) The option of utilizing a fifty percent (50%) increase in permanent pool volume in lieu of littoral zone.~~
- ~~— (14) Development with no outfall available (landlocked) shall detain and treat its stormwater runoff on the site from a one hundred (100) year, twenty-four (24) hour design storm or according to SJRWMD 40C-4 criteria, whichever is more stringent.~~
- ~~— (15) Computations showing that the spacing of inlets is in conformity with the maximum allowable water spread on pavement as defined in the city Public Works Manual.~~

~~—(16) If an open channel or swale is used for conveyance, the side slopes shall be one (1) foot vertical drop for each two (2) feet or more of horizontal distance.~~

~~—(17) The side slope on dry retention ponds shall be sodded and whenever possible the bottom should be sodded also or seed and mulched as minimum.~~

~~—(18) A certification signed by the engineer, licensed in the state, responsible for the design which shall read as follows:~~

~~“I hereby certify that the design of the Stormwater Management System for the project known as (Project Name) meets all of the requirements and has been designed substantially in accordance with the requirements of the City of Palm Bay's Ordinance No. 95-33 and the Public Works Manual.”~~

~~—(B) To protect or improve the quality of groundwaters and surface waters;~~

~~—(C) To ensure that there is not more erosion after development than there was under natural or predevelopment conditions;~~

~~—(D) To maintain groundwater levels;~~

~~—(E) To protect the beneficial functioning of wetlands such as swamps, bogs, marshes, estuarines, sloughs, floodplains, water basins and salt meadows for the natural storage of surface waters and the biological reduction and assimilation of pollutants;~~

~~—(F) To protect against damage by building in an area, the whole or part of which is subject to flooding, until the area is filled to the base flood elevation after settlement, as shown on the flood insurance rate map and/or the flood hazard boundary map with amendments; or elevate the structures such that the finished habitable floors are built to or above the applicable base flood elevation as shown on the flood insurance rate map and/or the flood hazard boundary map with amendments and have met the requirements of this chapter.~~

~~—(G) To prevent saltwater intrusion by adhering to applicable best management practices;~~

~~—(H) To minimize injury to vegetation, fish and wildlife habitat and otherwise help to attain the objectives of this subchapter.~~

#### **~~§ 174.068 DESIGN STANDARDS.~~**

~~—To ensure attainment of the objectives of this subchapter and that performance standards will be met, the design, construction, and maintenance of drainage systems shall be consistent with the following standards:~~

- ~~—(A) Channeling stormwater runoff directly into water bodies shall be prohibited. Instead, runoff should be routed over a longer distance, through swales and other works designed to increase infiltration, allow suspended solids to settle, and remove pollutants;~~
- ~~—(B) Natural watercourses shall not be dredged, cleared of vegetation, deepened, widened, straightened, stabilized or otherwise altered. Water shall be retained or detained before it enters any natural watercourse in order to preserve the natural hydrodynamics of the watercourse and to prevent siltation or other pollution;~~
- ~~—(C) The area of land disturbed by development shall be as small as practicable. Those areas which are not to be disturbed shall be protected by an adequate barrier from construction activity. Whenever possible, natural vegetation shall be retained and protected;~~
- ~~—(D) No grading, cutting or filling shall be commenced until erosion and sedimentation control structures have been installed between the disturbed area and water bodies, watercourses and wetlands;~~
- ~~—(E) Land which has been cleared for development and upon which construction has not commenced shall be protected from erosion by appropriate techniques designed to revegetate the area;~~
- ~~—(F) Sediment shall be retained on the site of the development;~~
- ~~—(G) Wetlands and other water bodies shall not be used as primary sediment traps during development;~~
- ~~—(H) Erosion and sedimentation facilities shall receive regular maintenance to ensure that they continue to function properly;~~
- ~~—(I) Artificial watercourses shall be designed, considering soil type, so that the velocity of flow is low enough to prevent erosion;~~
- ~~—(J) City and MTWCD maintained facilities are subject to the level of service and standards the city and MTWCD respectively have the ability to provide.~~
- ~~—(K) Vegetated buffer strips shall be created or, where practicable, retained in their natural state along the banks of all watercourses, water bodies or wetlands. The width of the buffer shall be sufficient to prevent erosion, trap the sediment in overland runoff, provide access to the water body and allow for periodic flooding without damage to structures;~~
- ~~—(L) Intermittent watercourses, such as swales, shall be vegetated;~~

- ~~—(M) Retention and detention ponds shall be used to retain and detain the increased and accelerated runoff which the development generates. Water shall be released from detention ponds into watercourses or wetlands at a rate and in a manner approximating the natural flow which would have occurred before development;~~
- ~~—(N) Although the use of wetlands for storing and purifying water is encouraged, care must be taken not to overload their capacity, thereby harming the wetlands and transitional vegetation;~~
- ~~—(O) Dry retention facilities, a volume sufficient to retain the runoff from one-half ( $\frac{1}{2}$ ) inch of rainfall of entire site (or one and one-half ( $1\frac{1}{2}$ ) inches of runoff of impervious surfaces if greater) shall be provided;~~
- ~~—(P) Wet detention facilities, no more than one-half ( $\frac{1}{2}$ ) of this volume may be discharged in the first seventy-two (72) hours following a storm event; the total volume recovery occurring in fourteen (14) days;~~
- ~~—(Q) Volume in the permanent pool (below maintained water level) in wet detention facilities must be sufficient to provide a residence time of at least fourteen (14) days. This volume may be determined as one and one-half ( $1\frac{1}{2}$ ) inches over the impervious portion of the drainage basin, plus one-half ( $\frac{1}{2}$ ) inch over the pervious portion of the basis;~~
- ~~—(R) The inlet structure and outlet structure in wet detention facilities shall be located that contact between stormwater and littoral plantings is maximized. The inlet to the wet detention pond should be baffled to reduce turbulence, and the outlet from the wet detention pond shall be located as far as practicable from the inlet and should be constructed with skimmers to prevent the transmission of oils, grease and floating debris;~~
- ~~—(S) Runoff from parking lots shall be treated to remove oil and sediment before it enters receiving waters;~~
- ~~—(T) Detention and retention areas shall be designed when possible so that shorelines are sinuous rather than straight and so that the length of shoreline is increased, thus offering more space for the growth of littoral vegetation;~~
- ~~—(U) The use of drainage facilities and vegetated buffer zones as open space, recreation and conservation areas shall be encouraged;~~
- ~~—(V) Disturbed areas shall be stabilized and protected from erosion as soon as possible.~~

~~—(W) Retention areas shall be designed as dry-bottom ponds, with the seasonal high groundwater table demonstrated to be at least one (1) foot below the finished pond bottom. Wet bottom ponds may be used provided that the entity responsible for maintenance shall not be the city.~~

~~—(X) Detention reservoirs may be designed as wet-bottom or dry-bottom ponds. If designed as dry-bottom ponds, the seasonal high groundwater table shall be demonstrated to be at least one (1) foot below the finished pond bottom. If designed as a wet-bottomed pond, the depth shall be sufficient to limit growth of emergent plants to designated peripheral littoral zones, if applicable. Detention ponds shall be designed to remain hydraulically separate from the retention ponds so that backflow and mixing does not occur.~~

~~—(Y) Dry retention systems shall be designed to recover one-half ( $\frac{1}{2}$ ) of their volume in twenty-four (24) hours and the entire volume in seventy-two (72) hours. Wet detention systems shall recover their volumes in less than fourteen (14) days.~~

~~—(Z) The City Engineer may, under certain extenuating circumstances, when there is no other alternative, waive the pond system requirement for wet detention systems.~~

~~—(AA) A developer may elect to implement voluntary low impact development design standards for new development or redevelopment in accordance with this section.~~

~~—(1) Voluntary Low Impact Development (LID) is the voluntary implementation of designs and standards that further reduce stormwater pollution by maximizing open, green, and pervious space during development or redevelopment of a site. It is the developer's responsibility to comply with the requirements for stormwater management contained within Chapter 174 of the Palm Bay Code of Ordinances.~~

~~—(2) The City Engineer, or designee, shall review and concur that the low impact development designs and standards are consistent with the City's Low Impact Development Manual.~~

~~—(3) Voluntary LID designs and standards shall, at a minimum, be planned and designed to manage and capture stormwater runoff, to the maximum extent feasible, in a manner consistent with the integrated management practices (IMPs) as outlined in the City's Low Impact Development Manual.~~

~~—(4) The developer shall adhere to the LID designs and standards as contained in the City's Low Impact Development Manual to be entitled to a density or intensity bonus, more floor space than allowed under the current or proposed future land~~

~~use designation or zoning, greater height, a reduction in fees, credits, or granting of other incentives as authorized by City Council.~~

**~~§ 174.069 DEDICATION OF DRAINAGE FACILITIES.~~**

~~—The City Council may require, as a condition for obtaining approval for a drainage plan, that the applicant contract to dedicate drainage facilities to the city.~~

**~~§ 174.070 PERMIT FEES.~~**

~~—(A) A variable permit fee shall be collected at the time the required application package is submitted and will include the total cost of administration, management, engineering and inspection charges of the permitting process. Permit fees are as established by resolution pursuant to § 169.004.~~

~~—(B) Fees collected shall be used to offset the cost of the Stormwater Management and Conservation, site plan, and subdivision review service and shall be allocated to provide recovery of cost to the department.~~

~~—(C) The fees set forth in this section shall be increased by four percent (4%) (rounded to the nearest dollar) each fiscal year. Should any decrease in such fees be warranted in any given year, they shall also be decreased annually by that percentage that accurately reflects the reduction of permits requested and the specific and ascertainable resulting reduction in funds needed to pay the city costs to manage all services and time needed to issue and monitor the permits required by this section.~~

**~~§ 174.071 OUTSIDE AGENCY AND GOVERNMENTAL ENTITIES COORDINATION.~~**

~~—(A) While this subchapter is intended to be the minimum standards and criteria for the design of stormwater management systems in the city, other regulatory agencies and/or governmental entities by state statutes or by political boundaries have equal jurisdiction. Most of these agencies or governmental entities have established and refined design criteria for stormwater management. In some cases, established design parameters of those agencies contain conflicting standards or criteria. In the case of conflicting criteria, it is the intent of this subchapter to have the most stringent regulations govern.~~

~~—(B) The following is a synopsis of those agencies and governmental entities which have overlapping jurisdiction:~~

- ~~—(1) St. Johns River Water Management District (SJRWMD);~~
- ~~—(2) Florida Department of Transportation (FDOT);~~

- ~~—(3) Florida Department of Environmental Protection (FDEP);~~
- ~~—(4) Melbourne-Tillman Water Control District (MTWCD);~~
- ~~—(5) Brevard County.~~

**~~§ 174.072 VIOLATIONS; NOTICE.~~**

- ~~—(A) Any person who:~~

- ~~—(1) Commences or conducts an activity described in § 174.066 without prior approval of drainage plan;~~
- ~~—(2) Deviates from an approved drainage plan; or~~
- ~~—(3) Fails to maintain drainage facilities under his ownership or control;~~

~~shall be subject to the penalty set forth in § 174.079.~~

~~—(B) Any activity undertaken in violation of this subchapter shall be halted immediately after written notice by the City Engineer. The violator may be required to restore any altered land to its prior condition. In the event that restoration is not undertaken within a reasonable time as specified by the City Engineer, the City Council may act to restore the property. The cost of this restoration shall then become a lien upon the property where such illegal activity occurred.~~

**~~§ 174.073 SINGLE-FAMILY RESIDENTIAL CONSTRUCTION.~~**

- ~~—(A) Drainage requirements for single family residential construction. All single-family residential development shall meet the following requirements:~~

~~—(1) The finished floor elevation of the proposed dwelling may not be above the finished floor elevation of any existing side adjacent dwelling that is adjacent to the side of the proposed dwelling by more than one (1) foot for each four (4) feet of setback from the common property line.~~

~~—(2) Side slopes on any area within the lot cannot exceed one (1) foot vertical for each four (4) feet horizontal.~~

~~—(3) In areas with municipal sanitary sewer service, the maximum height of the finished floor elevation of a proposed dwelling cannot exceed one (1) foot above the finished floor elevation of any existing dwelling that is adjacent to the side of the proposed dwelling. If the proposed dwelling is not adjacent to any existing dwellings, the maximum finished floor elevation may also not be more than three (3) feet above the crown of the road that the subject property abuts. Where no municipal sanitary sewer service exists, the maximum height of the finished floor~~

~~elevation of a proposed dwelling cannot exceed six (6) inches above the finished floor elevation established by the septic tank permit.~~

~~—(4) The development of the proposed dwelling shall not adversely impact the historical drainage or surrounding properties and/or structures of the block in which the proposed dwelling is to be located. The developer of the proposed dwelling unit must accommodate historical drainage by redirecting it to a legal positive outfall.~~

~~—(5) The drainage from the development of the proposed dwelling must be directed to a legal positive outfall, without adversely impacting any adjacent properties.~~

~~—(6) To facilitate the above requirements alternate measures other than fill material may be utilized, including but not limited to, stem walls, extended footers, pilings, pumped on-site sewage systems with elevated drainfields, yard piping and inlets, or other approved methods.~~

~~—(B) Adjacent drainage conveyance facilities. Where the proposed dwelling lot is adjacent to an existing drainage conveyance ditch or drainage infrastructure, the property owner will be required to maintain a maximum side slope of three (3) feet horizontal to one (1) foot vertical from the centerline of the facility to the lowest finished floor elevation, with a five (5) foot wide buffer zone adjacent to the dwelling structure at the lowest finished floor elevation.~~

~~—Any modifications to the drainage facility required to meet this section will be at the property owner's expense.~~

~~—Should the applicant propose modifications to the drainage facility to accommodate the proposed dwelling structure, the applicant shall be required to maintain sufficient capacity in the drainage facility.~~

~~—(C) Residential drainage permit.~~

~~—(1) All proposed single-family residential building permit applications must be accompanied by a residential drainage permit application. The application must include:~~

~~—(a) The finished floor elevation of the proposed dwelling unit;~~

~~—(b) The finished floor elevation of any adjacent dwelling unit;~~

~~—(c) Existing and proposed topographic survey data sufficient to determine historical and proposed drainage patterns;~~



~~—— (d) The location and elevation of the septic tank drainfield (if applicable) with ties to the property lines;~~

~~—— (e) The location, elevation and cross sections (minimum twenty-five (25) foot intervals) of any adjacent drainage conveyance facility;~~

~~—— (f) Any other information as may be deemed necessary by the Public Works Director, or designee, to determine compliance with divisions (A) and (B) above, including certification by a professional engineer, licensed in the state of Florida, as to the design of any drainage system components;~~

~~—— (g) A notarized statement by the property owner acknowledging responsibility to maintain the lot drainage system and holding the city and the permit holder harmless from any liability regarding the lot drainage system is to be provided on forms approved by the City Attorney. The city will record this document;~~

~~—— (h) Fees as established by resolution pursuant to § 169.004.~~

~~—— (2) The fees as set forth in this section shall be increased by four percent (4%) (rounded to the nearest dollar) each fiscal year. Should any decrease in such fees be warranted in any given year, they shall also be decreased annually by that percentage that accurately reflects the reduction of permits requested and the specific and ascertainable resulting reduction in funds needed to pay the City of Palm Bay costs to manage all services and time needed to issue and monitor the permits required by this section.~~

~~—— (3) Residential drainage permits expire in ninety (90) days, unless associated with an active building permit, in which case the residential drainage permit expires concurrently with the building permit. One or more extensions of time for periods of not more than 90 days each may be allowed by the Public Works Director or designee for the application, provided the extension is requested in writing and justifiable cause is demonstrated.~~

~~—— (4) Any additional engineering, surveying and/or inspection services provided by the city will be charged to the applicant as established by resolution pursuant to § 169.004.~~

~~—— (5) The Chief Building Official shall withhold issuance of the certificate of occupancy until compliance with this ordinance has been determined. An as-built boundary and topographic survey, prepared and sealed by a professional land surveyor and mapper, licensed in the state of Florida, with sufficient vertical~~

~~elevations to establish finished floor elevations, slopes and drainage patterns shall be submitted and approved prior to the issuance of the certificate of occupancy.~~

~~—(6) The inspection and issuance of a certificate of occupancy shall not be construed as a warranty of the drainage system. After issuance of a certificate of occupancy, it shall be the responsibility of the property owner to maintain the drainage system. The property owner will be liable for the costs incurred by the city of Palm Bay to correct any deficiency in the drainage system. Modification of the drainage system after issuance of the certificate of occupancy is not permitted without a new residential drainage permit.~~

~~—(7) Any person(s), firm, business entity, or corporation that damages property located on, under, across or along a right-of-way or easement or any city road or other city improvement shall be required to either restore the damaged property to its condition prior to the damage or shall pay to the city the sum of money determined by the Public Works Department to be necessary to restore the damaged area to its condition prior to the damage. Any such restoration shall meet all construction and engineering standards of the city. Additionally, any permittee who has previously failed to restore the damage(s) as required by this subchapter shall not be issued further permits from the city until such damage is either restored and accepted by the Public Works Department, or the entire cost plus overhead, of restoration incurred by the city to make such restorations has been paid in full by the permittee. In the event discrepancies arise as to the responsibility for damage, the burden of proof shall be on the permittee.~~

~~—(8) A performance bond or other financial surety, acceptable to the City Attorney, may be provided to ensure compliance with this section.~~

~~—(9) Such surety will be in the amount 110% of the value of the proposed work and accompanied by a non-refundable processing fee as established by resolution pursuant to § 169.004. Upon satisfactory completion of the improvement in accordance with the permit requirements and/or repair of any damage to city facilities, as determined by the Public Works Director, said surety shall be released.~~

~~—(D) Erosion sediment control.~~

~~—(1) No grading, cutting or filling shall be commenced until erosion and sedimentation control structures have been installed;~~

~~—(2) Land which has been cleared for development and upon which construction has not commenced shall be protected from erosion by appropriate techniques designed to revegetate the area.~~

~~—(3) Sediment shall be retained on the site of the development;~~

~~—(4) Erosion and sedimentation facilities shall receive regular maintenance to ensure that they will continue to function properly.~~

~~—(E) Appeals.~~

~~—(1) A property owner may appeal the application of the criteria defined in divisions (A) and (B) above to the City Engineer, the Public Works Director, or designee. The City Engineer may override the application of the above criteria due extenuating circumstances that would result in an undue hardship upon the applicant. The City Engineer, the Public Works Director, or designee must provide in writing the relief approved and retain the approval and all records associated thereto within the master permit file of the dwelling. No relief may be given that would result in an unsafe design. Adjacent property owners shall be notified in writing by the City Engineer, the Public Works Director, or designee at least fourteen (14) days prior to a decision which grants relief to this section. Should the property owner or an adjacent property owner(s) object to the decision of the City Engineer, the Public Works Director, or designee, they may appeal the decision to City Council within thirty (30) days by filing a notice of appeal with the City Clerk, specifying the grounds therefore.~~

~~—(2) Upon receipt of an appeal of the administrative decision by the City Engineer, the Public Works Director, or designee, all records constituting the basis of the administrative decision shall be given to the City Clerk within twenty (20) days. The City Council shall hear the appeal at a regularly scheduled or at a special City Council meeting within sixty (60) days of the notice of appeal to City Council. Notice shall be given at least fifteen (15) days in advance of the public hearing to the property owner and any adjacent property owners. At the hearing, the property owner or adjacent objector(s) shall have a right to be heard.~~

**~~§§ 174.074 THROUGH 174.078 RESERVED.~~**

**~~§ 174.079 PENALTY.~~**

~~—Any person who violates any provision of § 174.072 shall be guilty of a misdemeanor of the second degree, punishable by a fine of not less than two hundred and fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00).~~

~~Such person shall be guilty of a separate offense for each day during which a violation of § 174.072 is committed or continues.~~

## **STORMWATER MANAGEMENT UTILITY**

### **~~§ 174.085 SHORT TITLE.~~**

~~—This subchapter shall be known and may be cited as the “Stormwater Management Utility” ordinance.~~

### **~~§ 174.086 AUTHORITY.~~**

~~—The city is authorized by the Florida Constitution and the provisions of F.S. Chapters 166 and 403 and F.S. § 403.0893, to construct, reconstruct, improve, and extend stormwater systems and to issue revenue bonds and incur other debts if needed to finance in whole or part the cost of such systems and to establish just and equitable rates for the services and facilities provided by the systems.~~

### **~~§ 174.087 FINDINGS AND DETERMINATIONS.~~**

~~—It is hereby ascertained, determined, and declared as follows:~~

~~—(A) Through the National Pollutant Discharge Elimination System Stormwater permitting program, the U.S. Environmental Protection Agency, as implemented by the Florida Department of Environmental Protection, has mandated the City to implement and fund a comprehensive stormwater management program to reduce the contamination of stormwater runoff and prohibit illicit discharges. It is necessary to establish methods for controlling the introduction of pollutants into the City of Palm Bay's separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System permit process as set forth in Chapter 95 of the City of Palm Bay Code of Ordinances, to provide for public health, safety, environment, and general welfare of the property owners and citizens of Palm Bay.~~

~~—(B) The Florida Legislature has mandated that local governments in the State of Florida, including the City, have the responsibility for developing mutually compatible Stormwater management programs consistent with the rules and regulations of the Florida Department of Environmental Protection and the water management districts and the Stormwater management programs established and maintained by other local governments.~~

~~—(C) The City has, pursuant to Chapter 163, Florida Statutes, adopted the objectives and policies found in CON-1.2 of the Conservation Element of the City of Palm Bay Comprehensive Plan, which provide that the City shall design,~~

~~manage, and operate the City's Stormwater Management System so the collection, storage, treatment, and conveyance of Stormwater within the City adequately protects surface water quality. The creation and maintenance of the City's Stormwater Utility was designed to implement the Conservation Element of the City of Palm Bay Comprehensive Plan and other municipal, federal and state policies mandating Stormwater management programs by local governments.~~

~~—(D) Section 403.0893, Florida Statutes, specifically authorizes and encourages local governments, including the City, to provide Stormwater Management Services and create Stormwater programs and adopt Stormwater Charges sufficient to plan, construct, operate and maintain Stormwater Management Systems.~~

~~—(E) Improper management of Stormwater increases erosion and sedimentation, which can decrease the capacity of water bodies to hold and transport water and interfere with navigation.~~

~~—(F) The development and urbanization of property results in the creation of impervious surfaces which tend to increase the volume and rate of Stormwater runoff and decrease groundwater recharge from water percolating into the soil, thereby requiring the implementation of Stormwater management practices to offset such impacts.~~

~~—(G) Improperly managed Stormwater runoff may increase the incidence and intensity of flooding, endangering persons and property within the City.~~

~~—(H) Improperly managed Stormwater runoff may interfere with the water quality and quantity of the Indian River Lagoon and Turkey Creek and further disrupt biological diversity and productivity associated with such waterbodies.~~

~~—(I) The public health, safety, and welfare are adversely affected by poor water quality and flooding resulting from inadequate Stormwater management practices.~~

~~—(J) The improper management of Stormwater and adverse impacts upon the quality of water resources located within the City may result in substantial economic harm to the City and its citizens.~~

~~—(K) Property owners within the City are eligible for flood insurance through the National Flood Insurance Program (NFIP), which enables these property owners to acquire federally backed flood insurance protection. To ensure that this coverage is available, the City is required to meet the minimum FEMA requirements for participation in the NFIP and failure to meet these requirements~~

~~could result in flood insurance being either unavailable or prohibitively expensive to property owners within the City.~~

~~—(L) The City maintains a system of Stormwater Management Facilities, including but not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, and other components as well as natural waterways.~~

~~—(M) Those elements of the Stormwater Management System that provide for the collection, storage, treatment, and conveyance of Stormwater are of benefit and provide services to Benefitted Property within the City.~~

~~—(N) The cost of operating and maintaining the Stormwater Management System and the financing of existing and future repairs, replacements, improvements, and extensions thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed, services received, or burden caused by properties served thereby.~~

~~—(O) The Stormwater Charges authorized herein are consistent with the authority granted in section 403.0893, Florida Statutes. That statutory provision is additional and supplemental authority to the constitutional and statutory power of self-government granted to the City.~~

~~—(P) It is necessary to establish methods for complying with regulatory mandates and programs related to the collection, treatment, and management of Stormwater. This includes, but is not limited to, the federally-mandated National Pollution Discharge Elimination System (NPDES) requirements; the Florida Department of Environmental Protection (FDEP) permit which the city holds to operate an MS4; city-wide water quality monitoring; federal, state and local mandates (stormwater and water quality); public outreach and education efforts; management of the waters of the Turkey Creek and Indian River Lagoon (inclusive of dredging, water quality, pollution control, debris removal and monitoring); the Illicit Discharge Ordinance (Chapter 95, City Code, Ordinance No. 2008-37) which applies to all properties within the city limits; stormwater infrastructure inventories and related stormwater management plan; grants acquisition and management; the implementation of city-wide stormwater Best Management Practices (BMP's); intergovernmental relations and regulations; stormwater permitting, plan review, and local regulation; right-of-way and driveway permitting; residential drainage permitting. These programs are designed to serve the greater good of all property owners, citizens, stakeholders and visitors to our community including those in subdivisions and similar developments both privately or publicly maintained.~~

**~~§ 174.088 DEFINITIONS.~~**

~~—As used in this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—BENEFITTED PROPERTY. All parcels of real property located within the City that receive a benefit from the Stormwater Management Services and/or Stormwater Management Facilities.~~

~~—CAPITAL COST. All or any portion of the expenses that are properly attributable to the acquisition, construction, design, installation, reconstruction, renewal or replacement (including demolition, environmental mitigation and relocation) of Stormwater Management Facilities under generally accepted accounting principles and including reimbursement to the City for any moneys advanced for Capital Cost and interest on any inter-fund or intra-fund loan for such purposes.~~

~~—CITY. The City of Palm Bay, Florida.~~

~~—CODE. The City of Palm Bay Code of Ordinances.~~

~~—DEPARTMENT. The City of Palm Bay Public Works Department.~~

~~—DIRECTOR. The City of Palm Bay Public Works Director or his designee.~~

~~—DRAINAGE BASIN. A part of the earth's surface that contributes Stormwater runoff to a drainage system, which consists of diffuse surface waters, together with all natural or artificial tributary surface streams and/or bodies of impounded surface water.~~

~~—FISCAL YEAR. A twelve (12) month period commencing on October 1 and concluding on September 30 of the following calendar year, or such other twelve (12) month period as may be adopted by the Utility.~~

~~—MS4. A Municipal Separate Storm Sewer System as designated by the United States Environmental Protection Agency and defined in 40 CFR 122.26(b)(8), is a conveyance or system of conveyances that is owned by a state, city, town, village or other public entity including special districts under state law such, that discharges to waters of the U.S., is designed or used to collect or convey stormwater (including storm drains, pipes, ditches, etc.), is not a combined sewer, and is not part of a publicly-owned treatment works.~~

~~—PROJECT COST. (A) the Capital Cost of one or more Stormwater Management Facilities, (B) the Transaction Cost associated with the Obligations to finance such Stormwater Management Facilities, (C) interest accruing on such Obligations for such period of time as the City deems appropriate, (D) the debt service reserve~~

~~fund or account, if any, established for the Obligations which financed the Stormwater Management Facilities, and (E) any other costs or expenses related thereto.~~

~~—STORMWATER. Any surface runoff and drainage of water from land surfaces, including both impervious and pervious Areas.~~

~~—STORMWATER ASSESSMENT. Either a Stormwater Improvement Assessment, a Stormwater Service Assessment, or both.~~

~~—STORMWATER CHARGE. A Stormwater Assessment, a Stormwater Utility Fee, or both.~~

~~—STORMWATER IMPROVEMENT ASSESSMENT. A special assessment imposed by the City to fund the Capital Cost or the debt service and related cost of an Obligation issued to finance the Project Cost of one or more Stormwater Management Facilities.~~

~~—STORMWATER MANAGEMENT AREA. A geographic area established by the Resolution of the City Council in accordance with Section 174.092 hereof within which Stormwater Management Services and/or Stormwater Management Facilities are to be provided.~~

~~—STORMWATER MANAGEMENT FACILITY. The systems, capital facilities, lands, and water bodies utilized in collecting, conveying, storing, managing, and treating Stormwater generated within the City. The term includes but is not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, and other components as well as natural waterways.~~

~~—STORMWATER MANAGEMENT SERVICE. (A) management and administration of the City's Stormwater Management Utility, including administration, planning, and permitting requirements; (B) Stormwater program engineering; (C) Drainage Basin planning; (D) Stormwater Improvements to be acquired or constructed within a reasonable time horizon without the issuance of any debt or borrowing; (E) operating and maintaining the City's Stormwater Management Facilities, including extraordinary maintenance; (F) billing and collection of Stormwater Service Assessments and Stormwater Service Fees, including customer information and educational services and reserves for statutory discounts; and (G) legal, engineering and other consultant services.~~

~~—STORMWATER MANAGEMENT SYSTEM or SYSTEM. The network of facilities, both natural and man-made, utilized in collecting, conveying, storing,~~



~~managing, and treating Stormwater, including but not limited to lakes, canals, rivers, streams, swales, culverts, pipes, wetlands, detention and retention basins, manholes, channels, drainage easements, and infiltration facilities, which convey stormwater from the point of first impact with the surface of land to the receiving water.~~

~~—STORMWATER MANAGEMENT UTILITY or UTILITY. That division within the City Public Works Department which constructs, operates and maintains the Stormwater Management System and otherwise performs the powers and duties described in this subchapter.~~

~~—STORMWATER SERVICE ASSESSMENT. A special assessment imposed by the City against benefitted property within a Stormwater Management Area to fund all or any portion of the Stormwater Service Cost properly attributable to the Stormwater Management Services provided by the City to such assessed property.~~

~~—STORMWATER SERVICE COST. The estimated amount for any Fiscal Year of all expenditures and reasonable reserves that are properly attributable to the Stormwater Management Service provided within the Stormwater Management Area under generally accepted accounting principles, including, without limiting the generality of the foregoing, reimbursement to the City for any moneys advanced for the Stormwater Management Service, and interest on any interfund or intrafund loan for such purpose.~~

~~—STORMWATER UTILITY FEE. A fee reasonably related to service provided by the City to property to fund all or any portion of the Stormwater Service Cost or Project Cost for a Stormwater Management Facility for such property at a just, fair, reasonable, and equitable rate based upon such property's Stormwater burden, the reasonable relationship to benefits received, and the reasonable cost of providing Stormwater Management Services and/or Stormwater Management Facilities to such property.~~

~~—STORMWATER UTILITY FUND. An enterprise fund associated with a specific Stormwater Management Area for maintaining Stormwater Service Charges collected by the City within such Stormwater Management Area.~~

#### **~~§ 174.089 ESTABLISHMENT OF STORMWATER MANAGEMENT UTILITY.~~**

~~—The stormwater management utility is established by the City Council to provide for the general welfare of the city and its residents by providing for the operation, maintenance, regulation, and future improvements to the stormwater management system. The City Stormwater Management Utility is hereby established to be a~~

division within the City Public Works Department and shall be administered by the Director of Public Works.

**~~§ 174.090 POWERS AND DUTIES OF THE UTILITY.~~**

~~— Subject to the supervision and authority of the City Manager and Director, the Utility shall have the following powers and duties:~~

~~—(A) Preparation of plans for Stormwater Management Services and Stormwater Management Facilities and betterments to the Stormwater Management System.~~

~~—(B) Administer the acquisition, design, construction, maintenance, and operation of the Stormwater Management Facilities.~~

~~—(C) Review, inspect, approve, and deny plans and permits for extensions to the Stormwater Management Facilities.~~

~~—(D) Promulgation of regulations for the use of the Stormwater Management System, including provisions for enforcement of such regulations.~~

~~—(E) Advise the City Council and other City departments on matters relating to the Stormwater Management Services and Stormwater Management Facilities, including procedures, regulations and criteria by which new development permits within the City are approved for compliance with stormwater management regulations.~~

~~—(F) Development of budgets and recommendations on the establishment and adjustment of Stormwater Charges, which shall be submitted to City Council for approval, to fund Stormwater Management Services and Stormwater Management Facilities.~~

~~—(G) Evaluation of water quality concerns for discharges to the Stormwater Management System.~~

~~—(H) Performance of all normal utility functions to include construction, operation, and maintenance of the City's Stormwater Management System, including, but not limited to, the hiring of staff, the selection of special consultants, the entering into contracts for services and construction of facilities, and the handling of purchase, lease, sale or other rights to property for the Stormwater Management System; all consistent with the personnel and procurement requirements of the City.~~

~~—(I) Apply for and pursue federal, state, local, and private grants or revolving funds to provide needed Stormwater Management Services and Stormwater Management Facilities.~~

~~—(J) Apply for, implement, and monitor required City permits relating to the Stormwater Management System, including any required water quality monitoring and water quality programs.~~

~~—(K) Administer, interpret, and enforce this subchapter and all regulations and procedures adopted relating to the design, construction, maintenance, operation, and alteration of the Stormwater Management Services and Stormwater Management Facilities.~~

**~~§ 174.091 REQUIRED LEVELS OF RATES FOR STORMWATER CHARGES.~~**

~~—The City Council shall require that adequate revenues are generated to provide for a balanced operating budget by setting sufficient levels of Stormwater Charges.~~

**~~§ 174.092 STORMWATER CHARGES.~~**

~~—(A) Revenue Sources for the Stormwater Management Utility. The Stormwater Utility Funding sources may include the following:~~

~~—(1) Stormwater Utility Fees;~~

~~—(2) Stormwater Assessments;~~

~~—(3) Stormwater permit and inspection fees;~~

~~—(4) Other funds or income obtained from federal, state, local, and private grants or revolving funds;~~

~~—(5) Bonds issued or loans obtained using future Stormwater Charges as collateral; and~~

~~—(6) Any other revenues budgeted by the City Council for Stormwater Management Services and Stormwater Management Facilities.~~

~~—(B) Enterprise Fund. The City Manager, Director, or their designee, shall establish an enterprise fund exclusively for the deposit and withdrawal of all revenue collected or received pursuant to this Subchapter. The City Manager, Director, or their designee shall use the enterprise fund for the independent and separate accounting of all revenues, expenditures, assets and liabilities, and earnings and obligations of the Utility and including the following purposes:~~

~~—(1) The acquisition by gift, purchase, or condemnation of real and personal property and interests therein, necessary to construct, operate, and maintain Stormwater Management Services and Stormwater Management Facilities;~~

- ~~—(2) All costs of administration and implementation of the Stormwater Management Services and Stormwater Management Facilities, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements;~~
  - ~~—(3) Engineering and design, debt service and related financing expenses, construction costs for new facilities, and enlargement or improvement of existing facilities;~~
  - ~~—(4) Operation and maintenance of the Stormwater Management Services and Stormwater Management Facilities;~~
  - ~~—(5) Monitoring, surveillance, and inspection of Stormwater Management Facilities;~~
  - ~~—(6) Permitting, water quality monitoring, and water quality programs;~~
  - ~~—(7) Retrofitting developed areas for pollution control;~~
  - ~~—(8) Inspection and enforcement activities;~~
  - ~~—(9) Billing and administrative costs; and~~
  - ~~—(10) Other activities reasonably required to carry out the City's stormwater management program.~~
- ~~—(C) Within each Stormwater Management Area, the City Council intends to fund all or part of the cost of providing Stormwater Management Services and Stormwater Management Facilities through Stormwater Charges. The City Council has further concluded that periodic determination of revenues earned and expenses incurred in connection with the provision of Stormwater Management Services and Stormwater Management Facilities will enhance accountability and management control of the City's Stormwater Management Utility and will facilitate implementation of the City Council's funding policy for Stormwater management. Accordingly, the City Manager shall establish a separate Stormwater Utility Fund for each Stormwater Management Area, which shall be maintained separate and apart from all other accounts of the City. Upon receipt, all Stormwater Charges shall be deposited into the appropriate Stormwater Utility Fund. Proceeds of the Stormwater Charges collected within each Stormwater Management Area shall be used solely for the provision of Stormwater Management Services and Stormwater Management Facilities provided therein. Interest earned on Stormwater Charges shall not accrue to the City general fund but shall remain with the Stormwater Utility Fund.~~

~~—(D) Imposition of Stormwater Charges. The City Council is hereby authorized to impose Stormwater Charges against property within all or a portion of the City included in a Stormwater Management Area by subsequent resolution(s) of the City Council as further provided herein.~~

~~—(1) Stormwater Assessments. The City Council is hereby authorized to impose Stormwater Assessments against Benefitted Property within a Stormwater Management Area. All Stormwater Assessments imposed pursuant to this subchapter within a Stormwater Management Area shall be imposed in accordance with the procedures set forth in Chapter 56 of the Code and Section 6.02 of the City Charter.~~

~~—(a) The Stormwater Service Cost or Project Cost may be assessed against Benefitted Property located within a Stormwater Management Area at a rate of assessment based upon the special benefit accruing to such property from the Stormwater Management Service and Facilities provided by the City.~~

~~—(b) Notwithstanding the foregoing, if the City Council specifically determines that any portion of a Stormwater Management Area receives a distinct special benefit from any component of the Stormwater Management Services or Stormwater Management Facilities that is materially different in kind or degree from the special benefit received by other portions of such Stormwater Management Area, the Stormwater Service Cost or Project Cost related to such component shall be assessed against the portion of the Stormwater Management Area receiving the distinct special benefit.~~

~~—(c) For any Fiscal Year in which Stormwater Assessments will be imposed within a Stormwater Management Area, the City Council shall determine the Stormwater Service Cost or Project Cost, the rate of assessments, and the methodology pursuant to which these costs will be apportioned amongst Benefitted Property by separately adopted resolutions in accordance with the procedures set forth in Chapter 56 of the Code.~~

~~—(2) Stormwater Utility Fees. The City Council is hereby authorized to impose Stormwater Utility Fees on all Benefitted Property within a Stormwater Management Area to fund all or any portion of the Stormwater Service Cost or Project Cost at a just, fair, reasonable, and equitable rate based upon such property's Stormwater burden and the reasonable cost of providing Stormwater Management Services to such property.~~

~~— (a) The rate of the Stormwater Utility Fee imposed within a Stormwater Management Area and the methodology pursuant to which the Stormwater Service Cost or Project Cost will be apportioned amongst Benefitted Property shall be established by separate resolution of the City Council, and may, at the discretion of the City Council, be included within a resolution imposing Stormwater Service Assessments.~~

~~— (b) Notwithstanding the foregoing, if the City Council specifically determines that any portion of a Stormwater Management Area receives a distinct special benefit or service from any component of the Stormwater Management Services or Stormwater Management Facilities that is materially different in kind or degree from the special benefit received by other portions of such Stormwater Management Area, the Stormwater Service Cost or Project Cost related to such component shall be assessed against the portion of the Stormwater Management Area receiving the distinct special benefit.~~

~~— (c) Stormwater Utility Fees shall be adopted by a resolution approved by the City Council after a public hearing. The public hearing must be advertised at least ten days in advance in a newspaper of general circulation in the City setting forth the date, time and place of the public hearing, the current rate(s), the proposed rate(s), and the effective date of the proposed rate(s). A separate public hearing is not required to amend rates, fees, and charges pursuant to a previously adopted price index adjustment. All rate changes shall apply to the first billing cycle after the effective date for the rates, unless otherwise provided by resolution.~~

~~— (3) Collection of Stormwater Charges. The Stormwater Charges authorized herein may be collected by the City pursuant to any legally available method or combination of such methods, including but not limited to: (1) for Stormwater Assessments, collection on the ad valorem tax bill pursuant to Chapter 56 of the Code and the Uniform Assessment Collection Act; (2) collection on the utility bill; or (3) collection by separate bill.~~

#### **~~§ 174.093 BILLING AND PAYMENT OF STORMWATER UTILITY FEES.~~**

~~— (A) Billing. For parcels subject to a Stormwater Utility Fee, such fees will be collected on the monthly utility bill or by separate bill, as determined by the Utility.~~

~~— (B) Delinquent Bills. If payment is not received within thirty (30) days from the date of the notice indicating the total amount due, the City may pursue any legal remedy available to it for collection and enforcement of such amount. This may include the imposition of a lien on the property in the amount of the outstanding~~

~~sums due, including interest at the maximum rate allowed by law and any administrative costs and/or fees imposed by the City. The lien may be recorded in the official records of the county.~~

~~—(C) Provisions of Chapter Cumulative. The provisions of this subchapter shall be supplemental to all ordinances of the city, and the provisions of this subchapter shall be cumulative to all other remedies provided by law or ordinance for the collection of unpaid Stormwater Charges.~~

**~~§ 174.094 (RESERVED).~~**

**~~§ 174.095 STORMWATER DRAINAGE FACILITIES.~~**

~~—(A) The owner of real property is responsible for providing and maintaining stormwater drainage facilities to collect and dispose of stormwater on-site in compliance with local law. It shall be unlawful for any person to alter non-city maintained or owned stormwater drainage facilities without the prior approval of the Public Works Director or other agencies having jurisdiction. No changes shall be permitted by the Public Works Director which will adversely affect the stormwater management system in the area of the property.~~

**~~§ 174.096 PROGRAM RESPONSIBILITY.~~**

~~—It shall be the duty of the Director to administer the Stormwater Management Utility. The Director shall keep an accurate record of all properties using the services and facilities of the System and the Stormwater Charges established and imposed pursuant to this subchapter.~~

**~~§ 174.097 (RESERVED).~~**

**~~§ 174.098 FLOODING; LIABILITY.~~**

~~—(A) Floods from stormwater runoff may occur which exceed the capacity of the stormwater management system. Nothing in this subchapter, or elsewhere in this Code, shall be deemed to mean that property subject to the user fees established hereby will always be free from stormwater flooding and flood damage.~~

~~—(B) Nothing in this subchapter or elsewhere in this Code shall be deemed to create any liability on the part of, or cause of action against, the city, or any official or employee thereof, for any flood damage that results from the runoff of floods or storms which cannot be accepted by the stormwater management system.~~

**CHAPTER 175: MINING / EXCAVATION OPERATIONS**

**~~§ 175.01 FINDINGS.~~**

~~—The City Council finds that the regulation of the opening and the operation of pits, quarries and excavations in the city is necessary for the protection of the health, safety and welfare of the people, and further that such regulation is necessary to minimize soil erosion, possible flooding, air pollution, ground subsidence, deterioration of public streets, and preemption of preferred land use.~~

#### **~~§ 175.02 DEFINITIONS.~~**

~~—For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—AGRICULTURAL USE. The using of land to produce, keep or maintain for sale, lease, or personally use, plants and animals useful to man, including, but not limited to, forages and sod crops; grains and seed crops; dairy animals and dairy products, poultry products; livestock including beef cattle, sheep, swine, horses, ponies, mules or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds; vegetables; and nursery, floral, ornamental and greenhouse producers.~~

~~—EXCAVATION. The removal of mineral resources or any earth material from its natural position upon a lot, other than incidental excavation directly related to foundation preparation for an approved building, structure or surface drainage.~~

~~—EXCAVATOR. Any person that sells, or offers for sale, whether directly or indirectly, any mineral resources or any earth materials excavated in the city, or any person who excavates in the city any mineral resources or earth materials other than incidental excavation directly related to foundation preparation for an approved building, structure or surface drainage.~~

~~—MINING. Same as EXCAVATION.~~

~~—PERSON. Any person, partnership, limited partnership, sole proprietorship, corporation, joint venture, trust or estate, or other group of persons acting as a single unit.~~

#### **~~§ 175.03 OPEN EXCAVATIONS PROHIBITED.~~**

~~—Open excavations are prohibited within the city unless specifically authorized by permit as provided for herein, except as follows:~~

~~—(A) Installation of utilities;~~

~~—(B) Foundations of any building or structure or other on-site leveling or excavation where approved under a valid building permit;~~



- ~~—(C) Excavations relating to the accessory use of land and designed to be filled upon completion of excavation; such as septic tanks, graves, and the like;~~
- ~~—(D) Swimming pools when a building permit has been issued for construction of such pool;~~
- ~~—(E) Borrow pits designated or controlled by any governmental agency, or any governmental operation or other entity created by law providing for mosquito control or drainage or any drainage district created pursuant to applicable Florida statutes;~~
- ~~—(F) Excavation in conjunction with agricultural use of lands, where no excavated materials are sold, whether directly or indirectly, or transferred from one (1) parcel of land to any noncontiguous parcel;~~
- ~~—(G) Construction of subdivisions complying with the city subdivision regulations;~~
- ~~—(H) Any leveling of land within the confines of a single tract of land where the plans for such leveling are approved by the City Engineer.~~
- ~~—(I) Excavations or leveling for private drives to provide ingress or egress; and~~
- ~~—(J) Conditional use under provisions of the GU – General Use Zoning District.~~

**~~§ 175.04 APPROVAL REQUIRED.~~**

- ~~—No excavator may either excavate or level a parcel of land until first obtaining special exception approval from the City Council. The special exception application for excavation shall include the following:~~
- ~~—(A) The name and address of the person seeking the permit;~~
- ~~—(B) A legal description of the property;~~
- ~~—(C) A map showing the exact location and boundaries of the tract of land in question, to include the location and type of trees existing thereon;~~
- ~~—(D) Drawings to scale by a registered, professional engineer showing the dimensions of the proposed excavation to be undertaken;~~
- ~~—(E) The applicant shall provide a topographical survey of the property including the location of water courses or water bodies;~~
- ~~—(F) The exact location and means of vehicular ingress and egress to the proposed excavation;~~
- ~~—(G) A detailed statement and plan for the proposed reclamation and future use of the property at the conclusion of the excavation operation;~~

- ~~—(H) A detailed statement indicating the nature, purpose and method of the proposed excavation;~~
- ~~—(I) An acknowledged written consent of the owner of the premises and mortgagee, if any, including their addresses;~~
- ~~—(J) A proposed and precise vehicular route indicating the streets and roadways over which all vehicles utilized to remove and transport the materials removed from any excavation shall travel, together with a statement from the city's engineering director that such streets and roadways are capable of accommodating such vehicles. A statement granting permission to use such roads from the appropriate county, city and state officials shall also be included; and~~
- ~~—(K) An affidavit from a person authorized to act on behalf of the applicant stating both a familiarity with all federal and state statutes, rules and regulations applicable to the project and that the applicant has fully complied with them.~~

**~~§ 175.05 GENERAL REQUIREMENTS AND SETBACKS.~~**

- ~~—(A) All sides of the excavated area shall be of no greater than one (1) foot vertical drop for each two (2) feet of horizontal distance to the maximum depth of the excavation as indicated on the approved plan. The excavation pit shall be enclosed by a fence at least six (6) feet high, which fence enclosure shall include a gate that shall be closed and locked at all times during which the excavation pit is not in use.~~
- ~~—(B) Pits, quarries, artificial lakes or other uses of land excavated and designed to be left open upon completion, shall be excavated within the following setback lines, as measured from the right-of-way line to the top of the beginning of the slope and shall conform with the requirements of the State Department of Transportation requirements, if any, but not less than the following:~~
  - ~~—(1) One hundred and fifty (150) feet from the right-of-way line of any state or federal numbered highway;~~
  - ~~—(2) Fifty (50) feet from the right-if-way line of any other public street, road or highway;~~
  - ~~—(3) fifty (50) feet from side, rear or abutting property line; and~~
  - ~~—(4) Where the proposed excavation site abuts residentially zoned property, the setback from the abutting residential property line shall be one hundred and fifty (150) feet.~~

~~—(C) Whenever the Public Works Director determines that the use of any city street, designated by the applicant for ingress and egress to and from the excavation site will be subject to excessive deterioration resulting in the breakdown of the subsurface and base of such street, the applicant shall be required to agree to maintain the street free from any safety hazards during the excavation operation, which hazards are caused by such operation and shall further agree that upon completion of the excavation operation he shall place the street in the same condition as it was prior to the beginning of the operation. In furtherance of this agreement, the excavator may be required by the City Manager to post an acceptable bond in the amount of one hundred percent (100%) of estimated reconditioning costs, as estimated by the Public Works Director, conditioned upon meeting the requirements of this division (C).~~

~~—(D) Reclamation of the excavation pit is required at the termination of the project in order to prevent either soil erosion, adverse effects on city-maintained rights-of-way, or natural drainage pattern, or to protect the natural environment surrounding the excavation pit, or to protect the character and value of surrounding property. The City Council shall require an acceptable bond in the amount of the reclamation costs, which bond shall contain a condition that the excavation and reclamation shall be made in accordance with the plans as approved by the City Council.~~

~~—(E) (1) Whenever any excavation is determined by the Planning and Development Director to be in violation of this chapter and where it is determined that such excavation constitutes a clear and present danger to the public, the Building Official shall direct the posting of a notice which shall read as follows:~~

~~“THIS PROPERTY IS UNSAFE AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE BUILDING OFFICIAL.”~~

~~—(2) Such notice shall remain posted until the property has been brought into compliance with this chapter. It shall be unlawful for any person, firm or corporation or their agent to remove such notice without written permission from the Planning and Development Director, or for any person to enter the property except for the purpose of correcting this violation.~~

#### **~~§ 175.06 PRESENTLY EXISTING EXCAVATION.~~**

~~—All persons excavating from pits, quarries or landfills presently in existence, shall be required to obtain a permit from the Planning and Development Director or his duly appointed agent, within ninety (90) days from the effective date of this chapter.~~

~~Permits shall be issued for continuing operation of such excavation after the Planning and Development Director, or his appointed agent, finds as follows:~~

~~—(A) That the applicant has obtained special exception approval from the City Council for the excavation project, or evidence of a legal nonconforming use;~~

~~—(B) That the applicant has submitted plans to the planning and development director which plans shall include items set forth in § 175.05(A) through (E).~~

#### **~~§ 175.07 CONFLICTING LAWS AND REGULATIONS.~~**

~~This chapter shall be supplemental to any and all other laws or regulations, whether county, state or federal, and in the event of any conflict between this chapter and any other law or regulation, the more strict provisions shall apply. If any part of this chapter is held to be unconstitutional, it shall be construed to have been the legislative intent to pass this chapter without such unconstitutional part and the remainder of this chapter as to the exclusion of such part shall be held to be valid as if such part had not been included herein. If this chapter or any provision hereof is held to be inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such holding shall not affect the applicability hereof to any other person, property or circumstances.~~

#### **~~§ 175.99 PENALTY.~~**

~~The violation of any provision of this chapter by an owner, or contractor or their tenants or agents shall be punishable by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not exceeding sixty (60) days or both fine and imprisonment. Each day a violation continues shall be considered a separate offense.~~

### **~~CHAPTER 176: FUEL STORAGE TANK SYSTEMS~~**

#### **~~FUEL STORAGE TANK SYSTEMS (TANK FARMS)~~**

#### **~~§ 176.01 SHORT TITLE.~~**

~~This chapter shall be known as the “Fuel Storage Tank System Ordinance.”~~

#### **~~§ 176.02 ABBREVIATIONS.~~**

~~For the purpose of this chapter, the following abbreviations shall apply:~~

~~—API. The American Petroleum Institute.~~

~~—ASTM. The American Society for Testing and Materials.~~

~~—NACE. The National Association of Corrosion Engineers.~~

~~—UL Underwriters Laboratories, Inc.~~

**~~§ 176.03 INTENT.~~**

~~—The intent and purpose of this chapter is to protect groundwater and surface water quality from the discharge of fuels from underground fuel storage tanks.~~

**~~§ 176.04 APPLICABILITY.~~**

~~—(A) All storage tanks and associated piping installed, repaired or modified after the effective date of these regulations shall be designed, constructed, tested and monitored to prevent or detect discharges of all gasoline, diesel, kerosene or other petroleum derivatives to the land, groundwaters or surface waters of the city in accordance with the requirements and standards of this chapter.~~

~~—(B) All existing storage fuel tanks shall also meet the provisions of § 176.05(A).~~

**~~§ 176.05 FUEL INVENTORY.~~**

~~—(A) Inventory records on forms provided by the city shall be maintained for all underground fuel storage tanks including:~~

- ~~—(1) Fuel type;~~
- ~~—(2) Physical measure of fuel;~~
- ~~—(3) Input and output of fuel;~~
- ~~—(4) Amount of water, if any, in tank;~~
- ~~—(5) Reconciliation of the above;~~
- ~~—(6) Reconciliation with previous closing physical inventory.~~

~~—(B) Inventory data shall be accumulated for each day fuel is added or withdrawn from tank, but not less frequently than once a week, and shall be available for inspection by the city at the facility.~~

~~—(C) For the purpose of this chapter, AVERAGE UNACCOUNTED OUTPUT shall mean an amount of fuel which cannot be accounted for after reconciliation of the physical inventory and input and output records.~~

**~~§ 176.06 STORAGE TANK AND PIPING CONSTRUCTION STANDARDS.~~**

~~—(A) All new tanks installed for the underground storage of fuels shall be designed and constructed to meet the following standards:~~

- ~~—(1) Cathodically-protected steel meeting the specifications in API 1632, sandblasted to SSPC6, and coated according to NACE RP-01-69. A sacrificial~~

~~anode tank shall meet the requirements of ULC 603.1-M-1982 and be electrically isolated; or~~

~~—(2) Glass fiber-reinforced plastic meeting ASTM Specification D4021-81 and be UL labeled “Nonmetallic Underground Tank for Petroleum Products”; or~~

~~—(3) Glass fiber-reinforced plastic clad steel tank sandblasted to SSPC6 with resin and fiberglass one hundred (100) mils thick; or~~

~~—(4) Double-walled steel or plastic tank.~~

~~—(B) All associated piping systems shall be constructed of corrosion-resistant materials or protected against corrosion by the use of double-walled piping or cathodic protection.~~

~~—(C) Tank and piping specifications shall be provided to ensure construction and design is appropriate for intended use.~~

#### **~~§ 176.07 STORAGE TANK AND PIPING TESTING AND MONITORING.~~**

~~—(A) System monitoring.~~

~~—(1) All underground storage tanks and piping shall be provided with a means of monitoring for any leakage of the stored fuel. Such monitoring system shall consist of:~~

~~—(a) A continuous leak detection system between the walls of double-walled tanks and piping; or~~

~~—(b) A single monitoring well or detector located in an impervious secondary containment; or~~

~~—(c) A network of at least four (4) monitoring wells placed around the tank or tanks.~~

~~—(2) All leak detection systems and devices shall be installed, maintained, and operated in accordance with manufacturer's requirements and inspected every two (2) weeks to determine that the device is functioning. All wells shall be either monitored every two (2) weeks or be equipped with a continuously functioning leak detection device.~~

~~—(B) System testing.~~

~~—(1) The owner or operator of a fuel storage system shall test the integrity of the storage tank and piping by type, according to the following:~~

~~— (a) A sacrificial anode-type tank shall have structure to soil potential tested annually in accordance with manufacturer's requirements.~~

~~— (b) An impressed current tank shall be tested monthly in accordance with manufacturer's requirements.~~

~~— (c) A glass fiber reinforced plastic tank shall be tested for deflection at the time of installation in accordance with manufacturer's requirements.~~

~~— (2) All systems shall also be tested if:~~

~~— (a) The operator of the storage system has failed to comply with the inventory requirements; or~~

~~— (b) A discharge detection device or monitoring well indicates that the contents of the system has been or is being discharged; or~~

~~— (c) Groundwater contamination by fuels exists in the vicinity; or~~

~~— (d) The average unaccounted physical inventory output exceeds one-half of one percent (0.5%) of total monthly output.~~

~~— (3) Such tests shall be conducted by a person trained and certified by the manufacturer of the test equipment or his agent.~~

~~— (4) If for any reason testing cannot be performed in accordance with the above, the tank shall be deemed to be abandoned.~~

#### **~~§ 176.08 FUEL LEAKS; MAINTENANCE AND REPAIRS.~~**

~~— (A) When an underground storage tank is found to be leaking, the operator shall empty the tank of all free liquid or otherwise contain the leak within twenty-four (24) hours from testing.~~

~~— (B) No person shall operate or put back into service any underground tank which has leaked or has otherwise failed the testing without having repairs performed in a manner which restores the structural integrity of the tank and piping and having the tank retested.~~

#### **~~§ 176.09 ABANDONED FUEL STORAGE SYSTEMS.~~**

~~— (A) Any fuel storage system which has been abandoned or has not been in service for over three (3) years shall be removed or filled with sand, concrete or other inert material.~~

~~— (B) No person shall place or store any fuels in an abandoned storage system.~~

~~—(C) No abandoned storage system shall be used or put into service unless the system meets the construction, monitoring, testing and detection requirements of this chapter.~~

#### ~~§ 176.10 RECORDS.~~

~~—All records of testing, inspections, monitoring and inventory required by this chapter shall be maintained for a two (2) year period and be made available to the city for inspection.~~

### **~~CHAPTER 177: FIRE PREVENTION AND PROTECTION~~** **~~BUILDINGS AND STRUCTURES~~**

#### **~~§ 177.01 (RESERVED).~~**

#### **~~§ 177.02 USE OF HAZARDOUS CONSTRUCTION MATERIALS.~~**

~~—Construction materials which, by their nature, generate undue fire hazard shall not be used. These materials will include, but are not necessarily limited to flammable fiberglass, flammable plastic and vinyl, interior or exterior finishes which have high flame-spread characteristics, exterior mansards with nonpressure-treated or no-fire retardant wood shakes or shingles or any other roofing material which is easily ignitable or encourages the spread of fire and any flammable decorative materials. Wood shakes or shingles which have been chemically treated to be fire retardant must be accompanied by test documents verifying that such treatment will continue to be effective under prolonged exposure to the Brevard County coastal environment.~~

#### **~~§ 177.03 WATER SUPPLY AND ACCESS FOR NON-RESIDENTIAL BUILDINGS.~~**

~~—(A) Water supply for fire protection on lots, parcels, or tracts served by a public water system. No building, excluding one and two-family dwellings, shall be constructed or enlarged unless such building is supplied with a water supply or fire protection meeting the following requirements:~~

~~—(1) Buildings protected by automatic fire sprinkler systems. Buildings equipped with automatic fire sprinkler systems throughout shall have as a required fire flow, the flow demand required by the largest fire sprinkler system.~~

~~—(2) Buildings not protected by automatic fire sprinkler systems. Buildings not equipped with automatic fire sprinkler systems throughout shall have as a required fire flow, the fire flow calculated by using the "Determination of Required Fire Flow" published by the Insurance Services Office, current edition. When the sustained~~



~~fire flow cannot be obtained, the fire flow may be decreased by the installation of an automatic fire sprinkler system, upgrading of construction, providing alternative water supplies acceptable to the fire marshal, or a combination of any of the above.~~

~~—(B) Water supply for fire protection on lots, parcels or tracts not served by a public water supply system. Where a public water supply system is not available, the fire flow shall be determined in accordance with NFPA 1, current edition as adopted by the Florida Administrative Code. When a building requires a fire flow of five hundred (500) gallons per minute or less, an approved automatic fire detection system shall be installed in accordance with NFPA 72, current edition as adopted by the Florida Administrative Code. When a building requires a fire flow of more than five hundred (500) gallons per minute, an automatic fire sprinkler system shall be installed in accordance with the current edition of NFPA 13 as adopted by the Florida Administrative Code.~~

~~—(C) Hydrants, quantity, and spacing for other than one- and two-family dwellings. The required fire flow shall be in accordance with the current edition of NFPA 1.~~

#### **~~§ 177.04 WATER SUPPLY FOR RESIDENTIAL AREAS.~~**

~~—(A) Hydrants in new one- and two-family residential subdivision/developments shall be installed at each intersection, with intermediate hydrants spaced at intervals not to exceed eight hundred (800) feet. The maximum distance to a fire hydrant from the closest point on a building shall not exceed six hundred (600) feet. Alternative placement configurations may be acceptable to the Fire Marshal. Hydrant spacing may be increased to twelve hundred (1200) feet apart if all new one- and two-family residential units are protected with a 13D automatic fire sprinkler system.~~

~~—(B) Buildings other than detached one- and two-family dwellings. Fire hydrants shall be provided for buildings other than detached one- and two-family dwellings in accordance with both of the following:~~

~~—(1) The maximum distance to a fire hydrant from the closest point on a building shall not exceed four hundred (400) feet.~~

~~—(2) The maximum distance between fire hydrants shall not exceed five hundred (500) feet.~~

#### **~~§ 177.05 FIRE ALARM SYSTEMS.~~**

~~—Installations. Fire alarm/automatic detection systems that are installed as an alternative to another code requirement shall be considered as a required system and shall be monitored by approved supervisory facilities.~~

## **CHAPTER 178: SIGNS**

### **~~§ 178.01 TITLE.~~**

~~—This Chapter shall be known and may be cited as the "Sign Ordinance of the City of Palm Bay, Florida."~~

### **~~§ 178.02 STATEMENT OF PURPOSE.~~**

~~—The purpose of this Chapter is to promote public health, safety, and general welfare by:~~

~~—(A) Establishing standards for the fabrication, erection, use, maintenance and alteration of signs within the City, which standards allow and encourage creativity, effectiveness and flexibility in the design and use of signs;~~

~~—(B) Promoting pedestrian and traffic safety by reducing signs within the City that pose visual hazards;~~

~~—(C) Preserving and improving the City's aesthetic appearance and mitigating against visual blight;~~

~~—(D) Balancing the promotion of public health, safety, and welfare with the public's interest in presenting and receiving constitutionally protected messages by way of signs within the City; and~~

~~—(E) Facilitating compliance and enforcement by providing objective guidelines, payment of fees to offset costs attendant to administering this ordinance, and imposing penalties in cases where the code is violated.~~

### **~~§ 178.03 CONTENT NEUTRALITY.~~**

~~—Nothing in this Chapter is intended to regulate or control the content of signs or to regulate differently commercial or noncommercial speech.~~

### **~~§ 178.04 SCOPE.~~**

~~—This chapter is intended to cover all requirements relative to the types, sizes, heights, permissible locations, restrictions, permits, inspections, identification, materials of manufacture and/or construction, erection, maintenance, procedure for requesting variances, and penalties for violation of the provisions prescribed~~

~~herein for all signs placed, installed, repaired, altered, replaced and/or erected within the limits of the City which are exposed to the out-of-doors view of the public.~~

~~§ 178.05 SIGNS AUTHORIZED; LIMITATIONS.~~

~~—All signs not expressly authorized by this Chapter are prohibited. Additionally, authorized signs requiring a permit under the terms of this Chapter are prohibited until the City issues such permit, or as otherwise provided in this Chapter. All signs, including those authorized and permitted, shall be subject to the restrictions, procedures, and limitations contained in this Chapter and other applicable governmental regulations.~~

~~§ 178.06 CONSISTENCY.~~

~~—This Chapter is based on and is intended to be consistent with and enhance the City's Zoning Code and the City's Comprehensive Plan.~~

~~§ 178.07 ADMINISTRATIVE AUTHORITY.~~

~~—The Growth Management Director shall act as Administrator of the provisions of this Chapter, acting in lieu of the governing body. As used in this Chapter, "Administrator" shall include such Administrator's authorized representative.~~

~~§ 178.08 DEFINITIONS.~~

~~—For the purpose of this Chapter, the following definitions shall apply. Unless specifically defined below or in Chapter 185 (Zoning Code), the words or phrases used in this Chapter shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter its most reasonable application.~~

~~—AGGREGATE. When used in reference to the total allowable sign area, the total available display area of all sides or portions of a sign shall constitute the aggregate sign area.~~

~~—ALTER. This term shall include, but not be limited to, the addition of sign surface area, the changing or relocation of light source or the relocation of an outdoor advertising display from one position to another. This term shall include any and all structural changes in the sign, but shall not include the changing of copy on a sign, including a sign which is designed as a changeable copy sign.~~

~~—APERATURE SIZE. See SIGN SURFACE AREA.~~

~~—BASE. This term shall include, but not be limited to, the bottom support surface of any sign where it meets the ground.~~

- ~~—BEACON LIGHT. Any outdoor high intensity light which consists of one or more beams capable of being directed in any direction or directions, capable of being revolved automatically, or capable of having any part thereof revolve automatically, or which flashes.~~
- ~~—BUILDING FRONTAGE. The linear length of a building facing a public street right-of-way, exclusive of alleys.~~
- ~~—COPY. The letters, colors, text or other graphics displayed upon the sign surface area.~~
- ~~—ERECT. Build, construct, attach, hang, place, suspend or affix, and shall include the painting of wall signs.~~
- ~~—ESTABLISHMENT. An establishment is any commercial, industrial, institutional, educational, office, social, business, or financial entity.~~
- ~~—FASCIA. A horizontal construction component that is used to cap the ends of a structural roof truss.~~
- ~~—FRAME. The outermost corners or edges of a sign cabinet (see also Sign Cabinet).~~
- ~~—GOVERNMENTAL BODY. The city, county, state or government of the United States, and any branch, agency, board or department thereof.~~
- ~~—GROUND LEVEL. Ground level shall mean the finished grade at the base of a sign structure.~~
- ~~—GROWTH MANAGEMENT DEPARTMENT. The City Department that administers and enforces the Land Development Code and the Florida Building Code.~~
- ~~—GROWTH MANAGEMENT DIRECTOR. The City officer or other designated authority, or their duly authorized representative, in charge of the Growth Management Department.~~
- ~~—HEIGHT. The vertical distance between the uppermost portion of a sign and ground level.~~
- ~~—LUMENS. A quantifiable measure of light.~~
- ~~—MAINTAIN. Maintain shall include general servicing and upkeep in a safe and operable condition and free from excessive wear and tear.~~

~~— NOTICE. Written notification given by certified mail delivery or to the last known address of the person to be notified, or by hand delivery to such person and, if such notification related to a violation of this Chapter, the physical posting of written notification on the sign structure or real property on which the sign is located. If certified mail delivery or hand delivery is not possible, then an advertisement in any regularly published newspaper in the City shall suffice.~~

~~— OWNER. The person owning the fee simple title to the property upon which a sign is located for which a permit is required.~~

~~— PARAPET. The vertical wall section that extends above a roof.~~

~~— PERMITTEE. The owner of a sign for which a permit is required.~~

~~— PERSON. Any individual, firm, partnership, association, corporation or other legal entity.~~

~~— PLACEMENT. The location that a sign occupies on a lot or building.~~

~~— PREMISES. A lot or parcel of land or combination of contiguous lots or parcels under single ownership.~~

~~— PUBLIC or PRIVATE WAY. Any public or private thoroughfare utilized for vehicular or pedestrian traffic.~~

~~— RELOCATE. Any change in the position of a sign from its original location.~~

~~— REPLACE. Rebuild, enlarge or change in size, structure or lettering other than repainting, or repair to electrical apparatus.~~

~~— SIDEWALK. The paved portion of a right-of-way specifically designed for pedestrian traffic.~~

~~— SIGN.~~

~~— (1) Any permanent or temporary object, which is visible from a public place, including public roadways, and which is designed to attract attention to the subject matter of its copy or image. Specifically excluded from this definition is works of art, flags or emblems of any nation, state or political subdivision.~~

~~— (2) SIGNS include the following defined classes of signs:~~

~~— (a) PERMANENT SIGNS. Signs made of durable material and fixed to a building, supporting structure, or the ground in such a manner as to be immobile without the use of extraordinary means, such as disassembly. The following types of signs shall be permanent signs:~~

~~———— (i) ANIMATED SIGN. Any sign with physical action or motion, or giving the appearance thereof, through the use of illumination wind or other mechanical means. Animated signs shall include flashing or oscillating signs and swinging signs, sky trackers and shall exclude electronic message signs and time or temperature units.~~

~~———— (ii) AWINING SIGN. A roof-like structure extending and supported from the exterior wall of a building and which is composed of non-rigid materials (except for the supporting framework) upon which a sign is indelibly drawn, painted or printed.~~

~~———— (iii) BENCH SIGN. A bench whose primary purpose is collateral with providing transportation service to the public upon which a sign is indelibly drawn, painted or printed.~~

~~———— (iv) BILLBOARD SIGN. Any freestanding sign, which may, without limitation, be a sign having changeable copy sign or an Electronic Message Sign, which identifies or advertises a use, establishment, product, activity or service not sold, produced, manufactured, located, provided or furnished on the parcel on which the sign is located (or which identifies a use, product, activity or service which is only incidentally sold or available on that parcel). Billboard Signs may be illuminated or non-illuminated and include Digital Billboards.~~

~~———— (v) DIRECTORY SIGN. Any sign that states the name and/or occupation of the occupants of a structure or gives the use of the structure, including office building directories, houses of worship directories and apartment house directories.~~

~~———— (vi) ELECTRONIC MESSAGE SIGN. A non-billboard Illuminated Sign emitting an illuminated message, image or design created electronically by any light source, light emitting diodes ("LEDs"), bare electric bulbs, luminous tubes, fiber optics, or any other combination of light sources creating a message. This definition shall include time, temperature and date signs. Each message on the sign must be displayed for a minimum of (8) eight seconds and all static message changes shall be completed within one (1) second. Each display must have a light sensing device that will adjust the brightness, as ambient light conditions change. An Electronic Message Sign which has copy which moves continuously or appears to be moving, flashing, changes color, pulses or alternates shall be considered an Activated Sign.~~

~~———— (vii) MARQUEE SIGN. Any sign which is attached to, or hung from, a permanent, roof-like structure which is supported by a building wall and which projects out from the building line usually, but not necessarily, over a public right-of-way such as a sidewalk.~~

~~———— (viii) MONUMENT SIGN. Any on-premises, freestanding sign supported by structures or supports in or upon the ground and independent of support of any building(s) and which has a maximum height of ten (10) feet. A monument sign may be a directly illuminated sign, electronic message sign, or indirectly illuminated sign.~~

~~———— (ix) POLE SIGN. A freestanding sign supported by one (1) or more poles in or upon the ground.~~

~~———— (x) PYLON SIGN. Any sign, other than a portable sign, which is supported by structures or supports in or upon the ground and independent of support from any building and having eight (8) feet or more ground clearance when measured from the grade at the base of the sign to the bottom of the sign face. The structural elements of a pylon sign shall not exceed one and one-half (1½) feet in diameter.~~

~~———— (xi) ROOF SIGN. Any sign that is erected, constructed or maintained on the roof of a building or structure above the eaves, or above mansards, parapets, or other similar architectural features of buildings or structures which are capable of supporting signs.~~

~~———— (xii) TRANSIT SHELTER SIGN. Any sign that is attached to a shelter on or abutting a public right of way, which shelter is intended for use in connection with public transportation.~~

~~———— (xiii) WALL SIGN. A sign which is attached to or erected against the wall of a building with its face in a parallel plane to the plane of the building façade or wall. This definition shall include the painting of a sign on a wall surface. For a building façade with multiple heights or roof lines, the wall sign shall not project more than five (5) feet above the parapet of a roof line that is more than 50% of the length of the building façade. Any wall sign contrary to this requirement shall be considered a roof sign.~~

~~———— (xiv) WAYFINDING SIGN. A sign that provides information regarding the location of nearby establishments in Commercial or Industrial Zone property that do not have frontage on an Arterial or Major Collector street. Wayfinding signs must be located on private property with written permission of the property owner and may not be erected in any public right-of-way. More than one entity may co-~~

~~locate on a Wayfinding sign. The property for an establishment using a Wayfinding sign shall be located within 2,640 feet (1/2 mile) of said sign.~~

~~—— (b) TEMPORARY SIGN. Any sign that is not a permanent sign.~~

~~—— (i) Temporary signs shall only be installed or placed with the express consent of the occupant or owner of the premises.~~

~~—— (ii) Temporary signs may only be placed on privately owned property.~~

~~—— (iii) Temporary signs shall follow the guidelines as outlined per each zoning district in the appendixes below.~~

~~—— (iv) The following types of signs shall be temporary signs:~~

~~—— a. A-FRAME SIGN. A sign consisting of two (2) sign faces connected at the top with either hinges or fixed fastening devices.~~

~~—— b. BANNER SIGN. Any sign intended to be hung either with or without frames, possessing characters, letters, illustrations or ornamentations applied to paper, plastic or fabric of any kind, and shall include flags, and streamers.~~

~~—— c. CONSTRUCTION SIGN. Any temporary sign erected between the time of issuance of a building permit and the issuance of a certificate of occupancy and located on the premises where construction is taking place, indicating the description of the project, the names and telephone numbers of the architects, engineers, landscape architects, contractors, or similar artisans, and the owners, financial supporters, sponsors and similar persons having a role or interest in the structure or project.~~

~~—— d. FEATHER SIGNS. A sign supported by a single monopole with an affixed, cloth-like material that moves and flexes with the wind.~~

~~—— e. FREESTANDING FRAME SIGN. Any self-supporting two-sided sign with a total sign area of no more than sixty-four (64) square feet and which has a maximum height not exceeding eight (8) feet.~~

~~—— f. FUTURE IMPROVEMENT SIGN. Any sign which describes proposed development to take place on the premises.~~

~~—— g. HUMAN SIGN HOLDER. Any sign that is supported, in whole or in part by a person.~~

~~—— h. INFLATED SIGN. A sign constructed from nonporous material, which is inflated with air or any lighter-than-air gas. Included in this definition are~~



~~inflated signs which represent the form of a person, place or thing. Aircraft which may meet this definition are not considered inflated signs.~~

~~———— i. PORTABLE SIGN. Any sign not permanently erected on a premises and which may be moved readily from place to place; except that this definition shall not apply to Vehicle Signs or signs displayed through, but not on, windows.~~

~~———— j. REAL ESTATE SIGN. Any sign used solely for the purpose of offering the sale or lease of the premises and/or building on which the sign is located.~~

~~———— k. VEHICLE SIGN. Any sign erected upon a vehicle wherein the principle purpose of the vehicle is not general transportation, but merely the support of the sign itself. Signs mounted upon taxis, buses, or other modes of general public transportation when in the course of their normal service are excluded from this definition.~~

~~———— l. WINDOW SIGN. A window sign is one that lets light or air through to the habitable part of the building and which is painted on, attached to, or visible through a window. A window sign does not include the display of merchandise.~~

~~———— (c) ABANDONED SIGN. Any:~~

~~———— (i) sign which through age and/or obsolescence no longer conforms to the structural or maintenance specifications of this chapter; or~~

~~———— (ii) pole, pylon or structure expressly installed for the purpose of affixing a sign which bears no sign or copy for a period of twelve (12) consecutive months; or~~

~~———— (iii) sign which displays information which incorrectly identifies the business, owner, lessor, or principal activity conducted on the site; or~~

~~———— (d) ACTIVATED SIGN. Any sign which:~~

~~———— (i) contains or uses for illumination any light, lighting device or lights which change color, flash or alternate, or change appearance of said sign or any part thereof automatically, except electronic message signs;~~

~~———— (ii) contains moving parts as part of its normal operation;~~

~~———— (iii) depicts or contains copy which moves or appears to be moving.~~

~~———— (e) DIGITAL BILLBOARD. Any Billboard Sign utilizing digital message technology, capable of changing the static message or copy on the sign electronically. A Digital Billboard may be internally or externally illuminated. A~~

~~Digital Billboard shall contain static messages only, and shall not have animation, movement, or the appearance or optical illusion of movement, of any part of the sign structure. Each static message shall not include flashing or the varying of light intensity. Digital Billboards shall be operated in accordance with Fla. Admin Code Rule 14-10.004(3). Digital billboards shall not be considered as Animated, Activated or Flashing type lighting.~~

~~—(f) FLASHING SIGN. Any sign on which all or any portion of the electrical lighting device(s) on such signs go on and off at alternate intervals. Any revolving Illuminated Sign shall be considered a Flashing Sign for purposes of this chapter. Digital billboards shall not be considered Flashing Signs for purposes of this chapter.~~

~~—(g) GOVERNMENT SIGN. Any sign erected by or at the direction of a public official in the performance of such official's office or duty.~~

~~—(h) ILLEGAL SIGN. An unpermitted sign which was not lawfully erected or a permitted sign not constructed in accordance with the representations set forth in the permit documents or a sign constructed in violation of city codes.~~

~~—(i) ILLUMINATED SIGN. Any sign using an artificial light source.~~

~~—(j) INTERIOR SIGN. A sign which is located in the interior of a structure or which is located outside a structure but, because of the sign's placement, design or orientations is not visible to persons from a location other than the parcel on which the sign is located. Interior signs are not regulated by this Chapter.~~

~~—(k) REVOLVING SIGN. Any sign so erected or constructed as to periodically or continuously change the direction toward which any plane containing the display surface area is oriented.~~

~~—(l) SNIPE SIGN. Any sign made of nondurable material and which is attached in any way to a utility, tree, fence post or any other similar object, or inserted with one or more stakes into the ground.~~

~~—(m) SUBDIVISION SIGN. Any permanent sign located at the entry of a subdivision or neighborhood, mobile home park, townhouse, or other planned residential development.~~

~~—SIGN CABINET. The self-supporting structural or non-structural frame that contains the sign face.~~

~~—SIGN FACE. The part of the sign that is or can be used to identify, display, advertise, communicate information, or for visual representation which attracts or intends to attract the attention of the public for any purpose.~~

~~—SIGN NUMBER. For the purpose of determining the number of signs, a sign shall be construed to be a single display surface or device containing elements organized, related, and composed to form a single unit. In cases where material is displayed in a random or unconnected manner, or where there is reasonable doubt as to the intended relationship of such components, each component or element shall be considered to be a single sign. A sign with sign surface on multiple sides of such sign shall be construed as a single sign, and the total area of such sign shall be the area computed on a single side of the sign.~~

~~—SIGN STRUCTURE. Any structure which is designed specifically for the purpose of supporting a sign, has supported or is capable of supporting a sign. This definition shall include any decorative covers, braces, wires, supports or components attached to or placed around the sign structure.~~

~~—SIGN SURFACE AREA. The total area of each sign face which may be used to display copy, including background, but not including the frame and structural supporting elements. The sign surface area shall be computed for the entire area within the periphery of a geometric form, or combination of geometric forms. The surface area of the sign shall be measured from the outside edges of the sign or the sign frame, whichever is greater. The sign area shall include the total of a single side of a sign surface upon which copy could be placed. Where a sign is composed of individual letters, characters or symbols applied directly to a building, canopy, marquee, mansard, fascia, façade, parapet, awning, the area of the sign shall be the smallest geometric shape which will enclose all of the letters, characters or symbols. The area of a multi-faced sign shall be the total area of each sign face.~~

~~—SIGN UNIT. Any display and/or display device containing elements organized, related and/or composed to form a single unit. Where the display of any elements is in a random manner without any organized relationship of elements, each element shall be considered a separate sign. A double-faced sign shall be considered a single sign.~~

~~—STREET FRONTAGE. The length of the property line for a single parcel which runs parallel to and along each public right-of-way (exclusive of alleys) it borders.~~

~~—WALL. The surface of the exterior of a principal building exposed to the public view within a single plane, inclusive of windows and/or doors.~~

~~—ZONING DISTRICT. The various zoning districts as established and described in the zoning regulations set forth in Chapter 185 of this code of ordinances.~~

**~~§ 178.09 SIGN PERMITS, NOT REQUIRED.~~**

~~—A sign permit shall not be required for:~~

~~—(A) The erection, installation, alteration, repair, relocation, reinstallation, or structural maintenance of:~~

~~—(1) Signs in conformance with the requirements of this Chapter located on property owned by a Governmental Body or on a right of way;~~

~~—(2) Temporary signs otherwise conforming with the requirements of this Chapter;~~

~~—(3) Directory Signs; or~~

~~—(4) Interior Signs.~~

~~—(B) Nonstructural maintenance of an existing permitted sign, such as cleaning or painting, or repairs to an existing sign which does not alter the size or height of the sign; or~~

~~—(C) Changing the copy of an existing permitted sign; or~~

~~—(D) Any sign that is legally existing and, if required, properly permitted as of the date this Chapter is enacted. A new permit shall be required prior to any alteration, repair, relocation, reinstallation, or structural maintenance of such legally existing sign.~~

**~~§ 178.10 SIGN PERMITS.~~**

~~—(A) Permits required. A sign permit is required prior to construction, erection, installation, alteration, repair, relocation, reinstallation, or structural maintenance of any sign not subject to § 178.09 of this Chapter.~~

~~—(B) Emergency Repairs. Repairs to a legally existing sign may be conducted prior to obtaining a permit in the event of an emergency imposing an imminent threat to life or property, provided, however, that any necessary permit is obtained promptly after such repairs are initiated. Emergency repairs shall be limited to returning the sign to its original permitted state.~~

~~—(C) Who may apply. The following persons, or the designated agent or such persons, may apply for a sign permit:~~

~~—(1) the owner of a sign for which a permit is required.~~

~~—(2) the designated agent of the owner of a sign for which a permit is required.~~

~~—(D) Administration. The Administrator or the Administrator's designee shall be responsible for the administration, processing, review and determination of applications for sign permits.~~

~~—(E) Timing. Unless otherwise expressly provided for in this chapter, the Administrator or the Administrator's designee shall review an application for any permit for the erection, relocation, repair, or in any way pertaining to signs, and issue a written determination to the applicant within thirty (30) business days of receipt of the completed application. The review and determination period may be extended for an additional forty-five (45) business days at the request of the applicant or its agent.~~

~~—(F) Grant or denial. If the application for a sign permit demonstrates that the proposed sign or the proposed work relating to a sign conforms with the requirements of this Chapter, and if all fees relating to such sign permit application have been paid, the sign permit application shall be granted. If the sign permit application does not demonstrate such conformity with the requirements of this Chapter or if all fees relating to such sign permit application have not been paid, the application shall be denied. In the event the application is denied, the Administrator or the Administrator's designee shall include the specific basis for the denial in the written determination provided to the applicant. Failure of the Administrator or the Administrator's designee to issue a final determination within the time set forth in subsection (E) above shall constitute a grant of such sign permit application.~~

~~—(G) Electrical Permits. A separate electrical permit shall be required for any sign containing electrical components. If the work authorized under an electrical permit has not been completed within six (6) months after the date that the electrical permit is issued, then both the electrical permit and the sign permit shall become null and void.~~

~~—(H) Revocation of permit. If the person to whom a sign permit is issued fails to comply with any of the provisions of this Chapter, the Administrator or the Administrator's designee shall provide notice to the permit holder revoking such permit and specifying the reason for such revocation.~~

~~—(I) Sign permit related fees.~~

~~—(1) Permit fees. Fees for sign permits, including inspection fees and plan checking fees, but exclusive of any fees for any electrical permit, shall be as~~

~~established by City Council by resolution pursuant to § 169.004. For the purpose of determining the sign permit fee, sign valuation shall be determined by the Administrator or the Administrator's designee.~~

~~—(2) Work commenced before acquiring permit. Where work for which a sign permit is required commences prior to issuance of such the permit, the fees for such permit shall be doubled, but the payment of such double fee shall not relieve the sign permit applicant from fully complying with the requirements of this Chapter and any other applicable regulations of the City in the execution of the work nor from any other applicable penalties. This provision shall not apply to emergency repairs under subsection (B) above.~~

~~—(J) Inspections.~~

~~—(1) Signs for which permits have been issued shall be inspected during and at completion of construction and at such times as deemed necessary by the Administrator or the Administrator's designee. The Administrator and the Administrator's designee are empowered to enter or inspect any building, structure or premises in the City upon which or in connection with which a sign is located, for the purpose of inspecting the sign, including its structural details and electrical connections, to ensure compliance with the provisions of this Chapter. Such inspections shall be carried out during normal business hours, unless an emergency exists.~~

~~—(2) When an inspection reveals maintenance, repair, or other remedial action is needed, the Administrator or the Administrator's designee shall provide notice to the property owner, and the sign permit holder (if not the property owner) identifying the needed remedial action. The owner shall have ten (10) business days to complete the remedial action or remove the sign.~~

~~—(3) Construction inspections. Any person constructing, erecting or relocating a sign for which a permit is required shall notify the Administrator or the Administrator's designee at all stages of construction that require inspection and approval by the Building Division. The requirements for such inspections are as follows:~~

~~—(a) a footing inspection for all detached signs shall be required;~~

~~—(b) a final structural inspection shall be required at completion of the work on all types of signs; and~~

~~—(c) a final electrical inspection shall be required on all signs containing electrical components and wiring to be connected to an electrical energy source.~~

**~~§ 178.11 REVIEW OF SIGN-RELATED DECISIONS.~~**

~~—(A) Any person who has been aggrieved by any order, requirement, decision, or determination applying or interpreting the provisions of this Chapter may seek review of said order, requirement, decision, or determination as provided in § 169.006.~~

~~—(B) Persons with standing to seek review of any order, requirement, decision, or determination under this Chapter related to constitutionally protected first amendment activity shall be entitled, as a matter of right, to seek immediate review of such final determination by filing an appropriate pleading with the circuit court having jurisdiction over the territory encompassed by the City.~~

**~~§ 178.12 PENALTIES AND REMEDIES.~~**

~~—Unless otherwise stated, a person who engages in conduct in violation of this Chapter shall be subject to the following penalties and/or remedies:~~

~~—(A) Violations of this chapter may be punished as provided in the City of Palm Bay Code, § 10.99, General Penalty.~~

~~—(B) Each day that a violation continues after receipt of written notice of such violation shall constitute a separate violation and separate offense for purposes of the penalties and remedies specified herein.~~

~~—(C) In addition to the penalties and remedies above, the City may institute any appropriate action or proceedings to prevent, restrain, correct or abate a violation of this Chapter, as provided by law.~~

**~~§ 178.13 SIGNS ON PROPERTY OWNED BY A GOVERNMENTAL BODY; PUBLIC RIGHTS OF WAY; PUBLIC PLACES.~~**

~~—(A) Property owned by Governmental Body. No private person or group shall erect, install, maintain, alter, repair, demolish, remove, relocate, reinstall, or perform structural maintenance upon, a sign located on property owned by a Governmental Body. Only the Governmental Body owning such land, or its designated agents, may erect, install, maintain, alter, repair, demolish, remove, relocate, reinstall, or perform structural maintenance upon, a sign upon such property.~~

~~—(B) Public Rights of Way. Except as expressly provided otherwise by the Florida Department of Transportation with regard to rights of way within its control and/or jurisdiction, no private person or group shall erect, install, maintain, alter, repair, demolish, remove, relocate, reinstall, or perform structural maintenance~~

~~upon, a sign located on any public right of way, including utility poles. Only the Governmental Body responsible for the maintenance of such public right of way, or its designated agents, may erect, install, maintain, alter, repair, demolish, remove, relocate, reinstall, or perform structural maintenance upon, a sign upon such a right of way.~~

~~—(C) Requirements. Any sign located on property owned by a Governmental Body or upon any public right of way must conform to the requirements of this Chapter.~~

~~—(D) Removal of unauthorized signs. The City may immediately remove any unauthorized sign located on property owned by a Governmental Body or upon any public right of way. Upon removing such a sign, the City shall hold it for a minimum of five (5) business days. At any time during such a holding period the owner of the sign may reclaim the sign after paying a removal and storage fee of one hundred dollars (\$100.00). Signs not reclaimed by the owner during this holding period shall be discarded.~~

#### **~~§ 178.14 SCHEDULE OF SIGNS IN COMMERCIAL DISTRICTS.~~**

~~—The table setting forth the type, size, location, number, and allowable sign illumination for signs located on parcels within commercial districts is found in Appendix A.~~

#### **~~§ 178.15 SCHEDULE OF SIGNS IN INDUSTRIAL DISTRICTS.~~**

~~—The table setting forth the type, size, location, number, and allowable sign illumination for signs located on parcels within industrial districts is found in Appendix B.~~

#### **~~§ 178.16 SCHEDULE OF SIGNS IN RESIDENTIAL DISTRICTS.~~**

~~—The table setting forth the type, size, location, number, and allowable sign illumination for signs located on parcels within industrial districts is found in Appendix C.~~

#### **~~§ 178.17 BILLBOARD AND INTERCHANGE SIGNS.~~**

~~—(A) Billboard signs may be permitted on industrial or commercial zoned properties which are not within one-half (1/2) mile of an Interstate 95 interchange, but which abut Palm Bay Road or Interstate 95, subject to the following restrictions:~~

~~—(1) Height shall not exceed sixty (60) feet;~~

~~—(2) Sign Surface Area shall be:~~



~~— (a) between three hundred and sixty (360) square feet and six hundred and eighty (680) square feet, (excluding cabinetry and trim); and~~

~~— (b) between two hundred (200) square feet and three hundred eighty-five (385) square feet, (excluding cabinetry and trim) along Palm Bay Road; and~~

~~— (c) embellishments shall not extend more than five (5) feet beyond the permanent sign face.~~

~~— (3) No Billboard sign shall be located less than 1,500 linear feet from any other Billboard Sign, measured in a straight line distance from sign to sign.~~

~~— (4) Each Billboard sign shall be setback from all property lines of the parcel upon which they are erected upon a distance equal to half the height of the sign.~~

~~— (B) Interchange signs may be permitted on industrial or commercial zoned properties located within one-half (1/2) mile of an Interstate 95 interchange if such property abuts Interstate 95 or if such Interchange sign is located within one-half (1/2) mile of an Interstate 95 interchange, subject to the following restrictions:~~

~~— (1) Height shall not exceed sixty (60) feet;~~

~~— (2) Sign Surface Area shall be no greater than:~~

~~— (a) four hundred (400) square feet per sign face and a maximum of one sign per side for an Interchange sign with a height of sixty (60) feet; and~~

~~— (b) two hundred fifty (250) square feet per sign face for an Interchange sign with a height of less than sixty (60) feet;~~

~~— (3) No Interchange sign shall be located less than one thousand (1,000) linear feet from any other Interchange sign, measured in a straight line distance from sign to sign.~~

~~— (4) Each Interchange sign shall be setback:~~

~~— (a) a minimum of twenty (20) feet from any public or private right-of-way lines; and~~

~~— (b) a minimum of ten (10) feet from any other property line.~~

~~— (C) Digital Billboards may be permitted on new and existing Billboard Signs on industrial or commercial zoned properties abutting Palm Bay Road, on industrial or commercial zoned properties abutting Interstate 95, and on industrial or commercial zoned properties if such Digital Billboard sign is located within one-half (1/2) mile of an Interstate 95 interchange within the City limits, subject to the~~

~~restrictions in sub-sections (A) and (B) above. Notwithstanding any other provision contained herein, an existing legal nonconforming Billboard Sign, regardless of location, may be converted to a Digital Billboard and may be altered or reconstructed to the extent necessary to complete such conversion, notwithstanding any other provision to the contrary contained in this Chapter 178 or in Chapter 185, subject to the following criteria:~~

~~— (1) Such Digital Billboard sign shall conform to State outdoor advertising regulations. There are currently only two (2) Billboard Signs in the City of Palm Bay that meet these regulations. One is located at 4250 Minton Road NE, and the other is located at the northwest corner of U.S. Highway No. 1 and Robert J. Conlan Boulevard NE;~~

~~— (2) Such Digital Billboard sign shall have an active State outdoor advertising permit from the Florida Department of Transportation;~~

~~— (3) The messaging area of the Digital Billboard sign (excluding framing, cabinetry and trim) shall not be larger than the existing sign face area;~~

~~— (4) The sign height and location shall not be changed.~~

~~— (5) Minimum display time. Each message on the Digital Billboard sign shall be displayed for a minimum of (8) eight seconds.~~

~~— (6) Message Changes. All Digital Billboard static message changes shall be completed within one (1) second.~~

~~— (7) Brightness level. Digital Billboard signs shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter at a pre-set distance.~~

Sign Face Size	Distance to be measured from
10' 6" x 36'	200'
14' x 48'	250'

~~— (8) Each Digital Billboard sign display shall have a light sensing device that will adjust the brightness as ambient light conditions change;~~

~~— (9) Digital Billboard signs shall be operated with systems and monitoring in place to either turn the display off or show a "full black" image on the display in the event of a malfunction that affects at least fifty percent of the sign area; and~~

~~— (D) Digital Billboards may be operated with conventional printed display faces.~~

~~—(E) Owners of Digital Billboards are strongly encouraged to coordinate with law enforcement and emergency management authorities to display, when appropriate, regional emergency information important to the traveling public including, but not limited to Amber Alerts or emergency management information, such as Hurricane Evacuation Orders. Owners of Digital Billboards are strongly encouraged to display advertising copy on the electronic/digital sign face on behalf of the City, with no charge for advertising space, of the following types advertising messages only: public service, welcome messages or community events in the City of Palm Bay.~~

#### **~~§ 178.18 CONSTRUCTION, DESIGN, AND LOCATION OF SIGNS.~~**

~~—(A) Design and construction. The design, construction and erection of all signs permitted within the city shall conform to the requirements of the Standard Building Code, adopted in Chapter 170 of this Code of Ordinances. Signs containing components to be connected to an electrical energy source shall also conform to the requirements of the National Electrical Code, adopted Chapter 170 of this Code of Ordinances. If the requirements of this Chapter conflict with the requirements of the above codes, the provisions of this Chapter shall govern.~~

~~—(B) Illuminated signs. All such light sources shall be maintained in good working condition. Signs which are not effectively shielded to prevent beams or rays of light from being directed at any portion of the traveled ways in the City of Palm Bay and which are of such intensity or brilliance as to cause glare or to impair the vision of a driver of a motor vehicle or which otherwise obscure or interfere with a driver's operation of a motor vehicle are prohibited.~~

~~—(C) Sign setbacks. Sign setbacks shall be determined to be the leading edge of the sign or the supporting structure for such sign, whichever is closer to the point from which the setback is calculated.~~

~~—(D) Orientation. All signs shall be designed and erected to be perpendicular to the ground upon which the sign is erected.~~

#### **~~§ 178.19 MAINTENANCE OF SIGNS.~~**

~~—(A) Except as expressly otherwise provided, all signs regulated by this Chapter, including their supports, braces, guys, anchors, electrical parts, lighting fixtures, and all painted and display areas shall be maintained so as to present a neat, clean appearance. Painted areas and sign surfaces shall be kept in good condition, and illumination, if provided, shall be maintained in safe and good working order.~~

~~—(B) Weeds and grass shall be kept cut in front of, behind, underneath and around the base of ground signs for a distance of ten (10) feet, and no rubbish or debris shall be permitted under or near such signs.~~

**~~§ 178.20 EXPRESSLY PROHIBITED SIGNS, NUISANCE.~~**

~~—(A) The following types of signs, in any location, are expressly prohibited:~~

- ~~—(1) Abandoned Signs;~~
- ~~—(2) Activated Signs;~~
- ~~—(3) Animated Signs;~~
- ~~—(4) Beacon Lights;~~
- ~~—(5) Flashing Signs;~~
- ~~—(6) Illegal Signs;~~
- ~~—(7) Revolving Signs;~~
- ~~—(8) Roof Signs;~~
- ~~—(9) Vehicle Signs;~~
- ~~—(10) Snipe Signs;~~
- ~~—(11) Any sign confusingly similar to a Government Sign;~~
- ~~—(12) Any sign, other than a Government Sign, in or upon any river, bay, lake, or other body of water within the City;~~
- ~~—(13) Any sign, other than a Government Sign, upon any pier or seawall;~~
- ~~—(14) Window signs which, in aggregate, cover more than twenty-five (25) percent of the total window surface; and~~
- ~~—(15) Any sign which:~~
  - ~~—(a) contains content previously adjudged obscene in the community;~~
  - ~~—(b) emits audible sound, vapor, smoke, odor particles, or gaseous matter;~~
  - ~~—(c) obstructs, conceals, hides, or obscures any Government Sign;~~
  - ~~—(d) presents a hazard to the safety of the public; or~~
  - ~~—(e) causes radio, television or other communication interference.~~
- ~~—(B) Any sign expressly prohibited by this section shall be deemed a nuisance. The Administrator or the Administrator's designee shall issue notices to both the~~

~~owner of the property on which such sign is located and, to the extent discernable, those persons maintaining and/or owning such signs, giving such persons ten (10) days to dismantle and remove signs or take action to make such sign conform to the requirements of this Chapter. In the event such a sign presents a hazard to public safety, it may be removed immediately by direction of the Administrator, the Administrator's designee, or any other City official responsible for public safety.~~

**~~§ 178.21 NONCONFORMING SIGNS.~~**

~~—(A) Any sign which did not conform to the provisions of Chapter 178 immediately prior to the effective date of this ordinance, and was not legally permitted and constructed, shall be an illegal nonconforming sign and shall be removed immediately.~~

~~—(B) Unless otherwise subject to the provisions of § 70.20, Florida Statutes, any sign which was legally permitted and constructed, but which does not conform to the provisions of Chapter 178, shall be a legal nonconforming sign and shall be governed as provided for herein.~~

~~—(C) A legal nonconforming sign may not be altered, enlarged, or moved in a way which increases its degree of nonconformity, but any sign or portion thereof may be altered to decrease its degree of nonconformity, except as provided for herein. Notwithstanding the foregoing or section (D) below, a legal nonconforming sign may be reconstructed as a Digital Billboard if doing so would otherwise conform to the requirements of Chapter 178.~~

~~—(D) A legal nonconforming sign shall not be structurally altered to prolong the life of the sign, except as otherwise provided herein. Reasonable repair and maintenance of nonconforming signs, including change of copy, is permitted, as provided for herein. Reasonable repair and maintenance means the work necessary to keep the sign, including the sign structure, in a good state of repair, but does not include replacement of materials in the sign structure. Reasonable repair does not include:~~

~~—(1) Any modification that changes the structure, or type of structure, such as conversion of a wooden sign structure to a metal sign structure;~~

~~—(2) Any modification that increases the sign area or the height above ground level. Embellishments may be added provided they do not exceed ten percent (10%) of the sign area, as established in Fla. Admin. Code § 14-10.007; or~~

~~—(3) Any modification that adds lighting to a sign structure that previously did not contain lighting and does not have the approvals to do so, or changes the existing lighting from printed faces to digital faces without prior approval.~~

~~—(E) Should a legal nonconforming sign become damaged, destroyed or deteriorated by any means to the extent that it requires more than reasonable repair and maintenance, as defined in subsection (D) above, then the sign shall not be reconstructed except in compliance with this Chapter.~~

~~—(F) Should a legal nonconforming sign be moved for any reason, it shall thereafter conform to the requirements of this Chapter after it is moved.~~

~~—(G) A legal nonconforming sign, other than legal nonconforming billboard signs, shall be deemed an abandoned sign and shall be removed if either the sign or the sign structure has not been used, or if the parcel or parcels upon which the sign is located becomes vacant or unoccupied for a period of ninety (90) consecutive calendar days or more.~~

~~—(H) A legal nonconforming billboard sign shall be deemed an abandoned sign and shall be removed if either the sign or the sign structure has not been used or becomes vacant or unoccupied for a period of twelve (12) consecutive calendar months or more.~~

#### **~~§ 178.22 PENALTIES.~~**

~~—(A) Litter along the streets and highways, including the State highway system, public spaces, public rights-of-ways, and waterways of Palm Bay, detracts from the beauty of the city. The term "litter" shall be as defined in Florida Statute 403.413(2)(f), that is located on public property, and shall include any artificial or manmade object illegally placed within a public right-of-way or illegally nailed, fastened or affixed to any tree, public utility pole, or other object located on public property or within a public right-of-way. The terms "litter" shall include "snipe sign" as defined within this Chapter.~~

~~—(B) The placement of a snipe sign on public property is transient in nature and is therefore irreparable. The existence of snipe signs are a nuisance upon the city and its staff. The adoption of the prohibition directed to snipe signs on public property shall be deemed notice of the violation. The person or business in possession or control of the snipe sign and the person or business who owns or is advertised or identified by name, address, website or other contact information on the sign may be cited upon observation of the violation. The person or business who owns or is advertised or identified on the sign shall be presumed to have~~

~~permitted the placement of the snipe sign in the absence of evidence to the contrary. The term "transient in nature" shall mean that a condition exists on a temporary, periodic, or non-permanent basis. The term "irreparable" shall mean the condition is incapable of being remedied, as the harm sought to be prevented has already occurred.~~

~~—(C) Violations of this Section shall be unlawful and shall be subject to the fines set forth in this subsection. Each piece of litter or separate sign that a person illegally places on or affixes to public property in violation of this Section shall be deemed a separate violation. The schedule for fines for the violations shall be as follows:~~

<del>Offense</del>	<del>Fine</del>
<del>1st</del>	<del>\$50</del>
<del>2nd</del>	<del>\$100</del>
<del>3rd and each thereafter</del>	<del>\$150</del>

~~—(D) Any litter or snipe sign placed on or affixed to public property or placed in the road right-of-way, including but not limited to public property and rights-of-way along or adjoining any roadway, in violation of this Section is hereby declared to be abandoned property and is thereby subject to being removed by an employee of the Code Compliance Division or a member of the Volunteer Citizens on Patrol (V-COP).~~

~~—(E) The Division Manager of the Palm Bay Code Compliance Division, or his or her designee, shall have the duty to enforce this subsection (178.22) through such assigned personnel as the Manager or designee determines to be appropriate.~~

~~—(F) A violation of the snipe sign prohibitions of this Section shall be documented by a digital photograph taken by a Code Compliance Officer or V-COP.~~

~~—(G) The Code Enforcement Board shall hear charges of code violations pursuant to the issuance of citations. The Board shall operate in the manner established in Chapter 52 of the Palm Bay Code of Ordinances.~~

#### **~~§ 178.23 CONFLICT WITH OTHER LAWS; UNCONSTITUTIONALITY OR INVALIDITY.~~**

~~—(A) If any portion, clause, phrase, sentence or classification of this Chapter, now or later amended, conflicts with any federal or state statute or regulation, either now existing or later enacted, such conflicting federal or state statute or regulation~~

shall govern and the remaining provisions of this Chapter that can be given effect without the conflicting provision shall continue in full force.

—(B) If any portion, clause, phrase, sentence or classification of this Chapter, now or later amended or its application to any person or circumstance, is held or declared by a court of competent jurisdiction to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of this Chapter that can be given effect without the invalid provision or application. It is the express intention and opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

#### **CHAPTER 178: APPENDIX A**

#### **SCHEDULE OF SIGNS IN COMMERCIAL ZONING DISTRICTS**

<b><i>Sign Type</i></b>	<b><i>District(s)</i></b>	<b><i>Maximum Number</i></b>	<b><i>Maximum Area</i></b>	<b><i>Maximum Height</i></b>	<b><i>Placement</i></b>	<b><i>Illumination</i></b>
A-Frame	All	1 per street frontage	16 sq. ft.	10 ft.	At the Property Line	None
Awning	All	1 per street frontage	10% of wall Area	10 ft.	Attached	Int. or Ext.
Banner	All	Non-Regulated	Non-Regulated	25 ft.	Non-Regulated	None
Bench	All	1 per bench	3 sq. ft.	6 ft.	Non-Residential	None



Billboard	See §178.17	See §178.17	See §178.17	See §178.17	See §178.17	External or Internal
Construction	All	1 per street frontage	16 sq. ft.	10 ft.	10' from any Property line	None
Directory	All	1 per street frontage	3 sq. ft.	3 ft.	At the Property Line	None
Electronic Message	All	1 per street frontage	64 sq. ft.	10' height @ < 150' frontage 25' height @ + 150' frontage	10' from any Property line	Internal
Free standing Frame	All	1 per street frontage	64 sq. ft.	10' height @ < 150' frontage 25' height @ + 150' frontage	10' from any Property line	Int/Ext
Future Improvement	All	1 per street front	16 sq. ft.	10 ft.	10' from any Property line	No

		age				
Human Sign Holder	All	1 per street frontage	16 sq. ft.	10 ft.	No such Sign shall impede visibility for traffic safety	None
Inflated	All	1 per street frontage	No n- Restricted.	25 ft.	10' from any Property line	External or Internal
Marquee	All	1 per street frontage	12 sq. ft.	N/A	Attached	External or Internal
Monument	All	1 per street frontage	64 sq. ft.	10' height @ < 150' frontage 25' height @ + 150' frontage	10' from any Property Line	External or Internal
Pole	All	1 per street frontage	64 sq. ft.	10' height @ < 150' frontage 25' height @ +	10' from any Property Line	Internal

				150' front age		
Portable	All	1 per street front age	64 sq.-ft.	10 ft.	Non- Regulate d	Internal
Pylon	All	1 per street front age	64 sq.-ft.	10' heig ht @ < 150' front age 25' heig ht @ ± 150' front age	10' from any Propert y-Line	Internal
Real Estate	All	1 per street front age	16 sq.-ft.	10 ft.	10' from any Propert y-Line	No
Transit Shelter	All	1 per dev elo pe d par cel	16 sq.-ft.	10 ft.	Right-of- way	External or Internal
Wall	All	1 per street front age	M ax 10 % of W	Not Ab ove Ave rag e	On the Princ iple Buildi ng	External

			all Area	Re offi ne		
Window	All	1 per stree t front age	1 0 % of w all Ar ea	Not Ab ove Ro offi ne	N/A	N/A

# **CHAPTER 178: APPENDIX B**

## **SCHEDULE OF SIGNS IN INDUSTRIAL ZONING DISTRICTS**

<b><i>Sign Type</i></b>	<b><i>Distr ict(s)</i></b>	<b><i>Ma xim um Nu mb er</i></b>	<b><i>Ma xim um Are a</i></b>	<b><i>Ma xim um Hei ght</i></b>	<b><i>Placemen t</i></b>	<b><i>Illumina tion</i></b>
A-Frame	All	1 per stree t front age	16 sq. ft.	10 ft.	10' from any Property line	None
Awning	All	1 per stree t front age	1 0 % of A r e a	Not abo ve tha n roof line	On the Principle Building	External or Internal
Banner	All	Non- Reg. per stree t front age	No n- Re gul ate d	25 ft.	Non- regulated	None

Bench	All	1 per bench	3 sq. ft.	6 ft.	Non-Residential	None
Billboard	See §§178.17	See §§178.17	See §§178.17	See §§178.17	See §§178.17	External or Internal
Construction	All	1 per street frontage	16 sq. ft.	10 ft.	10' from any Property line	None
Directory	All	1 per street frontage	3 sq. ft.	3 ft.	10' from any Property line	Ext. or Int.
Electronic Message	All	1 per street frontage	64 sq. ft.	10' @ 150' < ft. 25' @ 150' +	10' from any Property line	No Cinematic Movement @ Luminance @ Property line.
Freestanding Frame	All	1 per street frontage	64 sq. ft.	10' @ 150' < ft. 25' @ 150' >	10' from any Property line	Int/Ext.
Future Improvement	All	1 per street frontage	16 sq. ft.	10 ft.	10' from any Property line	None
Human Sign Holder	All	1 per street frontage	16 sq. ft.	10 ft.	No such sign shall impede vision for traffic safety	None

Inflated	All	1 per street front age	No n- Restr icted	25ft.	10' from any property line	Extern al-or Interna l
Marquee	All	1 per street front age	12 sq. ft.	N/A	Attached	Extern al-or Interna l
Monume nt	All	1 per street front age	64 sq. ft.	10 ft.	10' from any Property line	Extern al-or Interna l
Pole	All	1 per street front age	64 sq. ft.	10' < 150' ft. 25' @ 150' >	10' from any Property line	Internal
Portable	All	1 per street front age	64 sq. ft.	10 ft.	Non-regulated	Internal
Pylon	All	1 per street front age	64 sq. ft.	10' < 150' ft. 25' @ 150' >	10' from any Property line	Internal
Real Estate	All	1 per street front age	16 sq. ft.	10 ft.	10' from any Property line	None
Transit Shelter	All	1 per developed par	16 sq. ft.	10 ft.	Right-of-Way	Extern al-or Interna l

		cel				
Wall	All	1 per street front age	10% of wall Plac eme nt.	Not Ab ove the Ave rag e Roo f Line	On the Princip le Buildin g	External
Window	All	1 per street front age	10% Max. Of Place	N / A	N/A	None

## CHAPTER 178: APPENDIX C

### SCHEDULE OF SIGNS IN RESIDENTIAL ZONING DISTRICTS

<b>Sign Type</b>	<b>Distri ct(s)</b>	<b>Maxi mu m Num ber</b>	<b>Max imu m Area</b>	<b>Max imu m Heig ht</b>	<b>Placeme nt</b>	<b>Illumi natio n</b>
Constru ction	All	1 per street fronta ge	16-sq. ft.	10 ft.	10' from any Property Line	None
Director y	All	1 per street fronta ge	3-sq. ft.	3 ft.	10' from any Property Line	None
Future Improve ment	All	1 per street fronta ge	16-sq. ft.	10 ft.	10' from any Property line	None
Real Estate	All	1 per street fronta ge	16-sq. ft.	10 ft.	10' from any Property line	None

Subdivision	All	2 per street frontage	32 sq. ft.	10 ft.	Not within the 10' sight Visibility Triangle	Internal or External
Transit Shelter	Mixed Use Commercial/ Residential	4 per developed parcel	16 sq. ft.	10 ft.	Right of Way	No External or Internal

## **CHAPTER 179: STREETS AND OTHER RIGHTS-OF-WAY**

### **GENERAL PROVISIONS**

#### **~~§ 179.001 DEFINITIONS.~~**

~~— For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~— ALTER. Change any street in any way, including but not limited to:~~

~~— (1) Clearing trees, shrubs, plants and other undergrowth or vegetation;~~

~~— (2) Changing the base of an existing dirt, marl or paved street; or~~

~~— (3) Changing or resurfacing the surface of an existing dirt, marl or paved street.~~

~~— CLOSURE. A street or portion of a street closed permanently or by prohibiting vehicular access. The street or portion of it will generally remain open to non-motorized and pedestrian public access and will remain usable for other public purposes such as sidewalks, landscaping, and utility use.~~

~~— CREATE. A street may be created by dedication through platting, or by separate dedication subject to the approval by the City Council under the provisions of this chapter.~~

~~— EMERGENCY CLOSURE. A street or portion of a street closed temporarily as may be necessary for public health, safety, and welfare.~~

~~— IMPROVE.~~



~~—(1) The alteration in any way of any street previously created by plat or dedication although not previously approved pursuant to the subdivision regulations set forth in Chapter 184 of this code of ordinances.~~

~~—(2) The straightening, widening, diverting or narrowing of any street, whether paved or unpaved, not previously approved pursuant to Chapter 184 of this code of ordinances.~~

~~—IMPROVED STREET.~~

~~—(1) Any street that has been accepted for maintenance by the City Council;~~

~~—(2) A street presently maintained by the city or some other public;~~

~~—(3) A city approved, private street built to all government-approved specifications not dedicated by plat or otherwise for public use which is properly maintained; or~~

~~—(4) A street which is being constructed, reworked or improved pursuant to a road acceptance agreement with the city so long as:~~

~~—(a) The agreement has not been breached;~~

~~—(b) The other party to the agreement has not through its conduct called into question its financial ability to perform its obligations thereunder; and~~

~~—(c) The agreement has not been invalidated, terminated or otherwise discharged.~~

~~—STREET. Any dedicated public or private access way such as a street, road, highway, boulevard, parkway, circle, court or cul-de-sac, including all of the land lying between the right-of-way lines as delineated in a plat showing such streets, whether improved or unimproved, but shall not include those access ways such as easements and rights-of-way intended solely for limit utility purposes such as for electric power lines, telephone lines, water lines, drainage and sanitary sewers and easements of ingress and egress. All publicly dedicated streets shall connect with existing public streets or other publicly dedicated streets.~~

~~—TEMPORARY CLOSURE. A street or portion of a street closed for less than thirty (30) days.~~

~~—VACATION OF STREET. Relinquishing all or part of the property right of the public previously established by plat or dedication for street or road right-of-way purposes.~~

**~~§ 179.002 APPLICABILITY.~~**

~~— No street shall be closed or vacated, created or improved without receiving approval by City Council in compliance with the provisions of this chapter.~~

## **~~CREATING, IMPROVING, ALTERING AND VACATING STREETS~~**

### **~~§ 179.015 POWER OF COUNCIL.~~**

~~— The City Council may, upon its own motion, upon the request of any agency of the city, the state or the federal government, or upon the written petition of any person or persons owning property abutting any street located within the city limits, cause any street to be closed, created, improved, widened, straightened, diverted, narrowed or vacated. All Council actions that would create new or change existing right-of-way lines, under this chapter, require public hearings.~~

### **~~§ 179.016 CONDITIONS GOVERNING APPLICATION; PROCEDURES.~~**

~~— (A) All requests for creating, improving, altering, and vacating City rights-of-way shall be made by verified written petition, in an application filed with City, including, but not limited to the following:~~

~~— (1) A boundary survey and description of the property to be vacated (subject property). The boundary survey needs to show the location of any improvements and encroachments within the property to be vacated. The boundary survey and description must be prepared by a professional surveyor and mapper licensed in the state of Florida.~~

~~— (2) A legal sketch of description.~~

~~— (3) All property owners within five hundred (500) feet of the subject property shall be transmitted a courtesy notice by U.S. Mail which shall provide the following: date, time, and location of public hearing; type of petition considered at the public hearing; and location where the petition may be reviewed. Petitioner must request a radius map package from Brevard County.~~

~~— (4) A certification from the petitioner that the proposed change will not deprive other property owners of access to and from their property.~~

~~— (5) Letters or certificates from all public utilities that the vacation of right-of-way will not interfere with services being provided nor encroach on any utility easements.~~

~~— (6) A statement of justification for approval of petition.~~

~~— (7) A letter of authorization when the applicant is not the property owner.~~

~~—(8) All fees have been paid for the application, mailing, and sign cost associated with said request.~~

~~—(B) Once a complete application request has been received by City Staff, a review of the petition will be administered verifying that the following steps have been taken prior to being placed on a City Council agenda:~~

~~—(1) The requested creation, improvement, alteration, or vacation is consistent with the Transportation Element of the City's Comprehensive Plan.~~

~~—(2) The right-of-way does not provide the sole access to any property. Remaining access shall not be by easement unless otherwise permitted in a planned development.~~

~~—(3) The proposed creation, improvement, alteration, or vacation would not jeopardize the current or future location of any utility.~~

~~—(4) The proposed creation, improvement, alteration, or vacation is not detrimental to the public interest.~~

#### **~~§ 179.017 NOTICE OF HEARING.~~**

~~—(A) Before taking any action on creating, improving, publicly dedicating or vacating a right-of-way, the city shall first hold a public hearing and fifteen (15) days written notice shall be given to all property owners within five hundred (500) feet of the subject property.~~

~~—(B) Notice shall also be by publication once in a newspaper of general circulation in the city, and if there be no newspaper of general circulation published in the city, the City Council shall cause the notice to be published in a like manner in a newspaper of general circulation published in the county. Publication shall be at least ten (10) days prior to the date of the hearing, and service by publication shall be verified by affidavit of the publisher and filed with the City Clerk.~~

~~—(C) For all requests, the City shall post a sign at the approximate location of the closure at least fifteen (15) days prior to the public hearing.~~

~~—(D) The costs of providing notice of the public hearing shall be the responsibility of the applicant.~~

#### **~~§ 179.018 COUNCIL ACTION.~~**

~~—The City Council, in its sole discretion, shall make a final determination on the application for closure or vacation subsequent to the public hearing. In the case of~~

~~a vacation, the action shall be quasi-legislative in nature. In the case of a closure, the action shall be quasi-executive in nature.~~

~~—(A) After the public hearing, the City Council may, by appropriate ordinances, take such action for which notice was previously given.~~

~~—(B) After the public hearing for a closure request, the City Council may, by resolution, take such action for which notice was previously given.~~

~~—(C) When the City Council is acting upon a request for creation or widening or improvement of a street, whether public or private, the proposed ordinance shall require a dedication of such street to the appropriate persons, depending upon its proposed use as a public or private street. However, nothing herein shall be construed as creating an obligation upon the city to perform any act of construction or maintenance within such dedicated areas, except when such obligation is voluntarily assumed by the city.~~

~~—(D) When the City Council is acting upon a request for vacation or narrowing of a public street, to the extent to which the street is vacated or narrowed, such action shall operate as revocation of acceptance thereof by the City Council. However, the right-of-way and easement therein of any lot owner shall not be impaired by such action.~~

#### **~~§ 179.019 NOTICE OF PASSAGE.~~**

~~—(A) Notice of the adoption of such ordinance by the City Council shall be published one (1) time, within thirty (30) days following its adoption in one (1) issue of a newspaper of general circulation published in the city, and if there be no newspaper published in the city, the City Council shall cause the notice to be published in a newspaper of general circulation published in the county.~~

~~—(B) A certified copy of an ordinance that change right-of-way lines shall be sent by the City Clerk to the Clerk of the Circuit Court of the county for recordation within thirty (30) days from the date of adoption of the ordinance.~~

#### **~~§ 179.020 APPROVAL BY CITY ENGINEER EMERGENCY AND TEMPORARY CLOSURE.~~**

~~—(A) Approval by City Engineer: After approval by City Council and before any construction of any street is commenced, written approval of the City Engineer shall be obtained certifying that the city's design standards have been met.~~

~~—(B) Approval by City Manager: The City Manager may authorize emergency and temporary closures.~~

~~§ 179.021 ADMINISTRATIVE EXTENSIONS.~~

~~—When vacating is subject to compliance with conditions, such conditions must be met within two (2) years of the enactment of the ordinance. Failure to meet the conditions within two (2) years from the date of approval for the request shall render the ordinance null and void. The applicant may, under good cause request an extension of the time frames through a formal request to the Office of the City Clerk, no less than sixty (60) days prior to the expiration date.~~

~~§ 179.022 EFFECT ON UTILITY EASEMENTS.~~

~~—Any action by Council under this chapter shall not in any manner affect utility equipment or services already installed in the affected or proposed street or the right to maintain and operate the equipment and services in the affected or proposed street or portion thereof. The requestor or petitioner shall notify the applicable utility and service companies of the proposed action regarding the street add shall obtain a notarized letter from the appropriate utility and service companies stating such companies have no objection to the proposed action.~~

~~§ 179.023 FEE.~~

~~—Every application or petition filed with the city under this chapter, except those developments that follow the subdivision or PUD fee schedule, shall be in writing and accompanied by a filing fee as established by resolution pursuant to § 169.004.~~

**REQUIRED STREET IMPROVEMENTS**

~~§ 179.030 TRAFFIC CONTROL DEVICES.~~

~~—Following written approval from the City Engineer to commence construction or improvement of any public or private street, and prior to acceptance of any street by the city or the opening of any street to automobile traffic, any person or firm improving or constructing the street(s) shall furnish and install all signing and pavement markings in accordance with the Florida Department of Transportation manual entitled, Uniform Traffic Control Devices for Streets and Highways. The location and placement of signing and pavement markings shall be approved by the Police Department. Such signing and pavement markings shall be maintained in good repair by the installer, unless or until the streets are accepted for maintenance by the city.~~

~~§ 179.031 STREET NAME SIGNS.~~

~~—(A) Two (2) street name signs shall be installed and maintained by the developer at all cross intersections on diagonally opposite corners, with one (1) sign at all “T” intersections on all private streets and installed prior to acceptance for maintenance of any public street by the city.~~

~~—(B) Street name signs shall be six (6) inches in width with lettering four (4) inches in height on six-tenths (0.60) inch anodized aluminum with silver reflective lettering on green Scotchlite, high-intensity reflective background or equivalent. Street name sign poles shall be two (2) inch galvanized type supports set in concrete. Placement and location of street name signs shall be approved by the Police Department.~~

#### ~~§ 179.032 SIDEWALKS AND BIKEWAYS.~~

~~—(A) Sidewalks and bikeways shall be required on all streets where such sidewalks or bikeways would:~~

~~—(1) Provide for the continuation of existing or proposed sidewalks and bikeways;~~

~~—(2) Provide for primary or secondary access to existing or proposed school site locations; or~~

~~—(3) Conform to an adopted sidewalk or bikeway plan.~~

~~—(B) Sidewalks shall be concrete, four (4) feet in width and four (4) inches thick (six (6) inches thick in driveways), and shall be constructed on both sides of all streets that meet the criteria in division (A) above. For developments consisting of one (1) acre lots in size or greater, sidewalks may be provided on one (1) side of the street.~~

~~—(C) Bikeway construction, design and signing shall meet the requirements of the current Florida Department of Transportation Bicycle/Pedestrian Design Standards, unless otherwise approved by City Engineer.~~

#### ~~§ 179.033 ROADWAY SURFACING.~~

~~—For any block face with fifty percent (50%) or more of the platted lots being undeveloped, the road surface may be pulverized at the discretion of the City Engineer.~~

### **~~CLOSURE AND ABANDONMENT OF EASEMENTS AND DRAINAGE RIGHTS-OF-WAY~~**

#### ~~§ 179.045 POWER OF COUNCIL.~~

~~—The City Council, upon its own motion or upon request of the state or federal government, or upon the written petition of any person or persons owning property that abuts any public, dedicated or platted alley, easement, utility or drainage right-of-way located within the city limits may cause any alley, easement, utility or drainage right-of-way to be closed, abandoned, discontinued, vacated, altered, diverted, narrowed or amended.~~

~~§ 179.046 NOTICE OF HEARING.~~

~~—Before closing, abandoning, discontinuing, vacating, altering, diverting, narrowing or amending any public, dedicated or platted alley, easement, utility or drainage right-of-way or portions thereof, the City Council shall first hold a public hearing and ten (10) days' notice of the public hearing shall be given in writing to all persons whose property abuts upon the portion of the alley, easement, utility or drainage right-of-way affected by the proposed closing, abandoning, discontinuing, vacating, altering, diverting, narrowing or amendment. The notice shall be served by mailing a copy of such notice to each of such proposed owners, to be obtained from the records of the Tax Assessor or from such other sources as the City Clerk deems reliable. Proof of such mailing shall be made by an affidavit of the City Clerk or Deputy Clerk, the proof to be filed with the Clerk; provided, that failure to mail such notice or notices shall not invalidate any proceedings hereunder. Notice of the time and place of such hearing shall also be given by publication once in a newspaper of general circulation in the city and if there be no newspaper of general circulation published in the city, the City Council shall cause the notice to be published in a like manner in newspaper of general circulation published in the county; provided, that the publication shall be at least fourteen (14) days prior to the date of the hearing. The notice shall describe the alley, easement, utility or drainage right-of-way to be closed, abandoned, discontinued, vacated, altered, diverted, narrowed or amended and such service by publication shall be verified by the affidavit of the publisher of the newspaper and filed with the City Clerk.~~

~~§ 179.047 COUNCIL ACTION.~~

~~—After such public hearing, the City Council may thereafter by ordinance declare such closing, abandonment, discontinuing, vacating, altering, diverting, narrowing or amending of the alley, easement, utility or drainage right-of-way, of which notice was previously given as hereinbefore provided for, and such ordinance of the City Council closing, abandoning, discontinuing, vacating, altering, diverting, narrowing or amending any public, dedicated or platted alley, easement, utility or drainage right-of-way or portions thereof shall, to the extent to which it is closed, abandoned,~~

~~discontinued, vacated, altered, diverted, narrowed or amended, operate as a revocation of the dedication or acceptance thereof by the City Council, but the right-of-way and easement therein of any lot owner shall not be impaired thereby. Any action of the City Council, as herein authorized, shall be evidenced by an ordinance duly adopted and entered upon the minutes of the City Council.~~

~~§ 179.048 EFFECT ON UTILITY EASEMENTS.~~

~~—Such closing, abandonment, discontinuation, vacation, altering, diversion, narrowing or amendment shall not in any manner affect utility equipment or services already installed in the alley, easement, utility or drainage right-of-way, or portion thereof, or the right to thereafter maintain and operate the equipment and services in the alley, easement, utility or drainage right-of-way, or portion thereof, during the term of the franchise under which the equipment and services were installed in the alley, easement, utility or drainage right-of-way, or portion thereof. The requestor or petitioner shall notify the applicable utility and service companies of the proposed closing, abandonment, discontinuation, vacation, altering, diversion, narrowing or amendment of the alley, easement, utility or drainage right-of-way, or portion thereof, and obtain a notarized letter from the utility and service companies stating the companies have no objections.~~

~~§ 179.049 APPLICATION; FEE.~~

~~—Every application or petition filed with the city for closing, abandoning, discontinuing, vacating, altering, diverting, narrowing or amending any alley, easement, utility or drainage right-of-way, or portion thereof, shall be in writing and shall be accompanied by a filing fee as established by resolution pursuant to § 169.004, which fee shall be used for the expenses of legal notice and costs incidental in processing of the application or petition. This provision shall not apply when the city or one (1) of its agents is the requestor.~~

**STREET NUMBERING AND NAMING**

~~§ 179.060 DEFINITIONS.~~

~~—For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—FRONT ENTRANCE. The principal access to a building or that area of a property which faces the public or private street or access way.~~



~~— GRID SYSTEM. A series of designated north-south parallel lines intersecting a second set of east-west parallel lines within one (1) square mile area (i.e., section), as indicated on the “official property numbering maps.”~~

~~— NUMBERING SYSTEM. A uniform method of assigning and coordinating the addresses of buildings and properties based on a designated grid system contained in the official “property numbering maps.”~~

~~— OCCUPANT. Any person, firm, entity, partnership, trust, corporation, association or other organization who is occupying or leasing a building or other property for a period exceeding thirty (30) days.~~

~~— OWNER. Any and all persons, firms, entities, partnerships, trusts, corporations, associations or other organizations who own the fee title to, or have an undivided interest in, any building or property which is subject to the provisions of this subchapter.~~

~~— PRINCIPAL BUILDING. In a residential district, any detached dwelling unit shall be considered a principal building. Each multiple-family unit shall be considered as a principal building. In a commercial or industrial district, any principal structure for private business or businesses shall be deemed to be the principal building on the property on which it is located.~~

~~— STREET. Any public or private way or other place used for travel to or from properties and principal buildings, including roadways and driveways in apartment, condominium, commercial or industrial complexes.~~

#### ~~§ 179.061 UNIFORM NUMBERING SYSTEM.~~

~~— A uniform system of numbering properties and principal buildings, as shown on the map identified by the title “Property Numbering Map(s),” which is filed in the office of the City Planner, is adopted for use in the city. This map and all explanatory matter thereon is adopted and made a part of this subchapter.~~

#### ~~§ 179.062 ASSIGNMENT OF NUMBERS.~~

~~— (A) All properties, parcels of land, and principal buildings within the corporate limits of the city shall hereafter be identified by reference to the uniform numbering system adopted herein, provided all existing numbers of property and buildings not now in conformity with provisions of this subchapter shall be changed to conform to the system herein adopted on June 1, 1984.~~

~~— (B) A separate number shall be assigned for each parcel or principal building regardless of whether mail is delivered to such parcel or building. Only officially~~

~~named public and private streets approved according to § 179.066 shall be used for the assignment of numbers.~~

~~—(C) Numerals indicating the official numbers for each principal building or each front entrance to such building shall be posted in such a manner as to be clearly visible and distinguishable from the street on which the property is located. Such numerals shall be a minimum of three (3) inches in height and one-half (½) inch in width and of a contrasting color with the building. Principal buildings obtaining permit approval after the effective date of this subchapter shall post the address numerals before issuance of a certificate of occupancy.~~

~~—(D) Multiple family units (including apartments, condominiums and townhouse dwellings) that access onto named private drives or public road rights-of-way shall be assigned four (4) digit numbers in which the first two (2) digits refer to the building number and the appropriate grid range, the third digit refers to the floor number, and the fourth digit, where feasible, indicates the side — north, south, east or west — of the street the unit is located. Odd numbers are assigned to the north and east sides of a street or drive and even numbers are assigned to the south and west sides. The first two (2) digits may also be assigned on the odd/even scheme just described. If it is foreseen that a possible duplication of numbers may occur on road rights-of-way where other structures can exist, one (1) number based on the appropriate grid range shall be assigned to each building. Each unit will then be assigned a three (3) digit number in which the first digit will indicate which floor the unit is located (e.g., 101, 201, 301).~~

~~—(E) Commercial and industrial buildings containing more than one (1) occupant shall be assigned one (1) number based on the appropriate grid range and the individual units shall be numbered consecutively in a logical fashion. Structures containing one (1) occupant shall be assigned one (1) number based on the appropriate grid range.~~

#### ~~§ 179.063 ADMINISTRATION.~~

~~—(A) The City Planner or his designee shall be responsible for maintaining the numbering system.~~

~~—(B) The City Planner or his designee shall duly record all numbers assigned under this subchapter.~~

~~—(C) The City Planner or his designee shall assign to any property owner in the city or its immediate environs, upon request and without charge, a property number according to the provisions of this subchapter. Provided, however, that the City~~

~~Planner may issue additional property numbers in accord with the designated grid system whenever a property has been subdivided, a new front entrance opened, or undue hardship has been induced on any property owner.~~

~~—(D) Should an existing building have, exhibit or be addressed which does not conform with the uniform numbering system adopted herein, the City Planner or his designee shall give notice to those owners or occupants whose building number is in conflict with the uniform numbering system. The notice shall be delivered to the owner and occupant by regular U.S. mail, posting same in a conspicuous place on the building or property, or by hand delivery. The notice shall include a notification of a change of address which shall contain the new building or property number(s) assigned to the building or property in accordance with the provisions of this subchapter and shall direct the owner or the occupant to post the newly assigned building or property number on the building or property in accordance with the provisions of this subchapter.~~

#### ~~§ 179.064 ANNEXATION.~~

~~—Whenever a parcel of land, a subdivision, or any part thereof, becomes a part of the incorporated area of the city by annexation or otherwise, it should be the responsibility of the City Planner or his designee to review the building (i.e., address) numbers of such property and determine whether such numbers for such annexed portion conform to the designated uniform numbering system established by this subchapter. If the number, posting, or method of numbering do not conform with the city's uniform numbering system, the City Planner or his designee shall give notice of such nonconformance to the owners or occupants of the affected building or property. Nonconformance includes, but is not limited to, a number out of sequence, odd or even number on the wrong side of the street and rural box numbers. The notice shall be delivered in accordance with and contain the information and directions in the provisions of § 179.063.~~

#### ~~§ 179.065 NAMING OF COMMERCIAL AND INDUSTRIAL DEVELOPMENT.~~

~~—In order to avoid duplication for similar sounding names of commercial plazas, shopping centers, and industrial parks, proposed names referring to one (1) development or groups of uses shall be submitted to the office of the City Planner for review and approval.~~

#### ~~§ 179.066 STREET NAMING GUIDELINES.~~

~~—(A) All street name and street name changes shall be approved by the City Council in cooperation with the E-911 Street Naming Office according to the~~

~~interlocal agreement between the city, and the Board of County Commissioners. All street names shall comply with the following guidelines unless specifically exempted by City Council:~~

- ~~— (1) No name duplication or similar sounding names are permitted.~~
- ~~— (2) Street names shall be pleasant sounding, easy to read, appropriate for type or character of the street and add to the pride of home ownership.~~
- ~~— (3) Alphabetical letters (i.e., A, B, C, and so on), unconventional spellings, frivolous or complicated names are unacceptable.~~
- ~~— (4) The appropriate quadrant designation “NE” (northeast), “SE” (southeast), “NW” (northwest), “SW” (southwest) shall be placed after the street name. Directional affixes in street name (for example, “East,” “West,” “North,” “South,” and the like) shall not be used.~~
- ~~— (5) No street name shall contain more than twelve (12) letters, excluding affixes such as boulevards, street, avenue, and the like. The developer or owner of a street not accepted by the city shall, within thirty (30) days of city approval of any street name change, replace or change any existing street name signs to reflect the new street name.~~
- ~~— (B) The City Council shall approve all street names or all renaming of existing streets during the subdivision process of recording plats or through ordinance.~~
- ~~— (C) The original naming of streets can be proposed by the City or the developer of the new street.~~
- ~~— (D) Renaming of streets may be initiated by:~~
  - ~~— (1) The City Council;~~
  - ~~— (2) Any city department or other governmental body;~~
  - ~~— (3) Any individual or group provided the following procedure is followed:~~
    - ~~— (a) Written approval must be obtained from a majority of the property owners on the street proposed for name change. Such majority shall be based on the number of individual properties addressed on the street; and~~
    - ~~— (b) The applicant must submit the written approvals required and an application for street name change to the Growth Management Department. As part of the application, the applicant shall identify the purpose of or need for the name change.~~

~~§ 179.067 VIOLATIONS.~~

~~—Upon the effective date of this subchapter (June 1, 1984), the owner or occupant of any building required to be numbered shall have thirty (30) days to comply with the provisions of this subchapter. If the owner or occupant of any building fails to meet these provisions, the City Planner or his designee shall serve upon him a notice requiring such owner or occupant to properly number his building(s), and if he neglects to do so for ten (10) days after the service of such notice, he shall be deemed to have violated this subchapter.~~

**DRIVEWAY PERMITS**

~~§ 179.075 DEFINITIONS.~~

~~—For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—CITY ROAD. All roads designated as city roads by Florida Statutes.~~

~~—CULVERT. Any structure not classified as a bridge which provides an opening under the driveway for the passage of storm water.~~

~~—CURB. A concrete border forming part of a gutter along the edge of a pavement.~~

~~—DRIVEWAY. A prepared path for a vehicle giving ingress or egress from a roadway to an abutting property line.~~

~~—DRIVEWAY PERMIT GUIDELINES. A document describing the process and providing drawings and illustrations, containing the technical specifications and details for the construction of driveways and related infrastructure in the public right-of-way.~~

~~—EASEMENT. A strip of land on or through property in which a right to utilize for access, drainage, sanitation, or other public use has been granted, including roads.~~

~~—GUTTER. A manmade channel for draining of stormwater at the edge of a pavement.~~

~~—PAVED. Provision of a surface that is smoothly graded, hard surfaced and adequately drained for vehicular use.~~

~~—PUBLIC WORKS DEPARTMENT. The Public Works Director of the Public Works Department of the city government or his/her designated representative.~~

~~— ROAD. Includes streets, sidewalks, alleys, highways, and other ways open to travel by the public, and includes all area within the right-of-way in which such ways are located, including easements.~~

~~— ROADWAY. The portion of a road providing the traveled way and the adjacent shoulders.~~

~~— SIDEWALK. A prepared path, usually paved, along the side of a road for the use of pedestrians.~~

~~— SWALE. A natural or manmade open drainage depression in which storm water may flow.~~

~~— SWALE DRIVEWAY. A driveway whose surface is depressed in elevation to form a swale.~~

#### ~~§ 179.076 WHEN REQUIRED.~~

~~— No person, firm, corporation, or governmental agency shall construct, remove, alter, reconstruct, access the right-of-way temporarily or permanently, repair, or relocate any curb, culvert, sidewalk, driveway, gutter, pavement, or other improvement in any city road or easement without obtaining a driveway permit from the Public Works Department. When a driveway or other existing improvement has relocated, changed, or abandoned, making any portion or all of the driveway or other improvement unnecessary, the owner of the abutting property shall obtain a permit and shall remove the driveway or other improvement and shall, at his own expense, install or replace all necessary curbs, gutters, culverts and sidewalks.~~

#### ~~§ 179.077 PERMIT PROCEDURE.~~

~~— (A) Application procedure. Application for a driveway permit shall be made to the Public Works Director or designee on forms provided. Each applicant shall provide the information and drawings specified on the permit application for the particular type of improvement. Additionally, each applicant shall be required to agree to maintain the constructed improvements and to hold the Council harmless for any liability arising from failing to maintain or from improperly maintaining the improvement.~~

~~— (B) Issuance of permit. Upon receipt of the application and drawings, the Public Works Director or designee shall review the application and determine compliance with the location, drainage, construction and traffic engineering requirements established by the Council and whether it is consistent with future development of the area and any plans for future expansion of the existing road. If the application~~

~~meets the applicable requirements, the Public Works Director or designee shall issue a permit to the applicant. The Public Works Director or designee may impose such conditions on permits as he/she deems necessary to ensure that the above described requirements are met using good engineering practices and in conformance with the Driveway Permit Guidelines. By acceptance of the permit, the applicant agrees to abide by all terms and conditions contained in the permit, in this subchapter, and in any other applicable regulations of the city. Permits shall expire at the end of ninety (90) days unless extended.~~

~~—(C) Construction procedure. Upon issuance of the permit to the applicant, the Pubic Works Department will furnish the applicant the pipe and grade specifications. Swale locations referenced to the property line shall be constructed as specified in the permit. Any deviations must be approved in writing by the Public Works Director or designee. Based on the stormwater management regulations set forth of §§ 174.050 et seq., the area fronting a proposed building site extending from the edge of the pavement to the property line shall be addressed as provided for in the Driveway Permit Guidelines~~

~~—(D) Fees.~~

~~—(1) The fees for issuance of a driveway permit in compliance with the driveway code shall be as established by resolution pursuant to § 169.004.~~

~~—(a) Expirations in excess of ninety (90) days require new application.~~

~~—(2) The fees as set forth in this section shall be increased by four percent (4%) (rounded to the nearest dollar) each fiscal year. Should any decrease in such fees be warranted in any given year, they shall also be decreased annually by that percentage that accurately reflects the reduction of permits requested and the specific and ascertainable resulting reduction in funds needed to pay the city costs to manage all services and time needed to issue and monitor the permits required by this section.~~

~~—(E) Bond. A performance bond, or other financial security approved by the City Attorney, may be required in the case where the specified work is incomplete and certificate of occupancy has been requested, or when damages to the right-of-way or any public property has been done and not repaired in accordance with good engineering practices or the Driveway Permit Guidelines, or when the work is nonconforming as determined by the Public Works Department. In addition to paying the fees established by the Council, a performance bond or other security approved by the City Attorney in the amount of one hundred dollars (\$100.00)~~

~~nonrefundable processing fee, plus two thousand dollars (\$2,000.00) retainer refundable upon completion of specified work within thirty (30) days. If the work in question exceeds a value of two thousand dollars (\$2,000.00), the bond amount shall be increased by the difference plus ten percent (10%). If said work is incomplete after thirty (30) days the bond will be forfeited. All such bonds or other security arrangements shall be on forms approved by the City Attorney. Such forms shall prescribe the manner in which noncompliance with the provisions of a permit or this subchapter shall be remedied, and shall provide the necessary financial assurances to remedy any non-compliance.~~

#### ~~§ 179.078 SPECIAL CONDITIONS FOR RESIDENTIAL IMPROVEMENTS.~~

~~—An owner of property who desires to construct a single-family residence accompanying driveway on his or her property may apply for a driveway permit simultaneously with the application for the residential building permit. If a driveway is necessary to provide access to the property, no certificate of occupancy can be obtained until the owner:~~

~~—(A) Obtains a permit for the construction of the driveway pursuant to this subchapter and final approval thereof by the Public Works Department; and~~

~~—(B) Agrees to complete construction of the driveway within ninety (90) days from the date the permit is issued. Failure to complete construction within such ninety (90) day period shall constitute noncompliance and void the permit.~~

#### ~~§ 179.079 DESIGN AND CONSTRUCTION REQUIREMENTS.~~

~~—(A) Compliance with law. All driveway improvements, as provided in this subchapter, shall comply with the applicable sections of the subdivision, zoning and building regulations of the city. Within all zoning districts, the improvements shall be constructed to city standards and specifications and approved prior to the issuance of a certificate of occupancy.~~

~~—(B) Design standards. The Driveway Permit Guidelines and the specifications provided upon issuance of a permit will provide the technical specification providing for construction. Any deviations shall be approved in writing by the Public Works Director or designee. Approval shall not be unreasonably withheld providing such deviations conform to good engineering practices.~~

#### ~~§ 179.080 RESTORATION OF DAMAGED AREAS.~~

~~—Any person(s), firm, business entity, or corporation that damages property located on, under, across or along a right-of-way or easement or any city road or~~



~~other city improvement shall be required to either restore the damaged property to its condition prior to the damage or shall pay to the city the sum of money determined by the Public Works Department to be necessary to restore the damaged area to its condition prior to the damage. Any such restoration shall meet all construction and engineering standards of the city. Additionally, any permittee who has previously failed to restore the damage(s) as required by this subchapter shall not be issued further permits from the city until such damage is either restored and accepted by the Public Works Department, or the entire cost of restoration incurred by the city to make such restorations has been paid in full by the applicant. In the event discrepancies arise as to the responsibility for damage, the burden of proof shall be on the person or permittee to establish that the person or permittee is not responsible.~~

#### **~~RIGHT-OF-WAY AND EASEMENT USE~~**

##### ~~§ 179.090 SHORT TITLE.~~

~~—This subchapter shall be known and may be cited as the “Right-of-Way and Easement Use Ordinance.”~~

##### ~~§ 179.091 DEFINITIONS.~~

~~—For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—AASHTO. The American Association of State Highway and Transportation Officials.~~

~~—APPLICANT. Any person that is applying for a right-of-way use and easement permit.~~

~~—ARTERIAL ROAD ROW. The primary function of arterial corridors is to move moderate to large volumes of traffic relatively long distances. Arterials often connect widely separated rural and urban communities. Requirements for speed and level of service are usually quite high. Access should be well controlled, and where possible, limited to other arterials and collector roads. Arterials are used to move traffic around neighborhoods, and should form a continuous network designed for a free flow of through traffic.~~

~~—ASTM. The American Society for Testing and Materials.~~

~~—AS-BUILT. Site plans, other descriptions and drawings that are produced after the permitted improvement has been installed, placed, replaced or constructed and~~

~~is detailing the improvements exact location within a right-of-way or easement. For further details, refer to § 179.096(E).~~

~~—BUSINESS DAY. Every day except Saturday, Sunday and legal holidays of the city, the state, and/or the United States of America.~~

~~—CITY. The city, the City Manager or his designees.~~

~~—COLLECTOR ROADS. The connecting link between local streets and arterials to provide intra-neighborhood access. Traffic characteristics generally consist of relatively short trip lengths, moderate speeds and volumes. Access is of secondary significance, and should be limited to local streets, other collectors and major traffic generators. Collectors should penetrate neighborhoods without forming a continuous network, thus discouraging through traffic which is better served by arterials.~~

~~—DAMAGE. Any displacement, disturbance, or destruction, that injures, breaks, impairs or causes harm in any way to city property or other improvements that shall require repair or replacement to create a condition equal to or greater than the condition prior to the occurrence of the damage.~~

~~—DER. The Department of Environmental Regulation.~~

~~—DESIGN PLAN. Site plans, related descriptions and drawings that are produced before an improvement is installed, placed, replaced or constructed within a right-of-way or easement. For further details refer to § 179.096(D).~~

~~—DEVELOPED AREA. An area maintained and occupied by a commercial or private entity.~~

~~—EASEMENT. An interest in land granted, conveyed, dedicated, acquired for or devoted to ingress and egress of vehicular and pedestrian traffic.~~

~~—EMERGENCY. Any condition constituting an imminent or existing danger to life or property caused by nature, accident or wear and tear that results in an interruption of any public service, i.e., electrical, telecommunications, water, sewer, and the like, or that impedes the use of roads, streets, or other public rights-of-way and easements.~~

~~—EXCAVATION or EXCAVATE. Any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives, and includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, driving in, auguring, tunneling, scraping, tree and root removal, cable or pipe plowing, pile driving, wrecking,~~

~~razing, moving, or removing any improvement or mass of material, but does not include the tilling of the soil for agricultural purposes.~~

~~—FDOT. The Florida Department of Transportation.~~

~~—FRANCHISE. An initial authorization, or contracts, or renewal thereof issued by the city, whether designated as a franchise, permit, license, resolution, ordinance, contract, certificate, agreement or otherwise, that authorizes any person to use any right-of-way or easement.~~

~~—FRANCHISEE. A person who has been granted a franchise by the governing body of the city.~~

~~—IMPROVEMENT. Any physical changes made to land within rights-of-way and easements by placing streets, sidewalks, bicycle facilities, roadbeds, culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, guardrails, bridges, parks, squares, plazas, curbs, gutters, manholes, vaults, buried cables, conduit, wires, ground watering systems, water mains, sanitary sewer facilities, traffic control devices, street name signs, signs of any kind, security lights, street lights, landscaping, permanent control points (PCP), permanent reference markers (PRM), concrete monument reference markers, or any similar property owned and/or controlled by the city for public use. It shall include but not be limited to any aerial lines and underground lines that are designed to transport electric current, telecommunications, Community Antenna Television or any other service lines — and all appurtenances, pole lines, poles, railways, ditches, sewers, water, heat or gas mains, liquid transmission lines, pipelines, fences, gasoline tanks and pumps, duck banks, or conduit of any kind or other structures, hereinafter referred to as an improvement.~~

~~—LOCAL STREET. The primary function of a local street is to serve the adjacent property by providing initial access to the highway network. These facilities are characterized by short trip lengths, low speeds and small traffic volumes. Through traffic on these facilities should be discouraged. In addition to the above classifications, streets and highways may also be classified as “major” or “minor,” depending upon traffic volumes.~~

~~—MAINTENANCE. Activities that require a work effort to keep or maintain components of existing improvements in a safe and serviceable condition.~~

~~—OSHA. The Occupational Safety Health Act.~~

~~—PERMIT. See RIGHT-OF-WAY AND EASEMENT USE PERMIT.~~

~~— PERMITTEE. Any person having been granted a right-of-way and easement use permit by the city. The word PERMITTEE shall include all persons acting in behalf of the person to whom a permit has been issued.~~

~~— PERSON. Any individual, franchise, firm, joint venture, partnership, corporation, association, organization, business trust, municipality or other political subdivision, governmental unit, department, or agency, and shall include any trustee, receiver, assignee, or personal representative thereof.~~

~~— PUBLIC WORKS DEPARTMENT. The Public Works Department of the city and all of its divisions; also the Public Works Director and his designees.~~

~~— RIGHT-OF-WAY. An interest in land granted, conveyed, dedicated, acquired for city purposes, or devoted to vehicular and/or pedestrian traffic; this shall include but not be limited to land in which the state, county or city owns fee simple title, or has established any type of ownership thereof or interest in any land utilized by the city for vehicular and/or pedestrian traffic or other purposes.~~

~~— RIGHT-OF-WAY AND EASEMENT USE PERMIT. The document issued by the Public Works Department of the City of Palm Bay that authorizes permittees to install and construct improvements as described in this subchapter within rights-of-way and easements.~~

~~— UNDEVELOPED AREA. An area not maintained or occupied by either a commercial or a private entity.~~

#### ~~§ 179.092 EXEMPTIONS.~~

~~— (A) It is not intended by this subchapter to repeal, abrogate, annul or in any way impede or interfere with existing provisions of other agreements and contracts, i.e., franchises. Where this subchapter imposes greater restrictions than is imposed or required by such existing provisions of the agreements and contracts, by ordinance, the provisions existing on the date they were entered into shall prevail.~~

~~— (B) Any person with an active franchise in full force shall be exempt from the right-of-way use permit fees.~~

#### ~~§ 179.093 PROHIBITED USES WITHIN RIGHTS-OF-WAY AND EASEMENTS.~~

~~— In order to protect the health, safety and welfare of the citizens of the city, the city expressly reiterates and reinforces its authority to control and limit the use of the public rights-of-way and easements.~~

~~— (A) Rights-of-Way. Prohibited uses on any right-of-way within the city include, but are not limited to the following: mailboxes other than prescribed by the U.S.~~

~~Postal Service and the FDOT Roadway and Traffic Design Standards; decorative walls, retaining walls; barriers/ obstructions of any kind; construction materials (except for those construction materials intended for permitted use within the right-of-way and that are stored for a period of time not to exceed the duration of the permit); soils and/or debris of any kind; trees and shrubs (except as defined and outlined in the FDOT Highway Beautification and Landscape Management Rule, Chapter 14-40, F.A.C.) wells; recreational devices of any kind; sanitary facilities; benches; planters; unauthorized bus shelters; decorative statues; privately owned irrigation systems or irrigation systems not installed by a government entity, unless specifically approved by the Public Works Department; governmental or off-premises directional/guidance signs not permitted by law; any improvements for personal or private use, except in the case of approved private security lights, supplied and installed by a franchised electrical power company; the servicing or repairing of any vehicle except the rendering of emergency service and the storage of vehicles being serviced or repaired and the display of unauthorized advertising; except that any portion of a right-of-way may be used for an art festival, parade, fair or other lawful events if permitted by the city code of ordinances.~~

~~—(B) Easements. It is declared to be unlawful to install, place, locate or construct for personal or private use any improvement not intended for public use. Any improvement requiring a permanent foundation or which can not be readily removed shall also be declared unlawful.~~

~~§ 179.094 PERMIT — WHEN REQUIRED; NOT REQUIRED.~~

~~—(A) Required. A permit shall be obtained from the Public Works Department prior to installing, placing, constructing or replacing as described in this subchapter, any improvement within any right-of-way or easement, including but not limited to the following: all jack and bores regardless of bore method used; all poles, regardless of design use; all aboveground improvements that create an obstruction. All security lights and street lights shall require a permit but shall be exempt from the right-of-way and easement use permit fee.~~

~~—(B) Not required. A permit shall not be required for the following:~~

~~—(1) Driveways. Refer to §§ 179.075 et seq.~~

~~—(2) Franchisee. Only when the proposed improvement within the city right-of-way or easement meets all the following conditions:~~

~~—(a) Will not disturb any paved areas.~~

~~—(b) Will not disturb any other improvements in the area.~~

~~—— (c) Will not disturb vehicular or pedestrian traffic to any degree.~~

~~—— (d) Will not disturb an area larger than one hundred (100) square feet in any shape.~~

~~—— (e) Will not exceed a depth below grade of forty-eight (48) inches, except utility poles.~~

~~—— (f) Will be restored to a condition as good as or better than existed before the effort. The disturbed soil will be stabilized with like sod in front of developed areas or seed and mulch in front of undeveloped areas.~~

~~—— (g) Underground service connection, when the trench width is twelve (12) inches or less.~~

~~—— (h) Is not a jack 'n' bore of any kind, regardless of intended method to be used.~~

~~—— (3) Work. When the effort of the proposed work will be confined within utility easements and not within rights-of-way and easements as defined in § 179.091.~~

#### ~~§ 179.095 LIABILITY.~~

~~—This subchapter shall not be construed to create liability or hold the city responsible or liable for any damage to persons or property by reason of any inspection or reinspection. Neither the issuance of a permit nor the approval or disapproval of any installation authorized herein shall constitute any representation, guarantee or warranty by the city of any kind: nor shall the issuance of a permit or approval or inspection of any improvement create liability upon the city or any official, agent, representative or employee thereof. Additionally, the permittee shall be required to maintain improvements regardless of who installed, constructed, replaced, maintained or altered such improvements until such time as the improvement may be accepted by a governmental agency. By applying for a permit, the permittees acknowledge that they, and their subcontractors will hold the city harmless from any liability arising from failing to install, construct, replace, maintain or alter or from improperly installing, constructing, replacing, maintaining or altering the improvement until such time as the city may accept full maintenance responsibility for the improvement.~~

#### ~~§ 179.096 PERMIT PROCEDURES AND REQUIREMENTS.~~

~~—Application for a permit shall be made to the public works department on forms provided. The application shall meet the following requirements:~~

~~—(A) Applicant. Shall be the owner or the person who has an affidavit by the owner granting said person to act on the owner's behalf, but not a subcontractor for the owner.~~

~~—(B) Permit time limitations.~~

~~—(1) In no case shall construction commence on any improvement within any public right-of-way or easement, including Public Transit Bus Stop Shelters, or off premises direction signs be placed before a permit is issued except in the case of an emergency as defined in § 179.091. A permit issued by the city shall be valid for a period of one hundred twenty (120) days from the date of issuance. If a period in excess of one hundred twenty (120) days is required because of the scope of work, approval shall be obtained in advance of the issuance of the permit and the permit validation period shall reflect such extension. A permit shall not be valid for more than one (1) year from the date of issuance, except in the case of:~~

~~—(a) Off-premises directional guidance sign permits which shall be valid for a period of sixty (60) months/five (5) years from the date of issuance;~~

~~—(b) Permits for public transit bus stop shelters which shall be valid for a period of one hundred and twenty (120) months/ten (10) years from the date of issuance.~~

~~—(2) After the issuance of the permit, the permittee shall notify the city a minimum of two (2) business days prior to commencing construction. This notification will allow for scheduling of inspections. If a road closing is required, the permittee shall submit with the permit application a maintenance of traffic (MOT) plan, to include all proposed road closings, with an expected time duration for each closing. Road closings shall require separate approval by the Public Works Department and a minimum of three (3) business days prior notification before the commencement or construction. If road closings are approved, the permittee shall follow protective measures as outlined in §179.098. Road closings of less than fifteen (15) minutes shall not require notification, although protective measures as outlined in §179.098.~~

~~—(C) Permit fee. (Also refer to § 179.092, Exemptions.) A nonrefundable fee shall be charged for the permit. The fee shall be in addition to all other fees for permits or charges related to any proposed construction or work. The fee schedule for a permit shall be as established by resolution pursuant to § 169.004.~~

~~—(D) Design plan. All applicants shall submit, with the permit application, a duplicate set of design plans folded to a size not to exceed eight and one-half (8½)~~

~~× fourteen (14) inches. The design plans shall describe the following: materials to be used, type, quantities, pipe, conduit or cable size; pipe schedule if applicable or wall thickness, use of pipe or cable (power with voltage, gas with maximum allowable operating pressure, and the like) and all other pertinent details. One (1) or more typical cross-sections and/or profiles and plan views adequately reflecting the location of the improvement shall be shown. In all cases, dimensions shall be referenced from the right-of-way or easement line in addition to any other dimensions that may be shown. All existing improvements located within the work area shall be shown. If proposed improvements involve only one (1) side of the right-of-way, only the existing improvements on that side of the right-of-way need to be shown. The minimum vertical clearance above or below the pavement and grade shall be shown. In all cases, permittees shall list all right-of-way and easement users that may be affected and notify each of them by providing a copy of the permit application and a schematic installation plan of the proposed improvement. A simple key map showing the location of the improvement along with the proper Port Malabar Unit number or subdivision name, which ever is applicable, shall be included. In addition to the above requirements, any proposed improvements that consist of any of the following shall require a design plan at a minimum scale of one (1) inch equals fifty (50) feet and all references to grade and drainage elevations shall be NGVD 1929. Elevations may be in NAVD 1988 if so designated on plans and must include a conversion factor to NGVD 1929.~~

~~— (1) A water or gas main six (6) inches or larger in diameter.~~

~~— (2) A sanitary force main six (6) inches or larger in diameter.~~

~~— (3) Electrical distribution line or telecommunication lines or community antenna television (CATV), cable plants when any have a cable or conduit size six (6) inches or larger in diameter.~~

~~— (4) Gravity sewer mains.~~

~~— (5) Improvements requiring a trench line excavation width larger than eighteen (18) inches.~~

~~— (E) As-built. The as-built site plan shall be at a minimum scale of one (1) inch equals fifty (50) feet and all references to grade and drainage elevations shall be NGVD 1929. Elevations may be in NAVD 1988 if so designated on plans and must include a conversion factor to NGVD 1929. As-builts shall include a plan view elevation and location of affected drainage swales, culverts, manhole rims, roads, curbs and any other similar improvements. As-built site plans shall be required for~~



~~any of the following circumstances and shall be supplied to the city prior to the permit expiration:~~

~~—(1) Water or gas main six (6) inches or larger in diameter.~~

~~—(2) Sanitary force main six (6) inches or larger in diameter.~~

~~—(3) Electrical distribution lines or telecommunication lines or community antenna television (CATV), cable plants with a cable or conduit size six (6) inches or larger in diameter.~~

~~—(4) Gravity sewer mains.~~

~~—(5) Improvements requiring a trench line excavation width larger than eighteen (18) inches.~~

~~—(F) Authorized signature. The city shall require any franchise user of the rights-of-way and easements to submit annually a list of authorized parties within their concerns who may sign the permits for the following fiscal year. This list shall include the position, printed name and demonstrated signature of each authorized individual.~~

~~—(G) Annual fee increase. The fees set forth within this section shall be increased by four percent (4%) (rounded to the nearest dollar) each fiscal year. Should any decrease in such fees be warranted in any given year, they shall also be decreased annually by that percentage that accurately reflects the reduction of permits requested and the specific and ascertainable resulting reduction in funds needed to pay the city costs to manage all services and time needed to issue and monitor the permits required by this section.~~

#### ~~§ 179.097 DESIGN, MATERIAL, TESTING AND REPORTS.~~

~~—The purpose of this section is to specify the limits on open pavement cuts, to describe the improvement location zones within the right-of-way, to detail the improvement's minimum clearance and coverage requirements and also to specify accepted materials and testing methods to be used within the rights-of-way and easements.~~

~~—(A) Design requirements.~~

~~—(1) Location. Improvements shall be located as determined by divisions (a), (b), (c) and (d) below. In all cases, dimensions are to be referenced from the right-of-way line. The permittee may use additional references at his own discretion.~~

~~— (a) Electric, telecommunications, and CATV cable plant improvements. Permittees may, at their own discretion but within the limits of this subchapter, locate electric, telecommunications and CATV cable plant improvements underground or aerial. The city encourages the use of rear and side property line utility easements and arterial and collector road rights-of-way for all aerial improvements. When aerial improvements are permitted within a road right-of-way, only one (1) side of the road right-of-way will be reserved for aerial improvements. Improvements may be allowed on the opposite side of the road right-of-way when the location is required. Where feasible and practical, street lights should be attached to existing poles that otherwise meet the city's criteria, thereby eliminating additional poles. Additional locational criteria for electric, telecommunications, and CATV improvements are provided in division (d).~~

~~— (b) All aerial improvements shall be located in a zone between zero (0) and two (2) feet inside the road right-of-way line, except in cases where the concrete pole base exceeds two (2) feet in width. The additional size shall be accommodated if sufficient space is available. All underground improvements shall be located in a zone between zero and six (6) feet inside the road right-of-way line.~~

~~— (c) Water, sewer and natural gas. All water, sewer and natural gas improvements located within a road right-of-way shall be installed underground. The location shall be in a zone between six (6) feet and ten (10) feet inside the right-of-way line.~~

~~— (d) In cases where conflicts exist that would prevent the location of proposed underground improvements in the location zones provided for in divisions (a), (b), and (c) above, the following shall apply: If sufficient right-of-way width exists to provide for the proposed underground improvements to be located outside of the dedicated zones and excavation will not be required within five (5) feet of the edge of pavement, the proposed location shall be considered for approval. The final decision shall, in all cases be that of the Public Works Department and shall be binding on the permittee.~~

~~— (2) Clearance. The minimum clearance requirements for installation of improvements shall be as follows:~~

~~— (a) Aerial improvements shall have a minimum clearance of eighteen (18) feet above the road surface. Other governmental agencies or codes may require a greater clearance for certain applications. Such greater clearance requirements shall prevail. Traffic signalization improvements shall be exempt from the minimum~~

~~eighteen (18) foot clearance but shall require separate approval from the City Engineer.~~

~~—— (b) Underground improvements shall be a minimum of thirty (30) inches below the existing grade. Any crossing or parallel installations of improvements to include storm drain culverts shall have a minimum separation of twelve (12) inches. Manhole tops, valve boxes and meter boxes shall be located no higher than existing grade. Where the construction specifications of any other governmental agency having jurisdiction over the permittee are more stringent than those of the city's, the more stringent requirements shall govern.~~

~~—— (B) Material standards.~~

~~—— (1) Nonpaved areas.~~

~~—— (a) Back fill. Backfill materials shall be of AASHTO Specifications M 145, soil classification of A-3 or better. The materials shall be free of unsuitable materials such as muck, humus, peat, spongy material, roots, stumps, paving materials or concrete. Flowable fill may be used as backfill. Flowable fill shall meet or exceed the minimum standards as set forth in the Florida Department of Transportation 2000 Edition of Standard Specifications for Road and Bridge Construction, Section 121-Flowable Fill, Subsections 121-1 through 121-6, or the most current edition.~~

~~—— (b) Seed. When excavation occurs in front of undeveloped areas, utilization of seed and mulch is permissible. When utilized, permanent type grass seed shall consist of a mixture of twenty (20) parts of Bermuda seed and eighty (80) parts of Pensacola bahia seed and shall be of common variety with a minimum pure seed content of ninety-five percent (95%) with a minimum germination of eighty-five percent (85%). Pensacola bahia seed shall have a minimum pure seed content of ninety-five percent (95%) with a minimum germination of forty percent (40%) and a total germination of eighty percent (80%), including firm seed.~~

~~—— (c) Mulch. Mulch shall be used with seed, as specified herein. Mulch shall be dry mulch which shall be straw or hay consisting of oat, rye, wheat straw, or of pangola, peanut coastal bermuda or bahia grass hay. Only undeteriorated mulch which shall be readily cut into the soil shall be used.~~

~~—— (d) Sod.~~

~~—— 1. When excavation, occurs in front of developed areas, the excavated area shall be sodded with the same type of sod as existed prior to excavation. If~~

~~no sod existed, seed and mulch as provided for in divisions (b) and (c) above shall be utilized.~~

~~2. In the event a discrepancy should arise as to the existence or nonexistence of sod prior to excavation, in all cases sod shall be used, at the permittee's expense.~~

~~(e) Watering. All affected areas either seeded or sodded shall be maintained and regularly watered to ensure eighty percent (80%) standing growth.~~

~~(f) Concrete. Any concrete that is removed shall be replaced with concrete that meets the minimum requirement of 3,000 psi, Class 1, concrete or shall be replaced by like construction and size, whichever is greater.~~

~~(2) Paved areas.~~

~~(a) Backfill. Backfill material shall be of AASHTO specifications M 145, soil classification of A-3 or better. The materials shall be free of unsuitable materials such as muck, humus, peat, spongy material, roots, stumps, paving materials or concrete. Flowable fill may be used as back fill. Flowable fill shall meet or exceed the minimum standards as set forth in the Florida Department of Transportation 2000 Edition of Standard Specifications for Road and Bridge Construction, Section 121-Flowable Fill, Subsections 121-1 through 121-6, or the most current edition. Base materials as specified herein shall be used in conjunction with flowable fill in all paved areas.~~

~~(b) Base materials. The following types of material are acceptable for base materials:~~

~~1. Limerock. Limerock shall be of Miami or Ocala formation. The composition of limerock materials shall consist of a minimum percentage of carbonates of calcium and magnesium to be seventy percent (70%). The maximum percentage of water-sensitive clay mineral shall be three percent (3%). The liquid limit shall not exceed thirty-five percent (35%) and the material shall be nonplastic. Limerock material shall not contain cherty or other extremely hard pieces, lumps, balls or pockets of sand or clay-size material in sufficient quantity so as to be detrimental to the proper bonding, finishing or strength of the limerock base. Gradation requirements shall be that ninety-seven percent (97%) by weight of the material shall pass through a three and one-half (3½) inch sieve, and the material shall be graded uniformly down to dust. The fine material shall consist entirely of dust of fracture. All crushing or breaking up that might be necessary in order to meet such size requirements shall be done before the material is placed~~

~~on the road. Limerock base shall have an LBR value of not less than one hundred (100).~~

~~——— 2. Cemented Coquina shell material. Cemented Coquina shall be defined as material from the Ariastasia Formation composed essentially of whole or broken shells, coral and the skeletal remains of other marine invertebrates which have been cemented together by carbonates, silicates or other natural cementing agents. The material shall not contain loose shell or silica sand in sufficient quantity to prevent proper bonding. Material that shows a significant tendency to slake or undergo chemical or physical change on exposure to weather will not be acceptable. The minimum percentage of carbonates of calcium and magnesium in the material shall be fifty percent (50%). At least ninety-seven percent (97%), by weight, of the material shall pass a three and one-half (3½) inch sieve. Not more than twenty percent (20%), by dry weight, of the material shall pass through two hundred (200) sieve by washing. The portion of the material passing the No. 40 sieve shall be nonplastic. The material shall have an LBR value of not less than one hundred (100).~~

~~——— (c) Prime coat. Prime coat shall be cut-back or emulsified asphalt. The permittee shall submit a current design that shall conform to the following specifications:~~

~~——— 1. Cut-back asphalt. Cut-back asphalt shall be Grade RC-250 rapid-curing cut-back asphalt, conforming to the requirements of AASHTO M81 except that the penetration range shall be from 60–120 instead of 80–120.~~

~~——— 2. Emulsified asphalt. Emulsified asphalt shall be Grade 55-1 conforming to the requirements of AASHTO [M]140 (for anionic) and M208 (for cationic).~~

~~——— (d) Tack coat. Tack coat shall be emulsified asphalt, Grade RS-2, SS-1 or SS-1H meeting the requirements of AASHTO M140 (for anionic) and M208 (for cationic) except that the viscosity requirements shall not apply.~~

~~——— (e) Asphaltic concrete. Asphaltic concrete for use as surface courses on city streets shall be Type S-1 or Type S-111, conforming to the 1986 FDOT Standard Specifications for Road and Bridge Construction (Supplemental Addition). The permittee shall submit a current design that shall conform to the above specifications prior to placement.~~

~~——— (f) Pavement markings. Striping materials shall be replaced with existing like material with prior approval by the Public Works Department.~~

~~—(C) Testing and reports — when required (Also refer to § 179.098(C) and (D). In unpaved areas, when trench widths are greater than twelve (12) inches and/or greater than forty-eight (48) inches below existing grade, testing reports shall be in full accordance with this subchapter. In paved areas, trenching of any kind shall be tested in accordance with this subchapter. All testing reports shall be by a qualified testing laboratory, both signed and sealed by the laboratory's Florida certified professional civil engineer. Reports shall be submitted to the Public Works Department in a timely fashion. Test reports shall be received by the city prior to the expiration of the permit. The expense for testing shall be borne by the permittee, and testing shall be done to the following specifications:~~

~~—(1) Back fill unpaved areas.~~

~~—(a) Moisture density relationships shall be in accordance with AASHTO T-180-86 for every material change.~~

~~—(b) In-place density shall be in accordance with AASHTO T-204-86 or T-238-86.~~

~~—(c) Testing shall begin at the improvement bed, if the bedding was disturbed. If the bedding was not disturbed and is suitable as a foundation to support the improvement, the first test shall begin at a maximum distance of twelve (12) inches above the improvement and continue in twelve (12) inch layers to the surface.~~

~~—(d) Tests shall be taken at a frequency of once every uninterrupted effort and twelve (12) inch layer of compacted material or once every two hundred (200) linear feet and twelve (12) inch layer of compacted material, whichever is the shorter distance.~~

~~—(e) Backfill around improvements such as manholes, inlets, and the like, shall be tested to a distance not to exceed five (5) feet away from the improvement in the manner prescribed in this section. All tests shall be representative of the entire compaction effort around the improvements.~~

~~—(f) Density test results shall be accepted on stabilized, nonyielding surfaces only.~~

~~—(g) Flowable fill may be used as backfill. Flowable fill shall meet or exceed the minimum standards as set forth in the Florida Department of Transportation 2000 Edition of Standard Specifications for Road and Bridge Construction, Section 121-Flowable Fill, Sections 121-1 through 121-6, or the most current edition.~~

~~——(2) Backfill paved areas.~~

~~——(a) Moisture density relationships shall be in accordance with AASHTO T-180-86 for every material change.~~

~~——(b) In-place density tests shall be in accordance with AASHTO T-204-86 or T-238-86.~~

~~——(c) Testing shall begin at the improvement bed to determine that the bedding was not disturbed and is a suitable foundation to support the improvements. Tests shall continue in twelve (12) inch layers to the bottom of the base material.~~

~~——(d) Trenching parallel with the road. Tests shall be taken at a frequency of once every uninterrupted effort and twelve (12) inch layer of compacted material or once every two hundred (200) linear feet and twelve (12) inch layer of compacted material, whichever is the shorter distance.~~

~~——(e) Trenching perpendicular to the road. Tests shall be taken at a frequency of once for each lane width of traffic and for each twelve (12) inch layer of compacted backfill.~~

~~——(f) Density test results will be accepted on stabilized, nonyielding surfaces only.~~

~~——(g) Flowable fill may be used as backfill. Flowable fill shall meet or exceed the minimum standards as set forth in the Florida Department of Transportation 2000 Edition of Standard Specifications for Road and Bridge Construction, Section 121-Flowable Fill, Subsections 121-1 through 121-6, or the most current edition. Base materials as specified herein shall be used in conjunction with flowable fill in all paved areas.~~

~~——(3) Base material.~~

~~——(a) Limerock bearing ratio (LBR) shall be tested in accordance with FDOT Florida Method (FM) 5-515 for LBR and FM 5-514 for carbonates. Sampling for the above tests shall be in accordance with FM 5-504. The minimum frequency for testing LBR and carbonates is one (1) test for each day's production and/or every material change.~~

~~——(b) Moisture density relationship shall be in accordance with FDOT FM 5-515 for every material change.~~

~~—(c) In-place density tests shall be in accordance with AASHTO T-204-86 or T-238-86. The testing shall occur for each six (6) inch layer of compacted base material for each lane width of traffic to the bottom of the asphaltic concrete.~~

~~—(4) Asphaltic concrete. Hot mix materials aggregate testing shall be for stability, extraction (bitumen content) and gradation at a minimum frequency of 1:00 a.m. and 1:00 p.m. for each day's work.~~

~~—(5) Concrete. Twenty-eight (28) day compressive strength test shall be in accordance with ASTM C-39 at a minimum frequency of one (1) set of four (4) cylinders and slump for each day's pour or for each fifty (50) cubic yards whichever is greater.~~

~~—(6) Fire hydrant installation. The following tests shall be submitted to the city after installation is complete: gallons per minute flow, static and residual pressure tests.~~

#### ~~§ 179.098 CONSTRUCTION PROCEDURES.~~

~~—All work authorized by the permit shall be completed in accordance with the construction specifications as described in this subchapter. Where the construction specifications of any other governmental agency having jurisdiction over the permittee are more stringent than that of the city's, the more stringent requirements shall govern.~~

~~—(A) Protective measures and traffic flow.~~

~~—(1) Whenever any activity on a right-of-way is permitted, the permittee shall meet the requirements of the Florida Department of Transportation Manual on Traffic Controls and Safe Practices for Street and Highway Construction, Maintenance and Utility Operations (1989), the Manual on Uniform Traffic Control Devices (MUTCD), Section V, Construction and Maintenance, 1989 Revision, as published by the Federal Highway Administration. Other criteria shall be the 1989, T.T.C. 240-D, T.T.C. 250, published under the title of Guide for General Traffic Safety, International Municipal Signal Association and Institute of Transportation Engineers.~~

~~—(2) Permittees shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the project. Permittees shall also take all necessary safety measures to assure the safety of all employees on the project and other persons who may be affected by any construction. Permittees shall take all measures necessary to protect and prevent damage to any project materials or equipment to be incorporated into the project, whether in storage on~~



~~or off the site and other property or improvements at the site or adjacent thereto, including but not limited to trees, shrubs, lawns, drainage swales, walks, pavement areas, roadways, and/or any other improvements not designated for removal, relocation or replacement in the course of construction.~~

~~—(3) Permittees shall comply with all applicable laws, ordinances, rules, regulations and orders of any governmental agency having jurisdiction over permittees' activities. Permittees' duties and responsibilities for the safety and protection of the project shall continue until such time as all the work is completed and the permit is closed out. Refer to § 179.999.~~

~~—(B) Protection of adjoining or adjacent property and improvements. In performing the work authorized by the permit, permittees shall:~~

~~—(1) Keep all drainage improvements within the area of the construction free and unobstructed at all times. Permittees shall store, retain and take proper measures to prevent silt discharge, and the like, for all surplus water resulting from the work, in conformance with all current regulations and permits.~~

~~—(2) Sweep and clear all obstructions, dirt and debris of any kind from roadways, sidewalks, bike paths and other public thoroughfares daily.~~

~~—(3) Ensure that all excavations do not interfere with access to fire hydrants, fire stations, valve housings, emergency vehicles or other similar equipment that is vital to the safety, health and welfare of the citizens of Palm Bay.~~

~~—(4) Be required to use rubber-tired vehicles and not tracked vehicles, where necessary, to prevent damage to existing paved surfaces which would not otherwise be subject to repair or replacement as a direct result of construction, authorized by the permit. It shall be acceptable to place a minimum of two (2) inches of soil or rubber tire casings between the tracks and the paved surface to prevent damage.~~

~~—(5) Ensure that all excavated material retained on-site be placed, removed or located so as not to endanger the safety of workers, pedestrians or traffic, and so as not to present an inconvenience to adjoining property or traffic. Permittees shall take measures to reduce noise, dust and unsightly debris.~~

~~—(C) Trenching — Unpaved Areas.~~

~~—(1) Length. The maximum allowable size of any trench to be opened in one (1) day is limited to the size of a trench that can be properly backfilled in accordance with the provisions of this subchapter during any one (1) day's work.~~

~~—(2) Cover. Underground installations shall be a minimum of thirty (30) inches below the existing grade. Any crossing or parallel installations of improvements to include storm drain culverts shall have a minimum separation of twelve (12) inches. Manhole tops, valve boxes, and meter boxes shall be located no higher than existing grade. When the construction specifications of any other governmental agencies having jurisdiction over the permittee are more stringent than those of the city's, the more stringent requirements shall govern.~~

~~—(3) Compaction. When improvements can be installed in a trench width of twelve (12) inches or less, and no deeper than forty-eight (48) inches below existing grade, a compactive effort shall be required; however no testing is required.~~

~~—(4) Width. When improvements are installed in trenches with a width of greater than twelve (12) inches and/or greater than forty-eight (48) inches below existing grade, the trench width shall be a minimum of the diameter of the improvement plus twenty-four (24) inches; that shall be twelve (12) inches on each side of the improvement. All compactive efforts and testing shall be required as specified in § 179.097(B), (C), and this division (4).~~

~~—(5) Unsuitable material below improvement. Wherever excavation of the trench exposes unsuitable materials, as described in § 179.097(B)(1)(a), in the bottom of the trench and is an unsuitable foundation upon which to lay or support the improvement, such unsuitable materials shall be removed. The trench shall then be backfilled and compacted to a density of ninety-five percent (95%) of AASHTO T-180-86, for each eight (8) inches of suitable material to the bottom of the improvement. The placement of three-fourths (3/4) inch rock gravel to the necessary depth may be used as an alternative to the above method.~~

~~—(6) Backfill. Only good quality backfill, as provided for in § 179.097(B)(1)(a), shall be used. All soft and yielding material and other portions of the subgrade which will not compact readily shall be removed and replaced with suitable material. Backfill shall be compacted in two (2) stages. The first stage of compaction shall be up to a point of one-half ( $\frac{1}{2}$ ) the diameter of the improvement. The second stage of compaction shall start at a point one (1) foot above the improvement and continue in twelve (12) inch layers to the surface. Each layer's compaction effort from one (1) foot above the improvement shall achieve a minimum of ninety-five percent (95%) of maximum density in accordance with AASHTO T-180-86. Each layer shall be compacted to the required density and tested as provided for in this subchapter, prior to placing the next layer. Density~~

~~tests shall be accepted only on stabilized, nonyielding surfaces. Flowable fill may be used as backfill. Flowable fill shall meet or exceed the minimum standards as set forth in the Florida Department of Transportation 2000 Edition of Standard Specifications for Road and Bridge Construction, Section 121-Flowable Fill, Subsections 121-1 through 121-6, or the most current edition.~~

~~—(7) Removal and use of excavated material. All excavated soils from any project deemed suitable as fill material shall be utilized on the permitted project or delivered to a city facility designated by the public works department. All excavated soils deemed unsuitable shall be disposed of by the permittee at its own expense and in a lawful manner. If it is determined that the backfill material on site will not readily compact, it may be exchanged on a one-for-one (1:1) basis with suitable material. Proper records for this exchange shall be supplied to the city each day of the exchange.~~

~~—(8) Dewatering. Construction shall be accomplished in a dry trench. To maintain a dry trench, wellpointing or other approved methods of dewatering shall be carried out. When dewatering is necessary, a plan indicating the location and proposed system, i.e., length of points, size of headers, and the like, to be used shall be submitted to the Public Works Department for approval prior to installation. The proposal shall describe the points of discharge along with proposed siltation protection. No dewatering wellpoints shall be placed within five (5) feet of the edge of pavement, except in the case of a permitted road cut. Restoration of wellpointing holes and voids shall be accomplished by hydraulic backfilling with clean sand and done in conjunction with the removal of the wellpoints.~~

~~—(9) Trench box and sheeting. A trench box or sheeting and shoring shall be used to protect the work site, to include but not limited to the preservation of the roads, adjacent property and improvements; also to protect the health, safety and welfare of all persons on site. All trench boxes, sheeting and shoring shall conform to current OSHA standards.~~

~~—(D) Trenching — paved areas. Trenching in paved areas shall be the same as division (C) above, with the following exceptions and additions:~~

~~—(1) Pavement cuts.~~

~~—(a) Pavement cuts are prohibited unless one (1) or more of the following conditions exist:~~

~~——1. Subsurface obstructions such as other existing improvements are in conflict;~~

- ~~——— 2. Existing conditions of the roadway will require reconstruction;~~
- ~~——— 3. The road is scheduled by the city for reconstruction within two (2) years.~~
- ~~——— (b) The final decision on all road cuts shall be made by the Public Works Department. When pavement cuts are permitted, the cuts shall be perpendicular to the edge of pavement; and construction methods are to be in accordance with this subchapter.~~
- ~~—— (2) Compaction. A compactive effort and testing shall be required in all paved areas. Also refer to § 179.097(B)(2).~~
- ~~—— (3) Backfill. Only good quality backfill as provided for in § 179.097(B)(2)(a) shall be used. All soft and yielding material and other portions of the subgrade which will not compact readily shall be removed and replaced with suitable material. Compaction shall begin on the first eight (8) inches of bedding backfill or on the exposed bottom to assure the bedding is suitable as foundation to support the improvement, and continue in twelve (12) inch layers to the bottom of the base material. Each layer of the compaction effort shall achieve a minimum of ninety-eight percent (98%) of maximum density in accordance with AASHTO T-180-86. Each layer shall be compacted to the required density and tested as provided for in this subchapter, prior to placing the next layer. Density tests shall be accepted only on stabilized, nonyielding surfaces. Flowable fill may be used as backfill. Flowable fill shall meet or exceed the minimum standards as set forth in the Florida Department of Transportation 2000 Edition of Standard Specifications for Road and Bridge Construction, Section 121-Flowable Fill, Subsections 121-1 through 121-6, or the most current edition. Base materials, as specified herein, shall be used in conjunction with flowable fill in all paved areas.~~
- ~~—— (4) Base material. The materials used shall be placed in accordance with § 179.097(B)(2)(b)1. and 2. The base course shall be placed to a minimum depth of twenty-four (24) inches, in six (6) inch compacted layers, below the asphalt surface course. The base backfill trench shall be forty-eight (48) inches wider than the limits of the backfill trench, twenty-four (24) inches on both sides. The compaction shall be in six (6) inch maximum layers. Compacted density shall not be less than ninety-eight percent (98%) of maximum density of a representative sample as determined by AASHTO T-180-86. Each layer shall be compacted to the required density and tested prior to placing the next layer. Density tests shall be accepted on stabilized, nonyielding surfaces only. The public works department shall reserve the right to substitute tests at random locations to verify compaction.~~

~~—(5) Prime coat. The materials used shall be placed in accordance with § 179.097(B)(2)(c)1. and 2. In paved areas, application of prime coat shall be on all exposed surfaces and joints prior to asphaltic concrete being placed; and the prime coat shall be applied at the rate of 0.1 — 0.15 gallons of emulsified asphalt per square yard and shall be applied thoroughly and uniformly with no excess. In no case shall asphalt be placed on any prime coat prior to that material's specified curing time.~~

~~—(6) Surface coat. The materials used shall be placed in accordance with § 179.097(B)(2)(e). The surface treatment shall not be less than one (1) inch thick or consistent with existing pavement thickness whichever is greater. Installation shall be on a continuous plane without humps or depressions. The asphaltic concrete shall exceed the base course by twenty-four (24) inches, twelve (12) inches on both sides along neat sawcut lines.~~

~~—(E) Jack-'n'-bore. Bore casings of any kind shall extend past the edge of pavement by a minimum of five (5) feet. The backfill in excavated bore pits within the rights-of-way and easements shall be compacted to a stabilized and nonyielding condition. The back-fill density shall be accomplished by a compaction effort in twelve (12) inch layers, starting with the first twelve (12) inch layer above the exposed bottom of the pit and the last compaction effort on this surface. No density testing shall be required unless requested by the Public Works Department.~~

~~—(F) Restoration. In performing the work authorized by the permit, permittees shall, at their own expense, restore and repair all adjacent property and improvements to a condition as good as or better than the condition that existed prior to the permittee's activities. Refer to § 179.097(B)(1)(b) through (e).~~

#### ~~§ 179.099 EMERGENCY WORK.~~

~~—Nothing in this subchapter shall be construed to prevent any action deemed necessary for the preservation of life or property or for the immediate location of trouble in an improvement for the purpose of making emergency repairs, as defined in § 179.091.~~

#### ~~§ 179.100 PRESERVATION OF MONUMENTS.~~

~~—It shall be unlawful for any person to remove, alter or destroy, cause to be damaged, removed, altered or destroyed, any monument, stake or other distinctive mark placed or made to establish boundaries of section corners, quarter-section~~

~~corners, quarter-quarter section corners or points marking street or property lines on or within the city limits.~~

~~§ 179.101 COSTS INCURRED — PAYMENT.~~

~~— Payment of all costs incurred by permittees to install, construct, reconstruct, repair, maintain, alter, remove, relocate, and test, or any other costs incurred by the permittees, shall be the sole responsibility of the permittees, subject only to any applicable rules and regulations of the Florida Public Service Commission, and shall not be charged against the city, or any of its citizens. If it is necessary to relocate a city-maintained improvement, prior written approval from the public works department shall be required. All associated costs shall be borne by the permittee. The city has the right to require any improvement not in use to be removed or filled with suitable material. Improvements that are not in use shall be removed if the right-of-way or easement is needed for other city improvements.~~

~~§ 179.102 INTERPRETATION OF DISCREPANCIES.~~

~~— Where discrepancies exist between the city and persons or permittees, the Public Works Director or his designees shall have the power of interpretation to execute a final judgment.~~

~~§ 179.103 PRIMA FACIE EVIDENCE OF VIOLATION.~~

~~— It shall be prima facie evidence that the owner of the property abutting the unlawful improvement(s) is responsible for any violation(s) of this subchapter. It shall not be a defense to any violation(s) that the violation(s) was caused by a predecessor in title, or prior property owner or prior tenant.~~

~~§ 179.104 DUTY TO REMOVE UPON NOTICE BY CITY.~~

~~— Violation(s) of this subchapter shall be corrected, remedied and/or removed within the time set by the city, but in no event later than thirty (30) days of written notice to the owner or occupant of any premises.~~

~~§ 179.105 REMOVAL AND DISPOSAL BY THE CITY UPON FAILURE OF OWNER TO REMOVE; COSTS.~~

~~— If a violation(s) is not removed within thirty (30) days of receipt of written notice, the city shall remove and dispose of same without further notice. The cost of removal and disposal thereof shall be charged to the owner or occupant of the premises of the violator. If said costs are not paid within thirty (30) days, a lien in the amount of the costs together with fees and costs incurred by the city will be recorded against the property in the Public Records of Brevard County, Florida.~~

~~§ 179.106 REMOVAL AND DISPOSAL OF UNLAWFUL IMPROVEMENTS  
WITHOUT NOTICE TO OWNER.~~

~~—In the event a violation(s) of this subchapter occurs and the violator/installer cannot be ascertained, the improperly placed item will be removed and disposed of by the city. Should the violator be determined at a later time, all costs of removal and disposal shall be charged to the said person(s).~~

~~§ 179.107 RESTORATION OF DAMAGED AREAS.~~

~~—Any person(s), firm, business entity, or corporation that damages property located on, under, across or along a right-of-way or easement or any city road or other city improvement shall be required to either restore the damaged property to its condition prior to the damage or shall pay to the city the sum of money determined by the Public Works Department to be necessary to restore the damaged area to its condition prior to the damage. Any such restoration shall meet all construction and engineering standards of the city. Additionally, any permittee who has previously failed to restore the damage(s) as required by this subchapter shall not be issued further permits from the city until such damage is either restored and accepted by the Public Works Department, or the entire cost of restoration incurred by the city to make such restorations has been paid in full by the applicant. In the event discrepancies arise as to the responsibility for damage, the burden of proof shall be on the person or permittee to establish that the person or permittee is not responsible.~~

**GOLF CARTS**

~~§ 179.110 SHORT TITLE.~~

~~—This subchapter shall be known and may be cited as the "Golf Cart Ordinance."~~

~~§ 179.111 LEGISLATIVE INTENT.~~

~~—It is the intent of this subchapter to permit and regulate the use of golf carts upon roads, streets, and sidewalks within the City of Palm Bay. To maintain and protect the safety of residents of the City of Palm Bay. To abide by the restrictions of F.S. §§ 316.008, 316.212 and 316.1995 (2020), as amended from time to time. To provide guidelines to be considered by the Florida Department of Transportation FDOT for the approval of State highway crossings from City streets.~~

~~§ 179.112 APPLICABILITY.~~

~~—This subchapter shall only be effective on streets and roads in a golf cart community within the City of Palm Bay, Florida and approved State highway crossings intersecting Palm Bay roads or streets only.~~

~~§ 179.113 DEFINITIONS.~~

~~—For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—ALL-TERRAIN VEHICLES/OFF-ROAD VEHICLES (ATVS). Any motorized off-highway vehicle fifty-five (55) inches or less in width which has a dry weight of fifteen hundred (1,500) pounds or less, is designed to travel on three (3) or more nonhighway tires, and is manufactured for recreational use by one (1) or more persons. For the purposes of this section, ALL-TERRAIN VEHICLE also includes a "two-rider ATV" as defined in F.S. § 317.0003 (see F.S. § 316.2074 (2020)).~~

~~—CONTROLLED INTERSECTION. An intersection where pedestrian and/or vehicular traffic are controlled by any standard uniform traffic control device, as determined by the Florida Department of Transportation (FDOT).~~

~~—DESIGNATED PEDESTRIAN CROSSING. That portion of a roadway at a controlled intersection distinctly indicated as a crosswalk for pedestrian crossing by striping or signage or other markings on the road surface or along the roadway.~~

~~—DESIGNATED STREET OR DESIGNATED ROADS. All streets or roads or portions of roads or streets upon which golf carts shall be allowed to operate, under the conditions as provided for herein.~~

~~—GOLF CART. A motor vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of twenty (20) miles per hour (reference F.S. § 320.01(22) F.S. (2020)). GOLF CART shall not be construed to mean low-speed or neighborhood electric vehicle.~~

~~—GOLF CART COMMUNITY. A residential, commercial, and/or mixed-use subdivision or community within the City deemed safe and appropriate for the regulated use of golf carts as defined by the State of Florida Statutes. The application of this designation shall be reviewed by the City Engineer, and approved by the City Manager, and City Council. The community shall regulate and enforce safe operation of golf carts within the community.~~

~~—GRADE SEPARATED CROSSING. A tunnel or overpass designed and constructed for the purpose of crossing a street or highway.~~



~~— LOW-SPEED VEHICLE. Any four (4) wheeled vehicle whose top speed is greater than twenty (20) miles per hour but not greater than twenty-five (25) miles per hour, including, but not limited to, neighborhood electric vehicles. Low-speed vehicles must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers § F.S. 316.2122 F.S. (2020).~~

~~— SIDEWALK. That portion of a street between the curb line, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians F.S. § 316.003 F.S. (2020).~~

~~— STATE ROADWAY. Any roadway of the State highway system under the jurisdiction of the State except limited access facilities.~~

#### ~~§ 179.114 OPERATION OF GOLF CARTS.~~

~~— (A) The operation of any golf cart on roads or streets outside a golf cart community within the City of Palm Bay is prohibited under the following conditions:~~

~~— (1) In violation of State, County, or City traffic regulations.~~

~~— (2) On streets or roads with speed limits greater than thirty-five (35) miles per hour unless the street or road is approved by the City Engineer for crossing only, and the golf cart crossing is located at an approved controlled intersection.~~

~~— (3) Golf cart use on sidewalks, and bicycle paths within a golf cart community is prohibited unless:~~

~~— (a) The City Engineer or designee reviews the character, condition, and current use of the surrounding community, speed of roadway(s) being crossed, location(s) of golf cart crossings, and that golf carts, bicycles, disabled, and able-bodied pedestrians can safely share the sidewalk. The Florida Department of Transportation shall review the Ordinance before adoption.~~

~~— (b) A minimum unobstructed sidewalk width of eight (8) feet is required and separated from back of curb, or edge of shoulder by at least five (5) feet is recommended, less may be considered on a case-by-case basis.~~

~~— (c) A minimum width of four (4) foot grassed or stabilized, relatively flat area should be provided beyond the outside edge of sidewalks for recovery or stalled golf carts.~~

~~— (d) Sidewalks with existing adjacent drainage features or fencing shall not be considered.~~

~~—(4) Golf cart use on streets or roadways without appropriate golf cart crossing signage (MUTCD W11-11) posted by the City of Palm Bay or within a designated golf cart community.~~

~~—(5) Operation of golf carts that are not equipped with efficient brakes, reliable steering apparatus, safe tires, a rearview mirror, and red reflectorized warning devices in both the front and rear.~~

~~—(6) Operation between the hours of sunset and sunrise unless the Florida Division of Motor Vehicles (DMV) certifies the golf cart is equipped with headlights, brake lights, turn signals, and a windshield.~~

~~—(7) By minors, unless accompanied by an adult, and the golf cart is equipped with an operational horn.~~

~~—(8) Transporting more passengers than the number of passengers for which the golf cart was designed to carry or transporting any passenger who is not seated in a position intended by the golf cart manufacturer to carry a passenger.~~

~~—(B) Golf carts operated in compliance with subsection (A) above, shall be allowed to operate upon the streets, roads, State highway system and sidewalks designated for operation as follows:~~

~~—(1) Within golf cart communities. Which are defined within § 179.113 Definitions above, and on roads, and streets designated therein for golf cart usage. Each golf cart community shall provide signage and regulations for the use of golf carts on designating streets within golf cart communities where golf carts may be operated.~~

~~—(2) To cross designated City roadways with a posted speed limit greater than thirty-five (35) miles per hour.~~

~~—(3) Speed modified or 'hybrid' golf carts not conforming to the definition set forth above in § 179.113 Definitions above, are not authorized for streets within golf cart communities.~~

~~§ 179.115 GOLF CART CROSSINGS PROPOSED FOR DESIGNATED CITY STREETS OR ROADS WITH A POSTED SPEED LIMIT GREATER THAN THIRTY-FIVE (35) MILES PER HOUR.~~

~~—(A) Golf cart crossings shall be approved by the City Engineer or designee if each of the following criteria are met for each type of crossing:~~

~~—(1) Mid-block crossings: To be considered for a golf cart crossing at a mid-block location along any State road where a golf course or a single mobile home~~

~~park is constructed or located on both sides of the roadway, the proposed location and roadway characteristics shall meet the following criteria:~~

- ~~—— (a) Maximum vehicular volume of fifteen thousand (15,000) average daily traffic (ADT) or less along the roadway segment.~~
  - ~~—— (b) Maximum posted speed limit of forty (40) miles per hour or less.~~
  - ~~—— (c) Maximum number of lanes is three (3) with or without bike lanes.~~
  - ~~—— (d) Maximum allowable median width is fifteen (15) feet or less.~~
  - ~~—— (e) Minimum distance to the nearest driveway, access point, or pedestrian crosswalk is three hundred fifty (350) feet in each direction.~~
  - ~~—— (f) Crossing along roadway tangents only with the nearest point of curvature at least three hundred fifty (350) feet in each direction.~~
  - ~~—— (g) A clear and unobstructed view of the roadside on the approach to the crossing.~~
  - ~~—— (h) Mid-block crossing signing and pavement markings should be installed as shown in Figure 5.1-2.~~
  - ~~—— (i) Golf carts are the only vehicle permitted to use the designated crossing or to traverse State right-of-way. Other vehicles such as low-speed vehicles are strictly prohibited. See F.S. § 320.01(42).~~
- ~~—— (2) The crossing is a side street-controlled intersection meeting the following criteria:~~
- ~~—— (a) Side street maximum vehicular volume twelve hundred (1,200) ADT and AM/PM peak hour not to exceed one hundred ten (110) vehicles per hour single direction.~~
  - ~~—— (b) Main street posted speed limit or eighty-fifth (85th) percentile intersection approach speed is thirty-five (35) miles per hour or less.~~
  - ~~—— (c) Maximum crossing distance for undivided roadways shall be equal to three (3) lanes or less not including any right turn lanes, bike lanes, and crosswalks. For divided roadways of four (4) lanes, a minimum of twenty-two (22) feet median width is required.~~
  - ~~—— (d) Side street approaches should have an exclusive left turn lane and a shared through-right turn lane. Other lane approach configurations will be considered on a case-by-case basis.~~

~~—(e) Side street intersection alignment shall be at a ninety (90) degree (not more than one hundred five (105) degrees) angle to the mainline tangent. Skewed or offset intersections are not permitted for golf cart crossings.~~

~~—(f) Approach stop signs and pavement marking shall be in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and FDOT Standard Plans Index No. 711-001.~~

~~—(3) Full signalized intersections: To be considered for a golf cart crossing at a roadway intersection with full signal control, the location along any City road shall meet the following criteria:~~

~~—(a) Side street maximum vehicular volume fifteen hundred (1,500) ADT and AM/PM peak hour not to exceed two hundred (200) vehicles per hour single direction.~~

~~—(b) Side street posted speed limit or eighty-fifth (85th) percentile intersection approach speed is thirty-five (35) miles per hour or less.~~

~~—(c) Maximum crossing distance equal to five (5) lanes or less not including any right turn lanes, bike lanes and crosswalks.~~

~~—(d) Side street approaches should have at least one (1) exclusive left turn lane and at least one (1) exclusive through or shared through-right turn lane. Other lane approach configurations will be considered on case-by-case basis.~~

~~—(e) Side street intersection alignment shall be a ninety (90) degree (not more than one hundred five (105) degrees) angle to the mainline tangent. Skewed or offset intersections are not permitted for golf cart crossings.~~

#### ~~§ 179.116 GOLF CART CROSSINGS PROPOSED AT A LOCATION ON THE STATE HIGHWAY SYSTEM.~~

~~—(A) All requests for State highway golf cart crossings shall be submitted to the City's Growth Management Department and reviewed by the City Engineer or designee for submission to the appropriate Florida Department of Transportation (FDOT) District Traffic Operations Engineer (DTOE).~~

~~—(1) Only grade separated facilities shall be considered.~~

~~—(B) Shall meet each of the following mandatory criteria for the following types of crossings:~~

~~—(1) Mid-block crossings: To be considered for a golf cart crossing at a mid-block location along any State road where a golf course or a single mobile home~~

~~park is constructed or located on both sides of the roadway, the proposed location and roadway characteristics shall meet the following criteria:~~

~~—— (a) Maximum vehicular volume of fifteen thousand (15,000) average daily traffic (ADT) or less along the roadway segment.~~

~~—— (b) Maximum posted speed limit of forty (40) miles per hour or less.~~

~~—— (c) Maximum number of lanes is three (3) with or without bike lanes.~~

~~—— (d) Maximum allowable median width is fifteen (15) feet or less.~~

~~—— (e) Minimum distance to the nearest driveway, access point, or pedestrian crosswalk is three hundred fifty (350) feet in each direction.~~

~~—— (f) Crossing along roadway tangents only with the nearest point of curvature at least three hundred fifty (350) feet in each direction.~~

~~—— (g) A clear and unobstructed view of the roadside on the approach to the crossing.~~

~~—— (h) Mid-block crossing signing and pavement markings should be installed as shown in Figure 5.1-2.~~

~~—— (i) Golf carts are the only vehicle permitted to use the designated crossing or to traverse State right-of-way. Other vehicles such as low-speed vehicles are strictly prohibited. See F.S. § 320.01(42).~~

~~—— (2) Side street stop controlled intersections: To be considered for a golf cart crossing at a roadway intersection with side street stop control, the location along any State road shall meet the following criteria:~~

~~—— (a) Side street maximum vehicular volume twelve hundred (1,200) ADT and AM/PM peak hour not to exceed one hundred ten (110) vehicles per hour single direction.~~

~~—— (b) Main street posted speed limit or eighty-fifth (85th) percentile intersection approach speed is thirty-five (35) miles per hour or less.~~

~~—— (c) Maximum crossing distance for undivided roadways shall be equal to three (3) lanes or less not including any right turn lanes, bike lanes and crosswalks. For divided roadways of four (4) lanes or less, a minimum of twenty-two (22) feet median width is required. See Figure 5.1-4.~~

~~—— (d) Side street approaches should have an exclusive left turn lane and a shared through-right turn lane. Other lane approach configurations will be considered on case-by-case basis.~~

~~—— (e) Side street intersection alignment shall be ninety (90) degree (not more than one hundred five (105) degrees) angle to the mainline tangent. Skewed or offset intersections are not permitted for golf cart crossings.~~

~~—— (f) Approach stop signs and pavement markings shall be in accordance with MUTCD and Department's Standard Plans, Index No. 711-001.~~

~~—— (g) Golf cart signs (W11-11) should be placed on the mainline approach.~~

~~—— (3) Full signalized intersections: To be considered for a golf cart crossing at a roadway intersection with full signal control, the location along any State road shall meet the following criteria:~~

~~—— (a) Side street maximum vehicular volume fifteen hundred (1,500) ADT and AM/PM peak hour not to exceed two hundred (200) vehicles per hour single direction.~~

~~—— (b) Side street posted speed limit or eighty-fifth (85th) percentile intersection approach speed is thirty-five (35) miles per hour or less.~~

~~—— (c) Maximum crossing distance equal to five (5) lanes or less not including any right turn lanes, bike lanes, and crosswalks.~~

~~—— (d) Side street approaches should have at least one (1) exclusive left turn lane and at least one (1) exclusive through or shared through-right turn lane. Other lane approach configurations will be considered on case-by-case basis.~~

~~—— (e) Side street intersection alignment shall be a ninety (90) degree (not more than one hundred five (105) degrees) angle to the mainline tangent. Skewed or offset intersections are not permitted for golf cart crossings.~~

~~—— (4) If available information reviewed by the FDOT supports a golf cart crossing. The FDOT would then require a full engineering study prepared by a State of Florida licensed engineer representing the requestor. The engineering study shall contain the following information:~~

~~—— (a) Document the need for a golf cart crossing based on conditions set forth in F.S. § 316.212, i.e., verifying the following:~~

~~—— 1. The intersecting City road has been designated for use by golf carts.~~

~~2. A golf course or single mobile home park is constructed on both sides of a State road.~~

~~(b) Document all safety considerations with respect to intersecting sight distances, proximity to intersection and driveway conflict areas, number and configuration of approach lanes to signalized intersections and roadway speed and volume thresholds as described in the above criteria.~~

~~(c) Document the proposed golf cart crossing and/or roadway segment location (Roadway ID and Ite Post) and corresponding signing, marking, and signal treatments (if applicable). A schematic layout should be provided over aerial photography or survey to show locations of signs, markings and other treatments in proximity to existing traffic control devices.~~

~~(d) Document all crash history within the vicinity of the proposed golf cart crossing based on a minimum of three (3) years data.~~

#### ~~§ 179.117 OTHER PROHIBITED CONDUCT.~~

~~(A) ATVs nor low speed vehicles as defined in § 179.113 Definitions may not be operated on designated roads, streets, sidewalks, or bicycle paths.~~

~~(B) Golf carts shall comply with all applicable local and State traffic laws and may be ticketed for traffic violations in the same manner as motor vehicles.~~

#### ~~§ 179.118 SIGNAGE.~~

~~The City Manager shall designate the department which shall post appropriate signs to indicate that operation of golf carts is allowed.~~

#### ~~§ 179.119 INAPPLICABLE TO NEVS.~~

~~This subchapter shall not apply to neighborhood electric vehicles (NEVs) which have been sanctioned for on the road use by any State or federal law or rule which may be effective in the future.~~

#### ~~§ 179.120 PENALTY AND ENFORCEMENT.~~

~~Any person who violates any provision of this subchapter shall, upon conviction, be guilty of an infraction pursuant to F.S. § 316.655, all as may be amended from time to time. Enforcement of this subchapter shall be pursuant to F.S. § 316.072 (2020), as may be amended from time to time. The City's Police Department shall have the authority to enforce the provisions set forth herein and applicable traffic laws, provided. However, that the enforcement of rules and regulations established~~

~~by golf cart communities shall be the sole responsibility of each community if the community remains private.~~

### **~~OFF-PREMISES DIRECTIONAL/GUIDANCE SIGNS~~**

#### **~~§ 179.200 SCOPE.~~**

~~—(A) The standards for off-premises directional/guidance signs as described herein shall apply to public roads located within the boundaries of the city. Off-premise directional/guidance sign placement is limited to only those roads that meet the following classifications, described in the city's Comprehensive Plan as:~~

- ~~—(1) 4-Lane Arterial, Divided;~~
- ~~—(2) 2-Lane Arterial;~~
- ~~—(3) 4-Lane Collector, Divided;~~
- ~~—(4) 2-Lane Collector, Divided;~~
- ~~—(5) 2-Lane Major Collector;~~
- ~~—(6) 2-Lane Minor Collector.~~

~~—(B) The purpose of the off-premises directional/guidance sign is to identify a destination and guide motorists to a specific area. When used, the off-premises directional/guidance signs should have the lowest priority of all signs used in the public right-of-way or easement. A program of cooperation should be established between the city and other governmental agencies when a sign is to be placed within any state or county rights-of-way located within city boundaries.~~

#### **~~§ 179.201 CLASSIFICATIONS.~~**

~~—The off-premises directional/guidance signs shall be divided into three (3) classifications.~~

~~—(A) Recreational and cultural (brown sign). To provide directions to structures and sites that include but are not limited to: parks, libraries, sanctuaries, museums, etc.; areas of public interests that are typically attractions and traffic generators because they are open to the general public for the purpose of cultural, recreation, play, amusement or relaxation used to refresh the body or mind or for the training and refining of the mind, emotions, manners, vocal skills, taste, etc.~~

~~—(B) Non-profit (green sign). To provide directions to structures and sites that include but are not limited to churches, public schools/colleges, government agencies, fraternal and civic organizations, lodges, and areas of interest that are~~



~~targeted to specific groups and individuals that typically contribute to the betterment of the community and are not operated for monetary gain and are exempt for taxation.~~

~~—(C) Commercial (blue sign). To provide directions to structures and sites that provide on-premise parking spaces for one hundred (100) or more vehicles such as golf courses, industrial parks, residential subdivisions, businesses, private schools and areas of interests that are targeted to specific groups of persons who derive major portions of their incomes from such facilities and, as motorists, do not reside in the immediate areas; areas that attract large groups of persons who visit these areas for goods and services; large groups of persons who reside in these areas and, as motorists, derive major portions of their incomes outside of these areas; and large groups of persons who transport goods and services to and from these areas. The structures and sites are operated for monetary gain and are taxable entities. Residential subdivisions are included in this classification because of concentrated real estate sales and new construction.~~

#### ~~§ 179.202 DESIGN STANDARDS.~~

~~—The off-premises directional/guidance sign shall meet the following standards:~~

~~—(A) Rectangular in shape.~~

~~—(B) The size of each individual sign blade shall be eight inches (8") by forty-eight inches (48").~~

~~—(C) Where multiple stacked signs are located, the bottom of the lowest sign should be seven feet (7') above the closest edge of pavement or above the top of the closest curb, whichever is applicable.~~

~~—(D) Single blade sign locations shall meet the same standards for height as the multiple stacked locations. Depending on the posted speed limit in the area and to provide for future sign attachments, the sign post's top or aerial height shall be initially adjusted to accommodate a total of three (3) or five (5) sign blades stacked as described herein.~~

~~—(E) In locations where the posted speed is less than 45 mph, the sign blades may be stacked five (5) high, not to exceed a maximum height of forty inches (40").~~

~~—(F) In locations where the posted speed is 45 mph and higher, the sign blade stacking shall not exceed three (3) high or a maximum height of twenty-four inches (24").~~

~~—(G) The background color code for each of the three (3) administrative sign classifications shall be as follows:~~

~~—(1) Recreational and Cultural – Brown;~~

~~—(2) Non-Profit – Green;~~

~~—(3) Commercial – Blue.~~

~~—(H) The directional arrow, mileage numbers, and lettering shall be white.~~

~~—(I) The style and size of the lettering should meet the following standards:~~

~~—(1) The lettering should be upper case and should be of the type provided for in the "Standard Alphabets for Highway Signs and Pavement Markings"; Federal Highway Administration, Highway and Transportation Officials-20, or similar and current approved publications.~~

~~—(2) The identifying destination lettering should be at least four inches (4") in height.~~

~~—(3) The mileage designation should be in letters and numerals at least two inches (2") in height.~~

~~—(4) The directional arrow should be four inches (4") in size and located uniformly on the left side on the sign or closest to the travel way.~~

~~—(5) The mileage designation should be centered directly below the directional arrow. The mileage designation should be shown to the closest one tenth (1/10) of a mile (Example: 0.2 mi.).~~

#### ~~§ 179.203 SIGN LOCATIONS.~~

~~—(A) The off-premises directional/guidance signs should be located at least two hundred feet (200') from the center line of the intersection or abutting right angle roadway except in the case of median placement, and shall not obstruct drivers' critical viewing of other traffic control devices. The location of other traffic control devices shall in all cases take precedence over the location of off-premises directional/guidance signs.~~

~~—(B) In locations where the posted speed is less than 45 mph, the sign post closest to the travel way should be located a minimum distance of ten feet (10') off the edge of pavement or four feet (4') behind the face of a type "F" curb, as defined in the Florida Department of Transportation Roadway and Traffic Design Standards (latest edition), Index 300. In all cases the location should be as close to the right-of-way line as is practical.~~

~~—(C) In locations where the posted speed is 45 mph and higher, the sign post closest to the travel way should be located a minimum distance of fourteen feet (14') from the edge of pavement. In all cases the location should be as close to the right-of-way line as practical.~~

~~—(D) Off-premises directional/guidance signs may not be located outside of a five (5) mile radius from the described destination.~~

~~—(E) Off-premises directional/guidance signs shall be limited to a maximum of three (3) off-premises directional/guidance signs per four-way intersection for any one (1) described destination. The total number of off-premises directional signs for any one (1) described destination should be six (6).~~

~~—(F) In all cases, the exact location and number of off-premises directional/guidance signs placed within the public road right-of-way shall be determined by the Public Works Department of the city in accordance with the standards set forth herein.~~

~~—(G) The number of off-premises directional/guidance sign locations will be limited and available locations will be permitted on a first come first serve basis. Permit application will be accepted on file with the city in chronological order to provide for rapid implementation in the event a permit is canceled or expires and a specific location becomes available. The city will make every reasonable effort to provide the number of signs and locations specified by the applicant up to the maximum allowed. In the event the city determines that it cannot totally comply with the applicant's request, the city will offer to place signs that meet the requirements and adjust the permit fees accordingly or, if possible, locate the signs at the next closest available location; applicant may, during the permit application review phase, choose to continue the process or withdraw the application.~~

~~—(H) During the term of the permit, in-place signs may be relocated or removed at any time should site conditions change and warrant such an action by the city. Any such modifications to the original permit application are at the sole discretion of the Public Works Department and may be accomplished with or without notice to the permittee, although every effort will be made to contact the permittee should such a condition exist. No refund or adjustment to the original permit fee shall be made in any case.~~

~~§ 179.204 PERMITTING.~~

~~—(A) When required. A Right-of-Way Use Permit shall be obtained from the Public Works Department to place off-premises directional/guidance signs within the public rights-of-way and easements.~~

~~—(B) Applicant. The owner or the legally authorized person of the destination described on a off-premises directional/guidance sign.~~

~~—(C) Permit fee schedule. A non-refundable fee shall be charged for every off-premises directional/guidance sign permit.~~

~~—(1) Permit application fee. A non-refundable application initial processing and design fee as established by resolution pursuant to § 169.004 shall be charged to the applicant and due in full at the time the application is presented to the Public Works Department for review. Application fees are non-refundable if applications are rejected by the city, canceled by the applicant, or for any reason an application becomes null and void. Applicants shall have sixty (60) days from the time the initial permit application is received by the Public Works Department to either pay for the approved permit in full or cancel the application. If no such action is taken by the applicant within the provided sixty (60) day period, the Off-Premises Directional/Guidance Sign Right-of-Way Use Permit application shall become null and void. Should any application become null and void, any approved locations shall be available to the next qualified applicant.~~

~~—(2) The permit fee structure for each sign blade up to the maximum allowed shall be as established by resolution pursuant to § 169.004.~~

~~—(D) Permit time limitation. In no case shall a sign be installed before a permit is issued. A directional/guidance sign permit issued by the city shall be valid for a period of sixty (60) months/five (5) years from the date of issuance.~~

~~—(E) If a permittee fails to successfully reapply for permitted locations by the permit expiration date, the location(s) will immediately become available to the next eligible applicant. It shall be the sole responsibility of the permittee to reapply for permitted location(s) in a timely manner.~~

~~—(F) Where discrepancies exist between the city and the applicant or the permittee, the Public Works Director or designee shall have the power of interpretation to execute a final judgement.~~

#### ~~§ 179.205 ANNUAL FEE INCREASE.~~

~~—The fees set forth in this section shall be increased by four percent (4%) (rounded to the nearest dollar) each fiscal year. Should any decrease in such fees be~~

~~warranted in any given year, they shall also be decreased annually by that percentage that accurately reflects the reduction of permits requested and the specific and ascertainable resulting reduction in funds needed to pay the city costs to manage all services and time needed to issue and monitor the permits required by this section.~~

#### ~~§ 179.206 NON-CONFORMING SIGNS.~~

~~—When non-conforming signs are identified, a bright colored sticker will be placed on the face of the sign in plain view of the public. The notification sticker will clearly state that the sign is not in compliance with the regulations and an appropriate phone number will be provided for additional information. The sticker will also identify the person placing the sticker and the date the sticker was affixed to the sign. The person placing the sticker will record the language on the sign, the location of the non-conforming sign, and the date the notification was affixed. A copy of these records will be forwarded from time to time to the Right-of-Way Use Permitting Section of the Public Works Department for permanent record. The language for the notification sticker shall be in substantially the following form:~~

~~—Notice to Owner!~~

~~This sign is not in compliance with the current Off-premises Directional/Guidance Sign Code and is considered a non-conforming sign. This sign shall be found in violation and may be removed without further notice on or about (date). Please contact the Right-of-Way Use Permitting Section of the Public Works Department as soon as possible (phone number).~~

#### ~~§ 179.207 NO EXEMPTIONS.~~

~~—No sign existing prior to the enactment date of this subchapter shall be exempt from the provisions of this subchapter.~~

#### ~~§ 179.208 TIME SCHEDULE FOR IMPLEMENTATION OF REGULATIONS.~~

~~—(A) The city will attempt to notify the potential and existing sign owners of the herein regulations. The notification methods to be used will include but not be limited to the following:~~

~~—(1) Newspaper, public notice advertisements;~~

~~—(2) Space Coast Government Television, "Scrolling Items" listed from time to time as the agenda allows;~~

~~—(3) Palm Bay publications.~~

~~—(B) To provide sufficient time for existing sign owners to conform to the regulations described herein, compliance shall be as follows from the enactment date of this subchapter:~~

~~—(1) All new signs shall comply to the regulations described herein;~~

~~—(2) Sign owners shall have one (1) year to remove or replace existing nonconforming signs without penalties;~~

~~—(3) Existing non-conforming signs remaining in the public rights-of-ways after one (1) year shall be found in violation of this ordinance as described herein. The nonconforming sign may also be removed by the city without notice to the owner and disposed of in a legal manner. It shall be the sole responsibility of the off-premises directional/guidance sign owner to obtain a Right-of-Way Use Permit as described herein.~~

~~—(4) Within sixty (60) days, the city will start identifying, in accordance with § 179.204.~~

~~§ 179.999 PENALTY.~~

~~—Any person(s), firm, business entity or corporation that violates any of the provisions of this chapter for which no other penalty is set forth shall be subject to the penalty provisions set forth in § 10.99 of the City of Palm Bay Code of Ordinances.~~

## **CHAPTER 180: TREES AND SHRUBBERY; LANDSCAPING**

### **TREE PRESERVATION AND REMOVAL CODE:**

#### **PART 1. GENERAL PROVISIONS**

~~§ 180.01 INTENT.~~

~~—(A) The city finds that trees provide many beneficial functions to man, including many environmental, aesthetic, and economic amenities. It is declared to be necessary to preserve trees as a means to:~~

~~—(1) Protect the value of lands and water quality;~~

~~—(2) Preserve community appearance; and~~

~~—(3) Assist climate control, soil stabilization, oxygen exchange, and noise and air pollution abatement.~~

~~—(B) These factors relate to the economy of the city and provide for the health, safety and welfare of residents and visitors of the city. It is the intent of this code~~

~~to provide for the preservation and protection and to regulate control over the removal, relocation, or destruction of trees.~~

~~§ 180.02 DEFINITIONS.~~

~~—For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—CLEARING. The removal of trees and brush from the land, not including the ordinary mowing of grass.~~

~~—CROWN. The main mass of branching of a plant above the ground.~~

~~—DBH (DIAMETER AT BREAST HEIGHT) or BREAST HEIGHT. Fifty-four (54) inches above the surface of the ground at the base of the plant or tree. in the case of a tree with multiple main stems, the diameter shall be the sum of the diameter of the stems.~~

~~—DRIP LINE. A vertical line running through the outermost portion of the tree crown extending to the ground.~~

~~—EXCEPTIONAL SPECIMEN. Those trees which have a DBH of eighteen (18) inches or more.~~

~~—MANGROVE.~~

~~—(1) Rooted trees and seedlings of the following species, but only when having a coastal or estuarine association:~~

~~——(a) Red mangrove (*Rhizophora mangle* L.)~~

~~——(b) White mangrove (*Laguncularia racemosa* Gaertn.)~~

~~——(c) Black mangrove (*Avicennia germinans* (L.) L.)~~

~~——(d) Buttonwood mangrove (*Conocarpus erecta* L.)~~

~~—(2) An assemblage of one (1) or more of the following species:~~

~~——(a) Black mangrove (*Avicennia nitida*);~~

~~——(b) Red mangrove (*Rhizophora mangle*);~~

~~——(c) White mangrove (*Languncularia racemosa*); and~~

~~——(d) Buttonwood (*Conocarpus erecta*).~~

~~—PROTECTED TREE. Any self-supporting wood plant which has a DBH of six (6) or more inches, and which is not otherwise exempted from this subchapter. For the purpose of this subchapter, all mangroves are declared to be protected trees.~~

~~In addition, all palms with at least four and one-half (4½) feet of clear trunk between the ground level and the lowest branch are declared to be protected trees.~~

~~—RESTORATION TREE. A nursery grown tree with a DBH of at least five (5) inches and a minimum height of fifteen (15) feet and a minimum crown width of ten (10) feet of a species approved by the City Planner.~~

#### ~~§ 180.03 APPLICABILITY; PERMIT.~~

~~—The terms and provisions of this subchapter shall apply to all lands lying within the city limits, including publicly owned lands, rights-of-way, and easements except as provided for in this subchapter. It shall be unlawful without first securing a permit from the Planning Division to remove, destroy, cut down or damage or cause the removal, destruction, cutting down or damage of any tree(s) as defined by this subchapter.~~

#### ~~§ 180.04 EXCEPTIONS.~~

~~—The following exceptions to this subchapter shall be permitted in the manner prescribed:~~

~~—(A) Trees may be removed without a permit on the following properties:~~

~~—(1) Bona fide agricultural uses, cultivation, or grazing lands;~~

~~—(2) Commercial plant nursery sites; and~~

~~—(3) Single-family and two-family lots with less than one (1) acre of area.~~

~~—(B) After notifying the Planning Director the following trees may be removed without a permit: Beefwood, Scaly-barked beefwood, Australian pine, Melaleuca, Brazilian pepper, Castor bean, Eucalyptus, Chinaberry, ear tree, and camphor tree.~~

~~—(C) In the event that any tree shall endanger health or safety, and require immediate removal without delay, on-site verbal authorization may be given by a City Planner to allow the removal of the tree without obtaining a written permit as herein required. Such verbal authorization shall later be confirmed in writing within seven (7) days' time.~~

#### ~~§ 180.05 VIOLATIONS.~~

~~—Each failure to comply with any of the provisions of this subchapter shall constitute an individual violation. The property owner, contractor and/or authorized agent shall be issued a violation notice and they shall then have a maximum of two (2) weeks to submit a restoration plan as described below. For projects that are~~



~~under construction, a stop-work order will be issued when applicable and the issuance of and certificate of occupancy for any attendant structure(s) will be withheld until the restoration plan is submitted and approved by the Planning Division. This restoration plan shall, where applicable:~~

- ~~—(A) Provide information as described in § 180.15.~~
- ~~—(B) Identify the appropriate preservation practices as described in § 180.18.~~
- ~~—(C) Identify the locations of new tree plantings to restore the site, providing:~~
  - ~~—(1) Each restoration tree shall be a minimum five (5) inch DBH trunk diameter nursery grown tree, and a minimum height of fifteen (15) feet and a minimum crown width of ten (10) feet, and the species shall be approved by the Planning Director.~~
  - ~~—(2) One (1) restoration tree as described above shall be shown for each six (6) inches of trunk diameter of those trees that were severely damaged, cut down or removed from the site.~~
  - ~~—(3) If the site has been cleared, and little evidence of the removed trees are present so as to determine the extent of the violation then it shall be assumed that eight (8) trees with six (6) inch trunk diameter existed per acre of disturbed area.~~
- ~~—(D) Provide irrigation system or method for the maintenance of the new trees.~~
- ~~—(E) Indicate a schedule for the restoration to occur which shall at the latest coincide with the final inspection for a site development where applicable or three (3) months where final inspections would not normally occur. If the restoration does not occur within the approved time schedule, each day of which the property is not in compliance shall constitute a violation of this subchapter and the violation shall be presented to the Enforcement Board for action.~~

## **~~TREE PRESERVATION AND REMOVAL CODE:~~**

### **~~PART 2. TREE REMOVAL PERMIT~~**

#### **~~§ 180.15 APPLICATION — GENERAL PROVISIONS.~~**

~~—Anyone desiring a permit to remove a tree or clear property as defined by this code shall perform the following application requirements:~~

- ~~—(A) Fee. Submit a fee to the Land Development Division as established by resolution pursuant to § 169.004.~~
- ~~—(B) Expiration of permit. Any permit issued hereunder shall remain valid for six (6) months and may be renewable for a second six (6) month period upon request to the Planning Director, provided such request occurs prior to the expiration date~~

~~of the initial permit. If a permit required by this subchapter has been issued in conjunction with an approved site plan, subdivision, or building permit, then such permit shall remain valid for the life of the approved site plan, subdivision or building permit unless any of these approvals expire, are revoked or suspended.~~

~~—(C) Renewal of permit. The Planning Director may require reapplication and full review in those renewal cases where site conditions have changed substantially from the date of issuance of the initial permit as a result of natural growth of trees and vegetation or high winds, hurricane, tornado, flooding, fire, or other acts of nature.~~

~~—(D) Site plan drawing(s). Submit a site plan drawing(s) to the Planning Division at a scale of no greater than one (1) inch equals fifty (50) feet (1" = 50') which clearly shows all of the following information drawn to scale:~~

~~—(1) Sites to ten (10) acres. The diameter at breast height, botanical, and common names of each tree as defined in this subchapter.~~

~~—(2) Sites above ten (10) acres. The diameter at breast height, botanical, and common names of each exceptional specimen tree or those trees required to be listed by the City Planning Division. General distribution/groupings of protected trees as defined in this subchapter can be shown on the site plan instead of individual trees. The scale of this drawing may be increased as per the City Planning Division.~~

~~—(3) All existing and proposed site features, such as: structures, grading and drainage, pavements, easement, landscaping, utilities, streets, screening requirements.~~

~~—(4) Explanation of or code to identify those trees proposed to be removed and those to be preserved.~~

~~—(5) Details or notes explaining the methods for the preservation of those trees to remain.~~

~~—(6) Name, signature, address and telephone number of property owner and his agent, if applicable.~~

~~—(7) Legal description and address of property.~~

~~—(8) North arrow and scale.~~

~~—(9) Reason(s) for proposed removal of tree(s).~~

~~—(E) Identification of trees to be preserved. Identify all trees to be preserved on site with harmless bands, flagging, or other suitable markings. These shall correspond with the above site plan explanation in division (D)(4) above.~~

~~§ 180.16 REVIEW CRITERIA.~~

~~—The Planning Department shall review the tree removal request based on the following criteria:~~

~~—(A) The permit application shall be processed within seven (7) days, except that no tree removal permit shall be issued until the owner/developer has applied for a building permit and all pertinent subdivision and site plan reviews have been approved.~~

~~—(B) The signing of the certificate of approval on a subdivision plat and approved engineering drawings shall be considered as an issued permit under the terms of this subchapter. This shall only allow that clearing necessitated by the installation of the approved public improvements. However, tree preservation measures may still be required for exceptional specimens and trees within these areas after review in the field by the Planning and Engineering Departments.~~

~~—(C) Reasonable efforts shall be made on the property to save and design around existing healthy trees. Preservation of exceptional specimen trees may be required after review in the field by the Planning Director or his designee. However, this shall not reasonably restrict the development of a permitted use and shall not create an unsafe condition.~~

~~—(D) Effort shall be made to preserve enough trees on site so as to maintain the character of the existing tree coverage in the neighborhood based upon the number, type, size and distribution of trees.~~

~~—(E) Exceptional specimen trees approved to be removed shall be replaced with trees of the same species or other species as approved by the Planning Director. Replacement trees shall have a two (2) inch caliper and shall be a minimum of ten (10) feet overall height immediately after planting. One (1) replacement tree as described above shall be planted for each six (6) inches of trunk diameter of those exceptional specimen trees removed. In addition, all required trees as set forth in § 185.142, the off-street parking area landscaping requirements, shall have a one (1) inch caliper at planting.~~

~~—(F) Efforts shall be made to preserve specimen trees and those trees which are of significant historical, aesthetic, or ecological importance to a site and/or the city.~~

~~—(G) Efforts shall be made to preserve trees which are in required landscape areas or yards.~~

~~—(H) Efforts shall be made to select, design and locate permitted signs so that they do not necessitate the removal of trees.~~

#### ~~§ 180.17 APPEALS.~~

~~—Any application for a tree-removal permit that has been denied may be appealed pursuant to § 169.009 provided a written request is submitted to the Growth Management Director. Such appeal shall follow the procedures set forth therein.~~

#### ~~§ 180.18 PROTECTION OF TREES TO BE PRESERVED.~~

~~—The property owner, developer, contractor, and/or authorized agents shall make every effort to protect those trees to be preserved during site preparation and construction. To this end, the following methods and procedures shall be followed:~~

~~—(A) The use of hand labor may be necessary to clear vegetation within the drip line of those trees to be preserved. This shall be determined by the City Planner at the time of barricading as described below.~~

~~—(B) Materials, machinery and soil shall not be placed within nor use the area within the drip line of any tree to be preserved.~~

~~—(C) Materials, wires, signs, or nails shall not be attached to any tree unless such materials are used to preserve the tree.~~

~~—(D) All felled material shall be promptly and carefully removed from the site in order to avoid potential damage to remaining trees and vegetation.~~

~~—(E) Visible barricades shall be erected around those trees to be preserved. These barricades shall be at the drip line of the tree(s) and no closer than ten (10) feet to the trunk of the tree.~~

~~—(F) All trees to be preserved, except palms, shall have their natural soil level maintained. Tree wells and/or retaining walls shall be provided where necessary to maintain the natural existing soil level. The design of these structures shall be approved by the Planning Director and shall generally be consistent with methods specified in Tree Protection Manual for Builders and Developers, published by the Florida Department of Agriculture and Consumer Services, Division of Forestry, latest edition.~~

~~—(G) All efforts shall be made through the grading and drainage plan to maintain the natural drainage to those trees to be preserved. Swaling and minor negative~~

~~grade changes should always be designed outside the drip line area as much as possible. Piping should be used where deep swales or ditches would require significant grade changes adjacent to trees to be saved. Trenching of any type should be avoided in the drip line area. Where underground installations are required adjacent to the trunks of trees to be preserved, tunneling should be used. When trenching or tunneling near trees to remain, protective measures should be taken as specified in Tree Protection Manual for Builders and Developers.~~

~~—(H) All trees not approved for removal shall be protected and maintained during construction, as specified in the Tree Protection Manual for Builders and Developers or other comparable publications approved by the Planning Division.~~

### **~~LANDSCAPING REGULATIONS FOR NEWLY DEVELOPED SINGLE- AND TWO-FAMILY RESIDENTIAL LOTS~~**

#### **~~§ 180.25 APPLICABILITY; PERMIT REQUIRED.~~**

~~—The terms and provisions of this subchapter shall apply to all single and two-family residential lots, as defined in the zoning regulations set forth in Chapter 185 of this code of ordinances, developed after the effective date of this subchapter. Every residential lot developed hereafter shall be provided with landscaping in accordance with the provisions set forth herein. Where a principal structure existed or was in the process of being developed at the effective date of this subchapter, the principal structure may be modernized, altered, or repaired without providing the required landscaping. All detached accessory structures to the principal structure are permitted to be developed, modernized, altered, or repaired without providing the required landscaping for new principal structures.~~

#### **~~§ 180.26 GENERAL PROVISIONS.~~**

~~—The following minimum landscaping is required for newly developed single- and two-family residential lots:~~

~~—(A) Prior to the issuance of a certificate of completeness or a certificate of occupancy for newly constructed single- and two-family residences, the following number of trees and shrubs must exist or be planted on the lot:~~

~~—(1) Lots smaller than one (1) acre in size:~~

~~—(a) Four (4) trees; and~~

~~—(b) Ten (10) shrubs.~~

~~—(2) Lots larger than or equal to one (1) acre in size:~~

~~—(a) Six (6) trees plus two (2) additional trees for each one-half ( $\frac{1}{2}$ ) acre above one (1) acre in size, up to a maximum of forty (40) trees.~~

~~—(b) Twenty (20) shrubs plus ten (10) additional shrubs for each acre above one (1) acre in size, up to a maximum of fifty (50) shrubs.~~

~~—(B) Of the required trees, a minimum of fifty percent (50%) shall be species native to the county. Required shrubs may be either native or non-native.~~

~~—(C) Existing trees and shrubs may be utilized to meet the requirements of this subchapter, provided such vegetation is located within the property lines of the lot and not in any rights-of-way or easements. Planted trees and shrubs must be a variety which is compatible with the existing soil and drainage conditions, must be in locations which will not cause danger or interference with existing structures, on-site septic systems, wells, utility lines (both above and below ground), driveways or water bodies, and are not permitted within any easement or right-of-way.~~

~~—(D) One hundred percent (100%) of the lot must be covered with lawn grass or other approved living ground cover, excluding principal structures, accessory structures, vehicle-use areas, and pedestrian walkways. Nonliving ground cover is permitted within planting beds/flower beds provided such beds do not occupy more than ten percent (10%) of the lot, less the excluded impervious areas. The Planning Director may approve landscape beds with a mix of living and nonliving ground cover in excess of ten percent (10%) following submission of a detailed landscape plan depicting the proposed plantings. The intent of this section is that all landscaped areas present a finished appearance, as determined by the Planning Director.~~

#### ~~§ 180.27 RESIDENTIAL LOT LANDSCAPING DESIGN CRITERIA.~~

~~—All single and two-family residential lots shall conform to the following landscaping design criteria:~~

~~—(A) Plant material—existing vegetation. The preservation and maintenance of existing native vegetation and the use of drought-tolerant plant materials or water conservation techniques, as referenced in the St. Johns River Water Management District's Xeriscape Plant Guide, or other comparable publications approved by the Planning Division, is strongly encouraged. The following species, if existing on the residential lot, are not to be used as substitutes for the requirements in this section, nor shall they be planted on site:~~

Botanical Name	Common Names
Casuarina	Australian pine, beefwood
Melaleuca	Cajeput, punk tree, paperbark
Eucalyptus	Eucalyptus, gum tree
Schinus terebinthifolius	Brazilian pepper
Ricinus cummunis	Castor bean
Melia azedarach	Chinaberry
Enterolobium cyclocarpum	Ear tree, elephant ear
Cinnamomum camphora	Camphor tree

~~—(B) Trees. Any self-supporting woody plant (including mangroves, regardless of height, and palms) of a species which normally, in the county, grows at maturity to a minimum overall height of fifteen (15) feet. Required tree species native to the county must be those species identified by the Brevard County Agricultural Extension Services, Florida Department of Agriculture, Florida Native Plant Society, the City of Palm Bay Planning Division, or as approved by the Planning Director. Tree species shall be a minimum of six (6) feet overall height immediately after planting. Existing wax myrtles, cabbage palms, mangroves, saw palmetto or other native species having a trunk height of at least four (4) feet and having a caliper of at least two (2) inches may be substituted for the tree planting requirements in this section. These native species are strongly encouraged to be preserved on single and two-family residential lots.~~

~~—(C) Shrubs.~~

~~—(1) Definition. For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—SHRUB. A bushy, woody plant, usually with several permanent stems, and usually less than ten (10) feet tall at maturity.~~

~~—(2) Existing vegetation may be used to fulfill the shrub requirements in this section.~~

~~—(D) Living ground covers. Living ground cover shall include all grasses. Living ground covers used in lieu of grasses shall be planted so as to present a finished appearance.~~

~~—(E) Nonliving ground covers. Mulch or other types of approved nonliving ground cover. The use of astroturf, marl, crushed shell, coquina, or other road base material as a ground cover is unacceptable. Railroad ties, wood, bricks, and synthetic materials can be used to separate landscape areas, but cannot be used in place of required ground cover.~~

~~—(F) Lawn grass. Lawn grass used as a living ground cover shall be planted in grass species normally grown as permanent lawns in the county such as, but not limited to bahia, St. Augustine, and Bermuda species. Lawn grass must be used in swales or other areas subject to erosion.~~

#### ~~§ 180.29 LANDSCAPE PLAN CRITERIA.~~

~~—Applicants for single family and two-family building permits shall submit a landscape plan. The landscape plan must be shown on a survey drawing, and can be shown on the site plan survey to be submitted for the building permit. The landscape plan must contain the following:~~

~~—(A) An engineering scale and north arrow.~~

~~—(B) The legal description and address of the property.~~

~~—(C) The property lines.~~

~~—(D) All existing and proposed site features, such as structures, pavements, easements, landscaping, streets, drainage, septic tanks and drain fields, and above ground utility poles.~~

~~—(E) Explanation of or legend to identify those trees to be preserved (a tree survey is not required.) The approximate type, size, and location of the trees to be preserved must be shown on the landscape plan.~~

~~—(F) The location, common names, estimated size at planting including the plant height and quantity of proposed landscape plant, tree, and living ground cover shall be shown or listed in a key on the landscape plan. Only the type, quantity, and location of all nonliving ground cover must be shown or listed in a key on the landscape plan.~~

### **MUNICIPAL TREE CODE**

#### ~~§ 180.45 INTENT.~~

~~—The city recognizes that trees on municipal property serve the public interest by providing oxygen, soil stabilization, erosion prevention, shelter for wildlife and conservation of energy through shade and air filtration. Trees in parks and other~~



~~public areas enhance the image of the city, are a valuable contributor to the city's environment and are not only desirable but essential to the health, safety and welfare of all the citizens. It is the intent of this subchapter to provide for the planting, protection and maintenance of municipal trees and to designate a City Tree Department.~~

~~§ 180.46 DEFINITIONS.~~

~~—For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—CITY. The City of Palm Bay, the City Manager or his or her designee(s).~~

~~—CITY TREE DEPARTMENT or DEPARTMENT. The City of Palm Bay Parks and Recreation Department, its respective divisions and personnel, and any designated agent thereof.~~

~~—MUNICIPAL TREE. Any tree, existing or to be planted on municipally-owned property or property upon which the City has a legal right to plant trees.~~

~~—PARK. Any developed or designated future municipal park site.~~

~~—RIGHT-OF-WAY. Any interest in land granted, conveyed, dedicated, or acquired for city purposes, or devoted to vehicular and/or pedestrian traffic. This shall include but not be limited to land in which the city has an easement or to which the city owns fee simple title, or has any type of ownership thereof or interest in any land utilized by the city for vehicular and/or pedestrian traffic or other purposes.~~

~~—TOPPING. The severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.~~

~~—TREE. Any self-supporting woody plant which has a minimum height of six (6) feet and which is of a species having an average mature spread or crown spread of fifteen (15) feet or greater in area and having trunks which can be maintained in a clean condition with over six (6) feet of clear wood measured from the ground at maturity. In addition, all palms with at least four and one-half (4½) feet of clear trunk between the ground level and the lowest branch are declared to be trees.~~

~~§ 180.47 APPLICABILITY.~~

~~—The terms and provisions of this subchapter shall apply to all municipally-owned property lying within the city limits, including developed parks, designated parks, road and drainage rights-of-way and utility and drainage sites except as otherwise provided in this subchapter. The Parks and Recreation Department of the city is~~

hereby designated as responsible for the tree program for the city and shall act as the City Tree Department. It shall be unlawful, without permission from the city, to remove, destroy, cut down, damage, plant, replant, prune or otherwise maintain any municipally-owned trees as defined by this subchapter.

~~§ 180.48 DUTIES AND RESPONSIBILITIES.~~

~~—(A) It shall be the responsibility of the Parks and Recreation Department to study, investigate, develop, update annually, and administer a tree plan which encourages city beautification, shade, and air filtration, noise abatement, property value enhancement and other desirable attributes of trees within the city. Such plan shall be reviewed and approved by the appropriate city departments and presented annually to the Environmental Advisory Board of the city for their review, and then to the City Council. Upon Council's acceptance and approval of a plan, it shall constitute the official comprehensive tree plan for the city until amended.~~

~~—(B) The Parks and Recreation Department, when requested by the City Council, shall consider, investigate, make findings of fact, report and make recommendations upon any special matter or question coming within the scope of its duties.~~

~~§ 180.49 GENERAL STANDARDS.~~

~~—(A) The city, its agent(s) or its designee(s) shall have the right to plant, prune, maintain, and remove any trees, shrubs, and other plants within all municipally-owned road rights-of-way, subject to the standards defined and outlined in the 1988 Florida Department of Transportation Highway Beautification and Planting Regulations, and in parks and on other municipally-owned property.~~

~~—(B) The city, its agent(s) or designee(s) may remove or cause to be removed from municipal property any tree or part thereof which is in an unsafe condition which by reason of its nature is injurious to sewers, water lines, electric lines, gas lines, or other public utilities or improvements or that is infected with any injurious fungus, insect or pest which is determined by the County Urban Forester to be a health hazard to neighboring trees, shrubs or other vegetation.~~

~~—(C) It shall be unlawful as a normal practice for any person or firm to top any tree growing on municipally-owned property without the approval of the city. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempt from this provision. Such exemption must be requested from the city in writing.~~

~~Trees planted under overhead wires or other obstructions shall be of species whose growth is not normally expected to create a need for topping.~~

~~—(D) Every owner of any tree overhanging any municipal road right-of-way within the city shall prune the branches so that such branches shall not interfere with the maintenance of the right-of-way. All such pruning shall be done to comply with the 1988 Florida Department of Transportation Highway Beautification and Planting Regulations and so that there shall be a clear space of nine (9) feet above the surface of any sidewalk or bike path for public access.~~

~~—(E) Owners of tree shall remove all dead, diseased or dangerous trees or parts thereof that obstruct road rights-of-way, sidewalks, or bike paths, or which are injurious to sewers, water lines, electric lines, gas lines or other public utilities or improvements.~~

~~—(F) The city shall have the right to prune or remove any tree or shrub on private property when it meets any of the conditions described in divisions (D) and (E) above.~~

~~—(G) Owners of property that abut rights-of-way property are permitted to plant trees providing that the selection and location of such trees are in accordance with the other provisions of this subchapter and that such planting are approved in writing after review and approval by the city.~~

~~—(H) No tree shall be planted near a structure, paved surface, or water, sewer or other underground utilities if it is of a species generally recognized as having a habit of invasive root growth.~~

#### ~~§ 180.50 ARBOR DAY.~~

~~—Arbor Day shall be observed each year with an official ceremony and proclamation.~~

#### ~~§ 180.51 EXCEPTIONS.~~

~~—The following exceptions to this subchapter shall be permitted in the manner described:~~

~~—(A) In the event that any tree or trees shall be determined to be in imminently hazardous or dangerous condition, as determined by the city so as to endanger health or safety and require immediate removal without delay, verbal authorization may be given by the city.~~

~~—(B) During the event of emergencies such as hurricane, windstorm, flood, freeze, or other disasters, the requirements of this subchapter may be waived by the city. Any such waivers shall be temporary.~~

~~—(C) Specifically exempt from the protections expressed by the terms and provisions of this subchapter are the following species of trees:~~

- ~~—(1) Australian Pine (*Casuariana* spp.);~~
- ~~—(2) Brazilian Pepper (*Schinus terebin-thifolius*);~~
- ~~—(3) Melaleuca (*Melaleuca quinquenervia*);~~
- ~~—(4) Chinaberry (*Melia azedarach*);~~
- ~~—(5) Camphor Tree (*Cinnamomum camphora*);~~
- ~~—(6) Ear Tree (*Enterolobium cyclocarpum*);~~
- ~~—(7) Eucalyptus (*Eucalyptus* spp.);~~
- ~~—(8) Castor Bean (*Ricinus communis*);~~
- ~~—(9) Chinese Tallow (*Sapium sebiferum*).~~

#### ~~§ 180.99 PENALTY.~~

~~—It shall be unlawful for any person to prevent, delay or interfere with the city or any of its agent(s), employees, or contractors, while engaging in the planting, cultivating, mulching, pruning, spraying or removing of any municipally-owned tree. Any person violating any provision of §§ 180.45 et seq. shall be guilty of a second degree misdemeanor punishable as provided in Fla. Stat. §§ 775.082 and 775.083.~~

### **CHAPTER 181: WATER AND SEWERS**

#### **EXPANSION OF SANITARY SEWER SYSTEM**

~~§ 181.050 REQUIREMENT OF ALL RESIDENTIAL SUBDIVISIONS OF ANY SIZE AND MULTIPLE FAMILY DEVELOPMENTS OVER ONE HUNDRED (100) UNITS IN SIZE TO PROVIDE EMERGENCY POWER AND PUMPING EQUIPMENT.~~

~~—(A) The emergency power and pumping requirement is provided for in this subchapter to provide emergency power and/or by-pass pumps for each lift station constructed in specified residential developments where sanitary sewer system is constructed.~~

~~—(B) Developers with less than four (4) lift stations shall provide at a minimum a by-pass pump for each lift station sufficient to maintain adequate pumping capacity so as not to allow a sewer overflow due to loss of power.~~

~~—(C) Developers with four (4) or more lift stations in a Planned Unit Development (PUD) shall provide a minimum of one (1) portable generator sufficient to operate every four (4) lift stations or portion thereof in order to maintain adequate pumping capacity so as not to allow a sewer overflow due to loss of power.~~

### **WATER SHORTAGE EMERGENCY**

#### **§ 181.060 DEFINITIONS.**

~~—For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—INDIVIDUAL. Any person, firm, corporation, or other legal entity, whether public or private.~~

~~—WATER. Water taken from:~~

~~—(1) The city water system;~~

~~—(2) Any groundwater system, including shallow and deep water wells drawing water from the Florida aquifer;~~

~~—(3) Any surface water system; or~~

~~—(4) Any other public water supply.~~

~~—(5) Including, but is not limited to, any system that uses any groundwater or interconnected surface waters for a water source irrespective of whether such system is publicly or privately owned.~~

~~—WATER SHORTAGE EMERGENCY. A declaration by the city or county of the city that a water shortage exists.~~

#### **§ 181.061 APPLICATION.**

~~—The provisions of this subchapter shall apply to all individuals who use water, as defined, herein within the city.~~

#### **§ 181.062 IMPLEMENTATION.**

~~—The curtailments and restrictions of water uses provided for herein shall be implemented upon a declaration at any time of a water shortage emergency by the City Council and shall remain in effect until such time as the City Council shall declare such emergency to be at an end.~~

~~§ 181.063 RESTRICTION OR CURTAILMENT OF WATER USES.~~

~~—Nonessential uses of water shall be restricted or curtailed during the existence of a water shortage emergency. These restrictions shall include, but are not limited to, the following:~~

~~—(A) The sprinkling, watering or irrigating of shrubbery, trees, lawns, grass, ground covers, plants, vines, and gardens shall be limited to the hours of 7:00 a.m. through 9:00 a.m. and 7:00 p.m. through 9:00 p.m. Further, such uses of water shall be authorized for the following categories of users on the following days of the week:~~

~~—(1) Residential property owners whose street addresses (house numbers) end in an odd number shall be authorized to use water for the above purposes only on odd numbered days during a declared water shortage or water shortage emergency;~~

~~—(2) Residential property owners whose street addresses (house numbers) end in an even number shall be authorized to use water for the above uses only on even numbered days during a declared water shortage or water shortage emergency;~~

~~—(3) All commercial uses (such as nurseries, apartments, condominiums, home owners' associations, golf courses, shopping centers, farmers, and other commercial users) of water shall use water for the above purposes only as provided herein:~~

~~—(a) Such commercial users whose business addresses (street numbers) end in an odd number shall be authorized to use water for the above purposes only on odd numbered days during a declared water shortage or water shortage emergency;~~

~~—(b) Such commercial users whose business addresses (street numbers) end in an even number shall be authorized to use water for the above purposes only on even numbered days during a declared water shortage or water shortage emergency.~~

~~—(4) Industrial properties shall use water for the above purposes only as provided herein:~~

~~—(a) Industrial properties whose business addresses (street numbers) end in an odd number shall be authorized to use water for the above purposes only on~~

~~odd numbered days during a declared water shortage or water shortage emergency;~~

~~—(b) Industrial properties whose business addresses (street numbers) end in an even number shall be authorized to use water for the above purposes only on even numbered days during a declared water shortage or water shortage emergency.~~

~~—(B) The escape of water through defective plumbing, which means to knowingly allow water to escape through any water system that is in disrepair;~~

~~—(C) The washing of sidewalks, driveways, porches, exterior of homes, apartments or other outdoor surfaces;~~

~~—(D) The washing of business or industrial equipment and machinery, except as required for the public health;~~

~~—(E) The operation of any ornamental fountain or other structure using water with or without a recirculating system;~~

~~—(F) The filling of swimming pools and wading pools not using a filter and recirculating system;~~

~~—(G) The washing of automobiles, trucks, trailers, railroad cars, mobile homes, campers, or any other type of mobile equipment, except at a business enterprise established for such purpose which recycles at least seventy-five percent (75%) of water used;~~

~~—(H) The use of water for dust control, except as required for the public health;~~

~~—(I) The use of water for hydrant flushing except for the purpose of maintaining chlorine residuals;~~

~~—(J) The use of water for a water-to-air air conditioning system except where a return well has been provided to recycle water back to the shallow aquifer.~~

#### ~~§ 181.064 ENFORCEMENT.~~

~~—(A) Every police officer or city enforcement officer, including but not limited to inspectors from the Fire Department who have arrest power pursuant to state law, or other enforcement personnel of the city who have such powers, shall be authorized and empowered to enforce the provisions of this subchapter.~~

~~—(B) In addition to the penalties for violations, provided herein, the City Manager may enforce the provisions of this subchapter by ordering discontinuance of service to any person violating the provisions hereof for the third and each~~

~~successive violation during any declared water shortage. If any person's water supply is discontinued under the provisions of this subchapter, such person will be required to pay all charges necessary for reconnection before the city will reconnect such person's water supply.~~

~~§ 181.065 EXCEPTION TO MAINTAIN SANITATION.~~

~~—The City Manager shall have the authority to permit a reasonable use of water in any case necessary to maintain adequate health and sanitation standards as set forth in the Brevard County Health Code. These permits shall be issued only upon the showing of good cause for the uses requested when supported by the aforesaid county health and sanitation standards.~~

**~~POTABLE WATER WELLFIELD PROTECTION CODE~~**

~~§ 181.130 PURPOSE.~~

~~—The primary purpose of this subchapter is to reduce the risk to human health associated with contaminated drinking water. The quantity and quality of water available for use as a public water supply is directly related to land activities. Presently, a majority of the city's residents obtain their potable water supply from wells that pump water from a shallow aquifer. This aquifer is recharged by rainfall that occurs in the area around the wellfield. Land use activity near potable water wells has direct consequences on the quality of water percolating into the surficial aquifer. To ensure the long-term use of the present and future wells and wellfields it is necessary to take steps which will help to prevent the contamination of underground fresh water.~~

~~§ 181.131 DEFINITIONS.~~

~~—For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—AQUIFER. A geologic formation through which water may be percolated, transmitted, stored and yielded.~~

~~—DESIGNATED PUBLIC UTILITY. Any agency which under public franchise or ownership, operates a well or wells, to provide potable or raw water to the public for consumption.~~

~~—HAZARDOUS CONSTITUENTS. Those chemicals and substances listed in Appendix A [of Ordinance 89-13, which is not codified in this subchapter, but is on file and available for reference in the office of the City Clerk].~~



~~—STANDARD INDUSTRIAL CODE (SIC). A publication printed by the U.S. Government Printing Office which classifies and defines industries and commercial activities.~~

~~—WELL. Any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed when the intended use of such excavation is to conduct groundwater from a source bed to the surface by pumping, natural flow or other method.~~

~~—WELLFIELD. An area of land which contains one (1) or more than one (1) well for obtaining water.~~

~~§ 181.132 LAND USE AND DISTANCE REQUIREMENTS FROM ACTIVE DESIGNATED PUBLIC UTILITY WATER WELLS.~~

~~—(A) The following land uses and activities shall be prohibited from locating within two hundred (200) feet of a designated public utility water well.~~

~~—(1) Stormwater discharge retention-detention facilities.~~

~~—(2) Any industrial or commercial activities that utilize, generate, or, store any of substances listed as hazardous constituents in Appendix A.~~

~~—(3) Any uses listed in the Modified Standard Industrial Code, being Appendix B. These uses have the potential for the discharge of contaminated stormwater.~~

~~—(4) Sanitary landfills.~~

~~—(5) Domestic wastewater facilities including underground storage and transportation facilities.~~

~~—(6) Mining or excavation operations of any kind.~~

~~—(B) The following land uses and activities shall be prohibited from locating within one thousand (1,000) feet of a designated public utility water well.~~

~~—(1) Any industrial or commercial activities that utilize, generate or store in excess of five (5) gallons of liquid or twenty-five (25) pounds of solid, of any substances listed as hazardous constituents in Appendix A.~~

~~—(2) Any uses listed in Modified Standard Industrial Code, being Appendix B. These uses have the potential for the discharge of contaminated stormwater.~~

~~—(3) Sanitary landfills.~~

~~—(4) Mining or excavation operations of any kind.~~

~~—(C) Special exception site plan approval shall be required to locate any domestic wastewater facilities which include underground storage and transportation facilities between two hundred (200) feet and one thousand (1,000) feet from a designated public utility water well.~~

~~Editor's note: Appendix A and Appendix B, attached to original Ordinance 89-13, passed April 27, 1989, have not been codified in this subchapter. Copies of Appendix A and Appendix B shall remain on file for public inspection in the office of the City Clerk.~~

#### ~~§ 181.133 FUEL STORAGE TANK AND PUMP CONSTRUCTION.~~

~~—All fuel storage tanks and pump systems in the city shall comply with the requirements of §§ 176.01 et seq. of this code of ordinances and shall also comply with all zoning locational requirements.~~

#### ~~§ 181.134 VESTED RIGHTS.~~

~~—This subchapter shall not in any way limit or modify the vested rights of any person to complete any development or improvements to lands based upon prior law where a previous permit has been issued, authorization has been granted or final engineering/architectural plans, sealed by an engineer/architect are on file with the city prior to the enactment of this subchapter and where such previous permits, authorization, or plans remain in effect or are continuously processed to permitting. City Council may acknowledge vested rights in other circumstances where it is equitable and just.~~

### **CHAPTER 182: PUBLIC IMPROVEMENTS**

#### **PROCEDURE FOR ACCEPTANCE AND MAINTENANCE**

##### ~~§ 182.01 CREATION.~~

~~—There is created a subchapter to be entitled "Procedures for Acceptance and Maintenance of Public Improvements."~~

##### ~~§ 182.02 DEFINITION.~~

~~—For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—PUBLIC IMPROVEMENTS. Physical changes made to raw land to make the land more usable, including structures placed on or under the land surface, grading, street pavements, sidewalks, curbs, gutters, drainage structures, water mains, sanitary sewer facilities, utility lines, traffic-control devices, street signs,~~

~~landscaping, permanent control points (PCP), permanent reference monuments (PRM) or any other structure or facility proposed to be accepted for maintenance by the public.~~

~~§ 182.03 REQUEST BY APPLICANT.~~

~~—(A) Contents. Prior to any public improvement(s) being submitted for acceptance for perpetual maintenance by the city, a written request must first be submitted to the city. Such request must describe the type, location and purpose of such improvement(s) to include, as applicable, the legal description of the area to be served by the improvement(s), the detailed operation of the improvement(s), and the public purpose served by the improvements. Any acceptance of public improvements shall meet all requirements contained in this Chapter with the exception of the following public improvement types:~~

~~—(1) Water, wastewater and reuse improvements may be accepted administratively by the Utilities Department provided the conditions of acceptance are contained within a written Service Agreement or other contract. The Utilities Department has the right to not accept such improvements administratively and may require that the applicant's request follow the procedures contained in this Chapter.~~

~~—(2) Subdivision improvements, where the City Council has agreed to accept identified public improvements during the Preliminary or Final Subdivision process, may be accepted administratively provided the applicant has constructed all improvements in conformance with approved subdivision construction plans. The reviewing Departments have the right to not accept such improvements administratively and may require that the applicant's request follow the procedures contained in this Chapter.~~

~~—(B) Meeting of City Council. Such request shall be heard at a regularly scheduled meeting of the City Council. The City Council, in its determination of whether to accept such improvements, shall consider the following:~~

~~—(1) The public necessity and purpose of accepting the improvement(s) to promote the health, safety, and welfare of the public;~~

~~—(2) The existing physical condition of the improvement(s);~~

~~—(3) The extent to which the improvement(s) meets city or site construction and design requirements or standards;~~

~~—(4) The city's financial ability and other capabilities to maintain such improvement(s) given its size, location, condition, and design;~~

~~—(5) The characteristics of the existing development to be served by the improvement(s), to include the type of development and density of development.~~

~~—(C) Determination of need to accept improvement(s). Following consideration of the above factors, the City Council shall make a determination of the need to accept the improvement(s), whether the city has the financial ability to maintain the improvement(s), the impact acceptance of the improvement(s) will have upon other municipal services, the public purpose to be served by accepting the improvement(s), the general capability of the city to maintain the improvement(s), whether the health, safety, and welfare of the general public will be served by acceptance of the improvement(s), and its intent to accept the improvement(s), or to accept the improvement(s) with conditions.~~

~~—(D) Written request, accompanying documents. Following a determination of the City Council of its intent to accept the public improvements(s) for maintenance, the applicant shall submit a written request to the City Manager with two (2) copies and one (1) complete set of "as-builts" which shall be reproducible. The request shall specifically request consideration of the following items:~~

~~—(1) Staff recommendations for approval of construction of the public improvement(s);~~

~~—(2) Release of the applicant from the performance bond or surety for construction of the public improvement(s);~~

~~—(3) A review of the project with the city staff on the issue of completion and acceptance of the public improvement(s) for maintenance purposes;~~

~~—(4) A request for the city to accept and maintain public improvement(s);~~

~~—(5) The applicant shall attach the engineer's certificate of completion with the application.~~

~~—(6) A review of a two (2)-year maintenance bond as per Chapter 184.~~

~~—(E) Applicability of provisions. The provisions of this section shall apply to all improvements proposed to be accepted by the city for maintenance unless a written request with "as-built" drawings has been submitted to the city prior to the effective date of this section.~~

~~§ 182.04 INITIAL CONSIDERATION.~~

~~—The city staff shall review, inspect and test the public improvements at the applicant's expense. The type of tests shall be selected by the city, shall be carried out by firms selected by the city and shall be carried out in accordance with the standards, practices and procedures generally utilized by the industry for such tests. Review of the public improvements by the city staff is to be based upon the applicable city, county, state and/or industry construction specifications that set the standards for the public improvement contained in the request. The construction standards that will apply will vary as follows:~~

~~—(A) For public improvements that were constructed, placed, or installed prior to July 1, 1982, the construction, placement or installation shall be in accordance with the approved construction plans and the applicable construction standards in effect at the time of construction. If, however, review, inspection or testing yield results not in keeping with the above, corrective measures shall be made in accordance with the approved construction plans and the applicable construction standards in effect at the time of construction by the developer.~~

~~—(B) For public improvements to be constructed within the subdivided plats that were recorded prior to July 1, 1982, but have not been constructed, and for which construction plans have been prepared and approved, the applicable construction standards will be the standard construction specifications of the city and made a part of this chapter, by reference, including, but not limited to, Divisions 2, 3, 4 and 5 thereof as those specifications exist today or as they may be amended from time to time by the city engineer with the exception of those improvements where construction has begun within two (2) years from July 1, 1982. In those instances the construction standards shall be in accordance with the approved construction plans and the applicable construction standards in effect at the date of platting and plan approval. Upon the written request of a developer for good cause, the City Manager may extend, for a maximum period of one (1) year, the initial construction date for the applicable units under this section. GOOD CAUSE, for purposes of this division (B), shall include the inability to obtain or receive approval of necessary permits and approvals from the regulatory agencies that regulate such construction.~~

~~—(C) For public improvements to be constructed within subdivided plats that were recorded prior to the effective date of this subchapter but for which construction plans have not been approved, the applicable construction standards will be the standard construction specifications of the city adopted and made a part of this subchapter, by reference, including but not limited to Divisions 2, 3, 4 and 5 thereof~~

~~as those specifications exist today or as they may be amended from time to time by the City Engineer.~~

~~—(D) For public improvements to be constructed under other than any of the foregoing conditions, the applicable construction standards will be the standard construction specifications of the city adopted and made a part of this subchapter, by reference, including but not limited to Divisions 2, 3, 4 and 5 thereof as those specifications exist today or as they may be amended from time to time by the City Engineer.~~

~~—(E) In all of the foregoing cases, where modification of the requirements of the city's current standard construction specifications is being accepted, the modification is not intended to exempt compliance with any and all other applicable existing provisions of this code of ordinances and any other ordinance of the city.~~

~~—(F) It is the express intent of the City Council to permit the City Engineer, in his sound discretion, to amend specifications from time to time in accordance with the standards as established by good engineering practices and industry standards that pertain to the particular improvement offered for acceptance by the developer.~~

~~Editor's note: Current construction standards are set forth in Chapter 170 of this code of ordinances and in other applicable provisions of this Title XVII.~~

#### ~~§ 182.05 UNACCEPTABLE IMPROVEMENTS.~~

~~—If the public improvement is determined to be unacceptable, the City Manager shall have the following options:~~

~~—(A) Recommendation to the City Council that they invoke any posted bond or surety;~~

~~—(B) Direction of the city staff to continue working with the applicant on a correction list system to complete the public improvements and/or bring them up to all applicable standards, all at the applicant's expense;~~

~~—(C) Recommendation to the City Council that the public improvement not be accepted.~~

#### ~~§ 182.06 REPORT TO COUNCIL.~~

~~—Upon completion of the review, inspection, testing and approval of the public improvement, the City Manager shall report the findings to the City Council. In no event shall the staff review process exceed sixty (60) days unless testing of the public improvement cannot be completed within such time period, in which event the time period shall be extended an additional sixty (60) days.~~

~~§ 182.07 ACCEPTABLE IMPROVEMENTS.~~

~~—If the public improvement is determined to be acceptable, the City Council may consider a resolution accepting the construction of the public improvements specifically listed in the resolution, releasing the performance bond as to those acceptable public improvements and requiring the applicant to maintain the specified public improvements. Adoption of the resolution shall be contingent upon the applicant posting a maintenance bond or adequate security as determined by the Council, for the maintenance period prescribed by the City Council. For those public improvements that were constructed prior to July 1, 1982, the maintenance period will be for one (1) year; for those public improvements constructed after July 1, 1982, the maintenance period will be for two (2) years. The amount of the maintenance bond must be approved by the City Council and the City Attorney as to the form. Such resolution shall also be contingent upon the applicant complying with the provisions of § 182.08. Such bond or security shall be filed with the City Clerk.~~

~~§ 182.08 REVIEW FOR FINAL ACCEPTANCE FOR MAINTENANCE.~~

~~—(A) Not less than ninety (90) days and not more than one hundred and fifty (150) days prior to the expiration of the two (2) year maintenance period, the applicant shall request the city to review, reinspect and retest the public improvement, at the applicant's expense, for purposes of final acceptance of the improvement for maintenance purposes.~~

~~—(1) Such retesting shall be based upon standards, practices and procedures that are generally utilized in the industry that pertain to the public improvement sought to be accepted.~~

~~—(2) If the public improvement is determined to be acceptable, the City Council shall consider adoption of a final resolution accepting the maintenance of the improvements specifically listed in the resolution and establish the effective date as the termination of the two (2) year maintenance period.~~

~~—(3) If the public improvement is determined to be unacceptable, the City Manager shall have the following options:~~

~~—(a) Recommendation to the City Council that they invoke the posted maintenance bond or security;~~

~~—(b) Direction of the city staff to continue working with the applicant on a correction list to complete the improvement at the applicant's expense;~~

~~—(c) Recommendation that the City Council take any other action it may deem appropriate, including the rejection or tabling of the request.~~

~~—(B) In the event an applicant fails to either request review of the applicable improvement or complete the required corrections under this section within the appropriate time, such applicant will be required to post an additional one (1) year maintenance bond or security. If the applicant fails to post such a bond or security within thirty (30) days before expiration of the existing bond or security, the City Council may rescind its prior resolution accepting construction of the improvements, invoke the posted maintenance bond or security, if appropriate, and the applicant shall be required to recommence beginning with the requirements as established in § 182.03.~~

#### ~~§ 182.09 NECESSITY OF COUNCIL ACTION TO ASSUME MAINTENANCE RESPONSIBILITY.~~

~~—Any resolution that provides for the city to finally assume responsibility to maintain any public improvement shall not become final until the expiration of any maintenance period required hereunder. The maintenance of public improvements shall never become the responsibility of the city unless and until final acceptance by the City Council by appropriate resolution at the end of the two (2) year maintenance period.~~

#### ~~§ 182.10 FEES.~~

~~—The fee charged to the applicant shall be on the basis of actual time spent reviewing the public improvement by the city staff and any actual testing costs. The maximum amount an applicant may be charged for staff review time, not including actual testing costs, is set by adopted City Fee Schedule per request to review a public improvement. The charge per hour of individual staff time is a flat rate of twenty dollars (\$20.00) per hour. The minimum charge for any review is twenty dollars (\$20.00). Fees shall be paid as invoiced by the Finance Department of the city and before the City Council's consideration of the public improvement.~~

### **CHAPTER 183: COMPREHENSIVE PLAN REGULATIONS**

#### **GENERAL PROVISIONS**

#### ~~§ 183.01 COMPREHENSIVE PLAN.~~

~~—(A) Authority. This section is adopted pursuant to Fla. Const. Art. VIII, § 2,; Fla. Stat. Ch. 163 [being the Local Government Comprehensive Planning and Land~~



~~Development Regulation Act] and Fla. Stat. Ch. 166; and Fla. Laws Ch. 63-2001, Special Acts of 1963.~~

~~—(B) Purpose and intent. The city declares that the purpose and intent of this section is to provide for the city a plan which will guide future growth and development; encourage the most appropriate use of land, water and other resources consistent with the public interest; preserve, promote and protect the public health, safety, comfort, good order, appearance, convenience, and general welfare; preserve the residential or historical character of neighborhoods, prevent the overcrowding of land, avoid undue concentration of population; provide adequate and energy-efficient transportation, water, sewage, drainage, fire protection, law enforcement, schools, parks, recreation facilities, housing and other services, facilities and resources; enhance the aesthetic appeal of the community; promote the residential, business, and industrial needs of the community; and conserve and protect natural resources within the city, while protecting private property rights. By the adoption of this plan, the city will encourage and actively pursue coordination and cooperation between the planning and development activities of the city, other local governments, regional agencies, state government, and private property owners. The adoption of this section reserves the city's right to balance the needs of tide community.~~

~~—(C) Adoption.~~

~~—(1) The city adopts, by reference, the comprehensive plan and the goals, objectives and policies of each element:~~

~~——(a) Future land use element;~~

~~——(b) Recreation and open space element;~~

~~——(c) Coastal management element;~~

~~——(d) Conservation element;~~

~~——(e) Housing element;~~

~~——(f) Infrastructure element, consisting of sanitary sewer, solid waste, drainage, potable water and natural ground water aquifer recharge sub-elements;~~

~~——(g) Intergovernmental coordination element;~~

~~——(h) Capital improvements elements;~~

~~——(i) Transportation element consisting of traffic circulation and sub-elements;~~  
~~and~~

~~——(j) Mass transit;~~

~~——(k) Ports, aviation and related facilities, and CIE schedule of capital improvements.~~

~~——(2) Copies of the elements set forth in division (1) above are incorporated herein by reference as Exhibit A, which is attached to Ordinance 88-28, as amended by Exhibits A and B of Ordinance 90-20.~~

~~——(D) Adoption of future land use map. The city adopts, by reference, the future land use map as part of the comprehensive plan of the city. A copy of the map, as may be amended from time to time, is incorporated herein by reference as Exhibit B, which is attached to Ordinance 88-28 as amended by Exhibit C of Ordinance 90-20.~~

~~——(E) Adoption of future traffic circulation map. The city adopts, by reference, the future traffic circulation map as part of the comprehensive plan of the city. A copy of this map is incorporated herein by reference as Exhibit C, which is attached to Ordinance 88-28 as amended by Exhibit D of Ordinance 90-20. The future traffic circulation map shall serve as an official guide for future development within the city.~~

~~——(F) Adoption of procedure for monitoring. The city adopts, by reference, the procedure for monitoring and evaluation of the comprehensive plan, which is incorporated herein by reference as Exhibit D and which is attached to Ordinance 88-28.~~

~~——(G) Construction. The comprehensive plan and its elements shall be constructed by the city and its officials to accomplish the purpose and intent of this section. In the event various elements of the plan may appear to be in conflict, then in that event, the city and its officials shall resolve such conflict consistent with the purpose of this section. Any decision by the city or its officials construing various elements of the comprehensive plan shall be presumed to be fairly debatable. The city expressly reserves its legislative function to implement this comprehensive plan and to construe its various elements.~~

~~——(H) Interpretation of land use boundaries. Where uncertainty exists with respect to the boundaries of any of the land use districts as shown on the future land use map, the following rules shall apply:~~

~~——(1) Where boundaries approximately follow streets, alleys, or highways. Where district boundaries are indicated as approximately following the centerline or street line of streets, the centerline or alley line of alleys, or the centerline or~~

~~right-of-way line of highways such lines shall be construed to be such district boundaries.~~

~~—(2) Where boundaries parallel street lines, alley lines or highway right-of-way lines. Where district boundaries are so indicated that they are approximately parallel to the centerlines or street lines of streets, the center lines or alley lines of alleys, or the centerlines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale shown on the future land use map.~~

~~—(3) Where boundaries approximately follow lot lines. Where district boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be such boundaries.~~

~~—(4) Where the boundary follows a railroad line. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located midway between the main tracks of the railroad lines.~~

~~—(5) Where the boundary follows a body of water. Where the boundary of a district follows a stream, lake or other body of water such boundary line shall be construed to be the limit of the jurisdiction of the city, unless otherwise indicated.~~

~~—(6) Submerged areas not included in district. All areas within the corporate limits of the city which are under water and are not shown as included within any district shall be subject to all of the regulations of the district which immediately adjoins the water area. If the water area adjoins one (1) or more districts the boundaries of each district shall be construed to extend into the water area in a straight line until they meet the other district.~~

~~—(7) Where property has not been included in district. In every case where property has not been specifically included within a district, or where territory has become a part of the city by annexation, the same shall automatically be classed as lying and being in the single-family land use district until such classifications shall have been changed by an amendment to the future land use map as provided by law.~~

~~—(8) Vacation of public ways. Whenever any street, alley, or ether public way is vacated in the manner authorized by law, the land use district adjoining each side of such street, alley, or public way shall be automatically extended to the center of such vacation and all area included in the vacation shall then henceforth by subject to all regulations of the extended districts.~~

~~—(9) Where district boundaries are indicated as following platted lot lines, such lot lines shall be construed to be the district boundaries.~~

~~—(10) Where district boundaries are indicated by specific dimensions, such specific dimensions shall control.~~

~~—(11) Where district boundaries divide platted lots or cross unsubdivided property, and where no specific dimensions are indicated on the future land use map, the scale of the future land use map shall control.~~

~~—(12) Where the street or property layout or other physical features existing on the ground are at variance with the future land use map, or where other uncertainties exist as to interpretation of the future land use map, the Planning Director shall interpret the map to fix the exact location of land use boundaries.~~

~~—(I) (1) All development undertaken after the effective date of this section shall be consistent with such plan, elements, and maps except as provided herein.~~

~~—(2) The Planning Director shall be the caretaker of and responsible for recording all changes to the district boundaries on the future land use map promptly after any amendment has been approved by the City Council.~~

~~—(J) Vested rights.~~

~~—(1) In the event any provision of the comprehensive plan or maps would limit or modify the vested rights of any person or entity to complete any development that has been previously authorized, then in that event, the city may recognize the right to complete the development as provided herein. The city recognizes the right of any person to complete the following development:~~

~~—(a) Development that has received a building permit;~~

~~—(b) Development that has received final plat approval or final site plan approval;~~

~~—(c) Development that has received preliminary plat approval, preliminary subdivision approval, or preliminary PUD approval provided the development has secured a permit to construct all or any phase of such development and is continuing the development in good faith.~~

~~—(2) Any person or entity with vested rights who has a right to complete a development and has secured a building permit, final plat approval, final site plan approval, or preliminary approval as provided above shall lose its right to complete such development if such development does not maintain a current building permit, or current site plan or development approval as provided for by this code of~~

~~ordinances of the city. Once a development has lost its current approval, then in that event future development shall comply with applicable provisions of the comprehensive plan and maps.~~

~~—(3) The city may recognize other applications for vested rights in accordance with the following procedure:~~

~~—(a) Any property owner who claims to have vested rights based upon a prior approval from the city other than as provided above may submit to the city manager, within one hundred and twenty (120) days after the effective date of this section, a written request for recognition of the vested rights.~~

~~—(b) The applicant shall submit such information as the applicant deems appropriate to support a claim of vested rights including a legal description of property, dates of any recent rezoning, preparation of any plans, approval of any plans, any action of the city upon which applicant has relied, facts showing substantial reliance or change in position.~~

~~—(c) Within ninety (90) days after receipt of the application, the City Council shall either recognize or reject the applicant's claim of vested rights. If this city fails to act upon such request within ninety (90) days, then the application shall be deemed to be denied. No suit shall be filed by the applicant unless prior thereto the applicant has made a request of the city prior to the litigation.~~

~~—(K) Constitutional claims.~~

~~—(1) In the event any person claims that any provision of the comprehensive plan, elements, or maps constitutes a taking of the landowner's property without due process of law and the payment of just compensation as provided for in the Florida Constitution and the Constitution of the United States of America, then in that event, the person shall first present the claim to the city. The provisions of Fla. Stat. § 163.3215 shall prevail on any claims that may be asserted under such statutes and this section shall not be construed as an additional remedy presently governed by Fla. Stat. § 163.3215.~~

~~—(2) Any person claiming such taking shall:~~

~~—(a) Submit the claim in writing to the City Manager identifying the name and address of the property owners;~~

~~—(b) The present use of the property;~~

~~—(c) The present land use designation and zoning classification;~~

~~— (d) The particular provision of the comprehensive plan that the person believes to have constituted a taking;~~

~~— (e) The remedy requested;~~

~~— (f) Documentation or other evidence demonstrating the economic deprivation;~~

~~— (g) Case law or legal authority, if any, that demonstrates the taking;~~

~~— (h) Such other information demonstrating how the plan or element constitutes a taking.~~

~~— (3) After the city has received the request, it shall have ninety (90) days to review and act upon the request. Due public notice as required by Fla. Stat. Ch. 163 and Ch. 166, shall be provided prior to granting any relief under this section. The city reserves its full legislative function to act upon requests under this section and the actions shall be presumed to be fairly debatable.~~

### **CONCURRENCY MANAGEMENT SYSTEM**

#### **§ 183.20 PURPOSE AND INTENT.**

~~— The concurrency management system shall implement established minimum acceptable level of service standards for roads, potable water, sanitary sewer, solid waste, drainage and parks. This system is designed to utilize the most current and available data regarding the above public facilities or services to measure the impact of any development permit proposal upon the facilities for which levels of service have been adopted. No final development permit can be issued unless adequate facilities or services are available as determined by the concurrency evaluation.~~

#### **§ 183.21 EVALUATION CRITERIA.**

~~— The city shall utilize the following criteria to determine whether levels of service are adequate to support the specific impacts of a proposed development:~~

~~— (A) Roadways.~~

~~— (1) (1) Capacity for transportation facilities shall be evaluated using the 2002 Quality/Level of Service Handbook, Florida Department of Transportation.~~

~~— (2) Projected impacts on the transportation system shall be determined by utilizing the trip generation standards set forth in the Trip Generation Manual, 7th Edition, Institute of Transportation Engineers, and evaluating their impact at points of ingress and egress to roadways in the city.~~

~~— (3) (a) The calculation of total traffic generated by a proposed nonresidential project will assume one hundred percent (100%) buildout and occupancy of the project. Credit against the trip generation rates may be taken utilizing the percentages below:~~

~~Percent of Captured Trips from Passing Traffic~~

~~Use~~

~~Percentage (%)~~

~~Percent of Captured Trips from Passing Traffic~~

~~Use~~

~~Percentage (%)~~

~~Shopping centers:~~

~~— More than 400,000 sq. ft.~~

~~25~~

~~— 100,000 — 400,000 sq. ft.~~

~~25~~

~~— Less than 100,000 sq. ft.~~

~~25~~

~~Supermarkets~~

~~25~~

~~Hardware stores~~

~~5~~

~~Convenience stores~~

~~40~~

~~Fast food restaurants~~

~~35~~

~~Restaurants~~

~~15~~

~~Banks~~

46

Day care centers

40

Service stations/carwashes

58

Offices

0

Industrial uses

0

-

~~—(b) Any capture of trips from passing traffic for uses not specified above or in excess of those percentages must be justified by the applicant.~~

~~—(4) Current operating level of service shall be based upon the most recent traffic counts available plus projected traffic counts from previously committed developments.~~

~~—(B) Sanitary sewer and potable water.~~

~~—(1) City system. Capacity shall be determined by capacity reservation for the project by the Public Works Department of the city.~~

~~—(2) General development utilities system. Adequate capacity shall be determined by capacity reservation for the project by general development utilities.~~

~~—(3) Brevard Consumer Health Services. Issuance of a septic tank permit and approval of potable water well.~~

~~—(C) Solid waste. County Utilities Department shall certify that capacity exists prior to development approval.~~

~~—(D) Parks.~~

~~—(1) Adequacy of public parks shall be based on Palm Bay's level of service standards of five (5) acres per one thousand (1,000) population by planning area.~~

~~—(2) The impact of a proposed development will be determined by utilizing the official household-size multiplier, from the University of Florida, Bureau of Economic and Business Research for Palm Bay, times the number of units projected for a project.~~



~~—(E) Drainage. Certification that a project meets all applicable standards of the stormwater management regulations set forth in Chapter 174 of this code of ordinances shall be made by the city engineering division prior to permit approval.~~

#### ~~§ 183.22 CONCURRENCY EVALUATION FINDINGS.~~

~~—The city shall issue a concurrency evaluation during the building permit process and this evaluation shall certify either a nondeficiency finding or a deficiency finding:~~

~~—(A) Nondeficiency finding. A finding of nondeficiency by the concurrency evaluation shall remain valid provided a building permit has been issued within sixty (60) days of the concurrency evaluation. Once a building permit has been issued, the finding shall remain valid until construction has been completed and a certificate of occupancy issued; or for the life of the permit until it is revoked or suspended for failure to proceed in a timely manner as prescribed.~~

~~—(B) Deficiency finding. A finding of deficiency by the concurrency evaluation shall negate approval of the building permit application or force deferral of this approval.~~

#### ~~§ 183.23 CUMULATIVE RECORDS OF LEVEL OF SERVICE.~~

~~—The concurrency management system shall maintain a cumulative record of the level of service allocations permitted by the approval of building permits relative to the operating levels of service for the referenced public facilities.~~

#### ~~§ 183.24 ADMINISTRATION.~~

~~—The Planning Division shall administer the provisions of this subchapter and may develop such administrative rules, forms, applications and fees as may be required to implement the concurrency management system.~~

### **PROPORTIONATE FAIR SHARE TRANSPORTATION**

#### ~~§ 183.30 SHORT TITLE, AUTHORITY, APPLICABILITY.~~

~~—(A) This subchapter shall be known and may be cited as the "City of Palm Bay Proportionate Fair Share Transportation Ordinance."~~

~~—(B) This subchapter is adopted pursuant to Fla. Stat. § 163.3180(16).~~

~~—(C) The provisions of this subchapter shall apply to all developments within the city that impact a road segment where the road segment has failed to achieve transportation concurrency by having a level of service below that adopted in the city Comprehensive Plan.~~

~~—(D) This section shall not apply to multiuse Developments of Regional Impacts (DRIs), to developments exempted from concurrency or to developments creating de minimis impacts.~~

~~—(E) This subchapter shall be superior to any Brevard County ordinance which is adopted pursuant to Fla. Stat. § 163.3180(16).~~

#### ~~§ 183.31 PURPOSE AND INTENT.~~

~~—The purpose and intent of this subchapter is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors.~~

#### ~~§ 183.32 DEFINITIONS.~~

~~—For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—CAPITAL IMPROVEMENTS. The outlay of capital dollars for the planning of, engineering for, acquisition of land for, and construction of roads, turn lanes, intersection improvements and signalization, but does not include maintenance.~~

~~—COMMUNITY INVESTMENT PLAN (CIP). The five-year capital improvement element adopted in the City of Palm Bay Comprehensive Plan.~~

~~—DEVELOPER. Any person, any business entity including but not limited to any corporation partnership, association, trust, estate, business trust, agency, two (2) or more persons having a joint or common interest, governmental entity, or any other entity undertaking the development of land.~~

~~—FAIR SHARE TRANSPORTATION FACILITIES IMPACT FEE or IMPACT FEE. The fee required to be paid in accordance with the terms of the appropriate sections of the City of Palm Bay Fair Share Transportation Facilities Impact Fee Ordinance.~~

~~—LAND. The earth, water, and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land.~~

~~—LAND DEVELOPMENT ACTIVITY GENERATING TRAFFIC. The carrying out of any building activity or the making of any material change in the use of any structure or land that attracts or produces vehicular trip(s) over and above that produced by the existing land development activity, and consequently places an additional demand on the major road network system.~~

~~— LEVEL OF SERVICE. A qualitative measure that represents the collective factors of speed, travel time, traffic interruption, freedom to maneuver, safety, driving comfort and convenience, and operating costs provided by a road facility under a particular volume condition. Levels of service vary from A to F. LEVEL OF SERVICE C shall mean a roadway condition as determined and established by the 2002 Florida Department of Transportation's 2002 Quality/Level of Service Handbook.~~

~~— MAJOR ROAD NETWORK SYSTEM. All arterial and collector roads within the city, including proposed arterial and collector roads necessitated by new land development activity generating traffic.~~

~~— PERSON. An individual, any business entity including but not limited to a developer, corporation, governmental agency, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest, or any other entity.~~

#### ~~§ 183.33 RULES OF CONSTRUCTION.~~

~~— In the construction of this subchapter, the rules set out in this section shall be observed unless such construction is inconsistent with the manifest intent of the City Council. The rules of construction and definitions set out herein shall not be applied to any part of this section that contains any express provisions excluding such construction or where the subject matter or content of such section would be inconsistent with this section.~~

~~— (A) Generally. All provisions, terms, phrases, and expressions contained in this section shall be liberally construed in order that the true intent and meaning of the City Council may be fully carried out. Terms used in this section, unless otherwise specifically provided, shall have the meanings prescribed by the Florida Statutes for the same terms.~~

~~— (B) Text. In case of any difference of meaning or implication between the text of this subchapter and any figure, the text shall control.~~

~~— (C) Delegation of authority. Where there is a provision requiring the head of a department or some other city officer to do some act or to perform some duty, it is to be construed to authorize that person to delegate professional level subordinates to perform the duty, unless the terms of the provision or section specify otherwise.~~

~~— (D) Gender. Words of the masculine gender shall be construed to include the feminine and vice versa.~~

~~—(E) Day. A calendar day.~~

~~—(F) Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.~~

~~—(G) Number. A word of the singular number only, may extend and be applied to several persons and things as well as to one (1) person and thing. The use of the plural number shall be deemed to include any single person or thing.~~

~~—(H) Shall, may. "Shall" is mandatory; "may" is permissive.~~

~~—(I) Tense. Words used in the past tense include the future as well as the past or present.~~

~~—(J) Written or in writing. Any representation of words, letters or figures whether by printing or otherwise.~~

~~—(K) Year. A calendar year unless a fiscal year is indicated.~~

#### ~~§ 183.34 GENERAL REQUIREMENTS.~~

~~—(A) A developer may choose to satisfy the transportation concurrency requirements of the city by making a proportionate fair share contribution, pursuant to the following requirements:~~

~~—(1) The proposed development is consistent with the Comprehensive Plan and applicable Land Development Regulations; and,~~

~~—(2) The city five-year Community Investment Program (CIP) includes a transportation capital improvement that, upon completion, will accommodate additional traffic generated by the proposed development.~~

~~—(B) The city may choose to allow a developer to satisfy transportation concurrency requirements by making a proportionate fair share contribution by contributing to an improvement, that upon completion, will accommodate additional traffic generated by the proposed development, but is not contained in the five-year CIP, where one (1) of the following conditions apply:~~

~~—(1) The city adds the improvement to the five-year CIP no later than the next regular capital improvements update of the Comprehensive Plan, provided that the improvement is financially feasible as defined by Fla. Stat. § 163.3180(16)(b)(1); or,~~

~~—(2) If the funds in the five-year CIP are insufficient to fully fund the construction of the improvement, the city may enter into a proportionate fair share agreement with the developer authorizing construction of that amount of development on which the proportionate fair share amount is calculated if the proportionate fair share amount in such agreement is sufficient to pay for one (1) or more improvements which will, in the opinion of the City Council, significantly benefit the impacted transportation system, provided that improvement(s) is(are) adopted into the five-year CIP no later than the next regular capital improvements update of the Comprehensive Plan.~~

~~—(C) Any transportation capital improvement proposed to meet the developer's proportionate fair share obligation must meet the design standards of the city for city-maintained roads and the design standards of the applicable governmental entity for all other roads.~~

#### ~~§ 183.35 APPLICATION PROCESS.~~

~~—(A) A developer who shall commence any land development activity generating traffic that results in a failure of a road segment to achieve transportation concurrency may apply to the city for a proportionate fair share agreement.~~

~~—(B) Prior to submitting an application for a proportionate fair share agreement, a pre-application meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options and other relevant issues. If the road segment that has failed to achieve transportation concurrency is on the Strategic Intermodal System, the Florida Department of Transportation shall be requested to participate in the pre-application meeting.~~

~~—(C) Procedures for review of application for proportionate fair share agreement.~~

~~—(1) The developer shall submit an application to the Growth Management Director that includes a non-refundable application fee of five thousand dollars (\$5,000.00) and the following:~~

~~—(a) Name, address and contact information of the developer;~~

~~—(b) A drawing and legal description of the land;~~

~~—(c) Phasing schedule;~~

~~—(d) Description of the requested fair share mitigation;~~

~~—(e) If the requested fair share mitigation involves a road segment on the Strategic Intermodal System (SIS), evidence of concurrence from the Florida Department of Transportation.~~

~~—(f) Traffic study performed by a licensed traffic engineer demonstrating failure of road segment to achieve transportation concurrency.~~

~~—(2) Within twenty (20) days of receipt of the application, the Growth Management Director shall review the application to determine if the application is complete. If it is determined that the application is not complete, the Growth Management Director shall send a written statement to the developer delineating the deficiencies. If such deficiencies are not remedied by the developer within thirty (30) days of receipt of the written notification, then the application shall be deemed abandoned. The Growth Management Director shall grant an extension to cure such deficiencies, provided the developer has shown good cause for the extension and has taken reasonable steps to effect a cure.~~

~~—(3) Once the Growth Management Director determines that the application is complete, written notification shall be sent to the developer. The Growth Management Director shall also forward the developer's application to the City Attorney who shall, within thirty (30) days, draft a proportionate fair share agreement for consideration by the City Council at a meeting no later than sixty (60) days from the date the developer received the notification that the application was complete.~~

~~—(4) No proportionate fair share agreement shall be effective until approved by the City Council.~~

#### ~~§ 183.36 DETERMINATION OF PROPORTIONATE FAIR SHARE OBLIGATION.~~

~~—(A) Proportionate fair share mitigation includes, without limitation, separately or collectively, private funds, contributions of land and contribution of transportation facilities.~~

~~—(B) The methodology used to calculate a developer's proportionate fair share obligation shall be as provided in Fla. Stat. § 163.3180(12), and as represented by the following formula:~~

$$\text{Proportionate Share} = [(\text{Development Trips}) / (\text{SV Increase})] \times \text{Cost}$$

~~Where:~~

~~Development Trips = Those trips from the development that are assigned to roadway segment;~~

~~SV Increase = Service volume increase provided by the improvement to roadway segment~~

~~Cost = Adjusted cost of the improvement.~~

~~—(C) For the purposes of determining proportionate fair share obligations, capital improvement costs shall be based upon the actual cost of the improvement as obtained from the CIP, the Brevard MPO Transportation Improvement Program, or the Florida Department of Transportation Work Program. Where such information is not available, the improvement cost shall be determined using one (1) of the following methods:~~

~~—(1) An analysis by the Growth Management Department of costs, adjusted by the Florida Department of Transportation Price Trends Index from the previous year, by cross section type that incorporates data from recent projects; or,~~

~~—(2) The most recent issue of Florida Department of Transportation "Transportation Costs", as adjusted, based upon the type of cross section (urban or rural); locally available data from recent projects on acquisition, drainage, and utility costs; and significant changes in the cost of materials due to unforeseeable events.~~

~~—(D) If the city has accepted an improvement project proposed by the developer, then the value of the improvement shall be determined by using one (1) of the methods provided in this section.~~

~~—(E) If the city accepts any right-of-way dedication for the proportionate fair share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at one hundred and twenty percent (120%) of the most recent assessed value of the land, upon which the right-of-way is or will be located, by the Brevard County Property Appraiser or, at the mutual agreement of the city and the developer, by fair market value established by an independent appraisal approved by the city and at no expense to the city. The developer shall supply a certificate of title or title search of the land to the city at no expense to the city. If the estimated value of the right-of-way dedication proposed by the developer is less than the city estimated total proportionate fair share obligation for that development, then the developer must also pay the difference.~~

#### ~~§ 183.37 TRANSPORTATION FACILITIES IMPACT FEE CREDIT.~~

~~—(A) Proportionate fair share mitigation shall be applied as a credit against impact fees. Credits will be given for that portion of the impact fees that would have been used to fund the improvements on which the proportionate fair share contribution is calculated. Additionally, if the proportionate fair share contribution is based on only a portion of the development's traffic, the credit will be limited to~~

~~that portion of the impact fees on which the proportionate fair share contribution is based.~~

~~—(B) At the time the proportionate fair share obligation is being determined, the city will also compute the transportation facilities impact fee obligation for the proposed development. If the developer's proportionate fair share obligation is less than the development's anticipated total transportation facilities impact fee, then the developer must pay the difference to the city.~~

#### ~~§ 183.38 PROPORTIONATE FAIR SHARE AGREEMENTS.~~

~~—(A) Should the developer fail to apply for a building permit within one (1) year of the date of execution of the proportionate fair share agreement, then the agreement shall be considered null and void, and the developer shall be required to reapply in accordance with the provisions of this section.~~

~~—(B) Payment of the proportionate fair share contribution is due in full prior to issuance of the final development order or recording of the final plat and shall be nonrefundable. If the payment is submitted more than one (1) year from the date of execution of the agreement, then the proportionate fair share cost shall be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement at the time of payment, pursuant to the methodology set forth in § 183.36 and adjusted accordingly.~~

~~—(C) Developer improvements authorized under this subchapter involving dedications to the city must be completed upon final acceptance of the improvements and receipt of a warranty bond. The form of the warranty bond shall be approved by the City Attorney.~~

~~—(D) Developer improvements authorized under this subchapter not involving dedications to city must be completed upon recording of a final plat or upon issuance of a certificate of occupancy, whichever event first occurs.~~

~~—(E) Any requested change to a development project subsequent to a development order will be subject to additional proportionate fair share contributions to the extent the change would generate additional traffic.~~

~~—(F) A developer may submit a letter to withdraw from the proportionate fair share agreement at any time prior to the execution of the agreement. The application fee to the city will be nonrefundable.~~

#### ~~§ 183.39 APPROPRIATION OF FAIR SHARE REVENUES.~~



~~—(A) All proportionate fair share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the CIP, or for use as otherwise established in the terms of the proportionate fair share agreement.~~

~~—(B) In the event a scheduled transportation facility improvement is removed from the CIP, then the revenues collected for its construction shall be applied toward the construction of another improvement within that same corridor that would mitigate the impacts of development pursuant to the requirements of § 183.34(B)(2), as determined by the City Council.~~

### **DEVELOPMENT AGREEMENT**

#### **§ 183.40 SHORT TITLE, AUTHORITY, APPLICABILITY.**

~~—(A) This subchapter is adopted pursuant to Fla. Stat. § 163.3220(4).~~

~~—(B) The provisions of this subchapter shall apply to all developments within the City that impacts public facilities, such as road, stormwater, utilities, parks, and public safety infrastructure, for which the developer shall be required to improve as a result.~~

#### **§ 183.41 PURPOSE AND INTENT.**

~~—The purpose and intent of this subchapter is to establish a process whereby the impacts of development on City infrastructure can be mitigated by the cooperative efforts of the public and private sectors.~~

#### **§ 183.42 DEFINITIONS.**

~~—For the purpose of this subchapter, the definitions set forth in Fla. Stat. § 163.3221, as may be amended, shall be applicable to this subchapter.~~

#### **§ 183.43 APPLICATION PROCESS.**

~~—(A) A developer seeking to commence land development activity requiring public improvements shall make application to the City to establish a Development Agreement with the City.~~

~~—(B) The application can be for the entire developer project or any phase thereof.~~

~~—(C) The application shall be on a form prescribed by the City and shall be submitted with the required non-refundable application fee.~~

~~—(D) Once the application is determined to be sufficient, the Growth Management Department shall forward the developer's application to the City~~

~~Attorney who shall draft a development agreement or review the draft development agreement put forth by the developer's attorney, for consideration by City Council.~~

~~§ 183.44 DEVELOPMENT AGREEMENT.~~

~~—(A) The development agreement shall include all required components in accordance with Fla. Stat. § 163.3227.~~

~~—(B) A development agreement may include:~~

~~—(1) Any relocation of public or other utilities that is anticipated and an agreement as to which party shall bear the cost of the relocation.~~

~~—(2) An agreement as to the type and amount of surety agreements that will guarantee performance, payment or maintenance, as applicable; provided, that all bonds or letters of credit, for any purpose, shall be on forms acceptable to the city and be issued by an entity acceptable to the city.~~

~~—(3) An agreement as to buffers and visual screens for transition between land uses.~~

~~—(4) An agreement as to which party shall maintain stormwater drainage systems and open spaces.~~

~~—(5) A description of any conditions, terms, restrictions or other requirements or third-party agreements such as agreements with home owner associations or community development districts.~~

~~—(6) A statement regarding how the development will be phased including dates when phases may be commenced or completed.~~

~~—(C) No development agreement shall be effective until approved by the City Council following two public hearings in accordance with Fla. Stat. § 163.3225.~~

~~—(D) In determining whether to approve the development agreement, City Council shall consider the following:~~

~~—(1) The findings required to be made pursuant to Fla. Stat. § 163.3225, as may be amended; and~~

~~—(2) Whether the provisions of the development agreement are beneficial to the public health, safety, and general welfare.~~

~~—(E) Upon execution of the development agreement by both parties, the City shall record the agreement in accordance with Fla. Stat. § 163.3239.~~

~~—(F) Any changes in federal or state law subsequent to the effective date of the development agreement which may affect the rights of either the city or the developer shall be fully applicable as to the development notwithstanding the provisions of the development agreement; provided, however, that such changes in law do not preclude the ability of the parties to the development agreement to comply with the terms of the development agreement.~~

~~—(G) The Growth Management Director, or designee, shall periodically review each development agreement in compliance with Fla. Stat. § 163.3225, as may be amended. The City may inspect the land subject to the development agreement to determine compliance with the terms of the development agreement. The development agreement may be revoked or modified in compliance with Fla. Stat. § 163.3235, as may be amended.~~

~~—(H) A request to amend or cancel a development agreement shall be submitted to the City Council for consideration. The request shall contain the following information:~~

~~—(1) An explanation of the reason for seeking cancellation or amendment of the development agreement shall be attached to the request as Exhibit A.~~

~~—(2) A description of the actual amount of development completed, the size and scope of the resulting plan of development (after cancellation or amendment);~~

~~—(3) A description of development that has occurred on site, including the amount of existing vertical development by land use in gross square feet, dwelling units, or other applicable units of measure; the amount of infrastructure completed at the site; etc. A copy of the approved site development plan, if applicable, shall be attached to the request as Exhibit B; and~~

~~—(4) An identification of the amount of development that is planned (after cancellation or amendment), including the amount of vertical development by land use in gross square feet, dwelling units, or other applicable units of measure; the amount of infrastructure to be completed at the site; etc. A copy of the site development plan, if applicable, for the development as proposed after cancellation or amendment shall be attached to the request as Exhibit C.~~

## **CHAPTER 184: SUBDIVISIONS**

### **§ 184.01 PURPOSE.**

~~—These regulations are adopted for the following purposes:~~

~~—(A) To protect and provide for the public health, safety and general welfare of the city.~~

~~—(B) To guide the future growth and development of the city, in accordance with the City's Comprehensive Plan.~~

~~—(C) To protect the character and the economic stability of all parts of the city and to encourage the orderly and beneficial development of all parts of the city.~~

~~—(D) To establish reasonable standards of design and procedures for subdivisions and resubdivisions, in order to further the orderly layout and use of land; to ensure proper legal descriptions and monumenting of subdivided land.~~

~~—(E) To provide for the proper location and widths of streets to facilitate traffic throughout the city, having particular concern to the avoidance of congestion in the streets and highways, and pedestrian traffic movements.~~

~~—(F) To ensure that public facilities are available and will have sufficient capacity to serve the proposed subdivision.~~

~~—(G) To assure the adequacy of drainage facilities; prevent pollution of surface water; safeguard the water table and to encourage the wise use and management of natural resources throughout the city in order to preserve the integrity, stability and beauty of the community and the value of the land.~~

#### ~~§ 184.02 AUTHORITY.~~

~~—This chapter is adopted pursuant to the authority delegated to the city under Fla. Stat. Chapter 177 and Chapter 163.~~

#### ~~§ 184.03 JURISDICTION.~~

~~—These subdivision regulations shall apply to all subdivisions of land, as defined herein, located within the corporate limits of the city.~~

#### ~~§ 184.04 DEFINITIONS.~~

~~—(A) (1) For the purpose of these regulations, certain numbers, abbreviations, terms and words herein shall be used, interpreted and defined as set forth in this section.~~

~~—(2) Unless the context clearly indicates to the contrary, words used in the present tense include the future tense; words used in the plural number include the singular; the word “herein” means “in these regulations;” the word “regulations” means “these regulations.”~~

~~—(3) A “person” includes a corporation, a partnership, and an incorporated association of persons such as a club; “shall” is always mandatory; a “building” includes a “structure;” a “building” or “structure” includes any part thereof; “used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged, or designed to be used or occupied.”~~

~~—(B) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—(1) ALLEY. A public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on some other street.~~

~~—(2) APPLICANT. The owner of land proposed to be subdivided or his/her representative. Consent shall be required from the legal owner of the premises.~~

~~—(3) ARTERIAL ROAD. A road or street that is designed or functions to move larger volumes of traffic over relatively long distances. A road identified as an arterial on the adopted future traffic circulation map in the Comprehensive Plan.~~

~~—(4) BENCHMARK. A relatively permanent object as described in Section 61G17-6.002(1), Florida Administrative Code.~~

~~—(5) BLOCK. A tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines of waterways or boundary lines of municipalities.~~

~~—(6) BOND. Any form of security including a cash deposit, surety bond, collateral, property or instrument of credit in an amount and form satisfactory to the City Attorney and City Engineer.~~

~~—(7) CERTIFICATE OF COMPLETION (SUBDIVISION). A certificate issued by the City Engineer subsequent to final inspection certifying that all improvements have been completed in conformity with the requirements of this subchapter, the approved construction plans and specifications.~~

~~—(8) CERTIFICATE OF OCCUPANCY (CO). A written permission to occupy a structure granted by the Chief Building Official.~~

~~—(9) CERTIFIED SURVEY. A survey, sketch, plan, map or other exhibit which is said to be certified when a written statement regarding its accuracy or conformity to specified standards is signed and sealed by a registered surveyor licensed by the State of Florida.~~

~~— (10) COLLECTOR ROAD. A road or street that is designed or functions to collect traffic from local neighborhood roads and transmit them to arterial roads. A road identified as a collector on the adopted future traffic circulation map in the Comprehensive Plan.~~

~~— (11) COMPREHENSIVE PLAN. The future land use map series, future land use element and other elements of the City Palm Bay Comprehensive Plan adopted October 6, 1988, by the City Council and as amended which establishes goals, objectives, policies and criteria relating to the use of land, the provision of supporting services and the protection of natural resources and the environment.~~

~~— (12) CONCEPT PLAN. A sketch preparatory to the preparation of the preliminary plat to enable the subdivider to save time and expense in reaching general agreement with the city as to the form of the plat and the objectives of these regulations.~~

~~— (13) CONSTRUCTION PERMIT. The permit to begin construction of improvements according to the construction plans and specifications approved under this chapter.~~

~~— (14) CONSTRUCTION PLANS. The engineering drawings, specifications, tests and data necessary to show construction of the proposed improvements in a subdivision.~~

~~— (15) CUL-DE-SAC. A street with an intersection on one end and a closed turning area on the other.~~

~~— (16) DRAINAGE. Swales, ditches, storm sewers, seepage basin, culverts, side drains, retention or detention basins, streets, cross drains, canals and other facilities used to manage stormwater.~~

~~— (17) EASEMENT. Authorization by a property owner for the use by another, and for a specified purpose, such as public or private utilities, drainage, sanitation, ingress or egress or other public or private uses, of any designated part of his/her property.~~

~~— (18) ESCROW. A deed, a bond, money or a piece of property delivered to a third person to be delivered by him/her to the grantee only upon fulfillment of a condition.~~

~~— (19) FINAL PLAT. The final map of all or a portion of a subdivision which is presented for final approval.~~

~~—(20) GRADE. The slope of a road, street, drainage swale or other public way, specified in percentage terms.~~

~~—(21) HIGHWAY, LIMITED ACCESS. A freeway, or expressway, providing a trafficway for through traffic, in respect to which owners or occupants of abutting property on lands and other persons have no legal right to access to or from the same, except at such points and in such manner as may be determined by the public authority having jurisdiction over such trafficway.~~

~~—(22) LOCAL STREET. Any street or road not designated as a collector, arterial or limited access street in the Comprehensive Plan. The primary function of a local street is to serve the adjacent property by providing the initial access to the roadway network. All local streets are minor streets.~~

~~—(23) LOT. A tract, plot or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or for building development.~~

~~—(24) LOT CORNER. A lot situated at the intersection of two (2) streets, the interior angle of such intersection not exceeding 120 degrees.~~

~~—(25) METES AND BOUNDS. A land description method that details all the boundary lines of land, together with their terminal points and angles.~~

~~—(26) MINOR SUBDIVISION. The division of a parcel of land, whether improved or unimproved, into ten (10) or less contiguous lots or parcels of land, designated by reference to the number or symbol of the lot or parcel contained in the plat of such subdivision, for the purpose, whether immediate or future, of transfer of ownership. However, the division of land into parcels of more than five (5) acres which all have minimum street frontage and do not involve any change in street lines or public easements of whatsoever kind may be deemed not to be a minor subdivision within the meaning of this chapter. The term includes a re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land subdivided.~~

~~—(27) N.A.V.D. 88. The North American Vertical Datum of 1988.~~

~~—(28) N.G.V.D. 29. The National Geodetic Vertical Datum of 1929.~~

~~—(29) P.C.P. A permanent control point as defined in F.S. Ch. 177.~~

~~—(30) PEDESTRIAN WAY (PEDWAY). A transportation facility designed for use by pedestrians which may also be used by other forms of nonmotorized transportation.~~

~~—(31) PRELIMINARY SUBDIVISION PLAT. A map indicating the proposed layout of a development and related information that is submitted for preliminary approval.~~

~~—(32) P.R.M. A permanent reference monument as defined in F.S. Ch. 177.~~

~~—(33) PUBLIC IMPROVEMENTS. Those improvements required for use by the general public, including but not limited to streets, sidewalks, drainage, preservation areas and other easements and rights-of-way, street signs or water and sewer facilities.~~

~~—(34) REGISTERED ENGINEER. An engineer properly licensed and registered in the State of Florida.~~

~~—(35) REGISTERED LAND SURVEYOR. A land surveyor properly licensed and registered in the State of Florida.~~

~~—(36) RESUBDIVISION. A change in a map of an approved or recorded subdivision plat if such change affects any street layout on such map or area reserved thereon for public use, or any lot line; or if it affects any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions.~~

~~—(37) RIGHT-OF-WAY. A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for another special use. The usage of the term RIGHT-OF-WAY for land platting purposes shall mean that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels. Rights-of-way intended for streets, crosswalks, water mains, sanitary sewers, storm drains or any other use involving maintenance by a public agency shall be dedicated to public use by the maker of the plat on which such right-of-way is established.~~

~~—(38) SUBDIVIDER. The owner of record or his/her authorized representative of a tract of land that is to be used as a subdivision within the scope of this subchapter.~~

~~—(39) SUBDIVISION. The division of a parcel of land, whether improved or unimproved, into eleven (11) or more contiguous lots or parcels of land, designated by reference to the number or symbol of the lot or parcel contained in the plat of such subdivision, for the purpose, whether immediate or future, of transfer of ownership. However, the division of land into parcels of more than five (5) acres which all have minimum street frontage and do not involve any change in street~~



~~lines or public easements of whatsoever kind may be deemed not to be a subdivision within the meaning of this chapter. The term includes a re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land subdivided.~~

~~— (40) TOPOGRAPHICAL MAP/SURVEY. A map/survey that represents the physical features of an area. Refer to Section 61G17-6.002(m), F.A.C.~~

~~— (41) TRACT. The total actual parcel of land that is being divided into a subdivision. TRACT may also refer to a smaller parcel of land platted for other purposes than a residential building lot; including but not limited to; retention areas, landscape and/or recreational areas.~~

~~— (42) UNDUE HARDSHIP. A hardship which exists due to conditions or circumstances peculiar to the applicant's land and does not result from the actions of the applicant.~~

#### ~~§ 184.05 SUBDIVISION APPLICATION AND APPROVAL PROCESS.~~

~~— (A) Classification of subdivisions.~~

~~— (1) Whenever any subdivision of land is proposed, before any contract is made for the sale of any part thereof, and before any permit for the erection of a structure in such proposed subdivision shall be granted, the subdividing owner and or his/her authorized agent, shall apply for and secure approval of such subdivision in accordance with the following procedure:~~

~~— (a) Pre-application concept plan.~~

~~— (b) Preliminary plat.~~

~~— (c) Final subdivision plat.~~

~~— (2) In instances where the subdivision of land involves no public improvements, the preliminary plat and final plat application may be combined.~~

~~— (B) Submission dates; preliminary and final plat. Applications must be submitted to the Land Development office prior to 5:00 p.m. on the first day of the month to be processed for consideration by the Planning and Zoning Board the following month. If the first of the month happens to fall on a weekend or holiday the applications must be submitted prior to 5:00 p.m. on the previous working day.~~

#### ~~§ 184.06 PREAPPLICATION CONFERENCE/CONCEPT PLAN.~~

~~— (A) Before submitting an application for preliminary subdivision approval, an applicant shall meet with city staff to discuss the conceptual plans and designs of~~

~~the proposed subdivision. This preapplication meeting shall be coordinated through the Land Development Division and shall be held as soon as practicable. City staff representatives may include members from the following city agencies: land development; engineering; utilities (water and sewer); and fire. Concept plans provided by the applicant should include a general sketch of plans for development, including lot sizes, lot locations, street layout, utilities, amenities, surrounding property conditions, design themes, etc.~~

~~—(B) The purpose of the preapplication conference is to provide an informal review and input in the formative stages of the subdivision design which should help to expedite applications and thus reduce plan design and development costs for the applicant.~~

#### ~~§ 184.07 PRELIMINARY PLAT.~~

~~—(A) Application procedure. After a preapplication conference has been held, an applicant can submit an application for preliminary plat approval. Such an application must be made on forms available from the City's Land Development office. The application must be complete and accompanied by two (2) copies of the preliminary plat as city described in these regulations, a CD or other approved electronic copy of the plat, a filing fee, and a list of all owners of adjacent property and/or property directly opposite of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls.~~

~~—(B) Application processing. The Land Development Division shall process and coordinate the review of the preliminary plat application by the appropriate city departments in accordance with F.S. § 166.033. The appropriate city departments are to review and comment on the submitted information. Written comments from the city departments are to be returned to the Land Development Division to be incorporated into a staff report generated by the Land Development Division.~~

~~—(C) Public meetings. Once the application is determined to be sufficiently complete and meets all the regulations required by the City, a preliminary plat application shall be heard by the Planning and Zoning Board at the next available regular meeting. Courtesy notice letters of the meeting are to be sent to the owners of abutting and opposite properties of the proposed subdivision. Failure to mail or receive such courtesy notice shall not affect any action or proceedings taken however. Notice of such a meeting shall also be posted on the property for which subdivision is sought.~~

~~—(D) Preliminary approval.~~

~~—(1) After the Planning and Zoning Board has reviewed the preliminary plat, the city staff report with its recommendations, and testimony and exhibits submitted at the public meeting, the Planning and Zoning Board shall recommend approval, approval with conditions, or disapproval of the preliminary plat to the City Council in accordance with the timelines set forth in F.S. § 166.033.~~

~~—(2) The City Council shall then approve, approve with conditions, or disapprove the preliminary plat based on the Planning and Zoning Board recommendations, the City staff report, and the testimony and exhibits submitted at public hearings.~~

~~—(E) Effective period of preliminary approval. The approval of a preliminary plat shall be effective for a period of one year at the end of which time final approval on the subdivision must have been obtained from the City Council, although the plat need not yet be signed and filed with the County Clerk of Records. Any plat not receiving final approval within the period of time set forth herein shall be null and void, and the developer shall be required to resubmit a new plat for preliminary approval subject to all new zoning and subdivision regulations.~~

~~—(F) Zoning regulations. Every plat shall conform to existing zoning regulations and subdivision regulations applicable at the time of proposed final approval, except that any plat which has received preliminary approval shall be exempt from any subsequent amendments to the zoning ordinance rendering the plat nonconforming as to bulk or use, provided that the final approval is obtained within the one-year period.~~

~~—(G) Effect of approval of preliminary plat. Approval of the preliminary plat shall not constitute approval of the final plat. It shall only be deemed an expression of approval of the layout submitted on the preliminary plat as a guide for the preparation of the final plat.~~

#### ~~§ 184.08 FINAL SUBDIVISION PLAT.~~

~~—(A) Application procedure. Following the approval of the preliminary plat, the applicant if he/she wishes to proceed with the subdivision, shall submit an application for final plat approval to the Land Development office. Such an application must be made on forms available from the City's Community Planning and Economic Development office. The application must be complete and accompanied by two (2) copies of the final plat and construction plans as described in these regulations, a CD or other approved electronic copy of the plat, a filing fee, and a list of all owners of adjacent property and/or property directly opposite~~

~~of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls.~~

~~—(B) Final plat to conform to preliminary plat. The final plat shall conform substantially to the preliminary plat as approved, and if desired by the subdivider, it may constitute only that portion of the approved preliminary plat which he/she proposes to record and develop at the time, if such portion conforms to the requirements of this chapter.~~

~~—(C) Application processing. The processing of the final plat application will be substantially the same as the processing of the preliminary plat application described previously in § 184.07.~~

~~—(D) Public meetings. The final plat application shall be heard by the Planning and Zoning Board at the next available regular meeting. Courtesy notice letters of the meeting are to be sent to the owners of abutting and opposite properties of the proposed subdivision. Failure to mail or receive such courtesy notice shall not affect any action or proceedings taken however. Notice of such a meeting shall also be posted on the property for which subdivision is sought.~~

~~—(E) Final approval. After the Planning and Zoning Board has reviewed the final plat and construction plans, the city staff report with its recommendations, and testimony and exhibits submitted at the public meeting, the Planning and Zoning Board shall forward its recommendations for final action to the City Council. Upon receiving the recommendation of the Planning and Zoning Board including the city's staff report, the City Council shall hold a public meeting and shall act to either approve, approve with conditions, or disapprove such application.~~

#### ~~§ 184.09 SIGNING AND RECORDING OF SUBDIVISION PLAT.~~

~~—(A) Signing of the plat.~~

~~—(1) When a bond is required, city officials (City Clerk, City Surveyor, and Mayor) shall endorse approval on the plat after the bond has been approved by the City Attorney and City Engineer, and all the conditions of approval pertaining to the plat have been satisfied.~~

~~—(2) When installation of improvements is required, city officials (City Clerk and Mayor) shall endorse approval on the plat after all conditions of approval on the plat have been satisfied and all improvements satisfactorily completed. There shall be written evidence or certificate of completion that the required public facilities have been installed in manner satisfactory to the City's Public Works Director~~

~~and/or his/her designee and that the necessary dedication of public lands and improvements has been accomplished.~~

~~—(B) Recording of the subdivision plat. Upon the signing of the reproducible mylar of the plat by the appropriate city officials, the subdivider shall file the plat with the County Clerk of Records within thirty (30) days of the date of the last signature. After filing the plat with the County Clerk of Records, the subdivider shall provide the City Clerk's office with a reproducible mylar of the recorded plat and three (3) prints of the plat. The mylars and prints are then to be forwarded to the appropriate city departments for their files.~~

#### ~~§ 184.10 CONSTRUCTION APPROVAL.~~

~~—(A) Commencement of construction prior to approval of plat. No construction of any kind shall be permitted prior to final subdivision approval by the City Council.~~

~~—(B) Construction authorization. Prior to beginning any construction of the proposed subdivision, the applicant must have a preconstruction meeting with the Public Works Department. Authorization from the City Engineer in the form of a construction permit must also be obtained before any construction may begin.~~

~~—(C) Clearing. Prior to commencement of clearing and/or land alteration activities, the applicant must receive the required Site Work Permit from the Land Development Division.~~

#### ~~§ 184.11 IMPROVEMENTS AND PERFORMANCE AND MAINTENANCE BONDS.~~

~~—(A) Performance bond. As a condition for approval of a final plat by the City Council, the subdivider may be required to deposit with the City Clerk a bond or other security binding the subdivider to payment to the city to assure completion of all streets, drainage and other public improvements both on site and off site as may be required. The bond or other security will be in the amount of one hundred twenty-five percent (125%) of value of all Public Improvements. The City Council may conditionally approve the final plat to become effective at such time as the required bond or other security shall be deposited with the City Clerk within a time fixed by the City Council. The bond shall be executed by the subdivider as principal and may have at least one (1) good and sufficient surety approved by the city. It is the purpose and intent of this section that the subdivider provide such security as the city shall deem to be reasonably necessary to assure completion. The requirement of a surety on the bond shall be at the discretion of the City Council; however, before the City Council accepts a bond or other security, it must first~~

~~obtain approval from the City Engineer as to the amount and approval from the City Attorney as to the form of the bond or other security.~~

~~—(B) Completion of improvements. If a performance bond is not required, all applicants shall be required to complete, in accordance with the City Councils' decision and to the satisfaction of the City Engineer all public improvements and lot improvements of the subdivision as required in these regulations and to dedicate the same to the city free and clear of all liens and encumbrances on the property prior to city officials signing the plat. The City may allow incremental drawdown of the performance bond as improvements are made.~~

~~—(C) Temporary improvement. The applicant shall build and pay for all costs of temporary improvements required by the city and shall maintain the same for the period specified by the city. Prior to construction of any temporary facility or improvement, the developer shall file with the local government a separate suitable bond for temporary facilities, which bond shall ensure that the temporary facilities will be properly constructed, maintained and removed.~~

~~—(D) Costs of improvements. All required improvements shall be made by the applicants at his/her expense, without reimbursement by the city.~~

~~—(E) Failure to complete improvement. For subdivisions for which no performance bond has been posted, if the improvements are not completed within the period specified by the City Council at the time of final plat approval, the approval shall be deemed to have expired. In those cases when a performance bond has been posted and required improvements have not been installed within the terms of such performance bond, the City Council may declare the bond to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the bond is declared to be in default.~~

~~—(F) Acceptance of dedication offers. Acceptance of formal offers of dedication of public improvements (such as streets, public areas, parks, etc.) shall be in accordance with the procedure and process established in Chapter 182, procedure for acceptance and maintenance of public improvements.~~

~~—(G) Maintenance Bonds. After completion of improvements and exception of dedication, a two (2) year maintenance bond or other security will be required in the amount of twenty-five percent (25%) of all dedicated Public Improvements.~~

#### ~~§ 184.12 INSPECTION OF IMPROVEMENTS.~~

~~—(A) General procedure and fees. The City Public Works Department shall provide for the inspection of required public improvements during construction and~~

~~ensure their satisfactory completion. The applicant shall pay the city an inspection fee as established by resolution pursuant to § 169.004, and the subdivision plat shall not be signed by city officials unless such fee has been paid at the time of application. No building permits, certificate of occupancies, or certificates of completion shall be issued until all fees are paid. If the Public Works Department inspector finds that any of the required improvements have not been constructed in accordance with the city's construction standards and specifications, the applicant shall be responsible for completing the improvements. Wherever the cost of the improvements is covered by a performance bond, the applicant and the bonding company shall be severally and jointly liable for completing the improvements according to specifications.~~

~~—(B) Release of performance bond; certificate of completion. The city will not release nor reduce a performance bond until the City Engineer has submitted a certificate stating that all the required improvements have been satisfactorily completed and until the applicant's engineer or surveyor has certified to the City Engineer, through the submission of a detailed "as-built" survey of the subdivision, indicating location, dimensions, materials and other information required by the City Engineer, that the layout of the line and grade of all public improvements is in accordance with construction plans for the subdivision. Upon such approval and recommendation, the city may accept the improvements for dedication in accordance with the process and procedures outlined in Chapter 182, public improvements.~~

#### ~~§ 184.13 MAINTENANCE OF IMPROVEMENTS.~~

~~—The applicant shall be required to maintain all improvements in the subdivision until acceptance of such improvements by the city according to the process and procedure outlined in Chapter 182, public improvements.~~

#### ~~§ 184.14 DEFERRAL OR WAIVER OF REQUIRED IMPROVEMENTS.~~

~~—The City Council may defer or waive at the time of final approval, subject to appropriate conditions, the provision of any or all such improvements as, in its judgment, are not requisite in the interests of the public health, safety and general welfare, or which are inappropriate because of inadequacy or lack of connecting facilities.~~

#### ~~§ 184.15 ISSUANCE OF BUILDING PERMIT.~~

~~—(A) No building permits shall be issued for any building in the subdivision, except as provided for below, until a certificate of completion has been issued by~~

~~the City Engineer certifying that the subdivision improvements have been completed and the subdivision has been recorded with the County Clerk of Records. The City Engineer shall notify the City Building Department of when a subdivision has received a certificate of completion and thus is open for building.~~

~~—(B) Model homes and developer owned/builder owned homes may be permitted prior to the subdivision improvements receiving a certificate of completion provided the following conditions are adhered to:~~

~~—(1) A stabilized, all weather roadway is provided for fire apparatus to access all structures proposed for permitting;~~

~~—(2) A water source for fire apparatus use shall be provided and approved by the City of Palm Bay Fire Marshal;~~

~~—(3) A waiver of liability shall be provided to the City;~~

~~—(4) All homes proposed for permitting under this section shall maintain a minimum of one hundred (100) feet distance from existing structures not within the subdivision;~~

~~—(5) A maximum of twenty-five (25) structures will be permitted under this section per approved final subdivision plat;~~

~~—(6) The final subdivision plan shall be recorded with and addresses assigned by Brevard County;~~

~~—(7) The builder must bond the estimated cost of demolition of the structures should the subdivision improvements not be completed and the building permit expires or is revoked. Said demolition must occur within one (1) year of notification from the City or the City shall demolish the structures utilizing the bond proceeds;~~

~~—(8) In no case shall a Certificate of Occupancy be granted for a home until the certificate of completion has been issued.~~

#### ~~§ 184.16 DESIGN IMPROVEMENT AND RESERVATION STANDARDS.~~

~~—(A) Conformance to applicable rules and regulations.~~

~~—(1) In addition to the requirements established herein, all subdivision plats shall comply with the following laws, rules and regulations:~~

~~—(a) All applicable statutory provisions.~~

~~—(b) The City Comprehensive Plan.~~

~~—(c) The zoning ordinance of the city.~~



~~—(d) The regulations established in the public works manual.~~

~~—(e) The regulations and rules of any appropriate state or county agency (such as, St. Johns River Water Management District, Florida Department of Transportation, the Environmental Health Services Division, etc.)~~

~~—(2) Plat approval may be withheld if a subdivision is not in conformity with the above guides or policy and purposes of these regulations.~~

~~—(B) Self-imposed restrictions. If the subdivider places restrictions on any of the land contained in the subdivision greater than those required by the zoning ordinance or these regulations, such restrictions or reference thereto may be required to be indicated on the subdivision plat, or the City Council may require that deed restrictions be recorded with the County Clerk of Records and a copy filed with the city, including any subsequent amendments to the restrictions.~~

~~—(C) Monuments. Concrete monument reference markers shall be placed at all block corners and set by a licensed professional surveyor.~~

~~—(D) Subdivision name. The proposed name of the subdivision shall not duplicate, or too closely approximate phonetically, the name of any other subdivision in the greater city area.~~

#### ~~§ 184.17 DESIGN OF LOTS AND BLOCKS.~~

~~—(A) Lot design.~~

~~—(1) Lot arrangement and dimensions.~~

~~—(a) The lot size, width, depth, shape, orientation and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated.~~

~~—(b) Lot dimensions shall conform to the requirements of the zoning ordinances.~~

~~—(c) Residential lots where not served by public sewers shall be of sufficient size to accommodate a septic tank and leaching field. State and local health regulations and standards, as well as soil conditions, shall control the lot size in these circumstances.~~

~~—(d) The depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for off-street service and parking facilities required by the type of use and development contemplated.~~

~~—(2) Lot access to existing streets. The subdivision of land shall be such as to provide each lot, by means of a public street, satisfactory access to an existing public street. The use of easements shall not be permitted to provide sole access to public streets.~~

~~—(3) Double frontage lots.~~

~~—(a) Double frontage and reverse frontage lots should be avoided, except where essential to provide separation of residential development from traffic arteries and major collectors or to overcome specific disadvantages of topography and orientation.~~

~~—(b) A six (6) foot high wall, fence and berm (or optical vegetation) combined with landscape material located within a minimum ten (10) foot wide no access easement shall be provided along lot lines abutting arterial and major collector streets or other disadvantageous uses as determined by City Council.~~

~~—(4) Residential flag lots.~~

~~—(a) Residential flag lots shall have a minimum width of twenty-five feet (25').~~

~~—(b) Individual lots shall have fee simple ownership of their flag stem.~~

~~—(c) Such access shall not include a street, road, right-of-way or easement dedicated to the city or "the public" by a plat or other recorded instrument.~~

~~—(d) All other Code requirements of the applicable zoning district shall apply.~~

~~—(B) Block design.~~

~~—(1) General block size and shape. The lengths, widths and shapes of blocks shall be determined with due regard to the following:~~

~~—(a) Zoning requirements as to lot sizes and dimensions;~~

~~—(b) Needs for convenient access, circulation, control and safety of street traffic;~~

#### ~~§ 184.18 ROAD DESIGN.~~

~~—(A) General requirements.~~

~~—(1) Arrangement and character.~~

~~—(a) The arrangement, character, extent, width, grade and location of all streets shall conform to the Comprehensive Plan and shall be considered in their relation to existing and planned streets, topographical conditions and public convenience and safety, and in their appropriate relation to the proposed uses of~~

~~the land to be served by such streets. Roadway design shall meet the minimum Florida Department of Transportation design criteria.~~

~~— (b) Where no applicable location standards are shown in the Comprehensive Plan, the arrangement of streets in a subdivision shall either:~~

~~— 1. Provide the continuation or appropriate projection of existing principal streets in surrounding areas; or~~

~~— 2. Conform to a plan for the neighborhood, adopted by the City Council to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impracticable.~~

~~— (2) Street names. No street names shall be used which will duplicate or be confused with the names of existing streets. Street names shall be subject to the approval of the Land Development Division and submitted to the County E-911 office.~~

~~— (B) Design standards.~~

~~— (1) Street improvements. In order to provide for roads of suitable location, width and improvement to accommodate prospective traffic and afford satisfactory access to police, firefighting, sanitation and road maintenance equipment, and to coordinate roads so as to compose a convenient system and avoid undue hardships to adjoining properties, the following road standards are hereby required:~~

~~— (a) Street improvements shall be provided in each new subdivision in accordance with the Public Works Manual and the requirements described in the following schedules.~~

~~— (b) The standards and specifications for each general type of development shall be as follows:~~

~~— 1. For apartment, townhouse and similar multifamily residential types; one-family detached dwellings; and low density rural residential dwellings; roads shall contain fifty (50) feet of right-of-way with twenty-two (22) feet of paving for Local Streets, with a closed drainage system; and sixty (60) feet of right-of-way with twenty-two (22) feet of paving, for Local Streets with an open drainage system.~~

~~— 2. For commercial, industrial and other types, the standards will be as determined by the Public Works Director.~~

~~— 3. Arterial streets and cross sections in accordance with the Comprehensive Plan and as determined by the Public Works Director.~~

~~———— 4. For streets along development boundaries and streets connecting the development with an existing improved system.~~

~~———— 5. For streets, curbs, sidewalks, driveways, etc., the city hereby adopts the public works manual and is made a part hereof by reference. All subdivision improvements shall comply with these standards insofar as they are applicable.~~

~~—— (2) Layout of local street. Local streets shall be so laid out that their use by through traffic will be discouraged.~~

~~—— (3) Subdivision abuts arterial or major collector street. Where a subdivision abuts an existing or proposed arterial or major collector street, the City Council may require frontage access streets, reverse frontage with screening consisting of a six-foot wall, fence or berm with landscaping contained in a nonaccess reservation along the rear property line, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.~~

~~—— (4) Subdivision borders on railroad or limited access highway. When a subdivision borders on or contains a railroad right-of-way or limited access highway right-of-way, the City Council may require a street or alley approximately parallel to and on each side of such right-of-way.~~

~~—— (5) Reserve strips prohibited; exception. Reserve strips controlling access to streets shall be prohibited except where their control is definitely placed in the city under conditions approved by the City Council.~~

~~—— (6) Street jogs. Street jogs with center line offsets of less than one hundred twenty-five (125) feet shall be avoided.~~

~~—— (7) Sight distance for curves. A minimum sight distance will meet current FDOT standards.~~

~~—— (8) Street intersections.~~

~~—— (a) Street intersections shall be laid out so as to intersect as nearly as possible at right angles, and no street shall intersect any other street at less than sixty (60) degrees.~~

~~—— (b) Property lines at street intersections shall be rounded with a radius of twenty-five (25) feet, or with a greater radius where the City Engineer may deem it necessary. The City Engineer may permit comparable cutoffs or chords in place of rounded corners.~~

~~—(9) Right-of-way widths. Public road right-of-way widths shall be as shown in the Palm Bay Comprehensive Plan, and shall not be less than as follows, unless otherwise determined by the Public Works Director:~~

~~Street Type Right-of-way Width (feet)~~

~~Arterial 160~~

~~Collector 100~~

~~Local (open drainage) 60~~

~~Local (closed drainage) 50~~

~~—(10) Half streets; cul-de-sacs. Half streets shall be prohibited. If a half street is in existence and adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract. Cul-de-sacs will be required if determined necessary by the Planning and Zoning Board.~~

~~—(11) Dead-end streets. Dead-end streets, designed to be so permanently, shall not be longer than one thousand (1000) feet and shall be provided at the closed end with a turnaround having an outside roadway diameter of at least eighty (80) feet, and a street property line diameter of at least one hundred (100) feet.~~

~~—(12) Street grades. No street grade shall be less than three-tenths of one (0.30 of 1%) percent.~~

~~—(13) Drainage grades. No drainage grade, including swales, and curbs and gutters, shall be less than two-tenths of one (0.2 of 1%) percent. Swales shall be a minimum of one-tenth of one (.01 of 1%) percent.~~

~~—(14) Alleys. The minimum width of any alley right-of-way shall be twenty (20) feet. Alley intersections and sharp changes in alignment shall be avoided, but where necessary, corners shall be cut off sufficiently to permit safe vehicular movement. Dead-end alleys shall be avoided, but if unavoidable, shall be provided with adequate turnaround facilities at the dead end, as determined by the City Engineer.~~

~~—(15) Traffic studies. Residential subdivisions shall be required to submit a traffic study prepared by a licensed transportation engineering firm in accordance with the City of Palm Bay Standardized Traffic Impact Study Guidance Manual.~~

#### ~~§ 184.19 DESIGN OF STORMWATER DRAINAGE.~~

~~—General requirements. A stormwater drainage system shall be provided for all subdivisions. The system shall be designed and constructed to be in accordance~~

~~with the City Stormwater Management and Conservation Floodplain and Stormwater Management Ordinance (Chapter 174), the Public Works Manual, and any other applicable laws of any other governmental agencies such as the St. Johns River Water Management District, the Melbourne Tillman Water Control District, etc.~~

~~§ 184.20 DESIGN OF WATER AND SEWERAGE FACILITIES.~~

~~—(A) General requirements. In those subdivisions where the extension of and/or connection to the City Utilities Water and Sewer System is required, the applicant shall design and install the water and sewer facilities in a manner prescribed by the standards and specifications of the Palm Bay Utilities Department. Any new subdivisions shall be served with centralized water and waste water facilities.~~

~~—(B) Fire hydrants. The applicant shall provide fire hydrants that conform to the requirements of Chapter 177, Fire Prevention and Protection.~~

~~—(C) Supply for fire hydrants and other fire suppression facilities. Water supply lines necessary for supplying fire hydrants or other fire suppression facilities, including but not limited to fire sprinkler facilities, shall be separate and distinct line systems. Common use of supply lines for any other purpose is prohibited.~~

~~§ 184.21 SIDEWALK/PEDESTRIAN WAYS.~~

~~—(A) General requirements. Sidewalks/pedestrian ways are to be provided on all streets in all new subdivisions. The design and construction of sidewalks/pedestrian ways shall be in conformance with the Public Works Manual. Where there are no existing sidewalks adjacent to the proposed subdivision, the developer may post a Sidewalk Bond (or Cash Bond) equal to 125% of the cost of constructing the sidewalk and any necessary ramps and or cross-walk striping. A cost estimate shall be submitted by the Project Engineer during the final subdivision process, for city staff review. The city shall put the bond into escrow until such a time as the city provides sidewalks in the vicinity of the subdivision.~~

~~—(B) Waiver from sidewalk requirement. The City Council may waive the requirement for sidewalks where it determines and finds that sidewalks may be inappropriate for the subdivision being proposed (for example, large acre rural subdivision that do not connect to an existing or proposed sidewalk system).~~

~~—(C) Sidewalk connections. Required sidewalks shall connect to the nearby existing sidewalks and/or sidewalk locations shown on the Sidewalk Master Plan. Such connections must be made if the existing or planned sidewalk is within five hundred (500) feet of the closest subdivision sidewalk. Such connection shall be~~

~~identified during the preliminary plat process and shall be identified on the construction plans and as-built survey.~~

#### ~~§ 184.22 UTILITIES AND EASEMENTS.~~

~~—(A) Utilities. Except for the main feeder line, service lateral distribution utility lines of all kinds, including electrical power and light, telephone and telegraph, cable television, water, sewer and gas shall be constructed and installed beneath the surface of the ground unless all lots are one (1) acre or greater in size. The underground installation of incidental appurtenances such as transformer boxes, pedestal mounted terminal boxes, meter boxes for electricity or similar hardware necessary for the provision of electric and communication utilities shall not be required. Below ground level installation shall not be required for major electric and communication feeder lines which serve more than one subdivision or which connect utility substations. If the physical condition of the tract prevents underground installation of utilities, the City Council may waive the requirement for underground installation of utilities in accordance with this code.~~

~~—(B) Easements.~~

~~—(1) Utility and drainage easements shall be provided where necessary. The location and width of easements shall be drawn on the plat and the easements intended use shall be clearly stated.~~

~~—(2) Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of the watercourse as will be adequate for the purpose.~~

#### ~~§ 184.23 PUBLIC USES.~~

~~—Where deemed essential by the City Council upon consideration of the particular type of development proposed in the subdivision, and especially in large-scale neighborhood unit developments not anticipated in the Comprehensive Plan, the City Council may require the dedication or reservation of such other areas or sites of a character, extent and location suitable to the needs created by such development for parks and other public purposes. The purpose of all tracts of land shall be designated on the plat.~~

#### ~~§ 184.24 PRESERVATION OF NATURAL AND HISTORIC FEATURES.~~

~~—In all subdivisions, the applicant is required to take reasonable measures to preserve all natural, archeological and historic features which are consistent with~~

~~the City Comprehensive Plan. Some of these features include large specimen trees, water resources, archeological, historic structures and similar community assets.~~

#### ~~§ 184.25 NONRESIDENTIAL SUBDIVISIONS.~~

~~—(A) General. If a proposed subdivision includes land that is zoned for commercial or industrial uses, the layout of the subdivision with respect to such land shall make such provision as the City Council may require. In addition to the principles and standards in these regulations, which are appropriate to the planning of all subdivisions, the applicant shall demonstrate to the satisfaction of the City Council that the street, parcel and block pattern proposed is specifically adapted to the uses anticipated and takes into account other uses in the vicinity.~~

~~—(B) Standards. The following principles and standards shall be observed:~~

~~—(1) Special requirements over and above those listed in these regulations may be imposed by the city with respect to public infrastructure, such as streets, drainage, water and sewerage, etc., to accommodate the type of commercial and industrial development anticipated.~~

~~—(2) The applicant shall make reasonable efforts to protect contiguous residential areas from the proposed commercial or industrial subdivision. These provisions include a requirement of a minimum twenty-five (25) foot wide permanent landscape buffer easement abutting all residentially zoned properties. Streets which carry nonresidential traffic shall not be built adjacent to the boundaries of residential areas. The commercial and industrial subdivision shall not have direct vehicular access to a local residential street.~~

#### ~~§ 184.26 SPECIFICATIONS FOR DOCUMENTS; PREAPPLICATION CONCEPT PLAN.~~

~~—Concept plans shall show in sketch form such information as is necessary to provide an informal discussion and review of the proposed subdivision. This information may include the proposed street pattern, typical lot sizes, stormwater management facilities in relation to existing natural conditions of the site and its surroundings, typical building sizes, proposed utilities, etc. Other general information such as existing site conditions, soil conditions, flood plan data, topography, vegetation and surrounding property conditions should also be noted.~~

#### ~~§ 184.27 PRELIMINARY PLAN.~~



~~—(A) Submission. Three (3) copies of the preliminary plat, a CD or other approved electronic copy of the plat and the required supplementary material shall be submitted to the Land Development office along with a completed written application. The preliminary plat shall be at a scale of two hundred (200) feet to one (1) inch or larger, with a preferred scale of one hundred (100) feet to one (1) inch.~~

~~—(B) Design and required information. The preliminary plat shall be designed in conformity with the design standards established herein and shall contain the following information:~~

~~—(1) The title and certifications, the present tract designation according to official records in the office of the appropriate recorder, the title under which the proposed subdivision is to be recorded, with the names and addresses of the owners, and a notation stating the approximate acreage and the scale and north arrow;~~

~~—(2) All streets, including their names and right-of-way widths;~~

~~—(3) Other rights-of-way and easements, including their locations, widths and purposes;~~

~~—(4) The location of utilities, if not shown on other exhibits;~~

~~—(5) The lot lines, lot numbers and block numbers;~~

~~—(6) The sites, if any, to be reserved or dedicated for parks, playgrounds or other public uses;~~

~~—(7) The site, if any, for multi-family dwellings, shopping centers, churches, industries or other nonpublic uses, exclusive of single-family dwellings.~~

~~—(8) Site data, including but not limited to, the number of residential lots, typical lot sizes and the approximate number of acres in parks;~~

~~—(9) The protective covenants whereby the subdivider proposes to regulate land use in the subdivision and otherwise protect the proposed development.~~

~~—(10) Existing conditions such as boundary lines, adjacent easements showing their locations, widths and purposes, streets on or adjacent to the subdivision showing their right-of-way widths and locations, adjacent utilities including the location, size and invert elevation of sanitary sewer, the location and size of water mains, and the location of fire hydrants, electric poles, telephone poles and street lights. If water mains and sewers are not on or adjacent to the tract, the directions~~

~~and distance to and size of the nearest ones shall be shown, indicating the invert elevation of the sewers.~~

~~—(11) The approximate direction and gradient of the ground slope on adjacent land shall be shown including any embankments or retaining walls. Adjacent platted land shall be referred to by book and page number and subdivision title.~~

#### ~~§ 184.28 FINAL SUBDIVISION PLAT AND CONSTRUCTION PLANS.~~

~~—(A) Submission. Three (3) copies of the final plat, a CD or other approved electronic copy of the plat and construction plans shall be submitted with a completed application to the Land Development office. The final plat shall be drawn in ink on tracing cloth on sheets twenty-four (24) inches wide by thirty (30) inches long and shall be at a scale of two hundred (200) feet to one (1) inch or larger with a preferred scale of one hundred (100) feet to one (1) inch. Where necessary, the plat may be on several sheets accompanied by an index sheet.~~

~~—(B) Design and contents of the final plat. The final plat and construction plans for the subdivision shall be designed and in conformity with the design standards established herein and must show the following information:~~

~~—(1) The final plat shall be prepared in conformance with the requirements of the applicable Florida Statute;~~

~~—(2) The primary control points, approved by the City Engineer, or descriptions and “ties” to such control points to which all dimensions, angles, bearings and similar data on the plat shall be referred;~~

~~—(3) The tract boundary lines, right-of-way lines of streets, easements and other rights-of-way, and property lines of residential lots and other sites, with accurate dimensions, bearing or deflection angles, and radii, arcs and central angles of all curves;~~

~~—(4) The name and right-of-way width of each street or other right-of-way;~~

~~—(5) The location, dimensions and purpose of any easement;~~

~~—(6) Numbers or letters to identify each lot or site;~~

~~—(7) The purpose for which sites, other than residential lots, are dedicated or reserved;~~

~~—(8) The location of monuments;~~

~~—(9) Reference to any recorded subdivision plat of adjoining platted land by plat book, page and number;~~

- ~~— (10) A certification of a surveyor as to the accuracy of the survey and plat;~~
- ~~— (11) A certification of title showing that the applicant is the landowner;~~
- ~~— (12) Statements by the owner dedicating streets, rights-of-way and any sites for public uses.~~
- ~~— (C) Design and contents of the construction plans. The construction plans shall show the following information:~~
  - ~~— (1) The title, scale, north arrow and datum;~~
  - ~~— (2) The plans of streets and drainage showing grades approved by the City Engineer and any other public improvements; such plans shall be drawn to city standard scales and elevations and shall be based on datum plane approved by the City Engineer and shall be in conformance with the design specifications of the Public Works Manual of the city.~~
  - ~~— (3) Two copies of stormwater calculations.~~
  - ~~— (4) A tree survey meeting the requirements of Chapter 180, trees and shrubbery.~~

#### ~~§ 184.29 INTERPRETATION AND CONFLICT.~~

- ~~— (A) In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare.~~
- ~~— (B) Where the conditions imposed by any provisions of this chapter are either more restrictive or less restrictive than comparable conditions imposed by any other applicable law, ordinance, rule or regulation of any kind, the regulations which are more restrictive or impose higher standards or requirements, shall govern.~~

#### ~~§ 184.30 RESUBDIVISION OF LAND.~~

- ~~— For any change in a map of an approved or recorded subdivision plat, if such change affects any street layout shown on such plat or map, or any lot line, or if it affects any map or plan legally reached prior to the adoption of any regulations controlling subdivisions, such parcel shall be approved by the City Council by the same procedure, rules and regulations as for a subdivision.~~

#### ~~§ 184.31 VACATING OF PLAT.~~

~~—(A) Any plat or part of any plat may be vacated by the owner of the premises, at any time before the sale of any lot therein, by a written instrument, to which a copy of such plat shall be attached, declaring the same to be vacated. Such an instrument shall be approved by the City Council in accordance with the procedures established in Fla. Stat. Chapter 177 if the Council finds the vacation of the plat is in the public interest. Such instrument shall then be recorded with the County Clerk of Records.~~

~~—(B) When lots have been sold, the plat may be vacated in the manner herein provided by all the owners of lots in such plat joining in the execution of such writing.~~

#### ~~§ 184.32 VARIANCES.~~

~~—(A) General. Where the City Council finds that undue hardships or practical difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve variances to these subdivision regulations so that substantial justice may be done and the public interest secured, provided that such variance shall not have the effect of nullifying the intent and purpose of these regulations. The City Council may approve low impact development designed stormwater systems that vary from the design standards above provided the development is certified under the City of Palm Bay's Green Development Incentive Program.~~

~~—(B) Procedures. A petition for any such variance shall be submitted in writing by the subdivider at the time when the preliminary plat is filed for the consideration of the City Council. The petition shall state fully the grounds for the application and all of the facts relied upon by the petitioner.~~

#### ~~§ 184.33 FEES.~~

~~—(A) Preliminary plat fee. A filing fee as established by resolution pursuant to § 169.004 shall accompany the submission of the preliminary plat.~~

~~—(B) Final plat fee. A filing fee as established by resolution pursuant to § 169.004 shall accompany the submission of the final plat.~~

~~—(C) Vacating of plat fee. A filing fee as established by resolution pursuant to § 169.004 shall accompany the submission of a vacating of plat application.~~

#### ~~§ 184.34 MINOR SUBDIVISIONS.~~

~~—(A) Minor subdivisions. Division of such parcels into no more than ten (10) lots, that comply with the following criteria, shall be considered a minor subdivision and shall be administratively reviewed in two (2) stages: 1) preliminary plat review; and 2) construction plan and final plat review. A minor subdivision may be approved for a division of land if the following conditions are met:~~

~~—(1) All proposed lots are for detached single family residential lots.~~

~~—(2) Any proposed street may not exceed one thousand three hundred twenty (1,320) feet in total length and the new street shall directly connect to an existing public or privately maintained right-of-way.~~

~~—(3) All lots being created shall have fee simple access on a public or privately maintained street.~~

~~—(4) All lots shall meet the minimum lot frontage area and dimensional requirements for the zoning district in which they are located.~~

~~—(5) The subdivision shall be all inclusive and shall not consist of more than one (1) phase of development.~~

~~—(B) Re-plats or subdivisions that do not require the creation of new streets or right-of-way and are not located within a Special Flood Hazard Area may be reviewed under an application for final plat review and approval. A lot grading plan, drainage plan, and wetlands delineation, if applicable, shall be included with the final plat for review.~~

~~—(C) Exemptions. The following are exempt from the subdivision platting process subject to conformance to all other land development regulations, including but not limited to, lot design and lot drainage requirements of the Land Development Code.~~

~~—(1) The division of one (1) parcel or lot into no more than two (2) lots, where both of the proposed lots meet the minimum frontage requirements abutting a public or privately maintained road and there is no change in street lines or easements.~~

~~—(D) Provision of water and sewer. A minor subdivision may be developed under the following parameters:~~

~~—(1) Parcels with city water available to them, meaning existing water lines running along the parcel's frontage or across the street that the parcel has frontage upon, may be exempt from providing city sewer if existing sewer lines are not located within one-quarter ( $\frac{1}{4}$ ) mile of the parcel. This distance shall be measured using existing road right-of-ways. For such a parcel of land, the lots in the minor~~

~~subdivision shall be a minimum of one-half ( $\frac{1}{2}$ ) acre in size. The subdivision must connect to the city water system.~~

~~—(2) Parcels with city water available to them, and existing sewer lines located within one-quarter ( $\frac{1}{4}$ ) mile of the parcel, must provide sewer to each lot, regardless of the size of the lots in the subdivision. The subdivision must connect to the city water system.~~

~~—(3) Parcels located within areas that do not have either water or sewer lines available to them shall be required to provide both water and sewer to the subdivision, unless each lot is a minimum of one (1) acre in size. If both water and sewer are brought to the site, then the minimum lot size shall be consistent with what is provided for in the applicable Zoning District.~~

#### ~~§ 184.35 SIMPLE LOT SPLIT/LOT RECONFIGURATION.~~

~~—(A) Simple lot split. The subdividing of a tract, lot or parcel into only two lots (one new lot and the remainder) is allowed if each lot abuts a publicly maintained street which has been duly dedicated and accepted by the city and/or a privately maintained right-of-way, no new streets are created, and there is no change in the length or alignment of an existing street.~~

~~—(1) Simple lot splits do not require the formal platting process but shall be reviewed and approved by the City Manager's designee;~~

~~—(2) Simple lot splits approved by the city manager's designee shall be recorded in public records;~~

~~—(3) If required due to noncompliance or nonconforming conditions, the applicant shall provide the necessary right-of-way to bring the applicable roadway to standards;~~

~~—(4) No property shall be subdivided pursuant to this section more than once per year; and~~

~~—(5) For purposes of this section, the ownership interest in the portion of the lot which abuts a publicly or privately maintained street must be fee simple ownership.~~

~~—(B) Lot reconfigurations. Reconfigured lots shall adhere to the following:~~

~~—(1) Lot reconfigurations do not require a formal platting process but shall be reviewed by the City Manager's designee;~~

~~—(2) Lot reconfigurations approved by the city manager's designee shall be recorded in public records;~~

~~—(3) The lot lines are reconfigured to be in compliance with current regulations;~~

~~—(4) The number of reconfigured lots is less than or equal to the number of existing lots;~~

~~—(5) No easements existing on the subject property would need to be modified, unless approval is granted by the City Manager;~~

~~—(6) The combined area of the new lots is equal to the combined area of the existing lots;~~

~~—(7) Each new lot abuts a publicly maintained street which has been duly dedicated and accepted (or a privately maintained right-of-way); and~~

~~—(8) No new streets are created and there is no change in the length or alignment of an existing street.~~

~~—(C) Submittal.~~

~~—(1) A cover letter describing the project, identifying the project contact person(s) and any other information relevant for city staff review. If the applicant is other than the legal owner, the applicant's interest shall be indicated and the legal owner's authority to apply shall be included in a certified legal form (the lot split application).~~

~~—(2) Completed application form.~~

~~—(3) All applicable fees per as outlined in the fee schedule.~~

~~—(4) Owner authorization (if applicable).~~

~~—(5) Copies of a lot split survey (current property survey, the proposed lot reconfiguration and legal description, signed and sealed, not more than one year old, by a land surveyor registered and licensed in the state, each sheet of the lot split package shall be the same size shall be no larger than 24 inches by 36 inches).~~

#### ~~§ 184.36 ENFORCEMENT AND PENALTIES.~~

~~—(A) It shall be the duty of the Director of Growth Management to enforce the provisions of this chapter and to bring to the attention of the City Code Enforcement Board any violations or lack of compliance.~~

~~—(B) The Code Enforcement Board shall have recourse to such remedies in law and equity as may be necessary to ensure compliance with the provisions of these regulations.~~

## **~~CHAPTER 185: ZONING CODE~~**

### **~~GENERAL PROVISIONS~~**

#### **~~§ 185.001 TITLE.~~**

~~—This chapter shall be known and may be cited as the “City of Palm Bay Zoning Ordinance.”~~

#### **~~§ 185.002 AUTHORITY — ADOPTION.~~**

~~—This chapter, together with all future amendments, is adopted under the terms and authority granted by Fla. Stat. Ch. 163 and Ch. 166, and the Charter of the city.~~

#### **~~§ 185.003 APPLICABILITY; CONFORMANCE.~~**

~~—The provisions of this chapter shall apply to all lands, waters, buildings, structures, and the use thereof, within the jurisdictional limits of the city. No lands, waters, buildings or structures shall be used, no buildings or structures shall be erected, and no existing buildings or structures shall be moved, added to, enlarged, altered or maintained except in conformity with the provisions of this chapter.~~

#### **~~§ 185.004 CONFLICT.~~**

~~—It is not intended by this chapter to repeal, abrogate, annul or in any way impede or interfere with existing provisions of other laws or ordinances, except as specifically repealed by this chapter. Where this chapter imposes a greater restriction upon land, water, building or structures than is imposed or required by such existing provisions of law, ordinance, contract or deed, the provisions of this chapter shall control.~~

#### **~~§ 185.005 PURPOSE.~~**

~~—The city zoning code is based on, consistent with, related to and adopted to effectuate and implement the policies of the city comprehensive plan in order to protect, preserve and improve the public health, safety, order, appearance, convenience and welfare of the inhabitants of the city, including, but not limited to:~~

~~—(A) Lessening congestion in the streets;~~



- ~~—(B) Encouraging the most appropriate use of land, water and resources;~~
- ~~—(C) Providing adequate light and air;~~
- ~~—(D) Securing safety from fire and other dangers;~~
- ~~—(E) Preventing the overcrowding of land;~~
- ~~—(F) Presenting the character and stability of residential, commercial, industrial and other areas;~~
- ~~—(G) Facilitating the adequate provisions for transportation, water supply, sewerage, drainage, sanitation, recreation, schools, housing, and other services; and~~
- ~~—(H) Conserving and enhancing the standard of living within the city.~~

~~§ 185.006 DEFINITIONS.~~

~~—For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—ABROGATE. To abolish; repeal; or annul.~~

~~—ACCESSORY DWELLING UNIT. A residential dwelling unit, but not a mobile home or recreational vehicle, located on the same lot or parcel of land as a single-family dwelling unit, with a separate, complete housekeeping unit including a separate kitchen, sleeping area, and full bathroom facilities. The unit may be attached to the single-family dwelling unit or detached in a free-standing structure. An accessory dwelling unit is not permitted as accessory to a two-family dwelling, multi-family dwelling, or mobile home dwelling.~~

~~—(1) The unit shall be accessory to and on the same property as a single-family dwelling unit and may only be located on lots or parcels of land that meet the minimum lot size requirement of any Single-Family Residential District (SF-1, RS-1, RS-2, and RS-3), Estate Residential District (RE), Rural Residential District (RR), or General Use Holding District (GU) where single-family dwellings are permitted.~~

~~—(2) The unit shall be developed in conjunction with or after development of the principal dwelling unit and the owner of the property must reside within either the principal or the accessory dwelling unit.~~

~~—(3) Not more than one (1) accessory dwelling unit per property is permitted.~~

~~—(4) No accessory dwelling unit shall be sold separately from the principal dwelling unit. The accessory dwelling unit and the principal dwelling unit shall be located on a single lot or parcel, or on a combination of lots or parcels.~~

~~—(5) The air-conditioned floor area of the accessory dwelling unit shall not exceed 50% of the air-conditioned floor area of the principal structure, or 800 square feet, whichever is less. The accessory dwelling unit shall be no less than 200 square feet of air-conditioned floor area.~~

~~—(6) The unit shall meet the accessory structure setback and height provisions identified in §§ 185.118(A) and (B).~~

~~—(7) The unit shall be designed so that the exterior façade material is similar in appearance (material and color) of the existing principal structure.~~

~~—(8) A minimum of one (1), but not more than two (2) parking spaces shall be provided for the accessory dwelling unit, in addition to the spaces required for the principal dwelling unit.~~

~~—(9) Construction of the accessory dwelling unit, in combination with all structures on the property, shall not cause the maximum lot coverage of the zoning district to be exceeded.~~

~~—(10) The accessory dwelling unit shall be serviced by centralized water and waste water or meet the health department's well and septic tank and drain field requirements. Modification, expansion or installation of well and/or septic tank facilities to serve the accessory dwelling unit shall be designed in a manner that does not render any adjacent vacant properties "unbuildable" for development when well and/or septic tank facilities would be required to service development on those adjacent properties.~~

~~—(11) An accessory dwelling unit shall be treated as a mobile home unit for impact fees.~~

~~—ACCESSORY USE or STRUCTURE. A use or structure on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure which contributes to the comfort, convenience or necessity of the occupants of the principal building.~~

~~—AGRICULTURE. The production, keeping or maintenance, for sale, lease or personal use, of plants and animals useful to man, including but not limited to, forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock including beef cattle, sheep, swine, horses,~~

~~ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds, vegetables; nursery, floral, ornamental and greenhouse products; and fish hatcheries.~~

~~—ALCOHOLIC BEVERAGE. As defined by F.S. § 561.01.~~

~~—ALLEY. Any public or private right of way, created by platting or City Council action, with thirty (30) feet or less of right-of-way set aside for secondary public or private access for service to abutting properties and not intended for general traffic circulation.~~

~~—APARTMENT. See DWELLING, MULTIPLE-FAMILY.~~

~~—ARCADE AMUSEMENT CENTER. This term refers to a place of business having at least fifty (50) coin-operated amusement games or machines which operate by means of the insertion of a coin and by the application of skill on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility. An arcade amusement center shall follow all state regulations, as established by Fla. Stat. § 546.109.~~

~~—ARTERIAL ROAD. A road or street that is designed or functions to move large volumes of traffic over relatively long distances. A road identified on the adopted future traffic circulation map as an arterial.~~

~~—ASSEMBLY. Any activity involving the assembly of any commodity, including the assembly, packaging, re-packaging of any items. This does not include changing any commodity in composition, form, size, shape, texture, or appearance which is deemed to be an industrial process.~~

~~—AUTOMOTIVE REPAIR FACILITIES. This term shall include all mechanical engine overhaul or repair, and body work and painting of automotive vehicles.~~

~~—AUTOMOTIVE VEHICLE. Any self-propelled vehicle or conveyance designed and used for the purpose of transporting or moving persons, animals, freight, merchandise or any substance. The phrase shall include passenger cars, trucks, buses, motorcycles, scooters and station wagons, but shall not include tractors, construction equipment or machinery or any device used for performing a job except as stated above.~~

~~—AWNING. A detachable, roof-like cover, supported by the wall of a building for the purpose of shielding a doorway or window from the elements.~~

- ~~—BLANK WALL AREA. An exterior wall of a commercial structure that is unadorned with any architectural features.~~
- ~~—BOARDINGHOUSE. See ROOMING HOUSE.~~
- ~~—BUILDABLE AREA. The portion of a lot remaining after required yards have been provided.~~
- ~~—BUILDING or STRUCTURE. Any structure constructed or used for residence, business, industry or other private or public purposes or accessory thereto, including tents, lunch wagons, dining cars, trailers, mobile homes, sheds, garages, carports, animal kennels, structures of all types, storerooms, billboards, signs, gasoline pumps and similar structures whether stationary or moveable.~~
- ~~—BUILDING COVERAGE. The horizontal area measured within the outside of the exterior walls of the ground floor of all principal and accessory buildings on a lot.~~
- ~~—BUILDING OFFICIAL. The official charged with the administration and enforcement of the building codes as adopted by the city.~~
- ~~—BUSINESS SERVICES. Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, such as secretarial services, bookkeeping services, telephone answering services, advertising services, building maintenance and employment services.~~
- ~~—"C" CHANNEL. A structural element made from light-gauge metal used as conventional framing member.~~
- ~~—CAR WASH FACILITY. A building or structure in which the washing, cleaning, and/or polishing of motor vehicles is conducted.~~
- ~~—CHICKEN. A domestic fowl developed in a number of breeds for their eggs. A fowl is defined as a chicken by the University of Florida Extension Service. This definition shall not include ducks, geese, turkeys, pigeons or guinea.~~
- ~~—CHURCH. A building or structure or groups of buildings or structures which by design and construction are primarily intended for the conducting of organized religious services and customary accessory uses excluding general education facilities.~~
- ~~—CLUB, PRIVATE. An organization or group of people pursuing common goals, interests, or activities not operated or maintained for profit and incorporated under the laws of the state as a nonprofit organization.~~

~~—CLINIC. An establishment where patients are not lodged overnight, but are admitted for examination and treatment by a group of physicians or dentists practicing medicine together. The term does not include a place for the treatment of animals and does not include a “pain-management clinic” as defined in the Palm Bay Code of Ordinances.~~

~~—COLLECTOR ROAD. A road or street that is designed or functions to collect traffic from local neighborhood roads and transmit them to arterial roads. A road identified on the adopted future traffic circulation map as a collector.~~

~~—COMPREHENSIVE PLAN. An official public document that has been adopted by the City Council that provides goals, objectives and policies to guide present and future land use decisions in the city.~~

~~—CONDITIONAL USE. A use that would not be appropriate generally or without restriction throughout the zoning division or district but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted in such zoning district as conditional uses.~~

~~—CONGREGATE LIVING FACILITY. A facility providing housing and services for certain individuals, licensed by the State Department of Health and Rehabilitative Services which may include meals, housekeeping, and personal care assistance. A residential environment is maintained for those persons who may be functionally impaired or socially isolated, but are otherwise in good health. The residents can maintain a semi-independent lifestyle and do not require more intensive care as provided in a nursing home/convalescent home.~~

~~—CONSIGNMENT AND/OR THRIFT STORE. A store to which people bring items that they no longer want (such as old clothes, shoes, and equipment) to have them sold. The person who brought it to the store doesn’t necessarily have to receive a portion of the money paid for it; the item(s) could simply be donated.~~

~~—CORRECTIONS FACILITY. A facility which is owned or operated by an agency of the State of Florida or Brevard County or which is operated, whether or not under contract with an agency of the State of Florida or Brevard County and which is utilized primarily for purposes of confining, detaining, housing, or separating from the general public any persons (whether adult or juvenile) who have been (i) convicted of a crime regardless of whether adjudication has been withheld; or (ii) awaiting trial on criminal charges in any jurisdiction; or (iii) involuntarily committed~~

~~because of pending criminal matter regarding such person. The term CORRECTIONS FACILITY shall include any state, county, or private jail, prison, juvenile detention facility, juvenile assessment or assignment center or similar facility regardless of the name by which such facility is known. The term CORRECTIONS FACILITY shall exclude City of Palm Bay Police Department facilities.~~

~~—COURT. An unoccupied open space on the same lot with the principal building and fully enclosed on at least three (3) adjacent sides by walls of the principal building.~~

~~—COURTESY NOTICE. A notice of a public hearing, not required by law, mailed at the city's discretion to property owners within five hundred (500) feet of property which is the subject of the public hearing.~~

~~—CYBERCAFE. See ELECTRONIC GAMING ESTABLISHMENT.~~

~~—DAY CARE CENTERS (CHILD CARE NURSERIES). Any child care center or child care arrangement which provides child care for more than five (5) children unrelated to the operator and which receives a payment, fee or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included: Public schools and nonpublic schools which are in compliance with the Compulsory School Attendance Law, Fla. Stat. Ch. 232; summer camps having children in full-time residence; summer day camps and bible schools normally conducted during vacation periods.~~

~~—DRINKING ESTABLISHMENT. Is a place devoted primarily to retailing and drinking alcoholic beverages. The words "drinking establishment" shall include the words "bar," "saloon," "tavern," "pub," "barroom," "bottle club," "cocktail lounge," "lounge," and "cabaret."~~

~~—DRIVE-THROUGH SERVICES/FACILITIES. Any place or premises where transactions take place between customers within an automotive vehicle and employees either within or outside of a business establishment.~~

~~—DUPLEX. A residential structure that is divided into (2) units, with a separate entrance for each unit. Each unit may allow one (1) family to reside within.~~

~~—DWELLING, EFFICIENCY. A dwelling unit within a multiple family complex or hotel/motel consisting of not more than one (1) habitable room together with a kitchen or kitchenette and sanitary facilities.~~

~~— DWELLING, MOBILE HOME. A detached residential dwelling unit over eight (8) feet in width, licensed by the State of Florida, designed for transportation after fabrication on streets or highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling unit complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities, and the like. A “travel trailer” is not to be considered as a mobile home.~~

~~— DWELLING, MULTIPLE FAMILY. A residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.~~

~~— DWELLING, SINGLE FAMILY. A detached dwelling unit other than a mobile home, designed for and occupied by one (1) family only. A Tiny Home on Wheels (THOW) that is anchored to the ground or placed on a foundation with skirting and connected to the City of Palm Bay water and sewer distribution system may be considered as a SINGLE FAMILY DWELLING.~~

~~— DWELLING, TOWNHOUSES. A one-family dwelling in a row of at least three (3) such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one (1) or more fire-resistant walls.~~

~~— DWELLING, TWO FAMILY. A detached residential building containing two (2) dwelling units, designed for occupancy by not more than two (2) families.~~

~~— DWELLING UNIT or LIVING UNIT. One (1) room, or rooms, connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.~~

~~— ELDERLY OR HANDICAPPED DWELLINGS. Any dwelling, building or other structure occupied by seven (7) or more persons including staff who are not related to the owner or administrator by law, blood, marriage, or adoption. These dwellings shall be used exclusively for residential use by persons who are handicapped, aged or disabled, are undergoing rehabilitation, and are provided resident services to meet their needs. The resident services, in addition to housing and food services may include, but not be limited to, personal assistance with bathing, dressing, housekeeping, adult supervision, emotional security and other related services~~

but not including medical services. For the purpose of this chapter, these facilities shall not be deemed to include rooming or boarding homes, fraternities, sororities, clubs, monasteries or convents, hotels, emergency shelters, residential treatment facilities, recovery homes or nursing homes.

~~ELECTRONIC GAMING ESTABLISHMENT. Means a business operation, whether a principal use or accessory use, where persons utilize electronic machines or devices, including but not limited to, computers and gaming terminals, to conduct games of chance and/or a game promotion pursuant to Fla. Stat. § 849.094, including sweepstakes, and where cash, prizes, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such redeemed or distributed items are determined by the electronic games played or by predetermined odds. This term includes, but is not limited to internet cafes, internet sweepstakes cafes, cybercafés or sweepstakes cafes. This definition is applicable to any ELECTRONIC GAMING ESTABLISHMENT, whether or not the electronic machine or device utilized: (a) is server-based; (b) uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries; (c) uses software such that the simulated game influences or determines the winning or value of the prize; (d) selects prizes from a predetermined finite pool of entries; (e) uses a mechanism that reveals the content of a predetermined sweepstakes entry; (f) predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed; (g) uses software to create a game result; (h) requires deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device; (i) requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device; (j) requires purchase of a related product, regardless if the related product, if any, has legitimate value; (k) reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded; (l) determines and associates the prize with an entry or entries at the time the sweepstakes is entered; or (m) a slot machine or other form of electrical, mechanical, or computer game. It is the intent of this definition to classify any mechanism utilized at any ELECTRONIC GAMING ESTABLISHMENT that seeks to avoid application of this definition through the use of any subterfuge or pretense whatsoever. ELECTRONIC GAMING ESTABLISHMENTS do not include ARCADE AMUSEMENT CENTERS, regulated pursuant to FLA. STAT. § 849.161, or the official Florida Lottery.~~

~~ESTATE. A large, individually-owned piece of land containing a residence.~~



~~—FAMILY. One (1) or more persons occupying a single-family dwelling unit, provided that unless all members are related by blood, marriage, or adoption, no such family shall contain over four (4) persons (step-children and foster children under state-approved care shall be deemed to be part of a natural blood related family). The term FAMILY shall not be construed to mean a fraternity, sorority, club, monastery, or convent, boardinghouse, or nursing home.~~

~~—FLOOR AREA. The sum of the gross horizontal areas of the several floors of a building or buildings measured from exterior faces of exterior walls or from the centerline of walls separating two (2) attached buildings. The required minimum floor area within each district shall not apply to accessory uses; however, the floor area of accessory uses may be computed as part of the area of the principal use.~~

~~—GIRDER. A structural element used to support the sides or roof of a structure.~~

~~—GOLF COURSE. A tract of land for playing golf, improved with trees, greens, fairways, hazards, and which may include clubhouses and shelters. A miniature golf course or putt-putt type course shall not be considered a golf course.~~

~~—GROSS FLOOR AREA. The sum of the gross horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two (2) buildings, but not including interior parking spaces, loading space for motor vehicles, or any space where the floor-to-ceiling height is less than five (5) feet.~~

~~—GROWTH MANAGEMENT DIRECTOR. The official charged with the administration, interpretation, and enforcement of this chapter as provided for in § 185.180.~~

~~—HEDGE. A row of bushes or small trees planted close together in such a manner as to form a boundary or barrier.~~

~~—HEIGHT OF BUILDING. The vertical distance from the established average sidewalk or street grade or finished grade at the building line whichever is the highest, to:~~

~~—(1) The highest point of a flat roof;~~

~~—(2) The deck line of a mansard roof;~~

~~—(3) The average height between the peak and eave of gable, hip, and gambrel roofs.~~

~~—HOME OCCUPATION. An occupation conducted entirely in a residential dwelling unit subject to the provisions of § 185.125.~~

~~— HOSPITAL. A building or group of buildings, having room facilities for one (1) or more overnight patients, used for providing services for the inpatient medical or surgical care of sick or injured humans, and which may include related facilities such as laboratories, outpatient departments, training facilities, central service facilities, and staff offices, provided, however, it is subordinate to the main use and must be an integral part of the hospital operations.~~

~~— HOTEL. A building in which lodging, or boarding and lodging, are provided and offered to the public for compensation, and which ingress and egress to and from all rooms are made through an inside lobby or office supervised by a person in charge at all times. As such, a hotel is open to the public, in contradinction to a boarding or lodging house, apartment hotel, or multiple dwelling.~~

~~— HUMAN CREMATORIUM. A human crematory is a facility containing one or more combustion units, known as cremators, used solely for the cremation of human bodies within appropriate containers. Cremators are usually made of high-grade steel plate and lined inside with heavy refractory tile or brick. Most cremators have a variety of automatic controls and use gas for heating the cremator.~~

~~— INDUSTRIAL. Any activity involving the mechanical, or chemical treatment of any commodity, including the assembly, packaging, blending, canning, bottling, or processing of any items. Changing any commodity in composition, form, size, shape, texture, or appearance is deemed to be an industrial process. The word "industrial" shall include the word manufacturing.~~

~~— INOPERABLE VEHICLE. A vehicle which cannot be driven upon the public or private streets for reasons including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.~~

~~— INSTITUTIONAL USES. A nonprofit or quasi-public use or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.~~

~~— INTERNET CAFE. See ELECTRONIC GAMING ESTABLISHMENT.~~

~~— INTERNET SWEEPSTAKES CAFE. See ELECTRONIC GAMING ESTABLISHMENT.~~

~~— JUNK YARD. A lot or land area where used or second hand materials are bought, sold, exchanged, stored, baled, packaged, packed, disassembled, or handled including but not limited to scrap iron and other metals, cloths, paper, rags,~~

~~plumbing fixtures, rubber tires and bottles. The words junk yard does not include the words automobile wrecking yard and salvage yard.~~

~~—KENNEL. A commercial establishment in which more than four (4) dogs or domesticated animals more than six (6) months old are housed, groomed, bred, boarded, trained or sold.~~

~~—LAND. Includes the words “water,” “marsh,” or “swamp.”~~

~~—LANDING BOARD. A device placed on a pigeon aviary for the intake of birds into any loft or aviary.~~

~~—LANDSCAPED AREAS. Those areas containing, but not limited to, grass, ground covers, shrubs, vines, hedges, trees, berms and complementary structural landscape architectural features, such as rocks, fountains, sculpture, decorative walls and tree wells.~~

~~—LARGE VEHICLE. Any vehicle(s) not classified as Class 1, Class 2, or Class 3 and exceeding 15,000 pounds Gross Vehicle Weight as outlined by the Federal Motor Carrier Safety Administration.~~

~~—LIVESTOCK. Domestic animals raised for use and/or for sale; such as fowl, ducks, geese, turkeys, horses, cows, mules, donkeys, pigs, chickens, goats and other animals commonly found on farms.~~

~~—LIVING AREA. The minimum floor area of a dwelling as measured by its outside dimensions exclusive of carports, porches, sheds and attached garages.~~

~~—LOADING SPACE, OFF-STREET. Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space.~~

~~—LOCAL STREET. Any street or road not designated as a collector or arterial street. The primary function of a local street is to serve the adjacent property by providing the initial access to the roadway network. All local streets are minor streets.~~

~~—LODGING HOUSE. Same as ROOMING HOUSE.~~

~~—LOFT. Any house, dovecote, structure, or enclosure for the keeping and housing of any kind of pigeon.~~

~~—LOT. For purposes of this chapter, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to~~

~~provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of:~~

~~— (1) A single lot of record;~~

~~— (2) A portion of a lot of record;~~

~~— (3) A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record;~~

~~— (4) A parcel of land described by metes and bounds.~~

~~— LOT. Includes the words “plot,” “parcel,” or “tract.”~~

~~— LOT AREA. The total area within the lot lines of a lot, excluding any street right-of-way.~~

~~— LOT, CORNER. A lot located at the intersection of two (2) or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than one hundred and twenty degrees (120°).~~

~~— LOT COVERAGE. That portion of the lot that is covered by buildings and structures including pavement.~~

~~— LOT DIMENSIONS.~~

~~— (1) Depth of a lot shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.~~

~~— (2) Width of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard; provided, however, that width between side lot lines at their foremost points (where they intersect with the street lines) shall not be less than eighty percent (80%) of the required lot width except in the case of cul-de-sacs, where the eighty percent (80%) requirement shall not apply; provided, however, that all lots shall have a minimum of fifty (50) feet facing a street.~~

~~— LOT, INTERIOR. A lot other than a corner lot with only one (1) frontage on a street.~~

~~— LOT LINE. The boundary line of a lot.~~

~~— LOT OF RECORD. A lot whose existence, location and dimensions have been legally recorded or registered in a deed or on a plat prior to the effective date of this chapter.~~

~~— LOT, THROUGH. A lot other than a corner lot with frontage on more than one (1) street. Through lots abutting two (2) streets may be referred to as double-frontage lots.~~

~~— MANUFACTURED/MODULAR BUILDING. A building that is factory constructed in its entirety, in units, or components and then placed or assembled on a building site, and which has been approved by the department of community affairs of the state or its successor agency.~~

~~— MANUFACTURING. See INDUSTRIAL.~~

~~— MARINA. An establishment that provides storage (both wet and dry), servicing, fueling and securing of watercraft and may also include eating, laundry, and retail facilities for owners, crews and guests.~~

~~— MAY. Is permissive.~~

~~— MEDICAL, RECYCLING FACILITY. Any activity involving the sterilization and destruction of medical waste, including the disposal of hazardous materials generated by hospitals, nursing homes, dental clinics, and pharmacies other types of industrial and commercial companies.~~

~~— MEDICAL WASTE. Any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals as defined by The Medical Waste Tracking Act of 1988. Medical Waste excludes hazardous waste and household waste.~~

~~— MINING. The removal of mineral resources or any earth material from its natural position upon a lot, other than incidental excavation directly related to foundation preparation for an approved building, structure, accessory structure or surface drainage.~~

~~— MOBILE FOOD TRUCK. A vehicle, including trailers and other conveyances, used to vend food and/or beverage product classified as follows.~~

~~— (1) Class I — Mobile kitchens. In addition to the vending of products allowed for class II and class III mobile food trucks, these vehicles may cook, prepare and assemble food items in the unit and serve a full menu.~~

~~— (2) Class II — Canteen trucks. These vehicles vend fruits, vegetables, hot dogs, precooked foods, pre-packaged foods and pre-packaged drinks. No~~

~~preparation or assembly of foods or beverages may take place on or in the vehicle, however, the heating of pre-cooked foods is allowed. A cooking apparatus or grill top for the heating of pre-cooked foods is permitted so long as it complies with state regulations.~~

~~— (3) Class III — Ice cream trucks. These vehicles vend only pre-packaged frozen dairy or frozen water-based food products, soft serve or hand-dipped frozen dairy products or frozen water-based food products and pre-packaged beverages. If vending in the street (right-of-way) only, a mobile vending permit does not apply. Please contact the city to obtain a Business Tax Receipt (BTR).~~

~~— MOBILE FOOD VENDOR. A person who prepares, dispenses, or otherwise sells food from a mobile food truck.~~

~~— MOBILE HOME. See dwelling, mobile home.~~

~~— MOBILE HOME PARK. A single parcel of ground ten (10) acres or more in an area upon which there are mobile home sites to be leased or rented to occupants thereon.~~

~~— MOTEL. A building in which lodging, or boarding and lodging, are provided and offered to the public in contradistinction to a boarding or lodging house, or a multiple-family dwelling; the same as a hotel, except that the buildings are usually designed to serve tourists traveling by automobile, ingress to rooms need not be through a lobby or office, and parking usually is adjacent to the dwelling unit. See also the definition for TOURIST AND TRANSIENT LIVING ACCOMMODATIONS.~~

~~— NONCONFORMITY. Any lot, use of land, use of structure and premises or characteristics of any use which was lawful at the time of enactment of this chapter but which does not conform with the provisions of the district in which it is located.~~

~~— NURSING HOME / CONVALESCENT HOME. An extended or intermediate care facility licensed or approved to provide full time convalescent or chronic care to more than one (1) person, who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves. Also known as a "long-term care facility" or "extended care facility."~~

~~— OCCUPIED. The use of a structure or land for any purpose, including occupancy for residential, business, industrial, manufacturing, storage and public use.~~

~~— OFFICE, PROFESSIONAL. An office for the conduct of business of the following or related activities, medical and dental, law, engineering, real estate, insurance, accounting, chiropractic, architectural, technical and consultants in these related~~

~~fields. This term does not include a “pain-management clinic” as defined in the Palm Bay Code of Ordinances.~~

~~—OPEN SPACE. Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment.~~

~~—PAIN-MANAGEMENT CLINIC. Any facility, clinic, office, professional office or business which advertises in any medium for any type of pain-management services provided the facility, clinic, office or business is required to register with Florida Department of Health as a pain-management clinic. Any facility, clinic, office, professional office or business that employs a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications provided the facility, clinic, office or business is required to register with Florida Department of Health as a pain-management clinic. Any facility, clinic, office, professional office or business which is required to register with the Florida Department of Health as a pain-management clinic.~~

~~—PARKING AREA. Any area, excluding public rights-of-way, used for the purpose of maneuvering, parking, loading, storing or display of vehicles, including driveways, aisles, parking spaces, back-out areas, and other areas used for outdoor sales, display or storage of merchandise or equipment.~~

~~—PERSON. A firm, association, organization, governmental body, partnership, trust, company, or corporation as well as an individual.~~

~~—PERSONAL SERVICES. A use intended to provide services to a person or their apparel, including such uses as barber shops, beauty shops, tailors, shoe repair, laundry pickup stations and other related activities.~~

~~—PIGEON. A bird of the order Columbidae and includes racing pigeon, carrier pigeon, homing pigeon, fancy pigeon and sporting pigeon.~~

~~—PIGEON AVIARY. An accessory use structure used for the keeping and housing of racing, homing, and ‘fancy’ or seamless banded pigeons.~~

~~—PLANNED COMMERCIAL DEVELOPMENT (PCD). A commercial use or group of commercial uses of greater than three (3) acres of area developed to a carefully drawn site plan approved by the City Council as a special exception.~~

~~—PLANNED INDUSTRIAL DEVELOPMENT (PID). An industrial use or group of industrial uses of greater than five (5) acres of area developed to a carefully drawn site plan approved by the City Council as a special exception.~~

~~— PLANNED RESIDENTIAL DEVELOPMENT (PRD). A residential project consisting of two-family or multi-family uses of one hundred (100) units or more.~~

~~— PLANNED UNIT DEVELOPMENT (PUD). An area of land developed as a single entity, or in approved stage in conformity with a final development plan by a developer or group of developers acting jointly, which is totally planned to provide for a variety of land uses and common open space.~~

~~— PRINCIPAL USE OR STRUCTURE. A building in which is conducted the principal use of the lot on which it is situated. In a residential district any dwelling shall be deemed to be the principal building on the lot on which the same is situated. An attached carport, shed, garage, or any other structure with one (1) or more walls or a part of one (1) wall being a part of the principal building and structurally dependent, totally or in part, on the principal building shall comprise a part of the principal building and be subject to all regulations applied to the principal building. A detached and structurally independent carport, garage, or other structure shall conform to the requirements of an accessory building. A detached and structurally independent garage, carport or other structure conforming as an accessory building may be attached to the principal building by an open breezeway.~~

~~— PRIZE. Means any gift, award, gratuity, good, service, credit, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.~~

~~— PUBLIC OUTDOOR SPACE. An area dedicated for the use of passive outdoor activity.~~

~~— PUBLIC USE. Any use of land or structures owned and operated by a municipality, county, state or the federal government or any agency thereof and of a public service or purpose.~~

~~— PUBLIC UTILITY FACILITY. Any equipment or structures necessary for conducting a service by a government or public utility including telephone electric, and cable television lines, poles, equipment and structures; water or gas pipes, mains, valves or structures; sewer pipes, valves or structures; and pumping stations.~~

~~— RECREATIONAL VEHICLE. A unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.~~



~~—REGIONAL TRANSPORTATION CENTER. Public transportation facilities including bus stations, railway stations, or a multi-modal combination of both uses.~~

~~—REQUIRED SETBACK LINE. An imaginary line running parallel to a front, side or rear property line, which establishes the rear edge of a yard or open area in which no building, structure or use may be placed or established, unless otherwise permitted herein.~~

~~—RESTAURANT / EATING ESTABLISHMENT. Any building or structure or portion thereof, in which food is prepared and served for pay to any person not residing on the premises.~~

~~—RETAIL BUSINESS. An establishment where goods are displayed and offered for purchase directly by the intended consumer or user of such goods.~~

~~—RETAIL BUSINESS. An establishment where goods are displayed and offered for purchase directly by the intended consumer or user of such goods. The words Retail Business does not include Thrift Stores or Second Hand Stores.~~

~~—RETAIL FLOOR AREA. The sum of the gross horizontal areas of the several floors of a building which is open to consumers to inspect or purchase commodities or merchandise that are on display and/or sale.~~

~~—ROOMING HOUSE. A building other than an apartment, hotel, motel or motor lodge where, for compensation and by prearrangement for definite periods, lodging, meals or lodging and meals are provided for three (3) or more persons.~~

~~—SALVAGE YARD. A lot or land area where used or wrecked automobiles are bought, sold, exchanged, stored, disassembled, or handled including but not limited to scrap iron and other metals, and rubber tires and any associated recycling of these materials. The words salvage yard include the words automobile wrecking yard but does not include junk yard.~~

~~—SATELLITE DISH ANTENNA. Any parabolic or spherical antenna which receives television or other signals from orbiting satellites or other devices. This term does not include any television or communications system regulated as a public utility.~~

~~—SCREENING. A method of visually shielding or obscuring one (1) abutting or nearby structure or use from another by fencing, walls, berms or densely planted vegetation.~~

~~—SEAMLESS BAND. A plastic or metal identification band that contains a series of letters or numbers that is permanently attached to the pigeon at birth. The band~~

~~is issued by a nationally recognized birding association, and is to remain with the animal throughout its natural life.~~

~~—SECONDHAND DEALER. Secondhand dealer means any person who shall engage in the business of purchasing, selling or otherwise dealing in, whether as principal or agent, secondhand articles of property. Pawnbrokers, junk dealers and precious metals dealers, for the purpose of this article, shall be not classified as secondhand dealers. The words second hand dealer includes thrift stores.~~

~~—SECONDHAND PROPERTY. Secondhand property means any tangible personal property that is not new and has been previously sold or offered for sale, including, but not limited to, clothing, watches, rings and all other jewelry; appliances; plumbing and electrical fixtures; tools; bicycles; musical instruments; adding machines; copy machines; computers, and other office equipment; knives, and any other article of tangible personal property of any value.~~

~~—SELF STORAGE FACILITY. A structure containing separate, individual, and private dead storage spaces of varying sizes up to a maximum of 300 square feet which are leased or rented on individual leases for varying periods of time.~~

~~—SEMIPUBLIC USE. Any use of land or buildings owned and operated by an individual, firm, corporation, lodge or club, either as a profit or nonprofit activity, for a public service or purpose. This shall include privately owned utilities, transportation, recreation, and cultural activities and services.~~

~~—SHALL. Is mandatory.~~

~~—SHOPPING CENTER. A commercially owned development with twenty-five thousand (25,000) gross square feet or greater of building area and with at least one hundred (100) parking spaces.~~

~~—SIGN. Any device to inform or attract the attention of persons not on the premises on which the sign is located; provided, however, that the following shall not be included in the application of the regulations herein:~~

~~—(1) Signs not exceeding one (1) square foot in area and bearing only property numbers, postbox numbers, names of occupants of premises, or other identification of premises not having commercial connotations;~~

~~—(2) Flags and insignia of any governmental level except when displayed in connection with commercial promotion;~~

~~—(3) Legal notices, identification, informational, or directional signs erected or required by governmental bodies;~~

~~—(4) Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or flashing lights;~~

~~—(5) Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.~~

~~—SMALL EVENT SPACE. An assembly, gathering, or meeting space, to include clubs, lodges, recreational groups, and similar uses, containing less than five thousand (5,000) square feet of floor area, which are solely confined to indoor spaces with their occupancy being subject to applicable Building and Fire Codes. Any outside spaces will require a Special Event Permit.~~

~~—STREET. In addition to the definition contained herein, a street for the purposes of this section shall be a public or private right-of-way set aside for public travel which is more than thirty (30) feet in width.~~

~~—(1) STREET RIGHT-OF-WAY LINE. The property line which bounds the right-of-way set aside for use as a street.~~

~~—(2) STREET CENTERLINE. The midpoint between the street right of way.~~

~~—STRUCTURE. See BUILDING.~~

~~—SUBMERGED LANDS. Submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters. Privately owned submerged lands may be utilized for the calculation of density and intensity of residential and commercial development.~~

~~—SWIMMING POOL. Any portable pool or permanent structure containing a body of water eighteen (18) inches or more in depths intended for recreational purposes, but not including an ornamental reflecting pool or fish pond or other type of pool regardless of size, unless it is located and designed so as to create a hazard or to be used for swimming or wading.~~

~~—TERRACE. A hard, semi-hard, or improved surfaced area directly adjacent to a principal building at or within three (3) feet of the finished grade and not covered by a permanent roof.~~

~~—TINY HOME ON WHEELS (THOW). A dwelling to be used as permanent housing with permanent provisions for living, sleeping, eating, cooking, and sanitation. A Tiny Home on Wheels (THOW) is considered a single-family residential structure when anchored to the ground or placed on a foundation with skirting and connected to the City of Palm Bay water and sewer distribution~~

~~system. A THOW must have a minimum living area of one hundred and twenty (120) square feet. A THOW must be certified to meet ANSI A119.5 standards. A THOW exceeding four hundred (400) square feet shall meet the Federal Manufactured Home Construction and Safety Standards and shall have a United States Department of Housing and Urban Development label. A THOW shall only be permitted in a small planned unit development (SPUD).~~

~~—TOURIST AND TRANSIENT LIVING ACCOMMODATIONS. Any place wherein tourists, transients, travelers, or persons desiring temporary residence may be provided with sleeping, sanitary or cooking facilities:~~

~~—(1) MOTEL. See MOTEL.~~

~~—(2) TOURIST COURT. A group of tourist accommodation units under one (1) ownership or on one (1) tract of land providing facilities for overnight guests or for longer periods of time, and with cooking or eating facilities within the individual units.~~

~~—(3) HOTEL. See HOTEL.~~

~~—TOWNHOUSE. See DWELLING, TOWN-HOUSES.~~

~~—TRAILER. Any vehicle without motive power designed to be coupled to or drawn by a motor vehicle and constructed so that no part of its weight or that of its load rests upon the towing vehicle.~~

~~—TRAVEL TRAILER or MOBILE CAMPER. A self-powered or nonself-powered vehicle eight (8) feet or under in width and no more than thirty-five (35) feet in length capable of being towed by an ordinary vehicle upon which it is constructed, whose primary use is temporary lodging while traveling or camping and is not used for habitation except in designated areas while within the corporate limits of the city.~~

~~—TRUCK FARMING. Farms where crops are grown specifically to be retailed. This is typically an operation with rows of crops that are harvested by trucks that drive between or alongside the crops.~~

~~—USED or OCCUPIED. Includes the words “arranged,” “designed,” “constructed,” “altered,” “converted,” “rented,” “leased,” or “intended to be used” or “occupied.”~~

~~—VACANT. A building or parcel of land which is neither occupied or used or is in an inoperative state for a period of six (6) months.~~

~~—VARIANCE. A variance is a relaxation of the terms of the zoning chapter where such variance will not be contrary to the public interest and where, owing to~~

~~conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the chapter would result in unnecessary and undue hardship. As used in this chapter, a variance is authorized only for height, area, size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.~~

~~—WALL. A structure forming a physical barrier which is so constructed that less than fifty percent (50%) of the vertical surface is open to permit the transmission of light, air, and vision through such surface in a horizontal plane.~~

~~—WAREHOUSE. A building used primarily for the storage of goods and materials.~~

~~—WHOLESALE TRADE. Establishments or places of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional or professional business users; or acting as agents or brokers and buying merchandise for such individuals or companies.~~

~~—XERIC LANDSCAPING. Water conservation through creative landscaping applied by following seven (7) procedures:~~

- ~~—(1) Appropriate planning and design;~~
- ~~—(2) Appropriate plant selection;~~
- ~~—(3) Mulching;~~
- ~~—(4) Efficient use of turf;~~
- ~~—(5) Efficient irrigation;~~
- ~~—(6) Appropriate maintenance;~~
- ~~—(7) Improve poor soils.~~

~~—YARD, REQUIRED. An open space on the same lot with a principal building which is unoccupied and unobstructed by building or structures from the ground to the sky from the property line to the setback line except as otherwise provided in this definition:~~

- ~~—(1) FRONT YARD, REQUIRED. The area extending across the entire width of the lot between the front lot line and the front setback line. The distance shall be measured perpendicular to the front lot line.~~

~~—(2) SIDE YARD, REQUIRED. The area extending along the side lot line from the required front yard to the required rear yard and lying between the side lot line and the side setback line. The distance to be measured perpendicular to the side property line.~~

~~—(3) REAR YARD, REQUIRED. The area extending across the entire width of the lot between the rear lot line and the rear setback line. The distance to be measured perpendicular to the rear property line.~~

~~—ZERO-LOT LINE SINGLE-FAMILY DETACHED DEVELOPMENTS. Residential developments of single-family detached dwelling units where the dwelling units are placed on one (1) side lot line, but where no two (2) dwelling units share a common side lot line and which meet all requirements of this chapter.~~

#### ~~§ 185.007 ZONING DISTRICTS ESTABLISHED.~~

~~—The city is divided into zoning districts as specified in §§ 185.030 et seq. and §§ 185.060 et seq. and as shown on the official zoning map of the city.~~

#### ~~§ 185.008 ZONING MAP.~~

~~—(A) Identification of official map. The official zoning map shall be identified by the signature of the Mayor attested by the City Clerk under the following: "This is to certify that this is the official zoning map referred to in the Palm Bay Zoning Ordinance," together with the date of adoption of this chapter.~~

~~—(B) Changes in district boundaries. If, in accordance with the provisions of this chapter and other applicable law, changes are made in the district boundaries or other matter portrayed on the official zoning map, such changes shall be made on the official zoning map promptly after the amendment has been approved by City Council. The official zoning map shall contain a listing by date and ordinance or resolution number of all changes.~~

~~—(C) Final authority as to zoning status. Regardless of the existence of purported copies of the official zoning map which may, from time to time, be made or published, the official zoning map shall be kept under the responsible charge of the Growth Management Director or his designee and shall be the final graphic authority as to the current zoning status of all lands, waters and structures in the city. However, the legal description of all zoning or rezoning ordinances or resolutions, if applicable, shall be the final legal authority as to the zoning status of land.~~

~~—(D) Replacement of official zoning map. In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the City Council may, by resolution, adopt a new official zoning map which shall supersede the prior official zoning map. The new official zoning map may correct drafting or other errors or omissions in the prior official zoning map, but no such correction shall have the effect of amending the original zoning code or any subsequent amendment thereof. Unless the prior official zoning map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining, shall be preserved together with all available records pertaining to its adoption or amendment.~~

~~—(E) Retention of earlier zoning map. All zoning maps or remaining portions thereof which have had official force and effect in the city prior to the effective date of this chapter shall be retained as a public record and as a guide to the zoning status of lands and water under the jurisdiction of the city prior to the adoption of this chapter.~~

~~—(F) Updating zoning base maps. From time to time the zoning base map(s) may be updated to reflect new annexations, streets, or subdivisions formally approved by the City Council without further official action by the Council. No revision of zoning boundaries is permitted except by ordinance.~~

~~—(G) Changes to map. No zoning changes shall be made on the official zoning map or matter shown thereon except in conformity with the procedures set forth in this chapter. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this chapter and punishable as provided under this chapter.~~

#### ~~§ 185.009 INTERPRETATION OF DISTRICT BOUNDARIES; USES.~~

~~—Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the following rules shall apply.~~

~~—(A) Boundaries approximately following streets, highway, alleys or rights-of-way. Boundaries indicated as approximately following the centerline of streets, highways, alleys or rights-of-way shall be construed as to follow such centerlines. In the event a right-of-way is vacated, the district boundary shall be construed as remaining in its location except when ownership of the vacated street is divided other than at the center in which case the boundary shall be construed as moving with the ownership.~~

~~—(B) Boundaries approximately following platted lot lines. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.~~

~~—(C) Boundaries approximately following city limits. Boundaries indicated as approximately following city limits shall be construed as following such city limits.~~

~~—(D) Boundaries approximately following railroad lines. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.~~

~~—(E) Boundaries approximately following bulkhead lines, shore lines, streambed, or other water bodies. Boundaries indicated as following bulkhead or shore lines shall be construed to follow such bulkhead lines or shore lines, and in the event of change the bulkhead or shore line shall be construed as moving with the newly established bulkhead line or the actual shore line; boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerlines.~~

~~—(F) Boundaries indicated as entering any body of water. Boundaries that are indicated as entering any body of water, but not continuing to intersect with other zoning boundaries shall be construed as extending in the direction in which they enter the body of water to intersect with other zoning districts.~~

~~—(G) Boundaries approximately parallel to or extensions of above features. Boundaries indicated as parallel to or extensions of features indicated in divisions (A) through (F) above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.~~

~~—(H) Administrative official to interpret boundaries in cases of discrepancy between actual features and zoning map. Where discrepancies exist between natural or manmade features existing on the ground and with those shown on the official zoning map or in other circumstances not covered by divisions (A) through (G) above, the Growth Management Director shall interpret the district boundaries. Appeal from the interpretation of the Growth Management Director shall be pursuant to § 169.009.~~

~~—(I) Interpretation of uses permitted. Uses not designated as permitted by right, allowed by conditional use, or accessory to such uses shall be prohibited from that district. If a question arises as to the interpretation of any permitted uses, such interpretation shall be made by the Growth Management Director.~~

~~§ 185.010 APPLICATION.~~



~~— No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, and/or reconstructed, moved or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located, or as otherwise provided for in this chapter.~~

~~§ 185.011 BUILDINGS TO CONFORM.~~

~~— No building or other structure shall hereafter be erected or altered:~~

- ~~— (A) To exceed the height, bulk or floor area;~~
- ~~— (B) To provide a greater number of dwelling units;~~
- ~~— (C) To occupy a greater percentage of lot area;~~
- ~~— (D) To have narrower or smaller rear yards, front yards or side yards;~~
- ~~— (E) To provide less lot area per dwelling unit or to occupy a smaller lot; or~~
- ~~— (F) Provide a lesser separation between buildings or portion of buildings, than therein required or in any manner contrary to the provision of this chapter.~~

~~§ 185.012 MULTIPLE USE OF REQUIRED SPACE PROHIBITED.~~

~~— No part of a yard or other open space or off-street parking or loading space required about or in connection with any building for the purpose of complying with this code shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building, except as specifically provided for in this code.~~

~~§ 185.013 REDUCTION OF LOT AREA PROHIBITED.~~

~~— No yard or lot existing at the time of passage of this code shall be reduced in dimension or area below the minimum requirements set forth herein for the district in which it is located. Yards or lots created after the effective date of this chapter shall meet the minimum requirements established by this chapter.~~

~~§ 185.014 MINIMUM REQUIREMENTS.~~

~~— Within each district, the regulations set by this chapter shall be minimum regulations and shall apply uniformly to each class or kind of structure, land, or water.~~

~~§ 185.015 LOT REQUIREMENTS.~~

~~— Each building or structure hereafter erected shall be located on a lot as defined herein. Every structure or building hereafter erected shall be on a lot abutting an~~

~~improved and approved street, as defined in Chapter 179 of this code of ordinances.~~

~~§ 185.016 ANNEXED TERRITORY.~~

~~—The zoning classification of all property which may hereafter be annexed to the city shall be determined by the City Council after review and recommendation of the Planning and Zoning Board at the time of annexation.~~

~~§ 185.017 TRANSITION PROVISION.~~

~~—In the event any provision of this chapter would limit or modify the vested rights of any person or entity to complete a development that has been previously authorized, then in that event, the city may recognize the right to complete the development as provided herein. The city recognizes the right of any person to complete the following development:~~

~~—(A) Development that has received a building permit as long as that permit remains valid;~~

~~—(B) Development that has received final site plan approval shall have one (1) year to obtain and maintain a valid building permit; and~~

~~—(C) Development that has filed a completed application for a building permit shall have 180 days to obtain and maintain a valid building permit.~~

~~§ 185.018 SITE PLANS.~~

~~—A site plan shall be required for the construction or expansion of any building, structure, infrastructure, or complex of buildings or structures, unless exempted by this section. Prior to making application for a site plan, the applicant shall request a pre-application meeting with the City to determine whether the proposed project meets the criteria established for a site plan, minor site plan, site plan modification, or is exempt from the site plan process. A building permit shall not be issued unless the construction plans are accompanied by a City approved site plan. A site plan shall be submitted to the Growth Management Department for administrative review. The submittal requirements shall follow the Guidelines for Site and Building Permitting Procedures Manual.~~

~~—(A) Site Plan. A site plan shall be submitted for all the following development proposals:~~

~~—(1) New site development proposals for unimproved real property.~~

~~—(2) Any developed site proposing an addition of 50 percent (50%) or greater of the original floor area or seating capacity of the existing structure.~~

~~—(3) Any addition of impervious area, or modification of an existing onsite wetland, surface water, or stormwater management system.~~

~~—(4) Proposals where existing onsite "natural areas" of any size will be impacted.~~

~~—(B) Minor Site Plan. A minor site plan shall be submitted for the following site development proposals:~~

~~—(1) Changes to existing development which does not exceed 50 percent (50%) of the original floor area or seating capacity of the existing structure.~~

~~—(2) Additions or alterations to site infrastructure, stormwater, impervious areas of less than five hundred (500) square feet; or an addition of up to twenty percent (20%) of parking areas on developed sites, or on sites with no existing permit.~~

~~—(C) Site Plan Modification. Site plan modifications shall meet the following criteria:~~

~~—(1) All infrastructure required to service the site shall exist on the subject site.~~

~~—(2) Parking meets all code requirements, or any approved parking determination, parking rate adjustments or variance requests, in accordance with the Land Development Code.~~

~~—(3) The proposed modification does not substantially alter the traffic circulation system or substantially change the use of property, as determined by the Growth Management Director.~~

~~—(D) Applicability. All site plans are subject to compliance with the Zoning Code.~~

~~—(1) Only the specific work area identified in a site plan, minor site plan, or site plan modification shall be subject to compliance with current code requirements, unless the alteration or modification adversely impacts safety, existing infrastructure, or another code requirement that stipulates the area outside of the work area must comply with the current standards.~~

~~—(E) Exemptions. The following are exempt from the site plan review; however, shall comply with all other development regulations and building code requirements.~~

~~—(1) Detached single-family or duplex/two-family residence on a fee simple lot.~~

~~—(2) Accessory structures to an established principal use meeting the following criteria:~~

~~—(a) The structure does not necessitate the expansion of the existing infrastructure such as parking spaces, stormwater system, etc.; or~~

~~—(b) Does not impact the adequacy of the existing infrastructure (e.g., utilize necessary parking spaces, remove/reduce stormwater, etc.); and~~

~~—(c) The scope of work does not require modifying the existing site engineering and can be regulated through the building permit review process.~~

~~—(F) Revisions to Approved Plans (RTAP). Revisions to approved plans under construction which do not increase the gross square footage of a building or adversely impact compliance with the approved site plan and would not alter the required infrastructure and improvements necessary to serve the site, may be approved in writing provided such additions and/or modifications fully conform to all existing city regulations. Prior to final acceptance of the site, as-built drawings shall be submitted indicating such revisions, and/or modifications prior to site acceptance.~~

## **DISTRICT REGULATIONS**

### **§ 185.030 GU — GENERAL USE HOLDING DISTRICT.**

~~—(A) Intent. The provisions of this district are intended to apply to large undeveloped or sparsely developed areas which are capable of supporting single-family dwellings at very low densities without extensive infrastructure improvements. This district is also intended to place land in a hold pattern until such time as a specific request is presented which is consistent with the future land use plan and which provides for infrastructure improvements necessary to support a more intensive land development classification.~~

~~—(B) Principal uses and structures:~~

~~—(1) Single-family dwellings.~~

~~—(2) General agricultural activities limited to farming, grove agriculture, plant nursery (wholesale only), tree farming, and flower and shrub gardening.~~

~~—(3) Keeping or raising for sale of horses, ponies, cows and other livestock provided that the total of all such animals shall not exceed one (1) for each one-half (½) acre of lot area.~~

~~—(4) Keeping or raising for sale of small domestic animals, birds or fish.~~

- ~~—(5) Public parks, playgrounds and other public recreational facilities.~~
- ~~—(6) Public or private golf courses.~~
- ~~—(7) Public utility equipment and facilities.~~
- ~~—(8) Public uses.~~
- ~~—(C) Accessory uses and structures: Customary accessory uses of a noncommercial nature clearly incidental and subordinate to one (1) or more principal uses.~~
- ~~—(D) Conditional uses:~~
  - ~~—(1) Agricultural activities such as truck farming, bee keeping, fish hatcheries, poultry farms and other agricultural activities not expressly provided under principal uses.~~
  - ~~—(2) Retail sales of agricultural products grown or raised on the same lot, provided the following conditions are met:~~
    - ~~—(a) No structure for sale of such products shall contain a floor area greater than two hundred (200) square feet.~~
    - ~~—(b) The area and structure used for sale of such products shall meet the setbacks established for principal structures.~~
    - ~~—(c) All parking spaces, loading spaces and drives shall meet the setbacks established for principal structures.~~
- ~~—(3) Cemeteries.~~
- ~~—(4) Broadcasting towers, antennas and transmitters.~~
- ~~—(5) Churches.~~
- ~~—(6) Clubs, lodges, and similar activities.~~
- ~~—(7) Public and private schools.~~
- ~~—(8) Mining.~~
- ~~—(9) Stables or horse riding academy.~~
- ~~—(10) Commercial dog kennels.~~
- ~~—(11) Communication towers and facilities.~~
- ~~—(E) Prohibited uses and structures:~~
  - ~~—(1) All uses not expressly or provisionally permitted herein.~~

~~—(2) All uses not in keeping with the low density residential or agricultural character of the district.~~

~~—(3) Corrections facilities.~~

~~—(F) Lot and structure requirements:~~

~~—(1) Minimum lot area — five (5) acres.~~

~~—(2) Minimum lot width — three hundred (300) feet.~~

~~—(3) Minimum lot depth — three hundred (300) feet.~~

~~—(4) Maximum building coverage — ten percent (10%).~~

~~—(5) Minimum living area — one thousand two hundred (1,200) square feet.~~

~~—(6) Maximum height — thirty-five (35) feet.~~

~~—(7) Minimum yard requirement:~~

~~—(a) Front — seventy-five (75) feet.~~

~~—(b) Side interior — thirty (30) feet.~~

~~—(c) Side corner — fifty (50) feet.~~

~~—(d) Rear — fifty (50) feet.~~

#### ~~§ 185.031 RR — RURAL RESIDENTIAL DISTRICT.~~

~~—(A) Intent. The provisions of this district are intended to apply to areas uniquely suited for the development and maintenance of rural single-family residential living combined with limited agricultural activities. Large lot sizes are required to maintain the low density rural character, prevent unsanitary conditions, and provide sufficient open space to ensure that the various principal uses are kept at a level of compatible land use intensity.~~

~~—(B) Principal uses and structures:~~

~~—(1) Single-family dwellings.~~

~~—(2) Accessory dwelling units; subject to the provisions listed in the § 185.006.~~

~~—(3) General agricultural activities limited to farming, grove agriculture, plant nursery (wholesale only), tree farming, and flower and shrub gardening.~~

~~—(4) Keeping or raising for sale of horses, ponies, and cows; provided, that the total of all such animals shall not exceed one (1) for each one-half (½) acre of lot area.~~

- ~~—(5) Public parks, playgrounds and other public recreational facilities.~~
- ~~—(6) Public utility equipment and facilities on a site of one (1) acre or less or within a dedicated utility easement or right-of-way.~~
- ~~—(7) Keeping or raising for sale of small domestic animals, birds, or fish.~~
- ~~—(8) Keeping or raising for sale of small farm animals, such as goats, chickens, pigs and other small animals typically found on a farm, provided the total of all such animals shall not exceed five (5) for each one half (½) acre of lot area.~~
- ~~—(9) The acreage used in determining the number of animals that may be kept upon the premises may only be used for one (1) type of animal. For example, an acre of land would allow for two (2) horses, but it would not allow for an additional five (5) goats. The land needed to support one type of animal cannot in turn be counted to permit further animals. This provision is to protect the health of the animal(s) and to ensure the residential character of the neighborhood is maintained.~~
- ~~—(C) Accessory uses and structures:~~
  - ~~—(1) Customary accessory uses of a noncommercial nature clearly incidental and subordinate to one (1) or more principal uses.~~
- ~~—(D) Conditional uses:~~
  - ~~—(1) Public or private golf courses.~~
  - ~~—(2) Retail sales of agricultural products grown or raised on the same lot, provided the following conditions are met:~~
    - ~~—(a) No structure for sale of such products shall contain a floor area greater than four hundred (400) square feet.~~
    - ~~—(b) The area and structure used for sale of such products shall meet the setbacks established for principal structures.~~
    - ~~—(c) All parking spaces, loading spaces and drives shall meet the setbacks established for principal uses.~~
  - ~~—(3) Cemeteries (excluding crematoriums).~~
  - ~~—(4) Churches.~~
  - ~~—(5) Antennas and transmitters.~~
  - ~~—(6) Clubs, lodges and similar activities.~~

- ~~— (7) Public and private schools.~~
- ~~— (8) Stables or horse riding academy.~~
- ~~— (9) Commercial dog kennels providing the following conditions are met:~~
  - ~~— (a) Principal structure setbacks must be met for all kennel structures and activities.~~
  - ~~— (b) All parking spaces, loading spaces and drives shall meet the setbacks established for principal uses.~~
- ~~— (10) Public utility equipment not within a dedicated utility easement or right-of-way and on a site of greater than one (1) acre.~~
- ~~— (11) Public uses.~~
- ~~— (12) Wedding venues, subject to the provisions established in § 185.088(J).~~
- ~~— (E) Prohibited uses and structures:~~
  - ~~— (1) All uses not specifically or provisionally permitted herein.~~
  - ~~— (2) Mining.~~
  - ~~— (3) Intense agricultural activities such as truck farming, beekeeping, fish hatcheries, poultry farms, pig farms and other agricultural activities not expressly provided for under principal uses.~~
  - ~~— (4) Correctional facilities.~~
- ~~— (F) Lot and structure requirements:~~
  - ~~— (1) Minimum lot area — One (1) acre.~~
  - ~~— (2) Minimum lot width — one hundred and fifty (150) feet.~~
  - ~~— (3) Minimum lot depth — two hundred (200) feet.~~
  - ~~— (4) Maximum building coverage — thirty-five percent (35%).~~
  - ~~— (5) Minimum living area — one thousand two hundred (1,200) square feet.~~
  - ~~— (6) Maximum height — thirty-five (35) feet.~~
  - ~~— (7) Minimum yard requirements:~~
    - ~~— (a) Front — fifty (50) feet.~~
    - ~~— (b) Side interior — twenty (20) feet.~~
    - ~~— (c) Side corner — thirty (30) feet.~~



~~—— (d) Rear —— thirty (30) feet.~~

~~§ 185.032 RE — ESTATE RESIDENTIAL DISTRICT.~~

~~— (A) Intent. The provisions of this district are intended to apply to an area of low density single-family residential development of an estate character. Lot sizes and other restrictions are intended to protect and promote the highest quality residential development.~~

~~— (B) Principal uses and structures:~~

~~—— (1) Single-family dwellings.~~

~~—— (2) Accessory dwelling units; subject to the provisions listed in the § 185.006.~~

~~—— (3) Public parks, playgrounds and other public recreational facilities.~~

~~—— (4) Public utility equipment and facilities located within a utility easement or right-of-way.~~

~~— (C) Accessory uses and structures:~~

~~—— (1) Customary accessory uses of a noncommercial nature clearly incidental and subordinate to one (1) or more principal uses.~~

~~— (D) Conditional uses:~~

~~—— (1) Public or private schools.~~

~~—— (2) Churches.~~

~~—— (3) Public utility equipment facilities not located within a utility easement or right-of-way.~~

~~—— (4) Public utility equipment facilities, except communication towers, not located within a utility easement or right-of-way.~~

~~— (E) Prohibited uses and structures:~~

~~—— (1) All uses not specifically or provisionally provided herein.~~

~~—— (2) Correctional facilities.~~

~~— (F) Lot and structure requirements:~~

~~—— (1) Minimum lot area —— twelve thousand (12,000) square feet.~~

~~—— (2) Minimum lot width —— eighty (80) feet.~~

~~—— (3) Minimum lot depth —— one hundred and twenty (120) feet.~~

- ~~— (4) Maximum building coverage — thirty percent (30%).~~
  - ~~— (5) Minimum living area — one thousand six hundred (1,600) square feet.~~
  - ~~— (6) Maximum height — twenty-five (25) feet.~~
  - ~~— (7) Minimum yard requirements:~~
    - ~~— (a) Front — twenty-five (25) feet.~~
    - ~~— (b) Side interior — twelve (12) feet.~~
    - ~~— (c) Side corner — twenty-five (25) feet.~~
    - ~~— (d) Rear — twenty-five (25) feet.~~
  - ~~— (8) Minimum two (2) car enclosed garage required at the time of the issuance of the structure's certificate of occupancy.~~
- ~~§ 185.033 RS-1 — SINGLE-FAMILY RESIDENTIAL DISTRICT.~~
- ~~— (A) Intent. The provisions of this district are intended to apply to an area of low density single-family residential development. Lot sizes and other restrictions are intended to promote and protect high quality single-family residential development.~~
  - ~~— (B) Principal uses and structures:~~
    - ~~— (1) Single-family dwellings.~~
    - ~~— (2) Accessory dwelling units; subject to the provisions listed in the § 185.006.~~
    - ~~— (3) Public parks, playgrounds and other public recreational facilities.~~
    - ~~— (4) Public utility equipment and facilities located within a utility easement or right-of-way.~~
  - ~~— (C) Accessory uses and structures:~~
    - ~~— (1) Customary accessory uses of a noncommercial nature clearly incidental and subordinate to one (1) or more principal uses.~~
  - ~~— (D) Conditional uses:~~
    - ~~— (1) Public and private schools.~~
    - ~~— (2) Churches.~~
    - ~~— (3) Public utility equipment and facilities, except communication towers, not located within a utility easement or right-of-way.~~
  - ~~— (E) Prohibited uses and structures:~~

- ~~— (1) All uses not specifically or provisionally provided herein.~~
- ~~— (2) Correctional facilities.~~
- ~~— (F) Lot and structure requirements:~~
  - ~~— (1) Minimum lot area — eight thousand (8,000) square feet.~~
  - ~~— (2) Minimum lot width — eighty (80) feet.~~
  - ~~— (3) Minimum lot depth — one hundred (100) feet.~~
  - ~~— (4) Maximum building coverage — thirty percent (30%).~~
  - ~~— (5) Minimum living area — one thousand six hundred (1,600) square feet.~~
  - ~~— (6) Maximum height — twenty-five (25) feet.~~
  - ~~— (7) Minimum yard requirements:~~
    - ~~— (a) Front — twenty-five (25) feet.~~
    - ~~— (b) Side interior — eight (8) feet.~~
    - ~~— (c) Side corner — twenty-five (25) feet.~~
    - ~~— (d) Rear — twenty-five (25) feet.~~
  - ~~— (8) Minimum two (2) car enclosed garage required at the time of the issuance of the structure's certificate of occupancy.~~

~~§ 185.034 RS-2 — SINGLE-FAMILY RESIDENTIAL DISTRICT.~~

- ~~— (A) Intent. The provisions of this district are intended to apply to an area of medium density single-family residential development. Lot sizes and other restrictions are intended to promote high quality residential development.~~
- ~~— (B) Principal uses and structures:~~
  - ~~— (1) Single-family dwellings.~~
  - ~~— (2) Accessory dwelling units; subject to the provisions listed in the § 185.006.~~
  - ~~— (3) Public parks, playgrounds and other public recreational facilities.~~
  - ~~— (4) Public utility equipment and facilities located within a utility easement or right-of-way.~~
- ~~— (C) Accessory uses and structures:~~
  - ~~— (1) Customary accessory uses of a noncommercial nature clearly incidental and subordinate to one (1) or more principal uses.~~

~~—(D) Conditional uses:~~

~~—(1) Public and private schools.~~

~~—(2) Churches.~~

~~—(3) Public utility equipment and facilities, except communication towers, not located within a utility easement or right-of-way.~~

~~—(E) Prohibited uses and structures:~~

~~—(1) All uses not specifically or provisionally permitted herein.~~

~~—(2) Correctional facilities.~~

~~—(F) Lot and structure requirements:~~

~~—(1) Minimum lot area — seven thousand five hundred (7,500) square feet.~~

~~—(2) Minimum lot width — seventy-five (75) feet.~~

~~—(3) Minimum lot depth — one hundred (100) feet.~~

~~—(4) Maximum building coverage — thirty percent (30%).~~

~~—(5) Minimum living area — one thousand two hundred (1,200) square feet.~~

~~—(6) Maximum height — twenty-five (25) feet.~~

~~—(7) Minimum yard requirements:~~

~~—(a) Front — twenty-five (25) feet.~~

~~—(b) Side interior — eight (8) feet.~~

~~—(c) Side corner — twenty-five (25) feet.~~

~~—(d) Rear — twenty-five (25) feet.~~

~~—(8) Minimum one (1) car enclosed garage required at the time of the issuance of the structure's certificate of occupancy.~~

~~§ 185.035 RS-3 — SINGLE-FAMILY RESIDENTIAL DISTRICT.~~

~~—(A) Intent. The provisions of this district are intended to apply to an area of medium density single-family residential development. Lot sizes and other restrictions are intended to promote quality residential development.~~

~~—(B) Principal uses and structures:~~

~~—(1) Single-family dwellings.~~

~~—(2) Accessory dwelling units; subject to the provisions listed in the § 185.006.~~

- ~~—(3) Public parks, playgrounds and other public recreational facilities.~~
- ~~—(4) Public utility equipment and facilities located within a utility easement or right-of-way.~~
- ~~—(C) Accessory uses and structures:~~
  - ~~—(1) Customary accessory uses of a noncommercial nature clearly incidental and subordinate to one (1) or more principal uses.~~
- ~~—(D) Conditional uses:~~
  - ~~—(1) Public and private schools.~~
  - ~~—(2) Churches.~~
  - ~~—(3) Public utility equipment and facilities, except communication towers, not located within an easement or right-of-way.~~
- ~~—(E) Prohibited uses and structures:~~
  - ~~—(1) All uses not specifically or provisionally permitted herein.~~
  - ~~—(2) Correctional facilities.~~
- ~~—(F) Lot and structure requirements:~~
  - ~~—(1) Minimum lot area — seven thousand five hundred (7,500) square feet.~~
  - ~~—(2) Minimum lot width — seventy-five (75) feet.~~
  - ~~—(3) Minimum lot depth — one hundred (100) feet.~~
  - ~~—(4) Maximum building coverage — thirty percent (30%).~~
  - ~~—(5) Minimum living area — eight hundred (800) square feet.~~
  - ~~—(6) Maximum height — twenty-five (25) feet.~~
  - ~~—(7) Minimum yard requirements:~~
    - ~~—(a) Front — twenty-five (25) feet.~~
    - ~~—(b) Side interior — eight (8) feet.~~
    - ~~—(c) Side corner — twenty-five (25) feet.~~
    - ~~—(d) Rear — twenty-five (25) feet.~~

~~§ 185.036 RM 10 — SINGLE, TWO, MULTIPLE-FAMILY RESIDENTIAL DISTRICT.~~

~~—(A) Intent. The provisions of this district are intended to apply to an area of medium density residential development with a variety of housing types. Lot sizes and other restrictions are intended to promote medium density residential development, maintaining an adequate amount of open space for such development.~~

~~—(B) Principal uses and structures:~~

~~—(1) Single-family dwellings.~~

~~—(2) Two-family dwellings/duplexes.~~

~~—(3) Multiple-family dwellings provided that in no case shall there be more than ten (10) dwelling units per gross residential acre. For multiple-family residential development that includes five (5) or more units, the provisions of (a) through (d) below, shall apply. Multiple-family developments of less than five (5) units shall be exempt from these provisions.~~

~~—(a) A tree survey shall be submitted, where applicable, showing the types, locations, and sizes of existing trees.~~

~~—(b) The perimeter of the project shall be provided with a six (6) foot high wall or fence of wood, masonry, brick, PVC, or wrought iron material. For perimeter fences adjacent to road right-of-ways, landscaping shall be provided between the road right-of-way and the perimeter fence. A minimum of one (1) tree for each fifty (50) linear feet of fence shall be provided. In addition to the tree requirement, a minimum of two (2) foot tall, continuous and unbroken row of shrubs shall be planted between the wall/fence and the right-of-way to provide relief from the wall/fence. Ivy or clinging vines may be used in lieu of the shrub requirement on masonry or brick fences. Earthen berms may be approved in lieu of the wall or fence provided the berm is six (6) feet in height with landscaping provided as identified in this subsection.~~

~~—(c) Sidewalks required.~~

~~—1. All buildings, parking areas and amenities shall be connected by sidewalks or interior walkways, and sidewalks along interior circulation drives shall connect with off-site sidewalks.~~

~~—2. When parking is provided in front, behind or on the side, of a building along an interior circulation drive, a concrete sidewalk with raised curb shall be constructed between the parking spaces and the building, with connecting sidewalks to the building entrance. If such sidewalk is provided on only one side~~

~~of an interior circulation drive, it shall be at least five (5) feet in width. If sidewalks are provided on both sides of the interior circulation drive, they shall be a minimum of four (4) feet wide.~~

~~—(d) Balconies. Balconies designed for other than purely ornamental purposes shall be a minimum of five (5) feet in depth.~~

~~—(4) Public parks, playgrounds or other public recreational facilities.~~

~~—(5) Public utility equipment and facilities located within a utility easement or right-of-way.~~

~~—(6) Congregate living facilities.~~

~~—(7) Public uses.~~

~~—(C) Accessory uses and structures: Customary accessory uses of a noncommercial nature clearly incidental and subordinate to one (1) or more principal uses.~~

~~—(D) Conditional uses:~~

~~—(1) Public or private schools.~~

~~—(2) Churches.~~

~~—(3) Public utility equipment and facilities, except communication towers, not located within a utility easement or right-of-way.~~

~~—(E) Prohibited uses and structures: All uses not specifically or provisionally permitted herein.~~

~~—(1) Corrections facilities.~~

~~—(2) All uses not specifically or provisionally provided for herein.~~

~~—(F) Lot and structure requirements, single-family:~~

~~—(1) Minimum lot area — six thousand (6,000) square feet.~~

~~—(2) Minimum lot width — sixty (60) feet.~~

~~—(3) Minimum lot depth — one hundred (100) feet.~~

~~—(4) Maximum building coverage — thirty-five percent (35%).~~

~~—(5) Minimum living area — None.~~

~~—(6) Maximum height — twenty-five (25) feet.~~

~~—(7) Minimum yard requirements:~~

- ~~—— (a) Front — twenty-five (25) feet minimum building setback.~~
- ~~—— (b) Side interior — eight (8) feet minimum building setback.~~
- ~~—— (c) Side corner — twenty-five (25) feet minimum building setback.~~
- ~~—— (d) Rear — twenty-five (25) feet minimum building setback.~~
- ~~—— (e) Parking may be located in a required front, rear or side yard for multifamily dwellings, provided such parking maintain at least a ten (10) foot setback from all front, side, and rear lot lines.~~
- ~~—— (G) Lot and structure requirements, two-family:~~
  - ~~—— (1) Minimum lot area — ten thousand (10,000) square feet.~~
  - ~~—— (2) Minimum lot width — one hundred (100) feet.~~
  - ~~—— (3) Minimum lot depth — one hundred (100) feet.~~
  - ~~—— (4) Maximum building coverage — thirty-five percent (35%).~~
  - ~~—— (5) Minimum living area — None.~~
  - ~~—— (6) Maximum height — twenty-five (25) feet.~~
  - ~~—— (7) Minimum yard requirements:~~
    - ~~—— (a) Front - twenty-five (25) feet minimum building setback.~~
    - ~~—— (b) Side interior — eight (8) feet minimum building setback.~~
    - ~~—— (c) Side corner — twenty-five (25) feet minimum building setback.~~
    - ~~—— (d) Rear — twenty-five (25) feet minimum building setback.~~
    - ~~—— (e) Parking may be located in a required front, rear or side yard for multifamily dwellings, provided such parking maintain at least a ten (10) foot setback from all front, side, and rear lot lines.~~
- ~~—— (H) Lot and structure requirements, multiple-family:~~
  - ~~—— (1) Minimum lot area — ten thousand (10,000) square feet.~~
  - ~~—— (2) Minimum lot width — one hundred (100) feet.~~
  - ~~—— (3) Minimum lot depth — one hundred (100) feet.~~
  - ~~—— (4) Maximum building coverage — thirty-five percent (35%).~~
  - ~~—— (5) Minimum living area: None.~~
  - ~~—— (6) Maximum height — twenty-five (25) feet.~~



~~— (7) Minimum yard requirements:~~

~~— (a) Front — twenty-five (25) feet minimum building setback.~~

~~— (b) Side interior — eight (8) feet minimum building setback.~~

~~— (c) Side corner — twenty-five (25) feet minimum building setback.~~

~~— (d) Rear — twenty-five (25) feet minimum building setback.~~

~~— (e) Parking may be located in a required front, rear or side yard for multifamily dwellings, provided such parking maintain at least a ten (10) foot setback from all front, side, and rear lot lines.~~

~~§ 185.037 RM-15 — SINGLE, TWO, MULTIPLE-FAMILY RESIDENTIAL DISTRICT.~~

~~— (A) Intent. The provisions of this district are intended to apply to an area of medium density residential development with a variety of housing types. Lot sizes and other restrictions are intended to promote medium density development while maintaining an adequate amount of open space for such development.~~

~~— (B) Principal uses and structures:~~

~~— (1) Single-family dwellings.~~

~~— (2) Two-family dwellings.~~

~~— (3) Multiple-family dwellings provided that in no case shall there be more than fifteen (15) dwelling units per gross residential acre. For multiple-family residential development that includes five (5) or more units, the provisions of (a) through (d) below, shall apply. Multiple-family developments of less than five (5) units shall be exempt from these provisions.~~

~~— (a) A tree survey shall be submitted, where applicable, showing the types, locations, and sizes of existing trees.~~

~~— (b) The perimeter of the project shall be provided with a six (6) foot high wall or fence of wood, masonry, brick, PVC, or wrought iron material. For perimeter fences adjacent to road right-of-ways, landscaping shall be provided between the road right-of-way and the perimeter fence. A minimum of one (1) tree for each fifty (50) linear feet of fence shall be provided. In addition to the tree requirement, a minimum of two (2) foot tall, continuous and unbroken row of shrubs shall be planted between the wall/fence and the right-of-way to provide relief from the wall/fence. Ivy or clinging vines may be used in lieu of the shrub requirement on masonry or brick fences. Earthen berms may be approved in lieu of the wall or~~

~~fence provided the berm is six (6) feet in height with landscaping provided as identified in this subsection.~~

~~—— (c) Sidewalks required.~~

~~—— 1. All buildings, parking areas and amenities shall be connected by sidewalks or interior walkways, and sidewalks along interior circulation drives shall connect with off-site sidewalks.~~

~~—— 2. When parking is provided in front, behind or on the side, of a building along an interior circulation drive, a concrete sidewalk with raised curb shall be constructed between the parking spaces and the building, with connecting sidewalks to the building entrance. If such sidewalk is provided on only one side of an interior circulation drive, it shall be at least five (5) feet in width. If sidewalks are provided on both sides of the interior circulation drive, they shall be a minimum of four (4) feet wide.~~

~~—— (d) Balconies. Balconies designed for other than purely ornamental purposes shall be a minimum of five (5) feet in depth.~~

~~—— (4) Public parks, playgrounds or other public recreational facilities.~~

~~—— (5) Public utility equipment and facilities located within a utility easement or right-of-way.~~

~~—— (6) Congregate living facilities.~~

~~—— (7) Public uses.~~

~~—— (C) Accessory uses and structures: Customary accessory uses of a noncommercial nature clearly incidental and subordinate to one (1) or more principal uses.~~

~~—— (D) Conditional uses:~~

~~—— (1) Public or private schools.~~

~~—— (2) Churches.~~

~~—— (3) Public utility equipment and facilities, except communication towers, not located within a utility easement or right-of-way.~~

~~—— (4) Permitted uses or uses permissible by special exception exceeding twenty-five (25) feet in height, but not to exceed forty (40) feet in height.~~

~~—— (E) Prohibited uses and structures:~~

~~—— (1) All uses not specifically or provisionally permitted herein.~~

~~—(2) Corrections facilities.~~

~~—(F) Lot and structure requirements, single-family:~~

~~—(1) Minimum lot area — six thousand (6,000) square feet.~~

~~—(2) Minimum lot width — sixty (60) feet.~~

~~—(3) Minimum lot depth — one hundred (100) feet.~~

~~—(4) Maximum building coverage — forty percent (40%).~~

~~—(5) Minimum living area — None.~~

~~—(6) Maximum height — twenty-five (25) feet.~~

~~—(7) Minimum yard requirements:~~

~~—(a) Front — twenty-five (25) feet minimum building setback.~~

~~—(b) Side interior — eight (8) feet minimum building setback.~~

~~—(c) Side corner — twenty-five (25) feet minimum building setback.~~

~~—(d) Rear — twenty-five (25) feet minimum building setback.~~

~~—(e) Parking may be located in a required front, rear or side yard for multifamily dwellings, provided such parking maintain at least a ten (10) foot setback from all front, side, and rear lot lines.~~

~~—(G) Lot and structure requirements, two-family:~~

~~—(1) Minimum lot area — eight thousand (8,000) square feet.~~

~~—(2) Minimum lot width — eighty (80) feet.~~

~~—(3) Minimum lot depth — one hundred (100) feet.~~

~~—(4) Maximum building coverage — forty percent (40%).~~

~~—(5) Minimum living area — None.~~

~~—(6) Maximum height — twenty-five (25) feet.~~

~~—(7) Minimum yard requirements:~~

~~—(a) Front — twenty-five (25) feet minimum building setback.~~

~~—(b) Side interior — eight (8) feet minimum building setback.~~

~~—(c) Side corner — twenty-five (25) feet minimum building setback.~~

~~—(d) Rear — twenty-five (25) feet minimum building setback.~~

~~—(e) Parking may be located in a required front, rear or side yard for multifamily dwellings, provided such parking maintain at least a ten (10) foot setback from all front, side, and rear lot lines.~~

~~—(H) Lot and structure requirements, multiple-family:~~

~~—(1) Minimum lot area — ten thousand (10,000) square feet.~~

~~—(2) Minimum lot width — one hundred (100) feet.~~

~~—(3) Minimum lot depth — one hundred (100) feet.~~

~~—(4) Maximum building coverage — forty percent (40%).~~

~~—(5) Minimum living area: None.~~

~~—(6) Maximum height — twenty-five (25) feet.~~

~~—(7) Minimum yard requirements:~~

~~—(a) Front — twenty-five (25) feet, or equal to the height of the building, whichever is greater.~~

~~—(b) Side interior — ten (10) feet, or equal to the height of the building, whichever is greater.~~

~~—(c) Side corner — twenty-five (25) feet, or equal to the height of the building, whichever is greater.~~

~~—(d) Rear — twenty-five (25) feet, or equal to the height of the building, whichever is greater.~~

~~—(e) Parking may be located in a required front, rear or side yard for multifamily dwellings, provided such parking maintain at least a ten (10) foot setback from all front, side, and rear lot lines.~~

#### ~~§ 185.038 RM-20 — MULTIPLE-FAMILY RESIDENTIAL DISTRICT.~~

~~—(A) Intent. The provisions of this district are intended to apply to an area of high density residential development. Lot, height, and other restrictions are intended to accommodate an intense degree of development, maintaining adequate amounts of open space for residential uses. Some nonresidential uses compatible with the character of the district are allowed.~~

~~—(B) Principal uses and structures:~~

~~—(1) Multiple-family dwellings, provided that in no case shall there be more than twenty (20) dwelling units per gross residential acre. For multiple-family residential~~

~~development that includes five (5) or more units, the provisions of (a) through (f) below, shall apply. Multiple-family developments of less than five (5) units shall be exempt from these provisions.~~

~~—— (a) A tree survey shall be submitted, where applicable, showing the types, locations, and sizes of existing trees.~~

~~—— (b) The perimeter of the project shall be provided with a six (6) foot high wall or fence of wood, masonry, brick, PVC, or wrought iron material. For perimeter fences adjacent to road right-of-ways, landscaping shall be provided between the road right-of-way and the perimeter fence. A minimum of one (1) tree for each fifty (50) linear feet of fence shall be provided. In addition to the tree requirement, a minimum of two (2) foot tall, continuous and unbroken row of shrubs shall be planted between the wall/fence and the right-of-way to provide relief from the wall/fence. Ivy or clinging vines may be used in lieu of the shrub requirement on masonry or brick fences. Earthen berms may be approved in lieu of the wall or fence provided the berm is six (6) feet in height with landscaping provided as identified in this subsection.~~

~~—— (c) Sidewalks required.~~

~~—— 1. All buildings, parking areas and amenities shall be connected by sidewalks or interior walkways, and sidewalks along interior circulation drives shall connect with off-site sidewalks.~~

~~—— 2. When parking is provided in front, behind or on the side, of a building along an interior circulation drive, a concrete sidewalk with raised curb shall be constructed between the parking spaces and the building, with connecting sidewalks to the building entrance. If such sidewalk is provided on only one side of an interior circulation drive, it shall~~

~~be at least five (5) feet in width. If sidewalks are provided on both sides of the interior circulation drive, they shall be a minimum of four (4) feet wide.~~

~~—— (d) Variations in building height.~~

~~—— 1. For building of two (2) or three (3) stories in height and not exceeding one hundred (100) feet in length, at least fifteen (15) percent of the roof line shall have a variation in height, or an average variation in height, of at least five (5) feet.~~

~~—— 2. For buildings of two (2) or three (3) stories in height and in excess of one hundred (100) feet in length, at least two (2) portions of the building shall have a variation in height, or an average variation in height, of at least five (5) feet. The~~

~~combination of said required variations in height shall amount to not less than fifteen (15) percent of the length of the building.~~

~~——— 3. For buildings of four (4) or more stories in height at least fifteen (15) percent of the roof line shall have a variation in height, or an average variation in height, of at least ten (10) feet.~~

~~——— (e) Variations in building facade.~~

~~——— 1. For buildings not exceeding one hundred (100) feet in length, at least fifteen (15) percent of the building face shall have a variation in setback of at least five (5) feet.~~

~~——— 2. For buildings in excess of one hundred (100) feet in length, at least two (2) portions of the building shall have variation in setback of at least five (5) feet. Variations of less than five (5) feet shall not count toward this requirement. The combination of said required variations in setback shall amount to not less than fifteen (15) percent of the length of the building.~~

~~——— (f) Balconies. Balconies designed for other than purely ornamental purposes shall be a minimum of five (5) feet in depth.~~

~~——— (2) Public parks, playgrounds and other public recreational facilities.~~

~~——— (3) Public utility equipment and facilities located within a utility easement or right-of-way.~~

~~——— (4) Congregate living facilities and group homes licensed and certified by the Department of Health of the state and rehabilitation services, including nursing homes.~~

~~——— (5) Public uses.~~

~~——— (C) Accessory uses and structures:~~

~~——— (1) Customary accessory uses of a noncommercial nature clearly incidental and subordinate to one (1) or more principal uses.~~

~~——— (D) Conditional uses:~~

~~——— (1) Public and private schools.~~

~~——— (2) Public utility equipment and facilities, except communication towers, not located within a utility easement or right-of-way.~~

~~——— (3) Churches.~~

~~——— (4) Private clubs or lodges.~~

~~—(5) Private Marinas.~~

~~—(E) Prohibited uses and structures:~~

~~—(1) All uses not specifically or provisionally permitted herein.~~

~~—(2) Corrections facilities.~~

~~—(F) Lot and structure requirements:~~

~~—(1) Minimum lot area — ten thousand (10,000) square feet.~~

~~—(2) Minimum lot width — one hundred (100) feet.~~

~~—(3) Minimum lot depth — one hundred (100) feet.~~

~~—(4) Maximum building coverage — forty percent (40%).~~

~~—(5) Minimum living area: None.~~

~~—(6) Maximum height — seventy (70) feet.~~

~~—(7) Minimum yard requirements:~~

~~—(a) Front — twenty-five (25) feet minimum building setback, or equal to the height of the building, whichever is greater.~~

~~—(b) Side interior — fifteen (15) feet minimum building setback, or equal to the height of the building, whichever is greater.~~

~~—(c) Side corner — twenty-five (25) feet minimum building setback, or equal to the height of the building, whichever is greater.~~

~~—(d) Rear — twenty-five (25) feet minimum building setback, or equal to the height of the building, whichever is greater.~~

~~—(e) The minimum separation distance between multiple family residential buildings on the same property shall be thirty (30) feet.~~

~~—(f) Parking may be located in a required front, rear or side yard for multifamily dwellings, provided such parking maintain at least a ten (10) foot setback from all front, side, and rear lot lines.~~

#### ~~§ 185.039 RMH — RESIDENTIAL MOBILE HOME DISTRICT.~~

~~—(A) Intent. The purpose of the mobile home residential zoning district shall be to locate and establish areas within the city which are deemed to be uniquely suited for the development and maintenance of mobile home park/subdivision residential areas of an urban character, which are properly served by adequate community facilities; to designate those uses and services deemed appropriate and proper for~~

~~location and development within the zoning district and to establish such development standards and provisions as are appropriate to ensure proper development in a mobile home park/subdivision residential environment.~~

~~—(B) Principal uses and structures:~~

~~—(1) Mobile home parks.~~

~~—(2) Mobile home subdivisions.~~

~~—(3) Public parks and recreation facilities.~~

~~—(C) Accessory uses and structures:~~

~~—(1) Private recreation facilities.~~

~~—(2) Laundry rooms.~~

~~—(3) Park management offices.~~

~~—(4) Customary accessory uses of a residential nature clearly incidental and subordinate to the principal use, including garages, carports, storage sheds and the like, in keeping with the residential character of the district.~~

~~—(5) Travel trailers, campers, and boats placed off-site in common storage areas.~~

~~—(6) Public utility equipment and facilities, except communication towers.~~

~~—(D) Conditional uses:~~

~~—(1) Churches.~~

~~—(E) Site and building regulations:~~

~~—(1) Minimum project size — The minimum size of the site to be developed for a mobile home park or subdivision shall be ten (10) acres.~~

~~—(2) Required recreation area — A minimum of ten percent (10%) of gross land area, exclusive of required setback and street right-of-way shall be set aside and developed for recreational purposes for residents of the mobile home park or subdivision.~~

~~—(3) Minimum size of individual mobile home space/lot — four thousand (4,000) square feet.~~

~~—(4) Minimum lot width — fifty (50) feet.~~

~~—(5) Minimum lot depth — eighty (80) feet.~~



- ~~— (6) Maximum building coverage — thirty-five percent (35%).~~
- ~~— (7) Minimum living area — six hundred (600) square feet.~~
- ~~— (8) Maximum height — twenty-five (25) feet.~~
- ~~— (9) Minimum yard requirements of individual mobile home space:~~
  - ~~— (a) Front — ten (10) feet.~~
  - ~~— (b) Side — six (6) feet.~~
  - ~~— (c) Side corner — ten (10) feet.~~
  - ~~— (d) Rear — ten (10) feet.~~
- ~~— (10) Site perimeter yard requirements:~~
  - ~~— (a) A twenty-five (25) foot minimum yard setback shall be provided from all exterior mobile home park/subdivision property lines.~~
  - ~~— (b) A mobile home park/subdivision shall be entirely enclosed, exclusive of driveways, at its external boundaries by a solid wall, wood or PVC fence or evergreen hedge not less than six (6) feet in height.~~
- ~~— (11) Off-street parking. There shall be at least two (2) paved, off-street parking spaces for each mobile home space, which shall be on the same site as the mobile home served.~~
- ~~— (F) Development plan review.~~
  - ~~— (1) As part of the supplementary data required to complete an application for a public hearing for a mobile home park/subdivision development, a scaled and dimensioned plot or site plan of the development shall be submitted as part of such application (if the site plan is larger than eleven (11) inches by seventeen (17) inches, two (2) copies are needed, as well as a digital copy); and if the application is approved, the mobile home park/subdivision shall be built substantially in accordance with such a plan. If the Growth Management Director deems that there is a substantial change from that which is shown on the original application, the developer shall be required to return to the Planning and Zoning Board and the City Council in order to receive approval for such changes as an amendment to the original site plan. The plot or site plan shall include, but not be limited to, location of all lots, service areas, public streets, street signs, walkways, and utilities showing the same underground where such is required. If a public utility equipment and facility is to be located on a site, its dimensions, location, access and other pertinent information should be indicated on the site plan. Adequate access for fire~~

~~fighting and emergency purposes and access to service areas shall be provided. Information concerning abutting land areas, such as land use, zoning, existing structures, and existing streets shall also be included. Site plan approval is limited to one (1) year, but may be extended for an additional year by the City Council, for demonstrated progress.~~

~~—(2) A completion bond may be required by the City Council. If the construction is not substantially underway within one (1) year after the approval of the site plan, the site plan may be voided by the City Council.~~

~~—(3) If the property is to be subdivided, the parcel shall be platted in accordance with the subdivision plat regulations, and all street paving, drainage, water and sewerage facilities shall comply with the subdivision specifications and requirements of the city (see Chapter 184).~~

#### ~~§ 185.040 RVP — RECREATIONAL VEHICLE PARK DISTRICT.~~

~~—(A) Intent. The purpose of the recreational vehicle park zoning district shall be to locate and establish areas within the city which are deemed to be uniquely suited for the development and maintenance of recreational vehicle activities, i.e., travel trailers, motor homes, camping tents, and trailers occupied as temporary living quarters; to designate those uses and services deemed appropriate and proper for location and development within the zoning district; and to establish such development standards and provisions as are appropriate to ensure proper development and functioning of uses within the district.~~

~~—(B) Principal uses and structures:~~

~~—(1) Travel trailers, recreational vehicles, motor homes, camping tents and other vehicles with sleeping accommodations.~~

~~—(2) Management offices and residence (a mobile home may be allowed for a manager's residence only).~~

~~—(C) Accessory uses:~~

~~—(1) Grocery store.~~

~~—(2) Bottled gas sales.~~

~~—(3) Laundry facilities.~~

~~—(4) Recreational facilities such as playgrounds, picnic areas, swimming pools, game courts, and recreation hall.~~

~~—(5) Public utility equipment and facilities.~~

~~—(D) Conditional uses:~~

~~—(1) Marina and boat rental including bait, fishing, and sports accessories sales serving guests of the park and/or the general public.~~

~~—(E) Design standards for recreational vehicle parks.~~

~~—(1) Minimum size: ten (10) acres.~~

~~—(2) Maximum density: fifteen (15) travel trailer/R.V. sites per gross acre of land. This shall also apply to any tent camping areas.~~

~~—(3) Streets and parking:~~

~~—(a) Direct access to the recreational vehicle park shall be from an arterial roadway. The administrative office of the park shall be so located as to assure that no recreational vehicles are parked in the right-of-way during the check-in process or while waiting for others to be checked in.~~

~~—(b) Width of streets. Streets or driveways in a recreational vehicle park shall be private and shall have the following widths:~~

~~—1. A one-way street/drive shall be at least twelve (12) feet in width.~~

~~—2. A two-way street/drive shall be at least twenty-four (24) feet in width.~~

~~—(c) Street surfacing. All roads or driveways shall be paved meeting city standards.~~

~~—(d) Road curves. All road curves shall have a minimum turning radius of fifty (50) feet. All culs-de-sac shall have a maximum length of five hundred (500) feet and terminate in a turning circle having a minimum radius of fifty (50) feet.~~

~~—(e) Parking. Each travel trailer site shall have off-street parking pads for both recreational vehicles and for towing vehicles. The pads shall be composed of a stabilized material meeting city standards.~~

~~—(4) Buffer strips. A twenty-five (25) foot minimum yard setback shall be provided from all exterior property lines and right-of-ways. The recreational vehicle park shall be entirely enclosed, exclusive of driveways, at its external boundaries by a solid wall, wood or PVC fence, or evergreen hedge not less than six (6) feet in height. The buffer strip shall be separate from recreational areas, streets, driveways, travel trailer sites (R.V. sites) and utility sites, but may be utilized for stormwater drainage and retention purposes.~~

~~—(5) Recreational areas. A minimum of ten percent (10%) of the total land area of a travel trailer park shall be devoted to one (1) or more common use areas for recreational activity. In addition, for every travel trailer and tent site, there shall be allocated an additional one hundred (100) square feet of land for recreational activity. However, this requirement is not necessary when the proposed development is a density of ten (10) sites per gross acre or less. Such recreational areas shall be exclusive of travel trailer sites, buffer strips, street right-of-way and storage areas; however, the periphery of such areas may contain utility sites, and other nonrecreational service buildings, the area of which will be subtracted from the computed "recreational area." Recreational areas shall be easily accessible to all park users and management. Although the required space for recreational usage may be met through more than one (1) recreational site, the minimum size of any such area shall be twenty thousand (20,000) square feet. Provision for all common open space and the construction of recreational facilities which are shown on the site plan shall proceed at an equivalent, or greater, rate as the construction of individual travel trailer sites.~~

~~—(6) Tent camping. Areas may be set aside for tent camping in accordance with all provisions of this section, except:~~

~~—(a) There shall be a stabilized pad on the site for parking of the transportation vehicle.~~

~~—(b) Tent camping may be permitted on a travel trailer site.~~

~~—(F) Design requirements for recreational vehicle site.~~

~~—(1) Minimum size.~~

~~—(a) Back-in parking sites shall have a minimum area of one thousand five hundred (1,500) square feet with a minimum width of thirty (30) feet and a minimum length of fifty (50) feet.~~

~~—(b) Drive-through parking sites shall have a minimum area of one thousand two hundred (1,200) square feet with minimum width of twenty (20) feet and a minimum length of sixty (60) feet.~~

~~—(2) Access. Each R.V./travel trailer site shall abut on at least one (1) street or driveway within the boundaries of the travel trailer park and access to the site shall be only from such an internal street or driveway.~~

~~—(3) Setback requirements. No part of a travel trailer placed on a travel trailer site shall be closer than five (5) feet to any site line and ten (10) feet to any street or driveway.~~

~~—(4) Appurtenances. Temporary appurtenances, such as cabanas and awnings, may be erected on a travel trailer site as long as such appurtenances do not violate the setback requirements as set forth in this section and as long as such appurtenances are capable of being dismantled and stored within four (4) hours.~~

~~—(G) Provisions of service in recreational vehicle parks.~~

~~—(1) Service buildings. All service buildings shall comply with the building code and regulations concerning buildings, electrical installations, plumbing and sanitation systems.~~

~~—(2) Water supply. An adequate supply of water shall be provided in accordance with the regulatory agencies. A minimum of one (1) potable water supply outlet shall be provided for every two (2) travel trailer sites. Each recreational area and bathhouse-restroom facility shall have at least one (1) approved drinking fountain in close proximity.~~

~~—(3) Sewage disposal.~~

~~—(a) All sewage disposal facilities shall be provided in accordance with the regulatory agencies.~~

~~—(b) At least one (1) sanitary dumping station shall be provided in every travel trailer park. Such station shall be readily accessible and well-lighted. The following schedule shall be used in determining additional dumping stations based on the number of sites which are not connected individually to sewer lines: for every fifty (50) sites or fractional part thereof, beyond the first (50) sites, one (1) sanitary dumping station shall be provided.~~

~~—(c) At least one (1) central bathhouse-restroom facility shall be located within three hundred (300) feet of all camping units which are either not supplied with sewer connections or not capable of utilizing such connections (e.g., tents, camper trailers). Any dispersed bathhouse-restroom facility provided to meet the distance requirement of three hundred (300) feet shall have at least two (2) of each of the following fixtures for men and women: Toilets, urinals, lavatories and showers. Recreational areas shall be located within three hundred (300) feet of a bathhouse-restroom facility.~~

~~—(d) The minimum number of bath and toilet facilities shall be determined by the latest adopted Florida Building Code.~~

~~—(4) Lighting. All entrances, exits, streets, and service buildings shall be well lighted during the hours of darkness. Street lighting may be overhead or low level but must be shielded and reflected into the street and should be of low intensity. All recreational facilities which are to be utilized during the hours of darkness shall be adequately lighted to ensure the safety of all users of such facilities.~~

~~—(5) Electricity. All requirements of the National Electrical Code as contained in this code of ordinances must be met.~~

~~—(6) Service and utility lines. All service utility lines in a travel trailer park shall be installed underground and at a minimum depth of eighteen (18) inches.~~

~~—(7) Refuse handling. Each travel trailer site shall be provided with at least one (1) fly-tight, watertight, rodent-proof container of a capacity not less than four (4) gallons and not more than thirty (30) gallons. However, this is not required when sites are within two hundred (200) feet of a large covered trash receptacle (e.g., dumpster). All refuse shall be collected at least twice weekly and where public or private collection service is not available, the owner or operator of the travel trailer park shall dispose of the refuse by transporting it to a disposal site approved by the regulatory agency. All refuse shall be collected and transported in covered vehicles or covered containers.~~

~~—(8) Insect and rodent control. Grounds, buildings and structures shall be maintained free of insect and rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall conform to the requirements and regulations of the regulatory agency. Adequate drainage systems will be provided and maintained in such a manner as to prevent the breeding of mosquitoes and other obnoxious insects in the park.~~

~~—(9) Fire protection. The travel trailer park shall be subject to the rules and regulations of the Fire Department.~~

~~—(10) Fuel supply and storage. All installations and tanks furnishing and/or storing any type of gaseous fuels to be used by the occupants of the travel trailer park shall comply with the Fire Prevention Code of the National Fire Prevention Association, as adopted.~~

~~—(11) Storage. Outdoor storage of travel trailers is permitted that such storage takes place within an area especially set aside for such use.~~

~~—(12) Signs. Those signs necessary for directional or safety purposes are permitted. All other signs as per the sign regulations set forth in Chapter 178 of this code of ordinances.~~

~~—(H) Operation of recreational vehicle park.~~

~~—(1) Responsibilities of park management. The owner of a travel trailer park or the park management shall at all times maintain the park and its facilities in a clean, orderly, and sanitary condition. The park management shall inform all park occupants of the provisions of this section, other related code provisions and ordinances of the city, and statutes, and of their responsibilities thereunder.~~

~~—(2) Length of occupancy. No guest of a travel trailer park shall remain in the same park for no more than thirty (30) days.~~

~~—(3) Register of occupants. A register of all travel trailer occupants in the park shall be maintained with the following information:~~

~~—(a) The name and address of each travel trailer owner or operator making use of the travel trailer park.~~

~~—(b) The dates of arrival and departure of each travel trailer.~~

~~—(4) Evacuation. It shall be the responsibility of the park management to notify all park occupants of the need to evacuate the travel trailer park in case of fire, wind, water or other manmade disasters or acts of God.~~

~~—(5) Animal control. It shall be the responsibility of the park manager to ensure that no owner or person in charge of an animal shall permit the animal to run at large or to commit any nuisance within the limits of any travel trailer park.~~

~~—(I) Regulation of recreational vehicle parks.~~

~~—(1) Use and occupancy permits. It shall be unlawful for any person to operate a travel trailer park within Palm Bay without first obtaining a business tax receipt, in the name of such person, to operate the specific park.~~

~~—(2) Inspection. The Health Official, Building Official, Code Enforcement Official and Fire Department are authorized to make periodic inspections of the travel trailer park and travel trailer sites for the purpose of determining satisfactory compliance with the regulations of this section pertaining to the health, safety, and welfare of the residents of the city.~~

~~—(3) Revocation of permit. Whenever any of the above officials, upon inspection of a travel trailer park, find that conditions or practices exist which are~~

~~in violation of any applicable provision of this section, they shall furnish the permittee with a list of violations that the inspection shall reveal, and give the permittee written notice of a specific reasonable time in which to remedy the violations. Failure of the permittee to remedy the violations within the specific time shall result in the revocation of the business tax receipt. Such permit shall be reissued only if the violations have been remedied to comply with the requirements of this section. The users of the travel trailer park shall have two (2) days from the date of the revocation in which to vacate the travel trailer park. The permittee shall be granted a hearing on such revocation before the City Council provided a request is made by the applicant within thirty (30) days after the revocation.~~

~~—(J) Development site plan review. As part of the supplementary data required to complete an application for a public hearing for a recreational vehicle/travel-trailer park development, a scaled and dimensioned plot or site plan of the development shall be submitted as part of such application (if the site plan is greater than eleven (11) inches by seventeen (17) inches, two (2) copies are needed, as well as a digital copy); and if the application is approved, the recreational vehicle/travel trailer park shall be built in accordance with such a plan. The site plan shall include, but not be limited to, location of all R.V./travel trailer sites, service areas, drives, streets, signs, buildings, parking, recreational space, setbacks, public utility locations and any other pertinent information. Site plan approval is limited to one (1) year by the City Council.~~

#### ~~§ 185.041 OP — OFFICE PROFESSIONAL DISTRICT.~~

~~—(A) Intent. The purpose of the office professional district shall be to locate and establish areas in the city which are deemed to be uniquely suited for the development of professional office uses and services protected from the intense development of commercial and industrial facilities. Development standards and provisions are established to ensure proper development of uses within the district; to reduce conflicts with adjacent residential uses; and to minimize traffic conflicts along adjacent thoroughfares.~~

~~—(B) Principal uses and structures. The following uses and structures are permitted for any use or group of uses that are developed, either separately, or as a unit with certain site improvements shared in common:~~

~~—(1) Professional offices and services such as medical and dental, legal, engineering, real estate, insurance, accounting, chiropractic, architectural, technical, and similar professions.~~



~~—(2) Financial institutions without drive-through service.~~

~~—(C) Accessory uses and structures. Customary accessory uses of one (1) or more of the principal uses, clearly incidental and subordinate to the principal uses, in keeping with the professional character of the district. No storage of material is permitted except where such material is clearly incidental to and an accessory component of the rendering of professional services. All storage shall be within an enclosed structure.~~

~~—(D) Conditional uses:~~

~~—(1) Churches.~~

~~—(2) Libraries.~~

~~—(3) Public utility equipment and facilities not located within a public utility easement.~~

~~—(4) Public uses.~~

~~—(5) Veterinarian clinics provided all activities are within the principal structure and there is no boarding of animals.~~

~~—(6) Camouflaged communication towers and facilities.~~

~~—(E) Prohibited uses and structures:~~

~~—(1) Retail, wholesale, drive through services/facilities, warehousing, storage, building contractor storage, personal service, assembling, and/or manufacturing.~~

~~—(2) All uses not specifically or provisionally permitted herein; any use not in keeping with the intent of this district.~~

~~—(3) Corrections facilities.~~

~~—(4) Pain-management clinic.~~

~~—(F) Lot and structure requirements:~~

~~—(1) Minimum lot area — ten thousand (10,000) square feet.~~

~~—(2) Minimum lot width — one hundred (100) feet.~~

~~—(3) Minimum lot depth — one hundred (100) feet.~~

~~—(4) Maximum building coverage — twenty-five percent (25%).~~

~~—(5) Minimum floor area — three hundred (300) square feet.~~

~~—(6) Maximum height — twenty-five (25) feet.~~

~~—— (7) Minimum yard requirements:~~

~~—— (a) Front — thirty (30) feet minimum building setback. Parking areas may be located in the front yard except within ten (10) feet of front lot line.~~

~~—— (b) Side interior — ten (10) feet minimum building and parking setback. Side yards abutting residentially zoned property shall maintain a twenty-five (25) foot minimum setback for all buildings and parking.~~

~~—— (c) Side corner — twenty-five (25) feet minimum building setback. Parking areas may be located on the side corner yard except within ten (10) feet of the side corner lot line.~~

~~—— (d) Rear — thirty (30) feet minimum building and parking setback. Fifteen (15) feet when abutting a dedicated alley.~~

~~—— (8) Shared access and parking areas:~~

~~—— (a) No side interior building and parking area setbacks are required provided all of the following are met:~~

~~—— 1. Buildings on adjacent parcels, under separate ownership, are joined by a common wall;~~

~~—— 2. Parking areas and aisles are joined with adjacent parcel(s) under separate ownership;~~

~~—— 3. Curb cuts and driveways on principal roadways (collector and arterial streets) are shared in common by all parcels involved and a minimum spacing of one hundred and fifty (150) feet is maintained; or access is provided by an approved frontage road;~~

~~—— 4. Easements and/or written assurances of cross access and a sharing of common facilities (stormwater system, solid waste, container(s), lighting, landscaping, etc.), as may be applicable, from all property owners involved must be approved prior to the issuance of a building permit.~~

~~—— (b) No interior side parking area setbacks, are required provided the requirements of divisions 2. through 4. are met.~~

~~—— (c) For adjacent developments meeting the requirements of divisions 2. through 4. above, the total number of off-street parking spaces required for uses on all parcels involved may be reduced by ten percent (10%) where the location of shared parking areas provides convenient access to all principal buildings.~~

~~—(9) A six (6) foot high completely opaque masonry wall shall be provided along the entire length of any side or rear property line abutting property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this zoning code.~~

~~—(10) Design requirements.~~

~~—(a) An Architectural Style for each structure is required. This shall include adherence to all standards contained in § 185.134.~~

~~§ 185.042 NC — NEIGHBORHOOD COMMERCIAL DISTRICT.~~

~~—(A) Intent. The purpose of the neighborhood commercial district shall be to provide areas within Palm Bay which are deemed to be uniquely suited for the development and maintenance of limited commercial activities offering convenience goods and personal services to residents of the surrounding neighborhood area. Development standards and provisions are established to ensure the proper development and location of uses and services deemed appropriate within the district; to reduce conflicts with adjacent residential uses, and to minimize the interruption of traffic along adjacent thoroughfares.~~

~~—(B) Principal uses and structures. The following uses and structures are permitted.~~

~~—(1) Retail stores, sales, and display rooms (not including automotive, lumber and building supply, and similar uses) containing less than five thousand (5,000) square feet of floor area.~~

~~—(2) Personal service establishments such as beauty and barber, laundry and dry cleaning pick-up stations, and the like.~~

~~—(3) Professional offices, studios, clinics, general offices, government office, business schools and similar uses containing less than five thousand (5,000) square feet of floor area.~~

~~—(4) Schools, libraries, and churches.~~

~~—(5) Day care centers containing less than five thousand (5,000) square feet of floor area.~~

~~—(6) Restaurant, not including drive-through facilities and containing less than five thousand (5,000) square feet of floor area.~~

~~—(7) Public utility equipment, facilities and uses located on one-half (1/2) acre or less of contiguous land.~~

~~—(8) Banks and financial institutions without drive-through facilities.~~

~~—(9) Public uses.~~

~~—(10) Veterinarian clinics provided all activities are within the principal structure and there is no boarding of animals.~~

~~—(11) Small Event Spaces containing less than five thousand (5,000) square feet of floor area, which are solely confined to indoor spaces with their occupancy being subject to applicable Building and Fire Codes.~~

~~—(C) Accessory uses and structures. Customary accessory uses of one (1) or more of the principal uses clearly incidental and subordinate to the principal use, in keeping with the low intensity commercial character of the district. All storage shall be in an enclosed structure.~~

~~—(D) Conditional uses:~~

~~—(1) Retail automotive gas/fuel sales:~~

~~—(a) Access. Retail automotive gas/fuel sales establishments shall be located on arterial roadways, at a signalized intersection of a major road collector, or on corner lots at intersections of collector streets or higher functional classification as identified in the adopted Palm Bay Comprehensive Plan. No more than two (2) corner lots at any one (1) intersection shall be used for retail gasoline or automotive fuel sales. No driveway or access shall be permitted within one hundred (100) feet from an intersection of collector streets or higher functional classification.~~

~~—(b) Minimum street frontage: one hundred and fifty (150) feet on each abutting street.~~

~~—(c) Location of facilities. Gasoline/ fuel pumps, storage tanks and other service island equipment shall be at least twenty (20) feet from all property lines, fifteen (15) feet from any building and one hundred (100) feet from the nearest residentially zoned land. No gasoline/fuel pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from any municipal or public supply well.~~

~~—(d) No fuel pump and tank installation shall have more than four (4) pump islands nor more than eight (8) pumps.~~

~~—(e) Tank storage: Underground storage required for all receptacles for combustible materials in excess of two hundred (200) gallons.~~

~~—(f) The proposed use will not constitute a nuisance or hazard because of vehicular traffic movement, delivery of fuel movement, noise or fume generation.~~

~~—(g) Signs, if any, and proposed exterior lighting will be so designed and arranged so as to promote traffic safety and to eliminate or minimize any undue glare, incompatibility or disharmony with adjoining properties.~~

~~—(h) Development and operation of the fuel pumps and attendant storage tanks shall be in compliance with §§ 176.01 et seq. of this code of ordinances.~~

~~—(2) Banks and financial institutions with drive-through facilities with the following condition: The proposed site fronts on an arterial road or at the intersection of collector streets or higher functional classification.~~

~~—(3) Restaurants with drive-through facilities and restaurants that allow patrons to dance to music, subject to the provisions set forth in § 185.088(l).~~

~~—(4) Indoor commercial recreation and amusement such as batting cages, miniature vehicle racetracks and similar uses, fitness centers and other indoor health, recreational, and similar facilities for exercise, sports, and other physical activities containing less than five thousand (5,000) square feet of floor area. Outdoor recreation uses must be related to the indoor recreation use and require a site plan approval.~~

~~—(5) Public utility equipment, facilities and uses located on sites greater than one-half (½) acre in size.~~

~~—(6) Eating establishments licensed by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation licensed as a restaurant that serve alcohol.~~

~~—(7) Retail stores, sales, and display rooms (not including automotive, lumber and building supplies) and similar uses occupying more than five thousand (5,000) square feet of gross floor.~~

~~—(8) Professional offices, studios, clinics, general offices, government offices, business schools and similar uses occupying more than five thousand (5,000) square feet of gross floor area.~~

~~—(9) Day care centers occupying more than five thousand (5,000) square feet of gross floor area.~~

~~—(E) Prohibited uses and structures:~~

~~—(1) All uses not specifically or provisionally permitted herein.~~

- ~~—(2) Corrections facilities.~~
- ~~—(3) Arcade amusement centers.~~
- ~~—(4) Pain-management clinic.~~
- ~~—(5) Electronic gaming establishments.~~
- ~~—(F) Lot and structure requirements:~~
  - ~~—(1) Minimum lot area — ten thousand (10,000) square feet.~~
  - ~~—(2) Minimum lot width — one hundred (100) feet.~~
  - ~~—(3) Minimum lot depth — one hundred (100) feet.~~
  - ~~—(4) Maximum building coverage — thirty percent (30%).~~
  - ~~—(5) Minimum floor area — three hundred (300) square feet.~~
  - ~~—(6) Maximum height — twenty-five (25) feet.~~
  - ~~—(7) Minimum yard requirements:~~
    - ~~—(a) Front — thirty (30) feet minimum building setback. Parking areas may be located in the front yard except within ten (10) feet of the front lot line.~~
    - ~~—(b) Side interior — ten (10) feet minimum building setback. Parking areas may be located in the side yard, except within five (5) feet of the side lot line. Side yards abutting residentially zoned property shall maintain a twenty-five (25) foot minimum setback for all buildings and parking.~~
    - ~~—(c) Side corner — twenty-five (25) feet minimum building setback. Parking areas may be located in the side corner yard, except within ten (10) feet of any public or private street.~~
    - ~~—(d) Rear — twenty-five (25) feet minimum building and parking area setback; ten (10) feet when abutting a dedicated alley.~~
  - ~~—(8) Shared access and parking areas.~~
    - ~~—(a) No side interior building and parking area setbacks are required provided all of the following are met:~~
      - ~~—1. Buildings on adjacent parcels, under separate ownership, are joined by a common wall;~~
      - ~~—2. Parking areas and aisles are joined with adjacent parcel(s) under separate ownership;~~

~~3. Curb cuts and driveways on principal roadways (collector and arterial streets) are shared in common by all parcels involved and a minimum spacing of one hundred and fifty (150) feet is maintained; or access is provided by an approved frontage road;~~

~~4. Easements and/or written assurances of cross access and a sharing of common facilities (stormwater system, solid waste container(s), lighting, landscaping, etc.), as may be applicable, from all property owners involved must be approved prior to the issuance of a building permit.~~

~~(b) No interior side parking area setbacks are required provided the requirements of divisions 2. through 4. above are met.~~

~~(c) For adjacent developments meeting the requirements of divisions 2. through 4. above, the total number of off-street parking spaces required for uses on all parcels involved may be reduced by ten percent (10%) where the location of shared parking areas provides convenient access to all principal buildings.~~

~~(9) A six (6) foot high completely opaque masonry wall, or wood fence shall be provided along the entire length of any side or rear property line abutting property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this chapter.~~

~~(10) Design requirements.~~

~~(a) An Architectural Style for each structure is required. This shall include adherence to all standards contained in § 185.134.~~

#### ~~§ 185.043 CC — COMMUNITY COMMERCIAL DISTRICT.~~

~~(A) Intent. The purpose of the community commercial district shall be to locate and establish areas within the city which are deemed to be uniquely suited for the development and maintenance of community commercial facilities, the areas to be primarily located in or near the intersection of arterial roadways; to designate those uses and services deemed appropriate and proper for location and development within the subject district; and to establish such development standards and provisions as are appropriate to ensure proper development and functioning of uses within the district.~~

~~(B) Principal uses and structures. The following uses and structures are permitted:~~

~~(1) Retail stores, sales and display rooms (not including lumber and building supply, and similar uses).~~

- ~~—(2) Personal service establishments such as beauty and barber, laundry and dry cleaning pick-up stations, and the like.~~
- ~~—(3) Professional offices, studios, clinics, general offices, government office, business schools and similar uses.~~
- ~~—(4) Schools, libraries, churches and similar uses.~~
- ~~—(5) Day care centers.~~
- ~~—(6) Restaurant, eating and drinking establishments (including a drive-through).~~
- ~~—(7) Public utility equipment and facilities.~~
- ~~—(8) Banks and financial institutions with or without drive-through facilities.~~
- ~~—(9) Business service establishments.~~
- ~~—(10) Clubs, lodges, and fraternal organizations.~~
- ~~—(11) Dry cleaning establishments using noninflammable solvents and cleaning fluids as determined by the Fire Chief.~~
- ~~—(12) Funeral homes.~~
- ~~—(13) Repair service establishments such as household appliances, radio and television, and similar uses, and automobile service establishments excluding body shops, upholstering, and painting. Subject to the following:~~
  - ~~—(a) There shall be no storage of junked or wrecked motor vehicles other than temporary storage for those vehicles awaiting repair. All vehicles shall have attached at all times a current vehicle registration license plate and shall be parked on a paved surface. Any wrecked vehicles shall be in an enclosed area and shall not be visible from outside the property.~~
- ~~—(14) Hotels, motels and guest cottages.~~
  - ~~—(a) The minimum living area per hotel/motel efficiency unit shall be two hundred and eighty (280) square feet.~~
  - ~~—(b) There shall be no more than seventy five (75) rental units per acre.~~
- ~~—(15) Hospitals and nursing homes.~~
- ~~—(16) Xerographic and offset printing.~~
- ~~—(17) Plant nurseries and green houses.~~



- ~~— (18) Public and private parking facilities. Must have at least a minimum-sized building on site.~~
- ~~— (19) Veterinarian clinics provided all activities are within the principal structure and there is no boarding of animals.~~
- ~~— (20) New and used automobiles, major recreational equipment and mobile home sales and rentals with accessory uses, subject to the following restrictions:~~
  - ~~— (a) All outside areas where merchandise is displayed shall be paved, meeting city specifications;~~
  - ~~— (b) All servicing and repair facilities, except for gasoline pumps, shall be located in an enclosed structure;~~
  - ~~— (c) There shall be no storage of junked or wrecked automobiles other than temporary storage for those awaiting repair. Such temporary storage shall be in an enclosed area and the vehicles shall not be visible from outside the property. All such vehicles awaiting repair shall have attached at all times current vehicle registration license plates;~~
  - ~~— (d) The lot must have frontage on an arterial roadway as identified in the adopted City Comprehensive Plan;~~
  - ~~— (e) All requirements of the Palm Bay Sign Ordinance must be met;~~
  - ~~— (f) All areas utilized for the parking of motor vehicles, major recreational equipment, and mobile homes for sales, lease or rental or awaiting repair must meet the parking setbacks, must be in addition to required parking spaces, aisles and drives required by §§ 185.140 et seq., and shall be considered parking areas under the terms § 185.142;~~
  - ~~— (g) Required parking shall be provided based on a one (1) space for each two hundred (200) square feet of gross floor area of the structure used primarily to conduct sales and one (1) space per employee on the largest working shift;~~
  - ~~— (h) The property must have minimum frontage on an arterial roadway of one hundred (100) feet;~~
  - ~~— (i) Gasoline facilities may be permitted as accessory uses, provided the requirements of division (D)(2)(c), (d), and (g) below are complied with. Retail sales are prohibited unless conditional use approval is granted.~~
- ~~— (21) State approved tattoo parlors.~~
- ~~— (22) Public uses.~~

~~—(23) Medical and dental manufacturing labs.~~

~~—(24) Indoor commercial recreation such as theaters, driving ranges, bowling alleys, and similar uses, excluding dance clubs, fitness centers and other indoor health, recreational, and similar facilities for exercise, sports, and other physical activities containing less than five thousand (5,000) square feet of floor area. Outdoor recreation uses must be related to the indoor recreation use and require a site plan approval.~~

~~—(25) Arcade amusements centers; subject to the following regulations:~~

~~—(a) The facility shall be located no less than one thousand (1,000) feet, measured from the outer wall of the facility to the closest property line, of any school.~~

~~—(b) No two facilities, operating pursuant to this subdivision, shall be located closer than five hundred (500) feet from one another, measured from the closest outer wall of each facility.~~

~~—(c) The number of devices within the facility shall be governed by the Land Development Code of the City of Palm Bay, as well as applicable Florida Statutes and laws.~~

~~—(C) Accessory uses and structures. Customary accessory uses of one (1) or more of the principal uses, clearly incidental and subordinate to the principal use, in keeping with the intense commercial character of the district. All storage shall be in an enclosed structure, unless otherwise provided for herein.~~

~~—(D) Conditional uses.~~

~~—(1) Permitted uses located on a parcel of ten (10) or more acres of area.~~

~~—(2) Auto body repair, upholstery and painting.~~

~~—(a) There shall be no storage of junked or wrecked vehicles other than temporary storage for those awaiting repair. All vehicles shall always have attached a current vehicle registration license plate.~~

~~—(b) Any wrecked vehicles awaiting repair shall be in an enclosed area and the vehicle shall not be visible from outside the property and shall be parked on a paved surface.~~

~~—(3) Retail automotive gas/fuel sales:~~

~~—(a) Access. Retail automotive gas/fuel sales establishments shall be located on arterial roadways, at a signalized intersection of a major road collector,~~

~~or on corner lots at the intersection of collector streets or higher functional classification as identified in the adopted Palm Bay Comprehensive Plan. No more than two (2) corner lots at any one (1) intersection shall be used for retail gasoline or automotive fuel sales. No driveway or access shall be permitted within one hundred (100) feet from an intersection of collector streets or higher functional classification.~~

~~—(b) Minimum street frontage: one hundred and fifty (150) feet on each abutting street.~~

~~—(c) Location of facilities: Gasoline, fuel pumps, storage tanks and other service island equipment shall be at least twenty (20) feet from all property lines, fifteen (15) feet from any building, and one hundred (100) feet from the nearest residentially owned land. No gasoline fuel pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from any municipal or public supply well.~~

~~—(d) Tank storage. Underground storage required for all receptacles for combustible materials in excess of two hundred (200) gallons.~~

~~—(e) The proposed use will not constitute a nuisance or hazard because of vehicular traffic movement, delivery of fuel movement, noise or fume generation.~~

~~—(f) Signs, if any, and proposed exterior lighting will be so designed and arranged so as to promote traffic safety and to eliminate or minimize any undue glare, incompatibility or disharmony with adjoining properties.~~

~~—(g) Development and operation of the fuel pumps and attendant storage tanks shall be in compliance with §§ 176.01 et seq. of this code of ordinances.~~

~~—(4) Indoor dance clubs, outdoor recreation, and outdoor amusement such as amusement parks, driving ranges, batting cages, go-cart tracks, outdoor skating facilities, miniature golf courses and similar uses.~~

~~—(5) Commercial radio and television broadcasting.~~

~~—(6) Marinas including wet and dry storage.~~

~~—(7) Car washes.~~

~~—(8) Permitted uses or uses permissible by conditional use exceeding seventy (70) feet in height.~~

~~—(9) Self storage facilities subject to the provisions established in § 185.088(F).~~

~~—(10) Communication towers and facilities.~~

~~— (11) Human crematoriums:~~

~~— (a) May only be allowed in conjunction with a funeral home.~~

~~— (b) Crematoriums shall adhere to the principal use setbacks of the CC district, except where the subject property abuts residentially zoned land. In this instance, all portions of the building that contains the crematorium must be setback a minimum of one hundred (100) feet from any land zoned residential.~~

~~— (c) All crematoriums must be placed within a sound-proof building and this building shall be constructed in such a manner to reduce vibrations. The building shall also contain the proper apparatus for eliminating emissions.~~

~~— (d) All crematorium facilities shall have an annual Visual Emissions Test conducted and a copy of the inspection report provided to the City.~~

~~— (e) All crematoriums must obtain a Florida Department of Environmental Protection (FDEP) Non-Title V permit, per Fla. Stat. § 62-296.401.~~

~~— (12) Pest control businesses.~~

~~— (E) Prohibited uses and structures:~~

~~— (1) All uses not specifically or provisionally permitted herein; any uses not in keeping with the community commercial character of the district.~~

~~— (2) Corrections facilities.~~

~~— (3) Pain-management clinic.~~

~~— (4) Electronic gaming establishments.~~

~~— (F) Lot and structure requirements:~~

~~— (1) Minimum lot area — twelve thousand five hundred (12,500) square feet.~~

~~— (2) Minimum lot width — one hundred (100) feet.~~

~~— (3) Minimum lot depth — one hundred and twenty-five (125) feet.~~

~~— (4) Maximum building coverage — thirty-five percent (35%).~~

~~— (5) Minimum floor area — three hundred (300) square feet.~~

~~— (6) Maximum height — seventy (70) feet.~~

~~— (7) Minimum yard requirements:~~

~~— (a) Front: thirty (30) feet minimum building setback. Parking areas may be located in the front yard except within ten (10) feet of the front lot line.~~

~~—— (b) Side interior: ten (10) feet minimum building setback. Parking areas may be located in the side yard, except within five (5) feet of the side lot line. Side yards abutting residentially zoned property shall maintain a twenty-five (25) foot minimum setback for all buildings and parking.~~

~~—— (c) Side corner: twenty-five (25) feet minimum building setback. Parking areas may be located in the side corner yard, except within ten (10) feet of any public or private street.~~

~~—— (d) Rear: twenty-five (25) feet minimum building and parking area setback; ten (10) feet when abutting a dedicated alley.~~

~~—— (8) Shared access and parking areas.~~

~~—— (a) No side interior building and parking area setbacks are required provided all of the following are met:~~

~~—— 1. Buildings on adjacent parcels, under separate ownership, are joined by a common wall;~~

~~—— 2. Parking areas and aisles are joined with adjacent parcel(s) under separate ownership;~~

~~—— 3. Curb cuts and driveways on principal roadways (collector and arterial streets) are shared in common parcels involved and a minimum spacing of one hundred and fifty (150) feet is maintained; or access is provided by an approved frontage road;~~

~~—— 4. Easements and/or written assurances of cross access and a sharing of common facilities (stormwater system, solid waste container(s), lighting, landscaping, etc.), as may be applicable, from all property owners involved must be approved prior to the issuance of a building permit.~~

~~—— (b) For adjacent developments meeting the requirements of divisions 2. through 4. above, the total number of off-street parking spaces required for uses on all parcels involved may be reduced by ten percent (10%) where the location of shared parking areas provides convenient access to all principal buildings.~~

~~—— (9) A six (6) foot high completely opaque masonry wall, or wood fence shall be provided along the entire length of any side or rear property line abutting property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this zoning code.~~

~~—— (10) Design requirements.~~

~~—(a) An Architectural Style for each structure is required. This shall include adherence to all standards contained in § 185.134.~~

~~§ 185.044 HC — HIGHWAY COMMERCIAL DISTRICT.~~

~~—(A) Intent. The purpose of the highway commercial district shall be to provide areas within Palm Bay which are deemed to be uniquely suited for the development and maintenance of highway oriented businesses and regional scale facilities, the areas to be primarily located along or near the intersection of major arterials and major transportation nodes; to designate those uses and services deemed appropriate and proper for location and development within the subject district; and to establish such development standards and provisions as are appropriate to ensure proper development and functioning of uses within the district.~~

~~—(B) Principal uses and structures. The following uses and structures are permitted:~~

~~—(1) Retail stores, sales and display rooms, including places in which goods are produced and sold at retail on premises.~~

~~—(2) Personal services establishments such as barber and beauty shops, fitness salons, laundry and dry cleaning establishments using noninflammable solvents as determined by the Fire Chief, tailor shops and similar uses.~~

~~—(3) Professional offices, studios, clinics, general offices, business schools and similar uses, including veterinarian clinics provided all activities are within the principal structure and there is no boarding of animals.~~

~~—(4) Hotels, motels, tourist courts.~~

~~—(a) The minimum living area per hotel/motel efficiency unit shall be two hundred and eighty (280) square feet.~~

~~—(b) There shall be no more than fifty (50) rental units per acre.~~

~~—(5) Eating and drinking establishments including drive-through facilities.~~

~~—(6) Indoor commercial recreation such as theaters, driving ranges, bowling alleys and similar uses, excluding dance clubs, fitness centers and other indoor health, recreational, and similar facilities for exercise, sports, and other physical activities. Outdoor recreation uses must be related to the indoor recreation use and require a site plan approval.~~

~~—(7) Banks and financial institutions with drive-through facilities.~~

~~—(8) Retail stores using outside display areas including plant nurseries, and building supplies providing the following provisions are met:~~

~~—(a) The outside display area may be open along the front of the lot but shall be effectively screened with a six (6) foot opaque wall or fence rendering the sides and rear opaque in order to avoid any deleterious effect on adjacent properties.~~

~~—(b) The outside display area shall be considered the same as the floor area for the purpose of calculating off-street parking requirements, yard and lot coverage regulations.~~

~~—(c) All outside display items with the exception of new and/or used vehicles for sale shall meet a twenty (20) foot front and side setback and a thirty (30) foot rear setback. New and used vehicles for sale or rent shall meet the parking setback requirements established in division (E)(7) below.~~

~~—(9) Public and private clubs and lodges including golf courses and similar activities.~~

~~—(10) New and used motor vehicles, major recreational equipment and mobile home sales and rentals with accessory uses; subject to the following restrictions:~~

~~—(a) All outside areas where merchandise is displayed shall be paved.~~

~~—(b) All servicing and repair facilities, except for gasoline pumps, shall be located in an enclosed structure.~~

~~—(c) There shall be no storage of junked or wrecked automobiles other than temporary storage for those awaiting repair. Such temporary storage shall be in an enclosed area and the vehicles shall not be visible from outside the property. All vehicles shall have attached at all times a current vehicle registration license plate.~~

~~—(d) Used motor vehicles may only be sold on the same site as a new motor vehicle dealership.~~

~~—(11) Auto repair, paint, upholstery and body shops subject to provisions (10)(a) through (c) above.~~

~~—(12) Public utility equipment and facilities not located within a public utility easement.~~

~~—(13) Hospitals and nursing homes.~~

~~—(14) Schools, churches, and libraries.~~

~~—(15) Day care centers.~~

- ~~—(16) Business service establishments.~~
- ~~—(17) Dry cleaning.~~
- ~~—(18) Funeral homes.~~
- ~~—(19) Xerographic and off-set printing.~~
- ~~—(20) Public and private parking lots and garages.~~
- ~~—(21) Public uses.~~
- ~~—(22) Arcade amusements centers; subject to the following regulations:~~
  - ~~—(a) The facility shall be located no less than one thousand (1,000) feet, measured from the outer wall of the facility to the closest property line, of any school.~~
  - ~~—(b) No two facilities, operating pursuant to this subdivision, shall be located closer than five hundred (500) feet from one another, measured from the closest outer wall of each facility.~~
  - ~~—(c) The number of devices within the facility shall be governed by the Land Development Code of the City of Palm Bay, as well as applicable Florida Statutes and laws.~~
- ~~—(23) Contractors' offices (plumbers, electricians, carpenters, masons, roofers, builders, cabinet makers, fence installers, gutter and siding installers, flooring and tile installers, drywall installers, painters, heating and air conditioning installers, glass repair and replacement and similar uses).~~
  - ~~—(a) All work shall be conducted within an enclosed structure.~~
  - ~~—(b) Any outside storage of vehicles and/or materials used or needed in conjunction with the business shall be stored upon an improved surface and shall be screened on all sides with a minimum six-foot-tall opaque material, as approved by the Land Development Division.~~
- ~~—(24) Brew pubs and/or other drinking establishments.~~
- ~~—(C) Accessory uses and structures. Customary accessory uses of one (1) or more of the principal uses clearly subordinate to the principal use, in keeping with the intense commercial character of the district.~~
- ~~—(D) Conditional uses.~~
- ~~—(1) Permitted uses located on a parcel of ten (10) or more acres of area.~~



~~—(2) Retail automotive gas/fuel sales:~~

~~—(a) Access. Retail automotive gas/fuel establishments shall be located on arterial roadways, at a signalized intersection of a major road collector, or on corner lots at intersections of collector streets or higher functional classification as identified in the adopted Palm Bay Comprehensive Plan. No more than two (2) corner lots at any one (1) intersection shall be used for retail gasoline or automotive fuel sales. No driveway or access shall be permitted within one hundred (100) feet from an intersection of collector streets or higher functional classification.~~

~~—(b) Minimum street frontage: one hundred and fifty (150) feet on each abutting street.~~

~~—(c) Location of facilities. Gasoline/ fuel pumps, storage tanks and other service island equipment shall be at least forty (40) feet from all property lines, fifteen (15) feet from any building, and one hundred (100) feet from the nearest residentially zoned land. No gasoline/fuel pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from any municipal or public supply well.~~

~~—(d) Tank storage: Underground storage required for all receptacles for combustible materials in excess of two hundred (200) gallons.~~

~~—(e) The proposed use will not constitute a nuisance or hazard because of vehicular traffic movement, delivery of fuel movement, noise or fume generation.~~

~~—(f) Signs, if any, and proposed exterior lighting will be so designed and arranged so as to promote traffic safety and to eliminate or minimize any undue glare, incompatibility or disharmony with adjoining properties.~~

~~—(g) Development and operation of the fuel pumps and attendant storage tanks shall be in compliance with §§ 176.01 et seq.~~

~~—(3) Commercial radio and television broadcasting.~~

~~—(4) Marinas.~~

~~—(5) Car washes.~~

~~—(6) Self storage facilities subject to the provisions established in § 185.088(F).~~

~~—(7) Communication towers and facilities.~~

~~—(8) Eating and drinking establishments that allow patrons to dance to music, subject to the provisions set forth in § 185.088(H).~~

~~—(9) Indoor dance clubs, outdoor recreation, and outdoor amusement such as amusement parks, driving ranges, batting cages, go-cart tracks, outdoor skating facilities, miniature golf courses and similar uses.~~

~~—(E) Prohibited uses and structures.~~

~~—(1) All uses not specifically or provisionally permitted herein; any use not in keeping with the commercial character of the district.~~

~~—(2) Corrections facilities.~~

~~—(3) Pain management clinic.~~

~~—(4) Electronic gaming establishments.~~

~~—(F) Lot and structure requirements:~~

~~—(1) Minimum lot area — fifteen thousand six hundred and twenty-five (15,625) square feet.~~

~~—(2) Minimum lot width — one hundred and twenty-five (125) feet.~~

~~—(3) Minimum lot depth — one hundred and twenty-five (125) feet.~~

~~—(4) Maximum building coverage — thirty-five percent (35%).~~

~~—(5) Minimum floor area — three hundred (300) square feet.~~

~~—(6) Maximum height — forty (40) feet.~~

~~—(7) Minimum yard requirements:~~

~~—(a) Front — fifty (50) feet minimum building setback. Parking areas may be located in the front yard, except within ten (10) feet of the front lot line.~~

~~—(b) Side interior — twenty (20) feet minimum building setback. Parking areas may be located in the side yard, except within ten (10) feet of the side lot line. Side yards abutting residentially zoned property shall maintain a twenty-five (25) foot minimum setback for all buildings and parking.~~

~~—(c) Side corner — twenty-five (25) feet minimum building setback. Parking areas may be located in the side corner yard, except within ten (10) feet of any public or private street.~~

~~—(d) Rear — thirty (30) feet minimum building and parking area setback; fifteen (15) feet when abutting a dedicated alley.~~

~~—(8) Shared access and parking areas.~~

~~— (a) No side interior building and parking area setbacks are required provided all of the following are met:~~

~~— 1. Buildings on adjacent parcels, under separate ownership, are joined by a common wall;~~

~~— 2. Parking areas and aisles are joined with adjacent parcel(s) under separate ownership.~~

~~— 3. Curb cuts and driveways on principal roadways (collector and arterial streets) are shared in common by all parcels involved and a minimum spacing of two hundred (200) feet is maintained; or access is provided by an approved frontage road.~~

~~— 4. Easements and/or written assurances of cross access and a sharing of common facilities (stormwater system, solid waste container(s), lighting, landscaping, etc.), as may be applicable, from all property owners involved must be approved prior to the issuance of a building permit.~~

~~— (b) For adjacent developments meeting the requirements of divisions 2. through 4. above, the total number of off-street parking spaces required for uses and all parcels involved may be reduced by ten percent (10%) where the location of shared parking areas provides convenient access to all principal buildings.~~

~~— (9) A six (6) foot high completely opaque masonry wall, or wood fence shall be provided along the entire length of any side or rear property line abutting property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this zoning code.~~

~~— (10) Design requirements:~~

~~— (a) An Architectural Style for each structure is required. This shall include adherence to all standards contained in § 185.134.~~

#### ~~§ 185.045 LI — LIGHT INDUSTRIAL AND WAREHOUSING DISTRICT.~~

~~— (A) Intent. The provisions of this district are intended to apply to an area which can serve light manufacturing, warehousing, distribution, wholesaling and other light industrial functions for the city and the region. Lot sizes and other restrictions are intended to ensure sufficient open space and minimize adverse impacts of industrial uses off site and to nonindustrial uses.~~

~~— (B) Principal uses and structures:~~

- ~~— (1) Warehousing within an enclosed structure.~~
- ~~— (2) Wholesaling within an enclosed structure.~~
- ~~— (3) Dry cleaning and laundry plants, printing plants, welding shops, machine shops, taxidermists and similar service and repair establishments and uses.~~
- ~~— (4) Light manufacturing, processing and assembly including precision manufacturing, electrical machinery, instrumentation, bottling plants, dairy products plants, bakeries, fruit packing and similar uses.~~
- ~~— (5) Building materials supply and storage, provided that any outside display and/or storage area shall be screened on all sides to avoid any deleterious impact on adjacent properties; includes contractor storage yards.~~
- ~~— (6) Automotive, truck, major recreational equipment and mobile home sales, storage and repair establishment including, body shops, dry docking facilities, paint shops, upholstery shops and similar uses provided that outside storage of vehicles not for sale shall be effectively screened on four (4) sides so as to avoid off-site visual impacts.~~
- ~~— (7) Vocational and trade schools.~~
- ~~— (8) Veterinary hospitals and clinics including boarding of animals.~~
- ~~— (9) Radio or television transmitter, towers or broadcasting facilities.~~
- ~~— (10) Research and development facilities provided all activities are within an enclosed structure.~~
- ~~— (11) Public utility equipment and facilities.~~
- ~~— (12) Public uses.~~
- ~~— (13) Communication towers and facilities.~~
- ~~— (14) Medical Recycling Facility.~~
- ~~— (15) Canine training and similar uses, provided all activities are within the principal structure and there is no boarding of animals.~~
- ~~— (16) Self-storage facilities.~~
- ~~— (17) Indoor commercial recreation such as theaters, driving ranges, bowling alleys, and similar uses, excluding dance clubs, fitness centers and other indoor health, recreational, and similar facilities for exercise, sports, and other physical activities. Outdoor recreation uses must be related to the indoor recreation use and require a site plan approval.~~

~~—(C) Accessory uses and structures:~~

~~—(1) Customary accessory uses clearly incidental and subordinate to one (1) or more principal uses.~~

~~—(2) Retail sales of products manufactured, processed or stored on the premises, provided the sales area constitutes no more than 15% of the total area of the space occupied by the business.~~

~~—(3) Offices clearly accessory to one (1) or more principal uses.~~

~~—(D) Conditional uses:~~

~~—(1) Automotive fuel, propane, and natural gas dispensaries and refueling stations subject to the following provisions:~~

~~—(a) Location of facilities: All pumps, storage tanks and other service island equipment shall be at least twenty (20) feet from all property lines, fifteen (15) feet from any building and one hundred (100) feet from the nearest residentially owned land. No pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from any municipal or public supply well.~~

~~—(b) Liquid gasoline, liquid kerosene, or liquid diesel fuels may be stored onsite for use by the operator of the property and stored onsite for offsite delivery to the general public, and stored, dispensed, and sold onsite to the general public for onsite sales of such substances.~~

~~—(c) Liquid and non-liquid propane, and liquid and non-liquid natural gas and other petroleum-based fuel products (including liquid gasoline, liquid kerosene, or liquid diesel fuel) may be stored onsite for the use of the operator of the property, stored and sold onsite for offsite delivery to the general public, and stored, dispensed, and sold onsite to the general property.~~

~~—(d) The proposed use will not constitute a nuisance or hazard because of vehicular travel movement, delivery of fuel movement, noise or fume generation.~~

~~—(e) Development and operation of the fuel pumps and attendant storage tanks shall be in compliance with §§ 176.01 et seq.~~

~~—(2) Freight handling and transportation terminals.~~

~~—(3) Planned industrial developments including office and business parks.~~

~~—(4) Corrections facilities subject to the following:~~

~~—(a) Minimum area required: 20 acres.~~

- ~~—— (b) Shall not be located within 1,000 feet of any residentially zoned property.~~
- ~~—— (5) Public and private schools.~~
- ~~—— (6) Tree and landscape recycling, subject to the following:~~
  - ~~—— (a) A minimum lot size of five (5) acres.~~
  - ~~—— (b) An eight (8) foot opaque fence or wall surrounding the site on all sides.~~
  - ~~—— (c) A one hundred (100) foot setback between any property line and any operation of tree or landscape recycling machinery (with the exception of vehicle or product storage).~~
  - ~~—— (d) A two hundred fifty (250) foot buffer between any residentially zoned land and any operation of tree or landscape recycling machinery (with the exception of vehicle or product storage).~~
  - ~~—— (e) Tree and landscape recycling operations restricted to 8:00 a.m. to 6:00 p.m.~~
  - ~~—— (f) Strict adherence to Maximum Permissible Sound Levels for Industrial Land, as set forth in Table 1 of § 92.06, Palm Bay Code of Ordinances.~~
- ~~—— (E) Prohibited uses and structures:~~
  - ~~—— (1) All uses not specifically or provisionally permitted herein.~~
- ~~—— (F) Lot and structure requirements:~~
  - ~~—— (1) Minimum lot area — twenty thousand (20,000) square feet.~~
  - ~~—— (2) Minimum lot width — one hundred (100) feet.~~
  - ~~—— (3) Minimum lot depth — two hundred (200) feet.~~
  - ~~—— (4) Maximum building coverage — fifty percent (50%).~~
  - ~~—— (5) Minimum floor area — None.~~
  - ~~—— (6) Maximum height — one hundred (100) feet.~~
  - ~~—— (7) Minimum yard requirements:~~
    - ~~—— (a) Front — forty (40) feet minimum building setback, parking areas may be located in the front yard except within ten (10) feet of the front lot line.~~
    - ~~—— (b) Side interior — twenty (20) feet minimum building setback. Parking areas may be located in the side yard except within ten (10) feet of the side lot line.~~

~~—— (c) Side corner — twenty-five (25) feet minimum building setback. Parking areas may be located in the side corner yard except within ten (10) feet of the side corner lot line.~~

~~—— (d) Rear — twenty-five (25) feet.~~

~~—— (8) An eight (8) foot high completely opaque masonry wall, or wood fence shall be provided along the entire length of any side or rear property line abutting property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this zoning code.~~

~~§ 185.046 HI — HEAVY INDUSTRIAL DISTRICT.~~

~~—— (A) Intent. The provisions of this district are intended to apply to an area in close proximity to major transportation facilities and which can serve general manufacturing, storage and distribution needs of the city and region. Lot sizes and other restrictions are intended to minimize adverse impacts to adjacent properties.~~

~~—— (B) Principal uses and structures:~~

~~—— (1) Warehousing.~~

~~—— (2) Wholesaling.~~

~~—— (3) Dry cleaning and laundry plants, printing plants, welding shops, machine shops, taxidermists and similar service and repair establishments and uses.~~

~~—— (4) Light manufacturing, processing and assembly including precision manufacturing, electrical machinery, instrumentation, bottling plants, dairy products plants, bakeries, fruit packing, and similar uses.~~

~~—— (5) Building materials supply and storage, provided that any outside display and/or storage area shall be screened on all sides to avoid any deleterious impact on adjacent properties; includes contractor storage yards.~~

~~—— (6) Automotive, truck, major recreational equipment and mobile home sales, storage and repair establishment including, body shops, dry docking facilities, paint shops, upholstery shops and similar uses provided that outside storage of vehicles not for sale shall be effectively screened on four (4) sides so as to avoid off-site visual impacts.~~

~~—— (7) Vocational and trade schools.~~

~~—— (8) Veterinary hospitals and clinics, including boarding of animals.~~

~~—— (9) Radio or television transmitter, towers or broadcasting facilities.~~

- ~~—(10) Research and development facilities.~~
- ~~—(11) Public utility equipment and facilities.~~
- ~~—(12) Freight handling and transportation terminals.~~
- ~~—(13) Printing, publishing and similar uses.~~
- ~~—(14) Textile and apparel manufacturing, processing and storage.~~
- ~~—(15) Lumber and wood products manufacturing, processing and storage.~~
- ~~—(16) Public uses.~~
- ~~—(17) Communication towers and facilities.~~
- ~~—(18) Salvage Yards.~~
- ~~—(19) Medical Recycling Facility.~~
- ~~—(20) Self-storage facilities.~~
- ~~—(C) Accessory uses and structures:~~
  - ~~—(1) Customary accessory uses clearly incidental and subordinate to one (1) or more principal used.~~
  - ~~—(2) Retail sales of products manufactured, processed or stored on the premises, provided the sales area constitutes no more than 15% of the total area of the space occupied by the business.~~
  - ~~—(3) Offices clearly accessory to one (1) or more principal uses.~~
- ~~—(D) Conditional uses:~~
  - ~~—(1) Manufacturing, assembly and processing uses or facilities not specifically provided as a principal use including block and concrete plants, furniture factories, food processing, citrus processing plants, salvage yards, and canneries and similar uses.~~
  - ~~—(2) Storage of liquefied petroleum products.~~
  - ~~—(3) Fabricated metal products.~~
  - ~~—(4) Chemicals and similar products.~~
  - ~~—(5) Automotive fuel tanks and pumps subject to the following provisions:~~
    - ~~—(a) Location of facilities. Gasoline/ fuel pumps, storage tanks and other service island equipment shall be at least twenty (20) feet from all property lines, fifteen (15) feet from any building and one hundred (100) feet from the nearest~~



~~residentially zoned land. No gasoline/fuel pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from any municipal or public supply well.~~

~~—(b) The use of fuel pumps shall be strictly limited to the owner of the property. Sales to members of the public in general or to any private individual are hereby strictly prohibited.~~

~~—(c) The proposed use will not constitute a nuisance or hazard because of vehicular traffic movement, delivery of fuel movement, noise or fume generation.~~

~~—(d) Development and operation of the fuel pumps and attendant storage tanks shall be in compliance with §§ 176.01 et seq.~~

~~—(6) Planned industrial developments.~~

~~—(7) Crematoriums.~~

~~—(8) Corrections facilities subject to the following:~~

~~—(a) Minimum area required: 20 acres.~~

~~—(b) Shall not be located within 1,000 feet of any residentially zoned property.~~

~~—(9) Smoke-producing industries, such as paper mills, rubber mills or regional incinerators, provided the land where such facility is operated shall be located no less than one-half (1/2) mile from the closest right-of-way line of Interstate 95.~~

~~—(E) Prohibited uses and structures: All uses not specifically or provisionally permitted herein.~~

~~—(F) Lot and structure requirements:~~

~~—(1) Minimum lot area — thirty thousand (30,000) square feet.~~

~~—(2) Minimum lot width — one hundred and fifty (150) feet.~~

~~—(3) Minimum lot depth — two hundred (200) feet.~~

~~—(4) Maximum building coverage — fifty percent (50%).~~

~~—(5) Minimum floor area — None.~~

~~—(6) Maximum height — one hundred (100) feet.~~

~~—(7) Minimum yard requirements:~~

~~—(a) Front — forty (40) feet minimum building setback. Parking areas may be located in the front yard except within ten (10) feet of the front lot line.~~

~~—— (b) Side interior — twenty (20) feet minimum building setback. Parking areas may be located in the side yard except within ten (10) feet of the side lot line.~~

~~—— (c) Side corner — twenty-five (25) feet minimum building setback. Parking areas may be located in the side corner yard except within ten (10) feet of the side corner lot line.~~

~~—— (d) Rear — twenty-five (25) feet.~~

~~—— (8) An eight (8) foot high completely opaque masonry wall, or wood fence shall be provided along the entire length of any side or rear property line abating property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this chapter.~~

~~—— (G) Lot and structure requirements for Salvage Yards:~~

~~—— (1) Minimum lot area — five (5) acres.~~

~~—— (2) Minimum lot width — two hundred (200) feet.~~

~~—— (3) Minimum lot depth — three hundred (300) feet.~~

~~—— (4) Maximum building coverage — fifty percent (50%).~~

~~—— (5) Minimum floor area — None.~~

~~—— (6) Maximum height — fifty (50) feet.~~

~~—— (7) Minimum yard requirements:~~

~~—— (a) Front — forty (40) feet minimum building setback. Parking areas may be located in the front yard except within ten (10) feet of the front lot line.~~

~~—— (b) Side interior — twenty (20) feet minimum building setback. Parking areas may be located in the side yard except within ten (10) feet of the side lot line.~~

~~—— (c) Side corner — twenty-five (25) feet minimum building setback. Parking areas may be located in the side corner yard except within ten (10) feet of the side corner lot line.~~

~~—— (d) Rear — twenty-five (25) feet.~~

~~—— (8) A six (6) foot high completely opaque masonry wall, or wood fence shall be provided along the entire length of any side or rear property line abating property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this chapter.~~

~~§ 185.047 IU — INSTITUTIONAL USE DISTRICT.~~

~~—(A) Intent. The provisions of this district are intended to apply to an area which can service the need of the city for public and semipublic facilities of an educational, governmental, recreational, health or cultural nature. Lot sizes and other restrictions are intended to ensure proper functioning and development of such uses.~~

~~—(B) Principal uses and structures:~~

~~—(1) Public educational institutions, including, but not limited to, elementary schools, junior high schools, high schools, junior or community colleges, colleges, and universities.~~

~~—(2) Governmental uses for federal, state, county, and city agencies and entities.~~

~~—(3) Public parks, playgrounds or other public recreational facilities.~~

~~—(4) Public utility equipment and facilities.~~

~~—(5) Churches.~~

~~—(6) Historic sites.~~

~~—(7) Camouflaged communication towers and facilities.~~

~~—(C) Accessory uses and structures: Customary accessory uses clearly incidental and subordinate to one (1) or more permitted uses.~~

~~—(D) Conditional uses:~~

~~—(1) Private schools.~~

~~—(2) Nonprofit youth, business, civic, service and cultural facilities and organizations.~~

~~—(3) Hospitals and associated medical clinics and offices.~~

~~—(4) Nursing homes, congregate living facilities and group care homes.~~

~~—(5) Cemetery.~~

~~—(6) Airports.~~

~~—(7) Permitted uses or uses permissible by special exception exceeding forty (40) feet in height.~~

~~—(E) Prohibited uses and structures: All uses not specifically or provisionally provided for herein.~~

~~—(1) Corrections facilities.~~

~~—(2) All uses not specifically or provisionally provided for herein.~~

~~—(F) Lot and structure requirements:~~

~~—(1) Minimum lot area — one (1) acre.~~

~~—(2) Minimum lot width — one hundred and fifty (150) feet.~~

~~—(3) Minimum lot depth — two hundred (200) feet.~~

~~—(4) Maximum building coverage — thirty percent (30%).~~

~~—(5) Minimum floor area — None.~~

~~—(6) Maximum height — forty (40) feet.~~

~~—(7) Minimum yard requirements:~~

~~—(a) Front: twenty-five (25) feet minimum building setback. Parking areas may be located in front yard except within ten (10) feet of the front lot line.~~

~~—(b) Side interior: twenty-five (25) feet minimum building setback. Parking areas may be located in the side yard, except within ten (10) feet of the side lot line. Side yards abutting residentially zoned property shall maintain a twenty-five (25) foot minimum setback for parking.~~

~~—(c) Side corner: twenty-five (25) feet minimum building setback. Parking areas may be located in the side corner yard, except within ten (10) feet of any, public or private street.~~

~~—(d) Rear: twenty-five (25) feet minimum building and parking area setback; ten (10) feet when abutting a dedicated alley.~~

~~—(8) Shared access and parking areas.~~

~~—(a) No side interior building and parking area setbacks are required provided all of the following are met:~~

~~—1. Buildings on adjacent parcels, under separate ownership, are joined by a common wall;~~

~~—2. Parking areas and aisles are joined with adjacent parcel(s) under separate ownership;~~

~~—3. Curb cuts and driveways on principal roadways (collector and arterial streets) are shared in common parcels involved and a minimum spacing of one hundred and fifty (150) feet is maintained; or access is provided by an approved frontage road;~~

~~4. Easements and/or written assurances of cross access and a sharing of common facilities (stormwater system, solid waste container(s), lighting, landscaping, etc.), as may be applicable, from all property owners involved must be approved prior to the issuance of a building permit.~~

~~(b) No interior side parking area setbacks are required provided the requirements of divisions 2. through 4. are met.~~

~~(c) For adjacent developments meeting the requirements of divisions 2. through 4. above, the total number of off-street parking spaces required for uses on all parcels involved may be reduced by ten percent (10%) where the location of shared parking areas provides convenient access to all principal buildings.~~

~~§ 185.048 FC — FLOODWAY CONSERVATION DISTRICT.~~

~~(A) Intent. The provisions of this district are intended to protect persons and property from the hazards of floodways and to conserve important natural resources for ecological purposes, open space needs and the enjoyment and education of present and future residents.~~

~~(B) Principal uses and structures:~~

~~(1) Open space devoted to the conservation of natural waterways, vegetation and wildlife.~~

~~(2) Aquatic preserves and outstanding Florida waters.~~

~~(3) Canoe trails.~~

~~(4) Hiking and/or bicycle trails.~~

~~(5) Nature study areas and boardwalks.~~

~~(6) Fishing and wildlife preserves.~~

~~(7) Public parks.~~

~~(8) Public or private open space as part of a planned unit development, DRI or other project.~~

~~(9) Natural drainage area.~~

~~(10) Pavilions for outdoor exhibits or special nature study.~~

~~(11) Public or private storm water retention areas.~~

~~(C) Accessory uses and structures:~~

~~—(1) Customary accessory uses clearly incidental and subordinate to one (1) or more principal uses.~~

~~—(D) Conditional uses:~~

~~—(1) Single-family homes at a maximum density of one (1) unit per ten (10) acres.~~

~~—(2) Public facilities.~~

~~—(3) Boat ramps or docks.~~

~~—(4) Camping areas.~~

~~—(E) Prohibited uses and structures: All uses not specifically or provisionally provided for herein.~~

~~—(F) Lot and structure requirements:~~

~~—(1) Minimum lot area — None except as specifically provided for above.~~

~~—(2) Minimum lot width — one hundred (100) feet for single-family; none otherwise.~~

~~—(3) Minimum lot depth — two hundred (200) feet for single-family; none otherwise.~~

~~—(4) Maximum building coverage — five percent (5%).~~

~~—(5) Minimum floor area — one thousand (1,000) square feet for single-family; none, otherwise.~~

~~—(6) Maximum height — twenty-five (25) feet.~~

~~—(7) Minimum yard requirements:~~

~~—(a) Front — fifty (50) feet.~~

~~—(b) Side interior — twenty-five (25) feet.~~

~~—(c) Side corner — twenty-five (25) feet.~~

~~—(d) Rear — twenty-five (25) feet.~~

#### ~~§ 185.049 SF-1 — SINGLE FAMILY RESIDENTIAL CATEGORY.~~

~~—(A) Intent. The provisions of this category are intended to apply to an area of medium density single-family residential development. Lot sizes, minimum living area standards, and other restrictions are intended to promote high quality residential development.~~

~~—(B) Principal uses and structures.~~

~~—(1) Single-family dwellings.~~

~~—(2) Accessory dwelling units; subject to the provisions listed in the § 185.006.~~

~~—(3) Public parks, playgrounds and other public recreational facilities.~~

~~—(4) Public utility equipment and facilities located within a utility easement or right-of-way.~~

~~—(C) Accessory uses and structures.~~

~~—(1) Customary accessory uses of a noncommercial nature clearly incidental and subordinate to one (1) or more principal uses.~~

~~—(D) Conditional uses.~~

~~—(1) Public and private schools.~~

~~—(2) Churches.~~

~~—(3) Public utility equipment and facilities, except communication towers, not located within a utility easement or right-of-way.~~

~~—(E) Prohibited uses and structures.~~

~~—(1) All uses not specifically or provisionally permitted herein.~~

~~—(F) Lot and structure requirements.~~

~~—(1) Minimum lot area — Eight thousand (8,000) square feet.~~

~~—(2) Minimum lot width — Eighty (80) feet.~~

~~—(3) Minimum lot depth — One hundred (100) feet.~~

~~—(4) Maximum building coverage — Thirty (30) percent.~~

~~—(5) Minimum living area — Fourteen hundred (1400) square feet.~~

~~—(6) Maximum height — Twenty-five (25) feet.~~

~~—(7) Minimum yard requirements:~~

~~—(a) Front — Twenty-five (25) feet.~~

~~—(b) Side interior — Eight (8) feet.~~

~~—(c) Side corner — Twenty-five (25) feet.~~

~~—(d) Rear — Twenty-five (25) feet.~~

~~—(8) Minimum one (1) car enclosed garage required at the time of the issuance of the structure's certificate of occupancy.~~

~~§ 185.050 (RESERVED).~~

~~§ 185.051 SRE — SUBURBAN RESIDENTIAL ESTATE CATEGORY.~~

~~—(A) Intent. The provisions of this category are intended to apply to an area of medium density single-family residential development. Lot sizes, minimum living area standards, and other restrictions are intended to promote high quality residential development.~~

~~—(B) Principal uses and structures:~~

~~—(1) Single-family dwellings.~~

~~—(2) Accessory dwelling units; subject to the provisions listed in the § 185.006.~~

~~—(3) Public parks, playgrounds and other public recreational facilities.~~

~~—(4) Public utility equipment and facilities located within a utility easement or right-of-way.~~

~~—(C) Accessory uses and structures.~~

~~—(1) Customary accessory uses of a non-commercial nature clearly incidental and subordinate to one (1) or more principal uses.~~

~~—(2) A security dwelling unit may be provided within a subdivision and shall adhere to the following standards:~~

~~—(a) The unit will only be permitted in conjunction with a subdivision that offers large, estate homes on medium to low-density lot sizes.~~

~~—(b) No person(s) under the age of eighteen (18) may reside within the unit, and at no time may the unit be occupied by more than two (2) persons.~~

~~—(c) The unit may contain no more than one thousand (1,000) square feet of gross floor area.~~

~~—(d) There may be only one (1) security dwelling unit for the subdivision.~~

~~—(e) There shall be at least one (1) parking space designated on-site for the resident of the unit.~~

~~—(D) Conditional uses.~~

~~—(1) Public and private schools.~~

~~—(2) Churches.~~



~~—(3) Public utility equipment and facilities, except communication towers, not located within a utility easement or right-of-way.~~

~~—(E) Prohibited uses and structures.~~

~~—(1) All uses not specifically or provisionally permitted herein.~~

~~—(F) Lot and structure requirements.~~

~~—(1) Minimum lot area — Eight thousand (8,000) square feet.~~

~~—(2) Minimum lot width — Eighty (80) feet.~~

~~—(3) Minimum lot depth — One hundred (100) feet.~~

~~—(4) Maximum building coverage — Forty (40) percent.~~

~~—(5) Minimum living area — Eighteen hundred (1800) square feet.~~

~~—(6) Maximum height — Twenty-five (25) feet.~~

~~—(7) Minimum yard requirements:~~

~~—(a) Front — Twenty-five (25) feet.~~

~~—(b) Side interior — Eight (8) feet.~~

~~—(c) Side corner — Twenty-five (25) feet.~~

~~—(d) Rear — Twenty-five (25) feet.~~

~~—(8) Minimum two (2) car enclosed garage required at the time of the issuance of the structure's certificate of occupancy.~~

#### ~~§ 185.052 RC – RESTRICTED COMMERCIAL DISTRICT.~~

~~—(A) Intent. The purpose of the restricted commercial district shall be to locate and establish areas within the city which are uniquely suited for commercial development but which are transitioning from residential or other noncommercial development to commercial use. Such areas to be primarily along major transportation corridors connecting other community commercial clusters. The uses and development standards included in the district are intended to provide compatibility between uses, protect nearby residential districts, provide access control along corridors, provide quality development, enhance corridor appearance, and provide additional commercial opportunities within the city.~~

~~—(B) Principal uses and structures. The following uses and structures are permitted:~~

- ~~—(1) Professional offices: accounting, architecture, engineering, dentistry, medical, insurance, legal, real estate, financial services (non-banking), and similar uses.~~
- ~~—(2) General offices: administrative, corporate, business, and similar uses.~~
- ~~—(3) Personal services: beauty, barber, dry cleaning pick-up, and similar uses (minimum fifteen thousand (15,000) square foot lot).~~
- ~~—(4) Business services: graphic design, interior design, advertising, photography, printing, employment services, telemarketing, business schools, and similar uses (minimum fifteen thousand (15,000) square foot lot).~~
- ~~—(5) Financial institutions: banks, credit unions and savings and loans (minimum fifteen thousand (15,000) square foot lot).~~
- ~~—(6) Retail sales and service: clothing, jewelry, luggage, shoes, electronics, sporting goods, books, gift shops, florists, photographic supplies, art dealers, tobacco products, grocery stores, drug stores, cosmetic and beauty supply, optical, specialty food, and similar uses (minimum fifteen thousand (15,000) square foot lot).~~
- ~~—(7) Veterinarians and veterinary clinics provided all activities are within the principal structure and there is no boarding of animals (minimum fifteen thousand (15,000) square foot lot).~~
- ~~—(8) Schools licensed by the State of Florida (minimum fifteen thousand (15,000) square foot lot).~~
- ~~—(9) Day care centers licensed by the State of Florida (minimum fifteen thousand (15,000) square foot lot), provided the lot has frontage on an Arterial or Collector Roadway, as identified in the adopted City Comprehensive Plan.~~
- ~~—(10) Public uses: any federal, state, county, municipal, special district, or similar use.~~
- ~~—(11) Funeral homes (minimum fifteen thousand (15,000) square foot lot).~~
- ~~—(12) Eating establishments: restaurants, coffee shops, pastry shops, ice cream parlors, cafeterias, snack shops, and similar uses (minimum fifteen thousand (15,000) square foot lot).~~
- ~~—(13) Contractors' administrative offices: plumbers, electricians, carpenters, masons, roofers, builders, cabinet makers, fence installers, gutter and siding installers, flooring and tile installers, drywall installers, painters, heating and air~~

~~conditioning installers, glass repair and replacement, and similar uses, provided no storage occurs at the site, no construction equipment is parked or stored at the site, and all parking is on a paved surface (minimum fifteen thousand (15,000) square foot lot).~~

~~—(C) Accessory uses and structures. Customary accessory uses of one (1) or more of the principal uses, clearly incidental and subordinate to the principal use, in keeping with the low intensity commercial nature of the district. All storage shall be within an enclosed structure unless clearly provided or excluded for herein.~~

~~—(D) Conditional uses.~~

~~—(1) Major retail sales, rental and service: building supply, major appliances, furniture, paint, hardware, lawn and garden supplies, consumer goods rentals, and similar uses (minimum fifteen thousand (15,000) square foot lot).~~

~~—(2) Plant nurseries, greenhouses (minimum fifteen thousand (15,000) square foot lot).~~

~~—(3) Public utility facilities.~~

~~—(4) Clubs, lodges, and fraternal organizations (minimum fifteen thousand (15,000) square foot lot).~~

~~—(5) Hospitals and nursing homes (minimum fifteen thousand (15,000) square foot lot).~~

~~—(6) Model home centers subject to the following:~~

~~—(a) No storage of construction materials is permitted on the site.~~

~~—(b) Off-street parking must be provided at one (1) space per three hundred (300) square feet of overall building.~~

~~—(c) Minimum lot area for the combined center is fifteen thousand (15,000) square feet.~~

~~—(d) The site and buildings only be utilized for sales and marketing purposes.~~

~~—(e) No residential use is permitted.~~

~~—(f) Only a sales office and homes representing those offered for sale by the builder are permitted uses under this category.~~

~~—(E) Prohibited uses and structures.~~

~~—(1) All uses not specifically permitted herein.~~

- ~~—(2) Building services: pest control, carpet cleaning, janitorial, water treatment, vending, and similar uses.~~
- ~~—(3) Retail automotive fuel sales.~~
- ~~—(4) Drinking establishments.~~
- ~~—(5) Pawn shops.~~
- ~~—(6) Tattoo parlors.~~
- ~~—(7) Contractors' offices with outside storage: plumbers, electricians, carpenters, masons, roofers, builders, cabinet makers, fence installers, gutter and siding installers, flooring and tile installers, drywall installers, painters, heating and air conditioning installers, glass repair and replacement, and similar uses.~~
- ~~—(8) Dancing in eating establishments.~~
- ~~—(9) Fireworks sales.~~
- ~~—(10) Fortune tellers, tarot card reading, palm readers, and similar uses.~~
- ~~—(11) Commercial towers.~~
- ~~—(12) Pain-management clinic.~~
- ~~—(F) Lot and structure requirements.~~
  - ~~—(1) Minimum lot area fifteen thousand (15,000) square feet.~~
  - ~~—(2) Minimum lot width one hundred (100) feet.~~
  - ~~—(3) Minimum lot depth one hundred fifty (150) feet.~~
  - ~~—(4) Maximum building coverage thirty-five percent (35%).~~
  - ~~—(5) Minimum floor area three hundred (300) square feet.~~
  - ~~—(6) Maximum height twenty-five (25) feet.~~
  - ~~—(7) Minimum yard requirements:~~
    - ~~—(a) Front: Forty (40) feet minimum building setback. Thirty (30) feet minimum building setback for front yards which face an arterial road. Parking areas may be located in the front yard except within fifteen (15) feet on the front lot line or ten (10) feet for parking areas located in a front yard which face an arterial road.~~
    - ~~—(b) Side interior: Ten (10) feet minimum building setback. Parking areas may be located in the side yard, except within five (5) feet of the side lot line. Side~~

~~yards abutting residentially zoned property shall maintain a thirty (30) feet minimum setback for all buildings and parking.~~

~~—— (c) Side corner: Twenty-five (25) feet minimum building setback. Parking areas may be located in side corner yard, except within ten (10) feet of any street.~~

~~—— (d) Rear: Thirty (30) feet minimum building and parking setback.~~

~~—— (8) Shared access and parking areas:~~

~~—— (a) No side interior building and parking area setbacks are required provided all of the following are met:~~

~~—— 1. Buildings on adjacent parcels, under separate ownership, are joined by a common wall.~~

~~—— 2. Parking areas and aisles are joined with adjacent parcel(s) under separate ownership.~~

~~—— 3. Curb cuts and driveways on principal roadways (collector and arterial streets) are shared in common parcels involved and a minimum spacing of one hundred fifty (150) feet is maintained, or access is provided by an approved frontage road.~~

~~—— 4. Easements and/or written assurances of cross access and a sharing of common facilities (stormwater system, solid waste container(s), lighting, landscaping, etc.), as may be applicable, common facilities from all property owners involved must be approved prior to the issuance of a building permit.~~

~~—— (b) No interior side parking area setbacks are required, provided the requirements of subdivisions (8)(a)2. through 4. above are met.~~

~~—— (c) For adjacent developments meeting the requirements of subdivisions (8)(a)2. through 4. above, the total number of off-street parking spaces required for uses on all parcels involved may be reduced by ten percent (10%) where the location of shared parking areas provides convenient access to all principal buildings.~~

~~—— (9) Wall requirements. An eight (8) foot high completely opaque masonry wall shall be provided along the entire length of any side or rear property line abutting property zoned residential. This required masonry wall shall provide a finished treatment on all sides and shall be set back from the property line a minimum of three (3) feet to provide adequate room for maintenance of both sides of the wall.~~

~~—— (10) Design requirements:~~

~~— (a) An Architectural Style for each structure is required. This shall include adherence to all standards contained in § 185.134.~~

~~— (11) Signs. Maximum height for any detached sign shall be ten (10) feet. All other criteria of the Sign Code shall be met.~~

~~— (12) Landscaping. All lots abutting residentially zoned land shall plant a minimum of one (1) tree for every thirty-five (35) feet of abutting distance. These required trees shall be a minimum of ten (10) feet in height at planting and shall be placed on the commercial lot between the residential property and any buildings or parking on the commercial lot.~~

~~§ 185.053 BMUV - BAYFRONT MIXED USE VILLAGE DISTRICT.~~

~~— (A) Intent. The purpose of the Bayfront mixed use village (BMUV) district is to provide areas within the Bayfront Redevelopment District for an attractive and functional mix of residential, office, neighborhood supporting commercial, institutional, and other similar low intensity land uses that are linked by a network of walkways to create a village center as recommended in the Bayfront Redevelopment Plan.~~

~~— (B) Principal uses and structures.~~

~~— (1) Single family dwellings.~~

~~— (2) Multiple family dwellings provided that in no case shall there be more than ten (10) dwelling units per gross residential acre.~~

~~— (3) Professional offices such as accounting, architecture, engineering, dentistry, medical, insurance, real estate, financial services, title companies and similar uses.~~

~~— (4) General offices such as administrative, corporate, business, and similar uses.~~

~~— (5) Personal service such as beauty, barbers, dry cleaning pick-up, tailoring and similar uses.~~

~~— (6) Business service such as graphic design, interior design, advertising, photography, printing, employment services, telemarketing, business schools, and similar uses.~~

~~— (7) Financial institutions (banks, credit unions, and savings and loan).~~

~~— (8) Retail sales and service (clothing, jewelry, luggage, shoes, electronics, sporting goods, gift shops, florists, photographic supplies, art dealers, antique~~

~~shops/dealers, tobacco products, grocery stores, convenience stores, drug stores, cosmetic and beauty supply optical specialty food, and similar uses).~~

~~—(9) Veterinary clinics provided all activities are within the principal structures and there is no boarding of animals.~~

~~—(10) Schools, churches, libraries, and museums.~~

~~—(11) Day care centers.~~

~~—(12) Public uses (any federal, state, county, municipal, special district, or similar use).~~

~~—(13) Funeral homes.~~

~~—(14) Eating establishments (restaurants, coffee shops, pastry shops, ice cream parlors, cafeterias, snack shops, and similar uses).~~

~~—(15) Retail bakeries.~~

~~—(16) Plant nurseries, greenhouses.~~

~~—(17) Clubs, lodges, and fraternal organizations.~~

~~—(18) Nursing homes and adult congregate living facilities.~~

~~—(19) Repair service establishments excluding auto repair.~~

~~—(20) Hotel, motel, and bed and breakfast inns.~~

~~—(21) Public and private parking lots.~~

~~—(C) Accessory uses and structures. Customary accessory uses of one or more of the principal uses, clearly incidental and subordinate to the principal use, in keeping with the objectives of a village environment. All storage shall be in an enclosed structure unless clearly provided for herein.~~

~~—(D) Conditional uses.~~

~~—(1) Public utility facilities.~~

~~—(2) On-premise alcohol consumption accessory to an eating establishment.~~

~~—(3) Eating establishment with sidewalk/ outdoor table service.~~

~~—(4) Dancing in eating establishments.~~

~~—(5) Marinas with boat sales and rentals.~~

~~—(6) Residential and nonresidential uses in the same structure.~~

~~—(E) Prohibited uses and structures.~~

~~—(1) All uses not specifically permitted herein.~~

~~—(2) Retail automotive fuel sales.~~

~~—(3) Pawn shops.~~

~~—(4) Tattoo parlors and body piercing establishments.~~

~~—(5) Contractors' offices with outside storage (plumbers, electricians, carpenters, masons, roofers, builders, cabinet makers, fence installers, gutter and siding installers, flooring and tile installers, drywall installers, painters, heating and air conditioning installers, glass repair and replacement, and similar uses).~~

~~—(6) Adult entertainment.~~

~~—(7) Fireworks sales.~~

~~—(8) Commercial towers.~~

~~—(9) Automotive/vehicle repair and auto body repair, painting, and storage of junk vehicles.~~

~~—(10) Vehicle/automotive sales/lease.~~

~~—(11) Palm readers/fortunetellers and similar uses.~~

~~—(12) Flea markets and auction houses and similar uses.~~

~~—(13) Soup kitchens/homeless shelters.~~

~~—(14) Pain management clinic.~~

~~—(F) Lot and structure requirements.~~

~~—(1) Minimum lot area – four thousand eight hundred (4,800) square feet.~~

~~—(2) Minimum lot width – forty (40) feet.~~

~~—(3) Minimum lot depth – one hundred twenty (120) feet.~~

~~—(4) Maximum building coverage – sixty percent (60%).~~

~~—(5) Maximum height – thirty-five (35) feet.~~

~~—(6) Minimum floor area (nonresidential) – three hundred (300) square feet.~~

~~—(7) Minimum living area for single family detached dwellings – None.~~

~~—(8) Minimum living area for multifamily units: None.~~

~~—(9) Yard requirements:~~



- ~~—— (a) Front: zero (0) foot minimum, twenty (20) foot maximum.~~
- ~~—— (b) Side interior: five (5) feet minimum.~~
- ~~—— (c) Side corner: zero (0) foot minimum, twenty (20) foot maximum.~~
- ~~—— (d) Rear: twenty (20) foot minimum; ten (10) minimum feet when abutting a right-of-way or alley.~~
- ~~—— (e) Accessory structures: minimum twenty (20) foot front and side corner, same side and rear as listed in divisions (b) and (d) above.~~
- ~~—— (10) Shared access and parking areas:~~
  - ~~—— (a) Off-street parking for non-residential uses shall be behind or to the side of the nonresidential building with a minimum of four (4) foot setback from a right-of-way line.~~
  - ~~—— (b) On-street parking spaces along the front property line shall be counted toward the minimum number of parking spaces required for that use on that lot, except where there are driveway curb cuts.~~
  - ~~—— (c) No side interior building and parking area setbacks are required for nonresidential buildings provided all of the following are met:~~
    - ~~—— 1. Buildings on adjacent parcels, under separate ownership, are joined by a common wall.~~
    - ~~—— 2. Parking areas and aisles are joined with adjacent parcel(s) under separate ownership.~~
    - ~~—— 3. Curb cuts and driveways on principal roadways (collector and arterial streets) are shared in common for the parcels involved and a minimum spacing of one hundred fifty (150) feet is maintained, or access is provided by an approved frontage road.~~
    - ~~—— 4. Easements and/or written assurances of cross access and a sharing of common facilities (stormwater system, solid waste container(s), lighting, landscaping, etc.), as may be applicable, from all property owners involved must be approved prior to the issuance of a building permit.~~
  - ~~—— (d) For adjacent developments meeting the requirements of divisions 2 through 4 above, the total number of off-street parking spaces required for uses on all parcels involved may be reduced by ten percent (10%) where the location of shared parking areas provides convenience access to all principal buildings.~~

~~— (11) Design requirements:~~

~~— (a) The Bayfront Architectural Style for each structure is required. This shall include the following architectural elevations facing public rights-of-way.~~

~~— 1. A metal panel, 5-seam or metal shake roof is acceptable. A 5-tab twenty-five (25) year dimensional shingle roof or manufactured equivalent of a wood shake roof is acceptable. 3-tab shingles, barrel vaulted tiles, or corrugated roof systems are not permissible.~~

~~— 2. Pitch of main roof, hipped or gable, shall be no greater than 5:12 and no less than 3:12; mansard roof shall be no greater than 9:12; porch roof shall be a lower pitch than the main roof.~~

~~A minimum 6" overhang is required for any roof structure. All structures must have a minimum 3:12 slope roof. Multiple roof systems with matching roof slopes are permissible. Low slopes (Flat) roof systems are permissible when screened by a mansard roof or parapet wall meeting the design requirements.~~

~~— 3. The predominant exterior color shall be pastel shades or white; earth tones are not acceptable except in brick.~~

~~— 4. Manufactured brick or materials that have the appearance of brick are acceptable. Horizontally struck stucco, exterior insulated finish system stucco panels, boards and batten, wood or vinyl siding, and stained hardwood panels shall also be considered acceptable finishes.~~

~~— 5. Front porch. The front porch must encompass an area greater than fifty percent (50%) of the front facade. The porch must be a minimum of 60" in depth.~~

~~— 6. Gingerbread trim and/or porch railings, columns or shall have the appearance of light frame wood construction.~~

~~— 7. Trim colors shall be white or light pastels. (Trim shall be considered railings, columns, door and window surrounds, soffits, shutters, gutters and downspouts, and other decorative elements.) Trim finishes shall be a contrasting lighter color than that of the primary building color with the exception of white as a primary building color.~~

~~— 8. There shall be no area greater than 400 square feet of contiguous blank wall area on any front facade that remains unadorned by architectural features that include, but are not limited to, windows, doors, lights, banding trim or porch elements.~~

~~9. There shall not be any singular facade that has greater than 100' lineal feet of run without a minimum 16" break, by using a directional or material change.~~

~~10. Metal-clad structures are permissible. Internal bracing must be certified to accept additional finishes or structures applied to the exterior metal panels. No external X bracing is to be visible on any front facade. Finish panels must be able to accept a painted finish. All exterior wall finishes must match the primary building color. The use of corrugated, synthetic or fiberglass panels is prohibited on any front wall or any front roof surface. All design requirements must be met for metal-clad structures as for any other new structures.~~

~~(b) The predominant exterior color shall be applied to all sides of the structure.~~

~~(c) The design requirements listed in division (11)(a) above shall be applicable to all new construction in the district, and in the case of additions or renovations to, or development of, an existing building or project, where the addition, renovation or redevelopment exceeds fifty percent (50%) of the square footage of the existing structure(s). A mirror building, defined as a building meant to compliment a pre-existing structure by use of identical material finishes, scale and form, shall be exempt from the design requirements. New buildings that are part of an overall campus plan that has an established architectural theme shall also be exempt from the design requirements herein.~~

~~(d) The design requirements listed in division (11)(a) above shall be applicable to all accessory structures not exempted by division (11)(c). Any accessory structure not meeting this requirement shall be screened so as not to be visible from the public right-of-way. Mechanical equipment such as drive-through menu boards and speaker stations, drive-through teller stations, ATM's, and similar appliances which require direct access by the public shall be exempt from the design review requirements of this subsection.~~

~~(e) Compliance with the requirements set forth in this subsection shall be demonstrated by submittal of building front elevations and color and material samples at the time of site plan review.~~

~~(f) Structures in the following use category are exempt from the design review requirements of this subsection: public utility equipment and churches.~~

~~(g) The city sign code shall be adhered to with the following additional requirements:~~

~~1. Materials: The color, construction, and material of each sign shall be compatible with the architecture on the site.~~

~~2. Design: Every sign frame or support shall be designed as a sympathetic architectural element of the building(s) to which it is principally related.~~

~~3. Free standing signs shall have landscaping at the base.~~

~~(h) Structures having a federal or state historic site status shall be exempt from this subsection.~~

~~(i) Garages for residential structures and uses shall not be located closer to the front or side corner lot line than the foremost facade of the principal building, i.e., "snout houses" are not permitted.~~

~~(j) The City Council may, by resolution, adopt such administrative policies, manuals and/or fees as necessary to implement the design requirements identified above.~~

~~(12) Signs. Maximum height for any detached sign shall be ten (10) feet. All other criteria of the Sign Code shall be met.~~

~~(13) Landscaping. Properties within the Bayfront mixed use village district are exempt from the development standards of § 185.142(B)(1) and (2), Off-Street Parking Area Landscape Requirements, however properties within the district shall meet all the other requirements of § 185.142 in addition to the following landscape development standards:~~

~~(a) One (1) tree per every forty (40) feet of the property frontage shall be planted between the right-of-way line and the front or side corner building line for all properties.~~

~~(b) Any off-street parking space or parking lot in the Bayfront mixed use village district that abuts a street right-of-way shall be buffered from the right-of-way by a landscape area of no less than four (4) feet of width in which is located a continuous row of shrubs no less than two (2) feet in height.~~

~~(c) In addition, where off-street parking is required for multiple family residential and nonresidential uses, such parking shall meet the interior parking area landscape requirements of § 185.142(3) of the code.~~

~~(14) Sidewalks. Sidewalks shall be provided to create a pedestrian access to the proposed project and to adjacent properties. All sidewalks shall:~~

~~—— (a) Be constructed of concrete with a raised curb separating the sidewalk from on-street parking.~~

~~—— (b) Be a minimum of four (4) feet in width.~~

~~—— (c) Comply with city engineering design standards.~~

~~—— (15) Fence/walls. The construction, erection, and maintenance of walls and fences shall be permitted per the city's fence code (§§ 170.110 through 170.122) with the following exceptions and additions:~~

~~—— (a) Chain link fence cannot be placed within twenty (20) feet of the front or side corner property lines, except that chain link fencing is prohibited on property containing residential buildings. Such projects may only erect a fence of wooden, PVC, or wrought iron material.~~

~~—— (b) Fence and wall height shall be limited to four (4) feet within twenty (20) feet of the front and side corner property lines, and limited to six (6) feet in height at all other areas of the property.~~

~~—— (c) The use of barbed wire is prohibited.~~

~~—— (16) Lighting. Buildings shall have no neon on their exterior; however, neon signs may be displayed inside windows provided they occupy no more than fifteen percent (15%) of the window where they are displayed.~~

#### ~~§ 185.054 GC – GENERAL COMMERCIAL DISTRICT.~~

~~—— (A) Intent. The purpose of the General Commercial District shall be to locate and establish areas within the city which are uniquely suited for heavy commercial development. Such areas are to be developed in an intensive manner and are designed to provide opportunities for small businesses of a variety of types. The uses and development standards included in the district are intended to provide additional opportunities for businesses to locate within the city by providing a mix of service, warehousing, commercial, wholesaling, storage, and similar businesses and uses.~~

~~—— (B) Principal uses and structures. The following uses and structures are permitted:~~

~~—— (1) Professional offices (accounting, architecture, engineering, dentistry, medical, insurance, legal, real estate, financial services (non-banking) and similar uses).~~

~~—— (2) General offices (administrative, corporate, business and similar uses).~~

- ~~— (3) Personal services (beauty, barber, dry cleaning pick-up and similar uses).~~
- ~~— (4) Business services (graphic design, interior design, advertising, photography, printing, employment services, telemarketing, business schools and similar uses).~~
- ~~— (5) Financial institutions (banks, credit unions and savings and loans).~~
- ~~— (6) Retail sales and service (clothing, jewelry, luggage, shoes, electronics, sporting goods, books, gift shops, florists, photographic supplies, art dealers, tobacco products, grocery stores, drug stores, cosmetic and beauty supply, optical, specialty food and similar uses).~~
- ~~— (7) Veterinarians and veterinary clinics.~~
- ~~— (8) Schools licensed by the state of Florida.~~
- ~~— (9) Day care centers licensed by the state of Florida.~~
- ~~— (10) Public uses (any federal, state, county, municipal, special district or similar use).~~
- ~~— (11) Funeral homes.~~
- ~~— (12) Eating establishments (restaurants, coffee shops, pastry shops, ice cream parlors, cafeterias, snack shops and similar uses).~~
- ~~— (13) Major retail sales, rental and service (building supply, major appliances, furniture, paint, hardware, lawn and garden supplies, consumer goods rentals and similar uses).~~
- ~~— (14) Plant nurseries and greenhouses.~~
- ~~— (15) Public utility facilities.~~
- ~~— (16) Clubs, lodges and fraternal organizations.~~
- ~~— (17) Building services (pest control, carpet cleaning, janitorial, water treatment, vending and similar uses).~~
- ~~— (18) Contractors' offices (plumbers, electricians, carpenters, masons, roofers, builders, cabinet makers, fence installers, gutter and siding installers, flooring and tile installers, drywall installers, painters, heating and air conditioning installers, glass repair and replacement and similar uses).~~
- ~~— (19) Wholesale trade, warehousing and storage~~
- ~~— (20) Towing services with associated storage.~~

- ~~—(21) Upholstery and furniture repair/refinishing.~~
- ~~—(22) Medical and dental manufacturing labs.~~
- ~~—(23) Welding and machine shops.~~
- ~~—(24) Technical and trade schools.~~
- ~~—(25) Retail automotive sales, rental and service (car, boat, recreation vehicle, ATV, and motorcycle sales and service including paint, body and upholstery shops).~~
- ~~—(26) Assembly of components manufactured off-site.~~
- ~~—(27) State licensed tattoo parlors.~~
- ~~—(28) Drinking establishments.~~
- ~~—(29) Indoor commercial recreation (excluding dance clubs). In buildings with multiple tenants, indoor commercial recreational uses may occupy up to five thousand (5,000) square feet of gross floor area, fitness centers and other indoor health, recreational, and similar facilities for exercise, sports, and other physical activities. Outdoor recreation uses must be related to the indoor recreation use and require a site plan approval.~~
- ~~—(C) Accessory uses and structures. Customary accessory uses of one (1) or more of the principal uses, clearly incidental and subordinate to the principal use, in keeping with the high intensity commercial nature of the district. All storage shall be within an enclosed structure or completely screened by an opaque fence or wall, of at least six (6) feet in height.~~
- ~~—(D) Conditional uses.~~
  - ~~—(1) Permitted uses located on a parcel of ten (10) or more acres of area.~~
  - ~~—(2) Commercial towers.~~
  - ~~—(3) Security dwelling unit, subject to the provisions established in § 185.088(I).~~
  - ~~—(4) Canine day care, and related services:~~
    - ~~—(a) There shall be no more than one (1) dog per thirty-five (35) square feet of the area within the facility that the dogs will be housed.~~
    - ~~—(b) The facility must have an outdoor area for exercise and bathroom relief. Said area shall be enclosed with a minimum six (6) foot tall fence.~~

- ~~—— (c) All kennels and housing areas shall be within an air-conditioned building. Outside kenneling will not be permitted.~~
- ~~—— (d) Fecal matter shall be disposed of on a daily basis.~~
- ~~—— (e) Dogs shall be indoors between the hours of 10:00 p.m. and 6:00 a.m.~~
- ~~—— (5) Dancing in eating and drinking establishments.~~
- ~~—— (6) Churches.~~
- ~~—— (7) Event halls, subject to the provisions established in § 185.088(J).~~
- ~~—— (8) Self-storage facilities subject to the provisions established in § 185.088(F).~~
- ~~—— (E) Prohibited uses and structures.~~
  - ~~—— (1) All uses not specifically permitted herein.~~
  - ~~—— (2) Pawn shops.~~
  - ~~—— (3) Pain-management clinic.~~
- ~~—— (F) Lot and structure requirements.~~
  - ~~—— (1) Minimum lot area – fifteen thousand (15,000) square feet.~~
  - ~~—— (2) Minimum lot width – one hundred (100) feet.~~
  - ~~—— (3) Minimum lot depth – one hundred fifty (150) feet.~~
  - ~~—— (4) Maximum building coverage – fifty percent (50%).~~
  - ~~—— (5) Minimum floor area – three hundred (300) square feet.~~
  - ~~—— (6) Maximum height – forty (40) feet.~~
  - ~~—— (7) Minimum yard requirements:~~
    - ~~—— (a) Front: thirty (30) feet minimum building setback. Parking areas may be located in the front yard except within ten (10) feet on the front lot line.~~
    - ~~—— (b) Side interior: ten (10) feet minimum building setback. Parking areas may be located in the side yard, except within five (5) feet of the side lot line.~~
    - ~~—— (c) Side corner: twenty-five (25) feet minimum building setback. Parking areas may be located in the side corner yard, except within ten (10) feet of any street.~~
    - ~~—— (d) Rear: ten (10) feet minimum building and parking setback.~~



~~—(8) Shared access and parking areas.~~

~~—(a) No side interior building and parking area setbacks are required provided all of the following are met:~~

~~——1. Buildings on adjacent parcels, under separate ownership, are joined by a common wall;~~

~~——2. Parking areas and aisles are joined with adjacent parcel(s) under separate ownership;~~

~~——3. Curb cuts and driveways are shared in common parcels involved and a minimum spacing of one hundred (100) feet is maintained, or access is provided by an approved frontage road; and~~

~~——4. Easements and/or written assurances of cross access and a sharing of common facilities (stormwater system, solid waste container(s), lighting, landscaping, etc.), as may be applicable, from all property owners involved must be approved prior to the issuance of a building permit.~~

~~—(b) For adjacent developments meeting the requirements of divisions (F)(8)(a) 2. through 4. above, the total number of off-street parking spaces required for uses on all parcels involved may be reduced by ten percent (10%) where the location of shared parking areas provides convenient access to all principal buildings.~~

~~—(9) Design requirements.~~

~~—(a) An Architectural Style for each structure is required. This shall include adherence to all standards contained in § 185.134.~~

~~§ 185.055 PLANNED COMMUNITY REDEVELOPMENT DISTRICT (PCRD).~~

~~—(A) Intent. The planned community redevelopment district is a concept which encourages and permits variation in mixed use developments by allowing deviation in lot size, bulk or type of dwellings, density, height, lot coverage and open space from that required in any classification under the zoning regulations of the city. The purpose is to encourage the development of planned communities that provide a broad range of residence types as well as commercial uses designed to serve the inhabitants of the development, the redevelopment district and the~~

~~city as a whole. It is recognized that only through ingenuity, imagination and flexibility can developments be produced which are in keeping with the intent of this subchapter, the Bayfront Redevelopment District Plan and the City of Palm Bay Comprehensive Plan, while departing from the strict application of the~~

~~conventional use and dimension requirements of other zoning districts and subdivision regulations.~~

~~—(B) Establishment of Planned Community Redevelopment Districts. These districts may be applied within the Bayfront Community Redevelopment District established by the city. Such districts must be established by amendment of the official zoning map and shall carry a zoning designation of PCR. The PCR District may be requested in any zoning category except BMUV, Bayfront Mixed Use Village District, LI, Light Industrial and Warehousing District and HI, Heavy Industrial District.~~

~~—(C ) Required elements. Each individual Planned Community Redevelopment District must contain the following required elements:~~

~~—(1) A mix of commercial and residential uses subject to the land use criteria established in this section;~~

~~—(2) Architectural standards;~~

~~—(3) Signage standards;~~

~~—(4) Landscaping standards;~~

~~—(5) Streetscape, public open space, river view maintenance, public access and civic standards; and~~

~~—(6) Development standards consistent with the criteria established in this section, including but not limited to minimum overall site size, height, setbacks, parking, loading, individual lot sizes and other development criteria.~~

~~—(D) Commercial land use standards.~~

~~—(1) Commercial use(s) consisting of one (1) or more of the following: retail, office, restaurant, personal services (hair salons, tailors, spas and similar uses) hotels, motels and similar uses is required to be provided in each Planned Community Redevelopment District based on the following minimum square footage standards:~~

~~—(a) A minimum square footage equal to five percent (5%) of the land area for projects having an existing residential classification at the time of application submittal;~~

~~—(b) A minimum square footage equal to ten percent (10%) of the land area for projects having an existing institutional classification at the time of application submittal; and~~

~~—(c) A minimum square footage equal to fifteen percent (15%) of the land area for projects having an existing commercial or office classification at the time of application submittal.~~

~~—(2) A minimum of fifty percent (50%) of the required commercial square footage must be located within the same building(s) as the residential uses proposed for development. The balance of the required commercial square footage may be located in separate buildings from the planned residential.~~

~~—(3) When deemed appropriate by the City Council, up to forty percent (40%) of the required commercial square footage may be mitigated for through financial contributions made into a fund incorporated into the Bayfront Community Redevelopment Agency budget for promotion, development and enhancement of commercial development within the community redevelopment district. The amount of the contribution shall be determined by the City Council provided that a minimum of \$33.75 per square feet of commercial not constructed is deposited into the fund. The forty percent (40%) mitigation shall be deducted from the minimums established in both subsection (1) and (2) above.~~

~~—(E) Residential land use standards.~~

~~—(1) A minimum of one (1) residential unit shall be constructed for each two thousand (2,000) square feet of required commercial.~~

~~—(2) Residential units shall contain a minimum of one thousand two hundred (1,200) square feet of living area.~~

~~—(3) Maximum density shall be twenty (20) units per acre. Density may be increased one (1) unit per acre for every two thousand (2,000) square feet of additional commercial developed on the site up to a maximum density of thirty (30) units per acre.~~

~~—(F) Architectural standards.~~

~~—(1) Applicants shall provide detailed architectural drawings for all structures within the project. The architectural styles must be cohesive within the project and shall include adherence to the standards contained in § 185.134.~~

~~—(G) Landscaping standards.~~

~~—(1) Detailed landscape plans and standards must be submitted for review and approval by the City Council. Landscaping must be provided to enhance the project by providing buffering from roadways and adjacent properties, breaking up parking and paving within the site and complementing buildings on the site.~~

~~—(2) Any walls along the perimeter of the property shall be buffered from offsite view by landscaping. Such walls must be approved by City Council during the approval process.~~

~~—(H) Streetscape, public open space, river view maintenance, public access and civic standards.~~

~~—(1) Each project shall provide streetscaping, public open space, public access to the waterfront or other public/civic facilities as part of the development. These features shall be determined during the project approval process and may be met offsite if deemed appropriate by City Council.~~

~~—(2) Projects between Dixie Highway NE (U.S. #1) and the Indian River Lagoon shall maintain a minimum of thirty percent (30%) of the frontage open through use of breezeways, no-build visibility corridors or other means.~~

~~—(I) Development standards.~~

~~—(1) The minimum size property necessary shall total two and one-half (2.5) acres.~~

~~—(2) The maximum height permitted shall not exceed forty (40) feet. Height may be increased two (2) feet for every one thousand (1,000) square feet of commercial square footage constructed above the minimum commercial square footage required by this section, up to a maximum height of seventy (70) feet.~~

~~—(3) Setbacks shall be determined during project review.~~

~~—(4) Parking and loading shall meet the regulations established in §§ 185.140, 185.141 and 185.142 of this Zoning Code. Deviations from these standards may be approved by City Council if deemed appropriate.~~

~~—(5) There is no minimum lot size established for subdivided properties. Lot sizes shall be provided by the developer and must receive approval by City Council.~~

~~—(6) Development standards shall be detailed in the applications support information provided by the developer during the approval process.~~

~~—(7) Fencing is permitted along the rear and side interior property lines at a maximum height of eight (8) feet. Fencing along river frontage shall comply with (H)(2) of this district and shall be limited to a height of four (4) feet.~~

~~—(J) Review process.~~

~~—(1) An application for a Planned Community Development District zoning shall consist of a Preliminary Application Approval process and a Final Application Approval process. Approval of the Preliminary PCR request shall be via Resolution. A PCR zoning classification is established when the Final Application is approved by City Council and shall be enacted by Ordinance. Both the preliminary and final applications must be submitted for review and action to the Bayfront Community Redevelopment Agency, the Planning and Zoning Board and City Council. All meetings must be public hearings.~~

~~—(K) Preliminary application submittal requirements.~~

~~—(1) A general plan for the use of all lands within the proposed PCRD. Such plans shall indicate the general location of residential areas (including density and unit types), open space, parks, passive or scenic areas, and non-residential areas (including maximum building square footage and maximum height).~~

~~—(2) A plan of vehicular and pedestrian circulation showing the general locations and right-of-way widths of roads, sidewalks, the capacity of the system and access points to the external and internal thoroughfare network.~~

~~—(3) Quantitative summary of land uses (maximum acres, maximum non-residential building square feet, maximum number of residential dwelling units, etc.). A report shall be submitted to the city that~~

~~includes a statement indicating how the proposed development complies with the comprehensive plan and a general description of the proposed development including:~~

~~——(a) The total acreage of the project.~~

~~——(b) The number of acres proposed to be developed in the various categories of land use shown on the concept plan; the percentage of total acreage represented by each category of use and each component of development; and an itemized list of uses proposed for each of the components which shall be the range of uses permitted for that section of the PCR.~~

~~——(c) The number and type of dwelling units proposed for the overall site and for its components, including dwelling unit per acre calculations and population projections for each and for non-residential projects, provide the gross square footage devoted for each land use.~~

~~—— (d) The establishment of minimum design standards which shall govern the site and development such as lot shape and size, internal streets and pedestrian ways, open space provisions, off-street parking, buffers and landscape areas.~~

~~—— (e) A site conditions map that includes:~~

~~—— 1. Legal description and boundary survey signed and sealed by a registered Florida land surveyor.~~

~~—— 2. Name of the PCR; owner, along with their address and phone number; surveyor and engineer of record; and, date of drawing.~~

~~—— 3. Scale, date, north arrow, and general location map showing relationship of the site to external uses, structures, and features.~~

~~—— 4. Boundaries of the subject property, all existing streets, buildings, water courses, easements, section lines, and other important physical features.~~

~~—— 5. Existing topography (latest U.S. Department of the Interior Geological Survey) on the site and along all adjacent roadways.~~

~~—— 6. The location and size of all existing drainage facilities and a utility concept plan.~~

~~—— 7. The location and function of all other existing public facilities which would serve the residents of the site including but not limited to schools, parks, and fire stations.~~

~~—— 8. Graphic displays necessary to depict proposed buildings, landscaping, conformance with surrounding area in terms of height, bulk and style and other graphics necessary to adequately determine that the criteria in this section have been met.~~

~~—— (L) Final application submittal requirements.~~

~~—— (1) Engineering plans.~~

~~—— (a) Engineering plans showing:~~

~~—— 1. Existing ground surfaces and proposed elevations in the planned unit development.~~

~~—— 2. If deemed necessary by the Council, subsurface conditions on the tract, including the location and results of tests made to ascertain the conditions of subsurface soil, rock, and groundwater, and the existing depth of groundwater.~~

~~3. Typical cross-sections of proposed grading, streets and sidewalks, canals and waterways.~~

~~4. Proposed type of pavement in accordance with city specifications.~~

~~5. Layout of water distribution, sanitary sewers and storm drainage systems, with grades and sizes indicated.~~

~~6. Final engineering drawing of water, sanitary sewer and storm drainage systems and sidewalks, streets, bulkheads, street name signs and adequate lighting.~~

~~(b) The engineering plans shall be in conformity with the requirements and specifications of the city subdivision regulations set forth in Chapter 184 of this code of ordinances.~~

~~(2) Final development plan:~~

~~(a) A final development plan containing, in addition to those items specified in § 185.055(K), the following information:~~

~~1. Dedication by owner and completion of certificate of surveyor.~~

~~2. The location, dimensions and character of construction of all proposed streets, driveways, points of ingress and egress, loading areas, number of parking spaces and areas, primary residential areas and structures, secondary nonresidential areas and structures, recreational areas and structures, and common open space areas.~~

~~3. Proposed lot lines (if any), lot and block numbers and dimensions of all primary nonresidential uses, and common open space.~~

~~4. The proposed architectural and landscape design of all structures and common open space that clearly reflects the compatibility of the variety primary and secondary uses proposed.~~

~~5. Location and width of canals and waterways.~~

~~6. Reservations, easements, alleys and any areas to be dedicated to public uses or sites for other than residential use with notes stating their purpose and any limitations.~~

~~7. Sufficient data to determine readily and reproduce on the site the location, bearing and length of every street, line, lot line, boundary line and block line, whether curved or straight.~~

~~——— 8. The radius, central angle, point of tangent, tangent distance and arcs and chords of all curved property lines.~~

~~——— 9. A legal description of the project's boundaries with bearings, distances and tie point.~~

~~——— 10. The final development shall meet the platting requirements of Fla. Stat. Ch. 177. In case of a large plan that may require two (2) or more sheets, the sheets are to be numbered and the numbers of the sheets are, to be indicated on the first sheet below the title.~~

~~—— (3) Development schedule. The development schedule shall contain the following information:~~

~~—— (a) The order of construction of the proposed stages delineated in the development plan.~~

~~—— (b) The proposed date for the beginning of construction of such stages.~~

~~—— (c) The proposed date for the completion of construction on such stages.~~

~~—— (d) The proposed schedule for the construction and improvement of common open space within such stages, including any complementary buildings.~~

~~—— (4) Title opinion. A title opinion from an attorney showing the status of the title to the site encompassed by the final development plan and all liens, encumbrances and defects, if any.~~

~~—— (M) Procedure.~~

~~—— (1) A fee, following the latest fee resolution shall accompany the preliminary and final development plan application for the purpose of administration, additionally, engineering, plat filing, necessary copies and travel fees will be incurred.~~

~~—— (2) The Bayfront Community Redevelopment Agency shall review the final development plan for its consistency with the Bayfront Redevelopment District Plan.~~

~~—— (3) The Planning and Zoning Board shall recommend the approval, approval subject to conditions, or disapproval of the final development plan with the preliminary development plan, the sufficiency and accurateness of the required exhibits, and the requirements and purposes of this subchapter and any other applicable provision of this code of ordinances and any other regulation of the city.~~



~~The Planning and Zoning Board shall recommend the approval, approval subject to change, or denial of the final development plan.~~

~~—(4) The City Council shall review the recommendations of the Planning and Zoning Board at a public hearing of the City Council and shall approve, approve subject to conditions, or deny the final development plan application.~~

~~—(N) Recording of final development plan.~~

~~—(1) After approval by the City Council of the final development plan application, the City Clerk shall see that all requirements of Fla. Stat. Ch. 177 have been complied with before the final development plan is recorded in the public records of the county.~~

~~—(2) The transfer of, sale of, agreement to sell, or negotiation to sell land by reference to or exhibition of, or other use of a final development plan of a planned community redevelopment project, or portion thereof, that has not been given final approval by the City Council and recorded in the official records of the county is prohibited. The description by metes and bounds in the instrument of transfer or other documents shall not exempt the transaction from such prohibition.~~

#### ~~§ 185.056 RAC – REGIONAL ACTIVITY CENTER DISTRICT.~~

~~—(A) Intent. The regional activity center (RAC) zoning district is a planned development intended to establish types of development and arrangements of land uses that are consistent with the comprehensive plan, but which are not otherwise provided for or allowed in the zoning districts set out in this chapter. The range of uses and development intensities allowed within a particular RAC district, along with any corresponding development and design standards are established by an associated RAC concept plan. Subsequent development within the RAC district is implemented by the approval of one or more site and development plans, known as RAC final development plans.~~

~~—The standards for creating a new RAC district and its associated concept plan set out herein are intended to promote flexibility of design and permit planned diversification and integration of uses and structures. The process set out herein allows the City Council to evaluate applications to establish new RAC districts and their associated concept plans, to make modifications to adopted concept plans, and to render final determination as to whether applications should be approved, approved with conditions, or denied. In addition, the City Council may, through approval with conditions, establish such additional limitations and regulations as~~

~~are deemed necessary to protect the public health, safety, and general welfare. Specifically, the RAC district is intended to:~~

- ~~— (1) Promote more efficient and economical uses of land.~~
- ~~— (2) Provide flexibility to meet changing needs, technologies, economics, and consumer preferences.~~
- ~~— (3) Encourage uses of land which reduce transportation needs and which conserve energy and natural resources to the maximum extent possible.~~
- ~~— (4) Preserve to the greatest extent possible, and utilize in a harmonious fashion, existing environmental features and amenities.~~
- ~~— (5) Provide for more usable and suitably located recreational facilities, open spaces and scenic areas, either commonly owned or publicly owned, than would otherwise be provided under a conventional zoning district.~~
- ~~— (6) Lower development and building costs by permitting smaller networks of utilities and streets and the use of more economical building types and shared facilities.~~
- ~~— (7) Permit the combining and coordinating of land uses, building types, and building relationships within a planned development, which otherwise would not be provided under a conventional zoning district.~~
- ~~— (B) Establishment of a new RAC district and adoption of an associated concept plan.~~

~~— (1) Eligibility for application. Applications for establishment of a new RAC zoning district shall demonstrate compliance with the following minimum eligibility criteria:~~

~~— (a) Minimum area for a RAC zoning district. The minimum area required for an application to a RAC district shall be five (5) acres, except where the proposed use is required to be approved as a planned development or regional activity center use by the comprehensive plan wherein, there shall be no minimum area required.~~

~~— (b) Configuration of the RAC zoning district. The RAC zoning district shall consist of a discrete area of land of sufficient width and depth to accommodate the proposed uses. Multiple parcels may be combined for purposes of establishing the RAC boundaries provided they are contiguous and under common ownership by the applicant(s). Separation by roadways, canals or similar dividers shall be considered contiguous for purposes of this section.~~

~~—— (c) Unified control/ownership. All properties included for the purpose of application to amend the official zoning map to create a RAC district shall be under the ownership or control of the applicant(s).~~

~~—— (2) Review process. The approval of a RAC zoning map amendment and associated concept plan application rests with the City Council. An application for a RAC zoning district shall include a concept plan; a RAC zoning district shall not be established unless and until an associated implementing RAC concept plan is approved by the City Council. Review of an application for a RAC zoning map amendment and associated concept plan shall be processed as follows:~~

~~—— (a) Pre-application conference. An application for a pre-application conference shall be submitted in accordance with established administrative policies and procedures.~~

~~—— (b) RAC concept plan application. A RAC concept plan application shall be submitted in accordance with the submittal requirements set forth in subsection (3).~~

~~—— (c) Planning and Zoning Board public hearing and recommendation. The Planning and Zoning Board shall conduct a public hearing on the RAC zoning map amendment and concept plan application and formulate findings supporting a recommendation to the City Council to approve, approve with conditions, or deny the application. The Board's recommendation shall be forwarded to the City Council for final action.~~

~~—— (d) City Council public hearing and disposition. The City Council shall conduct a public hearing on the RAC zoning map amendment and concept plan application. The Council's final action to approve, approve with conditions, or deny the application shall be based upon the recommendations of the Planning and Zoning Board, city staff, public testimony, and findings made at the public hearing. The decision of the City Council shall be final.~~

~~—— (e) Adoption of implementing ordinance. Council approval or approval with conditions for a RAC zoning map amendment and concept plan application shall be adopted into an implementing ordinance. The ordinance shall be adopted pursuant to state statutes and shall include a legal description of the property, a copy of the concept plan and any conditions placed on the approval by City Council.~~

~~—— (3) Application content and submittal requirements.~~

~~—— (a) RAC concept plan. A RAC concept plan is a generalized plan that establishes the allowable land uses and the allowable development density or intensity ranges as well as any corresponding development and design standards for all lands within the RAC zoning district.~~

~~—— The RAC concept plan shall consist of the graphic and/or textual information itemized in subsections 1. through 4. below.~~

~~—— 1. A general plan for the use of all lands within the proposed RAC. Such plans shall indicate the general location of residential areas (including maximum density and unit types), open space, parks, passive or scenic areas, and nonresidential areas (including maximum building square footage or other intensity maximums).~~

~~—— 2. A plan of vehicular and pedestrian circulation showing the general locations and right-of-way widths of roads, sidewalks, the capacity of the system and major access points to the external and internal thoroughfare network.~~

~~—— 3. A summary of allowable development. The summary shall provide:~~

~~—— a. The total acreage of the RAC district and each phase, as may be proposed;~~

~~—— b. The acreage of areas proposed for specific land uses proposed to be allowed within the RAC district and phases proposed in the concept plan, as may be applicable;~~

~~—— c. The acreage of open space or conservation areas within the RAC district and phases proposed in the concept plan;~~

~~—— d. The minimum and maximum allowable residential density to be allowed within the RAC district and each phase proposed in the concept plan, measured in residential dwelling units per acre; and~~

~~—— e. The minimum and maximum allowable nonresidential development intensity to be allowed within the RAC district and each phase, measured in gross building square footage or other appropriate intensity measure.~~

~~—— 4. Generalized regulations and development standards for the RAC district and each phase, including:~~

~~—— a. An itemized list of uses proposed to be allowed in the RAC district by phase.~~

~~\_\_\_\_\_ b. Development and design standards governing the development of the RAC district and each phase which shall, at a minimum, address: general lot dimensions and size; proposed dimensions of internal streets, sidewalks, and other transportation facilities (such standards may be conveyed through annotated diagrams); open space provisions perimeter buffering, and landscaping.~~

~~\_\_\_\_\_ c. The RAC concept plan may establish additional development and design standards for other development and design characteristics and elements so long as these standards are consistent with the comprehensive plan.~~

~~\_\_\_\_\_ d. The RAC concept plan shall also include additional items identified at the pre-application conference by city staff that, by their nature, are unique to the specific location of the project or development proposal.~~

~~\_\_\_\_\_ e. The RAC concept plan shall include a written analysis identifying consistency with the adopted comprehensive plan and how the proposed development is consistent with the intent of the RAC zoning category identified in Section (A).~~

~~\_\_\_\_\_ (b) Site condition map(s) and data that include:~~

~~\_\_\_\_\_ 1. A legal description of the properties included in the application with an associated boundary survey signed and sealed by a registered Florida land surveyor.~~

~~\_\_\_\_\_ 2. Name of the RAC; the owners of all properties included in the RAC district; the agent for the RAC application, and address and phone number of the agent; and, date of drawing and of any subsequent revision.~~

~~\_\_\_\_\_ 3. Scale, north arrow, and general location map showing relationship of the site to external uses, structures, and features.~~

~~\_\_\_\_\_ (c) An environmental assessment of the property identifying major environmental features of the site and endangered wildlife and vegetation.~~

~~\_\_\_\_\_ (d) A traffic study meeting generally accepted engineering practices examining the impact of the proposed development on the surrounding roadway network.~~

~~—(C) RAC final development plan. The RAC final development plan is a site and development plan consistent with and intended to implement a RAC concept plan. The final plan may pertain to an entire RAC district or one or more phases of the project. Final subdivision approval may be combined as part of the RAC final development plan.~~

~~— (1) Review process. The approval of a RAC final development plan rests with the City Council. An application for a RAC final development plan shall be processed as follows:~~

~~— (a) RAC final development plan application. A RAC final development plan application shall be submitted in accordance with the submittal requirements set forth in subsection (3).~~

~~— (b) Planning and Zoning Board public hearing and recommendation. The Planning and Zoning Board shall conduct a public hearing on the RAC final development plan application and formulate findings supporting a recommendation to the City Council to approve, approve with conditions, or deny the application. The Board's recommendation shall be forwarded to the City Council for final action.~~

~~— (c) City Council public hearing and disposition. The City Council shall conduct a public hearing on the RAC final development plan application. The Council's final action to approve, approve with conditions, or deny the application shall be based upon the recommendations of the Planning and Zoning Board, city staff, public testimony, and findings made at the public hearing. The decision of the City Council shall be final.~~

~~— (d) Adoption of implementing resolution. Council approval or approval with conditions for a RAC final development plan application shall be adopted into an implementing resolution. The resolution shall be adopted pursuant to state statutes and shall include a legal description of the property, a copy of the final development plan and any conditions placed on the approval by City Council.~~

~~— (2) Application content and submittal requirements.~~

~~— (a) RAC final development plan. A RAC final development plan is a detailed plan that establishes the specific locations and boundaries for all lots to be developed, rights-of-ways, public easements and provides detailed development standards for all properties within the phase being reviewed.~~

~~— The RAC final development plan shall consist of the graphic and/or textual information itemized in subsections 1. through 4. below.~~

~~— 1. A specific plan for the use of all lands within the proposed RAC phase. Such plans shall indicate the specific location and layout of residential areas (including maximum density and unit types), open space, parks, passive or scenic areas, and nonresidential areas (including maximum building square footage or other intensity maximums).~~

~~2. A plan of vehicular and pedestrian circulation showing the specific locations and right-of-way widths of roads, sidewalks, the capacity of the system and major access points to the external and internal thoroughfare network.~~

~~3. A summary of allowable development. The summary shall provide:~~

~~a. The total acreage of the RAC district and the specific phase for which final development plan approval is being sought;~~

~~b. The acreage of areas proposed for specific land uses proposed in the final development plan, as may be applicable;~~

~~c. The acreage of open space or conservation areas within the specific phase proposed in the final development plan;~~

~~d. The minimum and maximum allowable residential density to be allowed within the phase proposed, measured in residential dwelling units per acre; and~~

~~e. The minimum and maximum allowable nonresidential development intensity to be allowed within the phase, measured in gross building square footage or other appropriate intensity measure.~~

~~4. Specific regulations and development standards applicable to the phase, including:~~

~~a. An itemized list of uses proposed to be allowed in the phase.~~

~~b. Development and design standards governing the development of the phase which shall, at a minimum, address: lot dimensions and size; dimensions of internal streets, sidewalks, and other transportation facilities (such standards may be conveyed through annotated diagrams); open space provisions, perimeter buffering, and landscaping. Specific architectural design standards shall be provided.~~

~~c. The RAC final development plan may establish additional development and design standards for other development and design characteristics and elements so long as these standards are consistent with the comprehensive plan.~~

~~(b) Site condition map(s) and data that include:~~

~~1. A legal description of the properties included in the application with an associated boundary survey signed and sealed by a registered Florida land surveyor.~~

~~2. Name of the RAC; the owners of all properties included in the RAC district; the agent for the RAC application, and address and phone number of the agent; and, date of drawing and of any subsequent revision.~~

~~3. Scale, north arrow, and general location map showing relationship of the site to external uses, structures, and features.~~

~~(c) An environmental assessment of the property identifying major environmental features of the site and endangered wildlife and vegetation and description of permitting in process or completed.~~

~~(d) A traffic study meeting generally accepted engineering practices examining the impact of the proposed development on the surrounding roadway network and the proposed improvements necessary to support the phase of development proposed in the final development plan.~~

~~(e) Specific plans and designs for the provision of potable water and sanitary sewer, electric power, gas and other public utilities and services, as applicable.~~

~~(f) Identification of planned maintenance responsibility for all aspects of the development. Specifically identify all facilities proposed for maintenance by the city or other governmental entities.~~

~~(g) Identification of all exceptions to city construction and design standards proposed for the development. Exceptions include, but are not limited to, modification of required street or roadway right-of-way and pavement requirements, signage, location of utilities, design of utilities and drainage facilities, easement widths and locations and modifications proposed to any public improvement.~~

~~(h) Proposed schedule for construction of all infrastructure and estimates of the buildout for the development phase proposed.~~

~~(i) Final construction plans are not required to, but may, be submitted as part of the final development plan application. The applicant shall, however, provide sufficient detail in plans and proposals to permit the Council to ascertain the feasibility of future construction including infrastructure demand and supply issues.~~

~~(D) Joint RAC concept and final development plan application. At the option of the applicant, a RAC concept plan may be reviewed simultaneously with a RAC final development plan. In addition, modifications to an approved RAC concept~~



~~plan may be made as part of the approval process for a RAC final development plan. All applicable requirements for both the concept plan and the final development plan submittal applications must be addressed.~~

~~—(E) Administrative process following final development plan approval. Physical development of the property must be consistent with the approved Concept plan and final development plan for the RAC. Administrative review and approval processes for subdivisions, site plans, building permits and other land development regulations shall ensure such consistency. Substantial changes, as determined by the Growth Management Director, shall require re-submittal for final development plan approval. Minor changes not deemed to be substantial may be approved administratively.~~

#### ~~§ 185.057 PMU—PARKWAY MIXED USE DISTRICT.~~

~~—(A) Intent. The Parkway Mixed Use (PMU) zoning district is a Planned Development intended to establish types of development and arrangements of land uses that are consistent with the Comprehensive Plan, but which are not otherwise provided for or allowed in the zoning districts set out in this chapter. Subsequent development within the PMU district is implemented by the approval of one or more site and development plans, known as Final PMU Development Plans. The purpose of planned developments is to encourage the creation of designed neighborhoods and communities that provide a full range of residence types, as well as commercial uses that serve the inhabitants of the immediate community and surrounding neighborhoods.~~

~~—The standards for creating a new PMU district set out herein are intended to promote flexibility of design and diversification and integration of uses and structures. The process set out herein allows the City Council to evaluate applications to establish new PMU districts and to render final determination as to whether applications should be approved, approved with conditions, or denied. In addition, the City Council may establish such additional limitations and regulations as are deemed necessary to protect the public health, safety, and general welfare. Specifically, the PMU district is intended to:~~

~~—(1) Promote more efficient and economical uses of land.~~

~~—(2) Provide flexibility to meet changing needs, technologies, economics, and consumer preferences.~~

~~—(3) Encourage uses of land which reduce transportation needs and which conserve energy and natural resources to the maximum extent possible.~~

~~—(4) Preserve to the greatest extent possible, and utilize in a harmonious fashion, existing environmental features and amenities; with an emphasis on preserving existing exceptional specimen trees, to be incorporated into the development.~~

~~—(5) Lower development and building costs by permitting smaller networks of utilities and streets and the use of more economical building types and shared facilities.~~

~~—(6) Simplification of the procedure for obtaining approval of proposed developments through the combining and coordinating of land uses, building types, and building relationships within a planned~~

~~development, which otherwise would not be provided under a conventional zoning district.~~

~~—(B) Establishment of a new PMU district.~~

~~—(1) Eligibility for application. Applications for establishment of a new PMU zoning district shall demonstrate compliance with the following minimum eligibility criteria:~~

~~——(a) Minimum area for a PMU zoning district. The minimum area required for an application to a PMU district shall be twenty (20) acres and there shall be a minimum of forty (40) square feet of commercial space provided for each residential unit proposed within the PMU.~~

~~——(b) Maximum density. The maximum overall residential density within a PMU district shall be ten (10) dwelling units per acre.~~

~~——(c) Commercial uses. Permitted uses are retail (free-standing or combined in a plaza); personal service establishments, daycare centers, church/religious uses, restaurants, financial institutions, office uses, service stations with fuel sales, food service, theaters, professional office uses, medical and/or veterinary clinics and other uses approved by City Council during the development approval process.~~

~~——(d) Configuration of the PMU zoning district. The PMU zoning district shall consist of a discrete area of land of sufficient size to accommodate the proposed uses. Multiple parcels may be combined for purposes of establishing the PMU boundaries provided they are contiguous and under common ownership by the applicant(s). Separation by roadways, canals or similar dividers shall be considered contiguous for purposes of this section.~~

~~—— (e) Unified control/ownership. All properties included for the purpose of application to amend the official zoning map to create a PMU district shall be under the ownership or control of the applicant(s).~~

~~—— (2) Review process. The approval of a PMU zoning map amendment and associated application rests with the City Council. An application for a PMU zoning district shall include a Preliminary Design Plan (PDP); a PMU zoning district shall not be established unless and until an associated PDP is approved by the City Council. Review of an application for a PMU zoning map amendment and associated concept plan shall be processed as follows:~~

~~—— (a) Preliminary design plan (PDP) application. A PDP application shall be submitted in accordance with the submittal requirements set forth in subsection (3).~~

~~—— (b) Planning and Zoning Board public hearing and recommendation. The Planning and Zoning Board shall conduct a public hearing on the PMU zoning map amendment and PDP and formulate findings supporting a recommendation to the City Council to approve, approve with conditions, or deny the application. The Board's recommendation shall be forwarded to the City Council for final action.~~

~~—— (c) City Council public hearing and disposition. The City Council shall conduct a public hearing on the PMU zoning map amendment and PDP application. The Council's final action to approve, approve with conditions, or deny the application shall be based upon the recommendations of the Planning and Zoning Board, city staff, public testimony, and findings made at the public hearing. The decision of the City Council shall be final.~~

~~—— (d) Adoption of implementing ordinance. City Council approval or approval with conditions for a PMU zoning map amendment and PDP application shall be adopted into an implementing ordinance. The ordinance shall be adopted pursuant to state statutes and shall include a legal description of the property, a copy of the PDP layout and any conditions placed on the approval by City Council.~~

~~—— (3) Application content and submittal requirements.~~

~~—— (a) Preliminary design plan (PDP). A PDP is a generalized plan that establishes the allowable land uses and the allowable development density or intensity ranges as well as any~~

~~corresponding development and design standards for all lands within the PMU zoning district.~~

~~\_\_\_\_\_ The PDP shall consist of the graphic and/or textual information itemized in subsections 1 through 4 below.~~

~~\_\_\_\_\_ 1. A general plan for the use of all lands within the proposed PMU. Such plans shall indicate the general location of residential areas (including maximum density and unit types), open space, parks, passive or scenic areas, and nonresidential areas (including maximum building square footage or other intensity maximums).~~

~~\_\_\_\_\_ 2. A plan of vehicular and pedestrian circulation showing the general locations and right-of-way widths of roads, sidewalks, the capacity of the system and major access points to the external and internal thoroughfare network.~~

~~\_\_\_\_\_ 3. A summary of allowable development. The summary shall provide:~~

~~\_\_\_\_\_ a. The total acreage of the PMU district and each phase, as may be proposed;~~

~~\_\_\_\_\_ b. The acreage of areas proposed for specific land uses to be allowed within the PMU district and phases proposed in the concept plan, as may be applicable;~~

~~\_\_\_\_\_ c. The acreage of open space or conservation areas within the PMU district and phases proposed in the concept plan;~~

~~\_\_\_\_\_ d. The minimum and maximum allowable residential density to be allowed within the PMU district and each phase proposed in the concept plan, measured in residential dwelling units per acre; and~~

~~\_\_\_\_\_ e. The minimum and maximum allowable nonresidential development intensity to be allowed within the PMU district and each phase, measured in gross building square footage or other appropriate intensity measure.~~

~~\_\_\_\_\_ (b) Site condition map(s) and data that include:~~

~~\_\_\_\_\_ 1. A legal description of the properties included in the application with an associated boundary survey signed and sealed by a registered Florida land surveyor.~~

~~\_\_\_\_\_ 2. Name of the PMU; the owners of all properties included in the PMU district; the agent for the PMU application, and address and phone number of the agent; and, date of drawing and of any subsequent revision.~~

~~\_\_\_\_\_ 3. Scale, north arrow, and general location map showing relationship of the site to external uses, structures, and features.~~

~~—— (c) An Environmental Assessment of the property identifying major environmental features of the site and endangered wildlife and vegetation.~~

~~—— (C) Final development plan. The PMU Final Development Plan is a site and development plan consistent with and intended to implement a PMU preliminary development plan. The final plan may pertain to an entire PMU district or one or more phases of the project. Final subdivision approval may be combined as part of the PMU Final Development Plan.~~

~~—— (1) Review process. The approval of a PMU Final Development Plan rests with the City Council. An application for a Final Development Plan shall be processed as follows:~~

~~—— (a) Final design plan (FDP) application. An FDP application shall be submitted in accordance with the submittal requirements set forth in subsection (2).~~

~~—— (b) Planning and Zoning Board public hearing and recommendation. The Planning and Zoning Board shall conduct a public hearing on the PMU zoning map amendment and FDP and formulate findings supporting a recommendation to the City Council to approve, approve with conditions, or deny the application. The Board's recommendation shall be forwarded to the City Council for final action.~~

~~—— (c) City Council public hearing and disposition. The City Council shall conduct a public hearing on the PMU zoning map amendment and FDP application. The Council's final action to approve, approve with conditions, or deny the application shall be based upon the recommendations of the Planning and Zoning Board, city staff, public testimony, and findings made at the public hearing. The decision of the City Council shall be final.~~

~~—— (d) Adoption of implementing ordinance. City Council approval or approval with conditions for a PMU zoning map amendment and FDP application shall be adopted into an implementing ordinance. The ordinance shall be adopted pursuant to state statutes and shall include a legal description of the property, a copy of the FDP layout and any conditions placed on the approval by City Council.~~

~~—— (2) Required exhibits.~~

~~—— (a) If the applicant intends to subdivide land as part of their application of the PMU district then they shall meet the requirements of Chapter 184, Subdivisions.~~

~~——(b) A schematic layout of the proposed development shall be submitted on which structures shall be located in relation to each other and to major entrances into and off the site; internal circulation ways; parking and service areas; and landscaped areas. The site plan and supporting data shall also show proposed standards for development, including restrictions of the use of property; plans for the provision of utilities, including water, sewer and drainage facilities; and plans for protection of abutting properties.~~

~~——(c) Identification of planned maintenance responsibility for all aspects of the development. Specifically identify all facilities proposed for maintenance by the City or other governmental entities.~~

~~——(d) Declaration of covenants and restrictions shall be submitted for individual subdivisions and commercial areas that govern such items as accessory uses, architectural requirements (if any), and other items not covered by the PMU zoning standards.~~

~~——(e) A Traffic Study meeting generally accepted engineering practices examining the impact of the proposed development on the surrounding roadway network.~~

~~—(D) Joint preliminary development and final development plan application. At the option of the applicant, a Preliminary Development Plan (PDP) may be reviewed simultaneously with a Final Development Plan (FDP). In addition, modifications to an approved PDP may be made as part of the approval process for an FDP. All applicable requirements for both the PDP and the FDP submittal applications must be addressed.~~

~~—(E) Administrative process following final development plan approval. Physical development of the property must be consistent with the approved Preliminary Development Plan and the Final Development Plan for the PMU project. Administrative review and approval processes for subdivisions, site plans, building permits and other land development regulations shall ensure such consistency. Substantial changes, as determined by the Growth Management Director, shall require re-submittal for Final Development Plan approval. Minor changes not deemed to be substantial may be approved administratively.~~

~~—(F) Development standards. Standards for development shall be provided by the applicant at the time of submittal for a Preliminary Development Plan. These standards shall include such items as minimum lot sizes; minimum lot widths and depths; minimum yard areas (setbacks) for all types of uses; minimum living areas;~~

~~minimum building areas (if applicable); maximum height of structures; and such other items as will be needed to facilitate construction of the proposed community.~~

~~—(G) Signage. Standards for signs shall be provided by the applicant at the time of submittal for a Preliminary Development Plan. These standards shall address allowable sign locations; size; height; maximum number of signs permitted; lighting and landscaping requirements; etc.~~

~~—(H) Landscaping and tree preservation. Standards for landscaping shall be provided by the applicant at the time of submittal for a Preliminary Development Plan. These standards shall address the number of trees, shrubs and other plantings for both residential and nonresidential uses. A project developing under the PMU zoning category must follow the requirements for tree preservation and mitigation found in Chapter 180, of the Palm Bay Code of Ordinances.~~

~~—(I) Walls and fences. Standards for walls and fences shall be provided by the applicant at the time of submittal for a Preliminary Development Plan. These standards shall address the size, type and placement of walls and fences. Careful consideration shall be given to the site visibility of the motoring public, while protecting the rights and property values of the property owners of the PMU community.~~

#### ~~§ 185.058 BMU—BAYFRONT MIXED USE DISTRICT.~~

~~—(A) Intent. The purpose of the Bayfront Mixed Use (BMU) district is to provide areas within the Bayfront Redevelopment District for an attractive and functional mix of high density residential with a low intensity of commercial land uses that are linked by a network of walkways. The ratio of residential to commercial shall have a minimum of 20% commercial uses, based upon Floor Area Ratio (FAR) or the gross floor area of the first floor (footprint) of all principal use buildings.~~

~~—(B) Principal uses and structures.~~

~~—(1) Multiple family dwellings provided that in no case shall there be more than forty (40) dwelling units per gross residential acre.~~

~~—(2) Professional offices such as accounting, architecture, engineering, dentistry, medical, insurance, real estate, financial services, title companies and similar uses.~~

~~—(3) General offices such as administrative, corporate, business, and similar uses.~~

~~—(4) Personal service such as beauty, barbers, dry cleaning pick-up, tailoring and similar uses.~~

~~—(5) Business service such as graphic design, interior design, advertising, photography, printing, employment services, telemarketing, business schools, and similar uses.~~

~~—(6) Financial institutions (banks, credit unions, and savings and loan).~~

~~—(7) Retail sales and service (clothing, jewelry, luggage, shoes, electronics, sporting goods, gift shops, florists, photographic supplies, art dealers, antique shops/dealers, tobacco products, grocery stores, convenience stores, drug stores, cosmetic and beauty supply optical specialty food, and similar uses).~~

~~—(8) Public uses (any federal, state, county, municipal, special district, or similar use).~~

~~—(9) Eating establishments, including dancing in eating establishments. (restaurants, coffee shops, pastry shops, ice cream parlors, cafeterias, snack shops, and similar uses).~~

~~—(10) Retail bakeries.~~

~~—(11) Clubs, lodges, and fraternal organizations.~~

~~—(12) Nursing homes and adult congregate living facilities.~~

~~—(13) Hotel, motel, and bed and breakfast inns.~~

~~—(14) Public and private parking lots.~~

~~—(15) Brew pubs and/or other drinking establishments.~~

~~—(C) Accessory uses and structures. Customary accessory uses of one or more of the principal uses, clearly incidental and subordinate to the principal use, in keeping with the objectives of a mixed use environment. All storage shall be in an enclosed structure unless clearly provided for herein.~~

~~—(D) Conditional uses.~~

~~—(1) Public utility facilities.~~

~~—(2) Marinas with boat sales and rentals.~~

~~—(3) Public and private schools.~~

~~—(E) Prohibited uses and structures.~~

~~—(1) All uses not specifically permitted herein.~~



- ~~—(2) Retail automotive fuel sales.~~
- ~~—(3) Pawn shops.~~
- ~~—(4) Tattoo parlors and body piercing establishments.~~
- ~~—(5) Contractors' offices with outside storage (plumbers, electricians, carpenters, masons, roofers, builders, cabinet makers, fence installers, gutter and siding installers, flooring and tile installers, drywall installers, painters, heating and air conditioning installers, glass repair and replacement, and similar uses).~~
- ~~—(6) Adult entertainment.~~
- ~~—(7) Fire works sales.~~
- ~~—(8) Commercial towers.~~
- ~~—(9) Automotive/vehicle repair and auto body repair, painting, and storage of junk vehicles.~~
- ~~—(10) Vehicle/automotive sales/lease.~~
- ~~—(11) Palm readers/fortunetellers and similar uses.~~
- ~~—(12) Flea markets and auction houses and similar uses.~~
- ~~—(13) Soup kitchens/homeless shelters.~~
- ~~—(14) Pain-management clinic.~~
- ~~—(15) Secondhand Dealer.~~
- ~~—(16) Warehousing and/or self-storage facilities.~~
- ~~—(F) Lot and structure requirements.~~
  - ~~—(1) Minimum lot area – 1 acre.~~
  - ~~—(2) Minimum lot width – forty (40) feet.~~
  - ~~—(3) Minimum lot depth – one hundred twenty (120) feet.~~
  - ~~—(4) Maximum building coverage – sixty percent (60%).~~
  - ~~—(5) Maximum height – sixty (60) feet. Additional building height may be permitted, subject to the following provisions:~~
    - ~~—(a) Providing public a space or public amenity totaling ten percent (10%) of the site, entitles an additional 10 feet in height.~~

~~—— (b) Providing understory parking to reduce required surface parking, entitles an additional 10 feet in height.~~

~~—— (c) Providing public access to the waterway through public boat slips, or public boat launch, or public transitional slips, entitles an additional 10 feet in height.~~

~~—— (d) Provide a mixture of uses, such as restaurant with residential uses above, entitles an additional 10 feet in height.~~

~~—— (e) Providing shared storm water or shared parking with neighboring properties, entitles an additional 10 feet in height. Upon approval by the city, the shared amenity shall be recorded as an easement or agreement, in the public records of Brevard County.~~

~~—— (6) Minimum floor area (commercial) - three hundred (300) square feet.~~

~~—— (7) Minimum living area for multifamily units: None.~~

~~—— (8) Yard requirements:~~

~~—— (a) Front: zero (0) foot minimum.~~

~~—— (b) Side interior: five (5) feet minimum, twenty-five (25) foot minimum when the property is adjacent to single-family development not separated by waterway, railroad, or street.~~

~~—— (c) Side corner: zero (0) foot minimum.~~

~~—— (d) Rear: twenty (20) feet minimum; ten (10) minimum feet when abutting a right-of-way or alley.~~

~~—— (e) Accessory structures: minimum twenty (20) foot front and side corner, same side and rear as listed in divisions (b) and (d) above.~~

~~—— (f) For buildings sixty (60) feet in height, or greater, the building(s) shall be setback a minimum of half the height of the building from the rear and side interior property lines when the property is adjacent to single-family development not separated by waterway, railroad, or street.~~

~~—— (g) For buildings taller than sixty (60) feet; the building shall be stepped-back a minimum of twenty (20) feet beyond the forty (40) foot height measurement when the property is adjacent to single-family development not separated by waterway, railroad, or street. This is intended to create a terrace effect that helps provide light and air for the adjacent single-family dwellings. The stepped back portion can be used for recreational purposes such as gardening or outdoor dining.~~

~~—(9) Shared access and parking areas:~~

~~—(a) Off-street parking for non-residential uses shall be behind or to the side of the nonresidential building with a minimum of five (5) foot setback from a right-of-way line.~~

~~—(b) On-street parking spaces along any property line shall be counted toward the minimum number of parking spaces required for that use on that lot, except where there are driveway curb cuts.~~

~~—(c) No side interior building and parking area setbacks are required for nonresidential buildings provided all of the following are met:~~

~~—1. Buildings on adjacent parcels, under separate ownership, are joint by a common wall.~~

~~—2. Parking areas and aisles are joined and shared in common with adjacent parcel(s) under separate ownership.~~

~~—3. Curb cuts and driveways on principal roadways (collector and arterial streets) are shared in common for the parcels involved and a minimum spacing of one hundred fifty (150) feet is maintained, or access is provided by an approved frontage road.~~

~~—4. Easements and/or written assurances of shared and common facilities from all property owners involved must be approved by the city and recorded in public records of Brevard County prior to the issuance of a building permit.~~

~~—(d) For adjacent developments meeting the requirements of divisions 2 through 4 above, the total number of off-street parking spaces required for uses on all parcels involved may be reduced by ten percent (10%) where the location of shared parking areas provides convenient access to all principal buildings.~~

~~—(e) For developments adjacent to public parking the total number of off-street parking spaces required for uses on the parcel involved may be reduced by ten percent (10%) where the location of public parking areas provides convenient access to the principal buildings. On street public parking may not be considered for reduction eligibility.~~

~~—(10) Design requirements:~~

~~—(a) The Architectural Style for each structure shall adhere to 185.134 ARCHITECTURAL STYLE REQUIREMENTS (B)(1), (2), (3), (4), or (5).~~

~~—— (b) Structures in the following use category are exempt from the design review requirements of this subsection: public utility equipment and churches.~~

~~—— (c) The city sign code (Chapter 178) shall be adhered to with the following additional requirements:~~

~~—— 1. Materials: The color, construction, and material of each sign shall be compatible with the architecture on the site.~~

~~—— 2. Design: Every sign frame or support shall be designed as a sympathetic architectural element of the building(s) to which it is principally related.~~

~~—— 3. Free standing signs shall have landscaping at the base.~~

~~—— (d) Structures having a federal or state historic site status shall be exempt from this subsection.~~

~~—— (e) Garages for single-, or two-family residential structures and uses shall not be located closer to the front or side corner lot line than the foremost facade of the principal building, i.e., "snout houses" are not permitted.~~

~~—— (f) Other than for entrances and exits, parking structures shall be screened from view on ground level by landscaping or active commercial or residential uses, to the greatest extent possible, on any side that faces a public street or right-of-way.~~

~~—— (g) The City Council may, by resolution, adopt such administrative policies, manuals and/or fees as necessary to implement the design requirements identified above.~~

~~—— (11) Signs. Maximum height for any detached sign shall be ten (10) feet. All other criteria of the Sign Code shall be met.~~

~~—— (12) Landscaping. Properties within the Bayfront Mixed Use district are exempt from the development standards of § 185.142(B)(1), (2) and (4), Off-Street Parking Area Landscape Requirements, however properties within the district shall meet all the other requirements of § 185.142 in addition to the following landscape development standards:~~

~~—— (a) One (1) tree per every forty (40) feet of the property frontage shall be planted between the right-of-way line and the front or side corner building line for all properties.~~

~~—— (b) Any off-street parking space or parking lot in the Bayfront Mixed Use District that abuts a street right-of-way shall be buffered from the right-of-way by a~~

landscape area of no less than five (5) feet of width in which is located a continuous row of shrubs no less than two (2) feet in height.

~~— (c) In addition, where off-street parking is required for multiple family residential and nonresidential uses, such parking shall meet the interior parking area landscape requirements of § 185.142(3) of the code.~~

~~— (13) Sidewalks. Sidewalks shall be provided to create a pedestrian access to the proposed project and to adjacent properties. All sidewalks shall:~~

~~— (a) Be constructed of concrete with a raised curb separating the sidewalk from on-street parking.~~

~~— (b) Be a minimum of five (5) feet in width.~~

~~— (c) Comply with city engineering design standards.~~

~~— (14) Fence/walls. The construction, erection, and maintenance of walls and fences shall be permitted per the city's fence code (§§ 170.110 through 170.122) with the following exceptions and additions:~~

~~— (a) Chain link fence cannot be placed within twenty (20) feet of the front or side corner property lines.~~

~~— (b) Fence and wall height shall be limited to four (4) feet within twenty (20) feet of the front and side corner property lines, and limited to six (6) feet in height at all other areas of the property.~~

~~— (c) The use of barbed wire is prohibited.~~

~~— (15) Lighting. Buildings shall have no neon on their exterior; however, neon signs may be displayed inside windows provided they occupy no more than fifteen percent (15%) of the window where they are displayed.~~

#### ~~§ 185.059 PCD – PLANNED COMMERCIAL DEVELOPMENT DISTRICT.~~

~~— (A) Intent. The purpose of the planned commercial development district shall be to locate and establish areas within the city which are deemed to be uniquely suited for the management and development of strategically designed commercial projects. These shared commercial developments shall have frontage upon an arterial roadway, as established in the Palm Bay Comprehensive Plan. The minimum size necessary for a PCD is five (5) acres. The application of the PCD district shall be approved by City Council and shall adhere to the design requirements contained herein.~~

~~—(B) Principal uses and structures. The following uses and structures are permitted:~~

~~—(1) Retail stores, sales and display rooms, including places in which goods are produced and sold at retail on premises.~~

~~—(2) Personal services establishments such as barber and beauty shops, fitness salons, laundry and dry cleaning establishments using noninflammable solvents as determined by the Fire Chief, tailor shops and similar uses.~~

~~—(3) Professional offices, studios, clinics, general offices, business schools and similar uses, including veterinarian clinics provided all activities are within the principal structure and there is no boarding of animals.~~

~~—(4) Hotels, motels, tourist courts.~~

~~—(a) The minimum living area per hotel/motel efficiency unit shall be two hundred and eighty (280) square feet.~~

~~—(b) There shall be no more than fifty (50) rental units per acre.~~

~~—(5) Eating and drinking establishments including drive-through facilities.~~

~~—(6) Indoor commercial recreation such as theaters, driving ranges, bowling alleys and similar uses, excluding dance clubs.~~

~~—(7) Banks and financial institutions with drive-through facilities.~~

~~—(8) Retail stores using outside display areas including plant nurseries, and building supplies providing the following provisions are met:~~

~~—(a) The outside display area may be open along the front of the lot but shall be effectively screened with a six (6) foot opaque wall or fence rendering the sides and rear opaque in order to avoid any deleterious effect on adjacent properties.~~

~~—(b) The outside display area shall be considered the same as the floor area for the purpose of calculating off-street parking requirements, yard and lot coverage regulations.~~

~~—(c) All outside display items with the exception of new and/or used vehicles for sale shall meet a twenty (20) foot front and side setback and a thirty (30) foot rear setback. New and used vehicles for sale or rent shall meet the parking setback requirements established in division (E)(7) below.~~

~~—(d) The sale of sheds or other accessory buildings is prohibited within the Bayfront Community Redevelopment District east of the Florida East Coast Railroad.~~

~~—(9) Public and private clubs and lodges including golf courses and similar activities.~~

~~—(10) New and used motor vehicles, major recreational equipment and mobile home sales and rentals with accessory uses; subject to the following restrictions:~~

~~—(a) All outside areas where merchandise is displayed shall be paved.~~

~~—(b) All servicing and repair facilities, except for gasoline pumps, shall be located in an enclosed structure.~~

~~—(c) There shall be no storage of junked or wrecked automobiles other than temporary storage for those awaiting repair. Such temporary storage shall be in an enclosed area and the vehicles shall not be visible from outside the property. All vehicles shall have attached at all times a current vehicle registration license plate.~~

~~—(11) Public utility equipment and facilities not located within a public utility easement.~~

~~—(12) Hospitals and nursing homes.~~

~~—(13) Schools, churches, and libraries.~~

~~—(14) Day care centers.~~

~~—(15) Business service establishments.~~

~~—(16) Public uses.~~

~~—(C) Accessory uses and structures. Customary accessory uses of one (1) or more of the principal uses clearly subordinate to the principal use, in keeping with the intense commercial character of the district.~~

~~—(D) Conditional uses.~~

~~—(1) Retail automotive gas/fuel sales:~~

~~—(a) Location of facilities. Gasoline/fuel pumps, storage tanks and other service island equipment shall be at least forty (40) feet from all property lines, fifteen (15) feet from any building, and one hundred (100) feet from the nearest residentially zoned land. No gasoline/fuel pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from any municipal or public supply well.~~

~~—(b) Tank storage: Underground storage required for all receptacles for combustible materials in excess of two hundred (200) gallons.~~

~~—(c) The proposed use will not constitute a nuisance or hazard because of vehicular traffic movement, delivery of fuel movement, noise or fume generation.~~

~~—(d) Signs, if any, and proposed exterior lighting will be so designed and arranged so as to promote traffic safety and to eliminate or minimize any undue glare, incompatibility or disharmony with adjoining properties.~~

~~—(e) Development and operation of the fuel pumps and attendant storage tanks shall be in compliance with §§ 176.01 et seq.~~

~~—(2) Commercial radio and television broadcasting.~~

~~—(3) Marinas.~~

~~—(4) Car washes.~~

~~—(5) Self storage facilities subject to the provisions established in § 185.088(F).~~

~~—(6) Communication towers and facilities.~~

~~—(7) Eating and drinking establishments that allow patrons to dance to music, subject to the provisions set forth in § 185.088(H).~~

~~—(8) Indoor dance clubs, outdoor recreation, and outdoor amusement such as amusement parks, driving ranges, batting cages, go-cart tracks, outdoor skating facilities, miniature golf courses and similar uses.~~

~~—(9) Regional transportation centers.~~

~~—(E) Setbacks. The setback required from the nearest part of any wall to the perimeter of the project shall be included in the development plan and approved by City Council.~~

~~—(F) A six (6) foot high completely opaque masonry wall or wood fence shall be provided along the entire length of any side or rear property line abutting property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this zoning code.~~

~~—(G) Design requirements.~~

~~—(1) An Architectural Style for each structure is required. This shall include adherence to all standards contained in § 185.134.~~

~~—(2) Development of a commercial use or group of commercial uses intended to be developed according to a carefully drawn plan, may be permitted after~~



~~obtaining the proper site plan and building permit approvals. This coordinated project shall:~~

~~—— (a) Encourage timely and logical development of commercial facilities which would be constructed as a unit; and~~

~~—— (b) Discourage development of commercial parcels of size where uncoordinated development would likely result in less efficient use of the land and of service to the community and its residents; and to assure suitable design and other criteria which would protect both the commercial environment and surrounding properties.~~

~~—— (3) The maximum height of any structure shall not exceed one hundred (100) feet.~~

~~—— (H) In order to approve the project, the following conditions must be met:~~

~~—— (1) Ownership. The site proposed shall be under single ownership or if in several ownerships, a letter of authorization for the project to proceed towards obtaining city approval shall be filed by all owners of the properties included in the plan.~~

~~—— (2) Street frontage. The site proposed shall have a minimum width of two hundred (200) feet along a major street frontage.~~

~~—— (3) Access limitations. The minimum distance between access points shall be at least one hundred and fifty (150) feet, and the minimum distance between any one (1) location and an intersection of two (2) or more streets rights-of-way shall be one hundred (100) feet. The width of driveways and curb cuts, measured at the right-of-way line, shall provide for at least twelve (12) feet per traffic lane and shall conform to the following requirements:~~

~~—— Minimum Maximum~~

~~One-way traffic lane — 15 feet — 24 feet~~

~~Two-way traffic lanes — 24 feet — 30 feet~~

~~Three-way traffic lanes — 36 feet — 45 feet~~

~~Four-way traffic lanes — 50 feet — 56 feet~~

~~—— (4) Driveways having three (3) traffic lanes or more shall provide a raised median between entrance and exit lanes at the right-of-way line.~~

~~—(5) Tree regulations. Full compliance with the city tree regulations set forth in this chapter, in Chapter 180 and in any other applicable ordinance of the city must be assured.~~

~~—(I) The development standards of this district may be waived by the City Council, upon the recommendation of the Planning and Zoning Board.~~

### **PLANNED UNIT DEVELOPMENT (PUD)**

#### **~~§ 185.060 DEFINITIONS.~~**

~~—For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—COMMON OPEN SPACE. A parcel or parcels of land, or a combination of land and water within the site designated as a planned unit development, and designed and intended for the use or enjoyment of residents of the planned unit development. All common open space shall be improved to the extent necessary to compliment the residential uses and may contain compatible and complimentary structures for the benefit and enjoyment of the residents of the planned unit development.~~

~~—DEVELOPER. Any person, firm, association, syndicate, partnership or corporation, who owns land which is developed into a planned unit development and who is actually involved in the construction and creation of a planned unit development.~~

~~—DEVELOPMENT PLAN. The total site plan of a planned unit development drawn in conformity with the requirements of this subchapter. The development plan shall specify and clearly illustrate the location, relationship, design, nature, and character of all primary and secondary uses, public and private easements, structures, parking areas, public and private roads and common open space.~~

~~—DEVELOPMENT SCHEDULE. A comprehensive statement showing the type and extent of development to be completed within the various practicable time limits and the order in which development is to be undertaken. A development schedule shall contain an exact description of the specific buildings, facilities, common open space, and other improvements to be developed at the end of each time period.~~

~~—FINAL DEVELOPMENT PLAN. The development plan approved by the City Council and recorded with the clerk of the circuit court of the county according to the provisions of this chapter.~~

~~— FINAL DEVELOPMENT PLAN APPLICATION. The application for approval of the development plan and for approval of the required exhibits as specified in this chapter.~~

~~— PLANNED UNIT DEVELOPMENT (PUD). An area of land developed as a single entity, or in approved stages in conformity with a final development plan by a developer or group of developers acting jointly, which is master planned to provide for a variety of residential and compatible uses and common open space.~~

~~— PRELIMINARY DEVELOPMENT PLAN. The development plan approved by the City Council and filed with approval of the city of a planned unit development zone.~~

~~— PRELIMINARY DEVELOPMENT PLAN APPLICATION. The application for approval of the use of a site as a planned unit development and for approval of the required exhibits as specified in this chapter.~~

~~— SITE. The actual physical area to be developed as a planned unit development, including the natural and created characteristics of the area.~~

~~— SMALL PLANNED UNIT DEVELOPMENT (SPUD). An area of land developed as a single entity, or in approved stages in conformity with a final development plan by a developer or group of developers acting jointly, which is master planned to allow for a mixture of commercial and residential uses, to include for smaller sized (under 800 square feet) single or two-family structures and common open space. A SPUD may include Tiny Homes on Wheels (THOW), as defined in § 185.006. Connection to public sanitary sewer and public water required, if readily available as defined by the Mandatory Connection section of the Utility Code, § 200.11(N) or upon approval of the Utilities Director after a consideration of (1) distance of development to connection; and (2) potential detriment to the system.~~

~~— STAGE. A specified portion of the planned unit development that may be developed as an independent entity that is delineated in the preliminary development plan and the final development plan, and specified within the development schedule.~~

~~— ZERO-LOT ——— LINE ——— SINGLE-FAMILY ——— DETACHED DEVELOPMENTS. Residential developments or single-family detached dwelling units where the dwelling units are placed on one (1) side lot line but where no two (2) dwelling units share a line but where no two (2) dwelling units share a common side lot line and which meet all requirements of this subchapter.~~

~~§ 185.061 PURPOSE AND INTENT.~~

~~—(A) Purpose. The purpose of the planned unit development (PUD) district is to provide a particularized zoning district that recognizes unique conditions, allows design flexibility, and promotes planned diversification and integration of uses and structures, which other zoning districts cannot accommodate, while also retaining the city council's authority to establish such limitations and regulations as it deems necessary to protect the public health, safety, and general welfare. The PUD district is designed to:~~

~~—(1) Encourage flexible land development that sustainably uses land and infrastructure, reduces transportation needs, conserves energy, and maximizes the preservation of natural resources.~~

~~—(2) Allow for the integration of different land uses and densities in one development that would not otherwise be provided for in other zoning districts in this chapter, and which encourage compatibility in overall site design and scale, both internal and external, to the project site.~~

~~—(3) Permit outstanding and innovative residential and nonresidential developments with quality-of-life design features, such as an integration of housing types and accommodation of changing lifestyles within neighborhoods; design that encourages internal and external convenient and comfortable travel by foot, bicycle, and transit through such strategies as pedestrian scale, a building orientation generally toward streets and sidewalks, parking located to the side or rear of buildings, narrow streets, modest setbacks, front porches, connected streets, multiple connections to nearby land uses, terminated vistas, recessed garages, alleys, enhances landscaping, and mixed-uses.~~

~~—(4) Establishment of criteria for the inclusion of compatible associated uses to complement the residential areas within the planned unit development.~~

~~—(5) Achieve overall coordinated building and facility relationships and infill development, and eliminate the negative impacts of unplanned and piecemeal development.~~

#### ~~§ 185.062 PERMITTED USES.~~

~~—Uses permitted in the planned unit development may include and shall be limited to the following and contain a minimum of five (5) acres, except for a Small Planned Unit Development (SPUD) which shall contain a minimum of one (1) acre:~~

~~—(A) Primary residential uses: Single-family detached and multi-family residential dwelling units (including apartments) in semi-detached, attached, and multi-storied structures.~~

~~—(B) Nonresidential uses. Nonresidential uses of a religious, public or semipublic, cultural, recreational or commercial character and personal service centers, offices and professional centers providing services to residents of the planned unit development. Also included are public utility equipment and facilities. The nonresidential uses shall be compatible with the residential uses and shall provide for a walkable community to the greatest extent possible.~~

~~—(C) Hotels, motels, restaurants, and entertainment venues. Hotels, motels, restaurants, and entertainment venues may be permitted upon a consideration of the following criteria:~~

~~—(1) The total acreage used for the hotel, motel, restaurant, and entertainment venues, including necessary parking, support buildings, grounds and appurtenances shall not be considered common open space.~~

~~—(2) The proposed streets and traffic flow and the streets, thoroughfares, and traffic plan in the area adjacent to the site plan shall be adequate to support the anticipated traffic to be generated by the proposed hotel, motel, restaurant, and entertainment venues. The development plan shall provide pedestrian connectivity between residential and commercial uses providing for a walkability to the greatest extent possible.~~

~~—(3) The proposed hotel, motel, restaurant, and entertainment venues use is compatible with the proposed residential uses, nonresidential uses, and common open space within the planned unit development.~~

~~—(4) The proposed hotel, motel, restaurant, and entertainment venue use is compatible with the existing land use classification in the surrounding vicinity.~~

~~—(5) The area of the use shall be calculated as part of the total commercial acreage required.~~

~~—(D) Small planned unit developments. A SPUD shall be a minimum of one acre and a maximum of five acres, and may contain a horizontal or vertical mixture of residential and commercial uses. SPUDs shall not be developed using mobile homes, but may allow tiny homes on wheels as defined in § 185.006. SPUDs must be connected to the City of Palm Bay water and sewer distribution system. The City reserves the right to deny extension of public utilities. The decision to extend public sanitary sewer and public water shall be made upon the recommendation of the Utilities Director or designee. The Utilities Director shall base the recommendation on:~~

~~—(1) The factors included in the Mandatory Connection section of the Utility Code, § 200.11(N) Palm Bay Code of Ordinances.~~

~~§ 185.063 UNIFIED OWNERSHIP OR CONTROL.~~

~~—The title to all land within a proposed site for a planned unit development shall be owned or controlled by a developer submitting the applications provided for under this subchapter. The term CONTROLLED BY shall be interpreted to mean that the developer shall have the written consent of all owners of property within the proposed site not wholly owned by the developer. The consent shall contain a statement that the developer is authorized to represent the owners in the submission of an application under the provisions of this subchapter and that the owners shall agree to be bound by the decision of the City Council in the event application is approved.~~

~~§ 185.064 COMMON OPEN SPACE.~~

~~—(A) All common open space shall be preserved for its intended purposes as expressed in the final development plan. The developer shall choose one (1) or a combination of the following three (3) methods of administering common open space:~~

~~—(1) Public dedication accepted by the city may be included in the calculation of the common open space. This method is subject to formal acceptance by the city in its sole discretion.~~

~~—(2) Establishment of an association or nonprofit corporation of all individuals or corporations owning property within the planned unit development to ensure the maintenance of all common open space.~~

~~—(3) Retention of ownership, control and maintenance of all common open space by the developer.~~

~~—(B) All privately owned common open space shall continue to conform to its intended use and remain as expressed in the final development plan through the inclusion in all deeds of appropriate restrictions to ensure that the common open space is permanently preserved according to the final development plan. The deed restrictions shall run with the land and be for the benefit of present as well as future property owners and shall contain a prohibition against partition.~~

~~—(C) All common open space, as well as public and recreational facilities, shall be specifically included in the development schedule and be constructed and fully~~

~~improved by the developer at an equivalent or greater rate than the construction of residential structures.~~

~~—(D) If the developer elects to administer common open space through an association or nonprofit corporation, the organization shall conform to the following requirements:~~

~~—(1) The developer must establish the association or nonprofit corporation prior to the sale of any lots.~~

~~—(2) Membership in the association or nonprofit corporation shall be mandatory for all residential property owners within the planned unit development and the association or corporation shall not discriminate in its members or shareholders.~~

~~—(3) The association or nonprofit corporation shall manage all common open space and recreational and cultural facilities that are not dedicated to the public, shall provide for the maintenance, administration and operation of the land, any other land within the planned unit development not publicly or privately owned, and shall secure adequate liability insurance on the land. If the developer elects an association or nonprofit corporation as a method of administering common open space, the title to all residential property owners shall include an undivided fee simple estate in all common open space.~~

#### ~~§ 185.065 LAND USE REGULATIONS.~~

~~—(A) Minimum size with commercial uses. Shall contain a minimum of five (5) acres. A Small PUD shall contain a minimum of one (1) acre; commercial uses shall not be required in a SPUD.~~

~~—(B) Maximum density. The average density permitted in each PUD shall be established by the City Council, upon recommendation of the Planning and Zoning Board. The criteria for establishing an average density includes existing zoning, adequacy of existing and proposed public facilities and services, site characteristics, and the recommended density of any land use plan involving the area in question. In no case shall maximum density permitted exceed the underlying Future Land Use.~~

~~—(C) Minimum common recreation and open space: twenty-five percent (25%) of gross site acreage, except for a SPUD which shall have minimum of ten percent (10%) open space. COMMON RECREATION AND OPEN SPACE shall be defined as the total amount of improved usable area, including outdoor space, permanently set aside and designated on the site plan as recreational or open space for use by residents of the PUD. Such usable space may be in the form of active or passive~~

~~recreation areas including, but not limited to: Playgrounds, golf courses, nature trails, non-public recreational vehicle storage, stables, and lakes. Common open space shall be improved to the extent necessary to complement the residential uses and may contain compatible and complimentary structures for the benefit and enjoyment of the residents of the PUD. Easements, parking areas, road rights-of-way or minimum yards, and spacings between dwelling units, may not be included in determining usable open space. Water areas may be used to partially fulfill open space requirements. If golf courses and/or water areas are used to partially fulfill open space requirements, calculations for such may not exceed sixty percent (60%) of the required open space. All water areas included as part of the open space requirement, shall be permanent water bodies and shall be improved with docks or piers, minimum sloped edge as per applicable City and State regulations, and planted with grass and maintained around all sides so as not to harbor mosquitoes, insects and rodents.~~

~~—(D) Minimum lot area, frontage, and setbacks.~~

~~—(1) No minimum lot size shall be required within a PUD district apart from zero-lot line single-family detached developments. Any access driveway to individual lots must have minimum sixteen (16) foot of width.~~

~~—(a) Minimum driveway width for an individual residential lot within a SPUD shall be ten (10) feet wide.~~

~~—(2) Each dwelling unit or other permitted use shall have access to a public street either directly or indirectly via an approach private road, pedestrian way, court or other area dedicated to public or private use or common easement guaranteeing access. Permitted uses are not required to front on a public dedicated road. The city shall be allowed access on privately owned roads, easements and common open space to insure the police and fire protection of the area to meeting emergency needs, to conduct city services, and to generally ensure the health and safety of the residents of the PUD.~~

~~—(3) Minimum distances between structures shall be:~~

~~—(a) Between structures of two (2) stories or less — ten (10) feet.~~

~~—(b) Between structures of three (3) stories — twenty (20) feet.~~

~~—(c) Between structures of four (4) stories — thirty (30) feet.~~

~~—(d) Between structures over four (4) stories — thirty (30) feet, plus five (5) feet for each additional story.~~



~~—(e) Between structures of varying heights, the larger distance separation shall be required.~~

~~—(f) The minimum distance between residential structures in a SPUD shall be eight (8) feet.~~

~~—(4) The setback required from the nearest part of any building wall to the edge of any public right-of-way or private street and the minimum setback maintained between the walls of all structures and the perimeter of the PUD will be included in the proposed development plan and approved by City Council according to Section 185.066(B)(6) Review By City Council..~~

~~—(5) Property bordering a river water body shall preserve thirty percent (30%) of river frontage as a breezeway.~~

~~—(E) Maximum length of structures: two hundred (200) feet, unless an excess is specifically authorized by the Planning and Zoning Board.~~

~~—(F) Minimum commercial use area. The minimum commercial area permitted within a PUD shall be fifteen percent (15%) of the total gross acreage of the site, if the PUD contains more than five hundred (500) dwelling units, the minimum commercial area shall be increased to twenty percent (20%) of the total gross acreage, or the underlying future land use, whichever is greater. The areas shall be situated and buffered so as not to create any detrimental effect on residential uses. A SPUD shall require a minimum of twenty percent (20%) commercial uses, based upon floor area ratio (FAR) or the gross floor area of the first floor (footprint) of all principal use buildings, unless the SPUD is entirely composed of tiny homes on wheels as defined in § 185.006.~~

~~—(G) Minimum floor living area per unit:~~

~~—(1) Single-family dwellings — eight hundred (800) square feet.~~

~~—(2) Multi-family dwellings: None.~~

~~—(3) Hotel and motel units (where permitted) — two hundred and eighty (280) square feet per efficient unit.~~

~~—(4) Dwelling units within a SPUD shall not be required to have a minimum floor area.~~

~~—(H) Off-street parking.~~

~~—(1) Residential use.~~

~~—— (a) A minimum of two (2) parking spaces per single-family dwelling unit shall be provided.~~

~~—— (b) Dwelling units within a SPUD shall provide a minimum of one (1) parking space per unit.~~

~~—— (c) Multiple-family dwellings shall have a minimum of:~~

~~—— 1. Two (2) parking spaces per three (3) or more bedroom dwelling unit;~~

~~—— 2. One and one-half (1½) parking spaces per one (1) or two (2) bedroom dwelling unit; and~~

~~—— 3. One (1) space per efficiency unit that is part of a mixed one (1) and two (2) bedroom development.~~

~~—— (d) A development of efficiency units only shall have a minimum of one and one-half (1½) parking spaces per unit.~~

~~—— (e) Each space shall have a minimum width of ten (10) feet and a minimum length of nineteen (19) feet. If a parking stall contains a wheel stop or abuts a curbed or landscaped island, an overhang may be permitted, and the length of the stall thereby shortened to a minimum of sixteen (16) feet. Parking spaces for residential uses within a SPUD may be reduced in size from the above, if the standards are approved by the City Council. Parking areas shall not be separated from structures by any public right-of-way.~~

~~—— (2) Nonresidential uses. Within commercial areas, one (1) space shall be provided for each two hundred (200) square feet of retail floor area. Each space shall have a minimum width of ten (10) feet and a minimum length of nineteen (19) feet. If a parking stall contains a wheel stop or abuts a curbed or landscaped island, an overhang may be permitted and the length of the stall thereby shortened to a minimum of sixteen (16) feet. A reduction in parking requirements may be considered by the Planning and Zoning Board when the development plan provides for direct pedestrian access from residential uses:~~

~~—— (a) Restaurants — One (1) space for each three (3) seats, plus one (1) space for every employee.~~

~~—— (b) Hotels and motels — One (1) space for each guest room or rental unit, plus one (1) space for each two (2) employees.~~

~~—— (c) Other non-residential uses to be determined by the Planning and Zoning Board.~~

~~—(3) Landscaping. Within all common parking areas, a minimum of fifty (50) square feet of landscaped area shall be provided per parking space and such landscaped areas shall be distributed throughout the parking area.~~

~~—(I) Underground utilities. Within the PUD, all utilities including telephone, television cable, and electrical systems shall be installed underground. Primary facilities providing service to the site of the PUD may be exempted from this requirement. Large transformers shall be placed on the ground and contained within pad mounts, enclosures or vaults. The developer must provide landscaping with shrubs and plants to screen all utility facilities permitted above ground. The zoning board may require that substations be fenced and screened by trees and shrubs or walls resembling a structure which is compatible with the design of the buildings within the PUD.~~

~~—(J) Development standards. The minimum construction requirements for streets or roads, sidewalks, sewer facilities, utilities and drainage dedicated to the public shall be in compliance with the requirements of the city's subdivision regulations set forth in Chapter 184 of this code of ordinances. The development standards of this district may be waived by the City Council upon the recommendation of the Planning and Zoning Board.~~

~~—(K) Preservation of trees. Planned unit developments shall be regulated by the adopted city Landscape provisions.~~

~~—(L) For zero-lot line single-family detached developments only.~~

~~—(1) Interior side yard. The dwelling unit shall be placed on one (1) interior side property line with a zero setback and the dwelling unit setback on the other interior side property line shall be a minimum of ten (10) feet excluding the connecting elements such as fences, walls and trellises. If side yard abuts a street, setback should be at least twenty-five (25) feet.~~

~~—(2) Front setback. All dwelling structures shall be set back a minimum of twenty-five (25) feet from the front property line.~~

~~—(3) Rear setback. All dwelling structures shall be set back a minimum of ten (10) feet from the rear property line. The placement of patios, pools, garden features and other similar elements should be addressed initially as part of the PUD process.~~

~~—(4) Street frontage. Each lot shall have a clear direct frontage on public streets or to access ways complying with private street requirements.~~

~~—(5) Platting requirements. Each dwelling unit shall be located on its own individually platted lot.~~

~~—(6) Building heights. For a single-family dwelling only, the height shall not exceed two (2) stories and twenty-five (25) feet in height.~~

~~—(7) Minimum lot area. The minimum lot area shall be four thousand and fifty (4,050) square feet, or forty-five (45) feet by ninety (90) feet.~~

~~—(8) Minimum square footage of living spaces. For each unit, the minimum shall be eight hundred (800) square feet of living space under heat and air conditioning, not including garage and covered porch area.~~

~~—(9) Maximum building coverage. The maximum building coverage of the structure shall not exceed fifty percent (50%).~~

~~—(10) Opening prohibited on zero-lot line side. The wall of the dwelling located on the lot line side shall have no doors, air conditioning units or any other type of openings which would detract from the side yard privacy of the adjacent dwelling; provided, however, that atriums or courts shall be permitted on the zero-lot line side when the court or atrium is enclosed by three (3) walls of the dwelling unit, and a solid wall the height of the roof line is provided on the zero-lot line. The wall shall be constructed of the same material as exterior walls of the unit.~~

~~—(11) Maintenance and drainage easement. A perpetual four (4) foot wall maintenance easement shall be provided on the lot adjacent to the zero-lot line property line, which, with the exception of walls and/or fences, shall be kept clear of structures. This easement shall be included in the covenants of restrictions and incorporated into each deed transferring title to the property. Roof overhangs may penetrate the easement on the adjacent lot a maximum of twenty-four (24) inches. Measures shall be taken by the developer to direct runoff into the overall master drainage plan as submitted with the PUD.~~

#### ~~§ 185.066 PROCEDURE FOR APPROVAL OF A PRELIMINARY DEVELOPMENT PLAN AND TENTATIVE ZONING.~~

~~—The following procedures, applications, and exhibits shall be required when applying for tentative zoning approval of a preliminary plan:~~

~~—(A) Preliminary development plan application.~~

~~—(1) Preliminary application. A preliminary application shall be submitted to the Land Development Division by the developer requesting approval of the site as a planned unit development zone. The preliminary application shall contain the name~~

~~of the developer, surveyor and engineer who prepared the development plan and topographic data map, and the name of the proposed planned unit development.~~

~~— (2) Exhibits. The following exhibits shall be attached to the preliminary application:~~

~~— (a) Development plan that shall contain, but not be limited to, the following information:~~

~~— 1. Proposed name or title of project, the name of the engineer, architect, and developer.~~

~~— 2. North arrow, scale (one (1) inch equals two hundred (200) feet or larger), date, and legal description of the proposed site.~~

~~— 3. Boundaries of tract shown with bearings, distances, closures, and bulkhead liner. All existing easements, section lines and all existing streets and physical features in and adjoining the project, and the existing zoning.~~

~~— 4. Proposed parks, school sites or other public or private open space.~~

~~— 5. Off-street parking, loading areas, driveways and access points.~~

~~— 6. Site data including tabulation of the total number of gross acres in the project, the acreage to be devoted to each of the several types of primary residential and secondary nonresidential uses, and the total number of dwelling units, the maximum height of all structures, the minimum setbacks of all structures (and parking areas) and the total area of pervious and impervious surfaces.~~

~~— 7. Delineation of phased development, if applicable.~~

~~— 8. Proposed means of drainage for the site.~~

~~— (b) Schematic drawing of the elevation and architectural construction of the proposed primary and secondary nonresidential structures.~~

~~— (3) Submittal.~~

~~— (a) The PUD zoning application and preliminary development plan (PDP) shall be submitted to the Land Development Division. Plans will not be distributed for city staff review until all items are submitted and sufficient for review. The PDP application must be complete and accompanied by two (2) copies of the preliminary development plan, as described in these regulations, an approved electronic copy, a filing fee, and a list of all owners of adjacent property and/or property directly opposite of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls.~~

~~1. City staff will review the PDP application package for completeness and notify the applicant in writing whether the application submitted is sufficient or otherwise specify any deficiencies in the application. The City shall provide this notification in accordance with the timelines set forth in F.S. § 166.033.~~

~~2. Once the preliminary development plan application package is determined sufficient, the development coordinator will distribute the package to city staff. Pursuant to F.S. § 166.033(2), the city will not request additional information from the applicant more than three (3) times, without requesting a meeting with the applicant to discuss outstanding issues, unless the applicant waives this limitation in writing. If not waived, the city will proceed to process the application for approval or denial.~~

~~(b) Once the application is deemed complete, the Land Development Division shall process and coordinate the review of the preliminary development plan by the appropriate city departments. The appropriate city departments, to include police and fire departments, shall review and comment on the submitted information. Written comments from the city departments shall be returned to the Land Development Division to be incorporated into a staff report and prepared for a regularly scheduled meeting of the Planning and Zoning Board in accordance with the timelines set forth in F.S. § 166.033.~~

~~(c) Courtesy notice letters of the meeting shall be sent to the owners of abutting and opposite properties of the proposed subdivision. Failure by owners to receive such courtesy notice shall not affect any action or proceedings taken however. Notice of such a meeting shall also be posted on the property for which subdivision is sought.~~

~~(d) Preliminary development plans must be approved by City Council. Once plans are ready for the City Council, the applicant shall be notified.~~

~~(4) Application review.~~

~~(a) The preliminary development plan shall be reviewed formally by the Planning and Zoning Board to determine its conformity with the official plans and policies of the city and the requirements of this subchapter.~~

~~(b) Upon completion of its review, the Planning and Zoning Board shall recommend to the City Council, the approval, approval subject to conditions, or disapproval of the preliminary development plan application.~~

~~(5) Review criteria. The decision of the Planning and Zoning Board on the preliminary development plan application shall include the findings of fact that~~

~~serve as a basis for its recommendation. In making its recommendation, the Planning and Zoning Board shall consider the following facts:~~

~~—— (a) Degree of departure of proposed planned unit development from surrounding areas in terms of character and density.~~

~~—— (b) Compatibility within the planned unit development and relationship with surrounding neighborhoods.~~

~~—— (c) Prevention of erosion and degrading of surrounding area.~~

~~—— (d) Provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.~~

~~—— (e) The nature, intent and compatibility of common open space, including the proposed method for the maintenance and conservation of the common open space.~~

~~—— (f) The feasibility and compatibility of the development plan to function as an independent development, providing for connectivity and walkability between residential and nonresidential uses within the development.~~

~~—— (g) The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development.~~

~~—— (h) The availability and adequacy of water and sewer service to support the proposed planned unit development.~~

~~—— (i) The availability and adequacy of existing police and fire services to support the proposed planned unit development.~~

~~—— (j) The benefits within the proposed development and to the general public to justify the requested departure from standard land use requirements inherent in a planned unit development classification.~~

~~—— (k) The conformity and compatibility of the planned unit development within any adopted development plan of the city.~~

~~—— (l) The conformity and compatibility of the proposed common open space, residential and nonresidential uses within the proposed planned unit development.~~

~~—— (6) Consistency with Comprehensive Plan. A PDP application may only be approved if it is consistent with the Comprehensive Plan.~~

~~—— (a) Conformance to PDP purpose. A PDP application may only be approved if it is in conformance with the purpose of PDPs as articulated in section 30-3.15.~~

~~—— (b) Internal compatibility. All uses proposed within a PDP shall be compatible with other proposed uses; that is, no use may have any undue adverse impact on any neighboring use, based on the streetscape, treatment of pedestrian ways and circulation, motor vehicle circulation, and the separation and buffering of parking areas and sections of parking areas; the existence or absence of, and the location of, focal points and vistas, open spaces, plazas, recreational areas and common areas, and use of existing and proposed landscaping; use of the topography, physical environment and other natural features; use and variety of building setback or build-to lines, separations and buffering; use and variety of building groupings, building sizes, architectural styles, and materials; variety and design of dwelling types; particular land uses proposed, and conditions and limitations thereon; and any other factor deemed relevant to the privacy, safety, preservation, protection or welfare of any proposed use within the PDP.~~

~~—— (c) External compatibility. All uses proposed within a PDP shall be compatible with existing and planned uses of properties surrounding the PDP; that is, no internal use may have any avoidable or undue adverse impact on any existing or planned surrounding use, nor shall any internal use be subject to undue adverse impact from existing or planned surrounding uses. An evaluation of the external compatibility of a PDP should be based on the following factors: adjacent existing and proposed uses, design of the development, traffic circulation, and density and intensity.~~

~~—— (d) Intensity of development. The residential density and intensity of use of a PDP shall be compatible with and shall have no undue adverse impact upon the physical and environmental characteristics of the site and surrounding lands, and shall comply with the policies and density limitations set forth in the Comprehensive Plan. Within the maximum limitation of the Comprehensive Plan, the permitted residential density and intensity of use in a PDP may be adjusted upward or downward in consideration of the following factors: the availability and location of public and utility services and facilities; the trip capture rate of development; and the degree of internal and external connectedness of streets.~~

~~—— (e) Usable open spaces, plazas and recreation areas. Usable open spaces, plazas and recreation areas provided within a PDP shall be evaluated based on conformance with the policies of the Comprehensive Plan and the sufficiency of such areas to provide appropriate recreational opportunities, protect sensitive~~



~~environmental areas, conserve areas of unique beauty or historical significance, enhance neighborhood design, and encourage compatible and cooperative relationships between adjoining land uses.~~

~~——(f) Environmental constraints. The site of the PDP shall be suitable for use in the manner proposed without hazards to persons either on or offsite from the likelihood of increased flooding, erosion or other dangers, annoyances or inconveniences. Condition of soil, groundwater level, drainage and topography shall all be appropriate to the type, pattern and intensity of development intended. The conditions and requirements of the protection of resources article shall be met.~~

~~——(g) External transportation access. A PDP shall be located on, and provide access to, a major street (arterial or collector) unless, due to the size of the PDP and the type of uses proposed, it will not adversely affect the type or amount of traffic on adjoining local streets. Access shall meet the standards set in chapter 23 and chapter 30, article VI. Connection to existing or planned adjacent streets is encouraged. The trip generation report shall be signed by a professional engineer registered in the state when there is a difference between the traffic report provided by the petitioner and the concurrency test.~~

~~——(h) Internal transportation access. Every dwelling unit or other use permitted in a PDP shall have access to a public street directly or by way of a private road, pedestrian way, court or other area that is either dedicated to public use or is a common area guaranteeing access. Permitted uses are not required to front on a dedicated public road. Private roads and other accessways shall be required to be constructed so as to ensure that they are safe and maintainable.~~

~~——(i) Provision for the range of transportation choices. Sufficient off-street and on-street parking for bicycles and other vehicles, as well as cars, shall be provided. Parking areas shall be constructed in accordance with such standards as are approved by the city commission to ensure that they are safe and maintainable and that they allow for sufficient privacy for adjoining uses. When there is discretion as to the location of parking in the project, it is strongly encouraged that all motor vehicle parking be located at the rear or interior side of buildings, or both. The design of a PDP should, whenever feasible, incorporate appropriate pedestrian and bicycle accessways so as to provide for a variety of mobility opportunities. Connection to all sidewalks, greenways, trails, bikeways, and transit stops along the perimeter of the PDP is required. Where existing perimeter sidewalks do not exist, sidewalks shall be provided by the development.~~

~~—(7) Review by City Council. Upon receiving the, recommendation of the Planning and Zoning Board, the City Council shall, at a regularly scheduled public hearing, review the recommendation and preliminary development plan and either approve, approve subject to conditions, or disapprove the preliminary development plan application. The decision of the Council shall be based upon a consideration of the facts specified as review criteria for the zoning board in § 185.064.~~

~~—(8) Recordation of preliminary application. In the event the primary development plan application is approved by the City Council, a copy of such application and required exhibits shall be certified and approved by the City Clerk as a permanent record. A notice of such approval and filing, containing a legal description of the site, shall be recorded in the official records of the county, in the form of a resolution.~~

~~—(B) Applications in excess of one thousand (1,000) acres.~~

~~—(1) In the event any PUD application is in excess of one thousand (1,000) acres, the City Council may approve planned unit development zoning based on the requirements in this section on a revised or general basis. Specifically, the exact requirements of divisions (A)(2) above may be revised in terms of map scale and detail required.~~

~~—(2) Following this, the developer shall have six (6) months to present a preliminary development plan for any minimum stage of ten (10) acres. At the request of the developer, and for good cause shown, the City Council may extend the period required for the filing of the plan for a time certain not to exceed six (6) months. The plan shall be reviewed by the Planning and Zoning Board and the procedure of divisions (A) above would specifically then apply to any stage or the total development. Provided, however, approval of a preliminary development plan shall be a condition precedent to the filing of an application for the approval of a final development plan under § 185.067.~~

~~—(C) Amendments.~~

~~—(1) Except as otherwise provided in this section, an amendment to an approved PDP (except for an extension of a time limit) shall be accomplished only by a new PDP rezoning application.~~

~~—(2) The following types of amendments to the requirements of an approved PUD may be authorized by the appropriate reviewing board during development plan review, provided such amendments meet the criteria set forth in this subchapter for the development review process.~~

- ~~— (3) Minor adjustments or shifts in the location and siting of buildings, structures, parking bays, and parking spaces.~~
- ~~— (4) Changes in the location of utility tie-ins and solid waste, recycling, and yard trash containers.~~
- ~~— (5) Reductions in the overall density or intensity of structural ground coverage of the development.~~
- ~~— (6) Changes in the location and types of landscape materials, excluding changes in location of buffers.~~
- ~~— (7) Minor changes in the walkway and bikeway systems.~~
- ~~— (8) The addition of accessory structures or utility buildings of less than one thousand (1,000) square feet where there are no major changes to the perimeter features of the development.~~
- ~~— (9) The addition of up to ten new parking spaces.~~
- ~~— (10) Any expansion of gross floor area or enlargement of the building envelope that does not require the addition of required parking spaces or alter standards of the PUD ordinance.~~
- ~~— (11) Modifications that do not entail amendments to specific language included within the PDPDP ordinance.~~

~~§ 185.067 PROCEDURE FOR SECURING APPROVAL OF A FINAL DEVELOPMENT PLAN.~~

~~—The developer shall have one (1) year from the approval of the preliminary development plan for a planned unit development zone in which to file a final development plan application. At the request of the developer, and for good cause shown, the City Council may extend the period required for the filing of the application for a time certain not to exceed one (1) year. The final development plan application may request approval for the entire planned unit development plan or any stage. If approval is not requested for the entire planned unit development, the developer shall have one (1) year from approval of the final development plan application to file another final development plan application for approval of any or all of the remaining stages specified in the preliminary development plan. At the request of the developer, and for good cause shown, the City Council may extend for a time certain not to exceed one (1) year, the period for the filing of the application.~~

~~—(A) Required exhibits. The exhibits identified in § 185.066(B)(2)(a) shall be attached to the final development plan application.~~

~~—(1) In addition to the requirements of (A) above, a boundary and topographic map shall be submitted and shall include the location, size and type of all trees (per the standards identified in Chapter 180).~~

~~—(2) Development schedule. The development schedule shall contain the following information:~~

~~—(a) The order of construction of the proposed stages delineated in the development plan.~~

~~—(b) The proposed date for the beginning of construction of such stages.~~

~~—(c) The proposed date for the completion of construction on such stages.~~

~~—(d) The proposed schedule for the construction and improvement of common open space within such stages, including any complementary buildings.~~

~~—(3) Deed restrictions. Deed restriction proposals to preserve the character of the common open space as set forth in § 185.064. The deed restrictions shall include a prohibition against partition by any residential property owner.~~

~~—(4) Instruments dedicating all rights-of-way, easements and other public lands shown on the final development plan from all persons having any interest in the land.~~

~~—(5) Title opinion. A title opinion from an attorney showing the status of the title to the site encompassed by the final development plan and all liens, encumbrances and defects, if any.~~

~~—(B) Procedure.~~

~~—(1) A fee as established by resolution pursuant to § 169.004 shall accompany the final development plan application for the purpose of administration; additionally, engineering, plat filing, necessary copies and travel fees will be incurred.~~

~~—(2) The Planning and Zoning Board shall recommend the approval, approval subject to conditions, or disapproval of the final development plan with the preliminary development plan, the sufficiency and accurateness of the required exhibits, and the requirements and purposes of this subchapter and any other applicable provision of this code of ordinances and any other regulation of the city.~~

~~The Planning and Zoning Board shall recommend the approval, approval subject to change, or denial of the final development plan.~~

~~— (3) The City Council shall review the recommendations of the Planning and Zoning Board at a regular public hearing of the City Council and shall approve, approve subject to conditions, or deny the final development plan application. The final development plan approval shall constitute a PUD rezoning enacted by Ordinance. The final development plan shall be binding upon the land contained with the plan. Any proposed modifications to the final development plan shall be submitted to the Growth Management Director for determination of departure. If determined to be a substantial deviation from the approved final development plan, the applicant must receive Final PUD approval from City Council for such deviation.~~

~~— (C) Recording of final development plan.~~

~~— (1) After approval by the City Council of the final development plan application, the City Clerk shall see that all requirements of Fla. Stat. Ch. 177 have been complied with before the final development plan is recorded in the public records of the county.~~

~~— (2) The transfer of, sale of, agreement to sell, or negotiation to sell land by reference to or exhibition of, or other use of a final development plan of a planned unit development, or portion thereof, that has not been given final approval by the City Council and recorded in the official records of the county is prohibited. The description by metes and bounds in the instrument of transfer or other documents shall not exempt the transaction from such prohibition.~~

#### ~~§ 185.068 PHYSICAL REVIEW.~~

~~— The city shall have the right to evaluate the physical layout, architectural characteristics and amenities of the planned unit development and to suggest changes or modifications designed to create compatibility and conformity in the variety of uses within the development to insure, protect and promote the health, safety and general welfare of the property owners of the planned unit development and the residents of the city.~~

#### ~~§ 185.069 BUILDING PERMIT.~~

~~— No building permit shall be issued by the city until the final development plan has been approved and duly recorded as provided in this subchapter.~~

#### ~~§ 185.070 BONDING.~~

~~—The PUD shall follow the bonding procedures listed in § 184.11 of the Code of Ordinances.~~

#### ~~§ 185.071 TERMINATION OF PUD ZONE.~~

~~—(A) Any owners of all or a portion of land that has been designated a planned unit development under the provisions of this subchapter can apply to the city for the termination of that portion of a stage within an approved final development plan within which his property is located if construction has not been commenced pursuant to such final development plan. The procedure for the termination shall be that applicable to a zoning district change under this chapter and any other applicable zoning ordinance.~~

~~—(B) Failure of the developer to file a final development plan application within the time periods specified in § 185.067 shall automatically revoke approval of § 185.066(B)(7), and the site shall revert to the zoning classifications for which the property was zoned prior to the approval of the preliminary development plan. A notice of the revocation, containing a legal description of the site, shall be recorded in the official records of the county.~~

#### ~~§ 185.072 ENFORCEMENT.~~

~~—In addition to any other method of enforcement, the city shall have the power to enforce the provisions of this subchapter by appropriate suit in equity.~~

### **CONDITIONAL USES**

#### ~~§ 185.085 INTENT.~~

~~—Certain land uses, due to their unique functional characteristics and the potentiality for their incompatibility with adjoining land uses, require special consideration on an individual basis of their suitability for location and development within particular zoning districts. Such uses have been designated as conditional uses within appropriate zoning district classifications set forth in §§ 185.030 et seq. and §§ 185.060 et seq. It is the intent of this subchapter that such uses may be permitted in the zoning district classifications only after affirmative findings that they can be developed at particular locations in a compatible manner.~~

#### ~~§ 185.086 APPLICATION FOR CONDITIONAL USES; FEES.~~

~~—Written application for conditional use shall be complete and made to the Land Development Division using the application form provided by the city. Application must be filed not later than the first day of the month preceding the scheduled hearing month. The applicant shall be required to pay any fee as may be~~

~~established to defray processing and advertising costs related to review and hearing of the application. An application shall be accepted only for a conditional use specifically listed within the zoning district classification applying to the subject property or as specifically provided for elsewhere in this chapter.~~

~~§ 185.087 GENERAL REQUIREMENTS AND CONDITIONS.~~

~~—Standards for approval. In its deliberations concerning the granting of a conditional use, the City Council shall carefully consider the following guidelines and standards:~~

~~—(A) Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency.~~

~~—(B) Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor or other detrimental effects upon adjoining properties.~~

~~—(C) Adequate and properly located utilities are available or may be reasonably provided to serve the proposed development.~~

~~—(D) Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.~~

~~—(E) Signs, if any, and proposed exterior lighting will be designed and arranged so as to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.~~

~~—(F) Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.~~

~~—(G) The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation or type, of physical activity. The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties.~~

~~—(H) Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, reasonable time limit within which the action for which special approval is requested shall be begin or be completed, or both.~~

~~§ 185.088 SPECIAL REQUIREMENTS AND CONDITIONS.~~

~~— For those conditional uses listed below, the following special requirements shall apply in addition to those of § 185.087:~~

~~— (A) Churches. A conditional use may be granted under the following conditions:~~

~~— (1) The site has direct access to a collector or arterial roadway.~~

~~— (2) Minimum setbacks shall be twenty (20) feet from all property lines or the minimum setback of the district, whichever are greater.~~

~~— (3) Proposed sites not having direct access to a collector or arterial roadway must prepare a traffic impact study, approved by the City Engineer, to support the compatibility of the church use with surrounding uses. In addition, day care centers and schools are not permitted as accessory uses on these sites.~~

~~— (4) Minimum size: one (1) acre.~~

~~— (B) Clubs, lodges and similar activities. A conditional use may be granted under the following conditions:~~

~~— (1) The site has direct access to a collector or arterial roadway.~~

~~— (2) Minimum setbacks shall be twenty (20) feet from all property lines or the minimum setbacks of the district, whichever are greater.~~

~~— (3) Minimum size: one (1) acre.~~

~~— (C) Commercial dog kennels. A conditional may be granted under the following conditions:~~

~~— (1) No structures, pens, or runs shall be located within fifty (50) feet of any property line.~~

~~— (2) Open kennels must be visually screened from off-site view.~~

~~— (3) The site is a minimum of one (1) acre in size.~~

~~— (D) Planned industrial development. Development of industrial use or group of industrial uses of five (5) or more acres intended to be developed according to a carefully drawn plan, may be permitted by the City Council as a conditional use, after review by the Planning and Zoning Board, in the LI and HI zoning districts. This provision is intended to encourage better organization and controlled development for land reserved primarily for industrial uses, to create a compatible environment for a variety of industrial activities, to protect the integrity of surrounding residential and commercial uses, to allow and encourage proper placement and design for those commercial and residential uses which augment~~



~~the principal uses, and to discourage commercial and residential encroachment upon areas which should be reserved for industrial activities. In order to qualify for such conditional use, the following conditions must be met:~~

~~— (1) Ownership. The site proposed shall be in one (1) ownership, or, if in several ownerships, the request for conditional use shall be filed by all owners of the properties included in the plan.~~

~~— (2) Zoning provisions. All other portions of the respective zoning district regulations and all other applicable portions of this chapter.~~

~~— (3) Street frontage. The site proposed shall have a minimum width of two hundred (200) feet along a major street frontage.~~

~~— (4) Access limitations. The minimum distance between access points shall be at least one hundred and fifty (150) feet, and the minimum distance between any one (1) location and an intersection of two (2) or more street rights-of-way shall be one hundred (100) feet.~~

~~— (5) Site plan.~~

~~— (a) Concurrent with the request, a site plan, shall be submitted on which structures shall be located in relation to:~~

~~— 1. Each other and to major entrances into and off the site;~~

~~— 2. Internal circulation ways;~~

~~— 3. Parking and service areas; and~~

~~— 4. Landscaped areas.~~

~~— (b) The site plan and supporting data shall also show proposed standards for development, including restrictions of the use of property; plans for the provisions of utilities, including water, sewer and drainage facilities; plans for protection of abutting properties; plans for cross access and/or shared parking areas; and such other plans, tabulations and other data that the City Council may require.~~

~~— (6) Tree regulations. Full compliance with the city tree regulations set forth in this chapter, in Chapter 180 and in any other applicable ordinance of the city must be assured.~~

~~— (7) Office/business parks. All office/business park proposals must provide a list of prohibited and permitted uses in the proposed business park. The applicant~~

~~should also address how the development will be designed and regulated to ensure the compatibility of uses within the office/business park.~~

~~—(E) Public and private schools. A conditional use may be granted under the following conditions:~~

~~—(1) The proposed site is located on a collector or arterial roadway;~~

~~—(2) Minimum setbacks shall be twenty (20) feet from all property lines or the minimum setbacks of the district, whichever are greater;~~

~~—(3) Minimum size, one (1) acre.~~

~~—(F) Self storage facilities may be granted with the following conditions:~~

~~—(1) Design standards. The following minimum design standards shall apply to the construction of new self-storage facilities or, to the maximum extent feasible, the expansion or redevelopment of existing self-storage facilities.~~

~~—(a) No door openings for any storage unit with the exception of emergency egress doors shall be constructed facing any residentially zoned property.~~

~~—(b) The submitted conditional use site plan shall include a landscape plan.~~

~~—(c) Interior traffic lanes shall be a minimum of thirty-five (35) feet wide for two-way traffic and a minimum of twenty-five (25) feet for one-way traffic, in order to accommodate loading and unloading as well as through and/or emergency traffic.~~

~~—(d) The maximum storage unit size is limited to 300 square feet.~~

~~—(e) There shall be no outside storage at the site.~~

~~—(f) No roll up door openings for any storage unit shall be constructed facing any right-of-way.~~

~~—(g) Properties with the principal use as self-storage may locate along major collector or higher classified roads. For locations on lower classified roads, ground floor retail is required, or the building shall be setback from the roadway.~~

~~—(h) Exterior surface materials of the primary/street facade shall be select high quality, human-scale building materials to reduce building massing and create visual interest.~~

~~—(i) The base of a building (the first two to five feet above the sidewalks) shall be differentiated from the rest of the facade with treatments such as change in material and/or color.~~

~~—(j) The primary/street facade of buildings shall incorporate no less than two (2) building materials including, but not limited to, tile, brick, stucco, cast stone, stone, formed concrete or other high-quality, long-lasting masonry material over a minimum seventy-five (75) percent of the surface area (excluding windows, doors and curtain walls.) The remainder of the wall area may incorporate other materials.~~

~~—(k) Self-storage facilities resembling long, traditional warehouse buildings are prohibited. Self-storage facilities must be designed to emulate multi-family or office buildings compatible and in harmony with the surrounding area.~~

~~—(2) Operational requirements. The following minimum operational standards shall apply to self-service storage facilities and tenants of individual storage units:~~

~~—(a) Individual storage units shall not be used for activities such as residences, offices, workshops, studios, or hobby or rehearsal areas. Further, storage units shall not be used for manufacturing, fabrication or processing of goods, services or repair of vehicles, engines, appliances or other equipment, or any other industrial activity whatsoever. In addition, storage units shall not be used for commercial activity or places of business of any kind including, but not limited to, retail sales, garage or estate sales, or auctions, unless done so by the property management company.~~

~~—(b) Storage of flammable, explosive, perishable or hazardous materials within individual storage units and on site is prohibited.~~

~~—(c) Rental agreements shall provide tenants with written notice of the minimum operational standards set forth in this section and any other conditions imposed by the city.~~

~~—(G) Communication towers and facilities. A conditional use may be granted under the following conditions:~~

~~—(1) A map showing the closest existing communication towers shall be provided.~~

~~—(2) The applicant has supplied a written affidavit that co-location of antennas or other communication facilities is not possible in any other zoning district where these facilities are permissible.~~

~~—(3) If camouflaging is required, then tower or facilities must be camouflaged as required by City Council. An elevation view of this structure shall be provided.~~

~~—(4) The applicant has obtained written confirmation that the communication facility meets FCC and FAA radio frequency emission and lighting standards.~~

~~—(5) The submittal conditional use site plan includes a landscape plan that shows the landscape buffer and its irrigation as per Section 186.07(E) of the Palm Bay Code of Ordinances.~~

~~—(6) No fence gates, equipment structure doors, or driveways shall be constructed facing any residentially zoned property, or the gates may be offset or otherwise buffered as to not be directly viewed from the residential property. This alternative must be approved by the City Planner.~~

~~—(H) Eating and drinking establishments that allow patrons to dance to music. A conditional use may be granted under the following conditions:~~

~~—(1) The applicant shall provide information and documentation that noise from the establishment will be abated so that the business will be in full compliance with Title IX: General Regulations, Chapter 92, Noise, Palm Bay Code of Ordinances.~~

~~—(2) Methods of crowd control in both interior and exterior portions of the establishment shall be provided in the application.~~

~~—(I) Security dwelling unit. A conditional use may be granted under the following conditions:~~

~~—(1) The unit will only be permitted in conjunction with a site that has wholesale trade, warehousing, storage, contractor offices with storage, assembly, machine shops, commercial flex-space and/or similar uses.~~

~~—(2) No one under the age of eighteen (18) may reside within the unit, and at no time may the unit be occupied by more than two (2) persons.~~

~~—(3) The unit resident must be the owner of the property or an employee of the property owner. If the resident is not the owner, a signed and notarized contract between the property owner and the employee shall be provided to staff that addresses provisions for security.~~

~~—(4) The unit may contain no more than one thousand (1,000) square feet of gross floor area and may not be located in a free-standing structure.~~

~~—(5) There may be only one (1) security dwelling unit per property.~~

~~—(6) There shall be at least one (1) parking space designated on-site for the resident of the unit.~~

~~—(7) Applicants must demonstrate that approval of an onsite security dwelling minimizes the need for other security measures including but not limited to chain link fencing, strands of barbed wire atop fencing or walls and excessive security~~

~~lighting thereby promoting a more aesthetically acceptable site development pattern.~~

~~—(J) Wedding venues.~~

~~—(1) The minimum size of a property for a wedding venue shall be five (5) acres.~~

~~—(2) The subject property shall have direct access to a collector roadway or higher classification roadway.~~

~~—(3) The structure used for wedding venues and the associated parking areas shall meet the setbacks established for principal structures of the RR District.~~

~~—(4) The hours of operation shall be from sunrise to 11:00 P.M., not including venue setup and breakdown.~~

~~—(5) Parking surfaces shall utilize stabilized materials and shall meet the provisions established in § 185.140(B)(1).~~

~~—(6) A two-way driveway must be a minimum of twenty-four (24) feet in width at the right-of-way line and shall be paved from the right-of-way line to the edge of the roadway that the driveway connects to.~~

~~—(7) A one-way driveway must be a minimum of fifteen (15) feet in width at the right-of-way line and shall be paved from the right-of-way line to the edge of the roadway that the driveway connects to.~~

~~—(8) If a wedding venue chooses to have a sign, one detached sign shall be permitted for the venue site not to exceed six (6) feet in height, with a maximum sign area of sixteen (16) square feet, and setback a minimum of ten (10) feet from any property line.~~

~~—(9) All site lighting is subject to the provisions established in § 185.143.~~

~~—(10) All site noise is subject to the provisions established in Chapter 92.~~

~~—(K) Event halls.~~

~~—(1) The minimum size of a property for an event hall shall be five (5) acres.~~

~~—(2) The subject property shall have direct access to a collector roadway or higher classification roadway.~~

~~—(3) The structure used for event hall and the associated parking areas shall meet the setbacks established for the GC District.~~

~~—(4) The hours of operation shall be from sunrise to 12:00 A.M. not including venue setup and breakdown.~~

~~—(5) Parking surfaces shall utilize stabilized materials and shall meet the provisions established in § 185.140(C)(1).~~

~~—(6) A two-way driveway must be a minimum of twenty-four (24) feet in width at the right-of-way line and shall be paved from the right-of-way line to the edge of pavement of the roadway that the driveway connects to.~~

~~—(7) A one-way driveway must be a minimum of fifteen (15) feet in width at the right-of-way line and shall be paved from the right-of-way line to the edge of pavement of the roadway that the driveway connects to.~~

~~—(8) All site lighting is subject to the provisions established in § 185.143.~~

~~—(9) All site noise is subject to the provisions established in Chapter 92.~~

#### ~~§ 185.089 CONDITIONAL USES; CONDITIONS GOVERNING APPLICATION; PROCEDURES.~~

~~—(A) The City Council shall hear and decide conditional uses after review of the Planning and Zoning Board. All applications for conditional uses shall be submitted to the Planning and Zoning Board for study and written, advisory recommendations. The City Council may either grant conditional uses with such conditions and safeguards as are appropriate under this chapter or other applicable code or ordinance provisions, or deny conditional uses when not in harmony with the purpose and intent of this chapter. A conditional use shall not be considered by the City Council unless and until:~~

~~—(1) A written application for a conditional use is submitted indicating the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested.~~

~~—(2) Proposed conditional uses for planned development shall also be submitted to the Planning and Zoning Board for study, and the written recommendation of the Planning and Zoning Board shall be considered as part of the official record when hearing an application for a planned development.~~

~~—(3) Public notice shall be given as required by state statutes. Notice of such hearing shall be posted on the property for which conditional use is sought.~~

~~—(4) A courtesy notice shall be mailed, at the applicant's expense, to the property owners of record within a radius of five hundred (500) feet, provided,~~

~~however, that failure to mail or receive such courtesy notice shall not affect any action or proceedings taken hereunder.~~

~~—(B) In granting any conditional use, the City Council may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this chapter. The conditional use shall commence within two (2) years of the date that the conditional use is granted, as evidence by the issuance of a certificate of occupancy, certificate of completion and/or business tax receipt, as applicable. One (1) administrative extension of one (1) year may be approved by the City Manager, or designee, following a written request by the applicant within 60 days prior to the date of expiration.~~

### **TRANSITION ZONING**

#### ~~§ 185.100 LOTS IN TWO (2) DISTRICTS.~~

~~—Where a district boundary line as established in this chapter or as shown on the zoning map divides a lot which was of single ownership and of record at the time of this chapter. The zoning district boundary line may be considered as running along the property line, provided the movement of the boundary line shall not be more than fifty (50) feet in either direction.~~

#### ~~§ 185.101 LOTS IN COMMERCIAL OR INDUSTRIAL DISTRICTS ADJACENT TO RESIDENTIAL ZONE.~~

~~—(A) Where a lot in a commercial or industrial district abuts a lot in a residential district, a minimum setback of twenty-five (25) feet shall be provided unless the normally required setback is greater. This twenty-five (25) foot setback shall be for parking, building and all other structures.~~

~~—(B) A six (6) foot high completely opaque masonry wall, or wood fence shall be provided along the entire length of any side or rear property line abutting property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this chapter and any other applicable regulation of the city.~~

#### ~~§ 185.102 COMMERCIAL OR INDUSTRIAL DEVELOPMENT ADJACENT TO EXISTING NONCONFORMING SINGLE FAMILY HOMES.~~

~~—(A) Where an existing nonconforming single family home exists within a commercial or industrial zoning district, new development of adjacent properties within those commercial or industrial zoning districts shall provide a six (6) foot~~

~~high, completely opaque, masonry wall or wood fence along the entire length of any common property line. This buffering requirement shall be in addition to any other applicable regulation of the city.~~

~~—(B) At such time as the nonconforming single family home converts to a permitted use within the commercial or industrial zoning district, the buffering requirement for the masonry wall or wood fence shall cease.~~

~~—(C) Any addition or modification to an existing commercial or industrial site that decreases the existing separation between the single family home and the commercial or industrial development shall require adherence to the buffering requirement provided for in subsection (A) above.~~

### **~~SUPPLEMENTARY DISTRICT REGULATIONS~~**

#### **~~§ 185.115 BUILDING SETBACK LINES.~~**

~~—(A) For the purpose of promoting health, safety and general welfare of the community, and to:~~

- ~~—(1) Lessen congestion in the street;~~
- ~~—(2) Secure safety from fire, panic, storm, hurricane, or other causes;~~
- ~~—(3) Provide adequate light and air;~~
- ~~—(4) Prevent the overcrowding of land;~~
- ~~—(5) Avoid undue concentration of population;~~
- ~~—(6) Provide adequate facilities for transportation, parking, water and sewerage; and~~

~~—(B) For the purpose of promoting health, safety and general welfare of the community and secured safety from fire, storm, hurricane or other causes, all structures shall maintain a twenty-five (25) foot setback from the mean high water line of the following:~~

- ~~—(1) Indian River.~~
- ~~—(2) Palm Bay.~~
- ~~—(3) Turkey Creek.~~

~~—(C) In determining the setback requirements for any building proposed to be erected, the setback requirements hereinabove shall be construed as a minimum setback and if a greater setback is required under any of the zoning districts then such greater setback requirement shall be enforced.~~



~~§ 185.116 ERECTION OF MORE THAN ONE (1) PRINCIPAL STRUCTURE ON A LOT.~~

~~—In any district, more than one (1) structure housing a permitted or permissible principal use may be erected on a single lot, except single-family residences, provided that yard and other requirements of this chapter shall be met for each structure as though it were on an individual lot. In no case shall separation between principal structures be less than twice the required side interior setback.~~

~~§ 185.117 YARD ENCROACHMENTS.~~

~~—Every part of every required setback shall be open and unobstructed from the ground to the sky, except as hereinafter provided or as otherwise permitted in this chapter:~~

~~—(A) Sills or belt courses may project not over eighteen (18) inches into a required yard.~~

~~—(B) Movable awnings may project not over four (4) feet into a required yard, provided that where the yard is less than ten (10) feet in width the projection shall not exceed one-half ( $\frac{1}{2}$ ) the width of the yard.~~

~~—(C) Chimneys, fireplaces or pilasters may project not over three (3) feet into a required setback.~~

~~—(D) Fire escapes, stairways, and balconies which are unroofed and unenclosed may project not over five (5) feet into a required rear yard, or not over three (3) feet into a required side yard in any residential district.~~

~~—(E) Overhangs, hoods, canopies or marquees may project not over three (3) feet into a required yard.~~

~~—(F) Fences, walls and hedges shall be permitted in required yards subject to the provisions established herein.~~

~~—(G) Accessory parking may be located in a required front, rear or side yard for a single-family and two-family dwellings, provided such parking maintain at least a six (6) foot setback from all side interior lot lines and a ten (10) foot setback from, all rear lot lines.~~

~~—(H) Open, unenclosed porches, platforms or paved terraces not covered by a roof or a canopy may extend into the required side yard area not more than six (6) feet, and into the rear yard not more than twelve (12) feet.~~

~~—(I) Other than listed above or specifically provided for in §§ 185.030 et seq. and §§ 185.060 et seq., no required setback area shall be used for any building, driveway, aisle, parking space, back-out area or loading area except that access drives may cross the setback areas.~~

~~§ 185.118 ACCESSORY USES AND STRUCTURES.~~

~~—(A) No accessory structure shall be erected within:~~

~~—(1) Any public drainage and utility easement.~~

~~—(2) Any required front yard setback.~~

~~—(3) Any required side yard setback.~~

~~—(4) Ten (10) feet of any rear property line.~~

~~—(5) No separate or freestanding accessory structure shall be constructed or placed within five (5) feet of any building on the same lot. Accessory structures erected on lots fronting on two (2) streets shall conform to the principal structure setbacks for the side corner yard setback.~~

~~—(B) No accessory structure shall exceed twenty-five (25) feet in height or the height of the principal structure, whichever is least.~~

~~—(C) No accessory building may be erected upon property without the presence of a principal building. In any residential zoning district, no accessory structure shall exceed the size of the principal structure's living area, except that sheds may not exceed fifty percent (50%) of the size of the principal structure's living area. Accessory buildings shall not be used until after the principal structure has been fully constructed and a certificate of occupancy issued. Erection of tents as accessory structures is prohibited.~~

~~—(D) Satellite dish antennae. For the purpose of this chapter, satellite dish antennae are considered an accessory structure and a building permit shall be required when installing, moving or reconstructing a dish antenna. Satellite dish antennae shall meet the following requirements:~~

~~—(1) The satellite dish shall be erected to the rear of the front wall of the principal building and shall also meet the setback requirements listed in this section. The setback of the dish antenna shall be measured from the outermost point of the dish on the side closest to the applicable setback or property line.~~

~~—(2) Roof mounting. Satellite dish antennae may be roof-mounted provided that the twenty-five (25) foot height restriction in single-family residential districts~~

~~and the maximum height limits in commercial, industrial, and multi-family districts are not exceeded. The height of the antenna/dish shall be that distance as measured vertically from the highest point of the dish/antenna, when positioned at its lowest angle for operation, to ground level.~~

~~—(3) No more than one (1) dish antenna shall be located on any record parcel of land zoned for a single-family residential use. No more than two (2) dish antennae shall be permitted for multi-family or commercial uses.~~

~~—(4) Dish antennae located in single family residential districts shall not have a dish which exceeds ten (10) feet in diameter.~~

~~—(E) Metal structures. For the purpose of this chapter, metal accessory structures over three hundred (300) square feet or over twelve (12) feet in height are prohibited in residential zoning districts unless the structure is designed to simulate non-metal construction, is treated with a textured coating on all four (4) sides or is painted to match the color scheme of the primary residence. Metal accessory structures meeting the design standards listed above may be built to the height of the principal structure or twenty-five (25) feet, whichever is less.~~

~~Table A~~

~~Minimum Requirements~~

~~TYPE OF STRUCTURE~~

~~SETBACK REQUIREMENT~~

~~MAX HEIGHT~~

~~Table A~~

~~Minimum Requirements~~

~~TYPE OF STRUCTURE~~

~~SETBACK REQUIREMENT~~

~~MAX HEIGHT~~

~~Carport or detached garage~~

~~Carports shall not be permissible in a front yard.~~

~~REAR: ten feet (10') from any rear property line.~~

~~SIDE: same as the side yard setback of the principal structure.~~

~~Height of the principal structure or twenty-five feet (25'), whichever is less~~

~~Animal enclosures or cages<sup>1</sup>~~

~~REAR: fifteen feet (15')~~

~~SIDE: ten feet (10')~~

~~Six feet (6')~~

~~Metal structures~~

~~Metal structures shall not be erected within side or front yards.~~

~~REAR: ten feet (10') from any rear property line.~~

~~Twelve feet (12')~~

~~OR~~

~~Height of the principal structure or twenty-five feet (25'), whichever is less, for structures meeting design standards.~~

~~Swimming pools, as defined by Chapter 515, Florida Statutes, and associated barriers~~

~~REAR: ten feet (10') from any rear property line.~~

~~SIDE: same as side setback of the principal structure.~~

~~Height of the principal structure or twenty-five feet (25'), whichever is less~~

~~Satellite dish (ground-mounted)~~

~~Radius of the dish plus five feet (5') for side and rear yard setback.~~

~~Satellite dish~~

~~(ground-mounted)~~

~~Screen room (non-habitable space only)~~

~~REAR: ten feet (10') from any rear property line~~

~~SIDE: setback same as side setback of the principal structure~~

~~Height of the principal structure or twenty-five feet (25'), whichever is less~~

~~Sheds, gazebos, and pergolas over 120 square feet~~

~~REAR: ten feet (10')~~

~~SIDE: six feet (6')~~

~~CORNER LOTS: ten feet (10')~~

~~Height of the principal structure or twenty-five feet (25'), whichever is less~~

~~1Animal cages or enclosures shall be limited in size to fifteen feet (15') in length by ten feet (10') in width.~~

~~§ 185.119 AIR CONDITIONING UNITS.~~

~~—(A) In all residential districts, the exhaust or mechanical part of any air conditioning or heating unit, other than window units, shall be subject to side yard requirements except if such unit faces a street or an alley and is located fifteen (15) feet or more from an adjoining property.~~

~~—(B) In all other districts, the exhaust or mechanical part of any air conditioning unit or heating unit may encroach five (5) feet into the side yard building setback.~~

~~§ 185.120 VISION CLEARANCE AT CORNERS, CURB CUTS AND RAILROAD CROSSINGS.~~

~~—Notwithstanding any part of this chapter or any permit granted, or any variance granted under the provisions of § 169.009, no type of structure, vehicle, tree, planting, vegetation, sign or fence or any type of obstacle or any portion thereof shall be placed or retained in such manner which would create a traffic hazard or would obstruct the vision clearance at corners, curb cuts, or railroad crossings in any zone.~~

~~§ 185.121 EXCEPTIONS TO HEIGHT REGULATIONS.~~

~~—The height limitations contained in §§ 185.030 et seq. and §§ 185.060 et seq. do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.~~

~~§ 185.122 STRUCTURES TO ABUT AN IMPROVED STREET.~~

~~—Every building hereafter erected or moved shall be on a lot abutting an improved street. All lots upon which structures are built shall have a minimum width of fifty (50) feet abutting an improved street, measured at the right-of-way line. Exceptions to this requirement shall be for lots located in an approved planned unit development or for a multi-family townhouse development where units are owned in fee simple and access is provided through dedication of common vehicular and/or pedestrian access ways, provided such common access ways meet the fifty (50) foot requirement. Further, the fifty (50) foot dimension may be reduced for those lots which otherwise meet the district schedule requirements of this chapter~~

~~for minimum lot width. "Improved street" shall mean such streets as defined in Chapter 179 of this code of ordinances.~~

~~§ 185.123 REGULATION OF VEHICLES IN RESIDENTIAL AREAS.~~

~~—(A) Parking vehicles in residential areas. It shall be unlawful for any person, either as agent, owner, occupant, lessee, tenant or otherwise, to park, store, stop, deposit or allow, cause or permit to be parked, stored, stopped, or deposited on any public or private property of the RR, RE, RS-1, RS-2, RS-3, SF-1, SRE, RM-10, RM-15, RM-20, BMUV, RMH or RVP zoning districts.~~

~~—(1) Prohibited Parking:~~

~~—(a) In front of a residence, except within the paved driveway or adjacent to the driveway. A maximum of two (2) operable vehicles (per property) are permitted to be parked on the side of the driveway opposite the front door of the residence.~~

~~—(b) In the rear yard of a residence, unless the rear yard is enclosed by a 6-foot tall opaque fence.~~

~~—(c) Large vehicles; unless parked or stored in an enclosed structure.~~

~~—(d) No vehicle shall be parked or stored upon a vacant parcel of land that does not have a principal structure with valid Certificate of Occupancy issued.~~

~~—(e) No vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled, unless such work is being performed inside a garage or similarly enclosed area designed for such purposes. Painting of vehicles is prohibited unless conducted inside an approved spray booth.~~

~~—(2) Vehicles shall not exceed two (2) on a single side or one (1) on each side. This shall exclude the front and rear of the property.~~

~~—(a) Vehicles parked on the side of a residence located on a corner lot must be screened from the street adjacent to the side of the residence by a 6-foot tall opaque fence.~~

~~—(3) Exceptions. The provisions of this section shall not apply to:~~

~~—(a) Any residential district with current and valid building permit has been issued by the city, as to those vehicles actively engaged in such construction, between the hours of 7:00 a.m. and 9:00 p.m., Monday through Saturday;~~

~~—(b) Lawful and authorized work upon property in a residential district where the vehicle is parked or stopped;~~

~~——(c) The emergency parking of a disabled vehicle in a residential district. However, any such vehicle shall be removed from the residential district within twenty-four (24) hours;~~

~~——(d) Those vehicles parked in a residential district for a period not to exceed eight (8) hours rendering business, commercial or medical services to property at the location where parked or stopped.~~

~~——(e) Farm equipment used in the operation of an agricultural activity shall be exempt from the provisions of this subchapter. The property for which this equipment is exempt shall have a current agricultural exemption from the Brevard County Tax Collector or provide a signed and notarized affidavit that said equipment is for the property owner's personal use. Farm equipment may only be parked/stored on lands that are zoned RR, Rural Residential District or GU, General Use Holding District.~~

~~——(f) Parking recreational vehicles in residential areas. It shall be unlawful for any person to park or store a recreational vehicle in a residential area for longer than twenty-four (24) consecutive hours or forty-eight (48) hours in any one (1) month period, except on residential lots behind the front face of the residence. Recreational vehicles parked on the street side of a corner lot (opposite the side interior property line) must be screened by a 6-foot tall opaque fence. No vehicle shall be used for living, sleeping or housekeeping purposes in any location not approved for such use under the zoning requirements of this chapter. Any such vehicles shall have attached, at all times, a current vehicle registration license plate.~~

#### ~~§ 185.124 MINIMUM WIDTH OF COURTS.~~

~~—The minimum width of a court over ten (10) feet in depth shall be thirty (30) feet for one (1) story buildings, forty (40) feet for two (2) story buildings, fifty (50) feet for three (3) story buildings, and sixty (60) feet for four (4) story buildings. For every five (5) feet of height over forty (40) feet the width of such a court shall be increased by two (2) feet, provided that open unenclosed porches may project into a required court not more than twenty-five percent (25%) of the width of such court. Where a roadway is provided in the court, the width allowed for such roadway shall be in addition to that required hereby.~~

#### ~~§ 185.125 HOME OCCUPATIONS.~~

~~—(A) In a residentially zoned district, a home business tax receipt may be issued when the home is used only as a location for a business telephone, an address for~~

~~business correspondence, and a storage place for business records in conjunction with a principal residential use. A home business tax receipt does not permit or authorize the following:~~

- ~~— (1) Employees, other than members of the immediate family, residing on the premises in the conduct of the home occupation;~~
- ~~— (2) Walk-in or drive-in businesses to the residences;~~
- ~~— (3) Deliveries of business-related products for sale or distribution to the licensee;~~
- ~~— (4) Any off-site advertisement from any street;~~
- ~~— (5) Storage of goods;~~
- ~~— (6) A home occupation occupying an area greater than twenty-five percent (25%) of the first floor living area of the residence;~~
- ~~— (7) Conducting a home occupation in an accessory building; such occupation must be conducted in the main residence of the proprietor.~~
- ~~— (8) Storage of commercial vehicles; vehicles or vessels for hire; mobile food vending trucks/trailers.~~
- ~~— (B) Application for home occupational license.~~

~~— (1) Application for a home business tax receipt shall be made in the same manner as provided for in Chapter 110 of this code of ordinances. However, the Growth Management Director, or designee, shall certify compliance with the requirements of this section after review of the following information submitted by the applicant:~~

- ~~— (a) Name and address of applicant;~~
- ~~— (b) Legal description of property where home occupation is to be conducted;~~
- ~~— (c) A sketch showing the floor plan and total first floor living area of the residence;~~
- ~~— (d) Area of room or rooms to be utilized in the conduct of the home occupation;~~
- ~~— (e) Nature and type of home occupation sought;~~
- ~~— (f) A signed, notarized statement completed by the applicant certifying compliance with the requirements of subsection (A).~~



~~—(C) In a residentially zoned district, a home-based business occupational license may be issued for a business that does not meet all of the criteria identified in subsections (A) and (B) above provided the following criteria are met:~~

~~—(1) The business shall be conducted within the primary residence, use of accessory structures for operation of the business is prohibited.~~

~~—(2) The business shall not change the character of the dwelling or reveal from the exterior that the dwelling is being utilized for conduct of a home-based business.~~

~~—(3) No supplies or equipment shall be used or stored in connection with the business that would create fire or explosion hazards, electrical interference, noise, vibration, glare, fumes or odors detectable to the normal senses on adjacent properties or residential units.~~

~~—(4) Activities conducted and equipment or material used shall not change the fire safety or occupancy classifications of the premises.~~

~~—(5) A business operating under a Cottage Food License is permissible with proof of such license from the governing authority.~~

~~—(6) A licensed firearms dealer may operate within their home, provided a Federal Firearms Permit is valid and secured prior to the business tax receipt application. No on-site storage of ammunition or items related to ammunition reloading, musket ball or muzzle manufacturing or re-loading may be permitted. Transfer of firearms to private individuals may not occur at the property where the home is located.~~

~~—(D) Application for home-based business occupational license.~~

~~—(1) Application for a home-based business tax receipt shall be made in the same manner as provided for in Chapter 110 of this code of ordinances. However, the Growth Management Director, or designee shall certify compliance with the requirements of this section after review of the following information submitted by the applicant:~~

~~—(a) Name and address of applicant;~~

~~—(b) Legal description of property where home occupation is to be conducted;~~

~~—(c) A sketch showing the floor plan and total first floor living area of the residence;~~

~~—(d) Area of room or rooms to be utilized in the conduct of the home occupation;~~

~~—(e) Nature and type of home-based business sought;~~

~~—(f) A signed, notarized statement completed by the applicant certifying compliance with the requirements of subsection (C).~~

~~—(E) Expiration and revocation of license.~~

~~—(1) Business tax receipts for home occupations and/or home-based businesses shall expire as provided in Chapter 110, Palm Bay Code of Ordinances.~~

~~—(2) Business tax receipts for home occupations and/or home-based businesses may be revoked by the Growth Management Director for violation of any criteria established by this section.~~

~~—(F) Appeals for denial or revocation of license.~~

~~—(1) Licenses for home occupations and/or home-based businesses that have been denied by the Growth Management Director, or designee for failure to meet the criteria established in this section may file an appeal of an administrative decision pursuant to § 169.009.~~

~~—(2) Licenses for home occupations and/or home-based businesses that have been revoked by the Growth Management Director for violation of any criteria established by this section may file an appeal of an administrative decision pursuant to § 169.009.~~

#### ~~§ 185.126 BUILDINGS REQUIRED.~~

~~—All commercial uses shall provide at least the minimum size building required for the district in which the use is to be located. The building shall contain plumbing facilities adequate to serve the needs of the customers and employees of the commercial use and must meet all requirements of the plumbing code adopted in Chapter 170 of this code of ordinances.~~

#### ~~§ 185.127 CULVERTS AND CURBING.~~

~~—(A) Within all districts, culverts when required shall be constructed to city specifications and approved prior to the issuance of a certificate of occupancy.~~

~~—(B) Except for single-family and two-family lots, curbing will be required on all curb breaks or driveways. Curbing shall be placed from the property line to the~~

~~edge of the street pavement and shall conform to the city's "Standard Detail for Curbing" and all specifications contained therein.~~

~~§ 185.128 TEMPORARY MOBILE HOMES FOR OFFICE USE.~~

~~—Temporary mobile homes for office use may be permitted as a conditional use in the LI and HI districts subject to the following restrictions:~~

~~—(A) The conditional use shall be granted for a one (1) year period.~~

~~—(B) Temporary mobile homes shall meet all setbacks for the applicable district.~~

~~§ 185.129 MODEL HOMES.~~

~~—(A) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—ACCESS. A way for prospective purchasers, visitors and prospective customers to get from parking facilities to the model home. Such access shall be forty-four (44) inches wide, and must be either paved in accordance with this code of ordinances or be graded and covered with mulch.~~

~~—BUILDER. Any person, firm, association, syndicate, partnership, corporation, realtor or corporation who constructs model homes and other residential dwellings for sale to the public.~~

~~—BUSINESS OFFICE. Facility consisting of desks, files, phone banks, telephone switchboards, typewriters or other equipment usually associated with and utilized in a business office.~~

~~—BUSINESS TRANSACTION. A business transaction is a transaction between the seller and a potential purchaser other than the signing of a contract of purchase, selection of a lot or house plan, selection of paint colors, selection of cabinets, bathroom fixtures and appliances, and other similar actions by a purchaser in deciding on the purchase of a home.~~

~~—CONTRACTOR. Any person, firm, association, syndicate, partnership, realtor or corporation engaged in the business of accepting orders or contracts, either as a general other residential dwellings for sale to the public.~~

~~—DEVELOPER. Any person, firm, association, syndicate, partnership, corporation, realtor, or any business entity owning, utilizing or developing land for the purpose of constructing model homes and other residential dwellings.~~

~~—MODEL DISPLAY GROUP (i.e., prairie homes/model units). Two or more model homes (see definition of MODEL HOME) each erected or placed on a~~

~~separate single lot that meets the minimum requirements for a parcel in the zoning district in which located, for purposes of promoting sales of units for construction or emplacement elsewhere. The lots used in a model display group must be abutting lots.~~

~~— MODEL HOME. A finished, single-family residential unit, including units in a multi-family structure and mobile homes for which a certificate of occupancy has been obtained, located in a residentially zoned district but utilized as an example of a product offered for sale to purchasers (by a realtor, builder, developer or contractor).~~

~~— (B) Restrictions on use of model home/display homes.~~

~~— (1) Locations: The following shall apply to model homes and model display groups (prairie homes): may be permitted and applied for at locations zoned for RR, RE, RS-1, RS-2, RS-3, SF-1, SF-2, SRE, RM-10, RM-15, RM-20, RMH, PUD, RAC, and Mixed Use.~~

~~— (a) Each home must be located on a single lot. Model units are permitted in any townhouse or multiple-family building.~~

~~— (b) Model homes must be connected to water, sewer and electricity and must receive a certificate of occupancy as a model home only, prior to use as a model.~~

~~— (c) Model homes may be approved only in areas where they will not adversely affect existing residents.~~

~~— (d) Multiple Model Display Groups are permitted in each subdivision plat (see § 184.15).~~

~~— (e) Each model home must otherwise comply with the applicable zoning and sign regulations of the city.~~

~~— (f) Model homes are not required to be constructed with garages, even in districts where such garages would normally be required, provided the following criteria are met:~~

~~— 1. Prior to cessation of the use of the home as a model home, the builder must construct an operational two-car garage door along the front face of the home. This garage door is required to be in place and operational prior to either selling the home or renting the home.~~

~~2. Prior to issuance of a Certificate of Occupancy, the builder must file an affidavit with the Building Division certifying that the requirements of this section will be complied with prior to selling or renting the home for non-model home use.~~

~~(g) Parking: Except when located in a Model Display Group, all parking facilities shall be on a private property. There shall be no paving, surfacing, or laying of any material within any adjoining right-of-way for parking purposes.~~

~~For Model Display Groups:~~

~~1. Parking. Three off-street vehicular parking spaces, including the garage, shall be provided on the site or on an adjacent vacant property.~~

~~2. Off-site parking. Adjacent vacant single-family lot(s) may be used for model home parking. A plan to provide parking on an adjacent parcel shall require ownership by the same or an affidavit of authorization from the property owner as well as a surety deposit payable to the City to convert the property back to a residential or other permitted use when the structure is converted or sold~~

~~3. An accessible parking space is required and shall count as one of the three required spaces.~~

~~Accessibility requirements shall be met throughout the home, including access per the current Florida Building Code, Accessibility. This shall include handrail and grab bar requirements.~~

~~(2) Prohibited uses.~~

~~(a) No model home or model unit may be used for living purposes either temporarily or permanently while used as a model home or model unit.~~

~~(b) No real estate sales except those incidentals to the sale of model homes, model units or lots within the development may be conducted in a model home or model unit.~~

~~(3) Expiration.~~

~~(a) Sale. The model home permit shall automatically expire upon the sale or transfer of the model home, provided, however, that, if ownership of the model home is transferred to a qualified company, the model home permit may be transferred to the new owner. In the event the model home is sold, and the permit holder leases the model home from the purchaser, the permit holder may continue to operate the model home for the remainder of the permitted term, provided the permit holder is otherwise in compliance with this chapter.~~

~~—(b) Automatic expiration. If the qualified company is not the original permit holder and the qualifying agent resigns or otherwise ceases to serve as the qualifying agent, the permit shall automatically expire and shall not be renewed.~~

~~—(4) Model Homes as a Business office: Model home can be utilized as an example of a product offered for sale to purchasers (by a realtor, builder, developer or contractor. However, a model home unit shall not operate or function as a construction office. The model home shall be used primarily for demonstrating the type of units offered in the subdivision.~~

~~—(5) Garage Office. For any garage being used as an office for a model home the applicant must submit the following with the Building Permit application:~~

~~—(a) Plan of a garage office facility, including false walls, and temporary electrical and plumbing. All accessibility requirements for a business use must be met.~~

~~—(b) Plan should include a block note stating that a Change of Occupancy application will be submitted along with a Building Permit application that details the garage conversion when it is returned to the original use.~~

~~—(c) Ten thousand dollars (\$10,000.00) refundable surety to ensure that the garage is converted back to the FEMA standards for single-family home usage.~~

~~—(6) Model homes on properties zoned under any non-commercial/Industrial District shall comply with the provisions set forth in subsection (1) above except to the extent such provisions are modified by the City Council when the zoning is approved or subsequently amended.~~

~~—(C) Time for bringing noncomplying use into conformance. Any model home not in compliance with the provisions of this section shall be brought into compliance with these provisions within sixty (60) days of the effective date of this section. Thereafter, violations of the provisions of this section shall be presented to the Code Enforcement Board as provided by law.~~

#### ~~§ 185.130 ACCESS TO COMMERCIAL AND INDUSTRIAL LAND.~~

~~—(A) No public or private street, road, easement or driveway within a residential area or on which residentially zoned land abuts shall be used as vehicular access or as a through road to any commercially or industrially zoned land, uses or businesses and no lot shall be created, building permit issued nor curb cut or driveway permitted or approved that will allow or create access to any commercially or industrially zoned land or uses through a residential area except:~~

~~—(1) Access onto collector arterial roads.~~

~~—(2) Access to corner lots at intersections of any street with a collector or arterial road.~~

~~—(3) For emergency ingress or egress where access is physically controlled and used only for emergency evacuation or access.~~

~~—(4) Access to existing commercially or industrially zoned land or uses in existence at the time of adoption of this section that have no alternative means of ingress or egress to an existing public or private street.~~

~~—(B) Definition. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—RESIDENTIAL AREA. Any lot, street, right-of-way or land zoned as any of the various districts within this chapter and any other applicable ordinance of the city that allow any residential use as a principal or permitted use.~~

#### ~~§ 185.131 LIMITATIONS ON THE NUMBER OF DOGS KEPT WITHIN RESIDENTIAL ZONING DISTRICTS.~~

~~—(A) No person shall keep or maintain in, on or upon any lot, building, premises or property more than four dogs per dwelling unit. A dog shall be considered any canine six months in age or older. This section shall apply to all lands within the RE, RS-1, RS-2, RS-3, SF-1, SF-2, SRE, RM-10, RM-15, RM-20, RMH or PUD Zoning Districts.~~

~~—(B) All persons who own or keep more than four dogs as of the effective date of this section must either come into compliance with the section or obtain a certificate authorizing such person to temporarily keep such greater number within 90 days. Once obtained, said certificate shall only remain valid until the number of dogs owned or kept is reduced to four or less, at which time said certificate shall expire. No additional dogs can be added to those already registered to replace any dog that shall be given away, sold or that dies. There shall be only one valid certificate per residential dwelling unit at any time. If the holder of a certificate moves to another dwelling unit within the city, the holder of the certificate must notify the city and request the transfer of the certificate. Failure to transfer a certificate within 30 days of moving shall make the certificate void. If the holder of a certificate moves out of the city, the certificate shall immediately become void.~~

~~—(C) Application for a certificate shall be made on a form provided by the city and submitted to the Palm Bay Code Compliance Division. In order to obtain a~~

~~certificate, applicants must provide the following information and documentation on all dogs owned or kept by the applicant:~~

- ~~— (1) Dog license and certificate of inoculation for rabies, issued prior to the passage of this section, for each dog.~~
- ~~— (2) Complete physical description of all dogs owned or kept by the applicant, including age, weight, color and name; and~~
- ~~— (3) Photograph of all dogs owned or kept by the applicant.~~

#### ~~§ 185.132 CONVERSION OF GARAGE(S) TO LIVING AREA.~~

~~— Existing garage(s) may be converted to living area provided the following criteria are met:~~

- ~~— (A) The garage(s) are attached to the principal structure.~~
- ~~— (B) The living area created must be directly accessible from the living area in the principal home.~~
- ~~— (C) All building codes, fire codes and other provisions of the code of ordinances must be met.~~

#### ~~§ 185.133 TEMPORARY STORAGE UNITS IN RESIDENTIAL AREAS.~~

~~— (A) Definitions.~~

~~— RESIDENTIAL AREAS. Any land zoned RR, RE, SRE, RS-1, RS-2, RS-3, SF-1, SF-2, RMH, RM-10, RM-15, RM-20, PUD and single family and multiple family uses in the BMUV District.~~

~~— TEMPORARY STORAGE UNIT. Portable storage containers typically utilized temporarily for the storage of furniture, clothing, or other personal belongings, as part of the process of household moving and/or as part of a household's intent to store items offsite at a commercial storage location. This definition does not include storage units authorized by the Florida Building Code pursuant to Fla. Stat. § 553.73.~~

~~— (B) Allowable use. Temporary storage units are allowable in residential areas without a permit provided the following criteria are met:~~

- ~~— (1) A maximum of one (1) temporary storage unit is permitted per lot;~~
- ~~— (2) The maximum size of the temporary storage unit is ten (10) feet wide, twenty-four (24) feet long, and nine (9) feet high;~~



~~—(3) The maximum time a temporary storage unit is permitted to remain on the lot is fourteen (14) consecutive days with a maximum of two (2) placements permitted per year;~~

~~—(4) The temporary storage unit shall not be placed in any right-of-way or easement and shall not create a site obstruction for any vehicular or pedestrian traffic;~~

~~—(5) The temporary storage unit shall not be utilized for the storage of live animals;~~

~~—(6) The temporary storage unit shall not be utilized for human habitation;~~

~~—(7) The temporary storage unit shall not be utilized for the storage of hazardous or flammable materials;~~

~~—(8) Advertising is prohibited on the temporary storage unit with the exception of the name and phone number of the vendor of the unit; and~~

~~—(9) Notice is provided to the city by the vendor, on forms provided by the city, identifying the location and time of placement of the temporary storage unit.~~

~~—(C) Use requiring permits. The City Manager, or his designee, may grant one (1) extension to the time limit established in subsection (B) above, subject to the following criteria:~~

~~—(1) A maximum of one (1) fourteen (14) day extension per lot may be granted during any calendar year;~~

~~—(2) A permit shall be required for the fourteen (14) day extension beyond the fourteen (14) day period permitted in subsection (B); and such permit shall be accompanied by a fee as established by resolution pursuant to § 169.004; and~~

~~—(3) The applicant must affix to a placard, issued at the time of permitting and clearly visible from the nearest roadway, to the temporary storage unit which provides information identifying the placement date, date of required removal, and the number to report violations to the Code Compliance Division.~~

~~—(D) Exemptions. The above regulations shall not apply to temporary storage units that are placed for construction purposes in connection with a valid building permit or during any period of declared emergency by federal, state or local official action.~~

~~§ 185.134 ARCHITECTURAL STYLE REQUIREMENTS.~~

~~—(A) Structures must adhere to one (1) of the following Architectural Styles for architectural elevations facing public rights-of-way within the NC, CC, HC, RC, and OP zoning districts, and for structures constructed on a lot fronting any arterial or collector roadways in the GC zoning district. All structures that are in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site for the purpose of creating an outdoor public space. These areas are inclusive of benches, sitting areas, bicycle racks, display fountains and/or landscaping.~~

~~—(1) Florida Vernacular Architectural Style.~~

~~—(a) Masonry or frame construction.~~

~~—(b) Stuck stucco or lap siding finish.~~

~~—(c) Brick wainscot.~~

~~—(d) Architectural shingles or galvalume metal roof acceptable.~~

~~—(e) Exposed lookouts at truss ends, dentil molding, operable shutters that match the window width, period style lighting.~~

~~—(f) Limited color palette to pastel colors or white.~~

~~—(g) A front porch or overhang that has a minimum of sixty inches (60") width and encompasses a minimum of fifty percent (50%) of the main building façade.~~

~~—(h) No blank wall area to exceed four hundred (400) square feet of area.~~

~~—(i) No singular façade shall exceed one hundred (100) lineal feet of run without a minimum sixteen inch (16") break, by utilizing a directional or material change.~~

~~—(j) Pre-engineered metal buildings or metal buildings that utilize a fastened metal horizontal girder by which an exterior wall is attached to is not permitted. No part of the exterior finish shall utilize metal cladding.~~

~~—(k) All structures in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site of the main floor shall be utilized for the creation of an outdoor public space—these areas are inclusive of benches, sitting areas, bicycle racks, bus stops, display fountains and/or landscaping.~~

~~—(2) Mediterranean/Spanish Colonial.~~

~~—(a) Masonry or frame construction.~~

~~—(b) Heavy stucco or concrete finish.~~

~~—(c) Barrel vaulted elements over windows and doors.~~

- ~~—— (d) Flat or low hip roof lines with interlocking terra-cotta roof tile.~~
- ~~—— (e) Terra cotta detailing, quoins, metalwork around windows and doors, relief around cornices, parapets, balconies and balustrades.~~
- ~~—— (f) Limited color palette of white, parchment and coral colors.~~
- ~~—— (g) Pre-engineered metal buildings or metal buildings that utilize a fastened metal horizontal girder by which an exterior wall is attached to is not permitted. No part of the exterior finish shall utilize metal cladding.~~
- ~~—— (h) All structures in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site for the creation of an outdoor public space — these areas are inclusive of benches, sitting areas, bicycle racks, bus stops, display fountains and/or landscaping. Structures that exceed fifty thousand (50,000) square feet of the area on the main floor shall provide an area on the site equivalent to three percent (3%) of the main floor area for an outdoor public space.~~
- ~~—— (3) Spanish Revival.~~
  - ~~—— (a) Masonry or frame construction.~~
  - ~~—— (b) Heavy stucco or masonry finish.~~
  - ~~—— (c) Barrel arch over windows and doors.~~
  - ~~—— (d) Flat, gable and/or hip roof lines with interlocking barrel style roof tile.~~
  - ~~—— (e) Iron work around windows.~~
  - ~~—— (f) Trim work around doors, parapets, windows and entryways.~~
  - ~~—— (g) Color palette of white or the patina of the masonry.~~
  - ~~—— (h) Pre-engineered metal buildings or metal buildings that utilize a fastened metal horizontal girder by which an exterior wall is attached to is not permitted. No part of the exterior finish shall utilize metal cladding.~~
  - ~~—— (i) All structures in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site for the creation of an outdoor public space — these areas are inclusive of benches, sitting areas, bicycle racks, bus stops, display fountains and/or landscaping.~~
- ~~—— (4) Commercial American.~~
  - ~~—— (a) Traversable arcade of fabric awning or structural roof.~~
  - ~~—— (b) Recessed entryway and string course over storefront.~~

- ~~—— (c) Flat or low slope roof.~~
- ~~—— (d) Parapet with minor course banding and/or cornice.~~
- ~~—— (e) Concrete or brick construction.~~
- ~~—— (f) Large fixed plate glass storefront windows.~~
- ~~—— (g) Minor trim or fretwork.~~
- ~~—— (h) Color palette typically reflects the base material (brick) or lighter colors.~~
- ~~—— (i) Pre-engineered metal buildings or metal buildings that utilize a fastened metal horizontal girder by which an exterior wall is attached to is not permitted. No part of the exterior finish shall utilize metal cladding.~~
- ~~—— (j) All structures in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site for the creation of an outdoor public space — these areas are inclusive of benches, sitting areas, bicycle racks, bus stops, display fountains and/or landscaping.~~
- ~~—— (5) Bungalow.~~
  - ~~—— (a) Brick or concrete wainscot or base.~~
  - ~~—— (b) Gable roof line with exposed rafters and secondary rooflines.~~
  - ~~—— (c) Decorative shake or shingle roof or metal roof.~~
  - ~~—— (d) Horizontal siding.~~
  - ~~—— (e) Tapered columns.~~
  - ~~—— (f) Exposed structural elements for detailing such as beams, ridge vents, rafters and purlins.~~
  - ~~—— (g) Useable front porch.~~
  - ~~—— (h) Color palette may vary.~~
  - ~~—— (i) Pre-engineered metal buildings or metal buildings that utilize a fastened metal horizontal girder by which an exterior wall is attached to is not permitted. No part of the exterior finish shall utilize metal cladding.~~
  - ~~—— (j) All structures in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site for the creation of an outdoor public space — these areas are inclusive of benches, sitting areas, bicycle racks, bus stops, display fountains and/or landscaping.~~
- ~~—— (B) The predominant exterior color shall be applied to all sides of the structure.~~

~~—(C) The design requirements listed in subsections (A) and (B) above shall be applicable to all new construction in the district, and in the case of additions or renovations to, or development of, an existing building or project, where the renovation or redevelopment exceeds fifty percent (50%) of the square footage of the existing structure(s). A mirror building, defined as a building meant to compliment a pre-existing structure by use of identical material finishes, scale and form, shall be exempt from the design requirements. New buildings that are part of an overall campus plan that has an established architectural theme shall also be exempt from the design requirements herein.~~

~~—(D) The design requirements listed in subsections (A) and (B) above shall be applicable to all accessory buildings also. Any accessory structure not meeting this requirement shall be screened so as to not be visible from the public right-of-way. Mechanical equipment such as gasoline pumps, air and vacuum machines, drive-through menu boards and speaker stations, drive-through teller stations, ATM's, and similar appliances which require direct access by the public shall be exempt from the design review requirements of this subsection. All HVAC, wireless communication devices, Fire Suppression, Solar Panels, wind generation devices and similar equipment placed on any roof or above the roof line of any commercial structure shall be effectively screened as to not be seen by the public.~~

~~—(E) Compliance with the requirements set forth in this subsection shall be demonstrated by submittal of building front elevations and color and material samples at the time of site plan review.~~

~~—(F) Structures in the following use categories are exempt from the design review requirements of this subsection: public utility equipment, hospitals, churches, model home centers and buildings having federal, state or locally designated historical status.~~

~~—(G) The Sign Code shall be adhered to with the following exceptions:~~

~~—(1) Materials: The color, construction, and material of each sign shall be compatible with the architecture on the site.~~

~~—(2) Design: Every sign frame or support shall be designed as a sympathetic architectural element of the building(s) to which it is principally related.~~

~~—(3) Freestanding signs shall have landscaping at the base that is a minimum width of the sign above.~~

~~— (4) Freestanding signs over twenty-five (25) feet in height shall be exempt from the design review requirements of this subsection but will require landscaping at the base of each sign that is a minimum width of the sign above.~~

~~— (H) Alternative Architectural Styles.~~

~~— (1) The intent of City Council is that commercial structures adhere to the Architectural Style Requirements as described above during the administrative site plan review process for the city. The appeals process described below is intended to provide relief from those provisions only in unusual and unique circumstances. This subsection describes an alternative process for Architectural Styles that do not conform to the style requirements of subsections (A) through (G) above.~~

~~— (a) Alternative Architectural Styles. When an applicant proposes an architectural style that does not conform to subsections (A) through (G) above, the applicant may pursue an Architectural Style Exception through the Growth Management Director for a final administrative decision. The exception shall be in the form of a letter indicating the reasons for the request and the applicant's opinion of their adherence to the requirements. In rendering the final decision, the Growth Management Director shall take into account the overall level to which the architectural design complies with the requirements. If the applicant is not satisfied with the Final Administrative Decision, they may appeal that decision pursuant to § 59.04(6).~~

~~— (I) Appeals.~~

~~— (1) Applicants who desire to appeal the decision of the Growth Management Director, shall file a written appeal to the Palm Bay City Council pursuant to this subsection.~~

~~— (2) The City Council shall hold a minimum of one (1) public hearing in accordance with Chapter 59 to consider the appeal. The decision of Council shall be based upon the following:~~

~~— (a) The level to which the plans exceed the minimum requirements of the Palm Bay Code of Ordinances.~~

~~— (b) The economic impact to the local tax base of the City.~~

~~— (c) The impact of the project on other properties within the City.~~

~~— (d) Adherence to corporate branding.~~

~~— The City Council's decision shall be considered the final City action on the matter.~~

~~—(3) Prior to the public hearing required above, city staff shall prepare a report to Council that describes how the submitted site and architectural plans adhere to the Code, the requested exception, and the justification for the Final Administrative Decision.~~

~~§ 185.135 GREEN DEVELOPMENT PROGRAM STANDARDS.~~

~~—(A) The City Council may approve Green Development Program projects as part of the Planned Unit Development process contained in this Code regardless of project size (no minimum size for submittal of the Planned Unit Development District application). All other criteria of the Planned Unit Development District approval requirements must be met.~~

~~§ 185.136 BACKYARD CHICKENS.~~

~~—(A) No person shall keep or maintain in, on or upon any lot, building, premises or property any farm animal in any zoning category outside of the RR and GU districts except as provided for in this section or § 185.137.~~

~~—(B) Up to four (4) chickens may be kept on single family lots in the RE, RS-1, RS-2, RS-3, SF-1, SF-2 and SRE Zoning Districts subject to adherence to the following criteria:~~

~~—(1) Hens only may be kept. Roosters are prohibited.~~

~~—(2) Chickens must be caged at all times and cages/coops shall meet the criteria for animal cages and enclosures contained in § 185.118(F).~~

~~—(3) Breeding of chickens is prohibited.~~

~~—(4) Dead chickens shall be immediately removed from the premises and disposed of properly.~~

~~—(5) The cage/coop and surrounding areas shall be clean and properly maintained to avoid the attraction of vermin, insects or predators.~~

~~§ 185.137 PIGEONS.~~

~~—(A) No person shall keep or maintain in, on or upon any lot, building, premises or property any farm animal in any zoning category outside of the RR and GU districts except as provided for in this section or § 185.136.~~

~~—(B) Pigeons may be kept on single family lots in the RE, RS-1, RS-2, RS-3, SF-1, SF-2 and SRE Zoning Districts subject to adherence to the following criteria:~~

- ~~— (1) The keeping of pigeons is allowed in the RE, RS-1, RS-2, RS-3, SF-1, SF-2 and SRE Zoning Districts as an accessory use.~~
- ~~— (2) A maximum of one hundred (100) pigeons may be kept on a parcel containing at least one (1) primary structure.~~
- ~~— (3) Restrictions on flights.~~
  - ~~— (a) Maximum number to be released. No more than forty (40) pigeons may be released at any one time for exercise or training purposes.~~
  - ~~— (b) Maximum number of flights per twenty-four (24) hour period. No more than two (2) flights shall be allowed within a twenty-four (24) hour period.~~
  - ~~— (c) Pigeons shall only be released to fly between the hours of sunrise to sunset. When pigeons have been released from a distant location, they shall be allowed to fly into their home aviary upon their return regardless of which day or time of day.~~
- ~~— (4) Enclosure requirements. Pigeon Aviaries shall meet the provisions of § 185.118 ACCESSORY STRUCTURES, Subparagraph (F), Animal Cages or Enclosures.~~
- ~~— (5) Aviary Maintenance and Cleaning Requirements:~~
  - ~~— (a) Structures where pigeons are housed shall be kept and maintained in a sanitary condition. Refuse and droppings shall be removed from the premises at least twice each calendar week. No aviary or loft shall create a nuisance onto adjacent properties.~~
  - ~~— (b) The owner shall comply with the rules and regulations of the Brevard County Health Department and/or Animal Control pertaining to the sanitary conditions and maintenance of the premises.~~
  - ~~— (c) The owner or person in charge of keeping the pigeon aviary shall maintain the property and all features of the property, including roofs, driveways and walkways in a clean manner, void of any visible pigeon droppings.~~
  - ~~— (d) Pigeons shall not be allowed to land or perch on the structures or property of others. Birds shall be trained not to land anywhere except on the landing board to the loft within four (4) weeks after the pigeon is first let out of the loft (first flight). The landing board shall be constructed in such a manner that allows for the entire flying flock to land at the loft at one time. The minimum loft size shall be regulated to a minimum of one (1) square foot per bird.~~



~~—— (e) Pigeon businesses or breeding activities for commercial purposes shall not be conducted in the RE, RS-1, RS-2, RS-3, SF-1, SF-2 and SRE Zoning Districts.~~

~~—— (f) No training flight shall occur two (2) hours before sunset or sunrise, and that training flights not be conducted until four (4) hours after the feeding of birds.~~

~~—— (g) Any bird that is deemed diseased shall be removed from the loft and from the premises immediately.~~

#### ~~§ 185.138 MOBILE VENDING UNITS.~~

~~—— (A) Purpose and intent. The purpose and intent of this section are to establish land use and zoning regulations for real property upon which a mobile vendor is authorized to operate within the jurisdictional limits of the City. This section is neither intended to prohibit mobile food dispensing vehicles from operating within the entirety of the city nor regulate the licensing, registration, permitting, and fees of mobile food dispensing vehicles preempted by the state under F.S. § 509.102.~~

~~—— (B) Definitions. As used in this section, the following words and phrases shall have the following meanings, unless the context clearly indicates that a different meaning is intended.~~

~~—— ACCESSORY. Clearly incidental or subordinate to and customary in connection with the principal building or use on a developed site and which is located on the same lot or parcel with such principal building or use.~~

~~—— FOOD. All substances commonly used for human consumption as food, beverage, confectionery, or condiments, whether simple, mixed, or compound, and all substances or ingredients used in preparation thereof.~~

~~—— MOBILE FOOD DISPENSING VEHICLE. A mobile vending unit defined by F.S. § 509.102(1), and upon the effective date of this Section means any vehicle that is a public food service establishment and that is self-propelled or otherwise moveable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.~~

~~—— MOBILE VENDING UNIT.~~

~~—— (a) A motorized vehicle from which a mobile vendor offers for sale or sells goods or services to the public, such as a "food truck defined in § 185.006";~~

~~—— (b) A mobile food dispensing vehicle;~~

~~— (c) A "vending cart" is defined as a pushcart-type vehicle propelled by human power which has been specifically designed or used for purposes of offering for sale or selling goods or services to the public, but not including, by way of example, racks, wheelbarrows, dollies, grocery carts, baby carriages, tables, chairs, benches, cabinets, or other furniture and boxes, buckets, tubs, or other containers or devices which normally rest on the ground, whether or not wheels have been attached such as "hot dog cart";~~

~~— (d) A trailer that is pulled by a motorized vehicle and has no power to move on its own from which a mobile vendor offers for sale or sells goods or services to the public such as a "mobile catering kitchen" or a "food truck"; or~~

~~— (e) Any other mobile device approved by the City Manager from which a mobile vendor offers for sale or sells goods or services to the public.~~

~~— MOBILE VENDOR (i.e., mobile food vendors defined in § 185.006). Any person that sells or offers for sale services or goods from a mobile vending unit (not limited to mobile food dispensing vehicle as defined per F.S. § 509.102) within the City. References in this section to mobile vendors shall include operators of mobile food dispensing vehicles unless expressly stated otherwise.~~

~~— SPECIAL EVENT. Any sale, grand opening, photo shoot, party, holiday celebration, bazaar, concert or other performance, fair, carnival, tent revival, fundraising event, art festival, race, tour, rally, parade, bicycle run, demonstration, contest, exhibition, block party, outdoor display or similar event or occurrence, including the use of tents, or other devices or structures to conduct, advertise or promote any such event occurring on the city or non-city-owned lands or in a public right-of-way such as a public or non-public street, shared-use path, or other public place or building, parking lot, vacant lot, where the event would substantially inhibit the usual flow of pedestrian or vehicular travel or which occupies any public area or building so as to preempt use of the said area by the general public for its intended use or which deviates from the established use of said area or building, but such term does not include the following:~~

~~— (a) An event or function held within or on the grounds of a private residence or on the common areas of multifamily residential development, and which event or function is of private and nonprofit nature; or~~

~~— (b) Any use or activity specifically approved by a development permit issued by the city or specifically permitted by the Land Development Code.~~

~~—(C) Specific requirements. Mobile vendors not in compliance with the requirements of this section are prohibited and unlawful in the city. Mobile vendors shall be permitted under the following conditions:~~

~~—(1) The mobile vendor, especially mobile food vendors, such as food trucks, shall provide copies of all applicable approvals and licenses and mobile food establishment permit for their mobile food dispensing vehicle from the State of Florida Department of Business and Professional Regulations (DBPR), Florida Department of Health, and Florida Department of Agriculture and Consumer Services.~~

~~—(a) Food permits aren't necessary for other mobile vending, not regulated by DBPR, such as pet grooming, and selling vegetables and fruits.~~

~~—(2) All mobile vendors shall obtain a City of Palm Bay Business Tax Receipt for operating within the city limits.~~

~~—(a) State-licensed mobile food dispensing vehicles are exempted from the local Business Tax Receipt (see F.S. § 509.102).~~

~~—(3) Mobile vendors providing services via a mobile vending unit by appointment at a customer's place of business or residence shall be permitted in the City, which shall include:~~

~~—(a) Mobile pet grooming, car detailing, and similar services; and~~

~~—(b) Mobile caterers who are hired for private catering purposes to serve guests of a catered event, so long as:~~

~~—1. The mobile caterer is parked entirely on private property;~~

~~—2. Service is limited to the guests of the catered event only; and~~

~~—3. No payment transaction shall occur for individual orders taken by the mobile caterer.~~

~~—(4) Mobile vendors providing services or selling goods via a mobile vending unit at a public special event shall be authorized to operate in the City pursuant to the issued special event permit.~~

~~—(5) Mobile vendors providing services or selling goods via a mobile vending unit on private property shall not be permitted unless the property owner obtains a site plan authorizing accessory mobile vending sales on the property. In no case shall a mobile vendor be permitted to operate on the same parcel of real property~~

~~for more than sixty (60) total consecutive or nonconsecutive days per calendar year.~~

~~—(6) The mobile vendor (i.e., food trucks and food vending vehicles) shall contact your local fire safety authority to ensure your establishment meets the fire safety requirements as prescribed by the National Fire Prevention Association Standards (NFPA). The Local Fire Department shall ensure compliance with all applicable federal, state, and local fire safety statutes, regulations, ordinances, and codes. Mobile vendors shall make their vehicles available for inspection by the City of Palm Bay Fire Department at a location determined by the Fire Department.~~

~~—(D) Mobile vendors operating a mobile vending unit including food trucks are prohibited under the following conditions:~~

~~—(1) Municipally owned property, sidewalks, rights-of-way, easements, and in alleys, loading zone, or no parking zone. Except during city-organized events or as authorized by a public special event permit.~~

~~—(2) Operating in a fire lane or blocking fire hydrants or any other fire protection devices and equipment, or Americans with Disabilities Act (ADA) accessible parking spaces and/or accessible ramps.~~

~~—(3) To remove the wheels of a mobile vending unit.~~

~~—(4) To operate on unimproved surfaces and abandoned or vacant business locations.~~

~~—(5) No more than one (1) mobile vending unit shall be parked or in operation on a single property at any given time, except during public or private special events and city-organized events, or on approved site plans.~~

~~—(6) To locate within fifty (50) feet of any flammable combustible liquid or gas storage and dispensing structure.~~

~~—(7) To be located within fifty (50) feet of a single-family, multifamily residential lot unless separated and screened by a minimum six (6) foot high opaque wall.~~

~~—(8) To be located within ten (10) feet of any building, or structure.~~

~~—(9) The operation of a mobile vending unit must not obstruct or interfere with vehicular or pedestrian traffic, building access, fire lanes, crosswalks, driveways, fire hydrants, loading areas, stormwater drainage systems, or landscape buffers associated with the principal use. Specifically, mobile vending units must not enter or park upon any "no parking" area, loading zone, driveway, handicapped parking space, or designated public safety lane (e. g., fire lanes) or within twenty (20) feet~~

~~of a crosswalk or within fifteen (15) feet of a fire hydrant or storm drainage structure.~~

~~— (10) In addition to the location of the mobile vendor (especially for food trucks):~~

~~— (a) Mobile vendors are prohibited from serving food from a free-standing barbeque grill or fryer.~~

~~— (b) Selling or distributing alcoholic beverages.~~

~~— (c) Size. No food truck shall exceed a length of eighteen and one-half (18.5) feet or a width of ten feet, and shall not occupy required parking but can be used in excess parking areas of a business.~~

~~— (d) For outdoor dining, one (1) ten (10) foot by ten (10) foot area, covered or uncovered, may be permitted to accommodate seating and tables per mobile food truck.~~

~~— 1. Outdoor dining areas including, but not limited to, tables, chairs, booths, bar stools, benches, and standup counters shall only be permitted if expressly authorized in a site plan or a special event permit.~~

~~— 2. No tables, chairs or other furniture or equipment intended to provide accommodations for the patrons of mobile food vendors may be placed in the public right of way.~~

~~— 3. Any canopies, awnings, or any other attachments must be supported entirely by the mobile vending unit and may not touch the ground.~~

~~— (E) General requirements.~~

~~— (1) The mobile vending unit must be self-contained and may not connect to city water or power during operation while located on public right of way.~~

~~— (2) Mobile vendors may not operate in a stationary manner for more than twelve (12) consecutive hours.~~

~~— (3) Mobile vendors shall be permitted to operate between the hours of 6:00 a.m. and 2:00 a.m., except as permitted by a city-sanctioned event or activity.~~

~~— (4) All mobile vendors must ensure that individuals with disabilities have comparable access to mobile vending units. If existing designs cannot be modified to be accessible to people with disabilities, the method of providing service must be modified to become accessible. No object shall block any pedestrian pathway or ADA access.~~

~~—(5) Selling or dispensing food to customers in a moving vehicle or otherwise engaging in drive-up sales is prohibited from a mobile food dispensing vehicle.~~

~~—(6) Mobile food vendors shall remove all waste and trash prior to vacating their location. Under no circumstances mobile food dispensing vehicles must not discharge waste, fat, oil, grease, or other similar substances from the vehicle. All such substances related to or generated from the vehicle shall be taken with the vehicle when hen vehicle leaves the subject property.~~

~~—(7) The grounds around the mobile vending unit and within the vending space shall be kept free of litter, trash, paper, and waste at all time. Waste containers shall be provided, and all trash shall be taken with the vehicle when the vendor leaves or, with the permission of the property owner, placed inside a commercial dumpster in use and located on the site. Waste containers shall be weighted or otherwise secured in an upright position. The mobile vendor is responsible for containing and properly disposing of all solid waste and wastewater pursuant to local and state rules, regulations, and laws.~~

~~—(8) No signs or signage, other than that which can be contained on the mobile vending unit and one sandwich board sign, of no more than twelve (12) square feet in area, shall be permitted, which may not be placed in such a manner as to interfere with pedestrian facilities or the right-of-way. Signs may not extend above the mobile vending unit.~~

~~—(9) Amplified music or other sounds from any mobile vending unit or from audio equipment installed on the developed site by the property owner or person in charge of the mobile vending unit for purposes of vending, attracting, or encouraging the congregation of customers shall be prohibited.~~

~~—(10) The mobile vendor must comply with the noise provision of the City Code. Portable generators must be securely affixed to the unit during operation. Generators may not exceed a rating of sixty (60) dBA pursuant to industry standard measurements. Idling of a mobile vending unit is prohibited while preparing or serving food. Exhaust from a generator and all mobile vending operations, including food preparation, must be directed away from the service window and adjacent sidewalk.~~

~~—(11) The mobile vendor may not use any flashing or blinking lights or strobe lights. The mobile vendor may provide localized lighting on or in the mobile vending unit for the purpose of illuminating the customer ordering area to ensure customer~~

~~safety, for the purpose of food preparation, and for the purpose of menu illumination.~~

~~—(F) Penalties.~~

~~—(1) Owners and operators of mobile vending units, and property owners on which such units operate, shall be joint and severally liable for any violations.~~

~~—(2) If at any time the Florida Department of Business and Professional Regulation or Florida Department of Health revokes or suspends the mobile vendor's license, the city's mobile food truck permit shall be deemed to have been simultaneously revoked or suspended.~~

~~—(3) In addition to the penalties authorized by (F)(1) and (F)(2), the City Manager may also suspend or revoke the property owner's site plan approval for accessory mobile vending use and/or special event permit, as may be applicable, upon a finding that a mobile vending unit was operating on the subject property in violation of this section. If revoked, the property owner shall be prohibited from seeking subsequent site plan approval for accessory outdoor sales or a special event permit for the subject property for a period of one (1) year from the date of the revocation.~~

#### ~~§ 185.139 OUTDOOR DINING.~~

~~—An outdoor seating and/or dining area is an allowable use when such use is in conjunction with a licensed food or eating establishment. The outdoor seating and/or dining area shall be identified on an approved site plan that demonstrates the following conditions are met:~~

~~—(A) An outdoor seating and/or dining area is restricted to an area within the boundary lines of the property for which the licensed food or eating establishment is located.~~

~~—(B) The outdoor dining area shall be aesthetically and architecturally pleasing and in alignment with the architectural style requirements.~~

~~—(C) An outdoor seating and/or dining area must be clearly delineated on the site plan. Any such area which abuts a parking area shall have a protective buffer in the form of planters, decorative fencing, and/or hedges.~~

~~—(D) The number of outdoor seats provided by a restaurant shall be counted as part of the restaurants total allowable dining allotment and shall be shown on an approved site plan. All outdoor seating and/or dining furniture and associated lighting shall be contained within the defined area on the site plan.~~

- ~~—(E) Outdoor seats shall not cause a licensed restaurant's required parking to become inadequate.~~
- ~~—(F) Outdoor dining areas shall not encroach upon any public right-of-way, public easements, or setbacks.~~
- ~~—(G) Outdoor dining shall not be placed within five feet of bus stops, loading zones, fire hydrants, site triangles, above ground public utilities, bike racks or any type of public street furniture.~~
- ~~—(H) Private sidewalks that abut restaurants may be used for such outdoor seating and/or dining area, provided that there is a five-foot pedestrian clear zone, which shall be maintained at all times.~~
- ~~—(I) No outdoor seating and/or dining furniture shall be allowed within five (5) feet of a pedestrian crosswalk.~~
- ~~—(J) All kitchen equipment used to service the outdoor dining area shall be located within a building.~~
- ~~—(K) All outdoor dining furniture, including all accessory appurtenances including but not limited to approved space heaters, misters, and portable umbrellas that are located within the outdoor dining area shall be stored inside a building after close of business.~~
- ~~—(L) No outdoor dining furniture shall be attached, chained or in any manner affixed to any tree, post, sign, or other fixtures.~~
- ~~—(M) Outdoor food service will terminate no later than 10:00 p.m. on weekdays (Monday through Thursday) and 11:00 p.m. on weekends (Friday through Sunday).~~
- ~~—(N) The serving or consumption of alcoholic beverages within an outdoor dining area shall comply with the regulations of applicable government agencies.~~
- ~~—(O) Outdoor seating and/or dining areas must be maintained in a neat and orderly appearance at all times and must be cleared of all trash and debris on a periodic basis during the day and at the close of each business day.~~
- ~~—(P) If found to be necessary for the protection of the health, safety, and welfare of the public, the City Manager or his/her designee may require the subject property to immediately remove or relocate all or part of the tables, chairs, etc. of the outdoor seating and/or dining area.~~



~~—(Q) This section shall not apply to outdoor dining areas that are depicted on site plans approved prior to July 1, 2023.~~

## **~~OFF-STREET PARKING AND LOADING REQUIREMENTS~~**

### **~~§ 185.140 OFF-STREET PARKING AND TRAFFIC CIRCULATION.~~**

~~—In all districts, off-street parking shall be provided as follows:~~

~~—(A) Purpose and intent. The purpose and intent of this section is to set forth parking requirements in proportion to the parking demand for each use in order to ensure functionally adequate, efficient, aesthetically pleasing, and secure off-street parking facilities, and to provide for on-street parking in certain circumstances. The regulations and design standards of this section are intended to ensure the usefulness of parking facilities, protect the public safety, and mitigate potential adverse land use impacts.~~

~~—(B) Applicability.~~

~~—(1) Development. Every development, as defined in the City of Palm Bay Code, Title XVII Land Development Code, established after the effective date of this section shall comply with the requirements set forth.~~

~~—(2) Residential districts.~~

~~—(a) Parking in driveways. Driveways may be used to satisfy the parking requirements for single-family dwellings, duplexes and mobile homes provided that sufficient space is available exclusive of right-of-way or road easements.~~

~~—(b) Commercial vehicle parking or storage. No required parking space shall be used for a commercial vehicle for parking or storage or other uses which may interfere with normal off-street parking needs. A commercial vehicle is any truck, bus, trailer, portable equipment, machinery or similar vehicle or combination thereof, used or intended to be used for any commercial enterprise or business purpose, or which has over six (6) wheels, more than two (2) axles, a height greater than eight (8) feet and has an overall length of more than twenty-two (22) feet, excluding self-propelled roadway vehicles less than six thousand (6,000) pounds net weight.~~

~~—(c) Emergency vehicles. Parking shall not be permitted which blocks emergency vehicles on either public or private roads.~~

~~—(3) Exemptions.~~

~~—(a) Redevelopment. Building permits and certificates of occupancy may be issued for remodeling or structural alterations in existing developments without requiring compliance with this section provided such redevelopment does not result in an increase in the number of required parking spaces.~~

~~—(b) Change of use. The number of parking spaces required by this section may be reduced when the use of a building is changed or reduced to a use or floor area for which fewer parking spaces are required. When the use is changed to a use for which more parking spaces are required, the number of spaces shall be increased to comply with the off-street parking schedule and design standards. Off-street parking requirements may be met with shared or remote parking areas as described elsewhere in § 185.140.~~

~~—(C) General requirements.~~

~~—(1) Any principal structure built or enlarged or increased in capacity by adding dwelling units, guest rooms, seats, or floor area after the effective date of this section shall provide off-street parking in accordance with the provisions of this section.~~

~~—(2) It shall be unlawful for an owner or operator of any structure or use affected by this chapter to discontinue or change the required parking areas, other than through a corresponding reduction in size of the structure or change in use, without meeting the requirements of this section.~~

~~—(D) Design Requirements.~~

~~—(1) All parking spaces, and access drives shall be improved in accordance with the design standards set forth in the current edition of the City of Palm Bay Public Works Manual and the Land Development Code.~~

~~—(2) Each parking space shall have a minimum width of ten (10) feet and a minimum length of nineteen (19) feet. If a parking space contains a wheel stop or abuts a curbed or landscaped island, an overhang may be permitted, and the length of the space thereby shortened to a minimum of sixteen (16) feet.~~

~~—(a) Accessible spaces shall follow the current editions of the ADA, the FDOT Manual on Uniform Traffic Control Devices (MUTCD), the Florida Accessibility Code for Building Construction (FACBC), and F.S. Chapter 208.~~

~~—(b) Wheel stops may be used to prevent a vehicle from encroaching on adjacent sidewalks or property. The wheel stop shall be set back a distance that~~

~~provides an unobstructed sidewalk width of four (4) feet to meet the Americans with Disabilities Act and the Florida Accessibility Code for Construction.~~

~~— (3) All off-street parking areas shall be designed to have adequate access to a public street or alley. The function and operation of the proposed parking type must be compatible with and appropriate for the type of parking proposed. Back-out parking or any other type parking utilizing the public right-of-way as an access aisle is prohibited except when applied to single-family and duplex land uses. Interior aisle widths shall conform to the minimum requirements below:~~

<del>Parking</del>	<del>Aisle</del>		<del>Width</del>
<del>Angle</del>	<del>One-Way</del>	<del>Two-Way</del>	
<del>30°</del>	<del>12 feet</del>	<del>22 feet</del>	
<del>45°</del>	<del>14 feet</del>	<del>22 feet</del>	
<del>60°</del>	<del>18 feet</del>	<del>22 feet</del>	
<del>90°</del>	<del>24 feet</del>	<del>24 feet</del>	
<del>Parallel</del>	<del>12 feet</del>	<del>22 feet</del>	

~~— (4) Non-residential driveways.~~

~~— (a) Non-residential driveways widths measured at the right-of-way line shall be a minimum width of fifteen (15) feet for one-way traffic and twenty-four (24) feet for two-way traffic.~~

~~— (b) One (1) driveway per parcel shall be permitted for properties with up to one hundred and fifty (150) feet of street frontage. An additional driveway may be permitted for each additional one hundred and fifty (150) feet of street frontage.~~

~~— (c) Driveways shall be at least fifty (50) feet apart measured from the closest driveway edge at the right-of-way line.~~

~~— (d) Driveways along a minor side street shall not be located closer than one hundred twenty (120) feet to the nearest major street intersection.~~

~~— (e) In no case, however, shall a driveway or curb cut be permitted on the radii of any intersection. All driveways that connect to a public road right-of-way shall be paved from the property line to the edge of pavement of the abutting roadway.~~

~~— For larger commercial development that proposes multiple lanes of traffic, the following driveway width requirements shall apply:~~

	Minimum	Maximum
Three-way traffic lanes	36 feet	48 feet
Four-way traffic lanes	48 feet	60 feet

~~—(5) Where off-street parking is required, such required parking areas shall be used for vehicular parking only. No sales, dead storage, repair work, dismantling or servicing of any kind shall be conducted, and the required areas in the various zoning districts shall be in addition to the loading and service spaces normally required for the business or office served.~~

~~—(6) Where off-street parking is required, such parking shall be provided on the same lot or premises with the business or office which is being served. In the event the use of the lot or premises expands or changes and would require additional parking that cannot be accommodated on-site, the parking requirement may be satisfied off-site by following the provisions of § 185.140(H).~~

~~—(7) Where artificial lighting is provided, it shall be designed and arranged so that no source of such lighting will be a visible nuisance to adjoining property used or zoned for a residential purpose. In addition, such lighting shall be designed and arranged to shield public streets and highways and all adjacent properties from direct glare or hazardous interference of any kind. All lighting shall meet the standards provided for in § 185.143 of the Palm Bay Code of Ordinances.~~

~~—(8) When units or measurements determining the number of off-street parking spaces result in requirement of a fractional space, any such fractional space equal to or greater than one-half ( $\frac{1}{2}$ ) shall require a full off-street parking space.~~

~~—(9) All required off-street parking areas shall be provided in compliance with the landscaping provisions of this Code of Ordinances set forth in § 185.142 and Chapter 180.~~

~~—(10) The provisions of this division (D) shall apply to all new off-street parking or other vehicular use areas.~~

~~—(11) Parking lots permitted prior to adoption of the Americans with Disabilities Act (ADA) may be re-painted atop the existing parking space striping and will be considered maintenance. However, parking areas that are modified from this original layout shall be re-designed meeting the ADA requirements, inclusive of parking space striping, signage, markings, and handicapped ramps (where applicable). The site must still meet the minimum amount of parking spaces as provided for in this section.~~

~~—(E) Shared parking.~~

~~—(1) The standards and peak parking analysis contained in the most current edition of "Parking Generation" by the Institute of Transportation Engineers (ITE), is hereby adopted and shall be referenced in any calculation of shared parking.~~

~~—(2) The Director of Growth Management may permit the required parking spaces for one use to be shared with required parking spaces for one or more uses upon a finding that:~~

~~—(a) The shared parking spaces are in close proximity and readily accessible to the uses served; and~~

~~—(b) The uses served have different peak parking demands and operating hours; and~~

~~—(c) The design of the parking area in terms of traffic circulation, vehicular and pedestrian access, stormwater management, landscaping, open space preservation, and public safety meets the requirements set forth in Chapter 185.~~

~~—(3) It shall be the responsibility of an applicant for shared parking approval to provide a description of the uses, site plan(s), trip generation report, parking study and other information necessary to permit a finding by the Director of Growth Management regarding the request for shared parking.~~

~~—(4) In granting approval to meet the parking requirement with shared parking, the Director of Growth Management may require an agreement for shared parking be made between or among the~~

~~appropriate parties in the form of a shared parking agreement with easement(s) in recordable form acceptable to the City Attorney's office. Such document shall be recorded in the public records of Brevard County, Florida.~~

~~—(F) Parking computations.~~

~~—(1) Acceptable thresholds. As part of an approval of new construction, a change in use, substantial renovation, or expansion of an existing shopping center, the applicant shall calculate the required number of spaces as listed in division (G) and:~~

~~—(a) The number of handicapped parking spaces shall be as required by applicable Florida Statutes.~~

~~—(2) Unlisted uses. Upon receiving a development application for a use not listed in division (G), the Director of Growth Management shall apply the parking~~

and loading requirements for the listed use most similar in parking needs to the use for which development approval is requested.

~~—(3) Multiple uses. Lots containing more than one (1) use shall provide parking in an amount equal to the total of the requirements for all uses unless a shared parking arrangement is approved pursuant to division (E).~~

~~—(4) Fractions. When calculations of the number of required spaces result in fractions, any fraction up to one-half shall be disregarded and any fraction of one-half or more shall be rounded upward to the next highest full number.~~

~~—(5) Bench seating. Where seating consists of benches or pews, each twenty (20) linear inches shall be considered one seat.~~

~~—(6) Floor area. For the purpose of computing parking requirements which are based on the amount of square footage in buildings, calculations shall be on a gross floor area basis, unless otherwise indicated.~~

~~—(7) Employees. For the purpose of computing parking requirements based on the number of employees, calculations shall be for the largest number of persons working on any single shift, including owners and managers.~~

~~—(G) Amount of off-street parking required. Off-street parking shall be provided based on the following minimum requirements:~~

~~—(1) Animal hospital or veterinarian clinic: One (1) space for each five hundred (500) square feet of gross floor area, plus one (1) space for each doctor and/or employee.~~

~~—(2) Auto repair: One (1) space for each two hundred (200) square feet of gross floor area, plus credit of one (1) space per bay.~~

~~—(3) Care home or convalescent home: One (1) space for each patient bed.~~

~~—(4) Church or other place of worship: One (1) space for each three (3) seats in auditorium or chapel area, or one (1) space for each one hundred and twenty (120) square feet of floor area of the main assembly hall, whichever is greater, plus one (1) space per classroom.~~

~~—(5) Country club, health clubs, racquet clubs, or recreational facility: One (1) space for each one hundred and twenty (120) square feet of assembly hall/auditorium or one (1) space for each two hundred (200) square feet of gross floor area, whichever requirement may be greater, plus two (2) spaces per court and four (4) spaces per golf hole.~~

- ~~— (6) Day care centers: One (1) space per state required staff person plus one (1) space per ten (10) children, based on state license maximum.~~
- ~~— (7) Residential uses:~~
  - ~~— (a) Single-family dwelling unit: Minimum of two (2) parking spaces per dwelling unit.~~
  - ~~— (b) Multiple-family dwellings:~~
    - ~~— 1. Minimum of two (2) parking spaces per a two (2) or more bedroom dwelling unit;~~
    - ~~— 2. One and one-half (1½) parking spaces per one (1) bedroom dwelling unit; and~~
    - ~~— 3. One (1) space per efficiency unit that is part of a mixed one (1) and two (2) bedroom multi-family development. A development of efficiency units only shall have a minimum of one and one-half (1½) parking spaces per unit.~~
- ~~— (8) Elderly and handicapped housing: One half (½) of a parking space per dwelling unit.~~
- ~~— (9) Financial institution: One (1) space for each two hundred (200) square feet of gross floor area.~~
- ~~— (10) Food store: One (1) space for each two hundred (200) square feet of gross floor area.~~
- ~~— (11) Furniture carpet or appliance store: One (1) space for each four hundred (400) square feet of retail floor space.~~
- ~~— (12) Hospital: One (1) space for each two (2) beds, plus one (1) space for each employee at maximum employment on a single shift.~~
- ~~— (13) Hotel or motel: One (1) space for each guest room or rental unit, plus one (1) space for each employee.~~
- ~~— (14) Manufacturing and industrial activities: One (1) space for every employee on the largest working shift, or one (1) space for each one thousand (1,000) square feet of gross floor area, whichever is greater, plus one (1) space for each company vehicle operating from the premises.~~
- ~~— (15) Marina: One (1) parking space for every two (2) wet boatslips and one (1) parking space for every four (4) dry boatslips.~~

~~— (16) Medical and dental offices and clinics: One (1) space for each three hundred (300) square feet of gross floor area, plus one (1) space per each employee.~~

~~— (17) Mobile home: Two (2) spaces per mobile home.~~

~~— (18) Office (administrative, business or professional): One (1) space for each three hundred (300) square feet of gross floor area.~~

~~— (19) Place of public assembly, including an assembly hall, exhibition hall, convention hall, entertainment center, community center, library or museum One (1) space for each three (3) seats, or one (1) space for each two hundred (200) square feet of gross floor area, whichever is greater.~~

~~— (20) Restaurants and drinking establishments: One (1) space for each three (3) seats, plus one (1) space for every employee.~~

~~— (21) Drive-thru restaurants without indoor seating: one (1) space for each seventy-five (75) square feet of gross floor area plus one (1) space for every employee.~~

~~— (22) Retail stores and shops, personal service establishments, household repair or equipment shops: One (1) space for each two hundred (200) square feet of gross floor area.~~

~~— (23) School, elementary (public, private or parochial): One (1) space for each classroom or office room, plus one (1) space for each one hundred and fifty (150) square feet of seating area, including aisles, in any auditorium or gymnasium or cafeteria intended to be used as an auditorium.~~

~~— (24) School, junior and senior high schools and colleges (public, private or parochial), K-8 and K-12 educational facilities: Four (4) spaces for each classroom or office room, plus one (1) space for each one hundred and fifty (150) square feet of seating area, including aisles, in any auditorium or gymnasium or cafeteria intended to be used as an auditorium.~~

~~— (25) Shopping centers.~~

~~— (a) For commercially zoned developments with twenty-five thousand (25,000) gross square feet or greater, minimum off-street parking shall be provided according to the following schedule:~~

<del>Gross Floor Area</del>	<del>Parking/Square Feet</del>
<del>25,000 to 50,000 sq. ft.</del>	<del>1 space per 250 sq. ft.</del>



50,000 sq. ft. and over                      1 space per 400 sq. ft.

~~—— (b) There shall be no other parking space reductions in shopping centers than provided above.~~

~~—— (c) When tenants of a shopping center include theaters, the following also applies:~~

~~—— 1. Theaters. Shopping centers that contain a theatre shall provide the amount of parking as required in (a) above, plus the number of spaces required for theaters in (26) below.~~

~~—— (26) Theaters and other places of assembly having fixed seating: One (1) space for each four (4) seats, plus one (1) space for each two (2) employees.~~

~~—— (27) Warehousing and wholesaling: One (1) space for each one thousand (1,000) square feet of gross floor area for buildings up to ten thousand (10,000) square feet of gross floor area. For buildings in excess of ten thousand (10,000) square feet, one (1) space shall be provided for each two thousand (2,000) square feet, plus one (1) space for each company vehicle operating from the premises.~~

~~—— (28) Multi-tenant warehouse buildings (typically used for contractors and other service establishments): One (1) space for each five hundred (500) square feet of gross floor area, plus one (1) space for each company vehicle operating from the premises.~~

~~—— (29) Indoor Recreation: For those indoor recreation categories not specifically provided for herein, there shall be a minimum of one (1) space for each three hundred (300) square feet of gross floor area or one (1) space for each two (2) machines, whichever is greater.~~

~~—— (30) Self-storage facilities:~~

~~—— (a) Internally-accessed self-storage facilities (indoor, climate-controlled):~~

~~—— 1. One (1) space for each 25 units, plus three (3) spaces for the facility's lease office.~~

~~—— (b) Externally-accessed facilities (drive-up storage units):~~

~~—— 1. At least three (3) parking spaces shall be provided adjacent to the facility's lease office. Interior traffic lanes between storage buildings shall be a minimum of thirty-five (35) feet wide for two-way traffic and a minimum of twenty-five (25) feet for one-way traffic, in order to accommodate loading and unloading, as well as through and/or emergency traffic.~~

~~—(c) Outdoor storage of vehicles (boats, R.V.'s, etc.) may occur at either of the above facility, on paved or stabilized surfaces as approved by the City Engineer. The outdoor storage area must be screened from any public rights-of-way or adjacent residentially zoned property by an 8' tall completely opaque wood or PVC fence, or masonry wall that has a finished appearance on both sides of the wall.~~

~~—(H) Off-site parking and storage lots. All off-site parking and storage lot applications shall be considered individually by the Director of Growth Management and shall be subject to the requirements of this section and the City Land Development Code for site plan approval.~~

~~—(1) Conformance standards. All off-site parking and storage lots must be located no further than five hundred feet (500') from the outermost boundaries to the parent parcel that must contain a minimum of one (1) principal structure. No off-site parking area shall be permitted where the subject property is separated from the parent property by an arterial or collector roadway.~~

~~—(2) The applicant must submit a survey showing any exceptional specimen trees on site and submit a parking plan with details for surface material, traffic and safety devices, along with storm water treatment, for administrative site plan review.~~

~~—(3) Any exceptional specimen trees to be preserved in-place shall be effectively fenced or separated so that no damage shall occur to these trees while the site is being used for parking of vehicles or storage of materials on site.~~

~~—(4) Storage lots shall be screened on all sides by a minimum 6' tall completely opaque wood or PVC fence, or a masonry wall with a finished exterior surface.~~

~~—(5) Storage lots shall be constructed of paved or stabilized surfaces as approved by the City Engineer, or designee, and the driveway shall be paved from the property line to the edge of pavement of the abutting roadway.~~

~~—(6) Parking lots shall meet the parking development standards of this section and meet the landscape requirements of § 185.142.~~

~~—(7) The proposed off-site parking or storage lot must post the identity of the business(es) that has control of the site, the hours of operation for the lot, as well as emergency contact information that is clearly visible from the street. This information shall remain posted for as long as the site is in use.~~

~~—(8) Any lot or parcel of land leased for off-site parking or storage shall cease use at the same time the lease agreement is terminated.~~

~~—(9) A unity of title shall be required for off-site parking lots where they are utilized to meet the minimum parking requirements of the parent parcel.~~

~~—(I) Parking rate adjustment.~~

~~—(1) Any deviation in parking from the acceptable thresholds set forth in this section, shall require approval by the Director of Growth Management. This approval shall rely on written request for a parking rate adjustment filed with the Director of Growth Management. At a minimum the application shall include:~~

~~—(a) All data, materials, and information required for site plan approval of the subject site,~~

~~—(b) A map of the surrounding area reflecting existing zoning,~~

~~—(c) A parking study that identifies the relevant facts upon which the request is based, and describes in detail the basis for the proposed rate adjustment, and~~

~~—(d) Documents demonstrating that the applicant controls and will continue to control the property(ies) affected by the application.~~

~~—(2) The parking study required in section may include, but is not limited to:~~

~~—(a) Local parking studies of the same land use,~~

~~—(b) Shared parking by mixed uses,~~

~~—(c) On-site trip capture from secondary trip opportunities, and/or~~

~~—(d) Utilization of off-site parking, employer-based or other activities and/or provisions that will result in alternative travel modes that are not dependent on on-site parking,~~

~~—(3) In granting a parking rate adjustment, the Director of Growth Management shall determine that the proposed rate adjustment would not result in undesirable overflow parking, nor otherwise adversely impact the character and integrity of the surrounding area.~~

~~—(J) Paving standards. All parking spaces, access drives, and loading zones shall be paved in accordance with the design standards set forth in the current edition of the City of Palm Bay Public Works Manual and the Land Development Code.~~

~~—(K) Vehicular and pedestrian interconnections. For commercial development, vehicular and pedestrian interconnections are encouraged.~~

~~§ 185.141 OFF-STREET LOADING AND SERVICE FACILITIES.~~

~~—Off-street loading and service facilities shall be provided in accordance with the following standards and specifications:~~

~~—(A) On the same lot with every structure or use, hereinafter erected or created there shall be provided and maintained adequate space for loading and unloading of materials, goods or things and for delivery and shipping so that vehicles for the service may use this space without encroaching on or interfering with the public use of sidewalks, streets, parking areas, aisles, driveways and alleys by pedestrians and vehicles.~~

~~—(B) Where any structure is enlarged or any use is extended so that the size of the resultant occupancy comes within the scope of this section, the full amount of off-street loading space shall be supplied and maintained for the structure or use in its enlarged or extended size. Where the use of a structure or land or any part thereof is changed to a use requiring off-street loading space under this section, the full amount of off-street loading space shall be supplied and maintained to comply with this section.~~

~~—(C) For the purposes of this section, an off-street loading space shall be an area at the grade level at least fourteen (14) feet wide, forty-five (45) feet long, and having fourteen (14) feet of vertical clearance. Each off-street loading space shall be arranged for convenient and safe ingress and egress by motor truck and/or trailer combinations. No off-street loading space or necessary access way thereto shall be designated or utilized as off-street parking space. Each off-street loading space shall be accessible from the interior of any building it is intended to serve.~~

~~—(D) Off-street loading spaces shall be provided and maintained in accordance with the following schedule:~~

~~—(1) For buildings or structures containing retail, food store, restaurant, laundry, dry cleaning or similar retail or service uses which have an aggregate gross floor area of:~~

~~—(a) Over five thousand (5,000) square feet, but not over twenty-five thousand (25,000) square feet — one (1) space;~~

~~—(b) Over twenty-five thousand (25,000) square feet, but not over fifty thousand (50,000) square feet — two (2) spaces;~~

~~—(c) One (1) additional loading space shall be provided for each additional fifty thousand (50,000) square feet, or fractional part thereof, for buildings larger than fifty thousand (50,000) square feet.~~

~~—(2) For each auditorium, exhibition hall, museum, hotel, or motel, office building, or similar use, which has an aggregate gross floor area of over ten thousand (10,000) square feet, but not over fifty thousand (50,000) square feet, one (1) space. One (1) additional loading space shall be provided for each additional fifty thousand (50,000) square feet, or fractional part thereof, for buildings larger than fifty thousand (50,000) square feet.~~

~~—(3) For any light manufacturing, ware-house, research and development, assembly or similar industrial use which has aggregate gross floor area of over ten thousand (10,000) square feet, but not over fifty thousand (50,000) square feet, one (1) space. One (1) additional loading space shall be provided for each additional fifty thousand (50,000) square feet, or fractional part thereof, for buildings larger than fifty thousand (50,000) square feet.~~

~~—(4) For any use not specifically mentioned in this section, the requirements for off-street loading for a use which is mentioned and to which the unmentioned use is similar shall apply. Where there is any question as to the off-street loading needs of any other use, the number shall be determined and fixed by the Growth Management Director, or designee.~~

~~—(E) Off-street loading facilities to meet the needs of one (1) use shall not be considered as meeting the off-street loading needs of any other use.~~

~~—(F) No area supplied to meet the required off-street parking areas for a use shall be utilized for or be deemed to meet the requirements of this section for off-street loading facilities.~~

~~—(G) Nothing in this section shall prevent the collective, joint or combined provision of off-street loading facilities for two (2) or more buildings or uses; provided, that such off-street loading facilities are equal in size and capacity to the combined requirements of the several buildings or uses and are so located and arranged as to be usable thereby.~~

~~—(H) Plans for buildings or uses requiring off-street loading facilities under the provisions of this section shall clearly indicate the location, dimensions, clearance and access of such required off-street loading facilities~~

~~§ 185.142 OFF-STREET PARKING AREA LANDSCAPING REQUIREMENTS.~~

~~—Wherever in any zoning district, off-street parking areas in excess of one thousand five hundred (1,500) square feet, or five (5) spaces, exist, such parking areas and land shall conform to the minimum landscaping requirements set forth in this section; except, that single- and two-family residential uses on individually platted lots and multilevel parking structures shall be exempt from such requirements. All landscaped areas shall be protected from vehicular encroachment by curbs, wheel stops or other similar devices. Existing trees may be used to meet the requirements of this section.~~

~~—(A) Plant material.~~

~~—(1) Existing vegetation. The preservation and maintenance of existing native vegetation is strongly encouraged. Native species such as oaks, pines, sabal palms, red maples and mangroves having a trunk height of at least six (6) feet or having a caliper of at least two (2) inches may substitute for the tree planting requirements stated in this section. Existing vegetation may also substitute for buffer requirements along interior lot lines if such vegetation creates an opaque screen and has a caliper of at least two (2) inches. The following species, however, are not to be used as substitutes for the requirements in this section nor shall they be planted:~~

- ~~—Botanical name (common names)~~
- ~~—Casuarina (Australian pine, beefwood)~~
- ~~—Melaleuca (cajeput, punk tree, paperbark tree)~~
- ~~—Eucalyptus (gum tree)~~
- ~~—Schinus terebinthifolius (Brazilian pepper)~~
- ~~—Ricinus cummunis (castor bean)~~
- ~~—Melia azedarach (chinaberry)~~
- ~~—Enterolobium cyclocarpum (ear tree)~~
- ~~—Sapium sebiferum (Chinese Tallow)~~
- ~~—Cupaniopsis anacardioides (Carrotwood)~~
- ~~—Leucaena leucocephala (White Leadtree)~~

~~—(2) Drought tolerant vegetation. A minimum of fifty percent (50%) of total cumulative landscape plant material used to meet the provision of this section shall be drought tolerant as classified in the most recent edition of the St. Johns Water~~

~~Management District Xeriscape Plant Guide, or other comparable publications approved by the Planning Division. Existing vegetation may be used to fulfill the requirements of this section.~~

~~— (3) (a) Trees. All trees shall be species having an average mature spread or crown spread of fifteen (15) feet or greater in area and having trunks which can be maintained in a clean condition with over six (6) feet of clear wood measured from the ground. Trees having an average mature spread or crown less than fifteen (15) feet may be substituted by grouping the same so as to create the equivalent of a fifteen (15) foot crown spread. Tree species shall be a minimum of ten (10) feet in overall height at time of planting. Tree species whose roots are known to cause damage to public road ways or other public works shall not be planted closer than twelve (12) feet to such public works, unless the tree root system is completely contained within a barrier for which the minimum interior dimensions shall be five (5) feet square and five (5) feet deep, and for which construction requirements shall be four (4) inch thick concrete reinforced with No. 6 load mesh (6×6×6) or equivalent.~~

~~— (b) No single species of tree shall be used to total more than fifty (50%) percent of the required number of trees.~~

~~— (4) Palms. Palm trees may be used as a part of a landscaping plan; however, palms shall not be used to fill more than thirty percent (30%) of the requirements of this section. Existing native palms on site should be used and can substitute if the palms have a clear trunk height of at least six (6) feet or a caliper of at least six (6) inches.~~

~~— (5) Shrubs and hedges. Shrubs shall be a minimum of three (3) feet overall in height when measured at planting. Hedges, where required, shall be planted and maintained so as to form a continuous, unbroken, solid visual screen within six (6) months after time of planting.~~

~~— (6) Ground covers. Ground covers used in lieu of grasses shall be planted so as to present a finished appearance. The use of marl, crushed shell, coquina, or other road base material as a ground cover is unacceptable. Railroad ties, wood, bricks, stones, and synthetic materials can be used to separate landscape areas, but cannot be used in place of required ground cover.~~

~~— (7) Lawn grass. Lawn grasses shall be planted in grass species normally grown as permanent lawns in the county such as, but not limited to bahia, St. Augustine, and Bermuda species. All landscape areas to contain lawn grass shall~~

~~be completely covered with solid sod. Solid sod shall be used in swales or other areas subject to erosion. Grass sod shall be clean and reasonably free of weeds, noxious pests or disease.~~

~~—(8) Artificial plant material. Artificial plant material or artificial lawns or plants cannot be used.~~

~~—(9) Conformance with state standards. All plant material used shall conform to the standards for Florida No. 1, or better, as given in Grades and Standards for Nursery Plants, State of Florida, Department of Agriculture.~~

~~—(10) Mulch. All areas of required landscaping shall be mulched unless completely covered with grass or other approved ground cover.~~

~~—(11) Vines. Plants which require support to reach mature form. Vines shall be planted no further apart than three (3) feet from each other when used to meet the requirements of division (B)(3)(g) below.~~

~~—(B) Development standards.~~

~~—(1) Where parking areas are provided, there shall be required landscaping between such area and any abutting right-of-way as follows:~~

~~—(a) A strip of land at least ten (10) feet in depth located adjacent to an abutting right-of-way shall be landscaped to include an average of one (1) tree for each fifty (50) linear feet or fractional part thereof. These trees shall have a minimum two (2) inch caliper with a height of ten (10) feet at time of planting.~~

~~—(b) In addition, a hedge, wall, berm or other opaque durable landscape barrier of at least three (3) feet in height shall be placed along the entire length of the abutting right-of-way. Shrubs shall be planted twenty four (24) inches apart; this requirement shall apply to all sections of the landscape code where the planting of shrubs is required. If such opaque, durable barrier is of nonliving material, shrubs or vines shall be planted in such a manner as to break up the expanse of the wall. A two (2) foot berm may be used; however, additional landscaping at least one (1) foot in height at time of planting shall be installed. The remainder of the required landscape areas shall be landscaped with grass, ground cover or other landscape treatment.~~

~~—(c) Large parcels. When multi-family or non-residential parcels or tracts of land contain frontage that exceeds three hundred (300') linear feet, these developments shall plant one (1) tree per thirty (30) linear feet, or fractional part thereof, for the entire length of the frontage. Trees may be clumped, provided that~~



~~spacing between tree trunks is no greater than fifty (50) feet. The frontage shall also contain one (1) shrub per two (2) linear feet and these shrubs shall be a minimum of three (3) feet in height at time of planting.~~

~~— (2) Required landscaping adjacent to interior property lines:~~

~~— (a) Where parking areas abut property zoned or, in fact, used primarily for residential or institutional purposes, that portion of such area not entirely screened visually by an intervening structure or existing conforming buffer from an abutting property shall be provided a landscaped buffer which shall be maintained and replaced as needed. Such landscaped buffer shall consist of plant material, wall or other durable barrier at least six (6) feet in height measured from the median elevation of the parking area closest to the common lot line, and shall be located between the common lot line and the abutting property. Where the screen is composed of plant material capable of reaching six (6) feet in height, it shall be at least thirty-six (36) inches in height at time of planting and shall attain opacity within twelve (12) months under normal growing conditions.~~

~~— (b) In addition, an average of one (1) tree shall be provided for each thirty-five (35) linear feet of such parking area or fractional part thereof, adjacent to the common lot line, or a ratio equal to one (1) tree per thirty-five (35) linear feet of fifty percent (50%) of the length of the common lot line, whichever is greater. Trees within perimeter landscape strips may be grouped, but the distance between these trees shall not exceed fifty (50) feet. These trees shall have a minimum two (2) inch caliper with a height of ten (10) feet at time of planting. Each such tree shall be planted in at least twenty-five (25) square feet of planting area with a minimum dimension of at least five (5) feet. Each such planting area shall be landscaped with grass, ground cover or other landscape treatment.~~

~~— (c) Where such area abuts a dedicated alley or property zoned and, in fact, used for office, commercial or industrial purposes, that portion of area not entirely screened visually by an intervening structure or existing conforming buffer shall comply with the tree provisions only as prescribed in this section.~~

~~— (d) 1. Where a drainage or utility easement or right-of-way separates the parcel containing the off-street parking area and abutting properties or public rights-of-way, the provisions of this section shall apply unless the easements or rights-of-way contain trees which meet the planting and number requirements of this section. Should these trees be removed or die, the requirements of this section must be met.~~

~~2. Where drainage facilities or drainage or utility easements exist along the lot lines within the parcel containing off-street parking areas, the required trees shall not be placed in any drainage facility or easement; however, trees may be located along the edge of drainage facilities.~~

~~(3) Required interior parking area landscaping.~~

~~(a) All parking areas shall be internally landscaped to provide visual and climatic relief from broad expanses of pavement and to channelize and define logical areas for pedestrian and vehicular circulation. Interior landscaping, excluding required parking setbacks, shall account for ten percent (10%) of the total parking area. Landscape dividing strips, with or without walkways, shall be used to subdivide the parking area into rows with not more than an average of ten (10) spaces, per row except that parking rows adjacent to required landscape row dividers shall only be required such landscape strips at the end of each landscape row divider.~~

~~(b) Each separate landscape area shall contain a minimum of one hundred (100) square feet and shall have a minimum dimension of at least ten (10) feet, measured at its narrowest area, except that islands required to be designed with turn radii are permitted to have less than ten (10) feet if approved by the Growth Management Director, or designee, and shall include at least one (1) tree, with the remaining area meeting the requirements of this code. The total number of trees shall not be less than one (1) per two hundred (200) square feet or fraction thereof of required interior landscaped area and shall exclude those trees required along the perimeter of the parcel. Such landscaped areas shall be protected from vehicular encroachment by curbs, wheelstops or landscape timbers. Whenever an off-street parking area is designed to provide parking of vehicles in five (5) rows or more, at least one (1) interior landscaped area not less than ten (10) feet in width shall be provided the length of the parking rows, with at least one (1) landscaped row divider required for every five (5) parking rows. Landscaped areas, including landscaped islands, within or abutting vehicular use areas shall be excavated to a depth of two (2) feet to remove lot base course material, lime rock, asphalt, concrete, and similar material in order to ensure that adequate planting soil exists.~~

~~(c) In other parking areas where the strict application of this section will seriously limit the function of such areas, such as off-street loading areas, the required landscaping may be located near the perimeter of the paved area. Such interior landscaping which is relocated as herein provided shall be in addition to the perimeter landscaping requirements.~~

~~—— (d) The front of a vehicle may encroach upon any interior landscaped area or walkway when the area is at least three and one-half (3½) feet in depth per abutting parking space and protected by motor vehicle stops or curbing. An overhang may be permitted in such landscaped area or walkway. If shrubs or hedges are planted in front of such parking areas, the shrubs must be planted a minimum of three and one-half (3½) feet from the back of the curb or wheel stop to prevent damage to the hedge.~~

~~—— (e) Interior landscaped areas may be used for retention and detention sites for groundwater recharge.~~

~~—— (f) All garbage/refuse containers shall be screened on at least three (3) sides by concrete block, fencing or other materials at least six (6) feet in height which renders the view of the container opaque.~~

~~—— (g) Landscape vines, shrubs, or a combination of the two, are required to be planted along the outside of subdivision walls and/or any required masonry walls facing canal, road, or other rights-of-way.~~

~~—— (4) Pedestrian zone landscaping.~~

~~—— (a) A pedestrian zone is defined as a setback from any building facade facing a parking area or driveway, excluding the rear of the building. In no case shall the required pedestrian zone have an area less than ten (10) feet in width; nor shall more than five (5) feet of the width of the required pedestrian zone be paved, except for necessary access perpendicular to building entries. A minimum of five (5) feet of the width of the required pedestrian zone shall be clear of roof overhand. For drive-thru facilities, the length of a building containing the drive-thru window(s), or the loading/unloading spaces and overhead doors in industrial/warehouse or commercial buildings shall be exempt from these provisions.~~

~~—— (b) Plant materials. All multi-family and all non-residential development shall have at least two (2) trees planted per pedestrian zone, except for areas under a canopy. The requirements of this subsection concerning pedestrian zone trees shall not apply for gasoline stations if such trees cause a line of sight obstruction.~~

~~—— (5) Replacement Trees. The requirements for replacement trees listed in § 180.16(E) shall be observed. However, under extenuating circumstances where the requirements conflict with best horticulture practices for tree planting, some number of these trees may be planted within publically-owned lands. The number,~~

~~location, and placement thereon, shall be approved by the Growth Management Director, or designee. As an alternative to planting the trees off-site, the developer may choose to mitigate said trees through the payment of a fee, into the Palm Bay Tree Replacement Trust Fund. The replacement contribution shall be as provided for in latest fee resolution.~~

~~—(C) Intersection visibility. Where an aisle, driveway, sidewalk, bike path or other access way intersects a public right-of-way, landscaping shall be used to define the intersection, provided, however, all landscaping within the triangular areas described below shall provide unobstructed cross-visibility at a level between two (2) and six (6) feet. Trees having limbs and foliage trimmed in such a manner that no limbs or foliage extend into cross-visibility shall be allowed, provided they are so located so as not to create a traffic hazard. Landscaping, except grass and ground cover, shall not be located closer than three (3) feet from the edge of any access way pavement. The triangular areas are:~~

~~—(1) The areas of property on both sides of an aisle, driveway or other access way formed by the intersection of each side of the aisle, driveway or access way and the public right-of-way pavement line with two (2) sides of each triangle being ten (10) feet in length from the point of intersection and the third side being in line connecting the ends of the two (2) other sides.~~

~~—(2) The area of property located at a corner formed by the intersection of two (2) or more public streets with two (2) sides of the triangular area being measured thirty (30) feet in length along the right-of-way line (or in the case of an arc, the extensions of the right-of-way lines) from their point of intersection, and the third being a line connecting the ends of the other two (2) lines.~~

~~—(D) Installation and maintenance.~~

~~—(1) All landscaping shall be installed to accepted commercial planting procedures. Soil, which is free of lime rock, pebbles or other construction debris shall be provided. The owner of the property shall be responsible for the maintenance of all landscaping in good condition so as to present a neat, healthy and orderly appearance free of refuse and debris. All landscaped areas shall be provided with an irrigation system or available water supply with at least one (1) outlet located within one hundred and fifty (150) feet of the plant material. Where existing vegetation is used to meet the requirement along public rights-of-way or interior lot lines a water supply is not required. In order to reduce irrigation requirements, the following water saving techniques will be encouraged:~~

- ~~—— (a) The use of reclaimed wastewater where available;~~
  - ~~—— (b) The use of drought tolerant ground cover instead of lawn grass;~~
  - ~~—— (c) Watering schedules for automatic systems to reduce irrigation in the rainy summer and dormant winter seasons;~~
  - ~~—— (d) The commitment to irrigate between sunset and sunrise when evaporation is minimal;~~
  - ~~—— (e) Irrigation systems shall be designed to the greatest extent practical, water being applied to impervious areas is eliminated;~~
  - ~~—— (f) The use of xeric landscaping techniques.~~
- ~~—— (2) If any living material that is required by this code and shown on the approved site/landscape plan dies or fails to achieve normal growth, it shall be replaced within thirty (30) days of notification from the Growth Management Director, or designee. Such replacement landscaping shall meet all requirements of this code and the approved site/landscape plan. Failure to maintain the minimum landscape requirements of this section shall constitute a violation of this code.~~
- ~~—— (3) Pruning and topping. Pruning restrictions shall not apply for trees located under power lines. Trees shall be pruned only as necessary to promote healthy growth. Trees shall be allowed to attain their normal size and shall not be severely pruned or “hat racked” in order to permanently maintain growth at a reduced height. Trees may be periodically pruned or thinned in order to reduce leaf mass in preparation for tropical storms. All pruning shall be accomplished in accordance with the National Arborist’s Standards.~~
- ~~—— (E) Site plan data. Applicants for building permits shall submit a landscape plan containing the following:~~
- ~~—— (1) An engineering scale (One (1) inch equals twenty (20) feet preferred).~~
  - ~~—— (2) Property lines.~~
  - ~~—— (3) Dimensions.~~
  - ~~—— (4) Structures.~~
  - ~~—— (5) Accurate parking lot design showing parking spaces, aisles, loading areas, driveways, islands, signs, and parking lot or security light fixtures and the like.~~

~~—(6) Calculations of total square footage of the parking and landscaped areas as well as indicating the number and location of existing trees to be used and the number of new trees to be planted.~~

~~—(7) Location of water lines or other underground utilities, fire hydrants and other above ground utility fixtures.~~

~~—(8) Grading plan.~~

~~—(9) Plant specification list which is keyed to the plan and contains the botanical name, common name, estimated sizes at planting and at maturity (crown spread and height), quantity of each, and how transplanted to the site (container stock, bare root, balled or burlapped).~~

~~—(F) Nuisance Vegetation. All recognized nuisance trees (i.e. pepper trees, Australian pines, etc.) shall be removed during site preparation and perpetually removed (upon re-growth) after issuance of a Certificate of Occupancy.~~

~~—(G) The provisions of this section shall apply to all new off-street parking areas.~~

~~—(H) At such time as existing off-street parking or other vehicular use areas are enlarged, the enlarged areas shall meet the provisions of this section. The newly enlarged areas shall not cause the existing parking area landscaping to be more nonconforming.~~

~~—(I) At such time as existing off-street parking or other vehicular use areas are modified, the modification shall not cause the existing parking area landscaping to be more nonconforming. The intent of this provision is that any existing off-street parking or vehicular use areas shall, when feasible, become more conforming to the landscaping requirements of this section. Determination of the feasibility of modifying the existing parking or vehicular use areas, to become more conforming, shall be made by the Growth Management Director, or designee. This determination shall be based on the following considerations:~~

~~—(1) Cost of compliance with specific criteria in the parking area landscaping code;~~

~~—(2) Physical space available within the existing areas to comply with specific criteria in the parking area landscaping codes, such as existing "green" spaces;~~

~~—(3) The extent that existing conditions represent safety hazards; and~~

~~—(4) The extent to which modification addresses other criteria within the Code of Ordinances, such as, but not limited to, enhanced landscape installation,~~

~~compliance with the Americans with Disabilities Act (ADA), stormwater management requirements, and similar regulations.~~

~~§ 185.143 LIGHTING STANDARDS.~~

~~—It is the intent of this Code to define practical and effective measures by which the commercial outdoor light usage can be reduced, while preserving safety, security, and the nighttime use and enjoyment of property. These measures are intended to curtail the degradation of the nighttime visual environment, reduce light trespass, glare, energy consumption and resource waste by encouraging lighting practices that direct appropriate amounts of light where and when it is needed, increasing the use of energy-efficient sources, and decreasing the use of poorly shielded or inappropriately directed lighting fixtures.~~

~~—(A) Conformance standards. All outdoor lighting shall be installed in conformance with the provisions of this Code, the Florida Building Code, the National Electrical Code, the Energy Code, and the Sign Code of Palm Bay and under appropriate permit and inspection.~~

~~—(B) Applicability. New Uses, Buildings and Major Additions or Modifications. For all proposed new land uses, developments, buildings, and structures that require a permit, all outdoor lighting shall meet the requirements of this Code. All building additions or modifications of fifty percent (50%) or more in terms of additional dwelling units, gross floor area, or parking spaces, either with a single addition or with cumulative additions subsequent to the effective date of this provision, shall invoke the requirements of this Code for the entire site, including previously installed and any new outdoor lighting. Cumulative modification or replacement of outdoor lighting constituting fifty (50) percent or more of the permitted lumens for the parcel, no matter the actual amount of lighting already on a non-conforming site, shall constitute a major addition for purposes of this section.~~

~~—(C) General outdoor lighting standards.~~

~~—(1) Shielding Standards. All nonexempt outdoor lighting fixtures shall have shielding so that the total lumen output falls to zero (0.00) at the property line. (Exception: ) seasonal decorative lighting (i.e. Christmas Lights) using typical low-wattage incandescent or LED lamps shall be permitted in all zoning districts from the Thanksgiving holiday through the 15th of January.~~

~~—(2) The use of Metal Halide (MH), Light Emitting Diode (LED), Quartz Light (OL), and High Intensity Discharge (HID), when properly shielded is permitted for~~

~~all exterior site lighting. Other types of lamps not listed shall be considered as a part of the permitting process.~~

~~—(3) High Pressure Sodium (HPS) lighting is prohibited for building and security lighting.~~

~~—(4) The use of Low Pressure Sodium (LPS) lighting is prohibited in all zoning districts.~~

~~—(5) The undue lighting of the night sky by means of searchlights and similar devices without prior approval from the City Manager or their designee is prohibited.~~

~~—(6) Neon Lighting, LED strip and tracer lighting and other types of lighting used to illuminate the outline of a structure or storefront window system is prohibited.~~

~~—(7) No lighting fixture shall produce a lumen output exceeding one thousand (1000) lumens in any given area.~~

~~—(8) Poles and support structures used for outdoor lighting shall not exceed thirty feet (30') in height. The exception shall permit for required lighting of all communication towers or tall structures as mandated by the FAA and FCC.~~

### **NONCONFORMANCE PROVISIONS**

#### **~~§ 185.155 INTENT.~~**

~~—(A) Within the districts established by this chapter or amendments that may later be adopted, there exists lots, structures, uses of land and structures and characteristics of use which were lawful before this chapter was passed or amended, but which would be prohibited, regulated or restricted under the terms of this chapter or future amendments.~~

~~—(B) It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their continuation. Such uses are declared by this chapter to be incompatible with permitted uses in the districts involved. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.~~

#### **~~§ 185.156 EXTENSION AND ENLARGEMENT.~~**

~~—(A) A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after~~



~~passage of this chapter by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved.~~

~~—(B) To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building on which an active building permit has been issued. Actual building construction shall be diligently carried on until the, subject structure is completed.~~

#### ~~§ 185.157 NONCONFORMING LOTS OF RECORD.~~

~~—(A) In any district, permitted principal and accessory structures may be erected on any single lot that is of record on the effective date of this section, notwithstanding limitations imposed by other provisions of this code of ordinances and any other applicable ordinance of the city. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. These provisions shall apply even though such lot fails to meet the requirements for area or width or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through the procedure established in § 169.009.~~

~~—(B) If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this chapter, and if all or part of the lots do not meet the requirements for lot width and area as established by this chapter, the lands involved shall be considered to be an undivided parcel for the purpose of this chapter, and no portion of the parcel shall be used which does not meet lot width and area requirements established by this chapter.~~

#### ~~§ 185.158 NONCONFORMING USES OF LAND.~~

~~—Where, at the effective date of adoption or amendment of this chapter, lawful use of land exists that is made no longer permissible under the terms of this chapter as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:~~

~~—(A) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this chapter; unless such use is changed to a use permitted in the district in which such use is located;~~

~~—(B) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this chapter;~~

~~—(C) If any such nonconforming use of land ceases for any reason for a period of more than ninety (90) consecutive days. Any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located;~~

~~—(D) No additional structure which does not conform to the requirements of this chapter shall be erected in connection with such nonconforming use of land.~~

#### ~~§ 185.159 NONCONFORMING STRUCTURES.~~

~~—Where a lawful structure exists at the effective date of adoption or amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:~~

~~—(A) No such structure may be enlarged or altered in a way which increases its nonconformity;~~

~~—(B) But any structure or portion thereof may be altered to decrease its nonconformity;~~

~~—(C) Should such a structure be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter;~~

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~~—(D) Should such a structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.~~

#### ~~§ 185.160 NONCONFORMING USES OF STRUCTURES OR OF STRUCTURES AND PREMISES IN COMBINATION.~~

~~—If a lawful use involving individual structures, or of structure and premises in combination, exists at the effective date of adoption or amendment of this chapter, that would not be allowed in the district under the terms of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:~~

~~—(A) No existing structure devoted to a use not permitted by this chapter in the district on which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;~~

~~—(B) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this chapter, but no such use shall be extended to occupy any land outside such building;~~

~~—(C) Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed;~~

~~—(D) When a nonconforming use of a structure or structure and premises in combination is discontinued or abandoned for six (6) consecutive months, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located;~~

~~—(E) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction, for the purpose of this chapter, is defined as damage to an extent of more than fifty percent (50%) of the replacement cost at time of destruction.~~

#### ~~§ 185.161 REPAIRS AND MAINTENANCE.~~

~~—(A) On any building devoted in whole or in part to any nonconforming use, work may be done in any period of six (6) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent (10%) of the current replacement value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this chapter shall not be increased.~~

~~—(B) Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.~~

#### ~~§ 185.162 NONCONFORMING OR SUB-STANDARD LOTS CREATED BY EMINENT DOMAIN PROCEEDINGS.~~

~~—Any lot or parcel which shall be made nonconforming or substandard as a result of eminent domain proceedings instituted by the city or other governmental agency or through a voluntary conveyance by a lot owner in lieu of formal eminent domain proceedings, which lot or parcel except for such eminent domain or voluntary conveyance shall be deemed to be a conforming lot or parcel for all purposes under this chapter. However, any new construction or building addition shall conform to the subject yard requirements of the applicable district. Any re-construction or maintenance of the existing structures may be performed with no additional encroachment into the subject yard requirements.~~

~~§ 185.163 USES UNDER CONDITIONAL USE PROVISIONS NOT NONCONFORMING USES.~~

~~—Any use for which a conditional use is permitted as provided in this chapter shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.~~

~~§ 185.164 TEMPORARY USES.~~

~~—The casual, intermittent, temporary or illegal use of land or structures shall not be sufficient to establish the existence of a nonconforming use. Such use shall not be validated by the adoption of this chapter unless it complies with the terms of this chapter.~~

## **ADMINISTRATION AND ENFORCEMENT**

### **PART 1. GENERAL PROVISIONS**

~~§ 185.180 ADMINISTRATION AND ENFORCEMENT.~~

~~—The Growth Management Director, under the supervision of the City Manager, shall administer and enforce this chapter. He may be provided with assistance of such other officers and employees of the city as may be necessary to enforce the provisions of this chapter. If any provisions of this chapter are violated, the person responsible for such violation shall be notified in writing, indicating the nature of the violation and ordering the action necessary to correct it. The Growth Management Director, at his discretion, shall order discontinuance of illegal use of land, buildings, or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this chapter to ensure compliance with or to prevent violation of its provisions.~~

~~§ 185.181 BUILDING PERMITS REQUIRED.~~

~~—(A) No building or other structure shall be erected, moved, added to or structurally altered without a permit therefor issued by the Building Official. No building permit shall be issued except in conformity with the provisions of this chapter, except after written order pursuant to the provisions of § 169.009.~~

~~—(B) The issuance of a permit upon plans and specifications shall not prevent the Building Official from thereafter requiring the correction of errors in such plans and specifications or preventing the building operations being carried on thereunder when in violation of this chapter or any other provision of this code of ordinances or any other city ordinance.~~

#### ~~§ 185.182 APPLICATION FOR BUILDING PERMIT.~~

~~—(A) All applications for building permits for any structure and its accessory buildings shall be accompanied by scale drawings at a scale acceptable to the Building Official in the appropriate number showing the following:~~

~~—(1) The actual dimensions and shape of the lot or lots to be built upon, including the location and actual boundaries of abutting watercourses and water bodies.~~

~~—(2) The exact sizes and locations on the lot of buildings already existing, if any.~~

~~—(3) The locations and dimensions of the proposed buildings or alterations.~~

~~—(4) The location and layout of the proposed sewage disposal system.~~

~~—(5) When applicable, the required parking spaces, loading and unloading spaces, maneuvering spaces and openings for ingress and egress.~~

~~—(6) When applicable, grading and drainage plans showing any and all cuts, fills and provisions for adequately carrying off surface water on premises plus provisions for any surface water which would naturally flow over or through the area. Such plans shall be reviewed and approved by the Land Development Review Engineer.~~

~~—(7) Such other information as lawfully may be required by the Building Official, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this chapter.~~

~~—(B) One (1) copy of the plans shall be returned to the applicant by the Building Official after he shall have marked such copy either as approved or disapproved and attested same by his signature on such copy. The original, similarly marked, shall be retained by the Building Official.~~

#### ~~§ 185.183 CERTIFICATE OF OCCUPANCY REQUIRED.~~

~~—No land or building, or part thereof, hereafter erected or altered in its use or structure shall be used until the Building Official shall have issued a certificate of occupancy stating that such land, building, or part thereof, and the proposed use thereof are found to be in conformity with the provisions of this chapter. Within three (3) days after notification that a building or premises, or part thereof, is ready for occupancy or use, it shall be the duty of the Building Official to make a final inspection thereof and to issue a certificate of occupancy if the land, building or part thereof and the proposed use thereof are found to conform with the provisions of this chapter, or, if such certificate is refused, to state such refusal in writing with the cause.~~

#### ~~§ 185.184 EXPIRATION OF BUILDING PERMITS.~~

~~—(A) Expiration and extension. A permit for work shall be deemed to be abandoned six (6) months from the date the permit was issued and the permit shall become void unless satisfactory progress is made. Satisfactory progress shall be evidenced by a requested inspection. One (1) or more ninety (90) day extensions of a permit may be allowed provided the extension is requested in writing. If granted, such extensions shall be in writing by the Building Official. An inspection must be requested within the ninety (90) day extension period or the permit shall expire.~~

~~—(B) Required inspections. If the work described in any permit, issued by the Building Official has begun, all required inspections shall be requested. If the work described in a permit has commenced, but the stage of the work does not require an inspection, an inspection shall nonetheless be required and requested by the party to whom the permit was issued, to determine satisfactory progress or an additional permit extension shall be required at least six (6) months.~~

#### ~~§ 185.185 CONSTRUCTION AND USE TO BE AS PROVIDED IN APPLICATIONS, PLANS, PERMITS, CERTIFICATES OF OCCUPANCY.~~

~~—Building permits or certificates of occupancy issued on the basis of plans and applications approved by the Building Official authorize only the use, arrangement~~

~~and construction. Use, arrangement or construction at variance with the authorized, shall be deemed a violation of this chapter.~~

~~§ 185.186 MINIMUM FLOOR ELEVATION.~~

~~—All buildings not already restricted by floodplain management requirements (as set forth in Chapter 174) intended for human occupancy shall be constructed with the ground floor level at least twelve (12) inches above the highest point of the surface of the public thoroughfare on which the property abuts. The Chief Building Official may waive such requirements after approval from the City Engineer, where the applicant demonstrates that on-site lot and unfinished floor elevations and drainage provides for protection of the finished floor.~~

**PART 2. AMENDMENTS**

~~§ 185.200 REGULATIONS SUBJECT TO AMENDMENT.~~

~~—The regulations, restrictions and boundaries set forth in this chapter may, from time to time, be amended, supplemented, changed or repealed, in the manner prescribed by law.~~

~~§ 185.201 PROCEDURE.~~

~~—The procedure for amendment of this chapter shall be as follows:~~

~~—(A) A district boundary may be initiated by:~~

~~—(1) The owner or owners of at least seventy-five percent (75%) of the property described in the application;~~

~~—(2) Tenant or tenants, with owner's sworn to consent;~~

~~—(3) Duly authorized agents evidenced by a written power of attorney;~~

~~—(4) City Council;~~

~~—(5) Planning and Zoning Board;~~

~~—(6) Any department or agency of the city.~~

~~—(B) Any amendment to this chapter other than a district boundary change may be proposed by:~~

~~—(1) City Council;~~

~~—(2) Planning and Zoning Board;~~

~~—(3) Any department or agency of the city;~~

~~—(4) Any individual, corporation or agency.~~

~~—(C) All proposed amendments shall be submitted to the Planning and Zoning Board which shall analyze the factors of analysis applicable to the proposed amendment prior to making a recommendation to City Council:~~

~~—(1) Future Land Use Map Amendment Factors of Analysis:~~

~~—(a) Whether the proposed amendment will have a favorable or unfavorable effect on the city's budget, or the economy of the city;~~

~~—(b) Whether the proposed amendment will adversely affect the level of service of public facilities;~~

~~—(c) Whether the proposed amendment will adversely affect the environment or the natural or historical resources of the city or the region as a result of the proposed amendment;~~

~~—(d) Whether the amendment will have a favorable or adverse effect on the ability of people to find adequate housing reasonably accessible to their places of employment;~~

~~—(e) Whether the proposed amendment will promote or adversely impact the public health, safety, welfare, or aesthetics of the region or the city;~~

~~—(f) Whether the requested amendment is consistent with all elements of the Comprehensive Plan and established Levels of Service.~~

~~—(g) Whether the request maximizes compatibility (consistent with the definition found in Florida Statutes § 163.31649) between uses;~~

~~—(h) Whether the request provides for a transition between areas of different character, density or intensity;~~

~~—(i) Whether the request relocates higher density and intensity uses in areas which already feature adequate vehicular access and access to public facilities; and~~

~~—(j) Whether the request considers land use equity in accordance with Policy FLU-1.12A of the Comprehensive Plan.~~

~~—(2) Zoning Map Amendment Factors of Analysis:~~

~~—(a) The applicant's need and justification for the change and whether it aligns with the community's current or future needs;~~

~~—(b) The effect of the change, if any, on a particular property and surrounding properties;~~



~~——(c) The amount of existing undeveloped land in the general area of the city having the same classification as that requested;~~

~~——(d) Whether the proposed amendment furthers the purpose of the city's Comprehensive Plan, or other strategic plans applicable to the proposed development and the provisions in the Land Development Code;~~

~~——(e) Whether the requested district is substantially different from that of the surrounding area; and~~

~~——(f) Whether the request provides for a transition between areas of different character, density or intensity.~~

~~—(D) When a change of zoning classification of a single parcel is proposed, or a group of not more than five hundred (500) parcels, of any property within the city, a notice shall be mailed to each property owner whose zoning classification is proposed to be changed, using owner's current address of record, as maintained by the Tax Assessor, and be postmarked not later than ten (10) days prior to the scheduled hearing. Prior to the effective date of any zoning classification change, the City Council shall cause an affidavit to be filed with the City Clerk certifying its compliance with the provisions of this section. A failure to give notice shall not affect the validity of zoning except as to the property of the complaining owner.~~

~~—(E) When any proposed change of a zoning district boundary lies within five hundred (500) feet of the boundary of an incorporated or unincorporated area, notice shall be forwarded to the Planning Board or governing body of such incorporated or unincorporated areas in order to give such body an opportunity to appear at the hearing and express its opinion on the effect of the district boundary change.~~

~~—(F) The Planning and Zoning Board shall submit the request for change or amendment to the City Council with written reasons for its recommendation.~~

~~—(G) The City Council shall hold public hearings on the recommendation of the Planning and Zoning Board, giving public notice as required by the state statutes and by posting notice in city hall.~~

~~§ 185.202 (RESERVED).~~

~~§ 185.203 MODIFICATION OF DISTRICT BOUNDARY CHANGES.~~

~~—If a request for a district boundary change is for a district more liberal than the existing district, and the Planning and Zoning Board or the City Council determines that the request should be denied, the Planning and Zoning Board may~~

~~recommend, and/or the City Council may change the district classification for the property to any district classification that is less restrictive than the requested zoning classification consistent with the Future Land Use Map.~~

~~§ 185.204 RECONSIDERATION OF DISTRICT BOUNDARY CHANGES.~~

~~—When a proposed change in district boundaries has been acted upon by the City Council and disapproved or failed to pass, such proposed change, in the same or substantially similar form, shall not be reconsidered by the City Council, for a period of six (6) months. Such restriction shall not apply to the owner if the original request was initiated by the City Council, Planning and Zoning Board, or any department or agency of the city.~~

**ADMINISTRATION AND ENFORCEMENT:  
PART 3. SCHEDULE OF FEES AND CHARGES**

~~§ 185.215 ESTABLISHED.~~

~~—(A) Fees shall be as established by resolution pursuant to § 169.004.~~

~~—(B) In the event an applicant causes any cancellation, continuance, delay, postponement, rescheduling, withdrawal or reapplication of any rezoning, conditional use, variance or appeal of administrative decision, additional fees for costs shall be imposed against the applicant as established by resolution pursuant to § 169.004.~~

~~§ 185.216 PAYMENT; REFUNDS OR REBATES.~~

~~—No permit certificate shall be issued and no inspection, public notice or other action relative to zoning, petitions for changes in zoning, or appeals, shall be instituted until after such fees, costs and charges have been paid. When in accordance with the provisions of this section, a fee is paid and application is filed, there shall be no return or rebate of any funds so received, regardless of the city's determination in the matter involved. All fees, costs and charges shall be, upon collection, deposited in the general fund of the city.~~

**CHAPTER 186: COMMUNICATION TOWERS AND FACILITIES**

~~§ 186.01 PURPOSE.~~

~~—The purpose of this chapter is to uniformly regulate the size, number, type and location of communication towers, antennas and support facilities. Advances in information technology and the Federal Telecommunications Act of 1996 generated an increase in the number of requests to site commercial communication support facilities in the city. The city encourages advances in~~

~~communication technology that better serve its residents and does not prohibit communication systems. However, the purpose of the chapter is to protect city character and public safety by controlling tower, antenna, and facilities location, height, construction, and aesthetics ensuring that communication systems are compatible with surrounding land uses. Moreover, the city seeks to discourage visual clutter resulting from the potential, simultaneous deployment and proliferation of multiple communication towers or systems. To that end, this chapter is intended to encourage the co-location of communication antennas on existing public or private utility facilities, and to either camouflage antennas, towers and other communication facilities, or minimize visual impacts of communication systems through careful design, siting, buffering, and landscaping.~~

~~§ 186.02 DEFINITIONS.~~

~~—For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—ALTERNATIVE SUPPORT STRUCTURE. Any man-made structure, including but not limited to, buildings, light poles, clock towers, bell towers/steeple, water towers and the like, which allow for the attachment of communication facilities.~~

~~—CAMOUFLAGED TOWER OR ANTENNA. A communications tower or antenna designed to unobtrusively blend into the existing surroundings and be disguised so as not to have the appearance of a communications tower or antenna. Camouflaged towers and antennas on developed property must be disguised to appear as either a part of the structure housing a principal use, or an accessory structure that is normally associated with the principal use. Camouflaged towers and antennas placed on unimproved property must be disguised to blend in with the existing vegetation.~~

~~—CO-LOCATION. Attachment of two or more communications antennae to a new or existing communications tower, and the attachment of one or more communications antennas on an existing alternative support structure.~~

~~—COMMUNICATIONS ANTENNA. Any exterior device more than one meter in diameter used to send or receive electromagnetic waves for all types of communication.~~

~~—COMMUNICATIONS FACILITIES. A facility or location designed, or intended to be used for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services, and any commercial wireless telecommunication service~~

~~whether or not it is licensed by the FCC. This includes without limit, towers of all types and kinds, where used, and all related facilities and equipment such as antennas, cabling, equipment shelters and other structures associated with the site.~~

~~— COMMUNICATIONS TOWER. Any structure designed and constructed for the primary purpose of supporting one or more communications antennas. Tower shall mean the same as communications tower. Towers may be of the following construction types:~~

~~— (1) GUYED. A vertical structure anchored by guy wires.~~

~~— (2) MONOPOLE. A vertical self-supporting structure, not guyed, made of spin-cast concrete, steel or similar material, presenting a solid appearance.~~

~~— (3) LATTICE. A vertical self-supporting structure, not guyed, with three or more sides consisting of open-frame supports.~~

~~— ENGINEER. Any engineer licensed by the State of Florida.~~

~~— FAA. Federal Aviation Administration.~~

~~— FCC. Federal Communications Commission.~~

~~— HEIGHT. The distance measured from the finished grade of the parcel, including the base pad, to the highest point on the communications tower or other structure, including all communications antennae.~~

~~— MINOR MODIFICATION. For the purposes of co-location, a minor modification shall indicate an increase in the height of an existing communications tower of no more than forty (40) feet above the originally permitted tower height.~~

~~— PRE-EXISTING TOWERS AND PRE-EXISTING ANTENNAS. Any communications tower or communications antenna for which a building permit has been issued prior to April 1, 1998, including permitted communication towers or antenna that have not yet been constructed, so long as such permits are valid and in effect.~~

~~— SETBACKS. When referring to a support structure, such as a tower or building, setback shall mean the required distance from the support structure to the property line of the parcel on which the communication facility is located.~~

~~— TEMPORARY TELECOMMUNICATIONS TOWER. Any telecommunications tower constructed and operating in conjunction with a permitted special event. These facilities are also known as cellulars on wheels (cows) for their mobility.~~

~~Emergency towers used to aid in post-disaster relief efforts also fall in this category.~~

#### ~~§ 186.03 APPLICABILITY.~~

~~The terms and provisions of this chapter shall apply to all communication facilities on lands, lying within the city limits, including publicly owned lands, rights-of-way, and easements except as provided in § 186.04 herein. This chapter shall supersede all conflicting ordinances or codes regarding the locating and permitting of communication facilities.~~

#### ~~§ 186.04 EXCEPTIONS.~~

~~The following exceptions to complying with the requirements of this chapter shall be permitted:~~

~~(A) Any communication tower or antenna that is owned and operated by a federally licensed amateur radio operator.~~

~~(B) Any communication antenna which is not attached to a communication tower or building which is accessory to any commercial, industrial, residential, institutional, multi-family, or public utility structure provided that:~~

~~(1) The communication antenna does not exceed 20 feet above the highest point of the structure. This includes ground mounted satellite dish antennas that are regulated as accessory structures in the Zoning Code.~~

~~(2) Communication antennas that comply with all applicable FCC, FAA, and State of Florida regulations.~~

~~(3) The communication antenna complies with applicable building codes.~~

~~(C) The communication antenna or tower is located in U.S. military facilities, regardless of size.~~

~~(D) Temporary telecommunications towers that comply with applicable FCC regulations.~~

#### ~~§ 186.05 GENERAL REQUIREMENTS.~~

~~(A) Communication towers and communication antennas must comply with all applicable Federal Aviation Administration (FAA) and Federal Communications Commission (FCC) regulations. Proof of FAA approval is required for all communication tower applications.~~

~~—(B) Any structurally adequate structure including interstate signs and billboards, may be used to support one or more antennas. Appropriate structures are buildings, water towers, utility poles, monopoles, and towers.~~

~~—(C) An applicant seeking to construct a tower must demonstrate that there are no reasonable opportunities to locate the antenna(s) on existing towers or other support structures within a two (2) mile radius of the proposed tower. An engineer's report submitted to the city must show one or more of the following:~~

~~—(1) No existing towers or structures have sufficient height to meet the applicant's engineering requirements.~~

~~—(2) No existing towers or structures have sufficient structural strength to support the proposed antenna and related equipment.~~

~~—(3) The applicant's proposed antenna would cause electromagnetic interference with or would be interfered with by other antennas if placed on any existing tower or structure.~~

~~—(4) Other information that demonstrates that the wireless carrier's designated service cannot be provided through placement of the antennas on existing structures.~~

~~—(5) There are other bonafide limiting engineering factors submitted to the city that preclude co-location.~~

~~—(D) No signs or advertising shall be permitted on towers, antennas, or ground mounted facilities.~~

~~—(E) All tower plans must be designed and sealed by a professional engineer registered in the State of Florida.~~

~~—(F) Communication towers shall either maintain a galvanized steel or concrete finish appearance or, subject to any applicable standards of the FAA, be painted so as to reduce the visual obtrusiveness of the structure.~~

~~—(G) Temporary telecommunications towers associated with a special event shall be permitted for a limited period of time by the City Manager as part of the event, not to exceed the time of the special event. Temporary telecommunications towers necessary to aid in post disaster relief efforts are exempt from this permitting process.~~

~~—(H) In addition to the general requirements for the filing of a building permit application, the applicant shall include a statement in writing that the proposed communications facility shall be maintained in a safe manner, and in compliance~~

~~with all conditions of the building permit, including all conditions of any conditional use approvals.~~

~~—(I) Construction of the communications facility, and all other work performed at the site, shall only be conducted by persons with a Florida's contractor's license.~~

#### ~~§ 186.06 WHERE PERMITTED.~~

~~—(A) Freestanding communication towers and all other communication facilities may be permitted by right in the following zoning districts:~~

~~—(1) HI, Heavy Industrial;~~

~~—(2) LI, Light Industrial and Warehousing; or~~

~~—(3) IU, Institutional Use; or~~

~~—(4) GU, General Use Holding.~~

~~—(B) Freestanding communication towers and all other communication facilities may only be located in the following zoning districts by conditional use approval:~~

~~—(1) HC, Highway Commercial;~~

~~—(2) CC, Community Commercial; and/or~~

~~—(3) GC, General Commercial.~~

~~—(C) Freestanding communication towers, antennas, and other equipment may also be located in residential and non-residential planned unit developments (PUD's) as a specific element of an overall PUD master plan or amendment. However, when located within a residential PUD, the city can establish the minimum separation distances between communication towers and nearby homes or other types of dwelling units.~~

~~—(D) Antennas only may be located in residential districts when attached to electrical transmission towers or poles.~~

~~—(E) Communication tower facilities are prohibited from locating in any zoning district not provided for in subsections (A) through (D) above.~~

#### ~~§ 186.07 PERFORMANCE STANDARDS.~~

~~—(A) Lighting – Communication facilities shall not be artificially lit, except for:~~

~~—(1) Security and safety lighting of equipment buildings if such lighting is compliant with the model lighting ordinance prepared by the International Dark Sky Association and the Illuminating Engineering Society of North America; and~~

~~—(2) Required lighting by the FAA or other applicable authority, such lighting shall be installed in a manner to minimize impacts on adjacent residences.~~

~~—(B) Noise – No equipment shall be operated at a communication facility so as to produce noise in excess of the applicable City Noise Ordinance, Chapter 92, except when emergency situations require the use of backup generators.~~

~~—(C) Structural integrity – At the time of permitting all towers must be designed and certified to conform with the Florida Building Code, and any of its updates or amendments.~~

~~—(D) Setbacks:~~

~~—(1) All towers, regardless of their type or zoning district, shall be setback from all property lines of the property for which the tower resides, a minimum distance equal to half the height of the tower.~~

~~—(2) All towers must also be camouflaged in the CC, HC, and IU zoning districts.~~

~~—(3) Anchoring. All guy wires or other communication tower anchoring devices shall maintain at least a ten foot setback to any property lines. Guyed and/or lattice towers are permitted only in the LI and HI zoning districts. All other communication towers, where permitted, shall be self-supporting monopole towers.~~

~~—(E) Fencing and landscaping.~~

~~—(1) An eight (8) foot tall fence or wall, as measured from the finished grade of the site, shall be required around the perimeter of all communication tower sites. Access to the tower(s) shall be through a locked gate.~~

~~—(2) A ten (10) foot wide landscape buffer shall either be installed or preserved in the natural state around the fence or wall. This landscape buffer shall screen the base of the communications tower and ancillary structures. All landscaping shall be drought tolerant or irrigated, and shall be maintained in good health. Planted shrubs shall be a minimum of two (2) feet tall and spaced a minimum of three (3) feet apart. Planted trees shall contain a minimum 2-inch DBH and have an overall height of ten (10) feet at the time of planting.~~

~~—(F) High voltage and "No Trespassing" warning signs.~~

~~—(1) If high voltage is necessary for the operation of the communications tower or any accessory structures, "High Voltage Danger" warning signs shall be permanently attached to the fence or wall and shall be spaced not more than 40 feet apart.~~



~~—(2) At least one "No Trespassing" sign shall be permanently attached to the fence or wall.~~

~~—(3) At least one (1) sign shall be permanently attached to the fence or wall that provides the name of the owner of the tower and the name of each carrier that has antennae on the tower, as well as emergency phone numbers for each. The sign shall be visible from the access point of the site. Whenever the information on this sign changes, such as the tower being sold, the antennae or other apparatus are sold, a new service provider co-locates on the tower, the owner or lessee changes contact~~

~~information, etc, the sign must be updated accordingly within seven (7) business days.~~

~~—(G) Equipment storage. Mobile or immobile equipment not used in direct support of a tower facility shall not be stored or parked on the site of the communication tower, unless repairs to the tower are being made. Storage sheds or buildings shall be allowed on communication sites if fully enclosed with a roof.~~

~~—(H) Hurricane evacuation routes. Communication towers shall not be constructed at a height and location that, in the event the tower is toppled, the tower fall zone would totally or partially block or impede any road designated as a hurricane evacuation route.~~

~~—(I) Communication facilities not on towers. Excluding residential districts, communication facilities which are not attached to a tower may be permitted on any alternative support structure, regardless of the zoning restrictions applicable to the zoning district where the structure is located. The owner of such structure shall provide written certification of the following when applying for a building permit:~~

~~—(1) That the height of the communications facilities does not exceed the height of the alternative support structure by more than 20 feet.~~

~~—(2) That any communications facilities and their appurtenances, located above the primary roof of an alternative support structure, are set back one foot from the edge of the primary roof for each two feet in height above the primary roof of the communications facilities. However, this setback requirement shall not apply to communications facilities and their appurtenances that are appropriately screened from view through the use of panels, walls, fences or other screening techniques approved by the city or located on non-inhabitable structures. Setback requirements shall not apply to camouflaged antennas. Camouflaged antennas~~

~~shall not protrude more than 18 inches from the side of the alternative support structure.~~

~~— (3) The alternative support structure and communications facilities shall comply with the Florida Building Code and the city's land development regulations.~~

~~— (4) The communications antenna and supporting electrical and mechanical equipment must be of a color that is identical to, or closely compatible with the color of the supporting structure, so as to make the communications facilities visually unobtrusive.~~

#### ~~§ 186.08 APPLICATION.~~

~~— (A) Any proposed towers requiring conditional use approval must meet the special requirements found in § 185.088 of the Zoning Code.~~

~~— (B) In addition to conditional use approval, all permits for tower construction must submit the following items:~~

~~— (1) Completed site plan and building application forms, and a plans review checklist.~~

~~— (2) Building, site, and landscaping plans drawn to scale.~~

~~— (3) The name, address, and telephone number of the owner and lessee of the parcel of land upon which the tower is situated. If the applicant is not the owner of the property, then the written consent of the owner must be provided.~~

~~— (4) Written affidavit attesting that the applicant made diligent efforts for permission to co-locate the communication facilities on existing towers or other structures and that the applicant will allow co-location by and for other entities involved in the same business or industry as the applicant. This shall include an engineer's report certifying that there are limiting engineering factors that preclude co-location as per § 186.05 of this chapter, if applicable.~~

~~— (5) Each application to allow construction of a tower shall include a written statement from an engineer(s) that the construction and placement of the tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent properties. Submittal of FCC approval is considered sufficient.~~

~~— (6) Copy of the FCC license applicable for the intended use of the communications tower and/or facility.~~

#### ~~§ 186.09 MODIFICATION OF EXISTING TOWERS.~~

~~—(A) Existing towers constructed prior to the effective date of this chapter which do not meet the requirements of this chapter may continue as a non-conforming use. These towers may be replaced or modified for co-location, or to improve functionality as long as the height of the tower does not exceed 40 feet above the original tower height.~~

~~—(B) Minor modifications to communication towers shall be approved by staff administrative review. Minor modifications include the addition of antennas, provided either that the antennas add no more than 40 feet in height to the tower, or that the tower is rebuilt to the same height or no more than 40 feet above the original tower height. Prior to receiving a building permit for the modified tower, the applicant must meet the requirements of § 186.08(B). In lieu of submitting "full-scale" site plan drawings, the applicant shall submit a current survey of the communications tower facility showing not only the tower compound, but all equipment contained within. The survey must also show the proposed equipment, and be accompanied by a written statement, on company letter head, describing the amount that the tower height is being increased, if applicable. If the tower is not being increased in height, the letter shall describe the location of the new antennae.~~

~~—(C) Major modifications to communication towers shall be approved as stated in the zoning districts and may include conditional use review. Major modifications are those that exceed the definition of minor modifications.~~

~~—(D) Co-locations, on alternative support structures that meet the requirements of § 186.07(1)(1)-(4) or on existing towers, including nonconforming structures or towers, that meet the requirements provided in subparagraphs (1) – (3) below, are subject only to building permit review. Such co-locations are not subject to any design or placement requirements in effect at the time of the co-location that are more restrictive than those in effect at the time of the initial tower or antennae placement approval, or to public hearing review.~~

~~—(1) The co-location does not increase the height of the tower or structure to which the antennae are to be attached, measured to the highest point of any part of the tower or structure or any existing antennae attached to the tower;~~

~~—(2) The co-location does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment enclosures and ancillary facilities; and~~

~~—(3) The co-location consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennae placed on the tower or structure and its accompanying equipment enclosures and ancillary facilities and, if applicable, to the tower or structure supporting the antennae. Such regulations may include the design and aesthetic requirements, but not procedural requirements, in effect at the time the initial tower or antennae placement was approved.~~

~~§ 186.10 ABANDONMENT.~~

~~—(A) Discontinued use of a communication tower shall be deemed abandoned. Determination of the date of abandonment shall be made by the Growth Management Director (hereinafter referred to as Director), or his/her designee, who shall have the right to request documentation and/or affidavits regarding the active use of the tower.~~

~~—(B) The tower owner/operator shall have 90 days from the date of the Directors notice to either, reactivate the use of the tower with the same operator or another, or dismantle and remove the tower.~~

~~—(C) If there are two or more users on a communications tower, then these provisions shall not become effective until all users cease operations.~~

~~—(D) Under the following circumstances, the Director may determine that the health, safety and welfare of the city warrant and require removal of communications facilities:~~

~~—(1) A communications facility (hereinafter referred to as facility) has fallen into such a state of disrepair as to create a health or safety hazard;~~

~~—(2) The tower has been modified without obtaining the required permits to do so or the approval granted for construction of the tower has been revoked.~~

~~—(E) If the Director determines that a tower and/or facility shall be removed the owner shall dismantle and remove such equipment from the site and restore the aboveground site to as close to its original condition as possible, within 90 days of receipt of written notice from the Director. However, if the landowner for which the facility resides wishes to retain any access roadway to the site, the owner may do so with the approval of the Director.~~

~~—(F) If the facility ordered to be removed under this section is not removed or substantial progress has not been made to remove the facility within the 90-day~~

~~period, then the city may remove the facility at the sole expense of the facility owner, dispose of the equipment as it sees fit, and in order to cover the city's cost.~~

~~—(G) Notwithstanding anything in this section to the contrary, the Director may approve a temporary use agreement to operate the facility for no more than 180 days, during which time a suitable plan for removal, conversion, or re-location of the affected facility shall be developed by the facility owner. This agreement, and the terms of resolution of the facility, must be approved by the Director and signed by both the Director and the facility owner.~~

#### ~~§ 186.11 PERFORMANCE SECURITY.~~

~~—Prior to issuance of any building permit, the applicant and/or the owner of the site for which the communications facility will be located shall, at its cost and expense, be required to execute and file with the Growth Management Department a bond, or other form of security acceptable to the City Attorney, in an amount of at least \$50,000 for a new facility. The full amount of the bond or security shall remain in full force and effect while the facility is in existence and until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to issuance of the original building permit.~~

### **CHAPTER 187: ADMINISTRATIVE MORATORIA**

#### ~~§ 187.01 COMPREHENSIVE PLAN AMENDMENT MORATORIA.~~

~~—(A) Whenever the Planning and Zoning Board votes to recommend in favor of any proposed amendment to the city's Comprehensive Plan, the City Manager shall issue an administrative order setting forth the proposed amendment and establishing a moratorium during which any city employee, board or department will be prohibited from granting an approval or permit that would be prohibited in the event that the proposed amendment recommended for approval by the Planning and Zoning Board is subsequently enacted by the City Council.~~

~~—(B) Any administrative order issued pursuant to division (A) above shall be complied with by all city employees, boards and departments and shall be effective until the proposed amendment is enacted or rejected by the City Council. However, in the event that the City Council fails to:~~

~~—(1) Adopt a small scale amendment; or~~

~~—(2) Transmit a proposed amendment pursuant to state law; or~~

~~—(3) Reject an amendment within ninety (90) days after a favorable recommendation by the Planning and Zoning Board; or~~

~~—(4) Enact or reject an amendment within one hundred twenty (120) days after receiving comments on the proposed amendment pursuant to state law; any administrative order shall be deemed expired and shall be without further effect.~~

~~—(C) Notwithstanding divisions (A) and (B) above, excepted from any administrative order is any project that has a validly-issued building permit, variance approval, or has a completed application meeting all submission requirements submitted for City approval, variance approval, or building permit approval prior to a vote by the Planning and Zoning Board in favor of a proposed amendment.~~

#### ~~§ 187.02 LAND DEVELOPMENT CODE.~~

~~—(A) Whenever the Planning and Zoning Board votes to recommend in favor of any proposed amendment to the city's Land Development Code, the City Manager shall issue an administrative order setting forth the proposed amendment and establishing a moratorium during which any city employee, board, or department will be prohibited from granting a development order or development permit for any development, as defined in Chapter 163.3164, Florida Statutes, that would be prohibited, with or without variances, in the event that the proposed amendment recommended for approval by the Planning and Zoning Board is subsequently enacted by the City Council.~~

~~—(B) Any administrative order issued pursuant to division (A) above shall be complied with by all city employees, boards and departments and shall be effective until the proposed amendment is enacted or rejected by the City Council. However, in the event that the City Council fails to enact or reject an amendment within ninety (90) days after a favorable recommendation by the Planning and Zoning Board any administrative order shall be deemed expired and shall be without further effect.~~

~~—(C) Notwithstanding divisions (A) and (B) above, excepted from any administrative order is any project that has a validly-issued building permit, variance approval, or has a completed application meeting all submission requirements submitted for city approval, variance approval, or building permit approval prior to a vote by the Planning and Zoning Board in favor of a proposed amendment.”~~

**SECTION 2.** All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

**SECTION 3.** It is the intention of the City Council of the City of Palm Bay that the City of Palm Bay Code of Ordinances be revised to delete the language as specified above.

**SECTION 4.** If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

**SECTION 5.** The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2024-XX, held on \_\_\_\_\_, 2024; and read in title only and duly enacted at Meeting 2024-XX, held on \_\_\_\_\_, 2024.

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Rob Medina, MAYOR

ATTEST:

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Terese M. Jones, CITY CLERK

Reviewed by CAO: \_\_\_\_\_

***Strikethrough words shall be deleted; highlighted words that will included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.***