PART II

CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

Sec. 1-1. How Code designated, cited.

The ordinances embraced in the following chapters and sections shall constitute and be designated the "Code of Ordinances of Indialantic, Florida," and shall be so cited. (Code 1962, 1-1)

Sec. 1-2. Definitions, rules of construction.

In the construction of this Code the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the council:

General rule. All words and phrases shall be construed and understood 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 the law shall be construed and understood according to such peculiar and appropriate meaning.

Computation of time. In computing any period of time prescribed or allowed by this Code, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

Council. The words "town council" or "council" shall be construed to mean the town council of the town of Indialantic.

County. The words "the county" or "this county" shall mean Brevard County, Florida.

Gender. The masculine includes the feminine and neuter and vice versa.

Interpretation. In the interpretation and application of any provision of this Code, it shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision imposes greater restrictions upon the subject matter than the general provisions imposed by this Code, the provision imposing the greater restriction or regulation shall be controlling.

Joint authority. All words purporting to give a joint authority to three (3) or more city officers or other persons shall be construed as giving such authority to a majority of such officers or other persons unless it shall be otherwise expressly declared.

Number. The singular includes the plural and vice versa.

Oath includes affirmations.

Officers, departments, agencies. Whenever reference is made herein to any office, officer, department or agency, it shall mean such office, officer, department or agency of the town and shall include the duly authorized personnel and subordinates of such office, officer, department or agency.

Owner. The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of part of such building or land.

Person. The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Personal property. Personal property shall extend and be applied to every species of property except real property.

Reasonable time. In all cases where any provisions shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall be deemed to mean such time only as may be necessary for the prompt performance of such duty, or compliance with such notice.

Shall, may. "Shall" is mandatory; "may" is discretionary.

State. The words "the state" or "this state" shall mean the State of Florida.

Statutory citations. Citations herein, unless otherwise specified, are to Florida Statutes, 1979, and are intended and shall be construed merely as a convenience to the user of this Code. The fact that a citation herein may be rendered no longer appropriate or correct because of subsequent enactments of the legislature shall not invalidate or otherwise affect the meaning of the provision in which the citation appears, and such citation shall be deemed to refer to the appropriate provisions under such subsequent legislation.

Tense. The present tense includes the past and future and vice versa.

Town. The words "the town" or "this town" shall be construed as if the words "of Indialantic" followed the word "town," and shall extend to and include its several officers, agents and employees.

Week. The word "week" shall be construed to mean seven (7) days; but publication in a newspaper or any notice or other matter indicated to be for a stated number of weeks shall be construed to mean one insertion in each week, unless specifically stated to be for each day of the week or for more than one day in each week. (Code 1962, 1-2)

State law reference--Statutory definitions and rules of construction, F.S. Ch. 1.

Sec. 1-3. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following when not inconsistent with this Code:

(a) Any ordinance promising or guaranteeing the payment of money for the town, or authorizing the issuance of any bonds of the town or any evidence of the city's indebtedness;

(b) Any appropriation ordinance or ordinance providing for the levy of taxes or adopting or amending a budget;

(c) Any ordinance annexing territory to the town or excluding territory therefrom, or otherwise affecting the corporate limits;

(d) Any ordinance granting any franchise, permit or other right;

(e) Any ordinance approving, authorizing or otherwise relating to any contract, agreement, lease, deed or other instrument;

(f) Any administrative ordinance not inconsistent with this Code;

(g) Any ordinance accepting, dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating or repairing any street or public way;

(h) Any ordinance regulating or prohibiting traffic or parking on specific streets or in specific locations;

(I) Any ordinance calling or relating to a specific election;

(j) Any ordinance providing for local improvements or providing for special assessments therefor;

(k) Any ordinance accepting any dedication of public works or facilities or accepting or approving any plat or subdivision in the town;

(l) Any ordinance zoning or rezoning specific property;

(m) Any ordinance providing for the compensation of officers and employees;

(n) Any temporary or special ordinance;

and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length herein.

Sec. 1-4. Catch lines; internal citations.

In addition to the rules of construction set out in section 1-2, the following rules shall be observed in the construction of this Code:

(a) *Catch lines.* The Catch lines of the several sections of this Code are intended as mere catchwords to indicate the contents of the sections they precede and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the Catch lines are amended or re-enacted.

(b) *Internal citations*. All references to chapters or sections are to the chapters and sections of this Code unless otherwise specified. (Code 1962, 1-4)

Sec. 1-5. Effect of repeals.

When any ordinance repealing a former ordinance, clause or provision of this Code, shall be itself repealed, such repeal shall not be construed to revive such former ordinance, clause or provision of this Code, unless it is expressly so provided.

The repeal of an ordinance, clause or section of this Code, shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance, clause or section repealed. (Code 1962, 1-5)

State law reference--Repealed statute not repealed by implication, F.S. 2.04.

Sec. 1-6. Severability.

If any phrase, clause, sentence, paragraph, section or subsection of this Code shall be declared unconstitutional, invalid or unenforceable by a court of competent jurisdiction, such unconstitutionality, invalidity or a unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs, sections or subsections of this Code. (Code 1962, 1-6)

Sec. 1-7. Amendments to code.

All ordinances passed subsequent to this Code which amend, repeal or in any way affect any section or subsection of this Code, shall be numbered in accordance with the numbering system of this Code and printed for inclusion herein. When subsequent ordinances repeal any chapter, section or subsection or any portion thereof, such repealed portions shall be excluded from said Code by omission from reprinted pages. The subsequent ordinances, as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this Code and subsequent ordinances numbered or omitted are re-adopted as a new code by the town council.

Amendments to any of the provisions of this Code may be made by amending such provisions by specific reference to the section, subsection, paragraph or clause of this Code in the following language: "That Section (or subsection, paragraph or clause) _____ of the Code of Ordinances of Indialantic, Florida, is hereby amended to read as follows: . . . . ." The new provisions shall then be set out in full.

In the event a new provision not heretofore existing in the Code is to be added, the following language may be used: "That the Code of Ordinances of Indialantic, Florida, is hereby amended by adding a new section, to be numbered section (subsection, paragraph or clause) _____, which said section (subsection, paragraph or clause) reads as follows: . . . . ." The new provision shall then be set out in full.

All sections, articles, chapters or provisions desired to be repealed may be specifically repealed by section, article or chapter number in the following language: "That Section (Chapter or Article) ____ of the Code of Ordinances of Indialantic, Florida is hereby repealed." (Code 1962, 1-7)

Sec. 1-8. Altering code.

It shall be unlawful for any person in the town to change or amend by additions or deletions, any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the Town of Indialantic to be misrepresented thereby. (Code 1962, 1-8)

Sec. 1-9. General penalty; continuing violations.

(a) Whenever in this Code any act is prohibited or is made or declared to be unlawful or an offense, or whenever the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code shall be punished as follows:

Unless otherwise specifically authorized and provided for by law, a person convicted of violating a provision in this Code or other town ordinance may be sentenced to pay a fine, not to exceed $500, and may be sentenced to a definite term of imprisonment, not to exceed 60 days, in a municipal detention facility or other facility as authorized by law.

(b) Each day a violation of any provision of this Code shall continue shall constitute a separate offense, and each act in violation of the provisions of this Code shall be considered a separate and distinct offense.

© In addition to the penalties herein provided, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be, by the town, abated as provided by law, and each day that such condition continues shall be regarded as a new and separate offense. (Code 1962, 1-9; Ord. No. 254, 2, 5-15-79; Ord. No.96-3, 4, 11-14-95)

Sec. 1-10. Court costs for law enforcement education.

There shall be assessed, in addition to the normal fine, an additional two dollars ($2.00) for each fine imposed for an offense within the town, for the law enforcement education expenditures of the town. In addition, one dollar ($1.00) from every bond estreature or forfeited bail bond collected shall be used as aforesaid. The provisions of this section shall not apply to parking violations. (Res. No.11-76, 1, 12-26-76; Ord. No. 82-306, 1, 2-16-82)

State law reference--Court costs for law enforcement education, F.S. 943.25(5).

Sec. 1-11. Garage sales.

(a) Garage sales shall be defined as the casual nonbusiness related sale of personal property on the premises of the resident. Such definition includes the words "carport sale," "yard sale" and other titles indicating the same activity, but shall not include "sidewalk sales," which are strictly prohibited under this section.

(b) Each person desiring to hold a garage sale must reside at the site of the sale, but no garage sale may occur in a commercial zone without a permit from the town manager.

(c) The person holding a garage sale may place signs advertising the garage sale as permitted by section 17-106 of this Code.

(d) The number of garage sales per residence shall be limited to two (2) in any one calendar year, each such sale to last no longer than three (3) days.

(e) It shall be the responsibility of the person or persons holding a garage sale to ensure that neither public property nor private property is damaged or destroyed due to the garage sale. It shall further be the responsibility of such person or persons to ensure that attendees of the garage sale do not trespass upon the property and/or encroach upon the privacy of other residents. Evidence of violation of these obligations shall be grounds for revocation of this authorization to hold the garage sale.

(f) If the Indialantic Police Department receives a complaint or witnesses a violation of the provisions of subsection (d) or (e) above, said department shall issue a warning, and if prompt compliance does not result, then said department is authorized to either issue a citation to appear before the code enforcement board or take whatever other steps are necessary and proper under the circumstances to enforce the ordinance. (Ord. No. 85-5, 1, 4-16-85)

Sec. 1-12. Non-regulation by ordinances of firearms and ammunition.

As established by §790.33, Florida Statutes, including amendments thereto enacted by Laws of Florida chapter 2011-109, except as expressly provided by the Florida Constitution or by general law, the Florida Legislature has occupied the entire field of the regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage and transportation thereof, to the exclusion of all existing and future county, city, town or municipal ordinances and any administrative regulations or rules adopted by local or state government relating thereto. Accordingly, all ordinances, regulations and rules set forth in or contemplated by this code which in any manner regulate firearms or ammunition to the extent that the subject matter thereof has been properly occupied by, reserved to, or preempted by the Florida Legislature: (i) are hereby declared to be null and void; and (ii) shall not be interpreted, construed, implemented, enforced or the like in any manner so as to conflict with, be inconsistent with, or violate §790.33, Florida Statutes, including any subsequent amendments thereto.

The Town acknowledges that with certain statutorily provided exceptions, the entire field of regulation of firearms and ammunition, including any components thereof, has been occupied by the Florida Legislature and that, except as expressly provided by the Florida Constitution or by general law, the Town is preempted from adopting, enacting, implementing, or enforcing any ordinances, regulations and rules pertaining thereto to the extent that the subject matter thereof has been preempted by the Florida Legislature. Accordingly, as a rule of construction and interpretation applicable to all provisions of this code, it is hereby directed that no provision of this code shall be deemed or interpreted in any manner to that violates state law, including §790.33, Florida Statutes; operates in a manner that would permit a violation of state law, including §790.33, Florida Statutes; or that would operate in any manner as a regulation of firearms or ammunition, except as permitted by §790.33 or other applicable state law. The provisions of this code shall be interpreted and construed in a manner so as to not cause or result in a violation of state law, including §790.33, Florida Statutes, and to indicate that any violation is negligent and not knowing, willful, or intentional. (Ordinance No. 11-18, 1, 10-18-11)

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Chapter 2

ADMINISTRATION

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ARTICLE I . IN GENERAL

Sec. 2-1. Departments, boards, officers enumerated.

The town administration shall consist of the following:

(a) *Departments:* Police department, building inspection department, budget and finance department, fire department, public works department and administrative department.

(b) *Boards:* Board of adjustment, civil service board, zoning and planning board (a/k/a local planning agency), board of trustees of the municipal police officers' and firefighters' retirement trust fund, the board of trustees of the general employees' pension plan, and code enforcement board.

(c) *Officers*: Town manager, town clerk, chief of police, building official, town attorney, fire chief and finance director. (Code 1962, 2-1; Ord. No. 247, 1, 5-15-79; Ord. No. 01-07, 1, 4-17-01)

Secs. 2-2, 2-3. Reserved.

Editor's note--Former 2-2 and 2-3, pertaining to civil service for policemen and firemen and appointment of subordinates within departments, have been redesignated as 2-201, 2-202 for purposes of classification.

Sec. 2-4. Council approval required to obligate town.

No member of the council, mayor or town officer shall individually, or as a member of any committee, department, office or board, make or create any commitment, contract or obligation whereby the town may be bound without the express consent or approval of the council. Provided, any such commitment, contract or obligation voluntarily undertaken individually, may be assumed or adopted by the council if it is deemed in the best interest of the town. (Code 1962, 2-4)

Sec. 2-5. Code enforcement board.

(a) *Established.* A code enforcement board is hereby established pursuant to the authority granted by and according to the dictates of Florida Statutes, Sections 162.01 through 162.13, which are hereby incorporated by reference and as amended from time to time hereafter.

(b) *Subject to statutes.* The code enforcement board shall have such duties, responsibilities and powers as set forth in, and shall be governed in all respects by, Florida Statutes, Section 162.01 through 162.13, as presently enacted and as amended from time to time hereafter.

(c) *Membership and counsel*. The town council shall appoint five (5) members and two (2) alternates to the board. Legal counsel for the board shall be the town attorney, with legal counsel to the code enforcement officer being supplied by the town manager, with the advice and consent of the town council, all in accordance with the dictates of Florida Statutes Section 162.05(4).
(Ord. No. 81-284, 1-3, 10-8-80; Ord. No. 84-338, 1, 11-15-83; Ord. No. 89-25, 1, 9-19-89; Ord. No. 94-3, 1, 12-7-93; Ord. No. 02-10, 1, 4-16-02)

Sec. 2-6. Reserved.

Editor's note--Former 2-6, pertaining to the personnel management system, has been redesignated as 2-203 for purposes of classification.

Sec. 2-7. Repealed. (Ord. No. 01-07, 2, 4-17-01)

Editor's note—Former 2-7 pertained to the Indialantic Seaside Art show permit.

Sec. 2-8. Official seal of the Town of Indialantic.

(a) The official seal of the Town of Indialantic is hereby adopted by the Town Council. The seal shall consist of two concentric rings. Within the center ring shall be the words “INCORPORATED 1952", the word “SEAL”, and the following symbol “-*-”. Between the two rings shall be two stars, the words “Town of Indialantic”, and the word “Florida”. The following symbol is hereby designated to be the official seal of the Town of Indialantic:

(b) In accordance with the Florida Statutes, the manufacture, use, display, or other employment or any facsimile or reproduction of the municipal seal, except by municipal officials or employees in the performance of their official duties, without the express approval of the town council is a second-degree misdemeanor, punishable as provided by Florida Statutes.
(Ord. No. 97-15, 1, 12-2-97)

2-9. Official logo of the Town of Indialantic.

The official logo of the Town of Indialantic is hereby adopted by the Town Council. The logo shall consist of two concentric rings. Within the center ring shall be a the words "inc. 1952", and a

drawing of a seagull with its wings extended sitting on a piling. The seagull and piling are located on a beach with palms and other foliage in the background. Between the two rings shall be sea oats on each side of the logo, and the words "TOWN OF INDIALANTIC" and "FLORIDA". The center ring shall be colored white (seagull), black (portions of seagull's wings), blue (sky and water), sand (beach area), and the space between the two rings shall have black letters and sea oats with a yellow background. The following symbol is hereby designated to be the official logo of the Town of Indialantic:
(Ord. No. 97-16, 1, 12-2-97)

Secs. 2-10 - 2-14. Reserved.

ARTICLE II. ELECTIONS*

Sec. 2-15. Definitions.

Except as otherwise provided herein, words and phrases used in this article shall have the meanings ascribed to them in Florida Statutes, Section 97.021. (Code 1962, 12-2; Ord. No. 01-03, 2, 1-16-01)

Sec. 2-16. When mayor and councilmembers elected.

Elections for town council shall be for specifically numbered seats on the council designated Seats 1 through 4 and mayor. A candidate for election to the Town council shall qualify for a single specific seat. The mayor and the councilmembers for seats 2 and 4 shall be elected in each even-numbered year, and the councilmembers for seats 1 and 3 shall be elected in each odd-numbered year. Each elector shall vote for not more than one candidate for each town council seat to be filled at an election. The candidate receiving the greatest number of votes for any seat shall be deemed to be elected to that seat, and no run-off election shall be required.
(Ord. No. 89-12, 1, 5-16-89; Ord. No. 97-2, 1, 2-4-97; Ord. No. 01-03, 2, 1-16-01)

Sec. 2-17. State laws adopted.

Any question concerning elections in the town not covered by this article shall be resolved, insofar as applicable, by the election code of the State of Florida, and for that purpose Chapters 97 through 106, inclusive, of the Florida Statutes is adopted by reference and made a part of this article with the same effect as though set out at length herein. (Code 1962, 12-1; Ord. No. 01-03, 2, 1-16-01)

Sec. 2-18. Town elections; Clerk to coordinate with supervisor of elections.

(a) *Duties of the town clerk.* The town clerk is designated town elections qualifying officer. The town clerk is responsible for:

(1) Preparing election packets for candidates wishing to qualify for election to the town council;

(2) Receiving and maintaining records of required forms and fees from candidates seeking qualification;

(3) Filing all appropriate election documentation on behalf of the town with the state elections office or the Brevard County supervisor of elections, all as provided by law;

(4) Counting and working with the supervisor of elections, as necessary, to validate all candidate or election question petition signatures and petition forms, as provided in section 2-20 of this code, section 8.01 *et seq.* of the town charter, or section 166.031, Florida Statutes;

(5) Assisting candidates with information concerning deadlines, appointments, and important dates;

(6) Receiving and maintaining records of campaign reports;

(7) Recording and storing election documents in accordance with appropriate records retention procedures;

(8) Coordinating all town elections with the supervisor of elections of Brevard County to include elections for town council or elections with regard to town ballot questions, whether held concurrent with elections for town council or otherwise; and

(9) Advertising or noticing town elections as required by law, town charter, or the town code of ordinances.

(b) *Tasks for which town clerk is not responsible.* The town clerk/elections qualifying officer is not:

(1) Responsible for interpreting election law;

(2) Capable of filing or taking election complaints made by candidates, citizens, or town council members not running for office; or

(3) Responsible for errors or omissions on documents submitted by candidates running for office; or

(4) A policing agent for town elections. Concerns and complaints are to be directed to the Florida Elections Commission.

(Code 1962, 12-2; Ord. No. 01-03, 2, 1-16-01, Ord. No. 15-08, 1, 8-12-15)

Sec. 2-19. Filing fee; form of nominating petition.

(a) A fee of ten dollars ($10.00) for filing shall accompany the nominating petition for town office required by section 2.02(4) of the charter, payable in full at the time of such filing. With the exception of write-in candidates, at the time an individual seeks to qualify as a candidate for the office of town council or mayor, the candidate shall also pay a qualifying fee consisting of the required payment to the Florida Department of State elections trust fund. Pursuant to section 99.093, Florida Statutes, the assessment/qualifying fee payable to the Department of State elections trust fund is equivalent to one percent (1%) of the annual salary of the position to which the candidate seeks election. All payments of fees and assessments must be made in the form of a check drawn on the candidate's campaign account. As required by section 99.093, Florida Statutes, any person seeking to qualify for town council who is required to pay and who is unable to pay the election assessment without imposing an undue burden on personal resources, shall certify his or her inability under oath in the presence of the qualifying officer. Thereafter, the individual shall be excused from paying a qualifying or election trust fund assessment fee.

***Charter reference** - Elections generally, Art. VII.

***Editor's Note:** Formerly Article II, 2-15—2-100 contained provisions now included in the duties for the County Supervisor of Elections. Ordinance 01-03 deleted those provisions and provided a new Article II.

(b) Nominating petitions shall be in substantially the following form:

"We, the undersigned ten electors of the Town of Indialantic, Florida, hereby nominate and sponsor, _____ whose residence address is _____ for the office of _____ to be voted for at the election on the __ day of November, A.D. 19 _ . And, we individually certify that our names have appeared on the rolls of registered voters within the last year, that we are qualified to vote and that we have not signed any other nominating petition for that office.

(SPACES FOR TEN SIGNATURES)

ACCEPTANCE OF NOMINATION.

I hereby accept the nomination for _____ and agree to serve, if elected. My occupation is _____.

_____
Signature of Candidate

Date and hour of filing: _____
Received by:

_____

(c) *Qualification of write-in candidates.*

(1) Each person seeking to qualify for election to office as a write-in candidate shall file his or her qualification papers with the town clerk during the period for qualifying as a candidate. Any person who is seeking election as a write-in candidate shall be required to pay a filing fee of ten dollars ($10.00) in the form of a check drawn on the candidate's campaign account but shall not be required to pay a qualifying fee/election assessment consisting of the payment to the Department of State election trust fund required by section 99.093, Florida Statutes.

(2) A write-in candidate is not entitled to have his or her name printed on any ballot; however, space for the write-in candidate's name to be written in must be provided on the election ballot. Upon qualifying, a write-in candidate shall be considered a candidate. A person may not qualify as a write-in candidate if the person has also qualified for nomination or election to such office. Failure to qualify as a write-in candidate shall mean that any write-in votes cast for such person shall not be counted.

(Code 1962, 12-6; Ord. No. 01-03, 2, 1-16-01; Ord. No. 15-08, 2, 8-12-15)

Sec. 2-20. Determination of sufficiency of petition; refiling.

After the filing of a nominating petition the town clerk shall notify the candidate and the person who filed the petition whether or not it is found to be signed by the required number of qualified electors. If a petition is found insufficient, the town clerk shall return it immediately to the person who filed it with a statement certifying wherein the petition is found insufficient. Within the regular time for filing petitions a new petition may be filed for the same candidate. (Code 1962, 12-6; Ord. No. 01-03, 2, 1-16-01)

Sec. 2-21. Vacancies in candidacy.

(a) The following terms, as used in this section, shall have the following meanings:

(1) *Ballot or official ballot* when used in reference to the office of mayor or councilmember of the town:

(A) Voting machines, except when reference is made to write-in ballots, means that portion of the printed strips of cardboard, paper, or other material that is within the ballot frames containing the names of candidates, or a statement of a proposed constitutional amendment or other question or proposition submitted to the electorate at any election.

(B) Paper ballots means that printed sheet of paper containing the names of candidates, or a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at any election, on which sheet of paper an elector casts his or her vote.

(C) Electronic or electromechanical devices means a ballot which is voted by the process of punching or marking with a marking device for tabulation by automatic tabulating equipment or data processing equipment.

(2) *Candidate* means any person who has qualified for election to the position of mayor or councilmember on the town council.

(3) *Election* means any town election to choose elected officials to the town council.

(4) *Qualifying* means and refers to the procedure specified in article II, town charter, and sections 2-21 and 2-22 of this code, whereby an individual causes his or her name to be placed in the next town election as a candidate for town office.

(5) *Special election* means an election called for the purpose of filling a vacancy in elected town office.

(b) *Vacancy in candidacy; Withdrawal, death, or removal of candidate(s); One candidate remaining.*

If the withdrawal of a qualified candidate following the end of the qualifying period results in only one (1) candidate remaining on the ballot for that office and seat on the town council, the remaining candidate shall be declared elected and no election for that office shall be required.

(c) *Death, withdrawal or removal of candidate(s); No candidate remaining.*

(1) If the death, withdrawal or removal from the ballot of a qualified candidate following the end of the qualifying period but before the close of balloting on election day results in no candidates for a town office, the pending election for that office shall be cancelled, and a special election for that office shall be scheduled by the town council. Within no more than twenty-one (21) days following the ascertainment that no candidates are qualified and running for a town office, a special election shall be scheduled by the town council. The election shall be held not less than one-hundred twenty (120) days nor more than one-hundred fifty (150) days after the vacancy in the candidacy has occurred. Qualifying shall be reopened, at the time provided in the town charter and code, to allow candidates to qualify for the election to that office in accordance with the town charter and code. Any candidate wishing to qualify shall file the qualifying statement and petition required by the town charter, accompanied by such qualifying fees as set by the town code. If during the re-opened qualifying period, only one (1) candidate files, that candidate shall be declared elected, and no election for that office shall be required.

(2) The filing of campaign expense statements pursuant to the Florida Election Code in the Florida Statutes, by candidates in a special election called pursuant to subsection (c)(1), shall not be later than such dates as fixed by the town clerk, unless otherwise specified in the Florida Election Code as being applicable to municipalities. In fixing such dates, the town clerk shall take into consideration and be governed by the practical time limitations and the dates established for such statements in a regular town election.

(3) If a special election is called pursuant to subsection (c)(1), supplemental absentee ballots for the special election shall be mailed by the Supervisor of Elections to any absentee voter who was mailed an absentee ballot for the regular election. If an absentee voter returns the initial ballot that was mailed to said voter, said vote for that office for which the special election was called will be null and void, but any votes on all other offices and issues shall be counted.

(d) *No candidate remaining after close of the initial qualifying period.*

(1) If no candidate files for a town office during the qualifying period, or if the candidates filing all die, withdraw their candidacies, or are removed from the ballot prior to or simultaneous with the close of the qualifying period, the pending election for that office shall be cancelled, and a special election for that office shall be scheduled by the town council. Within no more than twenty-one (21) days following the ascertainment that there are no candidates qualified and running for a town office, a special election shall be scheduled by the town council. The election shall be held not less than one-hundred twenty (120) days nor more than one-hundred fifty (150) days after the vacancy in the candidacy has occurred. Qualifying shall be reopened, at the time provided in the town charter and code, to allow candidates to qualify for the election to that office in accordance with the town charter and code. Any candidate wishing to qualify shall file the qualifying statement and petition required by the town charter, accompanied by such qualifying fees as set by the town code. If during the re-opened qualifying period, only one (1) candidate files, that candidate shall be declared elected, and no election for that office shall be required.

(2) The filing of campaign expense statements pursuant to the Florida Election Code in the Florida Statutes, by candidates in a special election called pursuant to subsection (d)(1), shall not be later than such dates as fixed by the town clerk, unless otherwise specified in the Florida Election Code as being applicable to municipalities. In fixing such dates, the town clerk shall take into consideration and be governed by the practical time limitations and the dates established for such statements in a regular town election.

(3) If a special election is called pursuant to subsection (d)(1), supplemental absentee ballots for the special election shall be mailed by the Supervisor of Elections to any absentee voter who was mailed an absentee ballot for the regular election. If an absentee voter returns the initial ballot that was mailed to said voter, said vote for that office for which the special election was called will be null and void, but any votes on all other offices and issues shall be counted.

(e) *Removal of name from ballot.* The name of any qualified candidate who has withdrawn, died or been removed from the ballot shall not be printed on the ballot. If the ballot cannot be changed, any votes for that candidate shall be null and void.

(f) *Refund of qualifying fee.* A candidate withdrawing or being removed from the ballot after having qualified and paid the qualification fee shall not receive a refund of the qualifying fee. (Ord. No. 00-08, 1, 9-26-00; Ord. 07-04, 1, 3-20-07; Ord. 10-15, 1, 9-30-10)

Sec. 2-22. Names to appear on ballot; arrangement.

The printed ballots shall contain the names of all qualified candidates who have not declined to run for office, and such names shall be printed on the ballots in alphabetical order of surname under the name of the office (and in case of council candidates for other than the position of mayor, the name of the office and seat number) for which nominated. (Code 1962, 12-75; Ord. 97-2, 4, 2-4-97; Ord. No. 01-03, 2, 1-16-01)

Sec. 2-23. ~~Notice by proclamation required.~~ REPEALED.

(Code 1962, 12-86; Ord. No. 01-03, 2, 1-16-01; Ord. No. 18-06, 2, 05/09/18)

Secs. 2-24--2-100. Reserved.

ARTICLE III. TOWN COUNCIL*

Sec. 2-101. Compensation.

The compensation of the councilmembers shall be two hundred dollars ($200.00) per calendar month, so long as the member serves the entire month. For months during which a councilmember serves less than one full calendar month, the amount of compensation shall be computed by multiplying $200 times a fraction, the numerator of which is the number of days during a calendar month that a councilmember serves and the denominator of which is 30. At no time shall the rate of compensation be increased before the date on which the next regular town election occurs or would occur but for a lack of opposed candidates. Councilmembers may decline to accept any monthly compensation payment. Said action shall be treated by the Town as a non-payment of compensation. Any decision to decline compensation must be in writing by the affected councilmember and filed with the town clerk. (Code 1962, 2-12; Ord. No. 88-4, 1, 1-26-88; Ord. 94-5, 1, 5-17-94; Ord. 06-15, 1, 10-17-06; Ord. 10-08, 1, 6-15-10)

Charter reference--Compensation to be established by ordinance, 2.04.

Sec. 2-102. Meetings to be public.

All meetings of the council shall be open to the public, except as otherwise permitted by law. (Code 1962, 2-20; Ord. No. 247, 4, 5-15-79; Ord. No. 01-07, 3, 4-17-01)

Charter reference--Similar provisions, 2.08(1).

State law reference-- Sunshine law, F.S. 286.011.

Sec. 2-103. Time, place for regular meetings.

The council shall meet regularly at least once each month on the Wednesday preceding the second Thursday of the month at 7:00 p.m. at the Town Hall, unless notice of a different place, date, or time is posted in Town Hall and published at least ten (10) days in advance in at least one newspaper of general circulation in the town. Meetings shall generally be held at a place within the corporate limits of the town; provided, that from time to time the Town Council is authorized to hold its meetings outside the corporate limits of the Town. (Code 1962, 2-20; Ord. No. 247, 4, 5-15-79; Ord. No. 88-5, 1, 1-26-88; Ord. No. 89-3, 1, 1-17-89; Ord. No. 96-10, 1, 8-20-96; Ord. No. 98-3, 1, 2-3-98; Ord. 00-07, 1, 7-18-00; Ord. No. 15-01, 1, 11-18-14)

Charter reference--Regular meetings to be provided for by ordinance, 2.08(2).

***Charter reference--**Town council generally, Art. II.

State law reference--General grant of home rule powers, Fla. Const., Art. VIII, 2(b); F.S. 166.021.

Sec. 2-104. Special meetings.

Special meetings may be called by the council at any regular or special meeting, or by the Town Manager. Each such special meeting shall be held at a place authorized for regular council meetings, and shall be limited to the subjects specified in the call for it. Except if previously called at a regular or special meeting, no such special meeting shall be held unless notice thereof is individually given to each council member by the town clerk who shall disclose the subjects to be discussed, and notice thereof shall be posted in the town hall at least twenty-four (24) hours in advance, and also be published at least twenty-four (24) hours in advance in at least one newspaper of general circulation in the town. (Code 1962, 2-20; Ord. No. 247, 4, 5-15-79; Ord. No. 17-16, 2, 9/13/17)

Charter reference--Ordinance to provide for special meetings, 2.08(3).

Sec. 2-105. Emergency meetings.

Any member of the council or the Town Manager may call an emergency meeting of the town council. Emergency meetings shall not be called unless there is a clear and present emergency affecting the health or welfare of the town which needs to be dealt with immediately. Emergency meetings shall be held within or without the corporate limits of the Town at the time and place provided in the call for the meeting. No action shall be taken at any such emergency meeting without a three-fourths (3/4) vote of council present at said meeting so long as a quorum is present. The council members or Town Manager calling the meeting will notify the town clerk of the nature of the emergency. The town clerk will notify other council members stating that an emergency meeting has been called and briefly explaining the subject matter or nature of the emergency as well as notifying them of the time and place of the meeting. Actions taken at emergency meetings must be ratified at the next regularly scheduled meeting. (Ord. No. 247, 4, 5-15-79; Ord. 00-07, 1, 7-18-00; Ord. No. 17-16, 3, 9/13/17)

Charter reference--Ordinance to provide for emergency meetings, 2.08(4).

Sec. 2-106. Rules of procedure.

All meetings of the council shall be conducted in accordance with Robert's Rules of Order, except that the rules may be waived for particular purposes by unanimous consent of the council. (Code 1962, 2-21)

Sec. 2-107. Interrupting deliberations.

No person shall at any time, or for any cause, interrupt the deliberations of the council while in session in any meeting, without first obtaining the consent of the presiding officer, under penalty of expulsion from the meeting place. (Code 1962, 2-22)

Sec. 2-108. Police to attend, keep order.

At least one police officer shall attend each meeting of the council for the purpose of keeping order. (Code 1962, 2-23)

Sec. 2-109. Filling vacancies on council.

Any vacancy in the office of mayor or that of any other council member may, and if it has an unexpired term of more than ninety (90) days shall, be filled by the town council within sixty (60) days from the date on which the vacancy occurred, and a successor for the balance (if any) of the unexpired term on the date of the regular town election next following the occurrence of the vacancy shall then be elected for the balance of such term. (Code 1962, 2-24; Ord. No. 247, 5, 5-15-79)

Charter reference--Similar provisions, 2.06.

Sec. 2-110. Standing advisory committees.

(a) *Established.* The following standing committees shall be appointed by the council to act in an advisory capacity to the council:

(1) Parks/Recreation/Beautification
(2) Budget and Finance
(3) Civil Service Board

(b) *Number of members.* Each standing advisory committee shall have such number of members as the council may provide, or as may be otherwise provided by this code.

(c) *Terms*. Each member of a standing advisory committee shall serve for a term of one year (three hundred sixty-five (365) days).

(d) *Liaison with council.* The council may designate one of its members to act as liaison between each committee and the council. (Code 1962, 2-15; Ord. No. 85-8, 1, 5-21-85; Ord. No. 85-13, 1, 6-18-85; Ord. No. 90-3, 1, 1-16-90; Ord. No. 97-5, 1, 5-6-97; Ord. 98-5, 2, 3-17-98; Ord. No. 00-06, 2, 7-18-00)

Sec. 2-111. Special advisory committees.

There shall be such special advisory committees appointed by the council as the council shall from time to time determine. (Code 1962, 2-16)

Sec. 2-112. Removal of board and committee members.

(a) Members of boards and committees—other than the Board of Adjustment, Civil Service Board, Code Enforcement Board, or Zoning and Planning Board—may be removed during their terms as determined by a majority of the town council.

(b) Members of the following boards or committees: Board of Adjustment, Civil Service Board, Code Enforcement Board, or Zoning and Planning Board may be removed during their terms as determined by a majority of the town council consistent with the provisions of Section 112.501, Florida Statutes.

(Code 1962, 2-15; Ord. No. 201, 2, 8-17-76; Ord. 10-12, 1, 9-16-10)

Sec. 2-113. Limitation on terms of certain board and committee members.

The town council shall limit the terms of members of certain boards and committees as follows:

(1) With the exception of a member of the code enforcement board, whose term is provided by Section 162.05, Florida Statutes, a member of the civil service board, and a member of the board of trustees of the police officers' and firefighters' retirement trust fund, whose term is as provided by Section 185.05 and 175, Florida Statutes, and a member of the board of trustees of the general employees' pension plan, all town council appointments or reappointments to a town board or committee, occurring on or after January 1, 1989, shall provide that the appointee shall serve a term of not longer than one year (one year = three hundred sixty-five (365) days). Said appointee shall be eligible for reappointment to said board or committee; provided, always that the appointee shall meet all other applicable town requirements for appointment.

(2) A citizen who is otherwise eligible to be appointed to a Town board may be appointed by the Town Council to serve on more than one town board at any one period in time; provided, that the prohibition against dual office holding as set forth in Article II, Section 5 of the Florida Constitution of 1968 is not violated.

(3) Nothing stated above shall be interpreted to prevent a town board or committee member from serving on one board or committee, vacating the position on said board or committee, and then being appointed to another board or committee. (Ord. No. 89-4, 1, 1-17-89; Ord. No. 90-3, 2, 1-16-90; Ord. No. 98-5, 3, 3-17-98; Ord. No. 00-06, 2, 7-18-00; Ord. No. 01-07, 4, 4-17-01)

Sec. 2-114. Repealed.
Secs. 2-115--2-122. Reserved.

ARTICLE IV. MAYOR

Sec. 2-123. Compensation.

The compensation of the mayor shall be two hundred dollars ($200.00) per calendar month, so long as the mayor serves the entire month. For months during which the mayor serves less than one full calendar month, the amount of compensation shall be computed by multiplying $200 times a fraction, the numerator of which is the number of days during a calendar month that the mayor serves and the denominator of which is 30. At no time shall the rate of compensation be increased before the date on which the next regular town election occurs or would occur but for a lack of opposed candidates. The Mayor may decline to accept any monthly compensation payment. Said action shall be treated by the Town as a non-payment of compensation. Any decision to decline compensation must be in writing by the Mayor and filed with the town clerk. (Code 1962, 2-12; Ord. No. 88-4, 1, 1-26-88; Ord. 94-5, 2, 5-17-94; Ord. 07-09, 1, 5-15-07; Ord. 10-08, 2, 6-15-10)

Charter reference--Compensation of mayor to be established by ordinance, 2.04.

Sec. 2-124. General powers and duties.

The mayor shall be a voting member and the presiding officer of the town council and the titular head of the town. The mayor is recognized as head of the town government for ceremonial purposes, for the purposes of service of civil process and for purposes of military law. He shall execute all instruments to which the town is a party as the town council may direct, unless otherwise provided by the charter or by law. (Code 1962, 2-31; Ord. No. 247, 6, 5-15-79)

Charter reference--Similar provisions, 2.05.

Sec. 2-125. Specific powers and duties.

In addition to the powers and duties prescribed by the charter or elsewhere in this Code, the mayor shall:

(a) Hold the keys to the town and bestow them to visiting dignitaries within his sole discretion.

(b) Exercise all other powers and authority as may be vested in the mayor by virtue of the charter, laws of the State of Florida, or delegated by the council pursuant to any authority under the charter.

(c) Recommend to the council for adoption such measures as he may deem necessary or expedient.

(d) Perform such other duties as may be required of him by act of the council. (Code 1962, 2-31; Ord. No. 247, 6, 5-15-79)

Sec. 2-126. Deputy mayor to act in absence or disability.

During the absence or disability of the mayor, the deputy mayor shall exercise all the powers of the mayor and shall be charged with all the responsibilities of the mayor. (Code 1962, 2-32)

Charter reference--Similar provisions, 2.02(5).

Secs. 2-127--2-136. Reserved.

ARTICLE V. TOWN MANAGER

Sec. 2-137. Appointment, removal.

The council shall appoint a town manager, who shall be the chief administrative officer of the town, responsible to the town council for all town affairs placed in his charge by said council or pursuant to the charter. He may be removed by a majority vote of the entire council, in the best interests of the town, without the necessity of showing cause or a prior hearing. (Code 1962, 2-40; Ord. No. 247, 7, 5-15-79)

Charter reference--Similar provisions, 3.01.

Sec. 2-138. Qualifications.

The town manager shall be a United States citizen who has reached his majority, appointed on the basis of his executive and administrative qualifications. (Code 1962, 2-41; Ord. No. 247, 7, 5-15-79)

Charter reference--Similar provisions, 3.01.

Sec. 2-139. Powers and duties; appointment of town officers.

The town manager's powers and duties shall be as provided in the charter. Such powers and duties include, among others, the appointment and removal, subject to any and all applicable civil service rules and regulations, if any, of the building official, the town clerk, the finance director, the chief of police, the fire chief, and all other town personnel, with the exception of the town attorney, who shall

be appointed by the town council. With regard to the head of a town administrative unit (i.e. department head) the town manager's appointment shall be subject to confirmation by the town council.

In addition, the town manager shall have such powers and duties as may from time to time be assigned to him by the town council.
(Code 1962, 2-42; Ord. No. 247, 7, 5-15-79; Ord. No. 97-5, 2, 5-6-97; Ord. 01-07, 5, 4-17-01)
Charter reference—Powers and duties of manager, 3.03.

Secs. 2-140—2-149. Reserved.

ARTICLE VI. TOWN CLERK

Sec. 2-150. Position established.

The position of town clerk is hereby established. (Ord. No. 204, 1, 10-19-76)
Charter reference – Office of town clerk, 4.06

Sec. 2-151. Appointment, removal.

The town clerk shall be appointed (subject to approval of the council) and removed by the town manager.
(Ord. No. 204, 2, 10-19-76; Ord. No. 97-5, 3, 5-6-97; Ord. No. 01-07, 6, 4-17-01)

Sec. 2-152. Powers, duties.

The town clerk shall give notice of the meetings of the town council; shall keep the minutes of its proceedings; shall be custodian of the Town's seal; and shall maintain all ordinances and resolutions passed by the town council. He shall have the power to administer oaths and shall perform such other duties as may be assigned by the town manager. (Ord. No. 204, 2, 10-19-76)
Charter reference—Town clerk as acting town manager, 3.02.

Secs. 2-153—2-162. Reserved.

ARTICLE VII. TRAVEL BY TOWN PERSONNEL

Sec. 2-163. Statute adopted.

The town council hereby adopts by reference Section 112.061, Florida Statutes. Any provision hereinafter contained which may be in conflict with said statute shall prevail over said statute to the extent of the conflict. (Res. No. 9-73, 1, 8-21-73)

Sec. 2-164. Personnel covered.

The policies set forth herein are applicable to members of the town council, members of boards and committees appointed by the town council which are solely responsible to the town council, town officials appointed by the town council, and employees appointed by the town manager or by department heads subject to his discretion. (Res. No. 9-73, 2, 8-21-73; Ord. No. 01-06, 1, 3-20-01)

Sec. 2-165. Activities covered; family members excluded.

(a) This article shall apply to those expenditures incurred which are related to the performance of the official duties of town officials and employees, including but not limited to meetings with governmental officials, meetings with civic groups, seminars and training programs, pick-up or delivery of parts and equipment, recruiting personnel, community promotion, official conventions, and any other activities related to the completion of assigned or official duties.

(b) Reimbursement for expenses for the following activities is specifically prohibited: attendance at political rallies or events held for the specific purpose of promoting the candidacy of an individual for public office, and, except as otherwise specified herein, expenses incurred by members of an official's or an employee's family.

(c) No funds shall be reimbursed or paid to the mayor or any councilmember for expenses incurred within Brevard County, except as provided for under 2-165(e).

(d) Ineligible expenses include but are not limited to meals consumed within Brevard County, lodging expenses at a location within Brevard County, and per diem for entire days spent within Brevard County.

(e) Reimbursement to the mayor and councilmembers for the following expenses shall be permitted:

(1) Seminar, meeting, or conference registration fees, hotel/motel costs and travel outside of Brevard County, as approved by the town council;

(2) Meal and drink reimbursement for attendance by the mayor/councilmember and said individual's spouse or guest at the Space Coast League of Cities annual dinner meeting hosted by the town.

(3) Meal and drink reimbursement for attendance by the mayor/councilmember at any meeting of the Space Coast League of Cities provided the mayor/councilmember declines to accept compensation for the month of the meeting.
(Res. No. 9-73, 3, 8-21-73; Ord. 94-5, 3, 5-17-94; Ord. 96-12, 1, 8-20-96; Ord. No. 01-06, 2, 3-20-01; Ord. No. 17-09, 2, 5/15/17; Ord. No. 17-15, 2, 9/13/17; Ord. No. 18-03, 2, 2/7/18)

Sec. 2-166. Budgetary limitations.

Travel is authorized where budgeted. In the event a member of council, the town attorney, or the town manager finds that it is necessary to incur travel expenses which are in addition to the scope and intent of the adopted budget, specific authorization must be secured from the town council. In the event an employee of the town appointed by the town manager or by a department head subject to the direction of the manager finds that it is necessary to incur travel expenses which are beyond the scope or intent of the budget, a written request shall be filed with the town manager with an explanation of the need for the expenditure together with a suggested source of funding for the town manager's approval. (Res. No. 9-73, 6, 8-21-73; Ord. No. 01-06, 3, 3-20-01)

Sec. 2-167. Council to approve out of state travel.

All out of state travel must be approved by the town council. (Res. No. 9-78, 1, 7-25-78)

Sec. 2-168. Advance authorized.

A travel advance may be secured if a request is filed with the town manager not less than twenty-four (24) hours prior to the departure. The amount requested shall not exceed the anticipated expenses for the travel. (Res. No. 9-73, 5, 8-21 -73)

Sec. 2-169. Route, mode and arrangements for transportation.

All travel must be by a usually traveled route. In the event a person travels by an indirect route for his convenience, any extra cost shall be borne by the traveler, and reimbursement for expenses shall be made accordingly. All arrangements for air transportation by the town council or persons appointed by the town council shall be made through the town manager. Air travel shall be by coach class, except when coach class is not available to maintain a convenient travel schedule as determined by the town manager. In the event a privately owned vehicle is used for official travel, the vehicle owner shall be entitled to a mileage rate at the same rate established by state statute. The town council or members of boards or committees shall not be entitled to reimbursement for automobile travel within Brevard County, Florida. Employees appointed by the town manager shall be entitled to reimbursement for automobile travel incurred in the course of carrying out official town duties, excluding meetings held in the town, where a town vehicle is not available. If travel is outside the state, reimbursement shall be the equivalent of round trip coach air fare, in lieu of the prevailing vehicle mileage rate. (Res. No. 9-73, 8, 8-21-73; Ord. No. 83-327, 1, 3-15-83; Ord. 01-06, 4, 3-20-01; Ord. No. 17-09, 3, 5/15/17)

Sec. 2-170. When reimbursement for meals and beverages permitted.

Reimbursement for meal and beverage expenses incurred which relate to employees and persons other than those in the employment of the town are authorized in the following instances: Recruitment of personnel, hosting special visitors to the town, and expenses incurred in the course of advocating county, state and federal legislation. (Res. No. 9-73, 4, 8-21-73)

Sec. 2-171. Alcoholic beverages excluded.

There shall be no reimbursement for alcoholic beverages. (Res. No. 9-73, 8, 8-21-73)

Sec. 2-172. Per diem allowed.

If the individual does not elect to itemize expenses under section 2-173 below, a per diem allowance of thirty-five dollars ($35.00) per day is authorized. Computation for per diem shall be based on six (6) hour periods on the first and last days of travel. Per diem allowance will be granted only if overnight lodging is required. (Res. No. 9-73, 7, 8-21-73; Res. No. 9-78, 2, 7-25-78)

Sec. 2-173. Itemizing of expenses.

For travel expenses where per diem allowance is not selected or for other authorized expenses, the claimant will request reimbursement by submitting to the town a form showing the mode of transportation, meals and lodging and miscellaneous expenses claimed. Receipts, vouchers and paid bills must be attached to each claim except when impractical to obtain, such as for tips and baggage handling charges. Town employees shall receive the following amounts for meals and any tips paid with regard to meals: $6.00 – breakfast; $11.00 – lunch; and $19.00 – dinner, rather than reimbursement for receipted cost except as provided for in Section 2-170. (Res. No. 9-73, 8, 8-21-73; Ord. No. 01-06, 5, 3-20-01; Ord. 06-13, 1, 8-15-06)

Sec. 2-174. Repealed
(Ord. No. 01-06, 6, 3-20-01)

Sec. 2-175. Administration by manager.

The town manager is designated as the approving authority for all claims for reimbursement for official travel including per diem, subject to review by the town council if an appeal is made by someone other than an employee. The criterion to be followed is whether or not the claim is reasonable; i.e., a reflection of the actual allowable expenses incurred by the traveler without extravagance. For example, when a price range is offered by hotels, the medium or lower rate is appropriate and, as prescribed in section 2-165 above, no reimbursement may be claimed for dependents. The town manager shall also establish procedures necessary to implement this article, to assure accountability of funds expended and to keep any necessary records for budget, training and audit purposes. (Res. No. 9-73, 10, 8-21-73; Ord. No. 01-06, 7, 3-20-01)

Sec. 2-176. Repealed.
(Ord. No. 01-06, 8, 3-20-01)

Secs. 2-177--2-186. Reserved.

ARTICLE VIII. FINANCE*

Sec. 2-187. Preparation, submission of tentative budget.

(a) The town manager shall, in consultation with the budget and finance committee, on or before the first day of August of each year, prepare a tentative budget for the next succeeding fiscal year.

(b) The tentative budget shall show all anticipated revenues from all sources whatsoever, and all anticipated expenditures to be made during the next fiscal year.

(c) The tentative budget shall be presented to the town council, together with any suggestions and recommendations which the town manager and the budget and finance committee may deem appropriate, on or before the first day of August of each year. (Code 1962, 15-9; Ord. No. 247, 18, 5-15-79)

***Charter references**--Financial procedures generally, Art. V; fiscal year to conform to statutes, 5.01.

Sec. 2-188. Adoption of budget by council.

Prior to the beginning of each fiscal year the town council shall adopt the budget for the next succeeding fiscal year, based upon the tentative budget presented to the council by the town manager, with such changes and amendments as the council shall deem necessary. (Code 1962, 15-10; Ord. No. 247, 19, 5-15-79)

Charter reference--Hearing on and adoption of budget, 5.03, 5.04.

Sec. 2-189. Appropriation prerequisite to expenditure.

No money shall be drawn from the depository of the town, and no obligation for the expenditure of money shall be made, except pursuant to an appropriation made by the town council. (Code 1962, 15-2)

Sec. 2-190. Deposit of fines and forfeitures.

All forfeitures and fines shall be deposited in the general fund. (Code 1962, 15-3)

Secs. 2-191--2-200. Reserved.

ARTICLE IX. OFFICERS AND EMPLOYEES*

DIVISION 1. GENERALLY

Sec. 2-201. Repealed.

Editor's note - Ord. No. 93-7, adopted 9-21-93, repealed this section regarding civil service for policemen and firemen.

Sec. 2-202. Appointment of subordinates within departments.

Department heads shall appoint and remove subordinate employees of their respective departments, subject to the approval of the town manager.(Code 1962, 2-6; Ord. No. 247, 2, 5-15-79; Ord. No. 97-5, 4, 5-6-97)

Note--Formerly 2-3.

Sec. 2-203. Personnel management system.

A personnel management system shall be implemented by the town. Said personnel management system shall be approved by the town council and all amendments thereto shall be approved by majority vote of the council. (Ord. No. 84-341, 1, 12-20-83)

Note--Formerly 2-6.

Secs. 2-204--2-210. Reserved.

***Editor's note**--Formerly, Art. IX, 2-201--2-208, contained provisions pertaining to social security. Said provisions have been redesignated as Art. IX, Div. 2, 2-211--2-218, for purposes of classification.

DIVISION 2. SOCIAL SECURITY*

Sec. 2-211. Policy declared.

It is hereby declared to be the policy and purpose of the town to extend, effective as of July 1, 1956, to the employees and officials thereof, not excluded by law, nor excepted herein, and whether employed in connection with a governmental or proprietary function, the benefits of the system of old age and survivor's insurance as authorized by the Federal Social Security Act and amendments thereto, including Public Law 734 of 81st Congress, and by Chapter 650, Florida Statutes, and to cover by such plan all services which constitute employment as defined in Section 650.02, Florida Statutes, performed in the employ of the town. (Code 1962, 21-1)

Sec. 2-212. Act adopted.

There is hereby adopted the terms, conditions, requirements, reservations, benefits, privileges, and other conditions thereunto appertaining of Title II of the Social Security Act as amended by Public Law No. 734, 81st Congress, for and on behalf of all the officers and employees thereof and of its departments and agencies, save and except any of such officers and employees now covered or authorized to be covered by any retirement system provided by law, and further excepting any official or employee who occupies any position, office, or employment not authorized to be covered by applicable state or federal laws or regulations, or whose service is specifically excepted in section 2-203. (Code 1962, 21-7)

Sec. 2-213. Employees excluded.

There is hereby excluded from this article any authority to make any agreement with respect to any position or any employee or official now covered, or authorized to be covered, by any other ordinance or law creating any retirement system for any employee or official of the town. (Code 1962, 21-2)

Sec. 2-214. Agreement authorized.

The mayor or other chief executive officer of the town is hereby authorized and directed to execute all necessary agreements and amendments thereto with the Florida Industrial Commission, or its successor, as state agency, for the purpose of extending the benefits provided by the system of old age and survivor's insurance to the employees and officials of this town, as provided in section 2-201, which agreement shall provide for such method of administration of the plan by the town as is found by the state agency to be necessary for the proper and efficient administration thereof, and shall be effective with respect to services in employment covered by such agreement performed after the first day of July, 1955. (Code 1962, 21-3)

State law reference--The division of retirement of the department of administration is the successor to the Florida Industrial Commission as state agency pursuant to F.S. 650.02(4).

***Note--**See the editor's note at Art. IX.

Sec. 2-215. Withholdings authorized and required.

Withholdings from salaries, wages, or other compensation of employees and officials for the purpose provided in section 2-201 are hereby authorized to be made, and shall be made in the amounts and at such times as may be required by applicable state or federal laws or regulations, and shall be paid over to the state agency designated by such laws or regulations to receive such amounts. (Code 1962, 21-4)

Sec. 2-216. Appropriations for employer contributions.

There shall be appropriated from available funds, derived from the general fund, such amounts, at such times, as may be required to pay promptly the contributions and assessments required of the town as employer by applicable state or federal laws or regulations, which shall be paid over to the lawfully designated state agency at the times and in the manner provided by law and regulation. (Code 1962, 21-5)

Sec. 2-217. Records, reports, adherence to regulations.

The town shall keep such records and make such reports as may be required by applicable state or federal laws or regulations, and shall adhere to the regulations of the state agency. (Code 1962, 21-6)

Sec. 2-218. Custodian, withholding and reporting agent.

The finance director is hereby designated the custodian of all sums withheld from the compensation of officers and employees and of the appropriated funds for the contributions of the town, and the finance directed is hereby made the withholding and reporting agent and charged with the duty of maintaining personnel records for the purposes of this article. (Code 1962, 21-8)

Secs. 2-219--2-225. Reserved.

DIVISION 3. PENSION PLAN FOR POLICE OFFICERS AND FIREFIGHTERS*

Sec. 2-226. Definitions.

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated

Accumulated contributions means a member's own contributions to the fund, plus contributions made by the member on a pre-tax basis, on and after the first date when administratively feasible following the adoption of this ordinance as prescribed in Section 414(h)(2) of the Internal Revenue Code.

Actuarial equivalence means a form of benefit differing in time, period, or manner of payment from a specific benefit provided hereunder but having the same value when computed using RP 2000 Mortality Table and eight percent (8%) interest.

***Editor's note--Ord.** No. 89-15, 1-9, adopted Sept. 19, 1989, did not specifically amend the Code; hence, inclusion herein as Div. 3, 2-226--2-234, was at the discretion of the editor. Sections 10 and 11 of said ordinance, providing for an effective date and publication of public hearing, have been omitted from codification.

Agreement means this written instrument setting forth the provisions of the retirement system.

Average monthly earnings means one-twelfth (1/12) of the arithmetic average of annual earnings for the five (5) highest years of credited service during the ten (10) years preceding termination of employment or retirement.

Beneficiary means the person or persons entitled to receive benefits hereunder at the death of a member and filed with the board. If no such designation is in effect at the time of death of the member, or if no person so designated is living at that time, the beneficiary shall be the estate of the member.

Board means the board of trustees, which shall administer and manage the system herein provided and serve as trustees of the fund.

Code means the Internal Revenue Code of 1986, as amended.

Credited service means the total number of years and completed months of continuous service with the town as an employee. Credited service shall not be deemed to be interrupted by and members shall receive benefit credit for periods during which the member is on an authorized leave of absence. Members shall not receive credit for service for which accumulated contributions have been refunded, provided, however, members who have received a refund may receive up to 5 years of such benefit credit if they redeposit to the Fund an amount representing up to 5 years of refunded accumulated contributions, along with interest at the rate of 8.0% per annum from the date of the refund to the date of redeposit. The time spent in the military service shall be governed according to Section 175.032(5), Florida Statutes, for firefighters, and Section 185.02(5) and (6), Florida Statutes, for police officers. Effective January 1, 2007, members who die or become disabled while serving on active duty military service which intervenes the member's employment shall be entitled to the rights of this section even though such member was not re-employed by the Town. Members who die or become disabled while on active duty military service shall be treated as though re-employed the day before the Member became disabled or dies, was credited with the service they would have been entitled to under this section, and then either died a non-duty death while employed or became disabled from a non-duty disability.

Earnings means total cash remuneration paid to a police officer or firefighter for employment services rendered to the town.

Effective January 18, 2012 overtime included in earnings for police officers is limited to 300 hours per member per year. Prior to January 18, 2012 all overtime is included in the definition of earnings for police officers. No hours of unused vacation leave earned after January 18, 2012 shall be considered earnings, however, member's hours earned as of January 17, 2012 shall be included, provided that number of hours are cashed in at retirement.

Effective July 1, 2011 overtime included in earnings for firefighters is limited to 300 hours per member per year. Prior to July 1, 2011 all overtime is included in the definition of earnings for firefighters. No hours of unused vacation leave earned after July 1, 2011 shall be considered earnings, however, member's hours earned as of June 30, 2011 shall be included, provided that number of hours are cashed in at retirement.

Beginning with earnings after December 31, 2008, and pursuant to Internal Revenue Code Section 414(u)(7), the definition of earnings includes amounts paid by the Town as differential wages to members who are absent from employment while in qualified military service.

Effective date means October 1, 1988, applied retroactively.

Employee means all regular, full-time employees of the town, classified as combat firefighters and sworn police officers as defined in Chapters 175 and 185, Florida Statutes. Specifically excluded are civilian, clerical, and other non-combat employees of the police and fire departments.

415 Compensation means, for purposes of the application of Code Section 415 limits, the wages or earnings as defined for purposes of income tax withholding under Code Section 3401(a), plus all other payments of compensation or earnings to an employee by the employer for which the employer is required to furnish the employee a written statement under Code Secs. 6041(d) and 6051(a)(3).

Fund means the trust fund established herein as part of the system.

Limitation year for purposes of the application of Code Section 415 limits is the calendar year.

Member means an actively employed employee who fulfills the prescribed participation requirements.

Plan year means the period beginning October 1 and ending September 30.

Spouse means the lawful wife or husband of a member at the time of pre-retirement death or retirement.

System means the Town of Indialantic Police Officers' and Firefighters' Retirement System as contained herein and all amendments thereto.

Town means Town of Indialantic, Florida. (Ord. No. 89-15, 1, 9-19-89; Ord. No. 91-5, 1, 1-15-91; Ord. No. 99-2, 1, 1-19-99; Ord. No. 99-4, 1, 10-19-99; Ord. No. 08-07, 1, 6-17-08; Ord. 10-06, 1, 3-16-10; Ord. No. 11-15, 1, 7-27-11; Ord. No. 13-05, 1, 1-15-13)

Sec. 2-227. Membership.

(a) *Conditions and eligibility.* All members of the retirement plans covering police officers and firefighters of the town on the effective date shall participate hereunder. All future new employees shall become members as a condition of employment.

(b) *Application for membership*. Each eligible employee shall complete an application form covering the following items, as well as such other items as may be prescribed by the board:

(1) Acceptance of the terms and conditions of the retirement system; and,

(2) Designation of a beneficiary or beneficiaries.

(c) *Change in designation of beneficiary.*

(1) A member may from time to time change his or her designated beneficiary by written notice to the board upon forms provided by the board. Upon such change the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.

(2) If a retired member has elected an option with a joint pensioner or beneficiary and his or her

retirement income benefits have commenced, he or she may thereafter change the designated joint pensioner or beneficiary up to twice in accordance with Florida Statutes 175.333 and 185.341 without the approval of the board of trustee or the current joint annuitant or beneficiary. The retired member is not required to provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living. Any retired member who desires to change his or her joint annuitant or beneficiary shall file with the board of trustees a notarized notice of such change. Upon receipt of a completed change of joint annuitant form or such other notice, the board of trustees shall adjust the retired member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the retried member's current benefit and there is no impact to the Plan. No retired member's current benefit shall be increased as a result of the change of beneficiary. The retired member shall be responsible for the cost of the recalculation of the benefit by the actuary.

(Ord. No. 89-15, 2, 9-19-89; Ord. 10-06, 2, 3-16-10)

Sec. 2-228. Benefit amounts and eligibility.

(a) *Retirement dates.*

(1) *Normal retirement.* A member's normal retirement date shall be the first day of the month coincident with or next following the earlier of: 1) the attainment of age fifty-five (55), or 2) the later of the attainment of age 52 and the completion of 25 years of Credited Service. A member may retire on his or her normal retirement date or on the first day of any month thereafter. Each member shall become one hundred percent (100%) vested in his or her accrued benefit on his or her normal retirement date.

(2) *Early retirement.* A member may retire on his or her early retirement date which shall be the first day of any month coincident with or next following the later of the attainment of fifty (50) years of age and the completion of ten (10) years of credited service.

(3) *Delayed retirement.* Retirement shall not be mandatory solely by reason of age prior to the sixty-fifth birthday.

At the option of the employee he or she may remain in the active employ of the town beyond the normal retirement date and beyond age sixty-five (65); provided, however, that no person shall be entitled to remain in employment, regardless of age, if in the opinion of the town such person is incapable of or fails to satisfactorily perform his or her assigned job functions, for reasons of physical infirmity, emotional or mental impairment, lack of aptitude for the position held or for other cause. However, discharge, forced retirement, refusal to hire or denial of promotion may not be determined solely on the basis of age.

The delayed retirement date shall be the first day of the month coincident with, or next following, actual retirement. Nothing herein contained shall be construed to give any employee the right to be retained in the employ of the town or to interfere with the right of the town to terminate the employment of any employee at any time, nor upon dismissal or upon his or her voluntary termination of employment, to have any right or interest in the fund other than as is herein provided.

(b) *Retirement benefit.*

(1) *Normal or delayed*. A member retiring hereunder on or after his or her normal retirement date shall receive a monthly benefit which shall commence on his or her retirement date and be continued thereafter during his or her lifetime, with the first one hundred twenty (120) payments guaranteed payable in any event. The monthly retirement benefit shall equal three percent (3%) of average monthly earnings for each year of credited service.

(2) *Early.* A member retiring hereunder on his or her early retirement date may receive either a deferred or an immediate monthly retirement benefit payable for life, but with the first one hundred twenty (120) payments guaranteed payable, as follows:

a. A deferred monthly retirement benefit which shall commence on what would have been his or her normal retirement date had he or she remained as an employee and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement as his or her normal retirement date except that, credited service and average monthly earnings shall be determined as of his or her early retirement date; or,

b. An immediate monthly retirement benefit which shall commence on his or her early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in subsection a. above, reduced by three percent (3.0%) for each year by which the commencement of benefits precedes the normal retirement date.

(c) *Disability.*

(1) *Eligibility.* Any member who is found by the board upon examination to be mentally or physically incapacitated so as to be wholly unable to properly perform duties as a police officer/firefighter of the Town of Indialantic, Florida, may be retired for disability if the member meets the following service requirement:

a. Service-incurred disability (as determined by the board). No service requirement, members are covered from date of employment.

b. Non-service incurred disability (as determined by the board). Member is eligible following completion of ten (10) years of credited service.

(2) *Exclusions.* A member will be considered totally disabled if, in the opinion of the board, he or she is wholly prevented from rendering useful and efficient service as a police officer/firefighter, and a member will be considered permanently disabled if, in the opinion of the board of trustees, such member is likely to remain so disabled continuously and permanently from a cause other than is specified below:

a. Excessive and habitual use by the member of drugs, intoxicants or narcotics;

b. Injury or disease sustained by the member while willfully and illegally participating in fights, riots, civil insurrections, or while committing a crime;

c. Injury or disease sustained by the member while serving in any armed forces. This exclusion does not affect members who have become disabled as a result of intervening military service under the federal Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081; P.L. 110-245);

d. Injury or disease sustained by the member after his or her employment has terminated;

e. Self-inflicted injury or death.

(3) Determination of disability. No member shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board for that purpose, and is found to be disabled to the degree and in the manner specified in this section. Any member retiring under this section may be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the board for that purpose, to determine if such disability has ceased to exist.

(4) Benefit amount. The benefit payable to a member who retires with a total and permanent disability which is determined to be non-service incurred shall be an amount equal to three percent (3%) or his or her average monthly earnings multiplied by his or her years of credited service. In no event, however, shall the non-service incurred disability benefit be less than twenty-five percent (25%) of the member's average monthly earnings. The monthly benefit payable to a member who retires with a service incurred disability shall be an amount determined as for non-service incurred disability but not less than forty-two percent (42%) of average monthly earnings.

(5) Benefit offsets. In the event that the disability benefits described herein plus other monthly amounts to which the disabled member is entitled, under Worker's Compensation, or any other solely town-financed disability or salary continuation program exceeds one hundred percent (100%) of the member's average monthly earnings in effect on the date of disability, the disability benefits provided herein shall be reduced so that the total of all such regular monthly amounts does not exceed one hundred percent (100%) of such average monthly earnings; provided, however, the monthly disability benefit provided herein shall not be less than two percent (2%) of average monthly earnings times credited service.

(6) Payment of benefits. The monthly retirement income to which a member is entitled in the event of his or her disability retirement will be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date of board approval and any portion due for a partial month shall be paid together with the first payment. The last payment will be on the earlier of the following:

a. The first day of the month preceding the later of 1) the member's date of death, or 2) the payment of 120 monthly premiums; or

b. The first day of the month preceding the member's recovery as determined by the board.

(7) *Recovery.* If the board finds that a member who is receiving disability retirement income, is no longer disabled, as provided herein, the board shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the member to render useful and efficient service as an employee. If the member recovers from disability, his or her service beginning with the first month for which he received a disability retirement income payment and ending with the date of recovery shall not be considered in determining the retirement benefit commencing on or after his or her normal retirement date.

(d) *Pre-retirement death.*

(1) *Prior to vesting.* The designated beneficiary of any member who dies prior to having completed ten (10) years of credited service shall receive a refund of the member's accumulated contributions.

(2) *After vesting.* The designated beneficiary of any member who dies after having completed ten (10) or more years of credited service shall receive a monthly benefit payable for life which represents the actuarial equivalent of the pension benefit accrued by the member at his or her date of death.

(e) *Vesting.* If a member terminates his or her employment, either voluntarily or by discharge, and is not eligible for any retirement benefits under this system, he or she shall be entitled to the following:

(1) *Ten (10) or more years of credited service.* The accrued benefit determined as for normal retirement shall be payable for life and ten (10) years certain commencing at member's election on the normal retirement date, or actuarially reduced and paid at the early retirement date, provided he or she does not elect to withdraw his or her accumulated contributions, and provided he or she survives until benefit payments actually begin. However, the board of trustees may, in its sole discretion and according to uniform, nondiscriminatory guidelines, authorize an alternative form or method of payment provided actuarial equivalence is maintained. The benefit rate per year of service shall be the same as determined for early or normal retirement, and shall depend upon the time of commencement of benefit payments. Forfeitures arising from terminations of employment shall remain as a part of the assets of the fund; or

(2) *Fewer than ten (10) years of credited service.* Refund of accumulated contributions.

(f) *Deferred Retirement Option Plan ("DROP").*

(1) Eligibility to participate in the DROP.

a. Any member who is eligible to receive a normal retirement pension under section 2-228(a)(1) may participate in the DROP. Members shall elect to participate by applying to the board of trustees on a form provided for that purpose and complying with the requirements of sub-section (f)(1)e. An eligible member may participate in the DROP for a period not to exceed a maximum of sixty (60) calendar months.

b. All rights to participate in the DROP shall be forfeited if not exercised within 1095 days (three years) of the member's initial eligibility for retirement. The option to participate shall be exercised, if at all, as prescribed in sub-section (f)(1)e.

c. A member shall not participate in the DROP beyond the time of attaining 39 years of service and the total years of participation in DROP shall not exceed five (5) years. For example:

1. Members with thirty-four (34) years of credited service at time of entry shall only participate for five (5) years.

2. Members with thirty-five (35) years of credited service at time of entry shall only participate for four (4) years.

3. Members with thirty-six (36) years of credited service at time of entry shall only participate for three (3) years.

d. Upon a member's election to participate in the DROP, he or she shall be a retiree and is precluded from accruing any additional benefit under the fund. For all fund purposes, the DROP participating member becomes a retired employee for purposes of the fund. The amount of credited service, final average salary and percentage of average monthly earnings (the multiplier) freeze for fund purposes as of the date of entry into the DROP. The DROP participant remains otherwise eligible to be an employee during the DROP period and entitled to all the non-fund benefits of employment. Participation in the DROP does not guarantee employment for the specified period of the DROP. Participation in the DROP by an eligible member beyond the initial 60-month period as authorized by this code shall be subject to town approval and on an annual contractual basis for all participants.

e. Upon deciding to participate in the DROP, the member shall submit, on forms provided:

1. An application for service retirement;

2. A binding letter of resignation with the Town, establishing a deferred termination date which shall be the date of discontinuing in DROP. The termination date may be changed by a DROP participant within the limitations specified in sub-section (f)(1)a. and

3. Any other information required by the board or pursuant to law.

(2) Amounts payable upon election to participate in DROP.

a. Monthly retirement benefits that would have been payable had the member terminated employment with the department and elected to receive monthly pension payments will be paid into the DROP and credited to the participating member. Payments into the DROP will be made monthly over the period that the participating member participates in the DROP, up to a maximum of sixty (60) months.

b. Payments to the DROP earn interest using the actuarial asset rate of return earned on pension fund assets during the twelve (12) month period ending September 30th. The rate determined shall be the rate reported to the division of retirement pursuant to Part VII of Chapter 112, Florida Statutes.

c. No payments will be made from DROP until the member terminates employment as a police officer or firefighter.

d. Upon termination of employment, participants in the DROP will receive the balance of the DROP account in accordance with the following rules:

1. Members shall receive payment upon termination of employment.

2. Payment shall be made in a lump sum. The entire DROP account balance, less any required federal tax withholding, will be paid to the participating member upon approval of the Board of Trustees.

e. This payment will be made in accordance with the minimum distribution requirements of the 26 USC §401(a)(9) of the Internal Revenue Code.

f. The beneficiary of the DROP participant who dies before payment from DROP begins shall receive the payment in a lump sum less any required federal tax withholding upon approval of the board of trustees. (Ord. No. 89-15, 3, 9-19-89; Ord. No. 91-5, 2, 3, 1-15-91; Ord. No. 00-02, 1, 2, 3, 4, 3-21-00; Ord. No. 01-01, 1, 1-16-01; Ord. No. 07-11, 1, 6-19-07; Ord. 09-15, 1, 8-18-09; Ord. 10-06, 3, 3-16-10; Ord. 13-13, 1, 9-17-13)

Sec. 2-229. Optional forms of benefits.

(a) Each member entitled to an early, normal or delayed retirement benefit or a disability benefit shall have the right at any time prior to the date on which benefit payments begin to elect to have his or her benefit payable under any of the options hereinafter set forth in lieu of the benefits provided herein, and to revoke any such elections and make a new election at any time prior to the actual commencement of payments. The value of payable optional benefits shall be actuarially equivalent to the value of benefits otherwise payable, and present value of payments to the retiring member must be at least equal to fifty percent (50%) of the total present value of payments to the retiring member and his or her beneficiary. The member shall make such an election by written request to the board, such request being retained in the board's files.

Option 1--Joint and last survivor option. The member may elect to receive a benefit during his or her lifetime and have one hundred percent (100%), seventy-five percent (75%), sixty-six and two-thirds percent (66 2/3%) or fifty percent (50%) of such benefit continued after his or her death to and during the lifetime of his or her spouse or a relative other than his or her spouse. The election of Option 1 shall be null and void if the designated beneficiary dies before the member's benefit payments commence.

Option 2--Life annuity. The member may elect to receive an increased benefit payable for life only, ceasing upon death

(b) If a retired member has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change the designated joint pensioner or beneficiary up to twice in accordance with Florida Statutes §175.333 and §185.341 without the approval of the board of trustees or the current joint annuitant or beneficiary. The retired member is not required to provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living. Any retired member who desires to change his or her joint annuitant or beneficiary shall file with the board of trustees a notarized notice of such change. Upon receipt of a completed change of joint annuitant form or such other notice, the board of trustees shall adjust the retired member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit and there is no impact to the Plan. No retired member's current benefit shall be increased as a result of the change of beneficiary. The retired member shall be responsible for the cost of the recalculation of the benefit by the actuary.

(Ord. No. 89-15 4, 9-19-89; Ord. No. 01-01, 2, 1-16-01; Ord. 10-06, 4, 3-16-10)

Sec. 2-230. Contributions.

(a) *Member contributions.*

(1) *Amount.* Effective on the first date when administratively feasible following the adoption of this ordinance, on behalf of each Member, amounts representing five percent (5%) of earnings shall be contributed to the fund on a pre-tax basis pursuant to the provisions of Section 414(h)(2) of the Internal Revenue Code. Member contributions shall be collected and deposited at least monthly.

(2) *Guaranteed refund*. All benefits payable under this system are in lieu of a refund of accumulated contributions. In any event, however, each member shall be guaranteed the payment of benefits at least equal to the total amount of his or her accumulated contributions.

(b) *State contributions.* Any monies received by reason of the laws of the State of Florida, for the purpose of funding or paying for retirement benefits for the police officers and firefighters of the town shall be deposited to the fund immediately, and under no circumstances more than five (5) days after receipt. Effective October 1, 2016, all annual Chapter 175 premium tax revenues up to $46,369.57 shall be used to offset the Town's pension contributions, and all annual Chapter 175 premium tax revenues received in excess of $46,369.57 will be split 50/50 with 50% used to offset Town pension contribution and 50% used to fund share account benefits for firefighter members as provided in section 2-263. Additionally, the accumulated unused Chapter175 premium tax revenues (excess state monies reserve) in the amount of %560.06 will be split 50/50, with 50% ($280.03) used to reduce the unfunded actuarial liability of the pension plan and 50% ($280.03) used to share fund accounts for firefighter members as provided in section 2-263. Effective October 1, 2017, all annual Chapter 185 premium tax revenues up to $88,282, and all accumulated excess Chapter 185 premium tax revenues shall be used to reduce the Town's pension contributions.

(c) *Town contributions.* So long as this system is in effect, the town shall make quarterly contributions to the fund in an amount equal to the total cost for the year as shown by the most recent actuarial valuation of the system. The total cost for any year shall be defined as the total normal cost plus any additional amount required to amortize the unfunded actuarial accrued liability over not more than a thirty-year period.

(d) *Other.* Donations, gifts and contributions from sources other than the town may be deposited to the fund. Such deposits, at the discretion of the board, may be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used for additional benefits for members, as determined by the board. (Ord. No. 89-15, 5, 9-19-89; Ord. No. 99-2, 2, 1-19-99; Ord. No. 00-02, 5, 3-21-00; Ord. No. 09-15, 2, 8-18-09; Ord. No. 18-07, 2, 5/9/18)

Sec. 2-231. Administration.

(a) The sole and exclusive administration and responsibility for the proper operation of the retirement system and for making effective the provisions of this division are hereby vested in a board of trustees which shall be designated as the plan administrator for the system. The board shall consist of five (5) persons as follows:

(1) Two (2) legal residents of the town who shall be appointed by the town council to serve for a period of two (2) years unless sooner replaced by the town council. An appointed member may succeed himself or herself;

(2) One police officer and one firefighter to be elected as hereinafter provided; and

(3) A fifth member, elected by the other four (4) members of the board, to be appointed by the town council as a ministerial duty for a two-year term. Such fifth member shall be allowed to succeed himself or herself in office for additional two-year terms if re-elected.

(b) The regular term of office of each elected or appointed trustee shall be two (2) years. Each employee trustee may succeed himself or herself if re-elected as hereinafter provided.

(c) [The] elective police officer member and firefighter member shall be elected in the following manner: By vote of all actively employed members of the respective police or fire departments at places designated by the board, of which all qualified members entitled to vote shall be notified in person or by written notice ten (10) days in advance of said election. The candidate who receives the highest number of votes for office shall be declared elected and shall take office immediately upon commencement of the term of office for which elected or as soon thereafter as he or she shall qualify therefor. An election shall be held not more than thirty (30) days and not less than ten (10) days prior to the commencement of the term for which a trustee is to be elected. The board shall establish and administer the nominating and election procedure for each election. The board of trustees shall elect from among its members a chairman, vice chairman and secretary, within ten (10) days after a new trustee is elected or appointed.

(d) If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(e) The trustees shall serve without compensation, but they may be reimbursed from the fund for all necessary expenses which they may actually expend through service on the board.

(f) Each trustee shall, within ten (10) days after his or her appointment or election, take an oath of office before the town clerk, that so far as it develops upon him or her they will diligently and honestly administer the affairs of the said board, and that he or she will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. Such oath shall be subscribed to by the members making it and shall be certified by the said clerk and filed in the office of the town clerk.

(g) Each trustee shall be entitled to one vote on the board. Three (3) affirmative votes shall be necessary for a decision by the trustees at any meeting of the board. The chairman shall have the right to one vote only. Trustees may not cast proxy votes.

(h) Subject to the limitations of this division, the board of trustees shall from time to time establish uniform rules and regulations for the administration of funds created by this division and for transactions of its business. The board shall make no regulations relating to removal or suspension of a trustee.

(i) The board of trustees shall engage such actuarial accounting, legal and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the board of trustees and all other expenses of the board necessary for the operation of the retirement system shall be paid by the town or from the fund at such rates and in such amounts as the board of trustees shall agree. Funds may be distributed by a disbursing agent as determined by the board, but only upon written authorization by the board of trustees.

(j) Reserved.

(k) For all acts and determinations of the board the secretary shall prepare minutes.

(l) The duties and responsibilities of the board of trustees shall include, but not necessarily be limited to the following:

(1) Construe the provisions of the system and determine all questions arising thereunder;

(2) Determine all questions relating to eligibility for benefits hereunder;

(3) Determine and certify the amount of all retirement allowances or other benefits hereunder;

(4) Establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system;

(5) Distribute to the members annually pertinent financial information concerning the system;

(6) Receive and process all applications for participation and benefits;

(7) Authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund;

(8) Have actuarial studies and actuarial valuations performed, and make recommendations regarding any and all changes in the provisions of the system;

(9) Make the final determination of a member's eligibility for the disability benefits provided herein;

(10) Perform such other duties as are specified in this division.

(m) The board of trustees may furnish to the town auditor such available investment and actuarial information regarding the system as shall be requested. At its option, the board may select the town's independent auditor for purposes of preparing an independent audit of the system provided said auditor meets the requirements of Sections 185.35(1)(k) and 175.351(12)(b), Florida Statutes. (Ord. No. 89-15, 6, 9-19-89; Ord. No. 91-5, 4--6, 1-15-91; Ord. 99-2, 1—2, 1-19-99; Ord. 99-4, 1, 10-19-99; Ord. No. 00-02, 1-4, 3-21-00)

Sec. 2-232. Finances and fund management.

(a) As part of the system there is hereby established the fund, which shall initially consist of the assets held in the existing police officer and firefighter retirement funds sponsored by the town in effect prior to the effective date, and into which shall be deposited all of the contributions and assets whatsoever attributable to the system.

(b) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board of trustees. Payments of benefits and disbursements from the fund shall be made by the disbursing agent but only upon written authorization from the board.

(c) The board may appoint a national or state bank which meets the requirements of Chapter 280, Florida Statutes, for the purpose of serving as custodian of the fund and all assets of the fund

shall be promptly and continually deposited therewith. In order to fulfill its investment responsibilities as set forth herein, the board may also retain the services of the custodian bank, an investment advisor registered under Investment Advisory Act of 1940, an insurance company, or a combination of these, for purposes of investment decisions and management. Such investment manager shall have full discretion in the investment of assets subject to limitation of this agreement and any guidelines as prescribed by the board.

(d) All funds and securities of the system may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:

(1) Receipts and disbursements of the fund;

(2) Benefit payments;

(3) All cash investments realized and unrealized gains or losses whatsoever;

(4) All interest, dividends and capital gains (or losses) whatsoever attributable to contributions and deposits to the fund;

(5) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.

(e) The board of trustees shall have the following investment powers and authority;

(1) The board of trustees shall be vested with full legal title to said fund, subject, however, and in any event to the authority and power of the town council to amend or terminate this trust, provided that no amendment or termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund;

(2) The fund may be invested and reinvested in such securities or property, real or personal, wherever situated and of whatever kind, as shall be approved by the board of trustees, including but not limited to stocks, common or preferred, and bonds, and other evidences of indebtedness or ownership. The board of trustees is authorized to transfer from time to time to a common, collective, or pooled trust fund maintained by any bank which meets the requirements of Chapter 280, Florida Statutes, all of such part of the trust fund hereunder as the board of trustees may deem advisable, and such part or all of the trust fund so transferred shall be subject to all of the terms and provisions of such common, collective, or pooled trust fund which contemplates the commingling for investment purposes of such trust assets with assets of other trusts. The Board of Trustees may invest in foreign securities as regulated by Sections 175.071(1)(b)(4)b. and 185.06(1)(b)4b., Florida Statutes. The board of trustees is also authorized to withdraw from such common, collective, or pooled trust fund, from time to time, all or such part of the trust fund as the board of trustees may deem advisable;

(3) The board of trustees may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the system;

(4) No person or entity shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided nor for any loss or diminishment of the fund, except that due to his, her or its own negligence, willful misconduct or lack of good faith;

(5) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the trust fund;

(6) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies of power of attorney with or without power of substitutions; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock; or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the power of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be in the best interest of the fund to exercise;

(7) The board shall not be required to make any inventory or appraisal or report of any court, nor to secure any order of court for the exercise of any power herein contained;

(8) Where any action which the board is required to take or any duty or function which it is required to perform, either under the terms herein or under the general law applicable to it as trustee under this division, can reasonably be taken or performed only after receipt by it from a member, the town or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it;

(9) Any overpayments or underpayments from the fund to a member or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board. Overpayments shall be charged against payments next succeeding the correction. Underpayments shall be made up from the trust fund;

(10) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for;

(11) In any application to or proceeding or action in the courts, only the town and the board shall be necessary parties, and no member or other person having an interest in the fund shall be entitled to any notice of service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

(f) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said fund shall always remain in the board of trustees.

(g) Notwithstanding anything else in this subsection and as provided in Florida Statutes §215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company; as defined in that section. Beginning January 1, 2010, the Board must proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have directly in that company. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by Florida Statutes §215.473, as provided for in Florida Statutes 175.071(8) and 185.06(7) and the manner of the disposition, if any, is reasonable as to the means chosen. For purposes of determining which companies are scrutinized companies, the Board may utilize the list of scrutinized companies as developed by the Florida State Board of Administration. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection.

(Ord. No. 89-15, 7, 9-19-89; Ord. No. 91-5, 7, 1-15-91; Ord. No. 01-01, 3, 1-16-01; Ord. 10-06, 5, 3-16-10)

Sec. 2-233. Repeal or termination of system.

(a) Upon termination of the plan by the Town for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121, or upon written notice to the board of trustees by the Town that contributions under the plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees' accounts are nonforfeitable. The fund shall be distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits, after taking into account the expenses of such distribution. The board shall inform the Town if additional assets are required, in which event the Town shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board of trustees shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each police officer and firefighter entitled to benefits under the plan, as specified in subsection (3).

(3) The board of trustees shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

(4) If there is asset value remaining after the full distribution specified in subsection (3), and after payment of any expenses incurred with such distribution, such excess shall be returned to the Town, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the Town and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the Town and the state.

(5) The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts determined under subsection (3).

(Ord. No. 89-15, 8, 9-19-89; Ord. 10-06, 6, 3-16-10)

Sec. 2-234. Miscellaneous.

(a) *Medical board.* The board of trustees may at its discretion designate a medical board to be composed of up to three (3) physicians, but limited to either M.D.'s and/or D.O.'s, who shall arrange for and pass upon all medical examinations required under the provisions of this division, shall investigate all essential statements or certifications made by or on behalf of a member in connection with an application for disability or retirement and shall report in writing to the board of trustees its conclusions and recommendations upon all matters referred to it. The payment for such services shall be determined by the board of trustees.

(b) *Discharged members.* Members entitled to a pension shall not forfeit the same upon dismissal by the town, but shall be retired as herein described.

(c) *Nonassignability.* No benefit provided for herein shall be assignable or subject to garnishment for debt or for other legal process. However, the Board shall honor an income deduction order for alimony or child support in accordance with rules and procedures adopted by the Board.

(d) *Pension validity.* The board of trustees shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. Said board is empowered to purge the pension rolls of any person heretofore granted a pension under prior or existing law or heretofore granted under this division if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any pensioner who has heretofore under any prior or existing law or who shall hereafter under this division be erroneously, improperly or illegally classified.

(e) *Incompetents.* If any member or beneficiary is a minor or is, in the judgment of the board, otherwise incapable of personally receiving and giving a valid receipt for any payment due him or her under the system, the board may, unless and until claims shall have been made by a duly appointed guardian or committee of such person, make such payment or any part thereof to such persons, spouse, children or other person deemed by the board to have incurred expenses or assumed responsibility for the expenses of such person. Any payment so made shall be a complete discharge of any liability under the system for such payment.

(f) *[Codification.]* Specific authority is hereby granted to codify and incorporate this ordinance [Ordinance No. 89-15] in the existing Code of Ordinances of the Town of Indialantic, Florida.

(g) *[Repeal of conflicting provisions.]* All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

(h) *[Severability.]* Should any section or provision of this division or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereto as a whole or part thereof other than the part to be declared invalid.
(Ord. No. 89-15, 9, 9-19-89; Ord. 10-06, 7, 3-16-10)

Sec. 2-235. IRC Provisions.

(a) 415 Internal Revenue Code Limits

1. Basic Limitations. Subject to the adjustments in paragraph 3, the maximum amount of the actual annual retirement income paid in any year with respect to a Participant under this Plan attributable to employer provided benefits shall not exceed the dollar amount allowable for any calendar year pursuant to §415(b) of the Code, as adjusted in such calendar year for increases in the cost of living in accordance with Regulations issued by the Secretary of the Treasury under §415(d) of the Code. For purposes of applying the basic limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Treasury Regulations, so that such benefits are the Actuarial Equivalent of a straight life annuity. For purposes of this subsection Article, the following benefits shall not be taken into account:

   a. Any ancillary benefit which is not directly related to retirement income benefits;
   b. Any other benefit not required under §415(b)(2) of the Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of §415(b)(1) of the Code.

2. Participation in Other Defined Benefit Plans. The limitation of this subsection with respect to any Participant who at any time has been a Participant in any other defined benefit plan (as defined in §414(j) of the Code) maintained by the Town shall apply as if the total benefits payable under all defined benefit plans in which the Participant has been a Participant where payable from one Plan.

3. Adjustments in Limitations.

a. In the event the Participant's retirement benefits become payable before age sixty-two (62), the maximum amount of annual retirement income limitation prescribed by this Article shall be reduced in accordance with Regulations issued by the Secretary of the Treasury pursuant to the provisions of §415(b) of the Code, so that such limitation (as reduced) equals an annual benefit (beginning when such retirement income begins) which is equivalent to the Code §415(b) maximum amount of annual retirement income beginning at age 62.

(i) if the annuity date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) (as adjusted under section 415(d)), with the actuarial equivalence computed using whichever of the following produces the smaller annual amount: (a) the interest rate and mortality table or other tabular factor specified in the plan for determining actuarial equivalence for early retirement purposes; or (2) a 5 percent interest rate assumption and the applicable mortality table.

(ii) if the annuity starting date is in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) (as adjusted under section 415(d)), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table and expressing the participant's age based on completed calendar months as of the annuity starting date.

(iii) if the annuity starting date is in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the lesser of (1) the adjusted dollar limitation determined in accordance with (ii); and (2) the product of the dollar limitation under section 415(b)(1)(A) (as adjusted under section 415(d)) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of section 415.

(iv) the applicable mortality table is the mortality table described in Rev. Rul. 2001-62.

b. In the event the Participant's benefit is based on at least fifteen (15) years of Credited Service, the adjustments provided for in subparagraph (a) above shall not apply.

c. The reductions provided for in subparagraph (a) above shall not be applicable to disability benefits or pre-retirement death benefits.

d. In the event the Participant's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the basic limitation set forth in paragraph 1 herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65) as follows:

(i) if the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) (as adjusted under section 415(d)), with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table or other tabular factor specified in the plan for determining actuarial equivalence for delayed retirement purposes; or (2) a 5 percent interest rate assumption and the applicable mortality table.

(ii) if the annuity starting date is in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) (as adjusted under section 415(d)), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table and expressing the participant's age based on completed calendar months as of the annuity starting date.

(iii) if the annuity starting date is in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the lesser of (1) the adjusted dollar limitation determined in accordance with (ii); and (2) the product of the dollar limitation under section 415(b)(1)(A) (as adjusted under section 415(d)) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of section 415.

(iv) the applicable mortality table is the mortality table described in Rev. Rul. 2001-62.

e. Less than Ten (10) Years of Participation. The maximum retirement benefits payable under this Article to any Participant who has completed less than ten (10) years of participation with the Town shall be the amount determined under paragraph 1 multiplied by a fraction, the numerator of which is the number of the Participant's years of participation and the denominator of which is ten (10). The reduction provided for in this subparagraph shall not be applicable to disability benefits or pre-retirement death benefits.

f. Ten Thousand Dollar $10,000 Limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a Participant shall be deemed not to exceed the limitations in this subsection if the benefits payable, with respect to such Participant

under this Plan and under all other qualified defined benefit pension plans to which the Town contributes, do not exceed ten thousand dollars ($10,000) for the applicable Plan year and for any prior Plan Year and the Town has not at any time maintained a qualified defined contributions plan in which the Participant participated.

g. Reduction of benefits. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Participant's benefit under any defined benefit plans in which Participant participated, such reduction to be made first with respect to the plan in which Participant most recently accrued benefits and thereafter in such priority as shall be determined by the Board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Participant participated, such reduction to be made first with respect to the plan in which Participant most recently accrued benefits and thereafter in such priority as shall be established by the Board and the plan administrator for such other plans provided, however, that necessary reductions may be made in different manner and priority pursuant to the agreement of the Board and the plan administrator of all other plans covering such Participant.

h. Cost-of-Living Adjustments. The limitations as stated herein shall be adjusted annually in accordance with any cost-of-living adjustments prescribed by the Secretary of the Treasury pursuant to §415(d) of the Code.

i. Adjustment of Benefits payable in a form other than straight life annuity. Benefits payable in a form other than a straight life annuity and not subject to 417(e)(3) shall be adjusted to an actuarially equivalent straight life annuity that as follows:

(i) for limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity (if any) payable under the plan at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using an interest rate of 5 percent and the applicable mortality table under section 417(e)(3).

(ii) for limitation years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using whichever of the following produces the greater annual amount: (1) the interest rate and mortality table or other tabular factor specified in the plan for adjusting benefits in the same form; and (2) a 5 percent interest rate assumption that the applicable mortality table.

(iii) the applicable mortality table is the mortality table described in Rev. Rul. 2001-62.

4. This section shall be effective for distributions after December 31, 2001.

(b) 401(a)(31) Rollovers

(1) Direct transfers of eligible rollover distributions.

a. *General*. This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions

a. *Eligible rollover distribution*: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more and any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

b. *Eligible retirement plan*: An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust, an annuity plan described in section 403(a) of the Code, an eligible deferred compensation plan described in §457(b) which is maintained by an eligible employer described in §457(e)(1)(A) of the Code or an annuity contract described in 403(b) of the Code, that accepts the distributee's eligible rollover distribution.

c. *Distributee*: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is entitled to payment for alimony and child support under an income deduction order, are distributees with regard to the interest of the spouse or former spouse.

d. *Direct rollover*: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(3) In the event of a mandatory distribution under this plan in excess of $1,000 and the member does not elect to receive the distribution directly then the Board shall make a transfer to an individual retirement plan of the Board's choosing and shall notify the member in writing of such transfer.

(c) 401(a)(9) Required Distributions

(1) Effective for distributions after December 31, 1996, in accordance with IRC Section

401(a)(9), all benefits under this plan will be distributed, beginning not later than the required beginning date set forth below, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and a beneficiary.

(2) Any and all benefit payments shall begin by the later of:

a. April 1 of the calendar year following the calendar year of the member's retirement date; or

b. April 1 of the calendar year following the calendar year in which the member attains age 70 ½.

(3) If an employee dies before his entire vested interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as provided for under this plan.

(4) All distributions under this Plan will be made in accordance with this section, Code Section 401(a)(9) and the regulations thereunder, notwithstanding any provisions of this Plan to the contrary, effective beginning January 1, 2003.

(d) 401(a)(17) Limitation on Compensation

For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for any plan year shall not include any amounts in excess of the Internal Revenue Code s. 401(a)(17) limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code s. 401(a)(17)(B). For any person who first became a member prior to the first plan year beginning on or after January 1, 1996, the limitation on compensation shall be not less than the maximum compensation amount that was allowed to be taken into account under the plan as in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 401(a)(17)(1991). (Ord. 10-09, 1, 7-20-10; Ord. No. 11-15, 2, 7-27-11)

Sec. 2-236 – Firefighter Share Plan.

A defined contribution plan component (share plan) for firefighters is hereby established pursuant to section 175.351(6), Florida Statutes. The share plan shall be funded solely and entirely by Chapter 175 premium tax revenues allocated to the share plan, as provided herein. The share plan benefit is in addition to the benefits provided by the pension fund.

(1) Eligible members and share accounts. Firefighter members with at least one year of credited service who are contributing to and participating in the pension fund on or after June 5, 2016. Firefighter members who retired before June 5, 2016, members who are participating in the DROP on that date, former members who left Town employment before June 5, 2016, and the beneficiary of any member shall not be eligible to participate in the share plan. The board shall create an individual member share account for each eligible member, and maintain appropriate books and records showing the respective interest of each eligible member. The maintenance of separate share accounts is, for accounting purposes only, and a segregation of the assets of the trust fund to each account shall not be required.

(2) Allocation of Chapter 175 Premium Tax Revenues to the Share Plan.

(a) Initial Allocation. One-half of the accumulated excess Chapter 175 premium tax revenues on June 5, 2016 ($280.03) shall be allocated to the share plan as soon as administratively practical after adoption of this ordinance.

(b) Annual Allocation. Each year, as soon as administratively practical after October 1, an annual allocation shall be made to the share plan in an amount equal to the one-half of the Chapter 175 premium tax revenues received during the preceding plan year in excess of $46,369.57 (the amount received in 2003).

(3) Share account funding. The total amount of Chapter 175 premium tax revenues allocated to the share plan each year shall be divided equally among all eligible members as of September 30 of the year in which the allocation is made, with each eligible member receiving and equal share of the total; except that for the first allocation following the establishment of the share plan, the total amount of Chapter 175 premium tax revenues allocated to the share plan shall be divided equally among all eligible members as of June 5, 2016. Share plan monies credited to actively employed firefighter shall be placed in the officer's share account. Share plan monies credited to retired members shall be paid directly to the member in a one-time payment each year that Chapter 175 premium tax revenues are allocated to the share plan.

(4) Interest on Share Accounts. As of September 30 each year, the share account balance of each actively employed member shall be credited with interest at the rate earned by the Pension Plan.

(5) Allocation of costs, fees and expenses. As of September 30 each year, each individual share account shall be adjusted to allocate the costs, fees and expenses of administration of the share plan. Costs, fees, and expenses of administration shall be allocated to each individual member share account on a proportionate basis taking the costs, fees and expenses of administration of the fund as a whole multiplied by a fraction, the numerator of which is the total assets in each individual member share account and the denominator of which is the total assets of the fund as a whole.

(6) Annual Statements. The board shall provide each eligible member with an annual statement setting forth their share account balance as of September 30 each year, and each retiree who receives a share plan payment shall receive a statement reflecting the payment.

(7) No right to allocation. The fact of allocation or credit of an allocation to a member's share account by the board shall not vest in any member, any right, title, or interest in the assets of the pension fund or in the Chapter 175 tax revenues except at the time or times, to the extend, and subject to the terms and conditions provided in this section.

(8) Forfeitures; Distribution of Share Account Balance in the Event of Disability or Death. An eligible member who terminates Town employment with less than ten (10) years of credited service, other than for disability or death, shall forfeit his individual member share account. In the event an eligible member terminates Town employment due to disability or death, the member or the member's designated beneficiary shall receive the member's share account balance as of the date of disability or death. A member's share account is also subject to forfeiture as provided in section 112.3173, Florida Statutes. Forfeited amounts shall be redistributed to the other individual member accounts, except as otherwise required by law.

(9) Payment of benefits. If a member terminates employment and is eligible to receive retirement benefits under the pension fund, the member's share account balance shall be paid to the member, or in the event of the member's death to the member's designated beneficiary, within 90 days following termination of employment.

(10) Benefits not guaranteed. All benefits payable under this section shall be paid only from the Chapter 175 premium tax revenues allocated to the individual member share accounts, plus interest. Neither the Town nor the board shall have any duty or liability to furnish any additional funds, securities or other assets to fund share account benefits.
(Ord. No. 18-07, 3, 5/9/18)

Sec. 237. Police Share Plan.

A defined contribution plan component (share plan) for police officers is hereby established pursuant to section 185.35(6), Florida Statutes. The share plan shall be funded solely and entirely by Chapter 185 premium tax revenues allocated to the share plan, as provided herein. However, the Town and the union representing the Town police officers have mutually agreed that all annual Chapter 185 premium tax revenues up to$88,282 will be used to reduce the Town's annual required pension contributions. At such time as annual Chapter 185 premium tax revenues exceed $88,282, the parties will negotiate the details of the share plan.
(Ord. No. 18-07, 4, 5/9/18)

Secs. 2-238 - 2-249. Reserved.

Editors Note: Ord. No. 18-07 incorrectly numbered Firefighter and Police Share Plans as 2-263 and 2-264. This was corrected to read 2-236 and 236 as a scrivener's error.

DIVISION 4. CIVIL SERVICE SYSTEM

Sec. 2-250. Civil service implemented.

Pursuant to Section 4.05 of the Town Charter, a civil service system is hereby created and implemented for Town employees, as set forth in the Personnel/Civil Service Manual dated March, 1997, as amended by the document entitled First Amendment to Personnel/Civil Service Manual, dated February, 2001 and as adopted by Ordinance No. 01-05 and as amended by the document entitled Second Amendment to Personnel/Civil Service Manual dated April , 2001 and as adopted by Ordinance 01-08, and as amended by the document entitled Third Amendment to Personnel/Civil Service Manual, dated August, 2002 and as adopted by Ordinance 02-21, and as amended by the document entitled Fourth Amendment to Personnel/Civil Service Manual dated September, 2003 and as adopted by Ordinance 03-13 and as amended by the document entitled Fifth Amendment to Personnel/Civil Service Manual, dated March, 2008 and as adopted by Ordinance 08-05 and as amended by the document entitled Sixth Amendment to Personnel/Civil Service Manual, dated February, 2009 and as adopted by Ordinance 09-05 and as amended by the document entitled Seventh Amendment to Personnel/Civil Service Manual dated May, 2010 and as adopted by Ordinance 10-07 and as amended by the document entitled Eighth Amendment to Personnel/Civil Service Manual dated October, 2010 and as adopted by Ordinance 10-11 and as amended by the document entitled Ninth Amendment to Personnel/Civil Service Manual dated August 20, 2012 as adopted by Ordinance 12-12, subject to any collective bargaining and as amended by the document entitled Tenth Amendment to Personnel/Civil Service Manual dated February, 2013 and as adopted by Ordinance 13-07 and as amended by the document entitled Eleventh Amendment to Personnel/Civil Service Manual dated May, 2015, and as adopted by Ordinance 15-3, and as amended by the document entitle Twelfth Amendment to Personnel/Civil Service Manual dated April 2018, and as adopted by Ordinance 18-05.
(Ord. No. 93-7, 3, 9-21-93; Ord. No. 97-5, 5, 5-6-97; Ord. No. 01-05, 1, 2-20-01; Ord. No. 01-08, 1, 5-21-01; Ord. No. 02-21, 1, 9-17-02; Ord. No. 03-13, 1, 10-21-03; Ord. No. 08-05, 1, 3-18-08; Ord. No. 09-05, 1, 2-17-09; Ord. 10-07, 1, 5-18-10; Ord. 10-11, 1, 10-16-10; Ord. No. 12-12, 1, 8-21-12; Ord. No. 13-07, 1, 2-19-13; Ord. No. 15-03, 1, 5-13-15; Ord. No. 18-05, 2, 4/16/18)

Sec. 2-251. Repealed. (Ord. No. 93-7, 4, 9-21-93; Ord. No. 97-5, 6, 5-6-97)

DIVISION 5. GENERAL EMPLOYEES' PENSION PLAN

Sec. 2-252. Definitions.

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

1. Accumulated Contributions - means a Member's own contributions to the Fund at the rate of four point five percent (4.5%) of Salary on a pretax basis as provided for in Section 414(h)(2) of the Internal Revenue Code.

2. Actuarial Equivalence - means a form of benefit differing in time, period, or manner of payment from a specific benefit provided hereunder but having the same value when computed using the 1983 Group Annuity Mortality Table and eight percent (8%) interest.

3. Agreement - means this written instrument setting forth the provisions of the Pension Plan.

4. Average Final Compensation - means one-twelfth (1/12th) of the arithmetic average of Salary for the best five (5) years of employment during the last ten (10) years. For those Members who are employed for fewer than five years, Average Final Compensation shall be the arithmetic average of Earnings during the total months of employment. A year shall be 12 consecutive months.

5. Beneficiary - means the person or persons designated to receive benefits hereunder at the post-retirement death of a Member who has been designated in writing by the Member and filed with the Board. If no person so designated is living at that time, the Beneficiary, if applicable, shall be the estate of the Member.

6. Board - means the Board of Trustees, which shall administer and manage the Plan herein provided and serve as Trustees of the Fund.

7. Town - means Town of Indialantic, Florida.

8. Credited Service - means the total number of years and completed months of service with the Town as a General Employee, but omitting intervening years and completed months when such General Employee was not employed by the Town and years and completed months for which the Member has received a refund of Accumulated Contributions.

Members whose service is interrupted by active military service with the U. S. Armed Forces will receive benefit credit for up to four such years of active military service provided:

A. the Member is entitled to reemployment under the provisions of the Veterans' Reemployment Rights Act,

B. the Member was employed by the Town as a General Employee immediately prior to the commencement of active military service, and

C. the Member applies for reemployment with the Town as a General Employee within 90 days of discharge from active military service.

9. Joint Annuitant - means a Spouse, dependent child, or any person receiving 50% or more of their support from the Member who is designated by the Member for purposes of receiving benefits in the event of the pre-retirement death of the Member.

10. Employee or General Employee - means all full-time persons employed by the Town who are classified as General Employees.

11. Salary - means total W-2 compensation, plus tax deferred and tax-exempt items of income.

Effective July 1, 2011 overtime included in salary is limited to 300 hours per member per year. Prior to July 1, 2011 all overtime is included in the definition of salary. No hours of unused vacation leave earned after July 1, 2011 shall be considered salary, however, member's hours earned as of June 30, 2011 shall be included, provided that number of hours are cashed in at retirement.

12. Fund - means the Trust Fund established herein as part of the Plan.

13. Member - means an actively employed General Employee who fulfills the prescribed participation requirements.

14. Plan - means the Town of Indialantic General Employees' Pension Plan as contained herein and all amendments thereto.

15. Spouse - means the lawful wife or husband of a Member at the time of pre-retirement death or retirement.

(Ord. No. 13-06, 1, 1-15-13)

Sec. 2-253. Membership.

1. Conditions and Eligibility.

All full-time General Employees who are employed by the Town on the Effective Date may make a one-time irrevocable election to participate in the Plan. Full-time General Employees who are hired after the Effective Date shall participate in the Plan as a condition of employment. Provided, however, the Town Manager, solely, shall not participate.

2. Beneficiary Designation.

Each eligible General Employee shall complete a Beneficiary Designation form for purposes of naming beneficiaries to receive any death benefits provided hereunder.

A Member may from time to time change his or her designated Beneficiary by written notice to the Board upon forms provided by the Board. Upon such change the rights of all previously designated Beneficiaries to receive any benefits under the Plan shall cease.

Sec. 2-254. Benefit amounts and eligibility.

1. Retirement Dates

A. Normal Retirement - a Member's Normal Retirement Date shall be the first day of the month coincident with or next following the later of the attainment of age sixty-five (65) and the completion of five (5) years of Credited Service.

Members who continue in employment beyond their Normal Retirement Date continue to earn benefit credit under the Plan.

Each Member shall become 100% vested in his or her accrued benefit on his or her Normal Retirement Date.

B. Early Retirement - a Member's Early Retirement Date shall be the first day of the month coincident with or next following the attainment of age sixty (60) and the completion of five (5) years of Credited Service.

2. Retirement Benefits.

A. Normal - a Member retiring hereunder on or after his or her Normal Retirement Date shall receive a monthly benefit which shall commence on his or her Retirement Date and be continued thereafter during his or her lifetime. The monthly retirement benefit shall equal two percent (2.0%) of Average Final Compensation for each year of Credited Service.

B. Early - a Member retiring hereunder on or after his or her Early Retirement Date shall receive a monthly benefit which shall be computed as for Normal Retirement, but shall be reduced one-fifteenth (1/15th) for each year by which the commencement of monthly benefit payments precedes the Member's Normal Retirement Date.

3. Disability Benefits - None. Members who terminate employment as a result of injury or disease are entitled to benefits payable based upon their age and service at termination as set forth herein.

4. Pre-Retirement Death - if a Member dies while actively employed by the Town, the Member's designated Beneficiary shall receive, at their discretion, either 1) a refund of Accumulated Contributions, or 2) an immediate annuity payable for 120 months which shall be the actuarial equivalent of the accrued benefit earned by the Member as of the date of death.

5. Vesting - if a Member terminates his employment, either voluntarily or by discharge, and is not eligible for any other benefits under this Plan, he shall be entitled to the following:

A. With less than five (5) years of Credited Service - refund of Accumulated Contributions.

B. With 5 or more years of Credited Service -

1. The pension benefit accrued to his date of termination payable for life, commencing at the Member's Normal Retirement Date or Early Retirement Date, provided the Member survives until benefit payments actually begin. If the benefit is paid prior to the Normal Retirement Date, the monthly amount shall be determined as for Normal Retirement, but shall be reduced one-fifteenth (1/15th) for each year that the benefit commencement date precedes the Normal Retirement Date, or

2. Refund of Accumulated Contributions.

In the event that the Member dies prior to the commencement of benefits, the designated Beneficiary shall receive a refund of Accumulated Contributions.

Forfeitures arising from terminations of employment shall serve only to reduce future Town contributions and shall remain as a part of the assets of the Fund.
(Ord. 06-04, 1, 1-17-06)

2-254.1. Credit for workers' compensation payment periods.

A member who has been eligible or becomes eligible to receive workers' compensation payments for an injury or illness occurring during his or her employment while a member shall, upon return to active employment with the Town for one (1) calendar month or upon approval for disability retirement in accordance with sec. 2-254 3., receive full retirement credit for the period prior to such return to active employment or disability retirement for which the workers' compensation payments were received by the member. However, no member may receive retirement credit for any such period occurring after the earlier of the date of maximum medical improvement as defined in s. 440.02, Florida Statutes, or the date termination of employment with the Town has occurred. The Town and the member at the time of and during the worker's compensation injury or illness shall make the required retirement contributions, as required by sec. 2-256, based on the member's rate of monthly compensation immediately prior to his or her receiving workers' compensation payments for retirement credit received by the member. (Ord. 10-01, 1, 11-17-09)

Sec. 2-255. Optional forms of benefits.

Each Member entitled to a Normal or Early Retirement Benefit shall have the right at any time prior to the date on which benefit payments begin to elect to have his or her benefit payable under any of the Options hereinafter set forth in lieu of the benefits provided herein, and to revoke any such elections and make a new election at any time prior to the actual commencement of payments. The Member shall make such an election by written request to the Board, such request being retained in the Board's files.

OPTION 1 - Joint and Last Survivor Option

The Member may elect to receive a benefit during his or her lifetime and have such benefit (or designated fraction thereof) continued after his or her death to and during the lifetime of his or her Beneficiary. The Election of Option 1 shall be null and void if the designated Beneficiary dies before the Member's benefit payments commence.

OPTION 2 - Ten Year Certain and Life Annuity Option

The Member may elect to receive a reduced benefit which is payable for life, with the first 120 monthly payments guaranteed payable in any event.

OPTION 3 - Social Security Option

If a Member retires prior to the time at which Social Security benefits are payable, he may elect to receive an increased retirement benefit until such time as Social Security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuaries for the Plan, based upon the Social Security law in effect at the time of the Member's retirement.

OPTION 4 - Other

In lieu of the other optional forms enumerated in this Section, benefits may be paid in any form approved by the Board so long as actuarial equivalence with the benefits otherwise payable is maintained. Provided, however, lump sum payments of all or a portion of the Member's benefit entitlement are prohibited.

Sec. 2- 256. Contributions.

1. Member Contributions.

Active Members of the Plan shall make contributions to the Fund through payroll deductions in the amount of four point five percent (4.5%) of their Salary. These amounts shall be made on a pretax basis as provided for in Section 414(h)(2) of the Internal Revenue Code. Such Member contributions shall be deposited no less frequently than monthly. Members shall always be 100% vested in the amount of the Member contributions as these amounts shall represent the minimum benefits payable from the Plan.

2. Town Contributions.

So long as this Plan is in effect, the Town shall make contributions to the Fund in an amount equal to the difference between the total cost for the year as shown in the most recent actuarial valuation of the Plan and amounts contributed by the Members as set forth in the actuarial valuation report. The Town contributions shall be made in quarterly installments. The total cost for any year shall be defined as the total Normal Cost plus the additional amount sufficient to amortize any Unfunded Actuarial Accrued Liabilities over not more than a forty (40) year period.

Sec. 2-257. Administration.

1. The General Administration and responsibility for the proper operation of the Pension Plan and for making effective the provisions of this Ordinance are hereby vested in a Board of Trustees which shall be designated as the Plan Administrator for the Plan. The Board shall consist of five (5) persons as follows:

A. Two legal residents of the Town who shall be appointed by the Town Council to serve for a period of 2 years unless sooner replaced by the Town Council. An appointed Member may succeed himself or herself.

B. Two Members of the Plan to be elected as hereinafter provided, and

C. A fifth Member, elected by a majority of the other four (4) members of the Board, to be appointed by the Town Council as a ministerial duty for a two (2) year term. Such fifth member shall be allowed to succeed himself or herself in office for additional two (2) years terms if reelected.

2. The regular term of office of each elected or appointed Trustee shall be two (2) years. Each elected Trustee may succeed himself or herself if reelected as hereinafter provided.

3. Elected General Employee Trustees shall be elected in the following manner: by vote of all actively employed Members of the Plan at places designated by the Board, of which all qualified Members entitled to vote shall be notified in person or by written notice ten (10) days in advance of said election. The candidate who receives the highest number of votes for office shall be declared elected and shall take office immediately upon commencement of the term of office for which elected or as soon thereafter as he or she shall qualify therefore. The Board shall establish and administer the nominating and election procedure for each election. The Board of Trustees shall elect from among its Members a Chairman, Vice Chairman and Secretary, within (10) days after a new Trustee is elected or appointed.

4. If a vacancy occurs in the office of Trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

5. The Trustees shall serve without compensation, but they may be reimbursed from the Fund for all official expenses which they may necessarily actually expend through service on the Board.

6. Each Trustee shall, within ten (10) days after his or her appointment or election, take an oath of office before the Town Clerk of the Town, that so far as it develops upon him or her they will diligently and honestly administer the affairs of the said Board, and that he or she will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the Pension Plan. Such oath shall be subscribed to by the Members making it and shall be certified by the said Clerk and filed in the office of the Town Clerk.

7. Each Trustee shall be entitled to one (1) vote on the Board. Three (3) affirmative votes shall be necessary for a decision by the Trustees at any meeting of the Board. The Chairman shall have the right to one (1) vote only. Trustees may not cast proxy votes.

8. Subject to the limitations of this ordinance, the Board of Trustees shall from time to time establish uniform rules and regulations for the administration of funds created by this Ordinance and for transactions of its business, including provisions for expulsion due to non-attendance of its elected Members which could result in a vacancy.

9. The Board of Trustees shall engage such actuarial, accounting, legal and other services as shall be required to transact the business of the Pension Plan. The compensation of all persons engaged by the Board of Trustees and all other expenses of the Board necessary for the operation of the Pension Plan shall be paid by the Town or from the Fund at such rates and in such amounts as the Board of Trustees shall agree. Funds may be distributed by a disbursing agent as determined by the Board, but only upon written authorization by the Board of Trustees.

10. For all acts and determinations of the Board the Secretary shall prepare minutes.

11. The duties and responsibilities of the Board of Trustees shall include, but not necessarily be limited to the following:

A. Construe the provisions of the Plan and determine all questions arising thereunder.

B. Determine all questions relating to eligibility for benefits hereunder.

C. Determine and certify the amount of all retirement allowances or other benefits hereunder.

D. Establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the Plan.

E. Distribute to the Members information concerning the Plan.

F. Receive and process all applications for participation and benefits.

G. Authorize all payments whatsoever from the Fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the Plan and Fund.

H. Have actuarial studies and actuarial valuations performed, and make recommendations regarding any and all changes in the provisions of the Plan.

I. Perform such other duties as are specified in this Ordinance.

12. The Board of Trustees shall furnish to the Town Auditor and the Town Finance Director such required investment and actuarial information regarding the Plan as shall be requested.

Sec. 2-258. Finances and fund management.

1. All of the contributions and assets whatsoever attributable to the Plan shall be deposited to the Fund.

2. The actual custody and supervision of the Fund (and assets thereof) shall be vested in the Board of Trustees. Payments of benefits and disbursements from the Fund shall be made by the disbursing agent but only upon written authorization from the Board.

3. The Board may appoint a National or State Bank with Trust powers or the Town Finance Director for the purpose of serving as Custodian of the Fund and all assets of the Fund shall be promptly and continually deposited therewith. In order to fulfill its investment responsibilities as set forth herein, the Board may utilize the services of the Finance Director or retain the services of the Custodian Bank, an investment advisor registered under Investment Advisory Act of 1940, an insurance company, or a combination of these, for purposes of investment decisions and management.

Such investment manager shall have full discretion in the investment of assets subject to limitation of this agreement and any guidelines as prescribed by the Board.

4. All funds and securities of the Plan may be commingled in the Fund, provided that accurate records are maintained at all times reflecting the financial composition of the Fund, including accurate current accounts and entries as regards the following:

A. Receipts and disbursements of the fund;

B. Benefit payments;

C. All cash investments realized and unrealized gains or losses whatsoever;

D. All interest, dividends and capital gains (or losses) whatsoever attributable to contributions and deposits to the Fund;

E. Such other entries as may be properly required so as to reflect a clear and complete financial report of the Fund.

5. The Board of Trustees shall have the following investment powers and authority:

A. The Board of Trustees shall be vested with full legal title to said Fund, subject, however, and in any event to the authority and power of the Town Council of the Town of Indialantic, Florida to amend or terminate this Trust, provided that no amendment or Fund termination shall ever result in the use of any assets of this Fund except for the payment of regular expenses and benefits under this Plan. All contributions from time to time paid into the Fund, and the income thereof, without distinction between principal and income, shall be held and administered by the Board or its Agent in the Fund and the Board shall not be required to segregate or invest separately any portion of the Fund.

B. The Fund may be invested and reinvested in such securities or property, real or personal, wherever situated and whatever kind, as shall be approved by the Board of Trustees, including but not limited to stocks, common or preferred, and bonds, and other evidences of indebtedness or ownership.

C. The Board of Trustees may retain in cash and keep unproductive of income such amount of the Fund as it may deem advisable, having regard for the cash requirements of the Plan.

D. No person or entity shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided nor for any loss or diminishment of the Fund, except that due to his, her or its own negligence, willful misconduct or lack of good faith.

E. The Board may cause any investment in securities held by it to be registered in or transferred into its name as Trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the Trust Fund.

F. The Board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies of power of attorney with or without power of substitutions; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock, or other securities in any voting trust or any protective or like committee with the Trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the power of an owner with respect to stocks, bonds, or other investments comprising the Fund which it may deem to be in the best interest of the Fund to exercise.

G. The Board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power herein contained.

H. Where any action which the Board is required to take or any duty or function which it is required to perform, either under the terms herein or under the general law applicable to it as Trustee under this Ordinance, can reasonably be taken or performed only after receipt by it from a Member, the Town or any other entity, of specific information, certification, direction or instructions, the Board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

I. Any overpayments or underpayments from the Fund to a Member or Beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the Board. Overpayments shall be charged against payments next succeeding the correction. Underpayments shall be made up from the Trust Fund.

J. The Board shall sustain no liability whatsoever for the sufficiency of the Fund to meet the payments and benefits herein provided for.

K. In any application to or proceeding or action in the courts, only the Town and the Board shall be necessary parties, and no Member or other person having an interest in the Fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

6. Any of the foregoing powers and functions reposed in the Board may be performed or carried out by the Board through duly authorized Agents, provided that the Board at all times maintains continuous supervision over the acts of any such Agent; provided further, that legal title to said Fund shall always remain in the Board of Trustees.

Sec. 2-259. Maximum benefit limitations.

1. Basic Limitation.

Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a Member under this Plan shall not exceed $90,000 (or such lesser dollar amount as may be allowable for any calendar year pursuant to Section 415(b) of the Internal Revenue Code, as adjusted in such calendar year for increases in the cost of living in accordance with regulations issued by the Secretary of the Treasury under Section 415(d) of the Code).

For purposes of applying the above limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Treasury Regulations, so that such benefits are the Actuarial Equivalent of a straight life annuity. For purposes of this Section, the following benefits shall not be taken into account:

i. Any ancillary benefit which is not directly related to retirement income benefits;

ii. Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

2. Participation in Other Defined Benefit Plan. The limitation of this Section with respect to any Member who at any time has been a Member in any other defined benefit Plan (as defined in Section 414(j) of the Internal Revenue Code) maintained by the Town shall apply as if the total benefits payable under all defined benefit Plans in which the Member has been a Member were payable from one Plan.

3. Adjustments in Limitations. In the event the Member's retirement benefits become payable before unreduced Social Security benefits are payable, the $90,000 limitation prescribed by this Section shall be reduced in accordance with Regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code. If the Member's retirement benefit becomes payable after unreduced Social Security benefits are payable, for purposes of determining whether this benefit meets the limitation set forth in subsection 1 herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at the age when unreduced Social Security benefits are payable. This adjustment shall be made using an assumed interest rate of five percent (5%) and shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his or her delegate.

4. Less than Ten Years of Service. The maximum retirement benefits payable under this Section to any Member who has completed less than ten (10) years of credited service with the Town shall be the amount determined under subsection 1 of this Section multiplied by a fraction, the numerator of which is the number of the Member's years of credited service and the denominator of which is ten (10).

5. $10,000 Limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a Member shall be deemed not to exceed the limitations set forth in this Section if the benefits payable, with respect to such Member under this Plan and under all other qualified defined benefit pension plans to which the Town contributes, do not exceed $10,000 for the applicable Plan Year and for any prior Plan Year and the Town has not at any time maintained a qualified defined contribution Plan in which the Member participated.

6. Accrued Benefit of Effective Date. Notwithstanding the above limitations, if any Member as of the effective date hereof, has an Accrued Benefit as of that date that exceeds the above limitations, then such limitations shall equal such Accrued Benefit. However, no cost of living adjustments as provided in subsection 9 below shall be applicable to the amount of retirement benefit so determined.

7. Member in Defined Contribution Plan. In any case where a Member under this Plan is also a Member in a "Defined Contribution Plan" as defined in Section 414(i) of the Internal Revenue Code, maintained by the Town, the sum of the "Defined Benefit Plan Fraction" and the "Defined Contribution Plan Fraction" (both as defined in Section 415(e) of the Internal Revenue Code) shall not, subject to the restrictions and exceptions contained in Section 2004 of the Act, exceed 1.0.

8. Reduction of benefits. Reduction of benefits and/or contributions to all Plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit Plans in which Member participated, such reduction to be made first with respect to the Plan in which Member most recently accrued benefits and thereafter in such priority as shall be determined by the Trustees and the Plan Administrator of such other Plans, and next, by reducing or allocating excess forfeitures for defined contribution Plans in which the Member participated, such reduction to be made first with

respect to the Plan in which Member most recently accrued benefits and thereafter in such priority as shall be established by the Trustees and the Plan Administrator for such other provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the Trustees and the Plan Administrator of all other Plans covering such Member.

9. Cost-of-Living Adjustments. The limitations as stated in subsections 1, 2, 3, and 7 herein shall be adjusted to the time payment of a benefit begins in accordance with any cost-of-living adjustments prescribed by the Secretary of the Treasury pursuant to Section 415(d) of the Internal Revenue Code.

Sec. 2-260. Repeal or termination of system.

1. This Ordinance establishing the Plan and Fund, and subsequent ordinances pertaining to said Plan and Fund, may be modified, terminated or amended in whole or in part; provided that if this or any subsequent Ordinance shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment or repeal shall have accrued to the Member or Beneficiary shall not be affected thereby, except to the extent that the assets of the Fund may be determined to be inadequate.

2. If this Ordinance shall be repealed, or if contributions to the Plan are discontinued, the Board shall continue to administer the Plan in accordance with the provisions of this Ordinance, for the sole benefit of the then Members, any Beneficiaries then receiving retirement allowances, and any future person entitled to receive benefits under one of the Options provided for in this ordinance who are designated by any of said Members. In the event of repeal, or if contributions to the Plan are discontinued, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the Plan shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled to benefits in accordance with the provisions thereof.

3. The following shall be the order of priority for purposes of allocating the assets of the Plan upon repeal of this ordinance or if contributions to the Plan are discontinued:

A. Members already retired under the Early or Normal Retirement provisions of the Plan and those eligible for such Retirement provisions of the Plan and those eligible for such Retirement, active or deceased, but not actually retired, and their Beneficiaries, in proportion to and to the extent of the then actuarially determined present value of the benefits payable less amounts received. If any funds remain, then

B. Beneficiaries of deceased Members, in the same manner as in B. above. If any funds remain, then

C. Accumulated Contributions, then

D. To all other Members and their Beneficiaries in the same manner as B. but based upon Credited Service and Average Final Compensation as of the date of Termination of the Plan, and with any vested benefits given precedence.

The allocation of the Fund provided for in this subsection may, as decided by the Board be carried out through the purchase of insurance company contracts to provide the benefits determined in

accordance with this subsection. The Fund may be distributed in one sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the Board may direct. The Trust may be continued in existence for purposes of subsequent distributions.

4. After all the vested accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, then and only then shall any remaining funds revert to the general fund of the Town.

Sec. 2-261. Direct transfer of eligible rollover distributions.

1. General. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributes may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributes in a direct rollover.

2. Definitions.

A. Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributes, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributes or the joint lives (or joint life expectancies) of the distributes and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income.

B. Eligible Retirement Plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, and individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving Spouse, and eligible retirement plan is an individual retirement account or individual retirement annuity.

C. Distributee: A distributes includes an employee or former employee. In addition, the employee's or former employee's surviving Spouse is a distributes with regard to the interest of the Spouse.

D. Direct Rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributes.

Sec. 2-262. Miscellaneous.

1. Discharged Members - Unless otherwise required by Florida law, Members entitled to a pension shall not forfeit the same upon dismissal by the Town, but shall be retired as herein described.

2. Non-Assignability - no benefit provided for herein shall be assignable or subject to garnishment for debt or for other legal process.

3. Pension Validity - The Board of Trustees shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. Said Board is empowered to purge the pension rolls of any person heretofore granted a pension under prior or existing law or heretofore granted under this Ordinance if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any pensioner who has heretofore under any prior or existing law or who shall hereafter under this Ordinance be erroneously, improperly or illegally classified.

4. Incompetents - if any Beneficiary is a minor or if a Member or Beneficiary is, in the judgment of the Board, otherwise incapable of personally receiving and giving a valid receipt for any payment due him or her under the Plan, the Board may, unless and until claims shall have been made by a duly appointed guardian or committee of such person, make such payment or any part thereof to such persons, Spouse, children or other person deemed by the Board to have incurred expenses or assumed responsibility for the expenses of such person. Any payment so made shall be a complete discharge of any liability under the Plan for such payment.
(Ord. No. 97-13, 1, 9-9-97)

Sec. 2-263 - 2-279. Reserved

ARTICLE X. MOTION PICTURE AND TELEVISION PRODUCTION PERMITS

Sec. 2-280. Title.

This article shall be known and cited as the "Motion Picture and Television Production Permit Code."
(Ord. No. 95-6, 1, 12-20-94)

Sec. 2-281. Purposes.

The purposes of this article are:

(1) To establish a one-stop permitting process for photography on public property owned or controlled by or under the jurisdiction of the Town;

(2) To provide a means whereby acts otherwise prohibited by the Town Code may be allowed during such productions; and

(3) To provide for an exemption from other Town Code permit requirements in recognition of the economic impact of the motion picture and television industry.

Sec. 2-282. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings respectively ascribed to them by this section, except where the context clearly requires otherwise:

(1) "Town equipment" is any tangible property, other than real property, purchased by public funds and utilized in the normal course and scope of providing governmental service by the Town.

(2) "Town facility" is any public street, sidewalk, place or building owned or controlled by or under the jurisdiction of the Town to include, but not be limited to, Town park and recreation facilities, the Town Hall, Town public works building, and the Town firehouse.

(3) "Photography" is the commercial taking or making of a motion picture, television, or videotape production utilizing Town facilities. This term shall include, and a production permit shall be required for, such productions on private property not at a studio involving the erection of tents or other temporary structures or involving the use of pyrotechnics, explosives, or other incendiary devices.

(4) "Production permit" or "permit" is the permit required by this article.
(Ord. No. 95-6, 2, 12-20-94)

Sec. 2-283. Authority to issue permit.

(a) The Town Manager is hereby authorized to act for the Town pursuant to this article to receive, process, and approve or disapprove applications for production permits. The Town Manager may also act to enforce the provisions of this article.

(b) Appeals to the Town Council.

(1) Appeals to the Town Council may be taken by any person aggrieved by any decision of the Town Manager in making a determination pursuant to this article. A person aggrieved by a determination of the Town Manager is either the applicant or an individual who is affected in a manner differently than the community as a whole or greater in degree than the community as a whole. Such appeal shall be taken within a reasonable time not to exceed thirty (30) days following the date of rendition of the determination of the Town Manager by filing with the Town Clerk a notice of appeal. The notice of appeal shall specify the determination appealed from. The notice of appeal shall also briefly state the grounds upon which the appeal is based.

(2) At the Town Council hearing, the applicant or any person aggrieved may appear in person or by agent or attorney and be heard regarding the appeal. Decisions of the Town Council shall be made in writing which shall be filed with the town clerk. The town clerk shall record on the written decision the date that decision was filed in the officer of the town clerk. (Ord. No. 95-6, 3, 12-20-94)

Sec. 2-284. Permit required; suspension and/or revocation; violation.

(a) No person shall engage in, participate in, and/or start any commercial photography production on or upon any Town facility or utilize Town equipment unless a production permit shall first have been obtained from the Town Manager. Violation of this section shall be punishable as provided for by section 1-9.

(b) Failure to comply with the terms and conditions of the production permit once issued shall be grounds for immediate suspension of production until such time as the non-compliance is remedied.

The suspension shall be initially communicated orally, followed by a written suspension order. Continued failure to comply with the terms and conditions of the production permit shall be a basis for revocation of the permit. Continuation of the production in violation of the suspension and/or revocation shall be punishable as provided for by section 1-9. (Ord. No. 95-6, 4, 12-20-94)

Sec. 2-285. Application for permit.

(a) Any person seeking the issuance of a production permit shall file an application with, and on forms provided by, the Town Manager prior to commencement of production or any circumstance set forth in section 2-284(a). The application shall be signed by an authorized representative of the photography producer.

(b) The application shall contain the following information:

(1) Location(s) of the production;

(2) Duration and type of the production;

(3) Proof of liability insurance coverage with the Town named as an additional insured. All insurance policies shall be issued by companies licensed by the Florida Insurance Commissioner to issue the type of policies required herein. Liability insurance should be issued by companies rated by Best's Rating Guide as A+ or better. Liability insurance shall include general liability coverage in an amount of not less than $1,000,000 single limit liability, and $1,000,000 general automobile liability coverage and similar coverage for accidents involving uninsured motorists. Amounts of coverage may be reduced by the Town Manager for productions demonstrated to be of a small size or short duration; not involving use of any motor vehicles; or for events that are demonstrated not to involve dangers to property, life, or in which any person is likely to be injured;

(4) Special effects to be utilized, especially incendiary or explosive devices, and a plan explaining how said special effects will be utilized. In addition, the application shall list the person in charge (pyrotechnician) of such special effects together with said individual's qualifications and licensure by the applicable federal and state agencies;

(5) Proposed request for utilization of Town equipment or personnel;

(6) Necessity for temporary closures of public streets or sidewalks and for what duration;

(7) A written summary or explanation of the portion of the production to be shot within the Town;

(8) Number and type of vehicles and/or equipment and number of personnel to be on location with the production;

(9) An agreement in form and substance acceptable to the Town Manager and Town Attorney to pay for extraordinary services provided by the Town;

(10) Execution of a hold harmless/indemnification agreement for the benefit of the Town. The agreement shall be in form and substance acceptable to the Town Manager and Town Attorney; and

(11) The application shall be executed by an authorized official of the corporation or other legal entity or the natural person producing the photography. The application shall be executed subject to the following statement: Under penalties of perjury, I declare that I have read the foregoing application and its attachments and that the facts stated in it are true. (Ord. No. 95-6, 5, 12-20-94)

Sec. 2-286. Standards for permit; Exemption from other Town Code requirements.

(a) A permit shall be issued by the Town Manager upon a finding by the Town Manager based on the evidence submitted that the following standards have been satisfied by the applicant:

(1) Submission of a complete and properly executed application as required by this article;

(2) Proper execution and submission to the Town of a hold harmless/indemnification agreement in form and substance acceptable to the Town Manager and Town Attorney;

(3) Proper execution and submission to the Town of an agreement to pay for extraordinary services in form and substance acceptable to the Town Manager and Town Attorney;

(4) Submission of insurance policies in the form required by this article;

(5) Demonstration that it is not reasonably likely that there will be injury to animals or persons if the photography occurs as described by the applicant; and

(6) Demonstration that the photography will not interfere with the use of Town facilities by the general public for more than thirty (30) days during any twelve (12) month period.

(b) Once a production permit has been issued and notwithstanding any other provisions of the Town Code (except as otherwise provided in this article to the contrary), no other Town permit shall be required for any of the activities forming a part of the production. This article shall not exempt construction of a structure from compliance with all other provisions of the Town Code. Photography production pursuant to this article is exempt from the restrictions on signage and requirements for permitting for the temporary erection of signs, as specified in Chapters 6 and 17, Town Code; provided that any sign erected for photography production shall be removed within thirty (30) days of the erection of the sign, or sign structure. (Ord. No. 95-6, 6, 12-20-94)

Sec. 2-287. Cost for extraordinary services.

The Town shall recover direct costs for extraordinary services rendered in connection with a production. Such costs shall include, but not be limited to, charges for personnel and equipment committed in support of the production which are outside the normal scope of government services to the general public. Based on the information contained in the permit application, an estimate of these costs shall be provided by the Town Manager to the applicant prior to the issuance of the permit. The applicant agrees to pay the Town in advance for any services to be provided by the Town. The Town Manager will provide coordination and advise the applicant of estimated costs; provided, however, that this article shall not be otherwise interpreted to require the Town to furnish equipment or services for use by a production permit applicant or other person. (Ord. No. 95-6, 7, 12-20-94)

ARTICLE XI. FACILITIES

Sec. 2-300. Facility Naming.

(a) Purpose: The purpose of this Section is to establish a uniform method to assist the Town Council in naming Town facilities.

(b) Naming Guidelines:

1. A resident of the Town of Indialantic, a non-resident descendent of a former resident who contributed to the Town who desires that a descendent be recognized, or a group or organization may file a request with the Town Clerk to name/rename a Town facility.

2. Facilities to be considered for naming or renaming may include parks, dune crossovers, beach accesses, pavilions, piers, shelters, and walkways. Streets shall not be considered for naming/renaming.

3. Names under consideration shall not include any names that promote alcohol or tobacco products or a political organization.

4. Anyone for whom a facility is named should be a person who has been deceased for a minimum of twelve (12) months. However, Council may consider naming a facility for a person who is not deceased, or has not been deceased for a minimum of twelve (12) months, provided the person has made a contribution or gift of an extraordinary nature.

5. The request shall include a detailed account of the relationship of the proposed name to the subject facility, the contribution made by the individual to the Town, an indication as to the worthiness of the individual as to why this request is being made, an indication as to the length of time that the person was a resident of the Town, the current name of the facility (if previously named), and the physical location of the facility.

(c) Naming Determination: Council shall consider the request at a noticed public hearing.
(Ord. No. 16-13, 3, 7-13-16)

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Chapter 3

ALCOHOLIC BEVERAGES*

Sec. 3-1. State definitions adopted.

Words and phrases used in this chapter shall have the meanings ascribed to them by Florida Statutes, Sections 561.01, 563.01, 564.01 and 565.01.

Sec. 3-2. Hours regulated.

It shall be unlawful for any retail vendor of alcoholic beverages holding a license issued by the state to sell, serve or to permit the sale or service of any alcoholic liquors or beverages within the town except during the following hours:

(a) On any day from 8:00 a.m. until 2:00 a.m. the following day.

(b) Customers, patrons, visitors and any other person may remain in any bar, cocktail lounge, or cabaret for the purpose of consuming beverages purchased prior to the established closing hour for a reasonable period of time, not to exceed one-half (1/2) hour beyond the designated closing hour. The above hours shall not be construed to apply to the license holder, manager, or his agent or agents when engaged in the legitimate pursuit of business. (Code 1962, 3-3; Ord. No. 116, 1, 5-19-70; Ord. No. 92-7, 1, 4-21-92; Ord. No. 97-1, 1, 12-3-96; Ord. No. 17-02, 2, 2/8/17)

Sec. 3-3. Extending hours on special occasions.

Permission may be given by the town manager at his discretion to extend the closing hours on special occasions, providing that request for such permission is made at least forty-eight (48) hours in advance. (Code 1962, 3-4; Ord. No. 247, 8, 5-15-79)

Sec. 3-4. Sales to under-age persons.

No person shall sell, give, serve or permit to be served any alcoholic beverage to any under-age person. "Under-age person" means any person who has not yet attained the age at which sales to him are lawful under the laws of the state. (Code 1962, 3-9)

State law reference-Sales to under-age persons. F.S. 562.11.

***Cross reference--**Regulation of beverage establishment employees, 10-23; declaration of states of emergency, 10-25.

State law reference--State beverage law, F.S. Chs. 561--565.

Sec. 3-5. False representations of age.

No under-age person shall make false statements as to his age or identity, or furnish, present or exhibit any fictitious or false registration card, identification card, or other document for the purpose of procuring the sale, gift or delivery of alcoholic beverages. (Code 1962, 3-10)

State law reference--Similar provisions, F.S. 562.11(2).

Sec. 3-6. Consuming, in vicinity of beach and parks.

(a) *Definition.* The term "alcoholic beverage" as used in this section shall mean any beer, wine, liquor or other beverage meeting the definition of alcoholic beverage set out in Section 561.01(4), Florida Statutes, and as hereafter from time to time duly amended.

(b) *Consuming; Possession.* It shall be unlawful for any person to drink, consume or possess an open container of an alcoholic beverage on or in any: public street or right-of-way including but not limited to while being located in a parked motor vehicle, public boardwalk, public sidewalk, public beach, public park, public parking area, public driveway, or undeveloped lot open to the public, located within the area of the town identified in subsection (c) hereof. An open container shall be considered to be in the possession of a person, including the passenger of a motor vehicle, if the container is in the physical control of the person. An open container shall be considered to be in the possession of the operator of a motor vehicle if the container is not in the possession of a passenger and is not located in a locked glove compartment, locked trunk, or other locked non-passenger area of the motor vehicle. This section shall not apply to drinking, consumption, or possession of an open container of an alcoholic beverage in or on a moving or parked motor vehicle on a public right-of-way to the extent that same is regulated pursuant to section 316.1936, Florida Statutes). During any special event so declared as such by the town council, the town manager may issue a notice of non-enforcement of any portion of this sub-section by conspicuously posting said notice at town hall. Said notice shall specify the portion of this sub-section that is not to be enforced, and the location and the time during which said portion of this sub-section shall not be enforced. During said time the town shall not enforce the affected portion of this sub-section. Said notice of non-enforcement may not be revoked without at least twenty-four (24) consecutive hours of notice to the general public given in the same manner as the notice of non-enforcement is noticed.

(c) *Area described.* The provisions of this section shall apply to those parts of the town described as follows:

1. Within the area described as commencing at the intersection of the paved portion of the East side of A1A (Miramar Avenue) and the northern Lot line of Lot 8, Block 66, Indialantic by the Sea, according to the plat thereof, as described in Plat Book 3, Page 39, Public Records of Brevard County, Florida; then run East along the aforesaid North line of Lot 8 to the Atlantic Ocean and the corporate limits of the Town; thence run south-southeasterly along the shore of the Atlantic Ocean and the eastern corporate limits of the town to North line of Lot 3, Block 99, Indialantic by the Sea, according to the plat thereof, as described in Plat Book 3, Page 91, Public Records of Brevard County, Florida; thence run West along the aforesaid North line of Lot 3 to the East side of the paved

portion of A1A (Miramar Avenue); thence run North-Northwesterly along the East side of the paved portion of A1A to the POINT OF BEGINNING. This area includes Nance Park, Wavecrest Avenue a/k/a Wave Crest Street or Wave Crest, that portion of the rights-of-way east of A1A (Miramar Avenue) of 5th Avenue, 8th Avenue, 11th Avenue, 14th Avenue;

2. That portion of the rights-of-way east of A1A (Miramar Avenue) of Watson Drive and Tampa Avenue; and

3. Within the following public parks not described in paragraph 1. above: Dewey, Indian River, Lily, Gus Carey, Orlando, Riverside, Tradewinds, Sunset, Wavecrest, Sunrise, Sea, and Douglas.

(d) *Posting.* The town public works director is hereby directed to erect and maintain conspicuous signs to the public designating the restricted area described in subsection (c) above.

(e) *Violations*. Any person violating any of the provisions of this section shall be guilty of a municipal ordinance and shall be punished as provided in section 1-9, town code. No person, however, shall be cited or arrested for violation of this section without first being given a verbal warning and reasonable opportunity to comply with said warning by an Indialantic police officer or other sworn law enforcement officer duly requested to assist. (Code 1962, 3-19; Ord. No. 215, 1, 9-20-77; Ord. No. 281, 2-6, 6-23-80; Ord. No. 81-290, 1, 2-3-81; Ord. No. 89-16, 1, 6-20-89; Ord. No. 02-14, 1, 6-18-02; Ord. 04-11, 1, 8-17-04)

Sec. 3-7. Loafing, loitering in establishment.

No person shall loaf or loiter in or near any establishment where alcoholic beverages are sold or dispensed. No proprietor of any such establishment shall permit any person to loaf or loiter in or near such establishment. (Code 1962, 3-6)

Sec. 3-8. Repealed
(Ord. 14-08, 1, 4/21/14)

Sec. 3-9. Employing certain persons prohibited and regulated.

It shall be unlawful for any vendor under the state beverage law to employ any person in violation of Florida Statutes, Section 562.13. (Code 1962, 3-5)

Sec. 3-10. Possession of open container; Consumption in public places.

(a) *Alcoholic beverage defined.* The term "alcoholic beverage" as used in this section shall mean any beer, wine, liquor or other beverage meeting the definition of alcoholic beverage set out in Section 561.01(4), Florida Statutes.

(b) Prohibition; exception. It shall be unlawful for any person to drink, consume or possess an open container of an alcoholic beverage in any public park or at any public beach or on the premises outside of, or on any streets, alleys, sidewalks or parking areas open to the general public, and located within one hundred (100) yards of any building containing an establishment open to the general public which engages in the sale of alcoholic beverages in the town. No person, however, shall be cited or arrested for violation of this section without first being given a verbal warning and reasonable opportunity to comply with said warning by a town police officer or other sworn law enforcement officer duly requested to assist. During any special event so declared as such by the town council, the town manager may issue a notice of non-enforcement of any portion of this sub-section by conspicuously posting said notice at town hall. Said notice shall specify the portion of this sub-section that is not to be enforced, and the location and the time during which said portion of this sub-section shall not be enforced. During said time the town shall not enforce the affected portion of this sub-section. Said notice of non-enforcement may not be revoked without at least twenty-four (24) consecutive hours of notice to the general public given in the same manner as the notice of non-enforcement is noticed.

(c) Signage required. Any establishment engaged in the sale of alcoholic beverages shall, at all times when such establishment is open to the public or is selling alcoholic beverages, have a sign located where it can be readily seen and read by all customers of the establishment which is at least six by eight and one-half inches (6" x 8 ½") in size and with seven-sixteenth inch minimum lettering containing the following information:

IT IS UNLAWFUL TO CONSUME OR POSSESS OPEN CONTAINERS OF ALCOHOLIC BEVERAGES OUTSIDE OF AND WITHIN 100 YARDS OF THIS ESTABLISHMENT. INDIALANTIC TOWN CODE SEC. 3-10.

(Ord. No. 97-1, 2, 12-3-96; Ord. No. 02-14, 2, 6-18-02; Ord. No. 04-11, 2, 8-17-04)

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Chapter 4

ANIMALS AND FOWL

Art. I. In General, 4-1--4-34
Art. II. Dogs and Cats, 4-35--4-51

ARTICLE I. IN GENERAL

Sec. 4-1. Definitions.

As used in this chapter:

Animal means any living dumb creature capable of self -locomotion.

Animal control officer means the person or persons appointed by, contracted with or employed by the Board of County Commissioners of Brevard County, Florida to carry out the duties and enforcement of the Brevard County animal control code provisions set forth in article II., Chapter 14, Brevard County code of ordinances.

At large means when an animal is off of the premises of the owner and not under the actual control, custody, charge or possession of the owner or other responsible person either by leash, cord or chain. A dog while in use by a law enforcement officer or agency is exempt from this definition.

Citation means a form used by county animal control officer or town police officers for citing owners of animals or businesses in violation of this chapter.

Livestock includes all animals of the equine, bovine, or swine class and includes goats, sheep, mules, horses, hogs, cattle and other grazing animals.

Owner means any person who owns, keeps, harbors or controls an animal.

(Code 1962, 3-1; Ord. No. 275, 2, 12-4-79; Ord. No. 81-288, 1, 1-20-81; Ord. No. 12-01, 1, 11-21-11)

Sec. 4-2. Penalties.

(a) *Generally.* Any person violating or deemed in violation of any of the provisions of the chapter, shall be guilty of and subject to the penalties as provided in section 1-9 of this code.

(b) *Additional penalties for violation of section 4-21.*

(1) In addition to the penalties stated in 4-2(a) any law enforcement officer, parking enforcement specialist, or animal control officer shall have the power to issue a citation for violation of section 4-21. Such citation shall state the date, time, and place of the

issuance of the citation, the name and address of the person in violation, the date of the offense, the offense committed, a description of the animal involved, the amount of the fine, directions as to payment of the penalty or request for a hearing, statement as to the effect of the election to request a hearing rather than pay the fine listed on the citation, the name and signature of issuing officer, and the name and signature of person receiving the citation.

(2) A violator may pay the fine as provided for hereinbelow in subsection (3) and waive his right to a hearing and enforcement by a county court judge.

(3) Penalties imposed for the violation of section 4-21 shall be:

a. Five dollars ($5.00) per incident, if paid to the finance director of the town within ten (10) days of issuance of the citation.
b. Fifteen dollars ($15.00) per incident if paid to the finance director of the town more than ten (10) days but within twenty (20) days of issuance of the citation.

(4) If the fine outlined in subsection (3) is not paid within the twenty (20) day period outlined therein, the clerk shall cause the violator listed on the citation to be served with a court summons requiring payment or attendance at a hearing at a time and place specified on such summons in accordance with Florida Rules of Criminal Procedure. A county judge, after a hearing, shall make a determination as to whether a littering violation has been committed and may impose a sentence not to exceed that authorized by Indialantic Code section 4-2(a), as amended from time to time.

(5) Nonpayment of the penalty within such twenty (20) day period shall be prima facie evidence of the violator's election to waive the right to pay the fine imposed in section (b)(3)a. or b.

(6) A hearing may be requested by the person receiving such citation for the purpose of presenting evidence before a county judge concerning a violation of section 4-21. The cited person must request a hearing within twenty (20) days of the issuance of such citation by informing the clerk of the County Court of Brevard (criminal division) of such intention. Any person requesting a hearing who does not appear in accordance with such request, shall be subject to contempt proceedings or to such other penalties as the court may, in its discretion, impose to require compliance with this section.

(7) An election to request a hearing constitutes a waiver of the right to pay the fine indicated on the citation, and a county judge, after a hearing, may impose a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the county jail for not more than sixty (60) days, or by both fine and imprisonment. (Code 1962, 3-78; Ord. No. 275, 2, 12-4-79; Ord. No. 86-7, 2, 4-15-86; Ord. 12-01, 1, 11-21-11)

Sec. 4-3. Repealed

(Code 1962, 3-80; Ord. No. 275, 2, 12-4-79; Ord. 12-01, 3, 11-21-11)

Sec. 4-3.5. County animal control regulations in force; Authority of code enforcement board.

(a) Brevard County has adopted article II., sections 14-36 through 14-85, Brevard County code of ordinances, relating to animal control. Those provisions are enforceable in the town pursuant to section 14-40 of the Brevard County code of ordinances. Based on the county code provisions, the county and county animal control officers have the responsibility for animal control within the Town, except to the extent provided by the town code.

(b) For purposes of authority of the town's code enforcement board to enforce county code provisions relating to animal control, the town hereby adopts article II., sections 14-36 through 14-85, Brevard County code of ordinances, all as amended from time to time by the board of county commissioners. The authority of the town's code enforcement board shall be supplemental to the county code enforcement board, animal control officers, and other authorities to enforce the foregoing county code provisions.
(Ord. 12-01, 4, 11-21-11)

Sec. 4-4. Repealed.

(Code 1962, 3-76; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 5, 11-21-11)

Sec. 4-5. Interfering with enforcement; releasing impounded animals.

Town police officers are authorized to enforce this chapter and to assist animal control officers in the enforcement of article II., sections 14-36 through 14-85, Brevard County code of ordinances. Any person who shall in any manner interfere with, hinder, resist, obstruct, or molest a town police officer in the performance of said police officer's duty under this chapter, or without the authority of a court having jurisdiction to try violations of this chapter shall be in violation of section 1-9 or 4-2 as applicable. (Code 1962, 3-31; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 6, 11-21-11)

Sec. 4-6. Complaints for violations.

(a) Upon a receipt of a petition, signed by one (1) or more residents of the Town of Indialantic in the vicinity of the alleged violation, or in the case of a public beach or public park any resident of the town may so complain, made under oath before an individual authorized by law to take acknowledgments, setting forth the nature of and the date of the act, the owner of the animal, the address of the owner and a description of the animal committing such action, an animal control officer, or town police officer shall investigate the complaint to determine whether there is probable cause to believe a violation of this chapter has occurred. In the event the animal control officer, or police officer, concludes that such probable cause does exist, the animal control officer, or police officer shall enforce this chapter.

(b) Any violation of this chapter personally witnessed by an animal control officer or police officer shall be sufficient cause for a citation to be issued to the owner or person in possession or control of such animal.

(Code 1962, 3-43; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 7, 11-21-11)

Sec. 4-7. Repealed.
(Code 1962, 3-45; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 8, 11-21-11)

Sec. 4-8. Repealed.
(Code 1962, 3-45; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 9, 11-21-11)

Sec. 4-9. Repealed.
(Code 1962, 3-48; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 10, 11-21-11)

Sec. 4-10. Repealed.
(Code 1962, 3-49; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 11, 11-21-11)

Sec. 4- 11. Repealed.
(Code 1962, 3-50; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 12, 11-21-11)

Sec. 4-12. Repealed.
(Code 1962, 3-56; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 13, 11-21-11)

Sec. 4-13. Repealed.
(Code 1962, 3-57; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 14, 11-21-11)

Sec. 4-14. Repealed.
(Code 1962, 3-58; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 15, 11-21-11)

Sec. 4-15. Repealed.
(Code 1962, 3-59; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 16, 11-21-11)

Sec. 4-16. Repealed.
(Code 1962, 3-60; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 17, 11-21-11)

Sec. 4-17. Repealed.
(Code 1962, 3-52; Ord. No. 275, 2, 12-4-79; Ord. No. 81-288, 2, 1-20-81; Ord. No. 83-322, 1, 1-18-83; Ord. No. 12-01, 18, 11-21-11)

Sec. 4-18. Running at large prohibited.

(a) *Prohibited.* No animal, whether licensed or unlicensed, shall be at large. Any animal found at large, as defined in section 4-1, shall be deemed to be committing an act in violation of this chapter. Any person who owns, keeps, or harbors any animal found at large shall be guilty of a misdemeanor and punished as provided for in section 4-2.

(b) *Impounding.* Any animal found at large by an animal control officer or town police officer shall be impounded by such officer.

(c) *Trapping stray cats.* Any property owner may procure from animal control a cat trap to set out on his property in order to trap at large cats. Any cat trapped while at large shall be turned over to the county pound. (Code 1962, 3-24; Ord. No. 275, 2, 12-4-79)

Sec. 4-19. Creating and abating nuisances.

(a) Any person or business that owns, keeps or harbors any animal which is found to have done any of the following acts shall be deemed in violation of this section and shall be guilty of a violation of a municipal ordinance. A violator may be punished as provided in section 1-9 of this code or pursuant to code enforcement procedures set forth in section 2-5.

(b) The following are the offenses that are deemed to constitute a nuisance:

(1) Any animal that is at large as defined in this chapter;
(2) Any animal that chases or runs after persons or vehicles;
(3) Any animal that destroys or damages property of any person;
(4) Any animal that causes serious annoyance to a neighboring person and interferes with the reasonable use and enjoyment of such person's property such as, but not at all limited to, any animal which barks, or whines, or howls, or causes other objectionable noise or disturbance between the hours of 10:00 p.m. and 7:00 a.m., or which barks or whines or howls or causes other objectionable noise at any time for a continuous period of five (5) consecutive minutes or more.

(c) If any law enforcement officer or code enforcement officer shall find that any provision of this section has been violated, said officer shall notify the property owner or occupants of the property of such violation in writing and direct that the nuisance be abated. For subsequent violations, a law enforcement officer or code enforcement officer may initiate lawful proceedings, including proceedings pursuant to sections 1-9 or 2-5 of this code.
(Code 1962, 3-25; Ord. No. 275, 2, 12-4-79; Ord. No. 02-15, 1, 6-18-02)

Sec. 4-20. Repealed.
(Code 1962, 3-26; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 19, 11-21-11)

Sec. 4-21. Prohibited in parks and on beaches; exception.

No domestic animal shall enter into or on any public park or beach in the town unless the town council, in its discretion, by ordinance designates a beach or park area where domestic animals shall be permitted. Parks and beach areas so designated will be properly identified and posted. Any domestic animal found in a park or on a beach not designated for such animals shall be deemed to be committing an act in violation of this chapter and the owner thereof shall be punished as provided for in section 4-2. This section shall not prohibit any dog that is owned by a law enforcement agency, or the service of which is employed by a law enforcement agency, or service animal, as defined in s. 413.08, Florida Statutes, trained to assist or aid disabled or handicapped persons when such service animal is actually being used to assist or aid such person in any park or beach; provided, that law enforcement agency dogs, or any service animal, as required by s. 828.30, Florida Statutes, has a current rabies vaccination, and certificate thereof, that was administered by a licensed veterinarian. Upon request of a law enforcement officer, a person having a service animal in a town park must produce the certification of vaccination to the law enforcement agency within three (3) hours of a request therefore. A disabled

person, as defined under the federal Americans with Disabilities Act, public law no. 101-336, 42 USC s. 12101 *et seq.*, shall have the right to be accompanied into or on any public beach or park by a service animal without violating this section.
(Code 1962, 3-27; Ord. No. 275, 2, 12-4-79; Ord. 12-01, 20, 11-21-11; Ord. No. 18-08, 2, 7/11/18)

Sec. 4-22. Repealed.
(Code 1962, 3-30; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 21, 11-21-11)
State law reference--Cruelty to animals generally, F.S. Ch. 828.

Sec. 4-23. Molesting birds.

(a) The entire area embraced within the corporate limits of the town is hereby designated as a bird sanctuary.

(b) It shall be unlawful to trap, injure, kill, or molest in any manner any bird or wild fowl, or to rob their nests; provided, however, if starlings or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property as determined by the town council, then said birds may be destroyed in such numbers and in such manner as may be designated by the town council under the supervision of the chief of police; provided, however, that nothing herein is intended to regulate any matters specifically preempted by §790.33, Florida Statutes. (Code 1962, 20-52; Ord. No. 12-01, 22, 11-21-11)

Sec. 4-24. Repealed.
(Code 1962, 3-66; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 23, 11-21-11)

Sec. 4-25. Livestock and fowl; prohibited; penalty.

(a) The owning, keeping, or having, within the town limits, of any livestock, as defined in section 4-1, is prohibited.

(b) The owning, keeping, or having, within the town limits, of any chickens, turkeys, ducks, geese, or any other fowl, is prohibited. The owning, keeping, or having, within the town limits, of any parakeets, canaries or tropical birds, indoors, is permitted. This section is in no way intended to modify section 4-23.

(c) Violations of this section shall be punishable in accordance with section 4-2, Indialantic Code of Ordinances. (Ord. No. 82-308, 1, 6-15-82)

Sec. 4-26.
(Editor's Note - Ord. 08-09 providing for dog-friendly dining contained a sunset provision and expired on September 30, 2010)

Secs. 4-27—4-34. Reserved.

ARTICLE II. DOGS AND CATS

Sec. 4-35. Repealed.
(Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 24, 11-21-11)

Sec. 4-36. Repealed.
(Code 1962, 3-8; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 25, 11-21-11)

Sec. 4-37. Repealed.
(Code 1962, 3-9; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 26, 11-21-11)

Sec. 4-38. Repealed.
(Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 27, 11-21-11)

Sec. 4-39. Repealed.
(Code 1962, 3-11; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 28, 11-21-11)

Sec. 4-40. Repealed.
(Code 1962, 3-12; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 29, 11-21-11)

Sec. 4-41. Repealed.
(Code 1962, 3-13; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 30, 11-21-11)

Sec. 4-42. Repealed.
(Code 1962, 3-77; Ord. No. 275, 2,12-4-79; Ord. No. 12-01, 31, 11-21-11)

Sec. 4-43. Repealed.
(Code 1962, 3-15; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 32, 11-21-11)

Sec. 4-44. Repealed.
(Code 1962, 3-28; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 33, 11-21-11)

Sec. 4-45. Repealed.
(Code 1962, 3-17; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 34, 11-21-11)

Sec. 4-46. Repealed.
(Code 1962, 3-18; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 35, 11-21-11)

Sec. 4-47. Repealed.
(Code 1962, 3-19; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 36, 11-21-11)

Sec. 4-48. Repealed.

(Code 1962, 3-20; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 37, 11-21-11)

Sec. 4-49. Poisoning prohibited.

Any person who shall poison, or aid, abet or assist in the poisoning, or putting out or placing of poison at any point where dogs or cats may secure the same, shall be guilty of a misdemeanor and punished as provided for in section 4-2. (Code 1962, 3-29; Ord. No. 275, 2, 12-4-79)

State law reference--Exposing poison, F.S. 828.08.

Sec. 4-50. Limitation on number kept.

No person shall keep or maintain in connection with any building erected in any land use classification in which residential uses are permitted or in any residential unit of a multiple family land use classification, five (5) or more cats or dogs or combination thereof, six (6) months or older, unless they have a kennel license. No person shall keep or maintain on vacant property or in connection with any building used for business, commercial or industrial purposes, more than four (4) dogs. Nothing contained in this section shall be construed to permit the use of land or a building as a dog kennel unless said land or building is located in a land use classification in which a dog kennel is a permitted use. (Code 1962, 3-32; Ord. No. 275, 2, 12-4-79)

Sec. 4-51. Repealed.

(Code 1962, 3-53; Ord. No. 275, 2, 12-4-79; Ord. No. 12-01, 38, 11-21-11)

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Chapter 5

BEACHES, BOATS, PARKS AND RECREATION*

Art. I. In General, 5-1--5-13
Art. II. Boats and Boating, 5-14--5-33
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Div. 1. Generally, 5-34--5-62
Div. 2. Concessions, 5-63--5-79
Div. 3. Turtle Protection 5-80--5-86

ARTICLE I. IN GENERAL

Sec. 5-1. Enforcement of chapter.

This chapter shall be enforced by the police department of the town. (Ord. No. 247, 10, 5-15-79)

Sec. 5-2. Hours of operation.

The following parks shall remain open to the public from 6:00 am until 9:00 pm: Dewey, Ernest Kouwen-Hoven Riverside, Gus Carey, Indialantic Ocean Beach (south of Lot 20, Block 38, Indialantic by-the-Sea, Plat Book 3, Page 35, Public Records of Brevard County, Florida), Indian River, Lily, Orlando, Sea Park, Sunrise, Tradewinds, Vincent Benevente Sunset, Wavecrest and Wavecrest Extended. Douglas Park shall remain open to the public from 5:00 am until 10:00 pm. Nance Park and Indialantic Ocean Beach Park (which runs from Nance Park to the southern boundary of Lot 20, Block 38, Indialantic by-the-Sea, Plat Book 3, Page 35, Public Records of Brevard County, Florida) shall remain open to the public from 6:00 am to 1:30 am.

a) The permitted hours of operation for a Town park may be extended by the Town Manager for special occasions.

(Ord. No. 01-12, 1, 7-17-01; Ord. No. 02-17, 1, 8-20-02; Ord. 04-10, 1, 8-17-04; Ord. No. 15-04, 1, 6-10-15; Ord. No. 15-09, 1, 9-9-15)

Sec. 5-3. Closing of ocean or river during dangerous conditions.

During any period when the Atlantic Ocean or Indian River is declared by the town manager to be dangerous for any reason, a notice will be posted closing such areas to the use of the public and no protection will be offered or provided to persons using the area during such period.
(Ord. No. 01-12, 2, 7-17-01)

Sec. 5-4. Vehicle Access.

No car, truck, camper, bus or recreational vehicle of any type shall be driven onto park property other than in regularly designated facilities provided for that particular type of vehicle, unless directed otherwise by a police officer or authorized park attendant when conditions so warrant. The above shall not be construed as prohibiting town-owned or town authorized utility vehicles from entering upon park lands for maintenance purposes.
(Ord. No. 01-12, 3, 7-17-01)

***Cross reference**—Animals prohibited in parks, on beaches, 4-21; misuse of public trash receptacles, 8-17; sleeping, camping in a public place, 10-24; trees and shrubs generally, Ch. 16

Sec. 5-5. Parking.

The town manager shall cause to be erected certain signs outlining those areas where parking is permitted or prohibited. (Ord. No. 01-12, 4, 7-17-01)

Sec. 5-6. Animal Access.

(a) The following definitions shall apply to this section.

(1) *Animal control authority* means the entity tasked with animal control and animal services for the county. The animal control authority shall be designated by the board of county commissioners and authorized to enforce this article and the animal control laws of the state. *See* s. 14-36, Brevard County code of ordinances.

(2) *Aggressive dog* means any dog that, according to the records of the animal control authority, has severely injured or killed a domestic animal while unprovoked and off the owner's property which does not otherwise meet the definition of a dangerous dog. *See* s. 14-36, Brevard County code of ordinances.

(3) *Dangerous dog* means any dog that according to the records of the appropriate authority:

(A) Has aggressively bitten, attacked, or endangered or has inflicted severe injury on a human being on public or private property;

(B) Has more than once severely injured or killed a domestic animal while off the owner's property; or

(C) Has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority. *See* s. 767.11, F.S.

(4) "*Severe injury"* means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. *See* s. 767.11, F.S.

(5) *"Unprovoked"* means that the victim, who has been conducting himself or herself peacefully and lawfully, has been bitten or chased in a menacing fashion or attacked by a dog. *See* s. 767.11, F.S.

(b) Except as provided in s. 4-21 of this code or in sub-section (c) herein, no person shall be permitted to take any animal into any park whether on a leash, in arms, or running at large. Notwithstanding the foregoing, dogs trained to assist or aid disabled or handicapped persons when such dogs are actually being used to assist or aid such person are permitted at any time that such person is not prohibited from being in a park.

(c) Dogs in parks.

(1) Within Gus Carey Park, Dewey Park, Ernest Kouwen-Hoven Riverside Park, Douglas Park, and subject to paragraph (c)(2), Sunrise Park, dogs may be permitted. Notwithstanding the foregoing, no dangerous dog, no aggressive dog; no dog during the pendency of an investigation and resolution of any hearings related to classification of a dog as an aggressive dog, or a dangerous, shall be permitted within any town park at any time.

(2) No dog, except a service animal or police dog, as permitted by s. 4-21 of this code, may be permitted within Sunrise Park until the town manager determines that permitting dogs within said park does not violate a lease provision for the property, a management plan for the property, or a state regulation.

(3) Regulations relating to permitting dogs in parks may be promulgated from time to time by resolution of the town council, or for a period not exceeding sixty (60) consecutive days by the town manager. Violation of any such regulation adopted shall be deemed a violation of this code.

(4) Whenever an animal defecates in a town park, as described in paragraph (c)(1), the owner, or person having temporary custody or control of the dog while in the town park, shall immediately remove and properly dispose of the feces in a sanitary manner. As utilized in this paragraph, the term "immediately" shall mean prior to said person or dog leaving the park. *See also* s. 14-57(d), Brevard County code of ordinances. Failure of the owner, or person having temporary custody or control of the dog, that has defecated in a town park to remove and properly dispose of the feces in a sanitary manner, shall constitute a violation of the code and the creation of a public nuisance.

(Ord. No. 01-12, 5, 7-17-01; Ord. No.18-08, 3, 7/11/18)

Sec. 5-7.

It shall be unlawful to build a fire, open flame or containerized (e.g. in or on a grill or hibachi), in or on any park structure (e.g. gazebo, pier, boardwalk, parking lot). (Ord. 07-07, 1, 5-15-07)

Sec. 5-8. Special events.

(a) The Town Manager or his designee may issue permits for special events within Town parks. Special events may include but are not limited to art shows, craft shows, surfing contests and paddle board contests.

(b) A special events sponsor is liable for and shall in writing indemnify and hold harmless the Town for any injury (including death) to person or property occurring at, or as a direct or indirect result of, any special event. Prior to engaging in a special event, the sponsor shall present to the Town a copy of a liability insurance policy in the amount of at least $200,000 per person/$300,000 per occurrence insuring the sponsor and the Town, as an additional insured. The policy, paid for by the sponsor, shall be written by a company authorized to write insurance within the State of Florida and shall be rated as a standard company rated at A+ or better by A.M. Best's Rating Guide or equivalent specifications as approved by the Town Manager. The policy shall be non-cancelable without at least ten (10) days written notice to the town prior to cancellation. (Ord. 13-02, 1, 11-20-12)

5-9—5-13. Reserved.

ARTICLE II. BOATS AND BOATING

Sec. 5-14. Exemption from certain regulations for boats on Intracoastal; Definitions.

(a) The provisions of this article relating to the operation or equipment of boats shall not apply to boats operated on the Florida Intracoastal Waterway, if, but only if, such applicability is prohibited by Section 327.60, Florida Statutes.

(b) For the purposes of this article, the following terms shall be defined to mean:

(1) *Boat* means and refers to a "vessel" as defined herein.

(2) *Causeway* means and refers to the causeway connecting the town and the city of Melbourne by way of U.S. 192.

(3) *Personal watercraft* means and refers to a "personal watercraft" as defined in Section 327.02, Florida Statutes.

(4) *Vessel* means and refers to a "vessel" as defined in Section 327.02, Florida Statutes.

(Ord. No. 97-8, 1, 5-6-97)

Sec. 5-15. Observance of health, sanitation, conduct regulations.

All persons on board boats or vessels docked, moored or tied to land, docks, piers or wharves, abutting the public waterways in the town, shall observe all the health and sanitary regulations of the town, and all ordinances of the town relating to the conduct of persons and prohibiting acts contrary to public health, morals, safety or public peace, including ordinances prohibiting disorderly conduct and loud and boisterous noises which disturb the peace of the neighborhood. (Code 1962, 8-21)

Sec. 5-16. Garbage disposal.

It shall be unlawful for persons upon such boats to dump or throw garbage, paper, bottles, cans, fishing paraphernalia or other refuse or debris into such waterways. (Code 1962, 8-22; Ord. 01-12, 6, 7-17-01)

Cross reference--Garbage and trash generally, Ch. 8.

Sec. 5-17. Abandonment prohibited.

It shall be unlawful for any person to abandon any boat or watercraft in the public waterways within the town. (Code 1962, 8-20)

State law reference--Abandoned and derelict vessels, F.S. 823.11.

Sec. 5-18. Use of searchlights, warning devices.

The indiscriminate use of searchlights, horns, whistles, or bells on any watercraft within the corporate limits of the town is prohibited. (Code 1962, 8-19)

Sec. 5-19. Speed causing harmful wake.

No boat or vessel shall be operated upon any waterway in the town at a rate of speed which causes waves to damage docks, wharves, sea walls, or boats moored or tied to docks or wharves along such waterway. (Code 1962, 8-14)

Sec. 5-20. Deleted (Ord. No. 01-12, 7, 7-17-01)

Sec. 5-21. Operation near shore of causeway.

(a) It shall be unlawful to operate any boat, vessel or personal watercraft within one hundred (100) feet of the shore line portion of the causeway within the town, except as hereinafter provided.

(b) No boats or personal watercraft shall be launched or retrieved from the causeway.

(c) No boats or personal watercraft may be beached on the causeway except: (A) for the purpose of effectuating emergency repairs to said boat or personal watercraft; or (B) to protect life or property.

(d) Boats or personal watercraft operating within one hundred (100) feet of the causeway shall operate at a speed not in excess of ten (10) miles per hour.

(Code 1962, 8-13; Ord. No. 97-8, 2, 5-6-97)

Sec. 5-22. Skiing, aqua-planing south of causeway.

It shall be unlawful for any person to engage in water skiing or aqua-planing within one hundred yards of the south side of the causeway within the town. Water skiing or aqua-planing south of the causeway shall proceed in a counter-clockwise circular pattern. (Code 1962, 8-3)

Sec. 5-23. Docking on private property without permission.

No vessel or watercraft of any kind whatsoever shall moor to or tie up to a private sea wall or dock or be beached upon private property without the permission of the owner thereof. (Code 1962, 8-16)

State law reference - Similar provisions, F.S. 823.11.

Secs. 5-24--5-33. Reserved.

ARTICLE III. OCEAN BEACH*

DIVISION 1. GENERALLY

Sec. 5-34. Applicability.

The provisions of this article shall apply to that portion of the Atlantic Ocean beach in the town which is devoted to public use and is under the control of the town. (Ord. No. 01-12, 8, 7-17-01)

Sec. 5-35. Powers of lifeguards; obedience to commands.

The duly employed lifeguards on the beach are authorized to require persons using the beach and public property adjacent to such beach serving such beach to obey reasonable commands designed to protect the public and public property in the use of such beaches and adjacent property as aforesaid, and the failure to obey any lawful command of the guards shall be a violation of this Code. (Code 1962, 6-13)

Sec. 5-36. Damaging property.

It shall be unlawful to injure or destroy any buildings, tables, chairs, or other town property situated on the public beach. (Code 1962, 6-15)

State law reference -- Criminal mischief, F.S. 806.13.

Sec. 5-37. Misuse of property and equipment.

It shall be unlawful to use or occupy buildings, tables, chairs, or other town property situated on the public beach, other than for the purposes for which the property was constructed, placed and intended to be used on the beach. (Code 1962, 6-15)

Sec. 5-38. Destroying, damaging or altering beach front.

It shall be unlawful for any person to destroy, damage, or alter in any way the beach front. (Code 1962, 6-2)

Sec. 5-39. Removing sand or other earth.

It shall be unlawful for any person to remove and carry away for commercial use or purposes any sand, shell, gravel or other earthen material from the ocean beach within the limits of the town between the ocean bluff and the low water mark of the spring tides. (Code 1962, 6-1)

Sec. 5-40. Vehicles prohibited.

(a) For the purpose of this section, the following terms shall be defined to mean:

(1) *Beach* means and refers to that area, referenced in section 5-34, within the town and running landward from the low waterline of the Atlantic Ocean.

***Cross reference--**Possessing, consuming alcoholic beverages in vicinity of beach, 3-6; animals prohibited on beaches, 4-21.

(2) *Motor vehicle* means and refers to any self-propelled vehicle operated by gas, diesel, electric, or other engine power, and not operating upon rails or guideways. Motor vehicles shall include but not be limited to beach buggies, all terrain vehicles, tractors, buses, automobiles, mopeds, motorcycles, boats, and personal watercraft.

(3) *Personal watercraft* means and refers to "personal watercraft" as defined in Section 327.02, Florida Statutes.

(b) It shall be unlawful for any motor vehicle to be operated on or along the beach, or for any motor vehicle to be launched from or landed upon any beach. This section shall not apply to motorized equipment or motor vehicles lawfully used by governmental authorities or their agents in the maintenance of the beach; used solely for emergency rescue of boaters, swimmers, sunbathers, or other persons in distress; or used by law enforcement personnel in the pursuit of their governmental duties. (Code 1962, 6-3; Ord. No. 90-6, 1, 2-20-90; Ord. 97-8, 3, 5-6-97)

Sec. 5-41. Dangerous games.

Any game which may endanger the safety of others on the beach may be prohibited at the discretion of the chief of police. (Code 1962, 6-6)

Sec. 5-42. Area reserved for swimmers.

From the first day following the last day of school under the Brevard County school district's schedule to and including Labor Day of each year, the beach and water area between Sixth Avenue and Eighth Avenue is reserved for the exclusive use of swimmers and bathers between the hours of 10:00 a.m. and 5:00 p.m. Lifeguards on duty may, due to weather or density of bathers, reduce this restricted area as appropriate. This area will be marked by signs showing the limits in order that people may identify such boundaries. (Code 1962, 6-21; Ord. No. 86-15, 1, 5-20-86; Ord. No. 01-12, 9, 7-17-01)

Sec. 5-43. Use of floats and float boats

(a) No float or float boat shall be rented or used in the Atlantic Ocean during west winds having a velocity of over twenty (20) miles per hour.

(b) No child under the age of twelve (12) years shall be allowed or permitted to rent or use any float or float boat unless accompanied by his parents or a responsible adult.

(c) The use of floats and float boats shall be prohibited in the Atlantic Ocean when the beach and ocean have been closed for swimming purposes by order of town manager.
(Code 1962, 6-35, Ord. No. 01-12, 10, 7-17-01)

Sec. 5-44. Safety ropes for floats and float boats.

No float or float boat shall be rented or used in the Atlantic Ocean unless it shall be equipped with safety ropes, such safety ropes to extend around the perimeter of the float or float boat and be securely fastened at each corner in such a manner as to be easily grasped by swimmers. (Code 1962, 6-36)

Sec. 5-45. Picnicking; fires.

Picnicking is permitted on the beach, provided that all trash and rubbish are promptly removed and properly disposed of. It shall be unlawful to build a fire on the beach, whether for cooking or otherwise, without a permit from the fire department. (Code 1962, 6-5)

Sec. 5-46. Reserved.

Editor's note--Ord. No. 84-351, 1, adopted Sept. 18, 1984, repealed 5-46, pertaining to littering on beaches, derived from Code 1962, 6-5.

Sec. 5-47. Deleted (Ord. 01-12, 11, 7-17-01)

Sec. 5-48. Nudity; indecency.

It shall be unlawful to appear at the beach in the nude, or to appear in improper dress on the beach, or to permit an indecent exposure of the person, or to be guilty in any way of indecent or lewd behavior. (Code 1962, 6-8)

Cross reference--Indecency generally, 10-10.

State law reference--Indecent exposure of the person, F.S. 800.03.

Sec. 5-49. Deleted (Ord. 01-12, 11, 7-17-01)

Sec. 5-50. Dressing, undressing.

It shall be unlawful for any person to dress or undress, or change to or from a bathing suit, from or in any automobile or other vehicle, vacant lot or other place at the beach exposed to public view. (Code 1962, 6-12)

Cross reference--Indecency generally, 10-10.

Sec. 5-51. Urination or defecation.

It shall be unlawful to urinate or defecate on the beach. (Code 1962, 6-9)

Sec. 5-52. Tents for overnight occupancy.

It shall be unlawful to place any tent or other temporary structure on the beach for overnight occupancy. (Code 1962, 6-4)

Secs. 5-53--5-62. Reserved.

DIVISION 2. CONCESSIONS

Sec. 5-63. Procedure for issuance of franchise.

(a) When the town council shall, by ordinance or resolution, provide for one or more concessions on the beach, or on the streets or property adjacent thereto, the franchise for each concession shall be awarded to the highest or best responsible bidder determined on the basis of sealed bids.

(b) Invitation to bid shall be published in a newspaper of general circulation in the town one or more times not less than ten (10) days prior to the date for receiving such bids.

(c) The invitation to bid shall require that all bidders furnish complete personal histories, the names and addresses of one or more character references, and such further information as the council shall determine.

(d) The council may, in its discretion reject any or all bids.

(e) The town manager may enable concessions and/or vendors to locate on the beach, or on the streets or property adjacent thereto, for special events.
(Code 1962, 6-26; Ord. 02-14, 3, 6-18-02' Ord. 14-12, 1, 9-16-14)

Sec. 5-64. Duration.

Franchises to operate concessions on the public beach, or on the streets or property adjacent thereto, shall be limited to a time period of up to one year, and shall expire no later than the first day of October of each year. Any franchises issued by the town manager shall not exceed twenty-four (24) consecutive hours in duration. Franchises may be renewed on an annual basis by the town council. (Code 1962, 6-27; Ord. 02-14, 4, 6-18-02; Ord. 14-12, 2, 9-16-14)

Sec. 5-65. Permit required.

It shall be unlawful to operate any concession of any nature whatsoever upon the public beach, or upon property or streets adjacent thereto, without a franchise evidenced by a permit issued by the town council or the town manager. (Code 1962, 6-28; Ord. 02-14, 5, 6-18-02)

Sec. 5-66. Transfer of permit.

No permit issued by the town council under the provisions of this division shall be transferable except upon the express written consent of the council. The town clerk shall collect a transfer fee of one hundred dollars ($100.00) from the transferee prior to the transfer or assignment of the permit. (Code 1962, 6-29)

Sec. 5-67. Suspension or revocation of permit.

(a) Any permit issued under the provisions of this division may be suspended or revoked for failure to observe reasonable standards of safety and sanitation, or for a violation of a state law or any provision of this Code.

(b) A hearing shall be held by the council, upon not less than twenty-four (24) hours' notice, to determine whether cause, as provided in subsection (a), exists, and whether the permit should be suspended or revoked.

(c) The revocation or suspension of a permit hereunder shall also operate to automatically revoke or suspend the business tax of the permittee and no portion of the business tax or any other fees paid to the town shall be refunded. (Code 1962, 6-30; Ord. 14-03, 1, 1-21-14; Ord. 14-12, 3, 9-16-14)

Sec. 5-68. Business Tax required.

Concessionaires hereunder shall also be licensed in accordance with Chapter 9 of this Code. (Code 1962, 6-31; Ord. 14-03, 2, 1-21-14)

Sec. 5-69. Expiration of license terminates permit.

If a Business Tax Receipt is required and the required Business Tax Receipt fee has not been paid on the first day of October, the concession permit shall be deemed to have been terminated, and the operator shall be required to obtain a new permit from the council prior to obtaining a new Business Tax Receipt. (Code 1962, 6-33; Ord. 14-12, 5, 9-16-14)

Sec. 5-70. Insurance required.

Before a concession permit shall be issued, a liability insurance policy providing coverage of one million dollars ($1,000,000) per person/per occurrence, and a property damage policy providing coverage of fifty thousand dollars ($50,000) shall be purchased. Said insurance shall insure the concessionaire and list the town as an "additional insured" or "loss payee," as the case may be. As a condition of issuance of the concession license, these policies must be continuously maintained in effect at all times during which the concession license is in effect. If at anytime the insurance shall be non-renewed or cancelled, the concession license shall terminate. All insurance shall be occurrence based in nature. Claims made insurance shall not be acceptable. All insurance shall have a deductible of no more than five thousand dollars ($5,000) and shall be issued by an insurance company approved to write insurance of the type required by this code in the State of Florida by the Florida insurance commissioner. The insurance company shall be rated as "A" or better by Best's Rating Guide and have a financial quality rating of VII or better. To the extent feasible the insurance policy shall include a provision that the policy can not be non-renewed or cancelled without at least thirty (30) days' prior notice to the town. The concessionaire shall also complete an agreement containing an indemnification clause in favor of the town, indemnifying the town for the concessionaire's activities within the town pursuant to concession to be permitted. A copy of such policy shall be furnished to the town clerk at the time of application for a permit. (Code 1962, 6-34; Ord. 01-10, 1, 6-19-01; Ord. 14-12, 6, 9-16-14)

Sec. 5-71. Personnel required on duty at float concession.

Each person operating a beach concession evidenced by a permit from the council shall keep on the beach at all times when floats or float boats are rented or leased or otherwise supplied to users thereof, a person to supervise and direct the use of the floats or float boats, and to instruct persons in the proper use thereof. (Code 1962, 6-37)

Secs. 5-72--5-79. Reserved.

DIVISION 3. TURTLE PROTECTION*

Sec. 5-80. Definitions.

For the purpose of this division, the following terms shall have the meaning set forth in this section:

(a) *Artificial light:* Any source of light emanating from a manmade device, including but not limited to, incandescent mercury vapor, metal halide, or sodium lamps, flashlights, spotlights, street lights, vehicular lights, construction or security lights.

(b) *Beach:* That area of unconsolidated material that extends landward from the mean low water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation (usually the effective limit of storm waves).

(c) *Coastal construction control line (CCCL):* The line established pursuant to the provisions of Section 161.053, Florida Statutes.

(d) *Floodlight:* Reflector type light fixture which is attached directly to a building and which is unshielded.

(e) *Low profile luminaire:* Light fixture set on a base which raises the source of the light no higher than forty-eight (48) inches off the ground, and designed in such a way that light is directed downward from a hooded light source.

(f) *New development:* Shall include new construction and remodeling of existing structures when such remodeling includes alteration of exterior lighting.

(g) *Person:* Any individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, group, or unit or federal, state, county or municipal government.

(h) *Pole lighting:* Light fixture set on a base or pole which raises the source of light higher than forty-eight (48) inches off the ground.

(i) *Tinted or filmed glass:* Window glass which has been covered with window tint or film such that the material has:

(1) An industry approved inside-to-outside light transmittance value of forty-five percent (45%) or less; and

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***Cross reference** - Animals and fowl, Ch. 4

(2) A minimum five-year warranty, and

(3) Adhesive as an integral part, and

(4) Performance claims which are supported by approved testing procedures and documentation.

(j) *Shading coefficient:* A coefficient expressing that percentage of the incident radiation which passes through the window as heat. (Ord. No. 86-9, 1(1), 4-15-86; Ord. No. 07-08, 1, 5-15-07)

Sec. 5-81. Purpose.

The purpose of this division is to protect the threatened and endangered sea turtles which nest along the south beaches of Brevard County, Florida, by safeguarding the hatchlings from sources of artificial light. (Ord. No. 86-9, 1(2), 4-15-86)

Sec. 5-82. New development.

It is the policy of the Indialantic Town Council that no artificial light illuminate any area of the beaches of Indialantic, Florida. To meet this intent, building and electrical plans for construction of single-family or multifamily dwellings, commercial or other structures including electrical plans associated with parking lots, dune walkovers or other outdoor lighting for real property if lighting associated with such construction or development can be seen from the beach, shall be in compliance with the following:

(1) Floodlights shall be prohibited. Wall mounted light fixtures shall be fitted with hoods so that no light illuminates the beach.

(2) Pole lighting shall be shielded in such a way that light will be contained within an arc of three (3) to seventy-three (73) degrees on the seaward side of the pole. Outdoor lighting shall be held to the minimum necessary for security and convenience.

(3) Low profile luminaires shall be used in parking lots and such lighting shall be positioned so that no light illuminates the beach.

(4) Dune crosswalks shall utilize low profile shielded luminaires.

(5) Lights on balconies shall be fitted with hoods so that lights will not illuminate the beach.

(6) Tinted or filmed glass shall be used in windows facing the ocean above the first floor of multistory structures. Shade screens can be substituted for this requirement.

(7) Temporary security lights at construction sites shall not be mounted more than fifteen (15) feet above the ground. Illumination from the lights shall not spread beyond the boundary of the property being developed, and in no case shall those lights illuminate the beach. (Ord. No. 86-9, 1(3), 4-15-86)

Sec. 5-83. Exemption for new development.

The provisions of section 5-82 of this division shall not apply to any structure for which a building permit has been issued by the Indialantic Building Official prior to the effective date of this division. (Ord. No. 86-9, 1(4), 4-15-86)

Sec. 5-84. Existing development.

It is the policy of the Indialantic Town Council that no artificial light illuminate any area of the beaches of Indialantic, Florida. To meet this intent, lighting of existing structures which can be seen from the beach shall be in compliance with the following within two (2) years of the effective date of this division.

(1) Lights illuminating buildings or associated grounds for decorative or recreational purposes shall be shielded or screened such that they are not visible from the beach, or turned off after 9:00 p.m. during the period of May 1 to October 31 of each year.

(2) Lights illuminating dune crosswalks of any areas oceanward of the dune line shall be turned off after 9:00 p.m. during the period of May 1 to October 31 of each year.

(3) Security lighting shall be permitted throughout the night so long as low profile luminaires are used and screened in such a way that those lights do not illuminate the beach.

(4) Window treatments in windows facing the ocean above the first floor of multistory structures are required so that interior lights do not illuminate the beach. The use of black-out draperies or shade screens are preferred. The addition of tint or film to windows or awnings is also encouraged, as is turning off unnecessary lights if the light illuminates the beach. (Ord. No. 86-9, 1(5), 4-15-86; Ord. 07-08, 2, 5-15-07)

Sec. 5-85. Publicly owned lighting.

Street lights and lighting at parks and other publicly owned beach access areas shall be subject to the following:

(1) Whenever possible, street lights shall be located so that the bulk of their illumination will travel away from the beach. These lights shall be equipped with shades or shields that will prevent backlighting and render them not visible from the beach.

(2) Lights at parks or other public beach access points shall be shielded or shaded or shall not be utilized during the period of March 1 to October 31 of each year. (Ord. No. 86-9, 1(6), 4-15-86; Ord. No. 16-09, 1, 5-16-16)

Sec. 5-86. Enforcement and penalty.

This division shall be enforced in accordance with the provisions of Florida Statute 162.06 by the code enforcement board with the penalties set forth in Florida Statute 162.09. (Ord. No. 86-9, 1(7), 4-15-86)

[The next page is 369]

Chapter 5.5

BEAUTIFICATION*

Art.	I.	In General, 5.5-1--5.5-20
Art.	II.	Reserved, 5.5-21--5.5-40
Art.	III.	Town Color Code, 5.5-41--5.5-60
Art.	IV.	Property Maintenance, 5.5-61--5.5-85
Art.	V.	Attractive Nuisance Condition 5.5-86

ARTICLE I. IN GENERAL

Secs. 5.5-1--5.5-20. Reserved.

ARTICLE II. RESERVED

Secs. 5.5-21--5.5-40. Reserved.

ARTICLE III. TOWN COLOR CODE

Sec. 5.5-41. Standard.

The official town color code shall consist of a selection of approximately six hundred and four (604) color samples from the approximately one thousand and thirty seven (1,037) numbered color samples that are contained in the Sherwin-Williams (Paint) Company's Colors Sample Chart. These six hundred and four (604) colors consist of the four lightest colors on each panel of the aforementioned color chart. Color samples, and the paint, from any other paint manufacturing company which match the above color samples may be used according to the regulations set forth herewith. The official town color code shall be kept at the Indialantic Town Hall. A duplicate copy shall be kept by the building official. (Ord. No. 87-15, 1, 8-18-87; Ord. No. 02-25, 1, 10-15-02)

Sec. 5.5-42. Applicability.

Only a color or colors selected from the official Indialantic Town Color Code shall be used to pigment or re-pigment the exteriors of structures, including buildings and/or signs, located in zoning districts: "R-P" Residential - Professional; "C," "C-1," and "C-2" Commercial; "T" Tourist; "S-C" Shopping Center; and "CH" Church. A town painting permit, to be issued without cost, shall be required before commencing to pigment or re-pigment any structure within the designated zoning districts. (Ord. No. 87-15, 2, 8-18-87)

Sec. 5.5-43. Painting permit procedure.

Before pigmenting or re-pigmenting the exterior of a building or structure subject to this article, a painting permit must be obtained from the building official. To apply for a painting permit, the applicants shall bring two (2) copies of a color selection chart from any paint company of their choice. They may match any color they select on their color selection charts with a similar corresponding color on the Town's Official Color Code at the Town Hall. The applicants shall attach

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***Charter references**--Structure of the town, 1.03; land use and development, 9.02.

Cross references--Beaches, boats, parks and recreation, Ch. 5; buildings and construction, Ch. 6; garbage, trash, weeds, Ch. 8; planning generally, Ch. 11; streets and sidewalks, Ch. 13; trees and shrubs, Ch. 16; zoning, Ch. 17; maintaining residential character of town, 17-2(3)(b).

the second copy of the color selection chart to the application for the painting permit. When the application is approved by the building official, a painting permit to paint the structure such color shall be issued without cost to the applicant. (Ord. No. 87-15, 3, 8-18-87)

Sec. 5.5-44. Updating the official color code.

The town council shall, in its sole discretion from time to time, appoint an ad hoc committee with an uneven number of not less than five (5) nor more than nine (9) members to review currently available colors and thereby to revise the official color code. (Ord. No. 87-15, 4, 8-18-87)

Sec. 5.5-45. Penalties.

Any person who violates, or causes to be violated any provision of this article or permits any such violation or fails to comply with any of the requirements hereof shall be subject to the enforcement action of the Indialantic Code Enforcement Board pursuant to Florida Statutes Chapter 162. A separate offense shall be deemed committed on each day during or on which a violation or failure to comply occurs or continues. (Ord. No. 87-15, 5, 8-18-87)

Sec. 5.5-46. Repealed
(Ord. No. 14-10, 1, 7-15-14)

Editor's note-Ord. No. 14-10, adopted July 15, 2014, prohibiting murals, has been incorporated into Sec. 17-106

Sec. 5.5-47. Interpretation; Appeals; and Variances.

(a) All questions of interpretation relating to these color code regulations, as set forth in this article, shall be first presented to the town manager. Interpretations of this article may include but shall not be limited to ascertaining the meaning of words, terms, and provisions in this article, or the application of standards set forth herein.

(1) In interpreting this article, the town manager shall be guided first by the plain meaning of the word and terms in this code and second by the intent expressed herein, if any. The town manager shall make interpretations by interpreting the article as a whole and not by taking specific words or clauses in isolation.

(2) Prior to making an interpretation of the provisions of the color code, the town manager may require the building official, town attorney, or town planner to provide assistance. Interpretation of the provisions of this article shall be made in writing, shall state the code provision being interpreted, state the interpretation made, state the basis for the interpretation, and advise the recipient that appeals may be taken to the board of adjustment. The time within which an appeal must be taken and the manner of filing an appeal shall also be included within the town manager's letter of interpretation.

(3) After the town manager interprets the code, copies of the interpretation shall be promptly distributed to the party seeking the interpretation, members of the town council, and the town clerk. Upon receipt of the letter of interpretation, the town clerk, or the clerk's designee, shall promptly log on the letter of interpretation the date that the letter of interpretation was filed in the clerk's office. This date is the date of rendition of the interpretation. The town clerk shall keep an index of letters of interpretation indexed by code section.

(4) The board of adjustment shall have the authority to hear and decide appeals from the decision of town manager where it is alleged that there is an error in any decision or determination made by the town manager in interpreting this article.

(b) Hearings; appeals; notice.

(1) Appeals to the board of adjustment may be taken by any person aggrieved by any decision of the town manager in the interpretation of any portion of this article. A person aggrieved by an interpretation of the town manager is an individual who is affected in a manner differently than the community as a whole or greater in degree than the community as a whole.

(2) Such appeal shall be taken within a reasonable time not to exceed thirty (30) days following the date of rendition of the interpretation by filing with the town manager and the secretary to the board of adjustment a notice of appeal. The notice of appeal shall specify the section or subsection of this article involved, and the interpretation appealed from. The notice of appeal shall also briefly state the grounds upon which the appeal is based.

(3) The town manager shall within ten (10) days thereafter transmit to the secretary to the board of adjustment all papers constituting the record upon which the action appealed from was determined. The secretary to the board of adjustment after receipt of the record shall fix a time for hearing of the appeal within thirty (30) days and give public notice thereof.

(4) At the hearing, any person aggrieved may appear in person or by agent or attorney and be heard by the board of adjustment.

(5) Decisions of the board of adjustment shall be made in writing which shall be filed with the town clerk. The town clerk shall record on the written decision the date that decision was filed in the office of the town clerk.

(c) Stay of proceeding. An appeal stays all proceedings in furtherance of the action appealed from, unless the town manager certifies to the board of adjustment after the notice of appeal is filed, that by reason of facts stated in the notice of appeal, a stay would, in his opinion, cause imminent peril to life and property. In such cases proceedings shall not be stayed other than by a restraining order which may be granted by the board of adjustment or by a court of record on application.

(d) Variances. Variances from any of the provisions of section 5.5-46 may be sought in the manner provided for seeking a variance provided in section 17-141 *et seq*., town code, and subject to the same substantive requirements set forth therein; provided, however, that the applicant for a variance must show an unnecessary hardship as opposed to a practical or unusual difficulty.
(Ord. No. 97-6, 2, 5-6-97)

5.5-48--5.5-60. Reserved.

ARTICLE IV. PROPERTY MAINTENANCE

Sec. 5.5-61. Definitions.

Building. Any structure constructed or used for residence, business, industry, or other public or private purposes or accessory thereto, and including tents, lunch wagons, dining cars, trailers, mobile homes, sheds, garages, accessory buildings, carports, animal kennels, and similar structures whether stationary or movable.

Deterioration. The condition of a building, structure, or sign, or any part thereof, characterized by holes, breaks, rot, crumbling, peeling, rusting, fading, or other evidence of physical decay or neglect, lack of maintenance or excessive use.

Exposed to public view. Any premises, or any part thereof, of any building or any part thereof, which may be lawfully viewed by the public.

Exterior of premises. Open space on the premises outside of any building thereon.

Garbage (see also trash, refuse). The solid or semi-solid waste generated in the preparation and handling of food and ordinary household refuse.

Mixed occupancy. Any building containing one or more dwelling units or rooming units and also having a portion thereof devoted to nondwelling uses or used as a hotel.

Operator. Any person who has charge, care or control of a dwelling or premises, or a part thereof, whether with or without the knowledge and consent of the owner.

Owner. Any person who, alone or jointly or severally with others, shall have legal or equitable title to any premises, with or without accompanying actual possession thereof; or shall have charge, care or control of any dwelling unit, as owner or as executor, executrix, administrator, administratrix, trustee, receiver, or guardian of the estate, or as a mortgagee in possession regardless of how such possession was obtained. Any person who is a lessee subletting or reassigning any part or all of any dwelling or dwelling unit shall be deemed to be a co-owner with the lessor and shall have joint responsibility over the portion of the premises sublet or assigned by said lessee.

Premises. A lot, plot or parcel of land including the buildings or structures thereon.

Refuse (see also garbage, trash). All decayable and non-decayable solid waste, including but not limited to, garbage, trash, ashes, street cleanings, dead animals, abandoned automobiles and solid market and industrial wastes.

Screen. To conceal or separate. Screening may be accomplished pursuant to this article through the use of dense shrubbery or other vegetation.

Street. Any public or private right-of-way set aside for public travel thirty (30) feet or more in width, including roads, avenues, boulevards, lanes, drives, thoroughfares and highways.

Structure. Anything constructed or erected which requires location on the ground or attached to something having location on the ground, including signs and billboards, but not including fences or walls used as fences.

Trash (see also garbage, refuse). All debris and rubbish, and all materials generated as a result of individual ground maintenance and improvements, and all items other than garbage intended for disposal, but does not include autos, auto parts, or materials that accumulate as the result of building operations, building alterations, or clearing of lots. (Ord. No. 87-5, 1, 8-18-87; Ord. 11-12, 1, 8-16-11)

Sec. 5.5-62. Applicability.

(a) Every residential, nonresidential, or mixed occupancy building or structure, and the land on which it is situated, and every parcel of real estate, whether improved or unimproved and all fences and walls, shall be subject to the provisions of this article. This article shall apply whether or not such building or structure was constructed, altered, or repaired before or after enactment of this article, and irrespective of any permits or licenses which were issued for the use or occupancy of the building or premises for the construction or repair of equipment or facilities prior to the effective date of this article.

(b) Compliance with this article shall be the responsibility of all owners of record, regardless of ownership interest, operators and occupants of real property of any premises within the town. (Ord. No. 87-5, 2, 8-18-87)

Sec. 5.5-63. General maintenance.

All buildings, structures, and signs, both existing and new, and all parts thereof, shall be maintained in good repair and in a safe and sanitary condition, free from deterioration. All items of construction and all appliances, devices, and safeguards which are required by this Code in a building or structure when erected, altered, or repaired shall be maintained in good repair and in working order, free from deterioration and graffiti. (Ord. No. 87-5, 3, 8-18-87; Ord. No. 10-16, 1, 10-16-10)

Sec. 5.5-64. Paved and unpaved areas.

It shall be the responsibility of all persons included in section 5.5-61 above to maintain all paved and unpaved areas in a neat and clean condition, free of trash, debris, garbage, refuse, and litter. Paved areas shall be kept free of loose dirt. All paved and non-paved areas shall be maintained in good repair and free from deterioration. This shall include the standard acceptable practice for the removal of all ruts, pot-holes, and broken pavement. Proper drainage shall be provided to prevent the recurrent and excessive accumulation of stormwater for more than a four-hour period after cessation of rainfall. (Ord. No. 87-5, 4, 8-18-87)

Cross references--Garbage, trash and weeds, Ch. 8; streets and sidewalks, Ch. 13.

Sec. 5.5-65. Trash container areas.

All dumpster, trash cans, and trash container areas shall be maintained in a manner which prevents the accumulation of trash, debris, garbage, refuse, and litter.

These areas shall be further maintained in a manner so as to provide maximum screening, on all sides exposed to the public view. The screening always shall also be maintained in good condition and free from deterioration. For all residential districts, trash container areas shall be to the rear of the front building line. (Ord. No. 87-5, 5, 8-18-87)

Cross reference--Location of residential receptacles; removal from right-of-way, 8-12.

Sec. 5.5-66. Parking areas.

All parking spaces shall be maintained in such a manner as to ensure proper drainage and to prevent the recurrent and excessive accumulation of stormwater beyond a four-hour period after cessation of rainfall. The spaces shall be marked, or otherwise defined by the placement of concrete wheel bumpers, and shall be kept in good repair. All parking areas shall be kept free of derelict vehicles (junk, abandoned, and/or illegally parked vehicles).
(Ord. No. 87-5, 6, 8-18-87)

Cross references--Flood damage prevention, 6-114 et seq.; traffic, Ch. 15; parking, stopping and standing, 15-17 et seq.; abandoned or junked vehicles or parts thereof, 15-32 et seq.; water management, Ch. 16.5.

Sec. 5.5-67. Building exteriors.

The exterior of every building and structure or accessory buildings and structures shall be maintained in good repair. The same shall be free from broken glass, loose shingles, crumbling stone or brick, free from faded colors, excessive chipped or peeling paint, broken stucco, other damaged building materials, and free from any other condition reflective of deterioration.

The exterior of the premises, the exterior of structures and the condition of accessory structures shall be maintained so that the appearance of the premises and structures shall not constitute a blighting factor for adjoining property.

A building's exterior paint shall be considered "faded" if any of the following occur:

(1) The paint becomes discolored to the extent that the original color is lost or no longer readily identifiable; or

(2) The discoloration occurs in an uneven manner so that only portions of the building appear to be discolored and the original color may still be identified. (Ord. No. 87-5, 7, 8-18-87)

Cross references--Buildings and construction, Ch. 6; town color code, 5.5-41 et seq.

Sec. 5.5-68. Landscaping.

(a) *Exterior of premises.* Every owner or occupant in a single-family, duplex-, multifamily, residential-, professional-, tourist-, or church-district shall be required to maintain, with driveways, a front-yard area extending to the street pavement that is covered by a lawn, gravel, or ornamental plants, shrubs, or trees. Vegetation or any other material placed in the street other than a lawn requires authorization from the town public works director. Gravel or ornamental stone in the street is prohibited. Such areas in commercial and shopping center districts, if not paved, shall be maintained as above. Corner lots shall have two (2) such "front-yard" areas extending to each street paving for the purposes of this section.

(b) *Lawns.* All grass areas and lawns shall be properly maintained in a neat and attractive manner. Any grass area or lawn allowed to grow in excess of eight (8) inches in height shall be deemed to be not properly maintained in a neat and attractive manner.

(c) *Lawn irrigation systems.* All pumps and controls for underground lawn irrigation systems, visible from the front or located in the front setback area, shall be screened and not exposed to public view. For this purpose, all such screens may be created with shrubbery.

(d) *Natural growth.* Dead and dying trees and limbs or other natural growth which, by reason of rotting or deteriorating conditions or storm damage, shall be removed expeditiously. (Ord. No. 87-5, 8, 8-18-87; Ord. No. 11-12, 2, 8-16-11; Ord. 14-11, 1, 9-16-14)

Cross references--Garbage, trash, weeds, Ch. 8; streets and sidewalks, Ch. 13; trees and shrubs, Ch. 16; zoning, Ch. 17.

Sec. 5.5-69. Storage tank areas.

All aboveground storage tanks, containing propane, oil, water, or any other contents, shall be maintained in a manner which prevents the accumulation of trash, debris, litter, garbage, refuse, or similar objectionable materials. Storage tanks shall be screened to prevent exposure to public view on all sides. In residential areas, said storage tanks shall be located to the rear of the front building line. (Ord. No. 87-5, 9, 8-18-87)

Sec. 5.5-70. Clothes lines.

All elevated clothes line supports shall be kept behind the front building line and densely screened to avoid exposure to public view. (Ord. No. 87-5, 10, 8-18-87)

Sec. 5.5-71. Fences and walls.

All fences and walls shall be kept upright, without gaps, broken sections, or holes that are not part of the fence or wall design and free from deterioration and graffiti. (Ord. No. 87-5, 11, 8-18-87; Ord. 10-16, 1, 10-16-10)

Sec. 5.5-72. Penalties.

Any person who violates, or causes to be violated any provision of this article or permits any such violation or fails to comply with any of the requirements hereof shall be subject to the enforcement action of the code enforcement board pursuant to Florida Statute Chapter 162. A separate offense shall be deemed committed on each day during or on which a violation or failure to comply occurs or continues. (Ord. No. 87-5, 12, 8-18-87)

Sec. 5.5-73 – 5.5-85. Reserved

ARTICLE V. ATTRACTIVE NUISANCE CONDITION

Sec. 5.5-86. Attractive nuisance prohibited.

(a) As used in this article, the term "attractive nuisance" shall be construed to mean any artificial condition, whether in a building, on the premises of a building or upon an unoccupied job site, which by its nature, location or character would tend to attract and substantially endanger the safety of any minor person. This includes, but is not limited to, unsecured swimming pools, abandoned wells or shafts; excavations; abandoned refrigerators/freezers with doors or motor vehicles with unlocked doors; any structurally unsound fences or structures; lumber, trash/debris, or any other materials which may provide a hazard.

(b) No person shall have, keep, maintain, cause or permit an attractive nuisance condition on any parcel of land within this Town. Having, keeping, maintaining, causing, or permitting an attractive nuisance in violation of this section is hereby prohibited and declared to be a public nuisance. (Ord. 11-09, 1, 6-21-11)

Sec. 5.5-87. Attractive nuisance condition - violation.

(a) Any person responsible for any parcel of land on which an attractive nuisance condition shall exist shall take all necessary measures to remedy the attractive nuisance condition within three (3) calendar days after the date upon which written notice is given by the Town, or within such reasonable time as may be specified in the notice from the Town. (Ord. 11-09, 2, 6-21-11)

Sec. 5.5-88. Notice.

(a) If the code enforcement officer finds and determines that a public nuisance as described and declared in section 5.5-86 exists, he shall so notify the owner of record of the offending property and any occupants of the property in writing and demand that such owner(s) and occupant(s) cause the condition to be remedied. Said notice shall be given in writing and shall require that the condition be remedied. The notice shall specify a date for the completion of the remedying of the attractive nuisance condition. The notice shall be given by certified U.S. mail, return receipt requested, or as other provided in section 162.12, Florida Statutes, said notice being addressed to the owner or owners of the property described and to any occupants of the property. If notice is mailed, notice to a property owner shall be given as their names and addresses are shown upon the records of the county property appraiser at the time the notice is given. Mailed notice shall be deemed complete and sufficient when so addressed and deposited in the United States mail with proper postage prepaid.

(b) Simultaneous with mailing the notice, the property shall be posted with a notice in substantially the form as depicted in this section of the code.

(c) The notice shall be in substantially the following form:

NOTICE OF PUBLIC NUISANCE

Name of Owner _____
Name of Occupant (if other than the owner) if known_____
Address of Owner _____

Our records indicate that you are the owner(s) of the following property in the Town of Indialantic, Florida:

(describe property)

An inspection of this property discloses, and I have found and determined, that a public nuisance exists thereon so as to constitute a violation of the Town of Indialantic Attractive Nuisance Condition Ordinance, Article V, Chapter 5.5, Indialantic Code of Ordinances, in that:

(describe here the condition which places the property in violation)

You are hereby notified that unless the condition above-described is remedied so as to make it non-

violative of the Town of Indialantic Attractive Nuisance Condition Ordinance within three (3) calendar days from the date of this notice, the Town of Indialantic will proceed to remedy this condition, and the cost of the work, including advertising costs and other expenses, will be imposed as a lien on the property if not otherwise paid within thirty (30) days after receipt of billing. Within three (3) days after the posting of this notice or within three (3) days of the receipt of billing to said owner, the owner of the property or occupant of the property may make written request to the town manager for a hearing before him or his designee to challenge the taking of action to remedy the nuisance or the billing and/or liening. Further information regarding this notice or appeal may be obtained by contacting the town manager at Indialantic Town Hall, 216 Fifth Avenue, Indialantic, FL 32903, 321-723-2242.

Town of Indialantic, Florida
By: _____
Code Enforcement Officer

(Ord. 11-09, 3, 6-21-11)

Sec. 5.5-89. Hearing.

(a) Within three (3) days after the mailing of notice to said owner and the posting of the property, whichever event shall last occur, the owner of the property or occupant of the property may make written request to the town manager for a hearing before him or his designee to show that the condition alleged in the notice does not exist or that such condition does not constitute a public nuisance.

(b) At the hearing the town and the property owner or property occupant may introduce such evidence as is deemed necessary. The town manager may establish rules and regulations for the hearing procedure. Following a review by the town manager, the owner will have exhausted his/her administrative remedies. (Ord. 11-09, 4, 6-21-11)

Sec. 5.5-90. Condition may be remedied by town.

(a) If within three (3) days after the mailing of the notice to said owner, or said owner's agent, no hearing has been requested and the condition described in the notice has not been remedied, the town manager or said manager's designee may cause the condition to be remedied by the town at the expense of the property owner. If a hearing has been held and has been concluded adversely to the property owner, the town manager may cause the condition to be remedied by the town at the expense of the property owner.

(b) After causing the condition to be remedied, the town manager or said manager's designee shall certify to the town clerk the expense incurred in remedying the condition and shall include a copy of the notice above-described and a copy of the decision of the town manager or code enforcement board, if any, whereupon such expense shall become payable within thirty (30) days, after which a special assessment lien and charge will be made upon the property, which shall be payable with interest at the rate of eight per cent (8%) per annum from the date of such certification until paid. Notice of such lien shall be maintained in the town clerk's office in a file created for such purpose and may be filed in the office of the clerk of the circuit court and recorded among the public records of the county. Such lien shall be enforceable immediately or at any time within a period of twenty (20) years after recording of same in the records of the town clerk, all in the same manner as a special assessment lien in favor of the town under chapter 170, Florida Statutes, and may be satisfied at any time by payment thereof including accrued interest. Upon such payment, the town clerk shall by appropriate means evidence the satisfaction and cancellation of such lien upon the record, and as appropriate, in the public records of Brevard County, Florida, thereof. (Ord. 11-09, 5, 6-21-11)

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Chapter 6

BUILDINGS AND CONSTRUCTION*

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ARTICLE I. IN GENERAL

Sec. 6-1. Violations.

It shall be unlawful to violate or fail to comply with any provision of this chapter or any code or standard adopted by this chapter, or to give any false or misleading information in any application, plans, specifications or other documents required by this chapter, or to fail to comply with any permit or authorization issued pursuant to this chapter, and such violations shall be punished as provided by section 1-9 of this Code of Ordinances.

Sec. 6-2. Official designated enforcement officer.

The building official of the town is hereby designated and authorized as the enforcement officer for the provisions of this chapter. Notwithstanding the foregoing, the town manager may designate additional individuals to act as code enforcement officers of this chapter 6, town code, pursuant to chapter 162, Florida Statutes. (Ord. No. 246, 1, 1-16-79; Ord. 96-1, 1, 10-17-95)

Sec. 6-3. Official to head department; temporary substitute.

The building official shall be head of the building inspection department. During his temporary absence or disability, the town manager shall designate an assistant building official to act in matters that require prompt official attention. (Ord. No. 247, 11, 5-15-79)

***Cross references**--Beautification, Ch. 5.5; town color code, 5.5-41 et seq.; paint permit, 5.5-43; property maintenance, 5.5-61 et seq.; fire prevention and fire safety, 7-60 et seq.; construction or landscaping debris on streets, vacant lots, 8-21; bond prerequisite to building or construction license, 9-9; certificate prerequisite to contractor's license; effect of suspension, revocation, 9-l0; license tax for contractors, 9-11(37); safety precautions required when sidewalk broken or damaged, 13-5; gates opening over sidewalks or streets, 13-6; work incident to utilities, 13-19 et seq. zoning generally, Ch. 17; swimming pools to be enclosed, 17-l05; sign regulations, 17-l06.

Sec. 6-4. Provision for consent to inspection before permit issued by building official; inspection of premises with consent or warrant.

(a) Upon application for a building permit, the applicant shall consent, in writing, before a permit is issued, to an inspection or inspections of the premises by the building official or building inspector at dates and times reasonably determined by the building official. Except as stated hereinbelow, the building official shall provide the applicant with reasonable advance notice of the inspection in instances where the property and/or premises to be inspected are being utilized concurrent with the construction such that a reasonable expectation of privacy exists. If the applicant refuses to allow the building official or building inspector to inspect the premises, the building official may revoke the permit, order the work stopped or take such other civil action as may be legally permissible under the circumstances.

(b) The building official or building inspector may nevertheless inspect without advance notice, in cases of such concurrent utilization as stated in paragraph (a) above if proper consent is obtained or a warrant is secured by said official.

(c) When the building official or building inspector shall have first obtained a proper warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the building official or building inspector for the purpose of inspection and examination pursuant to this chapter.

(d) The building official or building inspector may inspect without advance notice and without a warrant if said inspector reasonably believes, in good faith, that a clear and present danger exists, which makes the building or premises unsafe, dangerous or hazardous. (Code 1962, 9-20; Ord. No. 88-7, 1, 5-24-88)

Sec. 6-5. General duties of official.

The building official shall receive applications for building permits, and furnish the prescribed certificates. He shall inspect all plans prior to building. He shall examine premises for which permits have been issued and shall make necessary inspections to see that the provisions of the law are complied with and that construction is prosecuted safely. He shall enforce all laws relating to the construction, alteration, repair, removal, demolition, equipment, use and occupancy, location, and maintenance of buildings and structures, except as may be otherwise provided for.
(Code 1962, 9-19; Ord. No. 89-10, 1, 4-18-89; Ord. 96-1, 2, 10-17-95)

Sec. 6-6. Appeals from decisions of the building official.

Any person aggrieved by the decision or action of the building official in the enforcement or implementation of this chapter or any standard or code adopted by this chapter shall have the right to appeal to the board of adjustment after the building official's decision is rendered. Such appeals shall be in accordance with sections 17-46 through 17-51 of the Code of Ordinances. As used in this section and in the standard code adopted in this chapter, the term □rendered□ shall mean the date that a written determination is filed in the records of the building official. (Ord. No. 85-16. 1. 6-18-85; Ord. No. 85-18, 1, 8-20-85; Ord. 96-1, 3, 10-17-95)

Sec. 6-7. Who may be issued permits.

Permits required by this chapter shall only be issued to persons who present a certificate of competency to do the work for which the permit is sought, issued by either Brevard County or the State of Florida, valid for the then current period; provided, however, that a permit may be issued to the owner of a single-family residence proposing to do work limited to that residence, provided that the building official finds that such home owner is competent to do such work. No permit will be issued unless the applicant has also fully complied with any and all other legal requirements of the State of Florida, County of Brevard, and the town. (Ord. No. 246, 2, 1-16-79)

State law reference--State certification of contractors, F.S. Ch. 489.

Sec. 6-8. Business tax receipt prerequisite to permit.

No person who is required to have a business tax receipt pursuant to Chapter 9 of this Code shall be issued a permit required by this chapter unless he is the holder of a valid, current business tax receipt issued in accordance with said chapter. (Ord. No. 12-02, 1, 11-21-11)

Sec. 6-9. False advertising.

No person shall display a sign or otherwise advertise or hold himself out as being qualified to engage in any work regulated by this chapter unless he is duly certified to do such work by either the State of Florida or Brevard County. (Code 1962, 22-25)

Sec. 6-l0. Procedure for permit issuance.

(a) The building official shall review all permits required by this chapter and, except as otherwise provided herein, shall refer them, with the building official's recommendations thereon, to the zoning and planning board for its action thereon. No permit, except as otherwise provided herein, shall be issued by the building official, without the prior review and approval of the zoning and planning board.

(b) The building official may issue permits for fences, swimming pools, pool enclosures, and other minor building plans, and for such other structures as authorized by the zoning and planning board, without prior review and approval of the zoning and planning board.

(c) The building official may, without the prior review or approval of the zoning and planning board, issue permits for all construction in the following zoning districts:

(1) "R-1-A" Single-Family Residence Districts;

(2) "R-1-B" Single-Family Residence Districts;

(3) "R-2" Duplex Residence Districts; and

(4) "R-3" Multi-Family Residence Districts.

(d) The building official may issue permits for all construction which does not involve a change in use or a change or modification to the site. The building official shall submit all other plans for construction permits to the zoning and planning board for its review and approval prior to issuance of a permit.

(e) Notwithstanding paragraphs (c) and (d) above, the building official may, in the building official's discretion, require the prior review or approval of the zoning and planning board prior to issuance of a building permit in special situations in which the building official is desirous of obtaining the opinion of the zoning and planning board.

(f) The building official shall report to the zoning and planning board all building permits issued hereunder at the zoning and planning board meeting immediately following the issuance of said permit(s) for its information. (Code 1962, 9-19; Ord. No. 82-309, 1, 4-20-82; Ord. No. 88-16, 2, 10-25-88; Ord. No. 89-11, 1, 4-18-89; Ord. 94-11, 1, 5-17-94)

Sec. 6-11. Fees charged by building department.

Fees, and the amount thereof, to be charged by the town building department for planning, zoning, building, electrical, plumbing, mechanical, swimming pool, driveway, utility, and other applications or permits, shall be promulgated from time to time by resolution of the Town Council. (Ord. No. 246, 4--6, 1-16-79; Ord. No. 81-295, 1, 7-28-81; Ord. No. 83-331, 1, 7-19-83; Ord. No. 83-334, 1, 9-20-83; Ord. No. 85-26, 1-3, 10-15-85; Ord. No. 86-1, 2, 11-19-85; Ord. No. 86-20, 1, 9-16-86; Ord. No. 87-1, 1, 11-18-86; Ord. No. 88-16, 3-5, 10-25-88; Ord. No. 92-9, 1, 7-21-92)

Sec. 6-12. Time fees are to be paid.

On all buildings, structures or alterations requiring a building permit, all required fees shall be paid at the time specified in a resolution passed pursuant to section 6-11, but in no event shall that time be later than the time of the issuance of a permit.
(Ord. No. 246, 5, 1-16-79; Ord. No. 85-26, 4, 10-15-85; Ord. No. 96-1, 4, 10-17-95)

Sec. 6-13. Fee for additional inspections.

Every additional inspection or reinspection shall require an additional fee as set forth in the resolution authorized by Sec. 6-11 and payable before such inspection or reinspection. (Ord. No. 246, 5, 1-16-79; Ord. 12-02, 2, 11-21-11)

Sec. 6-14. Fees not to be refunded.

No portion of a permit fee shall be refunded subsequent to the issuance of the permit. (Ord. No. 246, 7, 1-16-79)

Sec. 6-15. Application for certificate of occupancy.

Application for a certificate of occupancy shall be filed at the time of application for a building permit. (Code 1962, 9-1)

Cross reference--Certificates of occupancy required and procedure therefor, 17-81 .

Sec. 6-16. No charge for certificate of occupancy.

There will be no charge for a certificate of occupancy for new construction or alterations to existing buildings. (Code 1962, 9-1)

Sec. 6-17--6-26. Reserved.

ARTICLE II. BUILDING CODE*

Sec. 6-27. Florida Building Code adopted.

(a) *Florida Building Code adopted*. There is hereby adopted by reference and incorporated herein as fully and completely as though set out at length the current Florida Building Code as adopted by the Florida Legislature. The Florida Building Code is specifically to be construed as being cumulative with all existing federal, state, applicable county, and town laws, ordinances and regulations now existing or hereafter adopted, or as amended from time to time. The Florida Building Code shall not be construed as an authorization for any construction, which is now or hereafter prohibited by federal, state, applicable county, or other town laws, ordinances, or regulations. (Code 1962, 9-9; Ord. No. 81-291, 1, 4-21-81; Ord. No. 87-6, 1(a), 3-17-87; Ord. No. 87-22, 1, 11-17-87; Ord. No. 92-9, 2, 7-21-92; Ord. No. 96-1, 5, 10-17-95; Ord. No. 98-6, 1, 4-21-98; Ord. 12-02, 3, 11-21-11)

Sec. 6-28. Amendments to the Florida Building Code.

104.10.1 Modifications of the strict application of the requirements of the *Florida Building Code*. The Building Official shall coordinate with the Floodplain Administrator to review requests submitted to the Building Official that seek approval to modify the strict application of the flood resistant construction requirements of the *Florida Building Code* to determine whether such requests require the granting of a variance pursuant to Section 117 of the Florida Building Code. (Code 96-1, 6, 10-1795; Ord. 12-02, 4, 11-21-11; Ord. 14-04, 6, 2-18-14)

107.6.1 Building permits issued on the basis of an affidavit. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Section 105.14 and Section 107.6 of the Florida Building Code, shall not extend to the flood load and flood resistance construction requirements of the *Florida Building Code.*

117 VARIANCES IN FLOOD HAZARD AREAS

117.1 Flood hazard areas. Pursuant to section 553.73(5), F.S., the variance procedures adopted in the local floodplain management ordinance shall apply to requests submitted to the Building Official for variances to the provisions of Section 1612.4 of the *Florida Building Code, Building* or, as applicable, the provisions of R322 of the *Florida Building Code, Residential*. This section shall not apply to Section 3109 of the *Florida Building Code, Building*. . (Code 96-1, 6, 10-1795; Ord. 12-02, 4, 11-21-11; Ord. 14-04, 6, 2-18-14)

Sec. 6-28.5. Building inspection department.

There is hereby established a department to be called the building inspection department and the person in charge shall be known as the building official who shall be a department head and officer of the town.

The town manager shall employ and appoint a building official and determine the qualifications with concurrence of council and recompense therefor as long as the qualifications meet the minimum requirements of the State of Florida. It shall be the duty of the building official to enforce the provisions of this code as it relates to building, construction, and zoning ordinances. The building official shall keep records of all proceedings together with the necessary applications, copies of permits, and certificates showing all pertinent information. The building official shall not engage in the occupation of building, directly or indirectly, within the borders of the Town of Indialantic.

The building official, may with the approval of the town manager, appoint deputy or assistant building inspectors to perform duties consistent with such appointment. (Ord. No. 87-18, 1, 11-17-87; Ord. No. 98-6, 2, 4-21-98)

Sec. 6-29. Repealed.

(Code 1962, 9-14; Ord. No. 248, 1, 2-20-79; Ord. No. 92-9, 4, 7-21-92; Ord. 98-6, 3, 4-21-98; Ord. 12-02, 5, 11-21-11)

Sec. 6-30. Indialantic Coastal Construction Code of 1987.

(a) *[Generally:]* The provisions contained herein shall constitute the Indialantic Coastal Construction Code of 1987 hereinafter referred to as the coastal code and shall apply to all applicable construction within the town that is within the coastal building zone except as exempted hereby. This code is to be construed as being cumulative with the Florida Building Code adopted hereinabove and

in cases of conflict, the stricter provision shall apply. No provisions hereof shall be construed to permit any construction in any area prohibited by city, county, state or federal ordinance, statute, rule or regulation.

(b) *[Purpose.]* The purpose of the coastal code is to require a variance before any permit may be issued to allow a major structure to be constructed, in whole or in part, seaward of the coastal construction control line and to provide minimum standards for the design and construction of buildings and structures in the coastal building zone to reduce the harmful effects of hurricanes and other severe storms occurring along the coastal area of the Town of Indialantic. These standards are intended to specifically address design features, which affect the structural stability of the beach, dunes and topography of adjacent properties.

(c) *[Variance; procedure.]*

(1) No major structure may be constructed seaward, in whole or in part, of the Brevard County coastal construction control line, as now existing and as duly established from time to time hereafter, without a variance having first been granted by the board of adjustment.

(2) Notwithstanding the authority granted to the board of adjustment pursuant to section 17-141 of the Indialantic Zoning Code, the board of adjustment shall nevertheless follow only the below-stated procedure in all respects when dealing with a variance request based solely on the desire to construct a major structure, otherwise nonconforming to the coastal code, seaward of the coastal construction control line and landward of the oceanfront setback defined in section 17-127(15) of the Indialantic Zoning Code:

a. The board of adjustment shall grant a variance only when the applicant has met his burden of proof by proving that construction of the major structure seaward of the coastal construction control line will not jeopardize the stability of the beach-dune system, will not accelerate erosion, and will not endanger either adjacent or landward property or the property in question itself; it being in the public interest and prudent to preserve and protect the beaches of the Town of Indialantic from harm.
b. When a variance request is not solely based on the above-stated situation, all other aspects of the variance request shall be determined pursuant to Article VIII of the Indialantic Zoning Code, Chapter 17, and the issues noted above regarding the environment shall be determined as per subsection (2)a.
c. The board of adjustment shall also comply with sections 17-142 through 17-145 of the Indialantic Zoning Code when deciding a variance request whether or not same shall be based solely on the situation stated in this subsection.
d. Nothing hereinabove shall be construed as relieving applicant from complying with all applicable county, state and federal ordinances, statutes, rules and regulations before construction may actually commence.
e. In the event the board of adjustment grants a requested variance, the board may attach to said variance such reasonable conditions as the board deems necessary to maintain the purpose and intent of this section.

f. An applicant for a variance shall supply two (2) copies of a topographic survey of the subject property prepared or verified for accuracy not more than six (6) months prior to the date of the application and certified by a land surveyor registered in the State of Florida, depicting the location of the coastal construction control line, the oceanfront setback, existing structures, and proposed construction.

g. The applicant shall also submit two (2) copies of detailed final construction plans and specifications for all structures proposed, signed and sealed by a professional engineer or architect registered in the State of Florida.

(d) *Applicability.* The requirements of this coastal code shall apply to the following types of construction in Indialantic, Brevard County, Florida:

(1) The new construction of, or substantial improvement to major structures, nonhabitable major structures, and minor structures as defined herein.

(2) Construction which would change or otherwise have the potential for substantial impact on coastal zones (i.e., excavation, grading, paving).

(3) Construction located partially within the coastal building zone.

(4) Reconstruction, redevelopment or repair of a damaged structure from any cause, which meets the definition of substantial improvement as defined herein.

(e) *Exemptions.* The requirements of the coastal code shall not apply to the following:

(1) Minor work in the nature of normal beach cleaning and debris removal.

(2) Structures in existence prior to the effective date of the code, except for substantial improvements as defined herein.

(3) Construction for which a valid and unexpired building permit was issued prior to the effective date of this code.

(4) Construction extending seaward of the seasonal high-water line which is regulated by the provisions of Section 161.O41, Florida Statutes (i.e., groins, jetties, moles, breakwaters, seawalls, piers, revetments, beach nourishment, inlet dredging, etc.).

(5) Construction of nonhabitable major structures as defined herein, except for the requirements of paragraph (h)(4).

(6) Construction of minor structures as defined herein, except for the requirements of paragraph (h)(5).

(7) Construction concerning improvement of a major structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.

(f) *Application for permit.* All applications for building permits submitted to the town except for single-family detached residential construction (which is not unusual in design) within the coastal building zone landward of the coastal construction control line, and all applications for building permits submitted to the town for all construction seaward of the established Brevard

County coastal construction control line shall be certified by an architect or professional engineer registered in the State of Florida. Such certification shall state that the design plans and specifications for the construction are in compliance with all of the provisions, conditions, and criteria established and set forth in this coastal code, except that construction landward of the coastal construction control line need not comply with the foundation design and construction requirements delineated in (h)(3)b., c., d. and e., hereinbelow. A professional engineer or architect, however, except in the case of single family detached residential not unusual in design, shall certify that compliance with said construction standards are not warranted.

(g) *Definitions.* For the purposes of this subsection, the following terms shall have the meaning set forth below, and when not inconsistent with the context, words used in the present tense shall include the future, words in the singular include the plural number, and words in the plural number include the singular, and "shall" is always mandatory and not merely directory.

(1) *Beach:* The zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves. "Beach" may alternatively be referred to as "shore."

(2) *Breakaway wall:* A partition independent of supporting structural members that shall withstand design wind forces, but would fail under hydrostatic, wave, and runup forces associated with the design storm surge. Under design storm surge conditions, the wall shall fail in a manner such that it breaks up into components that will minimize the potential for damage to life or adjacent property. It shall be a characteristic of a breakaway or frangible wall that it shall have a horizontal design loading resistance of no less than ten (10) nor more than twenty (20) pounds per square foot.

(3) *Building support structure:* Any structure which supports floor, wall or column loads, and transmits these loads to the foundation, and shall include, but not be limited to beams, grade beams, or joists, and the lowest horizontal structural member exclusive of piles, columns or footings.

(4) *Coastal building zone:* That land area of the Town of Indialantic, Florida, lying landward of the Atlantic ocean and seaward of the Indian River.

(5) *Coastal construction control line:* A line defining the landward extent of that portion of the beach-dune system which is subject to severe fluctuations based upon a one-hundred-year storm surge, storm waves, or other predictable weather conditions as established by the Department of Natural Resources in accordance with Section 161.053, Florida Statutes.

(6) *Column action:* The potential elastic instability in piles or columns resulting in axial or lateral bending of the member due to compressive stress.

(7) *Construction:* The act of any building, clearing, filling or excavation, or substantial improvement in the size or use of any structure or building or the appearance of any land. When appropriate to the context, "construction" refers to the act of construction or the result of construction.

(8) *Design:* To plan and delineate utilizing the minimum applicable codes and/or criteria called for by this section.

(9) *Dune:* A mound or ridge of loose sediments, usually sand-sized, lying landward of the beach, and deposited by natural or artificial means.

(10) *Floodproofing:* As defined according to the National Flood Insurance Regulations.

(11) *Landward:* In a direction away from the Atlantic ocean.

(12) *Major structure:* Include the following structures: houses, single-family residential buildings; mobile homes; modular homes; trailers; multiple-family residential buildings; condominiums; motels; hotels; apartments; restaurants; shops; towers; other similar residential, or public buildings; swimming pools; bathhouses; detached garages; accessory and utility buildings; septic tanks and associated drain fields; package sewer and water plants; parking areas; impervious paved areas; sewer, water, electric, telephone, television cable and other utility lines; storm drains, water retention areas; drainage structures; private roads or streets; flagpoles and signs over twenty (2O) feet in height; and storage tanks.

(13) *Mean high water line:* The intersection of the tidal plane of mean high water with the shore. Mean high water is the average height of high waters over a 19-year period, as set forth in Section 177.27(15), Florida Statutes.

(14) *Minor structure:* Include dune and beach walkover structures; beach access ramps and walkways; stairways; viewing platforms; gazebos; boardwalks; lifeguard support stands; cantilevered docks or porches; fences; fishing or ocean piers; pipelines; ocean outfalls; and ornamental walls; garden structures; or other ornamental construction. It shall be a characteristic of minor structures that they are considered to be expendable under design wind, wave, and storm forces.

(15) *Mobile home:* Includes manufactured housing which conforms to the Federal Manufactured Housing Construction and Safety Standards or the Uniform Standards Code ANSI A-119.1 pursuant to Section 320.823, Florida Statutes.

(16) *Nonhabitable major structures:* Include swimming pools; parking garages; pipelines; piers, canals; lakes; ditches; drainage structures; and other water retention structures; water and sewage treatment plants; electrical power plants, transmission and distributions lines, transformer pads, vaults, and substations; roads; bridges; streets;

highways; storage tanks; communications buildings and towers; flagpoles and signs over fifteen (15) feet in height.

(17) *NGVD: "National Geodetic Vertical Datum"* established by the National ocean Service, and is alternatively referred to as the "1929 Mean Sea Level Datum."

(18) O*ne hundred-year storm:* A shore. incident hurricane or any other storm with accompanying wind, wave, and storm surge intensity having a one hundred (100) percent chance of being equaled or exceeded in any given year, during any one-hundred-year interval.

(19) *Seasonal high-water line:* That line formed by the intersection of the rising shore and the elevation of one hundred fifty (150) percent of the local mean tidal range above mean high water.

(20) *Seaward:* In a direction toward the Atlantic Ocean.

(21) *State minimum building code:* Model building construction code as established by Florida Statutes 553.73.

(22) *Substantial improvement:* Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds a cumulative total of fifty (50) percent of the most recent assessed value of the structure, as determined by the Brevard County Property Appraisers office, either:

a. Before the improvement or repair started; or
b. If the structure has been damaged, and is being restored; before the damage occurred.

For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.

h) *Coastal construction requirements.*

(1) *General:* Construction within the coastal building zone shall meet the requirements of this chapter, except that construction landward of the coastal construction control line need not comply with the foundation design and construction provisions of (h)(3)b., c., d. and e., hereinbelow. A professional engineer or architect, however, except in the case of single family detached residential not unusual in design, shall certify that compliance with said construction standards are not warranted. All structures shall be designed so as to minimize damage to life, and the natural environment.

(2) *Structural requirements for major structures:*

a. Design and construction: Major structures, except for mobile homes, shall be designed and constructed in accordance with the Florida Building Code. Major structures, except mobile homes, shall also comply with the applicable standards for construction found elsewhere in the Florida Building Code.

b. Elevation, floodproofing, and siting: All major structures shall be designed, constructed and located in compliance with the National Flood Insurance Regulations as found in 44 CFR Parts 59 and 60.

(3) *Design conditions:*

a. Velocity pressure: Major structures, except mobile homes, shall be designed in accordance with the requirements of the Florida Building Code.
b. Foundations: The elevation of the soil surface to be used in the design of the foundations, calculation of pile reactions and bearing capacities shall not be greater than that which would result from the erosion reasonably anticipated as a result of design storm conditions. Foundation design and construction of a major structure shall consider all anticipated loads acting simultaneously with live and dead loads. Erosion computations for foundation design shall account for all vertical and lateral erosion and scour producing forces, including localized scour due to the presence of structural components. Foundation design and construction shall provide for adequate bearing capacity taking into consideration the type of soil present and the anticipated loss of soil above the design grade as a result of localized scour. Erosion computations are not required landward of coastal construction control lines established or updated since June 30, 1980. Upon request the Department of Natural Resources may provide information as to those areas within coastal building zones where erosion and scour of a one-hundred-year storm event is applicable.
c. Wave forces: Calculations for wave forces resulting from design storm conditions on building foundations and superstructures may be based upon the minimum criteria and methods prescribed in the Naval Facilities Engineering Command Design Manual, NAVFAC DM-26, U.S. Department of Navy; Shore Protection Manual. U.S. Department of the Army Corps of Engineers; U.S. Department of the Army Coastal Engineering Research Center Technical Papers and Reports; the Technical and Design Memoranda of the Division of Beaches and Shores, Florida Department of Natural Resources; or other professionally recognized methodologies which produce equivalent design criteria.

   Breaking, broken, and nonbreaking waves shall be considered as applicable. Design wave loading analysis shall consider vertical uplift pressures and all lateral pressures to include impact as well as dynamic loading and the harmonic intensification resulting from repetitive waves.

d. Hydrostatic loads: Calculations for hydrostatic loads shall consider the maximum water pressure resulting from a fully peaked, breaking wave superimposed upon the design storm surge with dynamic wave setup. Both free and hydrostatic loads shall be considered. Hydrostatic loads, which are confined shall be determined by using the maximum elevation to which the confined water would freely rise if unconfined. Vertical hydrostatic loads shall be considered both upward and downward on horizontal or inclined surfaces of major structures (i.e., floors, slabs, roofs, walls). Lateral hydrostatic loads shall be considered as forces acting horizontally above and below grade on vertical or inclined surfaces. Hydrostatic loads on irregular or curved geometric surfaces shall be determined by considering the separate vertical and horizontal components acting simultaneously under the distribution of the hydrostatic pressures.

e. Hydrodynamic loads: Hydrodynamic loads shall consider the maximum water pressure resulting from the motion of the water mass associated with the design storm. Full intensity loading shall be applied on all structural surfaces above the design grade which would affect the flow velocities.

(4) *Structural requirements for nonhabitable major structures:*

a. Nonhabitable major structures need not meet the specific structural requirements of section (h)(2)b. except that they shall be designed to produce the minimum adverse impact on the beach and dune system and shall comply with the applicable standards of construction found in the Florida Building Code. All sewage treatment and public water supply systems shall be flood-proofed to prevent infiltration of surface water anticipated under design storm conditions. Underground utilities, excluding pad transformers and vaults, shall be floodproofed to prevent infiltration of surface water expected under design storm conditions or shall otherwise be designed to function when submerged under such storm conditions.

(5) *Structural requirements for minor structures:* Minor structures need not meet the specific structural requirements of section (h)(2), except that they shall be designed to produce the minimum adverse impact on the beach and dune system and shall comply with the applicable standards of construction found in the Florida Building Code.

(6) *Location of construction:* Construction, except for elevated walkways, lifeguard support stands, piers, beach access ramps, gazebos, and coastal or shore protection structures, shall be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. Construction, including excavation, may occur to the extent that the natural storm buffering and protection capability of the dune is not diminished.

(7) *Public access* Where the public has established an accessway through private lands to lands seaward of mean high tide or water line by prescription, prescriptive easement, or other legal means, development or construction shall not interfere with such right of access unless a comparable alternative accessway is provided. The developer shall have the right to improve, consolidate, or relocate such public accessways so long as they are:

a. of substantially similar quality and convenience to the public;
b. Approved by the town and approved by the Department of Natural Resources whenever improvements are involved seaward of the coastal construction control lines; and
c. Consistent with the coastal management element of the local comprehensive plan adopted pursuant to Section 163.3178, Florida Statutes.

(Code 1962, 9--12; Ord. No. 81-291, 2, 4-21-81; Ord. No. 87-6, 1(b), 3-17-87; Ord. No. 88-01, 1, 2, 12-15-87; Ord. No. 03-04, 1, 3-18-03; Ord. No. 12-02, 6, 11-21-11)

Sec. 6-31. Review of building and fire safety plans.

(a) Joint plan review. With regard to review of any building or construction plans and specifications for the construction, erection, demolition, alteration, or repair of any building or structure, the town's fire marshal is hereby designated as the local fire code enforcement official and is referred to herein as the fire official. Unless exempted hereby, said fire official shall conduct a review of said building and construction plans and specifications for compliance with the fire prevention code and life safety codes, as adopted in section 7-60, town code. No permit for the construction, erection, alteration, repair or demolition of any building or structure shall be issued until the building official and fire official, or their respective designees, have reviewed the plans and specifications for such proposal and both officials have found the plans to be in compliance with the requirements of the town building code (as adopted in section 6-27, town code), plumbing code (as adopted in section 6-74, town code), gas code (as adopted in section 6-90, town code), mechanical code (as adopted in section 6-102, town code) and the fire prevention code, together with the life safety standards set forth in section 7-60, town code. Any building or structure which is not subject to the fire prevention code, adopted in Section 7-60, and any building or structure which is exempt from the building permit process set forth in this chapter shall not be required to have its plans reviewed by the town pursuant to this section. One and two-family detached residential dwelling units are not subject to plan review by the fire official and the joint plan review provisions of this section.

(b) Conflict. In the event of a conflict between the requirements of town building code (as adopted in section 6-27, town code), plumbing code (as adopted in section 6-74, town code), gas code (as adopted in section 6-90, town code), or the mechanical code (as adopted in section 6-102, town code) with the fire prevention code and life safety code (adopted in section 7-60, town code), said conflict shall be reviewed by agreement between the town building official and the fire official in favor of the code which offers the greatest degree of life safety or alternatives which would provide an equivalent degree of life safety and an equivalent method of construction. Any decision made by the fire official and the building official may be appealed to the Board of Adjustment and Appeals.

(c) Conflict review by board of adjustment.

(1) If the decision of the fire official and the building official is to apply the provisions of either the town building code (as adopted in section 6-27, town code), plumbing code (as adopted in section 6-74, town code), gas code (as adopted in section 6-90, town code), and the mechanical code (as adopted in section 6-102, town code) or the fire prevention code, the board of adjustment may not alter the decision, unless the board determines that the application of such code is not reasonable.

(2) If the decision of the fire official and the building official is to apply an alternative to the provisions of either the building code (as adopted in section 6-27, town code), plumbing code (as adopted in section 6-74, town code), gas code (as adopted in section 6-90, town code), and the mechanical code (as adopted in section 6-102, town code) or the fire prevention code, together with the life safety code standards, as adopted by section 7-60, town code, the board of adjustment shall give due regard to the decision rendered by the fire official and the building official and may modify that decision, if the Board adopts a better alternative, taking into consideration all relevant circumstances.

(3) In any event that the board adopts alternatives to the decision rendered by the fire official and the building official, such alternative shall provide an equivalent degree of life safety and an equivalent method of construction as the decision rendered by the fire official and the building official.

The Board shall resolve any conflict in the provision of the town building code (as adopted in section 6-27, town code), plumbing code (as adopted in section 6-74, town code), gas code (as adopted in section 6-90, town code), and the mechanical code (as adopted in section 6-102, town code) with the fire prevention code and life safety code standards as adopted in section 7-60, town code, in favor of the code which offers the greatest degree of life safety or alternatives which would provide an equivalent degree of life safety and an equivalent method of construction.

(4) All decisions of the fire official, building official, and the Board shall be in writing and shall be binding upon all persons, except as otherwise provided pursuant to the Florida Statutes. Decisions of general application shall be indexed by applicable sections of the fire prevention code and the life safety code standards, or the town building code, plumbing code, mechanical code, or the gas code, and shall be available for inspection during normal town business hours.
(Ord. No. 92-9, 5, 7-21-92; Ord. No. 96-1, 7, 10-17-95)

Sec. 6-32. Reserved.

Editor's note--Ord. No. 87.6, 1(c), adopted March 17, 1987, repealed 6-32, which derived from Ord. No. 81-296, 1, adopted July 28,1981 and Ord. No. 85-9, 1, adopted April 16,1985.

Sec. 6-33. Enforcement of the minimum building code.

(a) *Definitions.* As used in this section, the term:

(1) *Board* means the board of building codes and standards created by Florida Statutes Chapter 553, Part VI.

(2) *Enforcing agency* means the Town of Indialantic.

(3) *State minimum building code* means the Florida Building Code referenced in Section 6-27 of this code.

(4) *Threshold building* means any building which is greater than three (3) stories or fifty (50) feet in height, or which has an assembly occupancy classification that exceeds five thousand (5,000) square feet in area and an occupant content of greater than five hundred (500) persons.

(b) *Enforcement.* There is hereby adopted by reference and incorporated herein Florida Statutes Section 553.79(5), (6), (7) and (8), and any subsequent amendments thereto. as follows:

(5) a. The enforcing agency shall require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record. The structural inspection plan must be submitted to the enforcing agency prior to the issuance of a building permit for the construction of a threshold building. The purpose of the structural inspection plan is to provide specific inspection procedures and schedules so that the building can be adequately inspected for compliance with the permitted documents. The special inspector shall inspect the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency.

b. The fee owner of a threshold building shall pay all costs of employing a special inspector, but the special inspector shall be responsible to the enforcement agency. The inspector shall be a person certified, licensed, or registered under Florida Statutes Chapter 471 as an engineer or under Florida Statutes Chapter 481 as an architect.

c. The board shall, by rule, establish a qualification program for special inspectors and shall compile a list of persons qualified to be special inspectors. The architect or engineer of record may act as the special inspector, provided he is on the list of persons qualified to be special inspectors.

d. The licensed architect or registered engineer serving as the special inspector shall be permitted to send his duly authorized representative to the job site to perform the necessary inspections, provided all required written reports are prepared by and bear the seal of the special inspector and are submitted to the enforcement agency.

(6) No permit may be issued for any building construction, erection, alteration, repair, or addition unless the applicant for such permit provides to the enforcing agency which issues the permit any of the following documents which apply to the construction for which the permit is to be issued:

a. Electrical documents for any new building or addition which requires an aggregate service capacity of six hundred (600) amperes (two hundred forty (240) volts) or more on a residential electrical system or eight hundred (800) amperes (two hundred forty (240) volts) or more on a commercial or industrial electrical system and which costs more than fifty thousand dollars ($50,000.00).
b. Plumbing documents for any new building or addition which requires a plumbing system with more than two hundred fifty (250) fixture units or which costs more than fifty thousand dollars ($50,000.00).
c. Fire sprinkler documents for any new building or addition which includes a fire sprinkler system which contains fifty (50) or more sprinkler heads.
d. Heating, ventilation, and air conditioning documents for any new building or addition which requires more than a fifteen-ton-per-system capacity, which is designed to accommodate one hundred (100) or more persons or for which the system costs more than fifty thousand dollars ($50,000.00). This paragraph does not include any document for the replacement or repair of an existing system in which the work does not require altering a structural part of the building or for work on a residential one-family, two-family, three-family, or four-family structure.
e. Any specialized mechanical, electrical, or plumbing document for any new building or addition which includes a medical gas, oxygen, steam, vacuum, toxic air filtration, halon, or fire detection and alarm system which costs more than five thousand dollars ($5,000.00). No such document shall be valid unless a professional engineer who possesses a valid certificate of registration has signed, dated and stamped such document as provided in Florida Statutes Chapter 471.025.

(7) The enforcing agency shall require that, on every threshold building:

a. The special inspector, upon completion of the building and prior to the issuance of a certificate of occupancy, file a signed and sealed statement with the enforcing agency in substantially the following form: To the best of my knowledge and belief, the above-described construction of all structural load bearing components complies with the permitted documents, and the shoring and reshoring conforms with the shoring and reshoring plans submitted to the enforcing agency.
b. Any proposal to install an alternate structural product or system to which building codes apply be submitted to the enforcing agency for review for compliance with the codes and made part of the enforcing agency's recorded set of permit documents.
c. All shoring and reshoring procedures, plans, and details be submitted to the enforcing agency for record keeping. Each shoring and reshoring installation shall be supervised, inspected, and certified to be in compliance with the shoring documents by the contractor.

d. All plans for the building which are required to be signed and sealed by the architect or engineer of record contain a statement that, to the best of the architect's or engineer's knowledge, the plans and specifications comply with the applicable minimum building codes.

(8) The enforcing agency may not issue a building permit for construction of any threshold building except to a licensed general contractor, as defined in Florida Statutes Chapter 489.105(3)(a), or to a licensed building contractor, as defined in Florida Statutes Chapter 489.105(3)(b), within the scope of his license. The named contractor to whom the building permit is issued shall have the responsibility for supervision, direction, management, and control of the construction activities on the project for which the building permit was issued. (Ord. No. 85-10, 1, 4-16-85; Ord. No. 87-6, 1(c), 3-17-87; Ord. No. 92-9, 6, 7-21-92; Ord. No. 12-02, 7, 11-21-11)

Secs. 6-34, 6-35. Reserved

Editor's note--Ord. No. 87-6, 1(c), adopted March 17, 1987, repealed 6-34 and 6-35, pertaining to compliance of structures with the Coastal Zone Protection Act of 1985, which derived from Ord. No. 86-10, 1, 2, adopted April 15, 1986.

Secs. 6-36--6-39. Reserved

ARTICLE III. ELECTRICITY*

DIVISION 1. GENERALLY

Sec. 6-40. Permits required.

No person shall do work covered by the electrical code adopted by this article without first obtaining a permit therefor from the building official. (Code 1962, 13-23)

Sec. 6-41. Exemption from permit for minor installations.

Permits are not required for portable electrical appliances under one thousand, four hundred (1,400) watts, which are ordinarily attached to permanent wiring by means of a plug or cord; provided that permits shall be required prior to the installation or connection of any electrical appliance that requires a two hundred twenty (220) volt power source. (Code 1962, 13-24, 13-31)

Sec. 6-42. Permit to be obtained before beginning work; exceptions.

Electrical permits shall be procured before starting any work, provided that the building official may extend the time for procuring a permit in case of emergency or where definite data is not immediately available. (Code 1962, 13-25)

***State law reference--**Similar provisions. Electrical code and standards, F.S. 553.15 et seq.

Sec. 6-43. Permit application required; contents.

Every applicant for an electrical permit shall describe the location of the work to be done, giving block, lot number or name of street, or such general description as will readily identify the proposed building or work. The applicant shall submit to the building official plans and specifications showing all work to be performed, the use of all parts of the building or premises, and giving complete information as to the scope of the work. The building official may waive this requirement in any case where he may determine such detailed information unnecessary in the proper prosecution of the work. (Code 1962, 13-26)

Sec. 6-44. Plans to be checked before issuing permit.

The plans and specifications, and all information filed by an applicant for an electrical permit, shall be carefully checked by the building official to ascertain that the work proposed complies with, and meets the minimum requirements necessary to safeguard life and limb, health, property and the public welfare, as well as the requirements of this article and other applicable provisions, before issuing an electrical permit. (Code 1962, 13-27)

Sec. 6-45. Permit fee.

The fee for an electrical permit shall be as provided by section 6-11. (Code 1962, 13-30)

Sec. 6-46. Master of journeyman to supervise work.

Every electrical job shall be under the direct supervision of a certified master or journeyman electrical who shall remain on the job in charge at all times; provided, that this requirement shall not apply to a home owner doing electrical work on his own residence.

Sec. 6-47. Authority to stop work.

In any case of failure to comply with the plans and specifications previously submitted to the building official, or the doing of work contrary to the provisions of this article or any other applicable provision, or contrary to the minimum requirements necessary to safeguard life and limb, health, property, and the public welfare, the building official may order the work stopped by notice in writing served on any person engaged in such work or causing such work to be done, and such person shall immediately stop the work until authorized by the building official to again proceed therewith. (Code 1962, 13-28)

Sec. 6-48. Inspection, approval required.

No work for which a permit is required by this article shall be connected to a source of electrical powers, nor shall electrical power be supplied to any such installation, until it has been inspected and approved by the building official and a certificate of occupancy issued if one is required. (Code 1962, 9-1)

Sec. 6-49. Approval or rejection of work.

Upon completion of the inspection for roughing in of electric wiring, the building official shall attach to or adjacent to the main switch, a sticker provided for that purpose, which shall state his acceptance or rejection of the electrical work being done. In the event the work has been rejected, the person doing the work shall immediately correct any defects and secure the building official's approval before any further permits are issued to him. (Code 1962, 13-38)

Sec. 6-50. Thirty-day temporary service connection.

A thirty-day temporary electric service connection may be approved by the electrical inspector if the wiring installation, apparatus or equipment is found to be in a safe operating condition and provided an urgent necessity for electrical current exists Under these circumstances, an application for a temporary service must be made in writing by the electrical contractor, firm, corporation, or owner requesting the temporary service connection to the electrical inspector. (Ord No. 86-1, 1, 11-19-85)

Secs. 6-51--6-59. Reserved.

DIVISION 2. STANDARDS AND REQUIREMENTS

Sec. 6-60. Conformity required.

All electrical work of any type or description whatsoever for which a permit is required by this article shall conform to the provisions of this article and to the provisions of the electrical code adopted by reference by section 6-62. (Code 1962, 13-45)

Sec. 6-61. Compliance with rules of utility.

All service equipment attached to any building or on any premises in the town shall conform to the rules of the electrical utility company, and shall be located as directed by its representatives. (Code 1962, 13-46)

Sec. 6-62. Code adopted.

(a) There is hereby adopted by reference as fully and completely as though set out at length that certain code known as the most recently adopted National Electrical Code, NFPA No. 70 promulgated by the National Fire Protection Association, as fully and with the same effect as though set out at length herein. Whenever there shall be a conflict between the provisions of the electrical code adopted by this section, and the provisions of this article, the provisions of this article shall be controlling. The National Electrical Code is specifically to be construed as being cumulative with all existing federal, state, applicable county, and town laws, ordinances and regulations now existing or hereafter adopted, or as amended from time to time. The National Electrical Code shall not be construed as an authorization for any construction which is now or hereafter prohibited by federal, state, applicable county, or other town laws, ordinances, or regulations.

(b) Sections 553.19(2), (3), (4), and (5), Florida Statutes (1991), are hereby adopted by

reference and constitute a listing of code standards applicable with the town. (Code 1962, 13-44; Ord. No. 92-11, 1, 7-21-92; Ord. No. 12-02, 8, 11-21-11)

Cross reference--Alarm systems, 6-168 et seq.

Sec. 6-63. "Authority having jurisdiction" defined for code.

The "authority having jurisdiction," for the purposes of the electrical code, shall be the building official.

Sec. 6-64. Amendments to National Electric Code.

That the following local amendments to the National Electrical Code are hereby added:

(1) Conduit required. All new electrical wiring in new or existing buildings being wired or required, as the case may be, for: (1) business, industrial, institutional or commercial occupancy; (2) for wet locations; or (3) locations subject to mildly corrosive fumes and vapors, shall be in an approved raceway. In all residential buildings to be used in whole, or in part, for institutional, commercial or business purposes, such institutional, commercial or business part shall be wired in an approved raceway from its own panel, supplied from the main panel.

(2) Service Entrance Conductors and Location. Service entrance conductors shall be of sufficient size to carry the loads as computed in Article 220 of the National Electric Code. Aluminum wire will only be accepted for the "Service Entrance Conductors" and rated no less than 100 amps. The point of service entrance to buildings and the location of the electric meter shall in each case be determined by the Town Manager or his designee. (Ord. No. 92-11, 2, 7-21-92)

Secs. 6-65--6-73. Reserved.

ARTICLE IV. PLUMBING*

Sec. 6-74. Florida Building Code. Plumbing

There is hereby adopted by reference and incorporated herein as fully and completely as though set out at length, the Florida Building Code, as adopted by the Florida Legislature. The Florida Building Code, Plumbing Code Council, Inc. is specifically to be construed as being cumulative with all existing federal, state, applicable county, and town laws, ordinances and regulations now existing or hereafter adopted, or amended from time to time. The Florida Building Code, Plumbing shall not be construed as an authorization for any construction, which is now or hereafter prohibited by federal, state, applicable county, or other town laws, ordinances, or regulations.

(Code 1962, 9-13, 22-1; Ord. No. 87-22, 1, 11-17-87; Ord. No. 92-9, 7, 7-21-92; Ord. 96-1, 8, 10-17-95; Ord. No. 12-02, 9, 11-21-11)

***State law reference** - Similar provisions. Plumbing generally, F.S. 553.01 et seq.

Sec. 6-75. Definitions for purposes of code.

Wherever reference is made in the plumbing code adopted hereby to the "plumbing inspection department" or the "plumbing official," it shall be construed to mean the building inspection department and the building official, respectively.

Sec. 6-76. Master or journeyman to supervise work.

Every plumbing job shall be under the direct supervision of a certified master or journeyman plumber who shall remain on the job in charge at all times; provided, that this requirement shall not apply to a home owner doing plumbing work on his own residence. (Code 1962, 22-26)

Sec. 6-77. Failure to make required sewer connection.

Any property owner who is required by the plumbing code to connect his premises to a public sewer and who fails to make such connection within thirty (30) days after notice from the building official that such connection is required shall be guilty of a violation of this Code of ordinances. (Code 1962, 22-79)

Sec. 6-78. Septic tanks if sewer not available.

Septic tanks may be used in locations not served by a sanitary sewer. All septic tanks hereafter installed shall conform in every respect to the regulations of the State Department of Health and Rehabilitative Services. Plans and specifications shall be furnished upon request by the building official. (Code 1962, 22-78)

Sec. 6-79. Sewage system approval prerequisite to certificate of occupancy.

No certificate of occupancy shall be granted until the sewage disposal system has been approved by the building official. (Code 1962, 9-1)

Secs. 6-80--6-89. Reserved.

ARTICLE V. GAS

Sec. 6-90. Florida Building Code, Fuel Gas.

Florida Building Code, Fuel Gas. The town hereby adopts as fully and completely as though set out at length herein that certain published code known as the current Florida Building Code, Fuel Gas, as adopted by the Florida legislature. The Florida Building Code, Fuel Gas is specifically to be construed as being cumulative with all existing federal, state, applicable county, and town laws, ordinances and regulations now existing or hereafter adopted, or as amended from time to time. The Florida Building Code, Fuel Gas shall not be construed as an authorization for any construction, which is now or hereafter prohibited by federal, state, applicable county, or other town laws, ordinances, or regulations. In the event of any inconsistency between said code and this chapter, this chapter shall prevail.
(Ord. No. 92-9, 8, 7-21-92; Ord. 96-1, 9, 10-17-95; Ord. 98-6, 5, 4-21-98; Ord. 12-02, 10, 11-21-11)

Sec. 6-91. Jurisdiction of building official.

The building official inspector shall have jurisdiction over the installing of all gas pipes within buildings. (Code 1962, 17-1; Ord. 96-1, 10, 10-17-95)

Secs. 6-92--6-101. Reserved.

ARTICLE VI. MECHANICAL REGULATIONS

Sec. 6-102. Florida Building Code, Mechanical

*Florida Building Code, Mechanical***.** There is hereby adopted by reference and incorporated herein as fully and completely as though set out at length, the Florida Building Code, Mechanical, as adopted by the Florida Legislature. The Florida Building Code, Mechanical is specifically to be construed as being cumulative with all existing federal, state, applicable county, and town laws, ordinances and regulations now existing or hereafter adopted, or as amended from time to time. The Florida Building Code, Mechanical shall not be construed as an authorization for any construction, which is now or hereafter prohibited by federal, state, applicable county, or other town laws, ordinances, or regulations.
(Ord. No 87-22, 1, 11-17-87; Ord. No. 92-9, 9, 7-21-92; Ord. 96-1, 11, 10-17-95; Ord. 98-6, 6, 4-21-98; Ord. No. 12-02, 11, 11-21-11)

Sec. 6-l03. Definitions for purposes of code.

Wherever in the Florida Building Code, Mechanical adopted hereby reference is made to the "mechanical inspection department" or the "mechanical official," it shall be construed to mean the building inspection department and the building official, respectively. (Ord. No. 12-02, 12, 11-21-11)

Secs. 6-104--6-113. Reserved.

ARTICLE VII. FLOOD DAMAGE PREVENTION

SEC. 6-114 – SEC. 6-164 REPEALED BY ORD. NO. 13-09

(Ord. No. 235, 2, 5-16-78; Ord. No. 92-8, 1, 3-16-93, Ord. No. 13-09, 2, 5-21-13; Ord. No. 13-09, 2, 5-21-13)

ARTICLE VIII. BULKHEAD LINE AND SHORELINE CHANGES*

Sec. 6-165. Bulkhead line established.

The following bulkhead line is hereby located and fixed:

Commence on the West line of Section 2, Township 28 South, Range 37 East, at a point 2,093.57 feet South 01°58'58" East along said line from the Northwest corner of said Section 2 and run North 66°46'10N East, 1,207.29 feet; thence North 23°13'50" West, 3.5 feet to a point which is the beginning of a curve concave to the Southeasterly and having a radius of 2,864.79 feet; thence from a tangent bearing of North 66°46'10" East run along said curve through a central angle of 08°32'21" a distance of 426.96 feet to the end of said curve and the beginning of a reverse curve concave to the Northwesterly and having a radius of 2,864.79 feet; thence along said curve through a central angle of 07°14'31" a distance of 362.10 feet to the end of said curve; thence North 68°04'00" East, 258.44 feet to the beginning of a curve concave to the Northwesterly and having a radius of 5,729.58 feet; thence along said curve through a central angle of 04°09' a distance of 415 feet to the end of said curve and the beginning of a reverse curve concave to the Southeasterly and having a radius of 5,729.58 feet; thence along said curve through a central angle of 04°09' a distance of 415 feet to the end of said curve; thence North 68°04'00" East, 2,825.73 feet to the POINT OF BEGINNING; From said Point of Beginning run South 21°56'00" East, 9 feet, more or less, to the Mean High Water Line and the Southwestern terminus of this Bulkhead Line; return to the Point of Beginning and run North 21°56'00" West, 117 feet; thence North 68°04'00" East, 645 feet; thence North 77°31'44" East; 304.14 feet; thence North 68°04'00" East, 949.44 feet; thence North 83°46'06" East, 166.38 feet; thence North 72°27'30" East, 815 feet; thence South 17°32'30" East, 30 feet, more or less, to the Mean High Water Line and the Southeastern terminus of the Bulkhead Line. (Ord. No. 173, 1, 3-l8-75)

State law reference--Establishment of bulkhead line, F.S. 253.1221.

Sec. 6-166. Bulkhead plat adopted.

The plat of the bulkhead line established by section 6-165, prepared for the town by Buckner Realty & Survey, Inc., shall be the official bulkhead plat of the town, a copy of which is on file in the office of the town clerk. (Code 1962, 8-29)

Sec. 6-167. Dredging and shoreline construction.

(a) It shall be unlawful to dredge channels from property adjacent to and abutting the Indian River or the Atlantic ocean extending from the established shoreline out to the channel of the Indian River or to erect or construct spoil banks from dredging operations, islands, docks, peninsulas, floating docks or platforms, piers or finger piers, or any other alteration to the shorelines of the Indian River or the Atlantic ocean by adding to or subtracting from the underwater lands of either the Indian River or the Atlantic ocean without first having obtained a permit from the town council.

***State law reference**--Coastal construction setback line, F.S. 161.052.

(b) It shall be unlawful to alter or change the present established and natural shoreline of

either the Indian River or Atlantic ocean by the construction of bulkheads, spoil banks, islands, dikes, peninsulas, floating docks or platforms, piers or finger piers or any other alteration to the shorelines of the Indian River or the Atlantic ocean by adding to or subtracting from the underwater lands of either the Indian River or the Atlantic ocean without first having obtained a permit from the town council. (Code 1962, 8-31)

State law references--Permits for coastal construction, F.S. 161.041; local permits for adding to or creating land or islands, F.S. 253.134.

ARTICLE IX. ALARM SYSTEMS*

Sec. 6-168. Definitions.

Alarm system. Any assembly of mechanical or electrical equipment so arranged as to signal the occurrence of a monitored event requiring urgent attention and to which the police department or fire department is expected to respond.

False alarm. An alarm signal from an alarm system causing a response by either the police or fire department when a need for such response does not in fact exist and the alarm is communicated as a result of improper design, improper installation, improper maintenance, or improper use; but, this definition does not include alarm signals caused by violent conditions of nature nor other extraordinary circumstances not reasonably subject to control by the alarm user. (Ord. No. 83-333, 1, 12-20-83; Ord. 11-07, 1, 4-19-11)

Sec. 6-169. Permits required; fee; renewal.

(a) It shall be unlawful for any person subject to business tax regulation to operate an alarm system in the town without a valid permit, regardless of whether said operator is also the owner or merely the user of such alarm system in a rental or lease situation. Operation of an alarm system without a permit shall be grounds for a hearing before the code enforcement board.

(b) A permit fee of ten dollars ($10.00) per year shall be levied on each and every business alarm system installed and in use within the town. If a business has one (1) or more alarm systems protecting two (2) or more separate structures having different addresses, a separate permit shall be required for each structure.

***Cross reference--**Electrical code, 6-62; fire protection and prevention, Ch. 7; damaging, tampering with fire equipment, 7-12; licenses, Ch. 9; false alarms or calls for emergency service unlawful, 10-9; noise prohibitions, 10-13, 10-14; interference with police and fire signal systems, 10-20; police, Ch. 12.

(c) All alarm permits will expire on the thirtieth day of September of each year and must be renewed not later than the first day of October of each year. Renewal permits for businesses will be issued at the same time that business tax receipts are issued. (Ord. No. 83-333, 1, 12-20-83;

Ord. No. 07-12, 1, 7-17-07; Ord. 11-07, 2, 4-19-11)

Sec. 6-170. Permit applications; emergency notification.

(a) Applications for alarm permits shall be made on forms provided by the building department, and shall state the name, address and telephone number of the property to be serviced by the alarm, and the name, address and telephone number of the applicant's residence. If the applicant's alarm is serviced by an alarm company, then that company's name, address and telephone number shall also be included.

(b) Each application shall list an emergency telephone number of the user or his representative, to permit prompt notification of alarm calls. Failure to keep information current may constitute grounds for revocation of the permit. (Ord. No. 83-333, 1, 12-20-83)

Sec. 6-171. Response to alarm; determination of validity.

Whenever an alarm system is activated in the town, requiring an emergency response to the location, the senior police or fire officer at the scene shall determine whether the emergency response was in fact required as indicated by the alarm system or whether in some way the alarm system malfunctioned as aforesaid, thereby activating a false alarm. If a determination of a false alarm is made, a report shall be written stating the proximate cause of such false alarm, a copy of which shall be mailed to the operator. (Signed statements of operator will be obtained where appropriate.) (Ord. No. 83-333, 1, 12-20-83)

Sec. 6-172. Fee assessments for excessive false alarms.

(a) It is hereby found and determined that more than five (5) false alarms per system in any one permit year is excessive and constitutes a public nuisance.

(b) False alarms in excess of the annual limit shall be billed a twenty-five dollar ($25.00) service charge per occurrence, such charge to be considered a fine owed by the alarm system operator to the town; each service charge shall be paid within thirty (30) days from the date of receipt thereof. Failure to pay the service charge within the prescribed time limit shall result in subjecting the operator to being brought before the code enforcement board for a hearing to determine the validity of the fine. (Ord. No. 83-333, 1, 12-20-83)

Sec. 6-173. Prohibited alarm systems.

(a) It shall be unlawful for any person, natural or corporate, to sell, offer for sale, install, maintain, lease, operate or assist in the operation of an automatic telephone dialing alarm system over any telephone lines used exclusively by the public (i.e., 911) to directly request emergency service from the town communications center. As an exception to this prohibition, a system

approved by Brevard County Civil Defense as the operating agency of the emergency service shall be allowed. Any automatic telephone dialing system installed as set forth herein prior to the

effective date of this article shall be removed within thirty (30) days after notification by the town of such unlawful system. Failure to remove such an unlawful system within the time limits herein prescribed shall be grounds for a hearing before the code enforcement board.

(b) All alarm systems installed within the town shall meet or exceed the standards set by the Underwriters' Laboratory, and the applicable standards of the NFPA Fire Codes. (Ord. No. 83-333, 1, 12-20-83)

Secs. 6-174--6-180. Reserved.

ARTICLE X. IMPACT FEES*

Sec. 6-181. Emergency services impact fee.

No impact fee for emergency services facilities expansion, including but not limited to fire and ambulance emergency response, shall be collected within the jurisdictional limits of the town except those impact fees imposed and utilized for emergency medical services transport services. (Ord. No. 89-20, 1, 8-15-89; Ord. 05-13, 1 8-16-05)

Sec. 6-182--6-199. Reserved.

ARTICLE XI. HOUSING

Sec. 6-200. Standard Housing Code Adopted.

There is hereby adopted by reference and incorporated herein as fully and completely as though set out at length **in** the 1997 edition of the Standard Housing Code as promulgated by the Southern Building Code Congress International, Inc. The Standard Housing Code is specifically to be construed as being cumulative with all existing federal, state, applicable county, and town laws, ordinances and regulations now existing or hereafter adopted, or as amended from time to time. The Standard Housing Code shall not be construed as an authorization for any construction, which is now or hereafter prohibited by federal, state, applicable county, or other town laws, ordinances, or regulations. (Ord. 98-6, 7, 4-21-98)

Secs. 6-210--6-219. Reserved.

***Editor's note**--Ord. No. 89-20, 1, adopted Aug. 15, 1989, provided for inclusion of new provisions in the Code but did not specify the manner of inclusion. Thus, codification of said provisions as Art. X, 6-181, was at the discretion of the editor.

ARTICLE XII. UNSAFE BUILDING ABATEMENT

Sec. 6-220. Standard code for elimination or repair of unsafe buildings adopted.

There is hereby adopted by reference and incorporated herein as fully and completely as though set out at length the 1985 edition of the Standard Code for the Elimination or Repair of Unsafe Buildings, as promulgated by the Southern Building Code Congress International, Inc. The Standard Code for the Elimination or Repair of Unsafe Buildings is specifically to be construed as being cumulative with all existing federal, state, applicable county, and town laws, ordinances and regulations now existing or hereafter adopted, or as amended from time to time. The Standard Code for the Elimination or Repair of Unsafe Buildings shall not be construed as an authorization for any construction, which is now or hereafter prohibited by federal, state, applicable county, or other town laws, ordinances, or regulations.
(Ord. 92-9, 11, 7-21-92)

Chapter 6.5

FLOODPLAIN MANAGEMENT

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Div. 2. Applicability, 6.5-102.1 – 6.5-102.6
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Div. 8. Violations, 6.5-108.1 – 6.5-108.3
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Div. 12. Flood Resistant Development-Subdivisions, 6.5-302.1 – 6.5-302.2
Div. 13. Flood Resistant Development-Site Improvements, Utilities and Limitations, 6.5-303.1 – 6.5-303.6
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Div. 17. Flood Resistant Development-Other Development, 6.5-307.1 – 6.5-307.8

DIVISION 1. ADMINISTRATION

6.5-101.1 Title. These regulations shall be known as the Floodplain Management Chapter of the Town of Indialantic, hereinafter referred to as "this chapter."

6.5-101.2. Scope. The provisions of this chapter 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.

6.5-101.3. Intent. The purposes of this chapter 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 Title 44 Code of Federal Regulations, Section 59.22.

6.5-101.4. Coordination with the Florida Building Code. This chapter 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.

6.5-101.5. Warning. The degree of flood protection required by this chapter and the Florida Building Code 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 chapter 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 Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring the Town 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 chapter.

6.5-101.6. Disclaimer of Liability. This chapter shall not create liability on the part of the Town of Indialantic or by any officer or employee thereof for any flood damage that results from reliance on this chapter or any administrative decision lawfully made thereunder.

DIVISION 2. APPLICABILITY

6.5-102.1 General. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

6.5-102.2 Areas to which this chapter applies. This chapter shall apply to all flood hazard areas within the Town of Indialantic, as established in Section 6.5-102.3 of this chapter.

6.5-102.3 Basis for establishing flood hazard areas. The Flood Insurance Study for Brevard County, Florida and Incorporated Areas dated November 19, 1997**,** 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 chapter 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 office of the Building Official.

6.5-102.3.1 Submission of additional data to establish flood hazard areas. To establish flood hazard areas and base flood elevations, pursuant to Section 105 of this chapter 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 Town 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 chapter 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.

6.5-102.4 Other laws. The provisions of this chapter shall not be deemed to nullify any provisions of local, state or federal law.

6.5-102.5 Abrogation and greater restrictions. This chapter supersedes any regulation in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing regulations including but not limited to land development regulations, zoning regulations, stormwater management regulations, or the Florida Building Code. In the event of a conflict between this chapter and any other regulation, the more restrictive shall govern. This chapter shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this chapter.

6.5-102.6 Interpretation. In the interpretation and application of this chapter, 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.

DIVISION 3. DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

6.5-103.1 Designation. The building official is designated as the Floodplain Administrator. The Floodplain Administrator may delegate performance of certain duties to other employees as authorized by the Town Manager.

6.5-103.2 General. The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this chapter. The Floodplain Administrator shall have the authority to render interpretations of this chapter consistent with the intent and purpose of this chapter 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 chapter without the granting of a variance pursuant to Section 107 of this chapter.

6.5-103.3 Applications and permits. The Floodplain Administrator, in coordination with other pertinent offices of the Town, 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 chapter;
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 chapter is demonstrated, or disapprove the same in the event of noncompliance; and
8. Ensure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this chapter.

6.5-103.4 Substantial improvement and substantial damage 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 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; 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 chapter is required.

6.5-103.5 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 Division 7 of this chapter.

6.5-103.6 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 chapter.

6.5-103.7 Inspections. The Floodplain Administrator shall make the required inspections as specified in Division 6 of this chapter 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.

6.5-103.8 Other duties of the Floodplain Administrator. The Floodplain Administrator shall have other duties, including but not limited to:

1. Establish procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 6.5-103.4 of this chapter;
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 6 months of such data becoming available;
4. Review required design certifications and documentation of elevations specified by this chapter and the Florida Building Code and this chapter to determine that such certifications and documentations are complete;
5. Notify the Federal Emergency Management Agency when the corporate boundaries of the Town of Indialantic 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."

6.5-103.9 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 chapter 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 chapter; 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 chapter and the flood resistant construction requirements of the Florida Building Code. These records shall be available for public inspection at Indialantic Town Hall.

DIVISION 4. PERMITS

6.5-104.1 Permits required. Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this chapter, 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 chapter and all other applicable codes and regulations has been satisfied.

6.5-104.2 Floodplain development permits or approvals. Floodplain development permits or approvals shall be issued pursuant to this chapter 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.

6.5-104.2.1 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. Sections 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 chapter:

1. Railroads and ancillary facilities associated with the railroad.
2. Nonresidential farm buildings on farms, as provided in section 604.50, F.S.
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 section 366.02, F.S., 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 section 553.73(10)(k), F.S., are not exempt from the Florida Building Code if such structures are located in flood hazard areas established on Flood Insurance Rate Maps

6.5-104.3 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 Town. 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 Division 5 of this chapter.
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.

6.5-104.4 Validity of permit or approval. The issuance of a floodplain development permit or approval pursuant to this chapter shall not be construed to be a permit for, or approval of, any violation of this chapter, the Florida Building Codes, or any other regulation of the Town. 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.

6.5-104.5 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.

6.5-104.6 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 chapter or any other chapter, regulation or requirement of the Town.

6.5-104.7 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; section 373.036, F.S.
2. Florida Department of Health for onsite sewage treatment and disposal systems; section 381.0065, F.S. and Chapter 64E-6, F.A.C.
3. Florida Department of Environmental Protection for construction, reconstruction, changes, or physical activities for shore protection or other activities seaward of the coastal construction control line; section 161.141, F.S.
4. Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; section 161.055, F.S.

5. 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.
6. Federal permits and approvals.

DIVISION 5. SITE PLANS AND CONSTRUCTION DOCUMENTS

6.5-105.1 Information for development in flood hazard areas. The site plan or construction documents for any development subject to the requirements of this chapter 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 Section 6.5-105.2(2) or (3) of this chapter.
3. Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 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 Section 6.5-105.2 of this chapter.
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. Delineation of the Coastal Construction Control Line or notation that the site is seaward of the coastal construction control line, if applicable.
8. Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.
9. Existing and proposed alignment of any proposed alteration of a watercourse.

The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this chapter 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 chapter.

6.5-105.2 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 two (2) 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 two (2) 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.

6.5-105.3 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 Section 105.4 of this chapter 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 demonstrates 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 Town. 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 Section 6.5-105.4 of this chapter.
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.

6.5-105.4 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.

DIVISION 6. INSPECTIONS

6.5-106.1 General. Development for which a floodplain development permit or approval is required shall be subject to inspection.

6.5-106.1.1 Development other than buildings and structures. The Floodplain Administrator shall inspect all development to determine compliance with the requirements of this chapter and the conditions of issued floodplain development permits or approvals.

6.5-106.1.2 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 chapter and the conditions of issued floodplain development permits or approvals.

6.5-106.1.2.1 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 Section 6.5-105.2(3)(b) of this chapter, the documentation of height of the lowest floor above highest adjacent grade, prepared by the owner or the owner's authorized agent.

6.5-106.1.2.2 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 Section 106.1.2.1 of this chapter.

6.5-106.1.3 Manufactured homes. The Floodplain Administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this chapter 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 Building Official.

DIVISION 7. VARIANCES AND APPEALS

6.5-107.1 General. The Board of Adjustment shall hear and decide on requests for appeals and requests for variances from the strict application of this chapter. Pursuant to section 553.73(5), F.S., the Board of Adjustment 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. This section does not apply to Section 3109 of the Florida Building Code, Building.

6.5-107.2 Appeals. The Board of Adjustment 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 chapter. Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the Circuit Court, as provided by Florida Statutes.

6.5-107.3 Limitations on authority to grant variances. The Board of Adjustment shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 6.5-107.6 of this chapter, the conditions of issuance set forth in Section 107.7 of this chapter, and the comments and recommendations of the Floodplain Administrator. The Board of Adjustment has the right to attach such conditions as it deems necessary to further the purposes and objectives of this chapter.

6.5-107.3.1 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 Section 6.5-105.3 of this chapter.

6.5-107.4 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.

6.5-107.5 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 chapter, provided the variance meets the requirements of Section 6.5-107.3.1, 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.

6.5-107.6 Considerations for issuance of variances. In reviewing requests for variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this chapter, 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 Town;
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.

6.5-107.7 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 chapter or the required elevation standards;
2. Determination by the Board of Adjustment 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 regulations; 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.

DIVISION 8. VIOLATIONS

6.5-108.1 Violations. Any development that is not within the scope of the Florida Building Code but that is regulated by this chapter that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this chapter, shall be deemed a violation of this chapter. 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 chapter or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.

6.5-108.2 Authority. For development that is not within the scope of the Florida Building Code but that is regulated by this chapter 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.

6.5-108.3 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**.**

DIVISION 9. GENERAL

6.5-201.1 Scope. Unless otherwise expressly stated, the following words and terms shall, for the purposes of this chapter, have the meanings shown in this section.

6.5-201.2 Terms defined in the Florida Building Code. Where terms are not defined in this chapter and are defined in the Florida Building Code, such terms shall have the meanings ascribed to them in that code.

6.5-201.3 Terms not defined. Where terms are not defined in this chapter or the Florida Building Code, such terms shall have ordinarily accepted meanings such as the context implies.

DIVISION 10. DEFINITIONS

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 chapter 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 1-percent 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 "1-percent-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 construction control line. The line established by the State of Florida pursuant to section 161.053, F.S., and recorded in the official records of the Town, which defines that portion of the beach-

dune system subject to severe fluctuations based on a 100-year storm surge, storm waves or other predictable weather conditions.

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. [Note: The FBC,B defines and uses the term "flood hazard areas subject to high velocity wave action" and the FBC, R uses the term "coastal high hazard areas."]

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 1-percent or greater chance of flooding in any year; or

2. Area designated as a flood hazard area on the Town'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 Town'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 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 August 18, 1972. [Also defined in FBC, B, Section 1612.2.]

Existing manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before August 18, 1972.

Expansion to an existing manufactured home park or subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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 areas: [Also defined in FBC, B, Section 1612.2.]

1. The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.
2. The area designated as a flood hazard area on the Town's flood hazard map, or otherwise legally designated.

Flood Insurance Rate Map (FIRM). The official map of the Town on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the Town. [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 chapter (may be referred to as the Floodplain Manager).

Floodplain development permit or approval. An official document or certificate issued by the Town, 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 chapter.

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.

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:

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.

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.

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 Town's floodplain management regulations.

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 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 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 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 chapter, 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 chapter and the flood resistant construction requirements of the Florida Building Code, structures for which the “start of construction” commenced on or after August 18, 1972 and includes any subsequent improvements to such structures.

New manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after August 18, 1972.

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 Section 320.01, F.S.]

Recreational vehicle. A vehicle, including a park trailer, which is: [See section 320.01, F.S.]

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 1 percent 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, 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 50 percent of the market value of the building or structure before the damage occurred. [Also defined in FBC, B Section 1612.2.]

Substantial improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 1612.2.]

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 the alteration will not preclude the structure's continued designation as a historic structure.

Variance. A grant of relief from the requirements of this chapter, 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 chapter 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.

DIVISION 11. FLOOD RESISTANT DEVELOPMENT- BUILDINGS AND STRUCTURES

6.5-301.1 Design and construction of buildings, structures and facilities exempt from the Florida Building Code. Pursuant to Section 6.5-104.2.1 of this chapter, 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 Section 6.5-307.1 through 6.5-307.8 of this chapter.

6.5-301.2 Buildings and structures seaward of the coastal construction control line. If extending, in whole or in part, seaward of the coastal construction control line and also located, in whole or in part, in a flood hazard area:

1. Buildings and structures shall be designed and constructed to comply with the more restrictive applicable requirements of the Florida Building Code, Building Section 3109 and Section 1612 or Florida Building Code, Residential Section R322.
2. Minor structures and non-habitable major structures as defined in section 161.54, F.S., shall be designed and constructed to comply with the intent and applicable provisions of this chapter and ASCE 24.

DIVISION 12. FLOOD RESISTANT DEVELOPMENT-SUBDIVISIONS

6.5-302.1 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.

6.5-302.2 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 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 6.5-105.2(1) of this chapter; and
3. Compliance with the site improvement and utilities requirements of Section 6.5-303.1 through 6.5-303.6 of this chapter.

DIVISION 13. FLOOD RESISTANT DEVELOPMENT-SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

6.5-303.1 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; 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.

6.5-303.2 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.

6.5-303.3 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.

6.5-303.4 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 Section 105.3(1) of this chapter demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.

6.5-303.5 Limitations on placement of fill. Subject to the limitations of this chapter, 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.

6.5-303.6 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 Section 6.5-105.3(4) of this chapter 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 Section 6.5-307.8(3) of this chapter.

DIVISION 14. FLOOD RESISTANT DEVELOPMENT-MANUFACTURED HOMES

6.5-304.1 General. All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to section 320.8249, F.S., and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this chapter. If located seaward of the coastal construction control line, all manufactured homes shall comply with the more restrictive of the applicable requirements.

6.5-304.2 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 hazards 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 chapter.
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 chapter.

6.5-304.3 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.

6.5-304.4 Elevation. Manufactured homes that are placed, replaced, or substantially improved shall comply with Section 6.5-304.4.1 or 6.5-304.4.2 of this chapter, as applicable.

6.5-304.4.1 General elevation requirement. Unless subject to the requirements of Section 304.4.2 of this chapter, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, 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).

6.5-304.4.2 Elevation requirement for certain existing manufactured home parks and subdivisions. Manufactured homes that are not subject to Section 6.5-304.4.1 of this chapter, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

1. Bottom of the frame of the manufactured home 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); or
2. Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.

6.5-304.5 Enclosures. Enclosed areas below elevated manufactured homes shall comply with the requirements of the Florida Building Code, Residential Section R322 for such enclosed areas, as applicable to the flood hazard area.

6.5-304.6 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.

DIVISION 15. FLOOD RESISTANT DEVELOPMENT-RECREATIONAL VEHICLES AND PARK TRAILERS

6.5-305.1 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.

6.5-305.2 Permanent placement. Recreational vehicles and park trailers that do not meet the limitations in Section 6.5-305.1 of this chapter for temporary placement shall meet the requirements of Section 6.5-304 of this chapter for manufactured homes.

DIVISION 16. FLOOD RESISTANT DEVELOPMENT-TANKS

6.5-306.1 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.

6.5-306.2 Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section 6.5-306.3 of this chapter 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 be permitted in coastal high hazard areas (Zone V).

6.5-306.3 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.

6.5-306.4 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.

DIVISION 17. FLOOD RESISTANT DEVELOPMENT-OTHER DEVELOPMENT

6.5-307.1 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 chapter or the Florida Building Code, shall:

1. Be located and constructed to minimize flood damage;
2. Meet the limitations of Section 6.5-303.4 of this chapter 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.

6.5-307.2 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 Section 6.5-303.4 of this chapter.

6.5-307.3 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 Section 6.5-303.4 of this chapter.

6.5-307.4 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 Section 6.5-303.4 of this chapter. Alteration of a watercourse that is part of a road or watercourse crossing shall meet the requirements of Section 6.5-105.3(3) of this chapter.

6.5-307.5 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.

6.5-307.6 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.

6.5-307.7 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.

6.5-307.8 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.

SECTION 4. APPLICABILITY.
For the purposes of jurisdictional applicability, this ordinance shall apply in the Town of Indialantic. This ordinance shall apply to all applications for development, including building permit applications and subdivision proposals, submitted on or after _____.

SECTION 5. INCLUSION INTO THE CODE OF ORDINANCES.
It is the intent of the Indialantic Town Council that the provisions of this ordinance shall become and be made a part of the Town of Indialantic Code of Ordinances, and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 6. SEVERABILITY.
If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

SECTION 7. EFFECTIVE DATE. This Ordinance shall become effective upon adoption by the Town Council.

PASSED by the Town Council of the Town of Indialantic on first reading on the ____ day of _____, 2013, and ADOPTED by the Town Council of the Town of Indialantic, Florida on final reading on the ____ day of _____, 2013.

TOWN OF INDIALANTIC

_____
David Berkman
Mayor

ATTEST: _____
Laura Eaton, CMC
Town Clerk

(TOWN SEAL)

Chapter 7

FIRE PROTECTION AND PREVENTION*

Art. I. In General, 7-1--7-26
Art. II. Volunteers, 7-27--7-42
Art. III. Reserved, 7-43--7-59
Art. IV. Fire Prevention and Fire Safety, 7-60--7-62
Art. V. Hazardous Substance Spill and Clean Up, 7-80--7-81

ARTICLE I. IN GENERAL

Sec. 7-1. Department created.

A fire department is hereby created. (Code 1962, 14-1)

Sec. 7-2. Composition of department.

The fire department shall consist of a fire chief, such number of paid firefighters as the council may provide, and volunteer firemen. (Code 1962, 14-2)

Sec. 7-3. Chief to head department subject to manager.

The fire chief shall be subject to the supervision of the town manager. The fire chief shall perform such duties as may be set forth in this code or Florida law, the fire chief's job description, and as directed by the town manager. (Code 1962, 14-11; Ord. No. 247, 12, 5-15-79; Ord. No. 97-5, 7, 5-6-97)

Sec. 7-4. Duties of chief generally.

The fire chief shall:

(a) Have charge of the prevention of fires and the protection of life and property against fire.

(b) Have charge of the extinguishment of fires and the saving of life and property from fire.

(c) Have charge of the stationing and activities of the members of the fire department.

(d) Be responsible for the maintenance and care of all property and equipment owned or in the possession of the fire department.

(e) Be responsible for the inspection of potential fire hazards and the abatement of existing hazards.

(f) Make a complete report to the town manager of each fire call answered by the fire department.

(g) Perform such other and further duties as the town manager shall designate. (Code 1962, 14-12; Ord. No. 247, 13, 5-15-79)

***Cross references--**Civil service for firemen, 2-201; pension plan for police officers and firefighters, 2-226 et seq.; alarm systems, 6-168 et seq.; false alarms or calls for emergency services, 10-9.

State law references--Assault or battery of firefighter, F.S. 784.07; preventing or obstructing extinguishment of a fire, F.S. 806.10.

Sec. 7-5. Chief to report to manager.

The fire chief shall make such reports including, among others, reports on the condition of all fire equipment and apparatus owned by the town or in possession of the fire department, as the town manager may require. (Code 1962, 14-35; Ord. No. 247, 17, 5-15-79)

Sec. 7-6. Control of fire area.

The fire chief or fire department officer in command at a fire which is being extinguished shall have full control of any area in the vicinity of the fire. (Code 1962, 14-41)

Sec. 7-7. Control of firemen at fire.

The fire chief or fire department officer in command at a fire shall have full control and supervision of all members of the fire department, volunteer or otherwise, during the progress of any fire. (Code 1962, 14-43)

Sec. 7-8. Police powers of commanding officer at fire.

The fire chief or fire department officer in command at a fire shall have full police powers while actually discharging his duties in the vicinity of the fire. (Code 1962, 14-44)

Sec. 7-9. Obedience to fire lines.

No person shall approach any closer to any fire than the fire line established by the fire chief or other member of the fire department. (Code 1962, 14-45)

Sec. 7-10. Command of town and utility employees at fire.

The fire chief or fire department officer in command at a fire shall have control and supervision of all town employees, or employees of utility companies, in the vicinity of any fire during the progress of such fire, for the purpose of enforcing all ordinances, rules and regulations pertaining to the fire, for providing adequate water, and for shutting off electric power to prevent damage from live wires. (Code 1962, 14-42)

Sec. 7-11. Duty to remove parked vehicle at scene of fire.

When ordered by any member of the fire department, or other person under the control and supervision of the fire chief, in the vicinity of a fire, no person shall fail or refuse to move a parked vehicle owned or operated by him, or under his control. (Code 1962, 14-46)

State law reference--Following, parking near fire apparatus, F.S. 316.2025.

Sec. 7-12. Damaging, tampering with equipment.

No person shall damage or tamper with any equipment or apparatus owned by or in the possession of the fire department. (Code 1962, 14-34)

Cross references--Trespass or interference with fire department property, 10-19; damaging, misuses of fire alarm signal system, 10-20.

State law reference--Criminal mischief. F.S. 806.13.

Sec. 7-13. Maintenance of equipment.

All equipment and apparatus owned by or in the possession of the fire department shall be maintained in such condition that it shall be at all times ready for use in emergencies. (Code 1962, 14-30)

Sec. 7-14. Private or misuse of equipment.

No equipment or apparatus owned by or in the possession of the fire department shall be used for the personal benefit of any person, or for any other use than that for which it was acquired. (Code 1962, 14-31)

Sec. 7-15. Use of equipment outside town.

No equipment or apparatus owned by or in the possession of the fire department shall be used for extinguishing fires outside the town limits except in conformity with regulations established by the town council. (Code 1962, 14-32)

Sec. 7-16. Unauthorized riding on equipment.

No person not a member of the fire department shall ride on any fire equipment or apparatus owned by or in the possession of the fire department, without the fire chief's permission. (Code 1962, 14-33)

Secs. 7-17--7-26. Reserved.

ARTICLE II. VOLUNTEERS

Sec. 7-27. Number.

The number of volunteer members of the fire department shall not be limited except as may be provided from time to time under the provisions of section 7-32 of this Code. (Code 1962, 14-19)

Sec. 7-28. Qualifications.

Any person over the age of eighteen (18) and in good physical condition shall be eligible for membership in the volunteer fire department. (Code 1962, 14-20; Ord. No. 06-11, 1, 7-18-06)

Sec. 7-29. Appointment; discipline; removal.

Volunteer members of the fire department shall be appointed, disciplined and removed by the fire chief, subject to such rules and regulations with respect thereto as shall be promulgated by the town council. (Code 1962, 14-22; Ord. No. 247, 15, 5-15-79)

Sec. 7-30. Chief to supervise and control.

The volunteer members of the fire department shall be under the supervision and control of the fire chief. (Code 1962, 14-21)

Sec. 7-31. Chief to assign duties.

The duties of all volunteer members of the fire department shall be assigned by the fire chief. (Code 1962, 14-23)

Sec. 7-32. Rules and regulations.

(a) *Authorized.* The volunteer members of the fire department shall promulgate rules and regulations for the organization and government of the department.

(b) *Approval.* The rules and amendments thereto shall be submitted to the town council for approval. Such rules and regulations, and any amendments thereto, shall not be deemed effective until approved by the town council. (Code 1962, 14-24; Ord. No. 247, 16, 5-15-79)

Secs. 7-33--7-42. Reserved.

ARTICLE III. RESERVED*

Secs. 7-43--7-59. Reserved.

***Editor's note**--Art. III, 7-43--7-49, pertaining to pensions for firefighters, has been deleted as being superseded by Ord. No. 89-15, included herein at Ch. 2, Art. IX, Div. 3, 2-226--2-234, which provides for a combined pension plan for police officers and firefighters. Former Art. III derived from Ord. No. 184, 2-6, adopted Sept. 16, 1975; Ord. No. 278, 1, adopted April 15, 1980 and Ord. No. 83-323, 1, adopted Jan. 3, 1983.

ARTICLE IV. FIRE PREVENTION AND FIRE SAFETY*

Sec. 7-60. Code adopted.

(a) The Florida Fire Prevention Code, current edition as mandated by the State Legislature, F.S. 633.0215, and administered by the Department of Financial Services, Office of the State Fire Marshall, as published by the State Fire Marshall's Office, shall be known as the "Town of Indialantic Fire Code" and is hereby adopted by reference and incorporated herein as if fully set out..
(Code 1962, 14-49; Ord. No. 196, 1, 6-15-76; Ord. No. 251, 1, 5-15-79; Ord. No. 84-353, 1, 9-18-84; Ord. No. 87-22, 1, 11-17-87; Ord. No. 92-12, 1, 7-21-92; Ord. 96-2, 1, 12-19-95; Ord. 10-04, 1, 3-16-10; Ord. 14-02, 1, 12-17-13; Ord. No. 16-05, 1, 3-9-16; Ord. No. 18-02, 2, 12/13/17)

Sec. 7-61. Repealed
(Code 1962, 14-51; Ord. No. 251, 2, 5-15-79; Ord. No. 10-04, 2, 3-16-10)

Sec. 7-62. Repealed
(Code 1962, 14-52; Ord. No. 251, 2, 5-15-79; Ord. No. 10-04, 3, 3-16-10)

***Cross reference** -- Fires prohibited on beach, 5-45.

Sec. 7-63. Fire hydrants.

(a) *Location requirements.* All residential lots shall have a fire hydrant located within five hundred (500) feet and the fire hydrant shall be connected to a water system capable of supplying the fire flow required by the fire officials of the Town of Indialantic. The five hundred (500) feet shall be measured from the intersection of the property boundary line which runs perpendicular to the road or roads which the residential lot borders and the line formed by the right-of-way of such road or roads, to the closest hydrant located on the same road or roads.

(b) *Residential construction within location requirements.* No permit for residential construction required in Chapter 6 of the Code of Ordinances of Indialantic, Florida, shall be authorized by the zoning and planning board without a showing that the residential lot is situated within five hundred (500) feet of a fire hydrant, as required by subsection (a).

(c) *Residential construction outside location requirements.* Any person or entity requesting a construction permit for residential construction under Chapter 6 of the Code of Ordinances of Indialantic, Florida, which does not meet the requirements of subsection (a) shall be required to submit a plan for installing fire hydrants and necessary connection to the water systems so as to put such construction in compliance with the requirements of subsection (a). All costs of such installation shall be borne by the person or entity requesting the permit. Upon approval of such installation plan, a construction permit may be granted. (Ord. No. 86-3, 1-3, 2-18-86)

Sec. 7-64--7-79. Reserved

ARTICLE V. HAZARDOUS SUBSTANCE SPILL AND CLEAN UP

Sec. 7-80. Definitions.

The following terms when used in this article shall be defined as follows:

(1) "Facility" shall mean: (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(2) "Fire department" shall mean the Indialantic Fire Department.

(3) "Hazardous substance" shall mean and refer to: (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 USC □1321(b)(2)(A)]; (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), Public Law No 96-510, 94 Stat. 2767 [42 USC '9601, *et seq.*], and the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law No. 99-499, 100 Stat. 1613; □ any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 USC '6921] (but not including any waste regulation under the Solid Waste Disposal Act which has been suspended by Act of the U.S. Congress); (D) any toxic pollutant listed or defined by, or designated pursuant to, section 307(a) of the Federal Water Pollution Control Act [33 USC '1317(a)]; (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator of the U.S. Environmental Protection Agency has taken action pursuant to section 7 of the Toxic Substances Act [15 USC '2606]; (F) any hazardous substance, material, or waste so defined by, or designated pursuant to, Chapter 403, and in particular, Section 403.703 *et seq.*, Florida Statutes; or (G) petroleum or petroleum product as defined by Section 376.301, Florida Statutes. Ammunition shall not be included in this definition.

(4) "Operator" or "Owner" means any person owning or operating a facility, and in the case of bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a governmental entity, any person who owned, operated, or otherwise controlled activities at such facility beforehand. Such

terms does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect his security interest in the facility. In the case of a hazardous substance which has been accepted for transportation by a common carrier or contract carrier, the term "owner" or "operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation. The shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control.

(5) "Person" means and refers to an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, municipality, county, or governmental entity.

(6) "Release" means and refers to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes the normal application of fertilizer.

(7) "Remove" or "removal" means and refers to the cleanup or removal of released hazardous substances from the environment; such actions as may be necessarily taken in the event of the release or the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material, or the taking of other actions necessary to prevent, minimize, or mitigate damage to the public health, safety, or welfare of the environment, which may otherwise result from a release or threat of release.

(8) "Response" or "respond" means remove, removal, remedy, and remedial action, including but not limited to enforcement activities related thereto.
(Ord. 96-3, 2, 11-14-95; Ord. 11-18, 5, 10-18-11)

Sec. 7-81. Report of hazardous substance releases; liability for clean up.

(a) Any threatened or actual release of a hazardous substance in:

1) any reportable quantity in excess of that amount that is listed in Title 40 Code of Federal Regulations, or listed in the Florida Administrative Code; or

2) any threatened release of any hazardous or toxic substance that is required to be reported to any federal or state agency, shall be immediately and, except as otherwise permitted herein, without delay reported to the fire department upon discovery. It shall be a violation of this code section to delay in reporting a threatened or actual release until after notifying an off-site owner or supervisor.

(b) Duty to control release. The requirements of this section shall not be construed to forbid any person on or about any facility from using all diligence necessary to control such release prior to the notification of the fire department, especially if such efforts may result in the containment of the release or the abatement of extreme hazard to employees or the general public.

(c) Disclaimer of liability. This section shall not create liability on the part of the town, or any of its departments, officials, employees, or agencies for damages that result from a reliance on this section or any administrative decision lawfully made pursuant hereto. All persons are advised to determine the level of protection, in addition to that required by this section, necessary or desirable to ensure that there is no unauthorized or dangerous release of hazardous substances.

(d) Liability. Any persons causing or contributing to the causing of an actual or threatened release of a hazardous substance which results in response or emergency action by the fire department shall be liable to the town for recoverable expenses resulting from the response or emergency action. This liability shall be in addition to any and all penalties otherwise provided by Federal or state law or other applicable town or county ordinances.

(e) Cleanup responsibility. Hazardous substances; Cleanup or abatement; Liability for costs.

(1) The fire department or such other governmental agency directed to respond by the fire chief, or his designee, is authorized to cleanup or abate the effects of any hazardous substance unlawfully released upon or onto property, whether public or private, or facilities within the town. The owner or operator of the facility shall give the town, or its agent, free access to assist in any cleanup. The following described persons shall be jointly and severally liable to the town for the payment of all costs incurred by the town or its agents as a result of such cleanup or abatement activity:

(A) Any person whose negligent or willful act or omission proximately caused such release;

(B) The person who owned or had custody or control of the hazardous substance at the time of such release, without regard to fault or proximate cause;

(C) The person who owned, operated, or had custody or control of the container or vehicle which held such hazardous substance at the time of or immediately prior to such release, without regard to fault or proximate cause; and

(D) The owner or operator of the facility at which the hazardous substance was released or threatened to be released.

(2) Verification and supervision. In the event that any person undertakes, either voluntarily or upon the order of the fire chief, or his designee, to cleanup or abate the effects of any hazardous substance unlawfully released upon or onto any property, whether public or private, or facility within the town, the fire chief may take such action as is necessary to supervise or verify the adequacy of the cleanup or abatement. The persons described in this sub-section shall be liable to the town for all costs and expenses incurred as result of such supervision or verification.

(f) Expenses recoverable. The Town shall be entitled to recover all of its expenses for responding or taking emergency action, including but not limited to:

(1) Reasonable and necessary expenses allocable to the emergency action. Recoverable expenses shall not include normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine fire fighting. Expenses allowable for recovery may include, but are not limited to:

(A) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response or emergency action;

(B) Compensation of the employees for the time and efforts devoted specifically to the response or emergency action;

(C) Rental or leasing of equipment used specifically for the response or emergency action (such as protective equipment or clothing, scientific and technical equipment);

(D) Replacement costs for equipment owned by the Town that is contaminated beyond reuse or repair, if the equipment was a total loss, and the loss occurred during the emergency action (such as self contained breathing apparatus irretrievably contaminated during the response);

(E) Decontamination of equipment contaminated during the response or emergency action;

(F) Special technical services specifically required for the response or emergency action (such as costs associated with the time and efforts of technical experts or specialists not otherwise normally provided by the town);

(G) Other special services specifically required for the response or emergency action;

(H) Laboratory costs of analyzing samples taken during the response or emergency action;

(I) Cost of cleanup, storage, or disposal of the released material;

(J) Costs associated with the services, supplier, and equipment procured for a specific evaluation;

(K) Medical expenses incurred as a result of response activities; and

(L) Legal expenses that may be incurred as a result of the response or emergency action, including efforts to recover expenses pursuant to this article.

(g) Financial authority. An emergency purchase order shall be authorized for removal and proper disposal of the hazardous substance in accordance with all applicable regulations of the town, state, and federal governments by a duly licensed private company. Fire department personnel shall be authorized to contact hazardous substance disposal companies to provide for the expeditious removal of accidental releases.

(h) Supp. No. 3 483

(h) Collection of expenses.

(1) The fire chief shall prepare a report detailing the town's costs and expenses in responding to a release, or threat of a release, and make demand for the response costs and expenses upon the owner or operator of the facility at which the release, or threat of release of hazardous substances occurred, or the owner of the vehicle from which hazardous substances were released or threatened to be released. The notice and demand shall also advise the owner or operator of said owner or operator's right to seek review before the code enforcement board at set forth in sub-section (h)(2) below. The demand shall be made by personal service by town police officer, county sheriff, or town code enforcement officer, or alternatively, by certified U.S. mail, return receipt requested, addressed to the owner at the address as shown in the current ad valorem tax rolls or to the operator at the operator's business address. The giving of notice and a demand for payment shall be deemed complete when personal service is accomplished or the notice and demand sent by certified mail is deposited in the U.S. mail, postage paid, and the town receives the return receipt card. If service cannot be obtained in the foregoing manner, service may be obtained by publication as set forth in section 162.12(2)(a), Florida Statutes, and a notice shall be conspicuously posted at the facility at which the release or threat of release occurred. Said notice shall set forth the name and address of the owner or operator of the facility, a legal description of the facility, detail the costs and expenses for response, describe the purpose and date of the response, make demand for payment of the costs and expenses of the response, and advise the owner or operator of its rights to seek review before the code enforcement board and the procedure for initiating review.

(2) The owner or operator may seek review of the cost and expenses sought to be compensated for the response as depicted in the notice and demand prepared by the fire chief. Review shall be before the code enforcement board, and the owner or operator must seek review, if at all, within thirty (30) days of the receipt of the notice and demand for compensation of costs and expenses. If notice is given by publication, the thirty (30) day time period shall begin to run the day after the last publication of the notice and demand. A request for review shall be made in writing and filed with the code enforcement board secretary, with a copy to the fire chief, and said notice shall give the telephone number and address at which the owner or operator may be contacted for the purpose of the code enforcement board hearing.

(3) Upon receipt of a notice from an owner or operator requesting review, the code enforcement board secretary shall schedule a hearing by the board, giving notice of the date, time, place, and purpose of said hearing to the owner or operator by first class U.S. mail, postage prepaid at the address as depicted on the owner or operator's request for code enforcement board review. At the hearing, the owner or operator shall have a right to be represented by counsel or an agent, to present evidence and witnesses, and to cross-examine witnesses presented by the town. The code enforcement board may issue subpoenas through its secretary to command the appearance of witnesses, and said subpoenas shall be served by town police officer, county deputy sheriff, or code enforcement officer. At the close of the hearing, the code enforcement board shall issue its findings of fact and conclusions of law, together with a final order as to the amount of response costs due from said owner or operator, which final order shall be the town's position as to the amount due. The board may also order that the amount determined to be due and owing to the town, if any, shall be returned to the town by a date certain.

(4) The code enforcement board, as part of its hearing procedure, may impose a lien upon the property at which the release or threatened release occurred. Said lien shall be for the amount of response costs and expenses and shall bear interest at a rate of eight percent (8%) per annum from the date that the board has ordered payment to be made. A copy of the final order of the board and the lien shall be forwarded by first class, U.S. mail, postage prepaid to the owner or operator of said facility. Said lien may be recorded in the public records of Brevard County, Florida. If the person fails or refuses to pay said costs and expenses within sixty (60) days after the board issues its final order, the Town may proceed with such action as authorized by law to collect said expenses, including reasonable attorney's fees and costs and interest. Anyone not satisfied with the code enforcement board decision may file an action in court for the review of said decision pursuant to the Florida Rules of Appellate Procedure.

(5) If the owner or operator does not seek a hearing before the code enforcement board within thirty (30) days of the receipt of the notice and demand for compensation of costs and expenses, the fire chief may request that the code enforcement board issue a lien in the amount of the notice and demand for response costs, as set forth in sub-section (h)(4) above. The owner and operator of the facility or the vehicle owner shall be notified of said hearing in the manner set forth in sub-section (h)(2) above. The town and the owner or operator of the facility may appear at the code enforcement board hearing to be held according the parties the same rights as set forth in sub-section (h)(3). The sole issue shall be the propriety of placing a lien on the facility for compensation of the costs and expenses of the response. Anyone not satisfied with the code enforcement board decision may file an action in court for the review of said decision pursuant to the Florida Rules of Appellate Procedure.

(I) The code enforcement board may upon request by the town council or any person creating a release of a hazardous substance, investigate a hazardous incident in order to make certain findings or recommendations concerning:

(1) The cause of the incident;
(2) Methods to improve safety; or
(3) Other findings concerning the incident.

(j) Civil suit. The town may bring a civil action for recovery of recoverable expenses and penalties against any and all persons causing or responsible for the a response or emergency action relating to the release or threat of release of a hazardous substance

(k) Written report. A full written report shall be prepared by the person having a release of a hazardous substance within fifteen (15) days after said release. The report shall include:

(1) Date and time of release;
(2) When and who reported release;
(3) The nature, quantity and amount of release;
(4) Actions taken to control the release;
(5) The present condition of the release, including ground, air, and water pollution;
(6) Future actions to be taken concerning the release; and
(7) Injuries to persons or property of the environment.

Said report shall be filed within the above stated time with the town fire chief.

(l) Continuing responsibility. Notwithstanding any provision of this article to the contrary, the owner or operator of any facility at which a hazardous substance has been released or at which there has been a threat of a release shall remain liable and responsible for its management, cleanup, and removal as authorized by law, and said responsibility shall be a continuing responsibility until proper disposition and removal.

(m) Violations. Violations of provisions of this article, excluding the failure to pay response costs and expenses for a release or threatened release, shall be punishable as specified in section 1-9, town code, or may be prosecuted as code enforcement violation pursuant to Chapter 162, Florida Statutes, and section 2-5, town code.

(n) Limited preemption. Nothing in this section 7-81 is intended to regulate any matters specifically preempted by §790.33, Florida Statutes.

(Ord. 96-3, 3, 11-14-95; Ord. 11-18, 6, 10-18-11)

[The next page is 533]

Chapter 8

GARBAGE, TRASH AND WEEDS*

Art. I. In General, 8-1--8-41
Art. II. Lot Clearing, 8-42--8-49
Art. III. Littering, 8-50--8-54

ARTICLE I. IN GENERAL

Sec. 8-1. Definitions.

As used in this chapter:

Automated garbage collection truck means the vehicle that is partially open at the top and accepts garbage conveyed from a cart provided by the collector.

Clam shell means a garbage and trash collector vehicle which is equipped with a crane to pick up and carry away large objects for disposal.

Contractor or collector means the person with whom the town has entered into a contract or to whom the town has granted a franchise for the collection and disposal of garbage and refuse generated in the town.

Diameter at breast height (dbh) means the diameter of the trunk of a tree, or the sum of the stems of a multi-stemmed tree, measured four and one-half (4.5) feet above natural or development grade.

Dumpster means a large container supplied by the contract collector used to contain garbage and trash usually generated by commercial concerns.

Front loader means the vehicle which picks up dumpsters and empties them into itself.

Garbage means the solid or semi-solid waste generated in both household and commercial handling of food and ordinary refuse. Consistent with §790.33, Florida Statutes, ammunition shall not be included in this definition.

Garbage Container means a container of not greater than ninety-six gallon capacity or less as provided by the collector.

Land clearing means the removal of vegetation from a vacant lot or parcel, however it does not include mowing, trimming or pruning of vegetation so as to maintain it in a healthy and viable condition.

Native vegetation means plant material indigenous to Brevard County, Florida.

Rear loader means the vehicle into the rear of which is emptied the contents of trash containers approximately thirty two gallon size.

Recyclable materials means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste including:

***Cross references**--Disposal of dead animals, 4-24; disposal of garbage from boats, 5-16; beautification, Ch. 5.5; property maintenance, 5.5-61 et seq.; trash container areas, 5.5-65; license tax for garbage collection service, 9-11(57).

(1) Glass (all unbroken, clear, brown, and green glass containers. Flat glass, window glass, dishes, crockery, etc. are excluded)

(2) Metal cans (aluminum and bi-metal), aluminum foil, aluminum pie tins

(3) Newspapers (daily newspapers, including inserts), magazines, office paper, brown paper bags, junk mail, telephone books

(4) Plastic bottles numbers 1-7

Recycling container means a plastic container provided by the Collector and used for storage/collection of recyclable materials.

Residential service means that service provided to residential housing and billed through the City of Melbourne Utility Water, Trash and Sewer Invoice.

Trash means all debris and rubbish, and all materials generated as a result of individual ground maintenance and improvements, and all items other than garbage intended for disposal, but does not include autos, auto parts, or materials that accumulate as the result of building operations, building alterations, or clearing of lots. Consistent with §790.33, Florida Statutes, ammunition shall not be included in this definition.

Tree means a woody or fibrous perennial plant with one or more upright limbs with a minimum dbh of four (4) inches, or a sum of four (4) or more inches for multi-stemmed trees, and which will attain an average mature height of at least ten (10) feet.

User means any customer of contract collector or a tenant of a customer of contract collector.

Vegetation means any plant material including but not limited to trees, shrubs, herbs and grasses. (Ord. No. 87-13, 1, 7-21-87; Ord. No. 89-9, 2, 4-18-89; Ord. No. 91-8, 1, 1-15-91; Ord. No. 94-16, 1, 9-20-94; Ord. 04-04, 1, 1-20-04; Ord. No. 06-05, 1, 2-21-06; Ord. No. 09-12, 1, 6-16-09; Ord. 11-18, 7, 10-18-11)

Sec. 8-2. **Accumulations prohibited generally.**

All lands in the town shall be kept free from any kind of trash or filth including, but not limited to, broken tree limbs, leaves or branches, any uncontainerized garbage or refuse, or any other type of material which might conceal pools of water, create breeding places for mosquitoes or which might be otherwise detrimental to the health or safety of the inhabitants of the town. The existence of any such trash or filth is hereby declared to be a nuisance. (Code 1962, 16-12)

State law references--Sanitary nuisances, F.S. 386.01; nuisances injurious to health, F.S. 386.041.

Sec. 8-3. Accumulations longer than four days prohibited; exception.

Except when a holiday celebrated on a normal collection day results in the closure of the county landfill, it shall be unlawful to permit an accumulation of garbage or trash upon any premises in the town for a period longer than four (4) days; without having arranged for disposal of such accumulation by the contract collector of the town, or by some person qualified under this chapter to perform such services. (Code 1962, 16-12; Ord. No. 83-321, 1, 1-3-83)

Sec. 8-4. Accumulations presumed sanitary nuisance; abatement.

Except when a holiday celebrated on a normal collection day results in the closure of the county landfill, accumulation of garbage or trash at any residential or commercial unit or building for more than five (5) days because of non-collection shall be prima facie evidence of a sanitary nuisance. In such cases, and by agreement with the board of county commissioners to utilize the services of the Brevard County health officer, the latter shall, in coordination with town authorities, notify the person or persons responsible for the violation to remove or cause to be removed such garbage or trash within twenty-four (24) hours, failing which the health officer may take corrective action as prescribed for similar violations within Brevard County. (Code 1962, 16-29; Ord. No. 83-321, 2, 1-3-83)

Sec. 8-5. Duty to use contract collector; fees.

(a) *Residential:* All residents or occupants of residential dwellings, houses and units in the town, wherever situated as to zoning, shall be required to have accumulations of garbage and trash removed and disposed of by the collector holding a contract or franchise agreement with the town, and for such service shall pay the collector such fees and charges as are agreed upon by the terms of the franchise agreement. Fees and charges for garbage and trash shall be chargeable on newly constructed residential units immediately upon occupancy or whenever the first garbage and trash collection is made by the contractor, whichever shall occur first.

(b) *Commercial:* All occupants of premises used for commercial purposes shall be required to have accumulations of garbage and trash removed and disposed of by the franchised collector and shall pay to him such fees and charges as are authorized for commercial collection in the franchise agreement with the town. Each occupant shall contract with the franchised collector and either provide a garbage container or utilize the dumpster that is provided for the building in which the occupant is located.

(c) *Evidence of accumulation:* The fact that any place of abode or any place of business is occupied shall be prima facie evidence that garbage or trash or both is being produced and accumulated upon such premises, and that charges and fees for the collection and disposal thereof are due the collector.

(d) *Construction and Demolition Debris:* The Collector shall have exclusive right to provide service for the collection of construction and demolition debris materials generated in the construction of buildings and structures or the clearing of land and preparation of sites for construction.

(Code 1962, 16-29; Ord. 04-04, 2, 1-20-04; Ord. 09-12, 2, 6-16-09

Sec. 8-5.5. Precollection recycling procedures.

Recyclable garbage, trash and refuse from single- and multi-family residences shall be prepared for collection as follows:

(1) All household trash and garbage shall be drained of all liquids prior to deposit in containers. Recyclable glass food containers shall be rinsed prior to placement in recycling containers. Metal cans need not be flattened, and labels need not be removed from cans or glass. Newspapers shall be free of food or other contaminants when placed in recycling containers. Recyclable plastic containers shall have the lids removed and be rinsed. The remaining household trash may be combined with garbage in acceptable refuse containers.

(2) All recyclable materials shall be sorted from other garbage and refuse and placed in proper recycling containers. For single-family residential units recycling containers shall be placed at curbside, separate and apart from any other containers on the day specified (by the collector) for collection of recyclable materials. For multifamily residential units recyclable material shall be placed in containers supplied by the collector.

(3) The abuse or use of recycling containers for purposes other than as provided herein is prohibited; and

(4) Recyclable material placed at curbside in recycling containers for collection shall become the property of the town. It shall be a violation of this section for any person, other than as authorized by the town, to collect or pick up or cause to be picked up any recyclable material so placed. (Ord. No. 89-9, 3, 4-18-89; Ord. No. 91-8, 2, 1-15-91; Ord. No. 09-12, 3, 6-16-09)

Sec. 8-6. Entitlement to trash collection for payment of garbage fee.

All persons are entitled to the removal of trash from their premises upon payment of the garbage fee, providing the quantity of trash shall not require more trash containers than garbage cans used by such person. If no garbage accumulates requiring removal from such residence or place of business, then such person shall be entitled to the removal of double the amount of trash. (Code 1962, 16-19)

Sec. 8-7. Collector to furnish list of customers.

The contractor collector for the town shall furnish to the town clerk the names and addresses of his customers. (Code 1962, 16-27)

Sec. 8-8. Permit required to collect, transport, dispose, etc.

No person shall remove garbage or trash from any premises or transport garbage or trash through the streets or alleys or public ways, or dump, bury or incinerate garbage or trash within the limits of the town, or permit himself to be employed or engaged for any such removal, transportation or disposal, without first having secured a permit for such services from the town clerk. (Code 1962, 16-28)

Sec. 8-9. Requirements for vehicles hauling garbage.

Any person removing garbage from premises within the town shall use vehicles especially designed for the conveyance of garbage. Such vehicles shall be of an approved type, shall meet the requirements of the state and of the town and shall be of such construction and design as to be leakproof. (Code 1962, 16-25; Ord. No. 09-12, 4, 6-16-09)

Sec. 8-10. Requirements for vehicles hauling trash.

Any person transporting trash or debris from any premises in the town may convey such trash or debris by commercial type vehicles. Such vehicles shall have protective covers to prevent trash and debris from littering the streets while in transit, or the owner or operator of such vehicles shall be responsible for clearing up or picking up any trash or debris falling from the vehicles. (Code 1962, 16-26)

Sec. 8-11. Duty to provide receptacles.

(a) It shall be the duty of the occupant of any premises in the town to contact the collector and secure receptacles for the disposal of garbage and trash sufficient in capacity to accommodate the accumulation of garbage and trash from his premises between pickups by the contract collector. Such containers shall conform to the requirements specified in the contract between the town and the contract collector.

(b) Construction and demolition debris materials generated in the construction of, or demolition of, buildings and structures or the clearing of land and preparation of sites for construction shall be placed in an on-site dumpster or within a temporary on-site fenced area. If temporary fencing is used it shall be woven wire, chain link or equal and shall prevent wind blown debris from occurring and shall be constructed to contain the debris.

(c) A covered trash receptacle container shall be provided for employee garbage on all sites involving the construction or demolition of buildings and structures or the clearing of land and preparation of sites for construction.(Code 1962, 16-13, 16-16; Ord. 04-05, 1, 2-17-04; Ord. No. 06-05, 2, 2-21-06)

Sec. 8-12. Location of residential receptacles; removal from right-of-way.

Trash receptacles shall be located at curbside for all residential collections. Receptacles for residential garbage collection shall be located either at curbside or at the rear door of the residence, at the option of the resident. Customers taking the rear door option shall allow the franchisees to place a mark on the curb or street to afford identification of rear door service; further, all containers shall be accessible for collection. Receptacles containing garbage located at curbside shall be placed at curbside no more than twelve (12) hours before the scheduled collection time, and shall be removed within twelve (12) hours after collection. (Code 1962, 16-14, 16-17; Ord. No. 83-321, 3, 1-3-83)

Cross reference--Trash container areas, 5.5-65.

Sec. 8-12.1. Dumpsters.

(a) Commercial garbage and trash shall be contained in a dumpster and shall be collected from an area designated by the user who shall provide that such area is accessible to the commercial collector's vehicle. Dumpsters shall be of sufficient size to accommodate the amount of garbage and trash generated by the user and all garbage and trash shall be deposited within the dumpster. All dumpsters placed within the town relating to the collection of garbage and every day trash shall be located, concealed, and maintained in conformance with the standards and criteria of this section.

(b) It is the responsibility of the proposed user to identify the number, size, and type of all trash containers and enclosures, either known or generally estimated, on the site plans submitted to the town for building permits.

(c) Dumpsters shall be placed within property lines and shall be located in a position convenient to pickup by front and rear loaders.

(d) Enclosures shall shield all four (4) sides of dumpsters except for dumpsters used while construction is in progress. The enclosures shall be in place, for any activity that requires the use of a dumpster, upon completion of new structures, or remodeling of existing structures, or upon request for a business tax receipt or upon renewal of a business tax receipt. Enclosures shall comply with the following standards:

(1) All dumpsters shall be required to be shielded by solid wooden walls and solid gates. Stuccoed masonry or vinyl walls may be used provided the vinyl is of a strength equal to or exceeding that of wood.

(2) The height of the walls and gates shall be as follows:

Up to six (6) cubic yard container: Six (6) feet high.
Up to eight (8) cubic yard container: Eight (8) feet high.

(3) The minimum inside dimensions of the enclosures shall be three (3) feet wider than the width of the dumpster and two (2) feet deeper than the depth. If the size of the dumpster is unknown, then the minimum size of a proposed enclosure shall be ten (10) feet by ten (10) feet (inside dimensions) with eight-foot-high walls. Upon written approval of the sanitation contractor, the depth can be adjusted.

(4) The gates of the enclosure shall have no panel wider than six (6) feet and shall be constructed of a material of sufficient strength to withstand normal daily use of trash disposal and pickup. Chain link gates with slats are not permitted. Gates shall have cane bolts to secure the gates in the open and closed positions. Cane bolts shall be mounted six (6) inches from the edge of the door.

(5) The base of the enclosure is to be concrete with a minimum of four (4) inches in depth.

(6) Gates should be closed at all times except during pickup. Employees of the sanitation contractor shall be responsible for opening and closing the gates to the enclosure.

(7) The sanitation contractor will be responsible for any damage incurred to the enclosure provided that the enclosure is otherwise in compliance with this Code. (Ord. No. 83-321, 4, 1-3-83; Ord. No. 87-13, 2, 7-21-87; Ord. No. 90-10, 1, 3-20-90; Ord. No. 90-14, 1, 9-18-90; Ord. No. 02-22, 1, 9-17-02; Ord. No. 07-12, 2, 7-17-07)

Cross reference—Trash container areas, 5.5-65.

Sec. 8-13. Preparation of garbage for disposal; daily deposit required.

All garbage, tin cans and bottles shall be drained of all liquid prior to being deposited in a garbage container. Wet garbage shall be wrapped in a plastic bag before being placed in the garbage container. (Code 1962, 16-15; Ord. No. 09-12, 5, 6-16-09)

Sec. 8-14. Garbage cans, receptacles to be kept closed.

Garbage containers shall be kept tightly covered at all times except when it is necessary to lift the cover to deposit garbage therein. (Code 1962, 16-15; Ord. No. 09-12, 6, 6-16-09)

Sec. 8-15. Manner of depositing trash.

All trash placed in a container or receptacle shall be weighed down or covered so that the lighter materials thereof shall be prevented from being blown out of the container or off the premises. (Code 1962, 16-16)

Sec. 8-16. Disposal of garden trash.

(a) All residents and occupants of premises in the town shall deposit garden trash, when and as it is accumulated, upon the street rights-of-way immediately in front of the premises of the person by whom such accumulation is made, or in another approved location which may be from time to time designated by the town, or on or near a used alley where such premises are located upon a used alley, for removal and disposition by the contractor collector for the town but not in that portion of the street used by motor vehicles except for that portion of the street right-of-way containing the resident's driveway.

(b) Residents and occupants may arrange for private removal and transportation of such garden trash.

(c) It shall be unlawful for any resident or occupant to deposit garden trash upon any adjoining lot or premises, whether vacant or improved, occupied or unoccupied, or upon any other premises or that portion of the street used by motor vehicles, alley or park, or any canal or waterway within the town. (Code 1962, 16-24; Ord. No. 12-14, 1, 9-18-12)

Sec. 8-17. Misuse of public receptacles.

It shall be unlawful for any resident or occupant of a premises in the town to place trash or garbage generated on his premises in any town-owned receptacle placed within the town for the use of the public. (Code 1962, 16-29)

Sec. 8-18. Burying garbage prohibited.

It shall be unlawful to bury garbage anywhere in the town. (Code 1962, 16-19)

Sec. 8-19. Reserved.

Editor's note--Ord. No. 84-351, 1, adopted Sept. 18, 1984, repealed 8-19, pertaining to littering in general, derived from Code 1962, 16-2.

Sec. 8-20. Placing on land of another.

It shall be unlawful for any person to place or deposit any trash, filth, weeds, cans, boxes, bottles, tubs, buckets, motor vehicle bodies or parts thereof, or other refuse or garbage on the land of another within the town without written consent of the owner thereof. (Code 1962, 16-3)

State law reference--Trespass generally, F.S. Ch. 810.

Sec. 8-21. Construction or landscaping debris on streets, vacant lots.

It shall be unlawful to place building materials, scrap plaster or any other refuse from building or other construction, or landscaping, on street or vacant lot in the town. (Code 1962, 16-65)

Secs. 8-22--8-41. Reserved.

ARTICLE II. LOT CLEARING*

Sec. 8-42. Short title; Legislative intent.

(a) This article shall be known as the "Town of Indialantic Lot Clearing Ordinance" and shall be applicable in the town.

(b) The town council finds and determines that urbanization of the community has caused a need for and requires the reasonable and effective control and regulation of excessive growth and accumulation of weeds and other plant life which may threaten or endanger the public health, or adversely affect and impair the economic welfare of adjacent property. Further, the town council finds and determines that the accumulation of garbage and trash in violation of this article, and the accumulation, storage or maintenance of junk or trash in violation of this article, requires reasonable and effective controls to protect the public health, economic order, aesthetics, safety, and welfare of the community. Removal of junked, unclaimed, or abandoned motor vehicles, as defined in section 715.07, Florida Statutes, may be accomplished pursuant to sections 715.05 and 715.07, Florida Statutes, and such removal while authorized by this code section shall not be subject to the provisions of this article.

(c) Any action taken pursuant to this article in regard to the abatement, disposal, or removal of the conditions herein declared to be a public nuisance shall be considered cumulative and in addition to other penalties or remedies provided elsewhere in this code or by federal or state statute or administrative rule.
(Ord. No. 84-340, 1, 2-21-84; Ord. No. 91-11, 2, 2-19-91; Ord. No. 94-3, 2, 12-7-93; Ord. No. 94-16, 2, 9-20-94)

Sec. 8-43. Public nuisances prohibited.

The existence of excessive growth and accumulation of weeds and other plant life which may threaten or endanger the public health, or adversely affect and impair the economic welfare of adjacent property, may be declared to be a public nuisance by the Town. A public nuisance shall include the definition as provided in Section 8-43.1. Further, the accumulation of garbage and trash on private property in violation and in a manner other than as described in article I of this chapter, and the accumulation, storage or maintenance of junk or trash, except for compost piles, in violation of article I of this chapter, is hereby prohibited and declared to be a public nuisance. The creation of other severe continuing nuisances, such as standing pools of water, erosion, or swirling sand caused by leaving exposed earth and/or sand without proper seeding, as prescribed in section 13-34 of this code, during the process of abating any or all of the above nuisances, is hereby prohibited and also declared to be a public nuisance. (Ord. No. 84-340, 1, 2-21-84; Ord. No. 91-11, 3, 2-19-91; Ord. No. 94-16, 3, 9-20-94)

***Editor's note**--Ord. No. 91-11, enacted Feb. 19, 1991, amended Art. II in its entirety, to read as set out in 8-42--8-46. Prior to amendment, Art. II had consisted of similar provisions designated as 8-32--8-41; said provisions were derived from Ord. No. 84-340, enacted Feb. 21, 1984. Prior to Ord. No. 84-340, said provisions were derived from Code 1962, 16-34, 16-42--16-46, and Ord. No. 256, 1-3, enacted May 21, 1979.

Cross reference--Code enforcement board, 2-5

Sec. 8-43.1 Applicability.

(a) Developed lots and vacant lots previously stripped of vegetation and capable of being mowed with grass or weeds over eight (8) inches in height shall be declared a public nuisance. (These lots are referenced in the "Vegetation Survey of Vacant Lots" on file in the Building Department).

(b) Vacant lots which have never been cleared to any extent and which contain both native and non-native vegetation and plant life may only be cleared when either a building permit is being requested or one or more of the following applicable conditions have been met (these lots are referenced in the "Vegetation Survey of Vacant Lots" on file in the Building Department):

(1) An application for a lot clearing permit shall be submitted by the owner or the owner's agent to the Building Official.

(2) A sketch plan showing the location of existing trees and native vegetative communities, the existing and proposed structures, and existing and proposed driveways or other paved surfaces shall accompany the application.

(3) Selective hand clearing of noxious or undesirable vegetation, such as Brazilian Pepper, but not native vegetation or trees, may be permitted by the Building Official after a site visit and a tagging by the applicant of vegetation to be removed.

(4) A five (5) foot wide swath may be cleared along all adjacent property lines after approval by the Building Official of a sketch plan as defined in item b(2) above; however, no native vegetation or trees may be cleared.

(Ord. 94-16, 4, 9-20-94; Ord. 08-12, 1, 10-21-08)

Sec. 8-44. Notice.

(a) If the code enforcement officer finds and determines that a public nuisance as described and declared in section 8-43 exists, he shall so notify the owner of record of the offending property in writing and demand that such owner(s) cause the condition to be remedied. The notice shall be given by personal service upon the owner or upon his agent, or by registered or certified U.S. mail, return receipt requested, addressed to the owner or owners of the property described, as their names and addresses are shown upon the latest Brevard County ad valorem tax records. The giving of notice shall be deemed complete and sufficient when so addressed and deposited in the United States mail with proper postage prepaid.

(b) Simultaneous with mailing the notice, the property shall be posted with a notice in substantially the form as depicted in this section of the code.

(c) The notice shall be in substantially the following form:

NOTICE OF PUBLIC NUISANCE

Name of Owner _____

Address of Owner _____

Our records indicate that you are the owner(s) of the following property in the Town of Indialantic, Florida:

(describe property)

An inspection of this property discloses, and I have found and determined, that a public nuisance exists thereon so as to constitute a violation of the Town of Indialantic Lot Clearing Ordinance in that:

(describe here the condition which places the property in violation)

You are hereby notified that unless the condition above-described is remedied so as to make it non-violative of the Town of Indialantic Lot Clearing Ordinance within ten (10) days from the date of this notice, the Town of Indialantic will proceed to remedy this condition and the cost of the work, including advertising costs and other expenses, will be imposed as a lien on the property if not otherwise paid within thirty (30) days after receipt of billing.

Town of Indialantic, Florida
By: _____
Code Enforcement Officer

(Ord. No. 89-21, 1, 9-19-89; Ord. No. 91-11, 4, 2-19-91; Ord. 09-01, 1, 11-18-08)

Sec. 8-45. Hearing.

(a) Within ten (10) days after the mailing of notice to said owner or said owner's agent, the owner of the property may make written request to the town manager for a hearing before him or his designee to show that the condition alleged in the notice does not exist or that such condition does not constitute a public nuisance.

(b) At the hearing the town and the property owner may introduce such evidence as is deemed necessary. The town manager shall establish rules and regulations for the hearing procedure. Following a review by the town manager, the owner will have exhausted his/her administrative remedies. (Ord. No. 89-21, 2, 9-19-89; Ord. No. 91-11, 5, 2-19-91; Ord. 09-01, 2, 11-18-08)

Sec. 8-46. Condition may be remedied by town.

(a) If within ten (10) days after the mailing of the notice to said owner, or said owner's agent, no hearing has been requested and the condition described in the notice has not been remedied, the town manager or said manager's designee may cause the condition to be remedied by the town at the expense of the property owner. If a hearing has been held and has been concluded adversely to the property owner, the town manager may cause the condition to be remedied by the town at the expense of the property owner.

(b) After causing the condition to be remedied, the town manager or said manager's designee shall certify to the town clerk the expense incurred in remedying the condition and shall include a copy of the notice above-described and a copy of the decision of the code enforcement board, if any, whereupon such expense shall become payable within thirty (30) days, after which a special assessment lien and charge will be made upon the property, which shall be payable with interest at the rate of eight per cent (8%) per annum from the date of such certification until paid. Notice of such lien shall be maintained in the town clerk's office in a file created for such purpose and may be filed in the office of the clerk of the circuit court and recorded among the public records of the county. Such lien shall be enforceable immediately or at any time within a period of twenty (20) years after recording of same in the records of the town clerk, all in the same manner as a special assessment lien in favor of the town under chapter 170, Florida Statutes, and may be satisfied at any time by payment thereof including accrued interest. Upon such payment, the town clerk shall by appropriate means evidence the satisfaction and cancellation of such lien upon the record, and as appropriate, in the public records of Brevard County, Florida, thereof.
(Ord. No. 89-21, 3, 9-19-89; Ord. 91-11, 6, 2-19-91; Ord. 11-10, 1, 5-17-11)

Secs. 8-42--8-49. Reserved.

ARTICLE III. LITTERING*

Sec. 8-50. Intent.

It shall be the intent of this article to enhance the public welfare, improve the cleanliness and beauty of the town, decrease the public expense incident to the littering of public and private property, and to combine all sections of the code relating to litter within one article. (Ord. No. 84-351, 2, 9-18-84)

Sec. 8-51. Definitions.

As used in this article, the following words and phrases shall have the meanings indicated:

***Editor's note**--Ord. No. 84-351, 2, adopted Sept. 18,1984, enacted a new Art. III, 8-50--8-53, to read as herein set out.

(1) *Handbills.* Any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper booklet, or any printed matter or literature which is not delivered by the United States Postal Service, except that "handbill" shall not include newspapers. A handbill shall be considered a commercial handbill if it advertises anything for sale or promotional gifts or prizes, if it directs attention to or advertises a meeting or performance at which an admission fee is charged for purposes of gain or profit, or if while containing some reading or pictorial material, it is predominantly advertisement and is distributed or circulated for advertising purposes, including the private gain of advertisers or distributors.

(2) *Litter.* All uncontainerized man-made materials, including but not limited to bottles, glass, garbage, trash, cans, scrap metal, refuse, paper, cigarettes/cigars, rubbish, disposable packages, or containers. Consistent with s. 790.33, Florida Statutes, ammunition and firearms shall not be included in this definition.

(3) *Litter receptacle.* A container constructed and placed for public use as a depository for litter.

(4) *Newspaper.* Any newspaper of general circulation, as defined by law, or any newspaper duly entered with the United States Postal Service; shall include any periodical or magazine regularly published with not less than four (4) issues per year and sold or distributed to the public.

(5) *Private property.* Property owned by any person as defined herein (other than public property), including but not limited to yards, grounds, driveways, entrances or passageways, parking areas, any body of water, vacant land, or private recreational facility.

(6) *Public property.* Any area that is used or held out for use by the public whether owned or operated by public or private interests, including but not limited to highways, streets, alleys, beaches, parks, recreational areas, parking lots, sidewalks, medians, causeways, or bodies of water. (Ord. No. 84-351, 2, 9-18-84; Ord. No. 11-18, 8, 10-18-11)

Sec. 8-52. Unlawful acts.

(1) *Acts prohibited.* It is unlawful for any person to throw, discard, place or deposit litter as herein defined in any manner or amount:

(a) In or on any public highway, road, street, alley or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in litter receptacles. When any litter is thrown or discarded from a motor vehicle, the owner, where knowledge is shown, or the operator of the motor vehicle, or both, shall be deemed in violation of this article.

(b) In or on any river, stream, tidal, or coastal water of the state or other body of water within the town. When any litter is thrown or discarded from a boat, the owner, where knowledge is shown, or the operator of the boat, or both, shall be deemed in violation of this article.

(c) In or on any private property.

(2) *Handbills and newspapers.*

(a) It shall be unlawful to distribute or cause to be distributed handbills or newspapers within the city in such a manner as to create litter.

(b) No person shall throw, scatter, or cast any kind of handbill or newspaper in or upon any public place within the city. It shall be lawful for any person to hand out or distribute handbills or newspapers in any public place, except in the public right-of-way, to any person willing to accept such handbill or newspaper.

(c) No person shall deposit, fasten, throw, scatter, or cast any handbill or newspaper in or upon any vehicle. This provision shall not prohibit the handing of any handbill or newspaper to the owner or occupant of any vehicle if the person is willing to accept said handbill or newspaper.

(d) No person shall place or cause to be placed any handbill or newspaper in or upon any premises if requested in writing by the owner or occupant thereon not to do so.

(e) Any person distributing handbills or newspapers shall maintain the area which they are utilizing free of any litter caused by said handbill or newspaper distribution.

(f) It shall be unlawful for any person to distribute or cause to be distributed any commercial handbill in any place, under any circumstances, which does not have printed on the handbill the names and addresses of the persons who printed, wrote, distributed, compiled, or manufactured said commercial handbill. (Ord. No. 84-351, 2, 9-18-84; Ord. 11-18, 8, 10-18-11)

Sec. 8-53. Penalties and enforcement.

(1) Any person, firm, corporation, business or other entity violating any provision of this article, upon conviction thereof, shall be guilty of a misdemeanor of the second degree, punishable as provided in section 10-1 of this Code.

(2) Violations of this article which are also violations of the Florida Litter Law, Section 403.413, Florida Statutes, as hereafter amended, may be enforced in accordance with those powers outlined in said Florida Litter Law, which law is incorporated herein by this reference.

(3) Violations of this article may be referred to the Town of Indialantic Code Enforcement Board for disposition. The board shall adhere to its established procedure for notice, timely compliance, and the setting of hearing dates. When violations are referred to the code enforcement board, the penalties for violations shall be in accordance with the provisions for enforcement of its orders. (Ord. No. 84-351, 2, 9-18-84)

Sec. 8-54. Enforcement.

(a) *Citations generally.*

(1) Any litter enforcement officer, as herein defined, may issue a citation to any person, business entity, or other entity violating the requirements of section 5-16 (Garbage disposal--Watercraft), section 8-20 (Placing on land of another), section 8-21 (Construction or landscaping debris on streets, vacant lots), section 10-11 (Littering causeway), or Florida Statute Section 403.413, the Florida Litter Law of 1971 as amended from time to time. Any such violator receiving a citation shall be deemed charged with a misdemeanor in the second degree pursuant to Florida Statute Section 403.413(5).

(2) A violator may pay the fine as provided for herein below in subsection and waive his right to a hearing and enforcement by a county court judge.

(b) *Citation forms.* Citations used in citing litter violations shall be on prenumbered forms as required and approved by the clerk and shall provide blank spaces for entering of the following information:

(1) Date, time and location of violation.

(2) Name and address of violator.

(3) Violator's date of birth.

(4) Description of the violation.

(5) Directions as to payment of the penalty or request for a hearing.

(6) Statement as to the effect of the election to request a hearing rather than pay the fine listed on the citation.

(7) Name and signature of issuing officer.

(8) Name and signature of person receiving the citation.

(c) *Penalties.*

(1) Penalties imposed for the first violation of this section, except those violations to which subsection (e) is applicable, shall be:

a. Five dollars ($5.00), if paid to the finance director of the town within ten (10) days of issuance of the citation.
b. Fifteen dollars ($15.00) if paid to the finance director of the town more than ten (10) days but within twenty (20) days of issuance of the citation.

(2) If the fine outlined in subsection (c)(1) is not paid within the twenty (20) day period outlined therein, the clerk shall cause the violator listed on the citation to be served with a court summons requiring payment or attendance at a hearing at a time and place specified on such summons in accordance with Florida Rules of Criminal Procedure. A county judge, after a hearing, shall make a determination as to whether a littering violation has been committed and may impose a penalty not to exceed that authorized by Florida Statute Section 775.082 and Section 775.083, as amended from time to time.

(3) Nonpayment of the penalty within such twenty (20) day period shall be prima facie evidence of the violator's election to waive the right to pay the fine imposed in (c)(1)a. or b.

(d) *Hearing*

(1) A hearing may be requested by the person receiving such citation for the purpose of presenting evidence before a county judge concerning a littering violation. The cited person must request a hearing within twenty (20) days of the issuance of such citation by informing the clerk of the County Court of Brevard (Criminal Division) of such intention. Any person requesting a hearing who does not appear in accordance with such request, shall be subject to contempt proceedings or to such other penalties as the court may, in its discretion, impose to require compliance with this section.

(2) An election to request a hearing constitutes a waiver of the right to pay the fine indicated on the citation, and a county judge, after a hearing, may impose a penalty not to exceed the limits set forth in Florida Statute Section 775.082 and Section 775.083, as amended from time to time.

(e) *Court action without a citation.* In the event there is evidence to support a finding that:

(1) A citation is issued to a person, business or entity, or other entity which has previously been cited for violating any of the ordinances listed in subsection (a) or Florida Statute Section 403.413, as amended, or

(2) If the litter which is the subject of such violation is of a type or quantity that significantly and negatively impacts the public health or safety.

Then the town may institute court action pursuant to subsection (c)(2) without affording the benefit of the citation/fine procedure outlined in subsection (c)(1) by having a law enforcement officer arrest the violator pursuant to Florida Statute Section 403.143, as amended from time to time.

(f) *Authorized enforcement officer.* For purposes of this section, any parking enforcement specialist so designated by the town or any law enforcement officer of the town shall be authorized to issue citations hereunder. (Ord. No. 86-8, 1--6, 4-15-86)

Editor's note--Ord. No. 86-8, 1--6, adopted April 15, 1986, purported to amend the Code by adding provisions designated as 8-51. For purposes of classification, the editors have redesignated these provisions as 8-54.

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Chapter 9

LOCAL BUSINESS TAX*

Sec. 9-1. Persons required to obtain business tax receipt.

No person shall maintain a permanent business location or branch office within the town for the privilege of engaging in or managing any business, profession or occupation within the town without first obtaining a business tax receipt from the town clerk of the town. Said receipt shall be issued to every person upon payment of the amounts hereinafter provided for by the town clerk, who shall issue all such receipts. (Ord. No. 143, 1, 9-19-72; Ord. No. 06-14, 2, 10-17-06; Ord. No. 16-03, 1, 1-13-16)

State law reference--Similar provisions, F.S. 205.042.

Sec. 9-2. When business tax receipts sold and due; partial-year receipts; definitions; classification.

(a) The definitions set forth in Section 205.022, Florida Statutes, are hereby incorporated into this section and shall apply throughout this article. In addition, the term "tax year" means the period beginning October 1st of any calendar year and ending on the next succeeding September 30th.

(b) All business tax receipts required by this article shall be sold by the town clerk beginning on August 1st of each year, are due and payable on or before September 30th of each year, and shall expire on September 30th of the succeeding year. If September 30th falls on a weekend or holiday, the tax is due and payable on or before the first working day following September 30th. No business tax receipt shall be issued for more than one year, and any receipt issued after October 1st of any tax year shall expire on September 30th of the tax year. Any receipt applied for after October 1st, but prior to April 1st, of any tax year shall be issued upon payment of the full rate for a one year receipt. Any receipt issued after April 1st of any tax year shall be issued at a rate equal to one-half (l/2) the amount of the annual business tax hereinafter prescribed.

(c) Wherever a specific classification of a business is established herein, the specific classification shall govern over any general classification which would in the absence of the specific classification appear to apply.

(Ord. No. 143, 3, 9-19-72; Ord. No. 93-6, 1, 9-21-93; Ord. No. 02-06, 1, 3-19-02; Ord. 06-14, 3, 10-17-06; Ord. No. 16-03, 1, 1-13-16)

State law reference--Similar provisions, F.S. 205.053(1).

***Cross references--**Licensing of dogs and cats, 4-36 et seq.; alarm systems, 6-168 et seq.

Sec. 9-3. Transfer on sale of business.

All business tax receipts may be transferable to a new owner when there is a bona fide sale or transfer of the business, profession or occupation. Said transfer shall be made on payment of a transfer fee of 10 percent of the annual business tax, but in no event not less than $3 nor more than $25. (Ord. No. 143, 4, 9-19-72; Ord. No. 85-6, 1, 4-16-85; Ord. No. 93-6, 2, 9-21-93; Ord. 06-14, 4, 10-17-06)

State law reference--Similar provisions, F.S. 205.043(2).

Sec. 9-4. Transfer of location.

Upon written request and presentation of the original business tax receipt, any receipt may be transferred from one location to another location in the town upon payment of a transfer fee of up to ten percent of the annual business tax, but not less than $3 nor more than $25. (Ord. No. 143, 5, 9-19-72; Ord. No. 93-6, 3, 9-21-93; Ord. 06-14, 5, 10-17-06)

State law reference--Similar provisions, F.S. 205.043(3).

Sec. 9-5. Suspension, revocation authorized.

The town council may suspend or revoke any business tax receipt issued to any person for cause as determined by the council. (Ord. No. 143, 6, 9-19-72; Ord. 06-14, 6, 10-17-06)

Sec. 9-6. Delinquency penalty.

All existing receipts not renewed by October first of each year shall be considered delinquent and are subject to a delinquency penalty of ten percent (10%) for the month of October plus an additional five percent (5%) penalty for each month of delinquency thereafter until paid, provided that the total delinquency penalty shall not exceed twenty-five percent (25%) of the business tax fee. (Ord. No. 143, 8, 9-19-72; Ord. 06-14, 7, 10-17-06)

State law reference--Similar provisions, F.S. 205.053(1).

Sec. 9-7. Penalty for doing business without business tax receipt.

(a) Any person engaging in or managing any business, occupation or profession without first obtaining a business tax receipt as required by this article shall be subject to a penalty of twenty-five percent (25%) of the business tax fee determined to be due, in addition to any other penalties prescribed herein

(b) Any person who engages in any business, occupation, or profession covered by this chapter, who does not pay the required business tax within 150 days after the initial notice of tax due, and who does not obtain the required business tax receipt is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to $250.

(c) Each day of selling merchandise or engaging in a business, occupation, or profession without complying with this chapter shall constitute a separate and distinct violation of such chapter.

(d) The advertisement of any business, profession, or occupation, by sign, newspaper, magazine, or otherwise, shall raise a rebuttable presumption of the engaging in and carrying on in the town of the business, occupation, or profession so advertised.
(Ord. No. 143, 9, 9-19-72; Ord. 93-6, 4, 9-21-93; Ord. 06-14, 8, 10-17-06)

State law reference--Similar provisions, F.S. 206.053(2).

Sec. 9-8. Business tax not to permit business prohibited by zoning.

In no way shall the mere fact that a business tax is imposed hereby in anyway enable an occupation not otherwise authorized by the zoning ordinance to be performed in the town. (Ord. No. 257, 3, 5-21-79; Ord. No. 06-14, 9, 10-17-06)

Cross reference--Zoning generally, Ch. 17.

Sec. 9-9. Repealed.

Editor's note - Ord. No. 93-6, adopted September 21, 1993, repealed Sec. 9-9 which related to applicants for occupational licenses for building or construction to post a $2,000 bond.

Sec. 9-10. Repealed.

Editor's note – Ord. No. 06-14, adopted October 17, 2006 repealed Sec. 9-10 which relates to requirements for a building contractor's license

Sec. 9-11. Schedule of business taxes.*

The following enumerated business taxes shall be paid for the following named classifications of businesses, occupations and professions. Said rates or amounts are annual unless otherwise specified.

(1) APARTMENTS and/or other rental units, furnished or unfurnished, BED AND BREAKFAST, HOTELS and MOTELS. Any concession shall constitute a separate business.
- (A) Apartment with 5 or fewer units 60.00
- (B) Apartment with more than five units 100.00

(2) ARTISTS 30.00

(3) ATM's (Automatic Teller Machines) (not located on the premises of a bank, credit union, savings and loan association, or similar financial institution) 35.00

(4) AUCTIONEERS 30.00

(5) BAIL BONDSMEN 100.00

(6) BANKS, SAVINGS AND LOAN INSTITUTIONS, TRUST COMPANIES OR SIMILAR FINANCIAL ESTABLISHMENTS 200.00

(7) BARBERS or BEAUTY SALON
- (A) Shop (includes the first hairstylist) 50.00
- (B) Each hairstylist (except as provided in sub-section 9-12(b), who is an independent contractor and not an employee) 20.00

(8) CONTRACTORS* 75.00

(9) DRUG STORES 200.00

(10) GROCERY STORES 200.00

(11) HOME OCCUPATIONS 25.00

(12) INSURANCE
- (A) Agency 60.00
- (B) Each individual agent (except as provided in sub-section 9-12(b), who is an independent contractor and not an employee) 30.00
- (C) Company 60.00

***Cross reference** - Building and construction regulations generally, Ch. 6.

(13) LIQUOR DEALER (includes cocktail lounges and package stores) 50.00

(14) MERCHANTS, including but not limited to: Abstract or Title Companies; Air conditioning equipment sales; Aquariums and supplies; Arms dealers; Arts and crafts; Bakeries; Book agents or salesmen; Bottled water; Bridal services; Candy shops; Carpeting; China and crystal; Cigar, cigarette, and tobacco at retail, whether in connection with any other business or not; Convenience store; Dry cleaning establishments; Dry goods store; Electric appliances; Electronic sales and service; Fabric shops; Florists; Furniture stores; Gas dealers or distributors; Gasoline filling stations without regard to the number of pumps; Gasoline, kerosene distillate, furnace oil or fuel oil dealers or distributors; Gift shops; Glassware; Greeting cards; Gunsmiths, repairing guns and sporting goods; Hardware stores; Hearing aids and service; Heating equipment; Hobby shops; Hosiery and lingerie; Housewares; Jewelry stores; Laundromat; Maternity wear; Miscellaneous dealers, repairers and repair shops; Motion picture theater; Music store; Newspaper and magazine distributor; Office supplies; Paints; Photo finishing and supplies; Plastics; Salesmen including distributors (meaning any salesman or agent who warehouses a product within the town limits and does business by distributing such stocks after sale by him but who is not an employee of such business, except as provided in sub-section 9-12(b)), salesman or agent who sells merchandise who maintains a business office other than his home but who is not an employee of such business, except as provided in sub-section 9-12(b), order offices, representing mail order houses or any person engaged in the business of collecting accounts but who is not an employee of such business, except as provided in sub-section 9-12(b); Seafood and produce market; Sportswear and sporting goods; Stereo centers; Swimming pool equipment; Tackle, fishing and marina supply stores; Television sales and service; Ten cent stores; Water softener sales or services ……..50.00

(15) PROFESSIONAL SERVICES, including but not limited to: Accountants; Advertising; Architects; Attorneys; Auditors; Business Office; Designers; Bonds and stocks brokers or salesmen; Chiropractors; Claim and collecting agencies: Credit association (firms or corporations, or agents thereof, supplying information or collecting accounts for members); Decorators; Dentists; Employment agencies; Engineers; Massage and therapist; Optician; Optometrists; Osteopaths; Photographer; Physicians; Piano tuner; Publisher; Stenographer; Surveyor; Tailor; Travel agencies 50.00

(16) REAL ESTATE AGENTS AND BROKERS 50.00

(17) RESTAURANTS including but not limited to sit-down restaurants and delicatessens 60.00

(18) RESTAURANTS serving alcohol..... 60.00

(19) RESTAURANTS with drive-through window 60.00

(20) TAXI and LIMOUSINES
(A) First car 75.00
(B) Each additional car 10.00

(21) TELEPHONE COMPANIES..... 150.00

(22) VENDING MACHINES (each machine) 30.00
(Ord. No. 80-282, 1, 8-19-80; Ord. No. 89-27, 1, 9-19-89; Ord. No. 95-12, 1, 9-19-95; Ord. No. 01-09, 1, 5-21-01; Ord. No. 06-14, 11, 10-17-06; Ord. No. 16-11, 1, 4-13-16)

Sec. 9-12. Schedule of business taxes; exemptions.

(a) All persons engaging in any business, occupation, profession, or avocation of such nature that no business tax receipt can be properly required for it pursuant to section 9-11 above shall pay a business tax of fifty dollars ($50.00); provided, that business taxes shall only be levied on businesses, occupations, professions, or avocations meeting one of the three categories set forth in section 205.042. Florida Statutes.

(b) *Employees.* An individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt. An individual acting in the capacity of an independent contractor is not an employee for purposes of the assessment of a business tax. Notwithstanding any provisions in section 9-11, the exemption provided in this sub-section and section 9-11 does not apply to a business tax imposed on individual employees by a municipality, excepting real estate broker associates or sales associates, pursuant to an ordinance adopted before October 13, 2010. To the extent that the town, prior to October 13, 2010, had a classification system that was in compliance with the requirements of chapter 2015, Florida Statutes, and that actually resulted in individual employees paying a business tax may continue to impose such tax in that manner. See Section 205.066, Florida Statutes.

(c) *Real estate broker associate or sales associate.* An individual licensed and operating as a broker associate or sales associate under chapter 475 is not required to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt. See Section 205.067, Florida Statutes.

(d) *Sale of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom, except intoxicating liquors, wine or beer.* A local business tax receipt is not required of any person for the privilege of engaging in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom, except intoxicating liquors, wine, or beer, when such products were grown or produced by such person in the state. A wholesale farmers' produce market may pay a tax of not more than $200 for a receipt that will entitle the market's stall tenants to engage in the selling of agricultural and horticultural products therein, in lieu of such tenants being required to obtain individual local business tax receipt to so engage. See Section 205.064, Florida Statutes.

(e) *Charitable organizations; Occasional sales, Fundraising.* A business tax receipt is not required of any charitable, religious, fraternal, youth, civic, service, or other similar organization that makes occasional sales or engages in fundraising projects that are performed exclusively by the members, and the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic, and service activities of the organization. A "charitable institution" means only nonprofit corporations operating physical facilities in this state at which are provided charitable services, a reasonable percentage of which are without cost to those unable to pay. See Sections 205.022; 205.192, Florida Statutes.

(f) *Exemption allowed certain disabled persons, the aged, and widows with minor dependents.* All disabled persons physically incapable of manual labor, widows with minor dependents, and persons 65 years of age or older, and not more than one employee or helper, and who use their own capital only, not in excess of $1,000, may engage in any business or occupation in counties in which they live without being required to pay a business tax. The exemption provided by this sub-section shall be allowed only upon the certificate of the county physician, or other reputable physician, that the applicant claiming the exemption is disabled, the nature and extent of the disability being specified therein, and in case the exemption is claimed by a widow with minor dependents, or a person over 65 years of age, proof of the right to the exemption shall be made. Any person entitled to the exemption provided by this section shall, upon application and furnishing of the necessary proof as aforesaid, be issued a receipt which shall have plainly stamped or written across the face thereof the fact that it is issued under this sub-section, and the reason for the exemption shall be written thereon. See Section 205.162, Florida Statutes.

(g) *Exemptions allowed disabled veterans of any war or their unremarried spouses.* Any *bona fide*, permanent resident elector of the state who served as an officer or enlisted person during any of the periods specified in s. 1.01(14), Florida Statutes, in the Armed Forces of the United States, National Guard, or United States Coast Guard or Coast Guard Reserve, or any temporary member thereof, who has actually been, or may hereafter be, reassigned by the air force, army, navy, coast guard, or marines to active duty during any war, declared or undeclared, armed conflicts, crises, who was honorably discharged from the service of the United States, and who at the time of said person's application for a business tax receipt is disabled from performing manual labor shall, upon sufficient identification, proof of being a permanent resident elector in the state, and production of an honorable discharge from the service of the United States be granted a business tax receipt to engage in any business or occupation in the town which may be carried on mainly through the personal efforts of the receipt holder as a means of livelihood and of which the town business tax receipt does not exceed the sum of $50 without payment of any business tax otherwise provided for by law. When such person applies for a receipt to conduct any business or occupation for which the town business tax exceeds $50, the remainder of such tax in excess of $50 shall be paid in cash. Such receipt when issued shall be marked across the face "Veterans Exempt Receipt" – "Not Transferable." Before issuing the receipt, proof shall be duly made that the applicant is entitled under this law to receive the exemption. The proof may be made by establishing to the satisfaction of the town by means of certificate of honorable discharge or certified copy thereof that the applicant is a veteran within the purview of this sub-section and by exhibiting a certificate of government-rated disability to an extent of 10 percent or more; an affidavit or testimony of a reputable physician who personally knows the applicant and who makes oath that the applicant is disabled from performing manual labor as a means of livelihood; a certificate of the veteran's service officer of the county in which the applicant lives, duly executed under the hand and seal of the chief officer and secretary thereof, attesting the fact that the applicant is disabled and entitled to receive a receipt within the meaning and intent of this sub-section; a pension certificate issued to said person by the United States government by reason of such disability; or such other reasonable proof as may be required by the town to establish the fact that such applicant is disabled. The unremarried spouse of a deceased disabled veteran of any war in which the United States Armed Forces participated is entitled to the same exemptions as the disabled veteran. See Section 205.171, Florida Statutes.

(h) *Religious institution.* A business tax receipt is not required of any religious institution. A "religious institution" for purposes of this sub-section means churches and ecclesiastical or denominational organizations or established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and also includes church cemeteries. Section Sections 205.022(1)(a); 205.191; 205.192, Florida Statutes.

(i) *Educational institution.* A business tax receipt is not required of any educational institution. An "educational institution" means a state tax-supported or parochial, church and nonprofit private school, college, or university conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Schools, the Department of Education, or the Florida Council of Independent Schools. Nonprofit libraries, art galleries, and museums open to the public are defined as educational institutions and eligible for exemption. See Section 205.022(1)(b), Florida Statutes.
(Ord. No. 80-282, 1, 8-19-80; Ord. No. 95-12, 2, 9-19-95; Ord. 06-14, 12, 10-17-06; Ord. No. 16-11, 2, 5-16-16)

Sec. 9-13. Interpretation and administration of business tax provisions.

(a) The town clerk shall be charged with the administration of this chapter. All questions of interpretation relating to this chapter, the tax amount due, or occupational categories to which occupations should be assigned for assessment purposes shall be first presented to the town clerk. Any interpretation shall be subject to rendition in a written, dated form. Thereafter, the town council shall decide appeals from the town clerk's interpretation where it is alleged that there is error in any order, requirement, decision or determination made by the town clerk in interpretation.

(b) Appeals to the town council may be taken by any person determined to be liable for payment of a business tax and subject to a decision of the town clerk that said person believes to be adverse to said person's interests.

(c) Appeals to the town council shall be made within a reasonable time not to exceed thirty (30) days following the date of rendition of the interpretation or other determination as set forth in this section. An appeal may be initiated by filing with the town clerk, a notice of appeal specifying the ground thereof and the decision appealed from. The town clerk shall promptly transmit to the town council all papers constituting the record upon which the action appealed from was taken. The town clerk shall fix a time for a hearing of the appeal within sixty (60) days and give notice thereof to the parties in interest. At the hearing, any party may appear in person or by agent or attorney.
Ord. No. 95-12, 3, 9-19-95; Ord. No. 06-14, 13, 10-17-06; Ord. No. 16-03, 1, 1-13-16; Ord. No. 16-11, 1, 2, 5-16-16)

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Chapter 10

OFFENSES - MISCELLANEOUS

Art. I. In General, 10-1--10-28
Art. II. Reserved, 10-29--10-49
Art. III. Commercial Store Security, 10-50--10-52
Art. IV. Rave Clubs 10-60—10-77
Art. V. Sexual Predators and Offenders 10-80 – 10-85

ARTICLE I. IN GENERAL

Sec. 10-1. Reserved.

Sec. 10-2. Bicycles; mutilating serial numbers.

It shall be unlawful for any person to mutilate any serial number on a bicycle placed thereon by the manufacturer or by the chief of police or his representative. It shall be unlawful for any person to have in his possession any bicycle from which either of such numbers has been removed. (Code 1962, 7-1)

Sec. 10-3. Reserved

Sec. 10-4. Reserved.

Editor's note- Ord. No. 17-04, 2, 3, 4, adopted 3/8/17, repealed 10-1, 10-3, and 10-4 as items already covered by State Law.

Sec. 10-5. Curfew for children.

(a) It shall be unlawful for any person under eighteen (18) years of age who is not an emancipated minor to be or remain upon any street or alley or public place in the town after 12:00 p.m. midnight and before 5:00 a.m. of the following day unless such person is:

(1) Accompanied by a parent or guardian or other adult person having custody and control of such minor;

(2) In the performance of a duty directed by such parent or guardian or other person having custody and control;

(3) Engaged in or traveling to or from lawful employment;

(4) On a lawful or emergency errand;

(5) In or traveling to or from lawful school, associational or recreational activities; or

(6) Traveling through the town on an interstate or intrastate trip.

Provided, that any person under eighteen (18) may be on the public sidewalk in front of his or her home or with another in front of that person's home during curfew hours.

(b) An "emancipated minor" shall be defined as any person under the age of eighteen (18) who establishes that she or he is not legally subject to the custody or care of a parent or guardian.

(c) Every member of the police force while on duty is hereby authorized to detain any minor willfully violating the provisions of paragraph (a) of this section until a parent or guardian of such minor shall take him or her into said person's custody and control; but such officer shall immediately upon taking custody of the child, if possible, communicate with a parent or guardian and shall also notify the appropriate person from the State of Florida Department of Health and Rehabilitative Services. (Code 1962, 20-51; Ord. No. 88-2, 1, 12-15-87)

Sec. 10-6. Reserved.

Sec. 10-7. Reserved.

Sec. 10-8. Reserved.

Sec. 10-9. Reserved.

Sec. 10-10. Reserved.

Sec. 10-11. Reserved.

Editor's note--Ord. No. 84-351, 1, adopted Sept. 18, 1984, repealed 10-11, pertaining to littering of causeway areas, derived from Code 1962, 8-5. Ord. No. 17-04, 5, 6, 7, adopted March 8, 2017, repealed 10-6, 10-9, and 10-10 as items already covered by State Law.

Sec. 10-12. Loitering.

For the purpose of this section, "loitering" means the act of standing or remaining in or about any public street, public sidewalk, public overpass or public bridge, or other place specifically enumerated herein. A person commits the offense of loitering when he knowingly:

(a) Loiters on any public street, public sidewalk, public overpass, public bridge or public place so as to hinder, or impede or tend to hinder or impede the passage of pedestrians or vehicles.

(b) Loiters in or about any police station, police headquarters building, court building, or any other public building or place for the purpose of soliciting employment of legal services or sureties upon criminal recognizance. (Ord. No. 171, 3, 3-18-74; Ord. No. 233, 1, 7-15-78)

State law reference--Loitering and prowling generally, F.S. 856.021.

Sec. 10-13. Noise; definitions; procedures.

(a) As used in section 10-13.1 through 10-14 below, the following words and phrases shall have the meanings ascribed to them unless the context clearly indicates differently:

(1) *Loud and disturbing noises* shall mean those noises, whether produced physically, mechanically, electrically or electronically, which are of sufficient sound and volume so as to disturb the peace of the surrounding neighborhood. Nothing in this definition is intended to regulate any matters specifically preempted by s. 790.33, Florida Statutes, such as the making of a loud and unusual noise with a firearm or ammunition. The objective method of measurement of such noise standards shall be as follows:

a. Sound levels shall be measured with a sound level meter and associated octave band filter manufactured according to standards prescribed by the American National Standards Institute, Inc. (American National Standard Institute General Proposed Sound Level Meters for Measurement of Noise and Other Sounds ANSI S1.4-1971, American National Standards Institute, Inc., New York, New York, and American National Standards Institute, Inc. Standard Method for the Measurement of Sound, Pressure Level ANSI S1.13-1971, or the latest edition of such standards shall be used, R-1976).

b. Locational requirement for measurement. Sound levels shall be measured along with boundaries of the noise site.

c. Maximum permissible sound levels by category. In the enforcement of the regulation, noises produced by the operation of motor vehicles or other transportation facilities shall not be included in determining the maximum permitted decibel level. The maximum permissible sound pressure levels (sound level limit) at the location of measurement for noise radiated for periods of ten (10) minutes or more from a property or for thirty seconds or more from a public right-of-way are identified in the table below:

SOUND LEVELS BY CATEGORY

Category	*Sound Level Limit dB(A)*
Residential, Residential-Professional Zoning District	55
Commercial, C-1 and C-2	65
Residential swimming pool alarms at ten (10) feet)	85
Tourist Zoning	55
Noise from vehicles or controlled by persons on public rights-of-ways in any area of town as measured from the edge of the right-of-way	55

(2) *Sound amplifying equipment* shall mean any instrument, machine or device for the amplification of the human voice, music or any other sound, including, but not limited to speakers, sound systems, radios, tape players, musical instruments, mechanical, electrical or electronic devices, etc. The phrase shall exclude warning devices on authorized emergency vehicles and warning devices and horns on other vehicles used only for traffic safety purposes.

(3) *Sound truck* shall mean any motor vehicles or other vehicle having mounted thereon or attached thereto any sound amplifying equipment.

(4) *Decibel* is one-tenth (l/l0) of a bel and is a unit of level when the base of the logarithm is the tenth root of ten (10), and the quantities concerned are proportional to power.

(5) *Sound-level meter* is an instrument including a microphone, an amplifier, an output meter, and frequency weighing networks for the measurement of noise and sound levels in a specified manner.

(6) *Sound analyzer* is a device for measuring the band-pressure level or pressure spectrum level of a sound as a function of frequency.

(7) *Person* is any person, person's firm, association, co-partnership, joint venture, corporation or any entity public or private in nature.

(8) All technical definitions are in accordance with American Standard S1. 1-1960 entitled Acoustical Terminology.

(b) Measurement of sound. The measurement of sound or noise shall be made with a sound level meter and octave band analyzer meeting the standards prescribed by the American Standards Association. The instruments shall be maintained in calibration and good working order. Octave band corrections may be employed in meeting the response specification. A calibration check shall

be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used when required. (Code 1962, 20-24; Ord. No. 88-14, 1, 10-25-88; Ord. No. 89-19, 1, 7-18-89; Ord. No. 01-04, 1, 2-20-01; Ord. 11-18, 10, 10-18-11)

Sec. 10-13.1. Hours during which loud and disturbing noise is prohibited.

(a) Excepting activities as set forth in Section (b) hereof, no person shall make or cause to be made any loud or disturbing noise within the town between the hours of 10:00 p.m. and 7:00 a.m. of the following day. However, the town manager may recognize that such loud or disturbing noise may occur on special events, as so declared by the town council (e.g. – Independence Day July 4th celebrations and Town Fiftieth anniversary celebration).

(b) No person shall make, or cause to be made, any loud or disturbing noise within the town while performing demolition, excavation, erection, alteration, or repair of any building as to create noise of such character, intensity, and duration as to be detrimental to public health, welfare, and peace other than between the hours of 7:30 a.m. to 8:00 p.m. on weekdays and 8:00 a.m. to 8:00 p.m. on Saturdays, Sundays, and holidays. (Ord. No. 88-14, 2, 10-25-88; Ord. 02-14, 6, 6-18-02; Ord. 05-12, 1, 8-16-05)

Editor's note--Ord. No. 88-14, 2--5, adopted Oct. 25, 1988, amended the Code by adding provisions designated as 10-13.5, 10-13.51--10-13.53. In order to conform to existing Code style, these provisions have been redesignated as 10-13.1--10-13.4 at the discretion of the editor.

Sec. 10-13.2. Sound amplifying equipment--Permit for use.

No person shall use or cause to be used any sound amplifying equipment, either mounted on a sound truck or otherwise, for the purpose of producing or reproducing sound which is cast upon the public streets for any purpose, without first obtaining a permit application from the police chief. The permit must be approved and signed by the police chief and the town manager and can be revoked at any time that the permit is used so as to create a public nuisance. The town manager may permit the use of sound amplifying equipment in town parks. The town manager may permit the use of sound amplifying equipment on private property in C, C-1, C-2 or SC districts for special events as so declared by the Town Council. (Ord. No. 88-14, 3, 10-25-88; Ord. No. 11-06, 1, 4-19,11; Ord. No. 11-16, 1, 8-16-11)**Note**--See the editor's note at 10-13.1.

Sec. 10-13.3. Same--Application.

Application for the issuance of a permit provided for in the preceding section shall be filed with the police chief in duplicate at least twenty-four (24) hours prior to the issuance of said permit. The application shall contain the following information:

(1) Name and home and business address of applicant.
(2) License and motor number of sound truck, when applicable.
(3) Name and address of all persons who will use the sound amplifying equipment.
(4) The purpose for which the sound amplifying equipment will be used.
(5) The section of the town in which the sound amplifying equipment will be used.
(6) The hours of operation of the sound amplifying equipment. (Ord. No. 88-14, 4, 10-25-88)

Note--See the editor's note at 10-13.1.

Sec. 10-13.4. Same--Restriction on hours, days of operation.

The use of sound amplifying equipment for the purpose of reproducing or producing sound which is cast upon the public streets of the town shall be restricted to between the hours of 11:00 a.m. and 5:00 p.m. every day except Sunday. The use of such equipment is prohibited on Sunday. The town manager may extend the hours and permit use on Sunday for the use of sound amplifying equipment for special events. Permits issued by the town manager for town parks shall be restricted to between the hours of 7:00 a.m. and 9:00 p.m. every day. (Ord. No. 88-14, 5, 10-25-88; Ord. No. 02-14,7, 6-18-02; Ord. 11-06, 2, 4-19-11; Ord. 12-03, 1, 12-20-11; Ord. 13-04, 1, 1-15-13)

Note--See the editor's note at 10-13.1.

Sec. 10-14. Regulation of noise created by motor vehicles and internal combustion engines.

Motor vehicle or internal combustion engine noise regulated; noise level limits. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motorboat or motor vehicle except through a muffler or other device which will effectively check loud or explosive noises therefrom is hereby prohibited. A muffler shall be defined as a device consisting of a series of chambers or baffle plates or other mechanical design for the purpose of receiving exhaust gas from an internal combustion engine and effective in reducing noise and no person shall modify the exhaust system of a motor vehicle in a manner which will amplify or increase the noise emitted by the motor of such vehicle than emitted by the muffler originally installed on the vehicle and such original muffler shall comply with all of the requirements of this section.

It shall be unlawful to operate a motor vehicle or internal combustion engine within the limits of the Town of Indialantic which creates a noise or sound which exceeds the following noise level limits:

All motor vehicles: Fifty-five (55) decibels measured at twenty-five (25) feet from the edge of the right-of-way. (Code 1962, 20-25; Ord. No. 88-14, 6, 10-25-88)

Sec. 10-14.1. Sections 10-13.1 through 10-14; penalties for violation.

(a) *Warning.* No person or business entity shall be served with a notice of violation of sections 10-13.1 through 10-14 without first being given a verbal warning of the violation occurring by an officer of the Indialantic Police Department and a reasonable opportunity to comply with said warning.

(b) *Penalties.* A violation of sections 10-13.1 through 10-14, if not abated after the verbal warning given pursuant to subsection (a), above, shall be a second degree misdemeanor punishable by a fine of up to five hundred dollars ($500.00) and/or sixty (60) days imprisonment. (Ord. No. 88-14, 7, 10-25-88)

Editor's note--Ord. No. 88-14, 7, adopted Oct 25, 1988, amended the Code by adding provisions designated as 10-14.5 which have been redesignated as 10-14.1 at the discretion of the editor.

Sec. 10-15. Reserved.

Editor's note-- Ord. No. 17-04, 8, adopted March 8, 2017, repealed 10-15 as an item already covered by State Law.

Sec. 10-16. Officers; interfering with.

It shall be unlawful for any person to interfere, or conduct himself in any manner which shall interfere with or prohibit any official or employee of the town from performing his official duties. (Code 1962, 20-28)

Sec. 10-17. Peddlers and solicitors; invitation required; exceptions.

(a) As used in this section, the following words shall have the following definitions:

(1) "Peddler" shall mean and refer to a person traveling by foot, motor vehicle, or any other type of conveyance from place-to-place, house-to-house, or from street-to-street, and who carries, conveys, offers for sale or sells goods, wares, merchandise, or makes deliveries of goods, wares, or merchandise from place-to-place or house-to-house. Any person who solicits orders and, as a separate transaction, makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this section shall be deemed to be a "peddler" subject to the provisions of this section. The word "peddler" shall also include "hawker."

(2) "Private residence" shall mean and refer to a residential structure and any real property visibly appurtenant thereto, including, for example, a single-family home and the fenced in lot upon which the home is located. A condominium or apartment building private residence shall include the doorway to an individual apartment unit but shall not include the property upon which the residential structure is located or the hallways and other common areas of a residential structure, unless the entire common properties have been posted as provided in this section.

(3) "Solicitor" shall mean and refer to a person who, for compensation, offers for sale, sells, or delivers any wares, merchandise, goods, or services within the town.

(b) The following non-exclusive list of activities are specifically exempted from the terms of this section:

(1)Persons selling or delivering milk and dairy products, bakery goods, or other food products;

(2)Persons delivering or picking up laundry, dry cleaning, garbage, yard clippings, trash, or items intended for solid waste recycling pursuant to a town approved franchise, garment storage, linen supply, towel supply, and diaper services agents, all operating from vehicles that are clearly marked;

(3)Newspaper delivery persons on regular routes; and

(4)Person engaged in the sale or maintenance of services by utilities, including but not limited to electric, water, sewer, telephone and cable television.

(c) Unless requested or invited by the occupant of a private residence, it shall be unlawful for any commercial solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise, sales, or services, to go in and upon a private residence for the purpose of soliciting orders for the sale of goods, wares, merchandise, or services, or for peddling or hawking the same, after the property owner or legal occupant of said private residence has given notice that such owner or occupant is not interested in being approached by any commercial solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise, sales or services. Notice as required by this section may be given by posting and continuously maintaining a sign not to exceed 4" x 12" in a conspicuous location on the private residential property leading to the entrance of a structure on the private residential property which sign states "No Soliciting" or words of a substantially similar nature that would place a reasonably prudent person on notice that the private residential property owner or occupant does not wish to be subject to soliciting, peddling, or hawking of merchandise, sales, or services. Where there is more than one entrance to a residential structure that might reasonably be expected to be used by a solicitor, peddler, itinerant merchant, or hawker of merchandise, sales, or services, each such entrance shall be posted as provided herein. A condominium association may post, as provided herein, the common elements of a condominium to prohibit commercial soliciting, peddling, or hawking of merchandise, sales, or services. The owner or agent of the owner of a non-condominium apartment building may post, as provided herein, the common areas of the apartment property to prohibit commercial peddling, soliciting, or hawking of merchandise, sales, or services.

(d) Each solicitor/peddler going door-to-door to residential units within the town will carry on his/her person at all times while soliciting/peddling within the town identification depicting his/her current photograph, full name, residence address, date of birth, and name of employer and/or the agency for whom he/she is soliciting/peddling.
(Code 1962, 20-30; Ord. No. 93-3, 1, 6-15-93; Ord. 12-09, 2, 5-9-12)

Cross reference--License tax for peddlers, 9-11(84).

Sec. 10-18. Reserved.

Sec. 10-19. Reserved.

Sec. 10-20. Resverved.

Editor's note--Ord. No. 17-04, 9, 10, 11, adopted March 8, 2017, repealed 10-18, 10-19, and 10-20 as items already covered by State Law.

Sec. 10-21. Posting bills, notices, advertisements.

(a) It shall be unlawful to tack, paste or otherwise attach any advertisement, notice, circular, bill or poster of any kind upon any tree, post, utility or other pole, or upon any public building or other public property.

(b) It shall be unlawful to tack, paste or otherwise attach any advertisement, notice, circular, bill or poster of any kind upon any private building or other private property without the express written consent of the owner thereof. (Code l962, 20-33)

Cross Reference--Littering generally, 8-50 et. seq.

Sec. 10-22. Private detectives regulated.

In addition to complying in all respects with Florida Statutes, Chapter 493, a private detective shall be subject to the following regulations:

(a) If he wears a uniform, then it must be a distinctive uniform which clearly distinguishes him from members of any police department.

(b) His uniform and badge, if any, shall prominently display the lettering "private patrol."

(c) The word "police" shall not be used in any way in connection with advertising, lettering on vehicles, stationery, or in any other manner to promote the work or business of a private detective.

(d) He shall never expressly or impliedly represent himself to be a member of any governmental law enforcement agency.

(e) He must immediately report to the police department any irregularity or violation of laws or ordinances that may come to his attention, provided that he shall not be required to report traffic offenses which do not involve personal injuries or property damages less than one hundred dollars ($100.00). (Code 1962, 11-6)

Sec. 10-23. Reserved.

Sec. 10-24. Reserved.

Sec. 10-25. Reserved.

Sec. 10-26. Reserved.

Sec. 10-27. Reserved

Sec. 10-28. Reserved.

Editor's note-- Ord. No. 17-04, 12-16, adopted March 8, 2017, repealed 10-24 through 10-28 as items already covered by State Law.

ARTICLE II. RESERVED

Secs. 10-29—10-49. Reserved

ARTICLE III. COMMERCIAL STORE SECURITY

Sec. 10-50. Definitions.

As utilized in this article, the following term(s) are defined as follows:

Commercial store. A place of business that is engaged in the retail sale of products or services, including but not limited to automotive gas or service stations; attended "coin" laundries; convenience stores engaged in the sale of retail groceries, including but not limited to prepared foods; stores renting or selling video tapes; stores vending prepared foods for off premises consumption; or other commercial or retail stores selling services or merchandise. Commercial stores subject to this article shall be those stores that are regularly open for business at any time between the hours of 9:00 p.m. and 5:00 a.m. The term "commercial store" does not include a store which is solely or primarily a restaurant or store that is unattended by an employee during said hours, such as an unattended "coin" laundry.

Operator of a Commercial Store. The person, corporation, partnership or other legal entity having lawful possession of the premises upon which a commercial store is operated. (Ord. 91-10, 1, 5-21-91)

State law reference--F.S. 812.171-812.175

Sec. 10-51. Commercial store security.

Each commercial store located within the Town shall meet the following standards to promote security and safety:

1. Have lighted parking lots sufficiently illuminated such that persons within the parking area are visible from an adjacent public right-of-way during the hours after 9:00 p.m. and before 5:00 a.m.;

2. Post a conspicuous sign in the commercial store entrance which states that the cash register or other container holding cash contains $50 or less;

3. Maintain window signage so that there is a clear and unobstructed view of the cash register and transaction area from outside the commercial store;

4. Prohibit window tinting on the windows of the establishment, if such tinting reduces exterior or interior viewing at any time during the hours of operation of 9:00 p.m. to 5:00 a.m.;

5. Install height markers at the entrance of the establishment which display height measures from the floor up to seven feet in height; and

6. Be equipped with a security camera system capable of retrieving an image to assist in the identification and apprehension of a robber.

(Ord. 91-10, 2, 5-21-91)

State law reference--F.S. 812.171-812.175

Sec. 10-52. Enforcement.

(a) The Code Enforcement Board is hereby granted the authority to enforce compliance with this article and to assess fees for noncompliance in the manner provided for by Chapter 162, Florida Statutes.

(b) This article shall not be the subject of a code enforcement board hearing involving any commercial store existing at the time of adoption of Ordinance No. 91-10, until at least nine (9) months after a copy of the ordinance and explanatory letter generally describing said ordinance has been mailed to the operator of a commercial store that is alleged by the code enforcement officer to be in violation of this article. (Ord. 91-10, 3, 5-21-91)

State law reference--F.S. 812.171-812.175

ARTICLE IV. RAVE CLUBS.

Sec. 10-60. Legislative findings, intent, and purpose.

(a) The town hereby finds and determines, as a matter of fact, that the late night and all night rave clubs and similar forums of assembly, commonly referred to as "raves," are sites for the sale, possession and use of illicit drugs.

(b) The town also finds such raves expose drug activity to the uninitiated youth of the community, and such exposure to drug activity occurring at such raves is often found to result in drug addiction, overdose and death of both juveniles and adults.

(c) The town hereby finds raves provide an arena for predatory-type sexual crimes, thus, for the protection of our town's youth, juveniles should not congregate in such social settings with adults; additionally, regulation of raves is also necessary for the protection of adult victims of such crimes.

(d) The town hereby finds raves are often times the sites for violent criminal activity, as well as street gang activity as defined in Chapter 874, Florida Statutes.

(e) The town hereby finds that the dangerous criminal activity occurring at such raves occurs predominately in the late night/early morning hours.

(f) The town hereby finds that the actions of rave patrons entering and exiting rave club establishments has a deleterious effect on nearby residential and commercial properties in terms of excessive noise, traffic and debris, and such impacts are exacerbated by the fact that rave patrons enter and exit such raves at extraordinarily late night/early morning hours when citizens have a reasonable expectation of peace and quiet.

(g) The town finds that the above-referenced problems associated with raves are unique and specific to such rave club establishments and are not prevalent in other types of unregulated places of assembly.

(h) It is the intent of the town to address the unique problems associated with raves by implementing rave club regulations for both juvenile and adult rave clubs to prevent rave club contact between juveniles and adults so as to prevent and/or reduce illicit or undesirable juvenile involvement and exposure to illegal drugs and dangerous criminal activity, and further to protect both juveniles and adults from criminal activity that occurs at such raves.

(i) The town hereby asserts that the following purposes of the rave club regulations set forth herein are matters of legitimate, substantial and compelling governmental interests:

(1) To protect juveniles and adults from illegal drug activity, including use, sale and drug abuse such as overdoses and to reduce, if not eliminate, such activity from occurring in rave clubs;

(2) To protect juveniles and adults from violent criminal activity occurring in rave clubs;

(3) To protect juveniles and adult victims from predatory-type sexual crimes occurring in rave clubs;

(4) To protect juveniles and adults from gang-related activity occurring in rave clubs;

(5) To reduce the amount of criminal activity occurring predominately in the late night/early morning hours;

(6) To prevent the deleterious impacts of noise, traffic and debris on adjacent residential and commercial property that occur in the late night/early morning hours.

(Ord. No. 02-11, 1, 4-16-02)

Sec. 10-61. Definitions.

For the purposes of this article, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise.

Adult rave club means any rave club whose patrons or admittees are eighteen (18) years of age or older.

Conviction or *convicted* means the finding of guilt for a violation of a municipal or county ordinance or state or federal law, adjudication withheld on such a finding of guilt, an adjudication of guilt on any plea of guilty or *nolo contendere*, or the forfeiture of a bond or bail when charged with a violation of a municipal or county ordinance or state or federal law.

Juvenile rave club means any rave club whose patrons or admittees are seventeen (17) years of age or younger.

Knowingly means with actual knowledge of a specific fact or facts, or with reasonable inquiry, a reasonable person should have known a specific fact or facts.

Permit or rave club permit means a permit to operate a rave club.

Permittee means a person in whose name a permit to operate a rave club has been issued, as well as the individual listed as an applicant on the application for a rave club permit.

Person means an individual, partnership, corporation, association or legal entity.

Premises means the building, the lot, parking areas, and any area under the control of the operator of a rave club.

Rave club means any place, area or property which is operated either as an ongoing enterprise or undertaking or as a one time event or a limited number of events, which is open to the public, and which:

(1) Has music, either live or electronically produced or transmitted; and

(2) Has space available for dancing, or dancing is permitted, whether such dancing takes place or not; and

(3) Allows free admission or admission by payment of a direct or indirect charge, fee, donation, or any form of consideration, or by the purchase, possession or presentation of a ticket, token, or membership card; and

(4) Is not licensed or permitted to sell, serve, or dispense alcoholic beverages for on-premises consumption, or permit alcoholic beverages to be consumed on premises.

Notwithstanding the foregoing, a "rave club," as defined herein, does not include:

(i) An establishment with a license reviewed and approved by the State of Florida to sell, serve or dispense alcoholic beverages for on-premises consumption;

(ii) A bona fide dance studio where students are taught the art of dancing or ballet;

(iii) A private residence or residential facility from which the general public is excluded;

(iv) A place owned and operated by the federal, state, or local government;

(v) A public or private elementary school, secondary school, college, or university;

(vi) A place owned, leased or operated by a not for profit organization and sponsored by a bona fide law enforcement organization or federal, state, local government or school board;

(vii) An adult dancing facility or adult entertainment facility, as defined in chapter 61, town code, lawfully established, existing, permitted and licensed under the provisions thereof, during such hours of the day as said establishment is being lawfully and principally operated as an adult use; or

(viii) A place owned, leased or operated by a bona fide religious organization, created, organized, existing and recognized as such pursuant to all applicable law including federal tax laws and 26 U.S.C. section 501(c)(3) tax exempt religious organization.

Rave club regulations mean the regulations set forth in this article.
(Ord. No. 02-11, 2, 4-16-02)

Sec. 10-62. Permit required; Application for permit.

(a) No person may operate a rave club without a permit.

(b) A notarized application for a permit shall be made on a form provided by the town manager or the town manager's designee. The applicant must be qualified according to the provisions of this article.

(c) The applicant shall indicate whether the application is for a juvenile rave club or adult rave club.

(d) A person who wishes to operate a rave club shall sign the application for a permit as

applicant. If a person who wishes to operate a rave club is other than an individual, each individual who has a twenty percent (20%) or greater interest in the business must sign the application for a permit as an applicant. Each applicant must meet the requirements of section 10-63, and each applicant shall be considered a permittee if a permit is granted.
(Ord. No. 02-11, 3, 4-16-02)

Sec. 10-63. Requirement for issuance of permit; Posting.

(a) The town manager, or the town manager's designee, shall approve issuance of a rave club permit within sixty (60) days after receipt of an application unless the town manager, or said manager's designee, finds one (1) or more of the following to be true:

(1) An applicant is under eighteen (18) years of age.

(2) An applicant has failed to answer or falsely answered a question(s) or request for information on the application provided.

(3) An applicant has been convicted of a violation of any rave club regulation within two (2) years immediately preceding the application.

(4) An applicant has failed to obtain a certification from the fire marshal that the rave club complies with all applicable provisions of chapter 7, town code, relating to fire prevention, relative to places of assembly, including, but not limited to, maximum permitted occupancy load and places of assembly.

(5) An applicant has failed to obtain a certification from the building official that the rave club complies with all applicable provisions of the land development code, as designated in section 11-8, town code, including, but not limited to, parking and places of assembly.

(6) An applicant has been convicted of a crime,

a. Involving:

1. Any felony, or

2. Any misdemeanor offense of Florida Statutes: chapter 784, assault; battery; culpable negligence; chapter 787, kidnapping; false imprisonment; luring or enticing a child; custody offenses; chapter 790, weapons and firearms; chapter 794, sexual battery; chapter 800, lewdness; indecent exposure; chapter 812, theft, robbery and related crimes; chapter 827 abuse of children; chapter 837, perjury; chapter 856, drunkenness; open house parties; loitering; prowling; desertion; chapter 562, selling, serving or giving alcoholic beverages to a minor; chapter 859, poisons; adulterated drugs; chapter 870, affrays; riots; routs; unlawful assemblies; chapter 874, street terrorism enforcement and prevention; chapter 877, miscellaneous crimes, and chapter 893, drug abuse prevention and control, as said chapters currently exist or may be amended or superceded from time to time, or

3. Any violation of rave club regulations of any other town, county, state or government; and

b. For which:

1. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if t he conviction is of a felony offense; or

3. Less than five (5) years have elapsed since the date of the last

conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four month period.

(7) An applicant has been convicted of a felony involving any sexual crime against a minor.

(b) The fact that a conviction is being appealed has no effect on the disqualification of the applicant under subsection (a) above.

(c) An applicant who has been convicted of an offense listed in subsection (a)(6)a. may qualify for a rave club permit only when the time period required by subsection (a)(6)b. has elapsed.

(d) The application shall be reviewed by the police department, the fire department and the town manager, or the town manager's designee, for compliance with the provisions of this section. Review shall be conducted by the police department and the fire marshal/inspector within thirty (30) days from the receipt of the application by the town manager, or said manager's designee, and their comments forwarded to the town manager, or said manager's designee, for consideration in issuance of the permit in accordance with the provisions hereof.

(e) The town manager or designee, upon approving issuance of a rave club permit, shall send to the applicant, by hand delivery or U.S. mail, written notice of that action and state where the applicant must pay the permit fee and obtain the permit. The town manager's approval of the issuance of the permit does not authorize the applicant to operate a rave club until the applicant has paid all fees required by this chapter and obtained possession of the permit.

(f) The permit shall state on its face the name of the person to whom it is granted, the expiration date, the address of the rave club, and whether it is issued for a juvenile rave club or an adult rave club.

(g) The permit must be posted in a conspicuous place at or near the entrance to the rave club so that it may be easily read at any time.
(Ord. No. 02-11, 4, 4-16-02)

Sec. 10-64. Application and renewal fees.

The town council may, by resolution, establish non-refundable fees for the town to review the contents of a rave club permit application and for each renewal permit issued under the terms of this chapter.
(Ord. No. 02-11, 5, 4-16-02)

Sec. 10-65. Persons under eighteen (18) prohibited in adult rave clubs.

(a) No person under the age of eighteen (18) years may enter an adult rave club unless accompanied by a parent or guardian.

(b) No person shall falsely represent himself or herself to be either a parent or guardian of another person under the age of eighteen (18) years for the purpose of gaining the other person's admission into an adult rave club.

(c) No permittee or employee of an adult rave club shall knowingly allow a person under the age of eighteen (18) years to enter or remain on the premises of an adult rave club.

(d) No permittee of an adult rave club shall maintain or operate the premises without posting a sign at each entrance to the business that reads: "It is unlawful for any person under eighteen (18) years of age to enter this premises without being accompanied at all times by said person's parent or guardian."
(Ord. No. 02-11, 6, 4-16-02)

Sec. 10-66. Persons age eighteen (18) and over prohibited in juvenile rave clubs.

(a) No person over eighteen (18) years of age may enter a juvenile rave club except:
(1) A permittee or employee of the rave club;
(2) A parent or guardian of a rave club patron inside the juvenile rave club; or
(3) A governmental employee in the performance of official duties.

(b) No person shall falsely represent himself or herself to be under eighteen (18) years of age for the purpose of gaining admission to a juvenile rave club.

(c) No permittee or employee of a juvenile rave club shall knowingly allow a person eighteen (18) years of age or over to enter or remain on the premises of the juvenile rave club.

(d) No permittee of a juvenile rave club shall maintain or operate the premises without posting a conspicuous sign at the entrance to the business that reads: "It is unlawful for any person over eighteen (18) years of age to enter this premises."
(Ord. No. 02-11, 7, 4-16-02)

Sec. 10-67. Hours of operation.

(a) No person shall operate a juvenile rave club during any hours other than 4:00 p.m. to 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday, and from 4:00 p.m. on Friday to 12:01 a.m. of the following day, and from 1:00 p.m. Saturday to 12:01 a.m. of the following day. The establishment shall close and all customers or members shall vacate the premises when it is required to close until the time that the establishment may legally open for operation.

(b) No person shall operate an adult rave club during any hours other than 1:00 p.m. to 1:00 a.m. of the following day. The establishment shall close and all customers or members shall vacate the premises when it is required to close until the time that the establishment may legally open for operation.
(Ord. No. 02-11, 8, 4-16-02)

Sec. 10-68. Security Paramedic.

(a) Whenever a rave club is open to the general public, the rave club permittee shall have on the premises, at the permittee's expense, the greater of either: (i) three off-duty sworn law enforcement officers, or three private security officers having either a class D or class MS license as set forth in chapter 493, Florida Statutes; or (ii) one off-duty sworn law enforcement officer, or one private security officer having a license described above, per 150 of the persons allowed under the maximum occupancy load for the structure in which the rave club is operated. The police chief may require a permittee to increase the number of off-duty law enforcement officers or licensed private security officers when a special event or limited engagement is scheduled to take place at a permitted rave club. Nothing in the subsection shall be construed to mean that the police chief must require law enforcement officers to serve in an off-duty capacity at a permitted rave club.

(b) Whenever a rave club is open to the general public, at least one certified and actively licensed paramedic, as set forth in chapter 401, Florida Statutes, shall be present, at the expense of the permittee.

(Ord. No. 02-11, 9, 4-16-02)

Sec. 10-69. Land development code; Fire prevention; Offenses.

No person shall operate a rave club in violation of any applicable provisions of the land development code, as designated by section 11-8, town code, or chapter 7, fire prevention, town code, as those provisions may be amended from time to time.

(Ord. No. 02-11, 10, 4-16-02)

Sec. 10-70. Rave club operator.

(a) A person who operates a rave club shall designate a person as the rave club supervisor and shall register that supervisor's name with the town manager or the town manager's designee.

(b) The person designated as the rave club supervisor shall comply with the requirements set forth in section 10-63(a)(6)a. and b. for applicants.

(c) The person designated rave club supervisor shall remain on the premises of the rave club during all hours of operation and until thirty (30) minutes after closing to ensure that the operation is conducted in accordance with all rave club regulations hereof.

(Ord. No. 02-11, 11, 4-16-02)

Sec. 10-71. Inspection.

(a) Application for, and issuance of, any rave club permit shall constitute consent by the permittee for representatives of the town to enter and inspect the premises of the rave club at any time it is open for business or occupied for the purpose of verifying compliance with the law.

(b) No person who operates a rave club, employee thereof, or a person designated as the rave club supervisor, shall refuse to permit a lawful inspection of the premises of a rave club by a representative of the town at any time it is open for business or occupied.

(Ord. No. 02-11, 12, 4-16-02)

Sec. 10-72. Expiration of permit.

(a) A permit for a rave club expires one year from the date of issuance. A permit may be renewed only by making application as provided in section 10-62. Application for renewal should be made at least sixty (60) days before the expiration date, and when made less than sixty (60) days before the expiration date, the expiration of the permit will not be affected by the pendency of the application.

(b) If the town manager or designee denies renewal of a permit, the applicant may not be issued any rave club permit for one year from the date denial becomes final. If, subsequent to denial, the town manager or designee finds that the basis for denial of the renewal permit has been corrected or abated, the applicant may be granted a permit if at least ninety (90) days have elapsed since the date denial becomes final.
(Ord. No. 02-11, 13, 4-16-02)

Sec. 10-73. Suspension of permit.

The town manager or designee shall suspend a rave club permit for a period of time not to exceed thirty (30) days, if the town manager determines that a permittee, or an employee of a permittee, has committed any one or more of the following acts:

(1) Violated any provisions of the rave club regulations;

(2) Engaged in the use, sale, or consumption of alcoholic beverages on the rave club premises;

(3) Refused to allow an inspection of the rave club premises so authorized in this article;

(4) Knowingly permitted an intoxicated person to remain on the rave club premises;

(5) Knowingly permitted gambling by any person on the rave club premises;

(6) Knowingly permitted the possession, consumption or sale of an alcoholic beverage on the premises of a rave club;

(7) Knowingly permitted the possession, consumption or sale of any illegal drugs on the premises of the rave club; or

(8) Knowingly allowed performances or activity that violates chapter 61, town code, which regulates adult entertainment.
(Ord. No. 02-11, 14, 4-16-02)

Sec. 10-74. Revocation of permit.

(a) The town manager, or said manager's designee, shall revoke a permit, if a cause of suspension under section 10-73 occurs, and the permit has been previously suspended within the preceding twelve (12) months.

(b) The town manager, or said manager's designee, shall revoke a permit, if the town manager determines that one or more of the following is true:

(1) A permittee has given false or misleading information in the material submitted to the town during the application or renewal process;

(2) A permittee or an employee has knowingly allowed the possession, use, or sale of controlled substances, or any derivative thereof, on the premises.

(3) A permittee or an employee knowingly permitted dancing or a live performance during a period of time when the rave club permit was suspended.

(4) A permittee has been:

a. Convicted of an offense listed in section 10-63(a)(6)a., town code, for which the time period required in section 10-63(a)(6)b. has not elapsed; or

b. Convicted of or is under indictment for any felony offense while holding a rave club permit.

(5) While an employee of the rave club, and while on the permitted premises, a person has committed an offense listed in section 10-63(a)(6)a., for which a conviction has been obtained, two or more times within a twelve (12) month period.

(c) The fact that a conviction is being appealed shall have no effect on the revocation of the permit.

(d) When the town manager or designee revokes a permit, the revocation will continue for a period of 365 consecutive days, and the permittee may not be issued any rave club permit for 365 days from the date revocation became final. If, subsequent to revocation, the town manager or designee finds that the basis for the revocation action has been corrected or abated, the applicant may be granted a permit, if at least ninety (90) days have elapsed since the date the revocation became final. If the permit was revoked under subsection (b)(4) hereof, an applicant may not be granted another permit until the appropriate number of years required under section 10-63(a)(6)b. has elapsed.

(Ord. No. 02-11, 15, 4-16-02)

Sec. 10-75. Appeals.

If the town manager or designee denies the issuance or renewal of a permit, or suspends or revokes a permit, the town manager or the town manager's designee shall send the applicant or permittee, by certified mail return receipt requested, written notice of the action, the right to an appeal, how an appeal maybe initiated, and the within which the appeal must be initiated. The aggrieved applicant or permittee may appeal the decision of the town manager to the town council in accordance with the following procedures. The filing of an appeal stays the action of the town manager, or said manager's designee, in suspending or revoking the permit until the town council makes a final decision on the appeal.

(1) The aggrieved party may, not later than ten (10) calendar days after receiving notice of the denial, file with the town clerk a written request for a hearing before the town council. Such request shall constitute a notice of appeal.

(2) If a written request is filed under subsection (1) hereof with the town clerk within the ten (10) day limit, the town council shall consider the request. The town clerk shall set a date for the hearing within thirty (30) days from the date the written request is filed with the clerk.

(3) The town council shall hear and consider evidence offered by any interested person to determine whether the town manager, or said manager's designee, properly denied issuance or renewal of the permit, or properly suspended or revoked the permit in accordance with the provisions of this article. During such hearing, the formal rules of evidence shall not apply.

(4) By a proper vote, the town council shall either affirm or reverse the town manager's actions concerning the permit or application, in accordance with the provisions of this article. Any dispute of fact must be decided on the basis of a preponderance of the evidence. The decision of the town council is final.

(5) If the town council affirms the town manager's denial or suspension or revocation, the aggrieved party may not re-apply for a rave club permit until at least twelve (12) months have elapsed since the date of the town council's action.

(Ord. No. 02-11, 16, 4-16-02)

Sec. 10-76. Transfer of permit.

A permittee shall not transfer a permit to another person, nor shall a permittee operate a rave club under the authority of a permit at any place other than the address designated in the application.

(Ord. No. 02-11, 17, 4-16-02)

Sec. 10-77. Penalties and remedies.

(a) A person who operates or causes to be operated a rave club without a valid permit or in violation of any provision of this article shall be subject to the following penalties and/or remedies:

(1) Suspension or revocation of the rave club permit.

(2) Violations of this article may be punished as provided in section 1-9 of this code or pursuant to code enforcement proceedings pursuant to section 2-5, town code.

(3) Each day that any violation continues after receipt of written notice of such violation shall constitute a separate violation and a separate offense for purposes of the penalties and remedies specified herein.

(4) In addition to the penalties and remedies above, the town may institute any appropriate action or proceedings to prevent, restrain, correct or abate a violation of this article, as provided by law.

(b) In addition to the penalties described above, the town may institute any appropriate action or proceeding to enjoin, prevent, restrain, correct, or abate a violation of this article. To the extent not inconsistent with Florida law, a violation of this article shall be subject to an injunction, temporary and permanent, without the necessity of showing an irreparable harm. A violation of this article shall constitute a public nuisance.

(Ord. No. 02-11, 18, 4-16-02)

Sec. 10-78—10-79. Reserved

ARTICLE V. Sexual Predators and Offenders.

Sec. 10-80. Findings.

(a) Repeat sexual offenders, sexual offenders who use physical violence, sexual offenders who prey on children, and sexual predators are sexual violators who present an extreme threat to the public safety. Sexual violators are extremely likely to use physical violence and to repeat their offenses, and many sexual violators commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual violator victimization to society at large, while incalculable, clearly exorbitant.

(b) It is the intent of this article to serve the town's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the town by creating areas around certain defined locations where children regularly congregate in concentrated numbers wherein certain sexual violators are prohibited from establishing temporary or permanent residence.

(c) The high level of threat that a sexual violator presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the town with sufficient justification to implement a strategy that includes restricting sexual violators from residing near certain areas where children are most likely to congregate and to be exposed to the potential threats of sexual violators.

(d) The town has a compelling interest in protecting the public from sexual violators and in protecting children from predatory sexual activity, and there is sufficient justification for requiring sexual violators to live in areas other than where large numbers of children may congregate.
(Ord. 06-12, 1, 8-15-06)

Sec. 10-81. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Day care center" means and refers to any child care center or child care arrangement that provides 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 term includes child care centers, nursery schools, and kindergartens, when not accessory to an elementary school, but does not include the following: public schools and nonpublic schools which are in compliance with the compulsory school attendance law of the State of Florida; summer camps having children in full-time residence; summer day camps; and Bible schools normally conducted during vacation periods.

"Permanent residence" means a place where the person abides, lodges, or resides for 5 or more consecutive days.

"Sexual Violator" means any person who has been:

1. designated as a "sexual predator" pursuant to s. 775.21, Florida Statutes; or

2. is a "sexual offender" as defined in s. 943.0435, Florida Statutes.

"Temporary residence" means a place where the person abides, lodges, or resides for a period of 5 or fewer days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

"Temporary shelter" is defined as any public or private building or facility which is offered to individuals and families who are homeless or who evacuate their homes or a hotel, motel, or other place of temporary residence as a result of a storm, flood, hurricane, tornado, explosion, fire, or other incident of any nature as a place to reside, rest, sleep, or eat.
(Ord. 06-12, 2, 8-15-06)

Sec. 10-82. Sexual violator residence prohibition; penalties; exceptions.

(a) Prohibited location of residence. It is unlawful for any person who is a sexual violator to establish a permanent residence or temporary residence within 2,000 feet of any public school, day care center, or public park.

(b) Measurement of distance. For purposes of determining the minimum distance separation shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to nearest outer property line of a school, day care center, or public park.

(c) Penalties. A person who violates this section shall be punished as provided in section 1-9, town code.

(d) Exceptions. A sexual violator residing within 2,000 feet of any school, day care center, or public park does not commit a violation of this section if any of the following apply:

(1) The person established the permanent residence or temporary residence and reported and registered the residence pursuant to ss. 775.21, 943.0435 or 944.607, Florida Statutes, prior to October 1, 2006;

(2) The person was a minor when he/she committed the offense and was not convicted as an adult;

(3) The person is a minor; or

(4) The school, public park, or day care center within 2,000 feet of the sexual violator's permanent residence or temporary residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to ss. 775.21, 943.0435 or 944.607, Florida Statutes.
(Ord. 06-12, 3, 8-15-06)

Sec. 10-83. Property owners prohibited from renting real property to certain sexual violators; penalties.

(a) It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence of temporary residence pursuant to section 10-82 of this code, if such place, structure, or part thereof, trailer or other conveyance, is located within 2,000 feet of any school, day care center, or public park.

(b) A property owner's failure to comply with provisions of this section shall constitute a violation of this section, and shall subject the property owner to the code enforcement provisions and procedures as otherwise provided in this Code or chapter 162, Florida Statutes.
(Ord. 06-12, 4, 8-15-06)

Sec. 10-84. Temporary emergency shelters; Sexual predators, sexual offenders, and sexual violators notification requirements.

(a) Any person who is required by Florida law to register as a "sexual predator" or "sexual offender" pursuant to ss. 775.21, 943.0435, or 944.607, Florida Statutes, as revised from time to time, or is otherwise a sexual violator, and who utilizes or intends to utilize a temporary shelter provided by any public or private entity and established as a result of any emergency or incident or threatened emergency or incident shall, immediately upon entering the shelter, notify the individual or individuals operating the shelter that he or she is a registered "sexual predator," "sexual offender," or a sexual violator pursuant to this code. The "sexual predator," "sexual offender," or other sexual violator shall be assigned to a temporary shelter specifically designated for use by "sexual predators," "sexual offenders" and sexual violators.

(b) The town manager in cooperation with the chief of police may, but is not obligated to, designate a public building or jail or other facility as a temporary shelter to be utilized by sexual violators.

(c) Failure of a sexual predator, sexual offender, other sexual violator to make notification as required in sub-section (a) shall constitute a violation of a municipal ordinance punishable as provided in section 1-9, town code, unless the temporary shelter becomes the temporary residence or permanent residence of the sexual violator in which case the sexual violator shall comply with the registration requirements of section 10-85 of this code. During the time that the temporary shelter is not a permanent residence or temporary residence of the sexual violator, the sexual violator need not register this location with the chief of police, or the chief's designee.
(Ord. 06-12, 5, 8-15-06)

Sec. 10-85. Sexual violator registration.

(a) Registration.

(1) Except if a sexual violator is in the physical custody of the Florida Department of Corrections, a private correctional facility, a Federal correctional agency, or the sheriff of Brevard County, a sexual violator convicted of an act causing the sexual violator to be convicted as a sexual predator or sexual offender and classified as such which act occurred after August 15, 2006, and who is a permanent resident or a temporary resident within the town must register with the town's chief of police, or his designee, by providing the following information to the department:

a. Name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, photograph, address of legal residence and address of any current temporary residence, within the state or out of state, including an address and a post office box address (if any), date and place of any employment, date and place of each conviction, fingerprints, and a brief description of the crime or crimes committed by the sexual violator. A post office box shall not be provided in lieu of a physical residential address.

1. If the sexual violator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, Florida Statutes, the sexual violator shall also provide to the chief of police, or the chief's designee, written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual violator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual violator shall also provide to the chief of police, or said chief's designee, written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. If the sexual violator is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual violator shall also provide to the chief of police, or the chief's designee, the name, address, and county of each institution, including each campus attended, and the sexual violator's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the chief of police's office.

b. Any other information determined necessary by the town chief of police, including criminal and corrections records; non-privileged personnel and treatment records; and evidentiary genetic markers when available.

(2) Sexual violators required to register pursuant to this section shall register or re-register in person at the office of the town chief of the police, or the chief's designee, within 48 hours after establishing a permanent residence or temporary residence in this town. Any change in the sexual violator's permanent residence or temporary residence or name, after the sexual violator registers in person at the office of the chief of police, or the chief's designee, shall be accomplished in the manner provided herein. When a sexual violator registers with the town chief of police,

or the chief's designee, the chief of police shall take a photograph and a set of fingerprints of the sexual violator and compare them against records on file with the Florida Department of Law Enforcement to assure that the sexual violator's registration on file with the department is correctly registered. If the records of the Florida Department of Law Enforcement do not correspond with the registration filed with the chief of police, the chief of police shall immediately notify the department in writing.

(b) Time of registration.

(1) If a sexual violator's birth month is January, the sexual violator must register or reregister with the town chief of police, or the chief's designee, during the months of April and October. If a sexual violator's birth month is February, the sexual violator must register or reregister with the town chief of police during the months of May and November. If a sexual violator's birth month is March, the sexual violator must register or reregister with the town chief of police, or the chief's designee, during the months of June and December. If a sexual violator's birth month is April, the sexual violator must register or reregister with the town chief of police, or the chief's designee, during the months of July and January. If a sexual violator's birth month is May, the sexual violator must register or reregister with the town chief of police, or the chief's designee, during the months of August and February. If a sexual violator's birth month is June, the sexual violator must register or reregister with the town chief of police, or the chief's designee, during the months of September and March. If a sexual violator's birth month is July, the sexual violator must register or reregister with the town chief of police, or the chief's designee, during the months of October and April. If a sexual violator's birth month is August, the sexual violator must register or reregister with the town chief of police, or the chief's designee, during the months of November and May. If a sexual violator's birth month is September, the sexual violator must register or reregister with the town chief of police, or the chief's designee, during the months of December and June. If a sexual violator's birth month is October, the sexual violator must register or reregister with the town chief of police, or the chief's designee, during the months of January and July. If a sexual violator's birth month is November, the sexual violator must register or reregister with the town chief of police, or the chief's designee, during the months of February and August. If a sexual violator's birth month is December, the sexual violator must register or reregister with the town chief of police, or the chief's designee, during the months of March and September.

(2) Additional times of registration.

(A) Within 48 hours after any change of the sexual violator's permanent residence or temporary residence within the town or change in the sexual violator's name by reason of marriage or other legal process, the sexual violator shall report in person to the town chief of police, or the chief's designee, and shall register as set forth above.

(B) A sexual predator who vacates a permanent residence or temporary residence within the town and fails to establish or maintain another permanent residence or temporary residence within the town shall, within 5 days after vacating the permanent residence or temporary residence within the town, report in person to the town chief of police, or the chief's designee. The sexual violator shall specify the date upon which he or she intends to or did vacate

such permanent residence or temporary residence. The sexual violator must provide or update all of the registration information required under this section. The sexual violator must provide an address for the permanent residence, temporary residence or other location that he or she is or will be occupying during the time in which he or she fails to establish or maintain a permanent residence or temporary residence.

(C) A sexual violator who remains at a permanent residence or temporary residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such temporary residence or permanent residence, report in person to the town chief of police, or the chief's designee, for the purpose of reporting his or her address at such residence.

(3) A sexual violator who intends to establish residence in another municipality, state, or other jurisdiction shall report in person to the town chief of police, or the chief's designee, within 48 hours before the date he or she intends to leave this town to establish a permanent residence or temporary residence in another municipality, state, or other jurisdiction. The sexual predator must provide to the town chief of police, or the chief's designee, the address, municipality, county, and state or other location of intended residence. The chief of police shall notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual predator's intended residence. The failure of a sexual predator to provide his or her intended place of residence is punishable as provided in section 1-9 of this code.

(4) A sexual violator who indicates his or her intent to reside in another municipality, state or other jurisdiction and later decides to remain in this town shall, within 48 hours after the date upon which the sexual violator indicated he or she would leave this town, report in person to the chief of police, or the chief's designee, of his or her intent to remain in this town. A sexual violator who reports his or her intent to reside in another municipality, state or other jurisdiction, but who remains in this town without reporting to the chief of police in the manner required by this code, commits a municipal ordinance violation punishable as provided by section 1-9, town code.

(5) The chief of police is responsible for maintaining all information obtained from sexual violators concerning registration and re-registration of sexual violators within the town. The chief of police shall also be responsible for determining whether the aforesaid information is consistent with registration information of the on-line internet web-site maintained by the Florida Department of Law Enforcement. If current information on file with the chief of police is inconsistent with information on the on-line internet web-site maintained by the Florida Department of Law Enforcement, the chief of police shall advise the Brevard County sheriff and the Florida Department of Law Enforcement.

(c) The chief of police's sexual violator registration list, containing the information described above is a public record. The chief of police is authorized to disseminate this public information by any means deemed appropriate to assure the requirements of this code are complied with, unless the chief of police determines that the information is confidential or exempt from public disclosure pursuant to Florida or Federal law.

(d) A sexual violator must maintain and update, as provided herein, registration with the town for the duration of his or her residency within the town, unless the sexual violator is no longer required by law or court order to maintain registration with the state of Florida or, until such time as the sexual violator moves from the town and is no longer an occupant of housing or a resident within the town.

(Ord. No. 06-12, 6, 8-15-06)

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Chapter 11

PLANNING AND DEVELOPMENT*

Art. I. Comprehensive Plan and Land Development Code, 11-1--11- 9
Art. II. Local Planning Agency, 11-10--11-19
Art. III. Concurrency Management, 11-20--11-31

ARTICLE I. COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE

Secs. 11-1--11- 5. Reserved.

Editor's note--Ord. No. 82-301, 1, adopted Dec. 15, 1981, repealed 11-1--11-5 of the Code, pertaining to the Indialantic Comprehensive Planning Agency, its organization, duties, financing, etc.; which agency, having fulfilled its mandate, had become obsolete. The plan developed by the former agency remains in force, as set out by 11-6 of this chapter. The repealed provisions were derived from Ord. No. 195, 2-6, adopted June 15, 1976.

11-5.5. Sale of public real property.

(a) Prior to the sale or other disposition of any public real property or any interest therein, including right of ways and easements, the Town shall require an appraisal of the real property or interest therein by a qualified MAI appraiser.

(b) Prior to the sale or other disposition of public real property or any interest therein, including right of ways and easements, the Town Council shall submit the terms and conditions of such sale or disposition to the voters of the Town for their approval at a public referendum to be held at the next General election or, if required by the Town Council, at a Special election.

(c) If the sale or disposition is approved by a majority of the voters at such election, the sale or other disposition shall be closed within ninety (90) days of the election. If the sale or disposition is not approved by a majority of the voters, then such sale or disposition of public real property shall be prohibited unless subsequently approved by the voters of the Town. (Ord No. 89-26,11-7-89)

Editor's note: Ord. No. 89-26, passed by a referendum vote at the General Election on 11-7-89, designated this section as Sec. 11-7. Inasmuch as a section so designated is already included herein, the editor has redesignated the newly enacted provision as section 11-5.5 hereof.

Sec. 11-6. Comprehensive plan adopted.

(a) This section is enacted pursuant to and in accordance with the provisions of Chapter 163.3161 et seq., Florida Statutes (Local Government Comprehensive Planning and Land Development Regulation Act).

***Cross references**--Beautification, Ch. 5.5; town color code, 5.5-41 et seq.; property maintenance, 5.5-61 et seq.; buildings and construction, Ch. 6; subdivisions of land, Ch. 13.5; trees and shrubs, Ch. 16; zoning regulations, Ch. 17; zoning and planning board, 17-30 et seq.; board of adjustment, 17-46 et seq.; environmentally sensitive lands, Ch. 18.

(b) The Indialantic Comprehensive Plan consists of a one volume book entitled *Town of Indialantic Comprehensive Plan* adopted August, 1988, amended December, 1999 and amended November, 2009. The foregoing is incorporated by this reference and is the official comprehensive plan for and of the town. (Ord. No. 292, 1, 2, 4-21-81; Ord. No. 88-13, 1, 8-23-88; Ord. No. 90-2, 1, 1-16-90; Ord. No. 97-11, 1, 9-9-97; Ord. No. 99-06, 1, 12-21-99; Ord. No. 10-05, 1, 3-16-10)

Sec. 11-7. Definitions.

As used in this chapter, the following terms shall be defined to mean:

Comprehensive plan means and refers to the plan designated in section 11-6 and adopted pursuant to and consistent with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act, as set forth in the Florida Statutes, and Chapter 9J-5, Florida Administrative Code.

Development means and refers to activities described in Section 380.04, Florida Statutes.

Land development regulation means and refers to ordinances enacted by the town council for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations, or any other regulation controlling the development of land. (Ord. No. 90-9, 1, 3-20-90)

Sec. 11-8. Land development code designated.

The town's land development code is hereby designated and adopted. The land development code shall consist of the following Code chapters and sections:

(1) Chapter 6, relating to building, construction, coastal setbacks, flooding, flood damage, and impact fees;

(2) Chapter 11, relating to planning and concurrency management;

(3) Chapter 13.5, relating to the subdivision of land;

(4) Chapter 17, relating to zoning, signage, onsite traffic flow and vehicular parking, retention and detention of surface waters; and

(5) Chapter 18, relating to environmentally sensitive lands and wetland regulation.
(Ord. No. 91-4, 1, 11-7-90)

Sec. 11-9. Procedures for quasi-judicial hearings; *Ex parte* communications; Site visits; Receipt of expert opinion; and Review of mail and other correspondence.

(a) Intent. Pursuant to Section 286.0115(1), Florida Statutes (1995), it is the intent of the town council that this section is intended to remove the presumption of prejudice from *ex parte* communications with town officials and to permit site visits, the receipt of expert opinion, and the review of mail and other correspondence relating to certain quasi-judicial proceedings by said town officials. No permission pursuant to Section 286.0115, Florida Statutes, to engage in *ex parte* communications or to conduct site visits, receive expert opinion at other than an advertised public hearing, or to review mail and other correspondence is authorized by the town council pursuant to this section, except for the quasi-judicial matters set forth herein and only to the extent set forth below.

(b) Definitions. As used in this section, the following terms shall be defined as follows:

(1) "Town official" means and refers to a member of the town council, the zoning and planning board, the local planning agency, or the board of adjustment.

(2) "*Ex parte* communication" means a communication involving a town official and a member of the public, town staff, or a town consultant regarding a pending quasi-judicial permit application or appeal, such that the town official may be exposed to only one perspective or part of the evidence with regard to a quasi-judicial matter pending before the council or board on which the town official serves. *Ex parte* communications occur at other than a public meeting of the board on which the town official serves at which the quasi-judicial matter discussed has been publicly noticed.

(3) "Member of the public" refers to any person interested in a quasi-judicial permit application or appeal, including but not limited to a permit applicant, an appellant from a town administrator's decision, an officer or member of a homeowner's association, an officer or member of an environmental, homebuilding/development, or concerned citizen's organization, an official or employee of a governmental entity other than the Town, a developer, a property owner, or an interested citizen, or a representative of or attorney for any of the foregoing.

(4) "Quasi-judicial" refers to a land use, land development, zoning, or building related permit or appeal, as set forth below, in which town officials give notice and an opportunity to be heard to certain substantially affected persons, investigate facts, ascertain the existence of facts, hold hearings, weigh evidence, draw conclusions from the facts, and apply the law to the facts, as the basis for their decision. The following are the only quasi-judicial matters subject to this section:

(A) Repealed.

(B) Site specific rezoning of land pursuant to chapter 17, Indialantic Town Code, which rezoning will have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application rather than policy setting;

(C) Applications for approval or amendment of a special permit pursuant to provisions such as section 17-132, Indialantic Town Code;

(D) Applications for approval, amendment, or extension of time of an approval of a site plan considered by the town council or the zoning and planning board pursuant to chapter 17, Indialantic Town Code;

(E) Applications for plat approval pursuant to chapter 13.5, Indialantic Town Code;

(F) Variances considered by the board of adjustment:

1. Pursuant to section 17-141 *et seq.*, Indialantic Town Code (zoning code);
2. Pursuant to section 6-30(c), Indialantic Town Code (Indialantic Coastal Construction Code of 1987);
3. Pursuant to Chapter 6.5 – Floodplain Management, Indialantic Town Code; and
4. Pursuant to section 105, Town of Indialantic Standard Housing Code, as adopted pursuant to section 6-200, Indialantic Town Code;

(G) Appeals heard by the board of adjustment from a(n):

1. Determination of the building official relating to stormwater and drainage systems in section 17-114, Indialantic Town Code, pursuant to section 17-114(10), Indialantic Town Code;
2. Order of the building official relating to chapter 6, Indialantic Town Code, pursuant to section 6-6, Indialantic Town Code;
3. Decision by the fire official or building official regarding plan review pursuant to section 6-31, Indialantic Town Code;

4. Interpretation of the building official relating to matters set forth in chapter 6.5, Indialantic Town Code;

5. Determination of the building official relating to Article III., Chapter 11, Indialantic Town Code, as made pursuant to section 11-29, Indialantic Town Code;

6. Determination of the housing official relating to the adopted Standard Housing Code pursuant to section 105 of said code, as adopted pursuant to section 6-200, Indialantic Town Code; and

7. Determination of the housing official relating to the adopted Standard Code for the Elimination or Repair of Unsafe Buildings pursuant to chapter 4 of said code, as adopted pursuant to section 6-220, Indialantic Town Code;

(H) Appeals from planning, zoning, building or other staff officials whose decisions are subject to appeal in accordance with adopted regulations; and

(5) "Site visit" means an inspection of real property subject to an application for any quasi-judicial permit or appeal prior to a public hearing on the permit application or appeal conducted by a town official. The mere act of driving by a site in the daily course of driving to a particular location, such as work or a particular store, which act is not undertaken for the purpose of inspecting a particular parcel of real property is not a site visit for purposes of this section.

(c) *Ex parte* communications between town officials and members of the public.

(1) A member of the public not otherwise prohibited by statute, charter provision or ordinance may have an *ex parte* communication with any town official regarding any quasi-judicial matter on which action may be taken by the council or board on which the town official serves; provided, that the town official adheres to the disclosure requirements set forth in sub-section (c)(3) below.

(2) Except as otherwise provided by statute, charter provision, or ordinance, any town

official may have an *ex parte* communication with any expert witness or consultant regarding any quasi-judicial matter on which action may be taken by the council or board on which the town official serves; provided, that the town official adheres to the disclosure requirements set forth in sub-section (c)(3) below.

(3) Disclosure.

(A) The town official shall disclose the occurrence of all *ex parte* communications or discussions with an expert witness or consultant involving said town official which relate to the quasi-judicial action pending before the council or board on which the town official serves.

(B) Disclosure of the *ex parte* communication. Disclosure shall occur by no later than the commencement of the final public hearing, or if no formal public hearing is held, then at the commencement of any hearing at which the final decision regarding the quasi-judicial matter is made. The town official shall disclose the *ex parte* communication verbally or by memorandum. Any such memorandum disclosing the occurrence of the *ex parte* communication shall be placed in the official file regarding the pending quasi-judicial matter which file shall be maintained in the Town Clerk's records. By no later than the commencement of the final hearing leading to a final decision on the pending quasi-judicial matter by the town official's council or board, the memorandum shall be made a part of the record.

(C) At the time of disclosure, the town official shall identify the person, group, or entity with whom the *ex parte* communication took place, the substance of the *ex parte* communication, and any matters discussed which are considered by the town official to be material to said town official's decision in the pending quasi-judicial matter.

(d) Oral or written communications between town staff and town officials. Town officials may discuss quasi-judicial matters pending before the council or board on which said town official serves with town staff; provided that the town official makes a disclosure pursuant to sub-section (c)(3).

(e) Site visits by town officials. Any town official may conduct a site visit of any property related to a quasi-judicial matter pending before the council or board on which the town official serves; provided, that the town official adheres to the disclosure requirements set forth in sub-section (c)(3) above. Any disclosure of a site visit pursuant to sub-section (c)(3) shall disclose the existence of the site visit, and any information obtained by virtue of the site visit considered by the town official to be material to said official's decision regarding the pending quasi-judicial matter.

(f) Review of mail, correspondence, and written communications by town officials. Any town official may review mail, correspondence, or written communications, related to a quasi-judicial matter pending before the council or board on which the town official serves. Immediately upon review of the mail, correspondence, or written communication, the document shall be placed in the official file regarding the pending quasi-judicial matter and maintained in the town clerk's records.

(g) Town clerk's file. All correspondence, mail, or written communications reviewed by

town officials prior to the final hearing on a pending quasi-judicial matter shall be placed in the official file regarding said matter and maintained by the town clerk. Said correspondence, mail, or written communications reviewed by town officials prior to the final hearing on a pending quasi-judicial matter, or any disclosure memoranda as described in sub-section (c)(3)(B), shall be available for public inspection. By no later than the commencement of the final public hearing, or if no formal public hearing is held, then at the commencement of any hearing at which the final decision regarding the quasi-judicial matter is made, the town clerk shall make said correspondence, mail, written communications, or other matters, and any disclosure memoranda placed in the official file, a part of the record. All of the foregoing documents shall be received by the council or board as evidence, with the exception of disclosure memoranda, subject to any objections interposed by participants at the hearing.

(h) Opportunity to comment upon substance of disclosure. At such time that a disclosure regarding an *ex parte* communication, receipt of an expert opinion, site visit, or review of mail, correspondence, or other written communication is made a part of the record at a hearing, persons who may have opinions or evidence contrary to those expressed in the *ex parte* communication, expert opinion, or mail, correspondence, or other written communication, or noted during the site visit, shall be given a reasonable opportunity to refute or respond and provide contrasting information, evidence, or views.
(Ord. 95-14, 1, 11-14-95; Ord. 02-01, 1, 11-14-01; Ord. 03-04, 2, 3-18-03; Ord. 13-10, 1, 5-21-13)

ARTICLE II. LOCAL PLANNING AGENCY

Sec. 11-10. Created.

(a)The zoning and planning board is hereby designated as the local planning agency pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, as set forth in the Florida Statutes.

(b) The local planning agency shall have the general responsibility for the conduct of the comprehensive planning program of the town. The local planning agency shall:

(1) Be the agency responsible for the preparation of the comprehensive plan and shall make recommendations to the town council regarding the adoption of such plan, element, portion thereof, or amendment to said plan.

(2) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the town council such changes in the comprehensive plan as may from time to time be required or appropriate, including the preparation of any evaluation and appraisal reports pursuant to Section 163.3191, Florida Statutes.

(3) Review proposed land development regulations, or amendments thereto, and make recommendations to the town council as to the consistency of the proposal with the adopted comprehensive plan, or portion thereof. If the local planning agency does not make a recommendation within sixty (60) days of the date on which a proposed land development regulation, or amendment thereto, is referred to it for review, the town council may, but is not obligated to, consider adoption of the land development regulation without first receiving the report of the local planning agency.

(4) Perform any other functions, duties, and responsibilities assigned to it by the town council or by state law. (Ord. No. 90-9, 2, 3-20-90)

Secs. 11-11--11-19. Reserved.

ARTICLE III. CONCURRENCY MANAGEMENT*

Sec. 11-20. Short title.

This article shall be known as and may be cited as the "Indialantic Concurrency Management Ordinance." (Ord. No. 91-1, 1, 11-7-90)

***Editor's note**--Section 1 of Ord. No. 91-1, adopted Nov. 7, 1990, added 11-20--11-31 to be designated as Art. II. Inasmuch as such Art. II already existed, 11-20--11-31 have been designated as Art. III herein.

Sec. 11-21. Purpose and intent.

(a) The concurrency management system shall implement established minimum acceptable level of service standards for transportation, sanitary sewer, solid waste, potable water, drainage, and recreation and open space needs, said levels of service having been adopted in the comprehensive plan adopted in section 11-6. This system is designed to utilize the most current and available data regarding the above public facilities to measure the net impact of any development permit proposal upon the facilities for which level of service standards have been adopted. No final development order shall be issued unless this concurrency evaluation process has determined that adequate public facilities meeting all adopted level of service standards, will be available at the time of development impact.

(b) It is not the intent of the town that the concurrency management system replace any other development review criteria utilized by the town, unless such review criteria are inconsistent with the provisions of this article. Compliance with the provisions of this article does not guarantee approval of a development proposal, unless all other development review criteria have been met. (Ord. No. 91-1, 2, 11-7-90)

Sec. 11-22. Applicability.

Unless otherwise provided herein, this article shall apply to all development orders. This article shall apply to new development orders and to amendments to existing development orders. The application of the provisions of this article shall assess only the net impacts from development of a parcel of land. (Ord. No. 91-1, 3, 11-7-90)

Sec. 11-23. Exemptions.

The following types of development are exempt from the requirements of this article:

(1) Remodeling or repair, provided that no increase in square footage is made.

(2) Accessory structures for existing single-family homes that will not increase the number of inhabitants of the structure.

(3) Other developments which do not result in any increase in demand upon established levels of service for public facilities identified in this article, as determined by the building official.

(4) Vested projects. (Ord No. 91-1, 4, 11-7-90)

Sec. 11-24. Definitions.

For purposes of this article, certain terms or words herein shall be interpreted as follows:

Accepted engineering principles means and refers to the engineering concepts generally accepted by the broad base of professionals in the particular engineering discipline for which a concurrency evaluation is being conducted.

Available public facilities or *available* means and refers to a public facility or service which will be provided as follows:

(1) The facility is in place to serve a proposed project at the time a final development order is approved;

(2) The facility is under construction at the time a final development order is approved;

(3) The facility is subject to a binding executed construction contract at the time a final development order is approved;

(4) The facility is subject to an enforceable development agreement. An enforceable development agreement may include, but is not limited to, agreements pursuant to Section 163.3220, Florida Statutes; or

(5) The facility is included in the first three (3) years of the Florida Department of Transportation five-year work program.

Average daily traffic means and refers to the average number of vehicles crossing a specific point on a roadway on an average weekday. The most recent official traffic counts from the Florida Department of Transportation, Brevard County, and/or the Town of Indialantic shall be accepted as representing average daily traffic for a specified roadway segment. Average daily traffic counts provided by any other source must be prepared by utilizing accepted engineering principles.

Captured trips means and refers to motor vehicle trips which enter or exit a development site, are not generated by that development, but, rather, are temporarily diverted from the average daily traffic of the adjacent roadway.

Developer's agreement means and refers to an agreement entered into pursuant to Chapter 163.3220, Florida Statutes, and this article.

Development means the carrying out of any building activity or mining operation, the making of any material change in the use or size of any structure or land, or the dividing of land into three (3) or more parcels, and as further defined in Section 380.04, Florida Statutes.

Development order means and refers to any order granting or granting with conditions an application for a development permit.

Development permit means and refers to any building permit, zoning permit, subdivision approval,

rezoning, certification, variance, or any other official action of local government having the effect of permitting the development of land.

Direct access means and refers to that driveway entrance or exit to a particular roadway from a project.

Final development order means a building permit, a site plan approval, or in the case of a subdivision, an approval to construct all required improvements and public facilities.

Land development regulations means and refers to ordinances enacted by the town for the regulation of development and includes, but is not limited to, zoning, rezoning, subdivision, building construction, landscaping, sign regulation, tree protection, or any other regulation pertaining to the development of land.

Level of service or *LOS* means and refers to any measure of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of that facility.

Net impact means the total impact a development has upon the level of service for a particular public facility minus the existing impacts of earlier phases or previous development on the same property.

Public facilities means and refers to public transportation, roadways, drainage/stormwater management, potable water, solid waste disposal, wastewater treatment, parks, recreations, and open space facilities.

Rendition means and refers to the issuance of a letter of determination by the building official or town council, the date of execution of which shall be presumed to have been made on the date set forth in said letter determination. The letter shall be filed with the town clerk on the same date.

Vested project means a project which received a final development permit prior to November 7, 1990, the effective date of this article, or for which the town has determined a vested right exists. (Ord. No. 91-1, 5, 11-7-90)

Sec. 11-25. Adopted level of service standards.

The minimum acceptable level of service standards for sanitary sewer, transportation, solid waste, potable water, drainage, schools and recreation shall be as follows:

(1) *Transportation:*

S.R. AlA	LOS E
U.S. 192	LOS D
Riverside Drive (north of U.S. 192).....	LOS E
Local collector streets	LOS C

Local streets ..... LOS C

(2) *Sanitary sewer:*

200 gallons per residential unit per day.

(3) *Solid waste:*

8.32 pounds per person per day.

(4) *Potable water:*

≤110 gallons per person per day (residential and non-residential)

(5) *Drainage:*

Retention of the 1st one (1) inch of rainfall onsite and designed for the 25-year, 24-hour event.

(6) *Recreation:*

4 acres of park/open space for each 1,000 residents. (Ord. No. 91-1, 6, 11-7-90)

(7) S*chools:*

TIERED LEVEL OF SERVICE - SCHOOL YEARS 2007/08 TO 2011/12

Facility Type	2007-08	2008-09	2009- 10	2010-11	2011-12
Elementary	127%	130%	115%	105%	100%
Middle Schools	122%	120%	100%	100%	100%
Jr./Senior High	133%	135%	110%	105%	100%
High Schools	139%	130%	115%	100%	100%

(Ord. 10-05, 2, 3-16-10)

Sec. 11-26. Evaluation criteria.

(a) *Generally.* The town shall utilize the following criteria and procedures to determine whether the levels of service for public facilities are adequate to support the specified impacts of a proposed project. This system is designed to utilize the most recent and available data regarding transportation, sanitary sewer, solid waste, potable water, drainage, and recreation. At a minimum, public facilities must be available to meet all adopted level of service standards prior to the issuance of a final development order.

(b) *Transportation facilities.*

(1) The capacity for transportation facilities shall be evaluated by using the Florida Highway System Plan Level of Service Standards and Guidelines Manual of the Florida Department of Transportation, January 1, 1989, or as subsequently updated or amended.

(2) Projected impacts on the transportation system shall be determined by utilizing the trip generation rates contained in the Trip Generation Manual, 4th edition, of the Institute of Transportation Engineers, or as subsequently updated or amended. The proposed project shall be evaluated for impacts on transportation facilities to which the proposed project has direct access.

(3) The calculation of total traffic generated by any development will assume one hundred percent (100%) buildout and occupancy of the project. Credit against trip generation rates for certain nonresidential land uses may be taken utilizing the percentages shown below:

Use	Percentages
Bars and cocktail lounges	35
Convenience stores	42
Day care centers	11
Fast food restaurants	35
Financial institutions	46
Hardware stores	5
Offices	5
Restaurants	18
Service station/carwashes	58
Shopping centers	25
Supermarkets	25

Any capture of trips from passing traffic for uses not specified above must be justified by the applicant based on the procedures described in the Trip Generation Manual, 4th edition, Institute of Transportation Engineers.

(4) Current operating level of service shall be based upon the most recent average daily traffic counts available plus projected traffic counts from projects previously approved but not yet constructed.

(5) Concurrency compliance for transportation facilities shall be determined to be nondeficient if any of the following occur:

a. For U.S. 192 and S.R. AlA: Issuance of a driveway permit for the proposed project by the Florida Department of Transportation.

b. Riverside drive (north of U.S. 192): Issuance of a driveway permit for the proposed project by Brevard County.

c. Local collector streets and local streets: Single-family homes on lots within subdivisions approved and constructed prior to November 20, 1990, the effective date of this article, are considered to be vested projects for purposes of transportation concurrency. Single-family subdivisions approved after November 20, 1990, the effective date of this

article, shall have impacts determined at the final plat approval stage (preliminary plat stage, if all required improvements and facilities are to be constructed prior to final plat approval) for one hundred percent (100%) of the project, and single-family homes built within these subdivisions shall be considered vested projects for purposes of transportation concurrency once the subdivision receives a nondeficiency finding and all required improvements and facilities are constructed. All

other applications for projects shall submit, on forms prepared by the town, sufficient information to determine the projected level of service for local roadways that the project directly accesses. This information will be analyzed by the building official and the zoning and planning board, as appropriate, in order to issue a finding of either nondeficiency or a finding of deficiency.

(c) *Sanitary sewer facilities.*

(1) A finding of nondeficiency shall be made for sewer facilities provided the applicant submits a capacity reservation certificate from Brevard County noting that capacity exists and has been reserved for the development project.

(2) A finding of deficiency shall be made for sanitary sewer facilities if the applicant fails to provide a capacity reservation certificate from Brevard County.

(d) *Solid waste facilities.*

(1) A finding of nondeficiency shall be made for solid waste facilities provided that the applicant submits a capacity reservation certificate from Brevard County noting that capacity exists and has been reserved for the development project.

(2) A finding of deficiency shall be made for solid waste facilities, if the applicant fails to provide a capacity reservation certificate from Brevard County.

(e) *Potable water facilities.*

(1) A finding of nondeficiency shall be made for potable water facilities provided that the applicant submits a capacity reservation certificate from the City of Melbourne noting that capacity exists and has been reserved for the development project.

(2) A finding of deficiency shall be made for potable water facilities, if the applicant fails to provide a capacity reservation certificate from the City of Melbourne.

(f) *Drainage.*

(1) Single-family homes within a subdivision approved and constructed prior to November 20, 1990, the effective date of this article, shall be considered vested projects for purposes of drainage concurrency.

(2) Single-family homes within a subdivision approved and constructed after November 20, 1990, the effective date of this article, shall be deemed vested projects; provided, that the subdivision has received a nondeficiency finding as specified in subsection (f)(3) or (f)(4) below.

(3) A finding of nondeficiency for drainage facilities shall be made; provided, that the applicant submits a permit specifying approval of the development project's stormwater system by the St.

Johns River Water Management District.

(4) A finding of nondeficiency for drainage facilities shall be made provided the development project complies with section 17-114 of this Code.

(5) A finding of deficiency for drainage facilities shall be made if the development project fails to meet the criteria specified above.

(g) *Recreation facilities.*

(1) Only residential projects shall be subject to the recreation level of service standards.

(2) In calculating the population of residential units, the most recent household size fixtures provided by the University of Florida Bureau of Economic and Business Research, shall be multiplied by the number of residential units in the development project.

(3) The existing population of the town plus the additional population projected from committed developments shall be added to the proposed project's population projection to determine total projected population.

(4) The total population shall then be divided by two hundred fifty (250) [four (4) acres of recreation/open space per one thousand (1,000) persons] to determine total acreage needed.

(5) A finding of nondeficiency shall be made for recreation facilities if the total acreage needed (from subsection (g)(4) above) is less than the existing acreage available in the town.

(6) A finding of deficiency shall be made if the total acreage needed (from subsection (g)(4) above) is greater than the existing acreage available in the town. (Ord. No. 91-1, 7, 11-7-90)

Sec. 11-27. Concurrency evaluation finding.

(a) *Generally.* The town shall issue a concurrency evaluation finding during the final development permit process, and this finding shall certify either an overall nondeficiency finding or an overall deficiency finding. An overall nondeficiency finding shall be made provided a proposed project is determined to be nondeficient for all six (6) public facility types. An overall deficiency finding shall be made if the proposed project is deficient for any of the six (6) public facilities.

(b) *Nondeficiency finding.* Overall nondeficiency findings shall remain valid provided that a final development order has been issued within sixty (60) days of the finding. Once a building permit or site plan approval has been issued, the finding shall remain valid for the life of the permit or until the permit is revoked or suspended for failure to proceed in a timely manner as prescribed. Subdivision approvals shall be valid for one (1) year, unless the required improvements have been constructed. Once a nondeficiency finding lapses, a new concurrency evaluation must be made.

(c) *Deficiency finding.* Overall deficiency findings shall negate the issuance of a final development order or force deferral of this issuance until a nondeficiency finding is made. (Ord. No. 91-1, 8, 11-7-90)

Sec. 11-28. Applications for concurrency evaluation.

(a) *Nonbinding concurrency evaluation applications.* The owner, or applicant for the owner, or developer, of a proposed development may request a nonbinding concurrency evaluation prior to submitting an application for a final development order. The results of this evaluation are not binding on the town. An applicant for a nonbinding concurrency evaluation must submit an application to the building official, along with such fee as may be established from time to time by resolution of the town council. This application shall contain all information required by the building official to make a nonbinding concurrency evaluation finding and at a minimum shall contain:

(1) Name, address, and telephone number of the owner of the property.

(2) Name, address, and telephone number of the applicant (if different from the owner).

(3) Legal description of the property and parcel size in acres.

(4) Boundary survey (if required by the building official).

(5) Type of development permit or development order requested.

(6) Specific use type with appropriate square footage (for nonresidential uses) or number of units (for residential uses).

(7) Present zoning and land use designation.

(8) Proposed project name, if known.

(b) *Binding concurrency evaluation application.* The owner, or applicant for the owner, or developer, of a proposed project must submit an application for a binding concurrency evaluation concurrent with the application for final development permit approval. This application must be filed

with all building permit applications, site plan approval applications, and subdivision (preliminary and final) approval requests. The application must be filed with the building official, along with such fee as may be established from time to time by resolution of the town council. This application must contain all information required by the building official to make a binding concurrency evaluation finding and at minimum shall contain:

(1) Name, address, and telephone number of the owner of the property.

(2) Name, address, and telephone number of the applicant (if different from the owner).

(3) Legal description of the property and parcel size in acres.

(4) Boundary survey.

(5) Type of development permit requested.

(6) Specific use type with appropriate square footage (for nonresidential uses) or number of units (for residential uses).

(7) Present zoning and land use designation.

(8) Proposed project name.

(9) Stormwater management plan.

(10) Traffic impact study, prepared utilizing accepted engineering principles, if required by the building official and/or the zoning and planning board.

(11) Site location map. (Ord. No. 91-1, 9, 11-7-90)

Sec. 11-29. Administration

This article shall be administered by the building official. The building official may develop such administrative rules, forms and/or applications as may be needed to implement the concurrency management system. The building official shall be responsible for maintaining a cumulative record of the level of service allocation permitted under the concurrency management system. (Ord. No. 91-1, 10, 11-7-90)

Sec. 11-30. Developer's agreement.

(a) *Generally.* The town council may, in its sole discretion, enter into developer's agreements with the legal and equitable owners of parcels of land, pursuant to Section 163.3220, Florida Statutes, in such cases where the threshold capacity of any public facility will be exceeded by a proposed development.

(b) *Application requirements.* The following requirements shall be contained in the application for a developer's agreement:

(1) Legal description of the land and the names of its legal and equitable owners.

(2) The proposed duration of the agreement.

(3) The proposed use of the property including population densities, building intensities, square footage, project phasing, and dates of construction completion.

(4) A description of public facilities that will serve the development, including who shall provide such facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of development.

(5) A description of the level of service allocations to be permitted by the developer's agreement.

(6) A finding that the proposed development is consistent with town comprehensive plan, adopted in section 11-6 hereof, and any applicable land development regulations.

(7) A description of any conditions, terms, restrictions, or other requirements deemed necessary by the town council.

(8) Payment of any required application fee as established by the town council.

(9) Any further information that the town may require because of the type or location of the proposed development.

(c) *Recording of developer's agreement.* The town shall record the agreement with the clerk of the circuit court within fourteen (14) days of its execution. The expense of recording the agreement shall be that of the owner/developer of the development project lands. (Ord. No. 91-1, 11, 11-7-90)

Sec. 11-31. Appeals.

Appeals from the decisions of the building official with respect to determinations made hereunder shall be taken to the town council. An appeal of the building official's determination shall be made within no more than thirty (30) days of the rendition of the written determination of the building official. To initiate an appeal a notice of appeal stating the basis for the appeal with supporting argument shall be filed with the town clerk. Before the appeal is acted upon by the town council, the town clerk shall forward the notice of appeal to the board of adjustment and thereafter to the zoning

and planning board for an advisory recommendation to the town council. (Ord. No. 91-1, 12, 11-7-90)

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Chapter 12

POLICE*

Art. I. In General, 12-1--12-14
Art. II. Reserved, 12-15--12-31
Art. III. Auxiliary Police Force, 12-32--12-41

ARTICLE I. IN GENERAL

Sec. 12-l. Composition of department.

The police department shall consist of a chief of police and such number of subordinate police officers as may from time to time be authorized by the town manager, subject to budgetary approval by the town council. (Code 1962, 23-1; Ord. No. 247, 20, 5-15-79; Ord. 97-5, 8, 5-6-97)

Sec. 12-2. Chief to head department, subject to manager and civil service.

The chief of police shall be head of the police department and the chief law enforcement officer of the town. He shall be responsible to the town manager. The police chief shall perform such duties as may be set forth in this code or Florida law, the police chief's job description, and as directed by the town manager. (Code 1962, 23-3; Ord. No. 247, 22, 5-15-79; Ord. 97-5, 9, 5-6-97)

Sec. 12-3. Specific powers, duties of chief.

The chief of police shall have the following powers and duties:

(a) He shall appoint his subordinates, subject to applicable civil service rules and regulations.

(b) He, or his designated representative, shall attend all meetings of the council.

(c) He shall be responsible to the town manager and make such reports as the town manager or council may require. (Code 1962, 23-2; Ord No. 247, 22, 5-15-79)

Secs. 12-4--12-14. Reserved.

***Cross references**--Court costs for law enforcement education, 1-10; civil service for policemen, 2-201; police to attend polling places during elections, 2-77; police to attend, keep order at council meetings, 2-108; pension plan for police officers and firefighters, 2-226 et seq.; alarm systems, 6-128 et seq.; police powers of commanding fire department officer at a fire, 7-8; interfering with officers, 10-16; regulation of private detectives, 10-22.

ARTICLE II. RESERVED*

Secs. 12-15--12-31. Reserved.

ARTICLE III. RESERVED**

Secs. 12-32-12-41. Reserved.

***Editor's note**--Article II, 12-15--12-21, pertaining to retirement for police officers, has been deleted as being superseded by Ordinance No. 89-15, included herein as Ch. 2, Art. IX, Div. 3, 2-226--2-234. Former Article II derived from Ord. No. 185, 1-5, adopted Sept. 16, 1975; Ord. No. 279, 1, adopted April 15, 1980 and Ord. No. 83-324, 1, adopted Jan. 3, 1983.

****Editor's note**--Ord. No. Ord. No. 17-05, adopted March 8, 2017, repealed Article III, Auxiliary Police Force, as obsolete.

[The next page is 825]

Chapter 13

STREETS AND SIDEWALKS*

Art. I. In General, 13-1--13-18
Art. II. Work Incident to Utilities, 13-19--13-51
Art. III. Melbourne Causeway, 13-52--13-56

ARTICLE I. IN GENERAL

Sec. 13-1. Paving to comply with state specifications.

All paving on or within any town right-of-way, or any right-of-way proposed to be dedicated or conveyed to the town, shall, unless otherwise specifically permitted by the council, comply in all respects with the standards and specifications of the Florida Department of Transportation.

Sec. 13-2. Damaging, removing materials from.

Except as otherwise provided herein, it shall be unlawful to destroy, deface or injure any street, portion of any public right-of-way (whether paved or unpaved), or sidewalk in the town, or to remove any material therefrom. Destruction, defacing, damaging, removing material, or causing injury, all as a direct result of routine lawn and floral maintenance, repair or maintenance of streets, sidewalks, or utilities, or planting of trees as approved by the town manager or said manager's designee, all on any street, sidewalk, or public right-of-way shall be activities exempt from this section. As used in this section, the term "right-of-way" shall mean lands, dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress or egress, or other use by the public, certain designated individuals, or governing bodies. (Code 1962, 24-1; Ord. No. 92-2, 1, 1-21-92; Ord. 92-6, 1, 4-21-92)

Sec. 13-3. Display of goods.

(a) Except as otherwise permitted by this section, every use customarily conducted within a building shall be conducted in a building enclosed on all sides with permanent walls. Unless a permit is obtained pursuant to this section, the sale or display for sale of goods, wares, merchandise, products, services, or material related to services, beyond the confines of such walls shall be prohibited. The display for sale of goods, wares, merchandise, products, services, or material related to services, as part of a sign permitted by the town code shall be excepted from the prohibitions of this sub-section.

(b) Sidewalk sales generally authorized. In the "R-P," "C", "C-1," "C-2," and "SC" zoning districts, a general permit for sidewalk sales is hereby authorized and issued for sidewalk sales meeting the following standards:

(1) No sidewalk immediately adjacent to a public right-of-way shall be completely blocked nor shall the flow of pedestrian traffic on any sidewalk be blocked, by merchandise, dress carts, tables, displays, or any other form of support, used in a sidewalk sale.

Cross references--Obstructing drainage, 10-7; drainage onto streets or property of another, 10-8; operation of vehicles with tar pots attached, 15-6; trees and shrubs, Ch. 16; council permission required for streets, driveways, 17-96; obstructions to vision at street intersections, 17-97.

(2) If the Town permits a sidewalk sale or special event to occur such that any part of it is within the public right-of-way or on public property all vendors are liable for and shall in writing indemnify and hold harmless the Town for any injury (including death) to person or property occurring at, or as a direct or indirect result of, any sidewalk sale. Prior to engaging in a sidewalk sale, the vendor shall present to the Town a copy of a liability insurance policy in the amount of at least $200,000 per person/$300,000 per occurrence insuring the vendor and the Town, as an additional insured. The policy, paid for by the vendor, shall be written by a company authorized to write insurance within the State of Florida and shall be rated as a standard company rated at A+ or better by A.M. Best's Rating Guide or equivalent specifications as approved by the town manager. The policy shall be non-cancelable without at least ten (10) days written notice to the town prior to cancellation.

(3) Banners, pennants, and national flags as permitted by Chapter 17 may be permitted as part of the display. No flashing, moving, or intentionally moving signage shall be permitted. No lights of any type are permitted to be used as any part of an advertisement or display at a sidewalk sale. All provisions relating to signage in Chapter 17 shall be adhered to as part of any special event or sidewalk sale; and

(4) Except as provided in sub-section (c) below, sidewalk sales shall only be held on dates pre-approved by resolution of the town council. The town council is hereby authorized, but shall not be obligated, to from time to time approve or revise by resolution a listing of dates for sidewalk sales.

(c) Special events, grand openings and store anniversaries. In the "R-P," "C", "C-1," "C-2," and "SC" zoning districts, the town manager is hereby authorized to issue special permits for sidewalk sales, if the application meets all of the following standards:

(1) No sidewalk sale immediately adjacent to the public right-of-way shall be completely blocked nor shall the flow of pedestrian traffic on any sidewalk be blocked by merchandise, dress carts, tables, displays, signs or any other form of support used in a sale or special event;

(2) If the Town permits a sidewalk sale or special event to occur such that any part of it is within the public right-of-way or on public property all vendors are liable for and shall in writing indemnify and hold harmless the Town for any injury (including death) to person or property occurring at, or as a direct or indirect result of, any sale or special event. Prior to engaging in a sidewalk sale, the vendor shall present to the Town a copy of a liability insurance policy in the amount of at least $200,000 per person/$300,000 per occurrence insuring the vendor and the Town, as an additional insured. The policy, paid for by the vendor, shall be written by a company authorized to write insurance within the State of Florida and shall be rated as a standard company rated as A+ or better by A.M. Best's Rating Guide or equivalent specifications as approved by the town manager. The policy shall be non-cancelable without at least ten (10) days written notice to the town prior to cancellation;

(3) Banners, pennants, and national flags as permitted by Chapter 17 may be permitted as part of the display. No flashing, moving, or intentionally moving signage shall be permitted. No lights of any type are permitted to be used as any part of an advertisement or display at a sale or special event. All provisions relating to signage in Chapter 17 shall be adhered to as part of any special event or sidewalk sale;

(4) The sidewalk sale or special event will not be adverse to the public interest;

(5) The permit is for the purpose of a special event; and

(6) Duration. No sidewalk sale for a business entity exceeds a period of seven (7) consecutive days, and in no event shall any business entity be issued a special permit for more than a total of thirty-six (36) days of sidewalk sales during a calendar year period;

(7) "Special events," as that term is used in this section, shall include but not be limited to extensive re-modeling of a business entity, annual town art shows, special sales conducted by a business entity, a business entity grand opening, a business entity anniversary, an open house for a business entity, events related to town recognized holidays, or other similar events.

(d) As used in this section, the term "sidewalk sale" shall be defined as set forth in Section 17-4.

(e) For storefronts in the C-2 zoning district having 70 feet or less of total street frontage; merchandise may be permitted to be attached to a building or a freestanding pole mounted to a wall or to the ground, subject to the following controls:

(1) Merchandise shall not contain any advertising signage relating to the name of the business displaying the items.

(2) The size of each displayed article shall not exceed 12 square feet with a maximum dimension on any single side of 6 feet.

(3) Merchandise displays shall be limited to a total of one item per 4 feet of store frontage.

(4) No display shall extend above the roof of storefront.

(5) Any outdoor display of merchandise authorized pursuant to this chapter must be of the type and nature sold inside the business.

(Code 1962, 24-3; Ord. No. 83-335, 1, 8-16-83; Ord. 94-7, 1, 1-18-94; Ord. 94-13, 1, 6-21-94; Ord. No. 02-16, 1, 7-16-02; Ord. No. 02-20, 1, 9-17-02; Ord. No. 03-10, 1, 8-19-03; Ord. No. 05-06, 1, 12-16-04; Ord. 06-02, 1, 11-16-05; Ord. 06-09, 1, 6-20-06; Ord. 07-02, 1, 11-21-06; Ord. 09-13, 1, 7-21-09; Ord. 12-08, 1, 2, 5-9-12)

Sec. 13-4. Use for storage of junk or vehicles.

It shall be unlawful to use any of the streets or sidewalks within the town for the purpose of storing junk or motor vehicles, or for temporary storage of vehicles for the purpose of sale or repair except in emergencies. (Code 1962, 24-4)

Sec. 13-5. Safety precautions required when sidewalk broken or damaged.

In the event any person shall dangerously damage or break, or cause to be damaged or broken up, any sidewalk, it shall be the duty of such person to provide whatever lights, barriers, or temporary and safe walkways may be required for safe pedestrian traffic at all times. Such provisions shall be maintained in good condition until the sidewalk is repaired or replaced. (Code 1962, 24-12)

Sec. 13-6. Gates opening over street or sidewalk.

The owner or occupant of any lot or parcel of land within the town which shall have any gate opening to any street or sidewalk shall have the gate hung so that it swings inward when open and so that it cannot be swung outward over or toward the street or sidewalk. (Code 1962, 24-13)

Sec. 13-7. Encroachments preventing traffic.

It shall be unlawful to place concrete or other solid materials upon the rights-of-way of streets or alleys for the purpose of preventing vehicular traffic or pedestrians from driving or walking upon said streets or alleys or rights-of-way, without having first obtained permission from the town council. (Code 1962, 24-21)

Sec. 13-8. Driving past barricades.

It shall be unlawful to drive any vehicle or animal past, around or over any barricade lawfully placed upon any street which has been closed by the barricade, except by consent of persons authorized to give such consent. (Code 1962, 24-26)

Sec. 13-9. Building numbering.

The house number of every residence and commercial establishment shall be prominently displayed on the face of the building, or on the mailbox or other structure near the street. The numbers shall not be more than seventy-five (75) feet from the property line, and shall be clearly visible from the street.

Numbers may be numerals or script, and shall be in contrast with the color of the immediate background on which they are mounted. The numbers shall be at least two and one-half (2 ½) inches in height, for residences, and three and one-half (3 ½) inches in height for commercial premises. (Ord. No. 83-325, 1, 2-15-83)

Secs. 13-10--13-18. Reserved.

ARTICLE II. WORK INCIDENT TO UTILITIES

Sec. 13-19. Scope.

The work covered by this article consists of all operations in connection with excavation and trenching for utilities, including dewatering, shoring, bracing, backfilling, compacting, protective slabs, restoration of surfaces (paved or otherwise), and disposal of surplus materials when installing, maintaining or connecting with utility lines (gas, electric, telephone, water, sewer, and TV cable, etc.) within rights-of-way in the town. (Ord. No. 245, 1.1, 1-16-79)

Sec. 13-20. Enforcement; certificate of compliance.

It shall be the duty of the director of public works to see that all persons doing work within the scope of this article comply with this article when working within the town, and the director of public works shall be responsible for obtaining, and the appropriate person doing such work shall submit, a written certification to the town certifying that the repair or replacement work has been done in accordance with this article. (Ord. No. 245, 2, 1-16-79)

Sec. 13-21. Permit required.

It shall be unlawful to do any construction or repair work within the scope of this article, without first procuring from the director of public works a written permit therefor. Such permit shall be issued under such conditions as may be prescribed by the director of public works and shall accurately describe the portion of the street to be affected and shall make provision for the replacement of that part of the street which is to be replaced in accordance with this criteria and shall state a definite time within which the permit shall be operative. (Code 1962, 24-22; Ord. No. 85-15, 1, 6-18-85; Ord. No. 14-14, 1, 9-16-14)

Sec. 13-22. Barricades, lights required, Maintenance of Traffic Plan, Flagmen.

Any contractor, company or individual carrying on or doing any construction, excavation or repair work within the scope of this article shall erect and maintain proper, safe and sufficient barricades, utilize flagmen, and during that period of time between one-half (l/2) hour after sunset and one-half (1/2) hour before sunrise, shall maintain sufficient lights or flares around such barricades, work or excavations to warn persons of the presence of such excavations and work and to prevent injury to persons and property. 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, the Manual on Uniform Traffic Control Devices (MUTCD), Section V, Construction and Maintenance, as published by the Federal Highway Administration. Other criteria shall be the 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. The most current published date for all references shall apply. A Maintenance of Traffic Plan, utilizing FDOT current criteria, shall be submitted to the Town for approval. The Town may incorporate additional requirements if deemed appropriate (Code 1962, 24-23; Ord. No. 14-14, 2, 9-16-14)

Sec. 13-23. Design Requirements, Material Standards, Construction Methods, Testing.

The purpose of this section is to specify the limits on open pavement cuts, to describe utility placement within the right-of-way, to detail the improvement's minimum clearance and coverage requirements, to specify accepted materials and construction 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 paragraphs (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 shall locate electric, telecommunications and CATV cable plant improvements underground. The Town encourages the use of rear and side property line utility easements and arterial and collector road rights-of-way for all improvements. Additional locational criteria for electric, telecommunications, and CATV improvements are provided in paragraph (d).

(b) All aerial improvements are discouraged. All underground improvements shall be located 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 between six (6) feet and ten (10) feet inside the right-of-way line and where possible, the utilities are not to be located under Town paved streets.

(d) In cases where conflicts exist that would prevent the location of proposed underground improvements in the location set forth in paragraphs (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 preferred locations 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 Director and shall be binding on the permittee.

(2) Clearance. The minimum clearance requirements for installation of improvements shall be as follows:

(a) 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 Town's, the more stringent requirements shall govern.

B. Material Standards.

(1) Backfill. Backfill materials shall meet or exceed specifications set forth in Section 125-8 of the most current version of the Florida Department of Transportation (FDOT) Standards Specifications for Road and Bridge Construction and shall meet 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.

(2) Flowable fill. Flowable fill shall meet or exceed the minimum standards as set forth in the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, Section 121-Flowable Fill, Subsections 121-1 through 121-6, or the most current edition.

(3) Sod. All disturbed areas within the right of way shall be sodded. Seed and mulch is not permitted. The disturbed area shall be sodded with the same type of sod as existed prior to excavation. All lawns or other NON-PAVED areas within or adjacent to the right-of-way that are disturbed or damaged by the construction operation shall be restored by resodding. Sod shall be Bahia, Bermuda or Floritam to match existing or adjacent grass. If an irrigation system is present, the sod shall be Floritam regardless of adjoining turf type. The sod type may also be designated by the Public Works Director at his sole discretion. All sodded areas shall be maintained and regularly watered for thirty (30) days to ensure standing growth.

(4) Concrete. All concrete and concrete work shall conform to the following unless otherwise noted on the approved drawings. All concrete specified in this Section shall attain a minimum compressive strength of 3,000 psi in twenty-eight (28) days.

(a) Concrete Mix Materials: Coarse aggregate shall be hard, clean, washed gravel or crushed stone. Maximum aggregate size shall not be larger than one (1) inch and not smaller than one-half ½ inch equivalent diameter, free from injurious amount of minerals, organic substances, acids or alkalies. Cement shall be Type 1, domestic Portland cement, conforming to ASTM C-150.

(b) Concrete Admixtures: Air-entrainment admixtures in concrete are permitted in accordance with manufacturers specifications provided the specified strength and quality are maintained and unless the admixture appears to be causing abnormal field results, and provided that the total entrained air content does not exceed five percent (5%). No other admixture of any type will be permitted without written approval of the Town.

(c) Reinforcing Steel: Reinforcing bars shall be intermediate grade, new billet-steel deformed bars free of loose rust, scale, dirt or oil, and shall conform to ASTM A-615. All reinforcement steel shall be placed, spliced, lapped, etc., in accordance with the ACI Standard 318. Welded wire fabric for concrete reinforcement is not permitted.

(d) Fiber Reinforcement: Commercial grade concrete with nylon fiber additive in lieu of reinforcement steel, one and one-half (1½) pounds of one to one and one-half (1-1½) inch long fibers added to each cubic yard of concrete.

(e) Transit or Ready-Mixed Concrete: May be used provided it conforms to ASTM C-94 and specifications herein stated and the central plant producing the concrete, batching, mixing and transportation equipment is, in the opinion of the Town, suitable for production and transportation of specified concrete.

(5) Base Material

(a) 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).

(b) 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 non plastic. The material shall have an LBR value of not less than one hundred (100).

(6) Prime / Tack Coat

(a) 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 catonic).

(b) 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 catonic) except that the viscosity requirements shall not apply.

(7) Asphaltic Concrete

Asphaltic concrete for use as surface courses on Town streets shall be Type SP-12.5 or Type SP-9.5, conforming to the FDOT Standard Specifications for Road and Bridge Construction. The permittee shall submit, for review and approval by Town staff, an asphalt mix design that shall conform to the above specifications prior to placement.

(8) Striping and Pavement Marking Material

Striping and pavement marking materials shall conform to the most current Manual on Uniform Traffic Control Devices (MUTCD). Material to be replaced with like material and is subject to review and approval by the Public Works Director prior to installation.

C. Construction Standards.

(1) Concrete

(a) Construction Methods: Forms shall be of sufficient strength to resist pressure of the concrete without springing. Do not remove bottom forms within twenty-four (24) hours after concrete has been placed. Do not remove side or top forms within twelve (12) hours after concrete has been placed. Upon removal of forms, correct minor defects with a rich mix cement mortar. Finish curbs, gutters, walks or medians until a smooth surface is attained. Final finish shall be a light broom finish. When completed, cure concrete as specified in FDOT Standard Specifications for Road and Bridge Construction Section 925 shall be obtained.

(2) Placing of Concrete: Deposit concrete in clean, wet forms and as nearly as practicable in its final position to avoid segregation. Place concrete at a rate so concrete is at all times plastic and flows readily into the spaces between the bars. Concreting shall be a continuous operation until the panel or section is completed. Vibrate all structural concrete. No concrete shall be allowed a free fall of more than four (4) feet or allowed to strike against a vertical or inclined surface or reinforcement above the point of deposit. Placing by means of pumping may be allowed, contingent upon the adequacy of the equipment for this particular work. Operation of pumping shall insure a continuous stream of concrete and shall be so regulated so that the pressure caused by wet concrete shall not exceed that used in the design of the forms. After the concrete has taken its initial set, exercise care to avoid jarring forms or placing any strain on ends of projecting reinforcement.

(3) Machine-Forming: Will be permitted, providing all quality conditions of conventional construction are met. Saw cut contraction joints unless an alternate method of constructing them is approved in writing by the Public Works Director. Saw cut contraction joints as soon as the concrete has hardened to the degree that excessive raveling will not occur and before uncontrolled shrinkage cracking begins. Saw cut contraction joints at intervals of not more than five (5) feet, except where shorter intervals are required for closures, but no joints shall be sawed or constructed at intervals of less than four (4) feet.

(4) Curing: As soon as practicable after finishing all concrete, apply an approved membrane curing compound or other Town approved cover at Contractor's option. Where membrane curing

compound is used, allow no walking or other traffic over the slab for seventy-two (72) hours after application unless surface is protected by heavy building paper or other Town approved cover.

(5) Joints

(a) Construction Joints: Locate joints not shown or specified so as to least impair strength and appearance of the work. Place concrete at such a rate so surfaces of concrete which have not been carried to joint levels will not have attained initial set before additional concrete is placed thereon.

(b) Contraction Joints: Construct curbs, curb-and-gutters, and valley gutters with contraction joints at intervals of ten (10) feet except where shorter intervals are required for closures, but no joint shall be constructed at intervals of less than four (4) feet. Construct sidewalks and concrete medians with contraction joints at intervals equal to the width of the walk or median respectively unless otherwise noted on the Drawings. Contraction joints may be of the open type or sawed. Construction of contraction joints shall conform to Sections 520 and 522 of FDOT Standard Specifications.

(c) Expansion Joints: Construct curbs, curb-and-gutters, and valley curbs with expansion joints at all inlets, all radius points, all points where operations cease for any considerable time and at intervals of not more than one hundred (100) feet. Construct walks and concrete medians with expansion joints at points of walk or median termination against any unyielding surface and at intervals not to exceed ninety (90) feet. Construct expansion joints with PVC slips encasing the reinforcing bars. Expansion joint material shall be ½ inch bituminous impregnated expansion joint material. Wood expansion joint material is not permitted. Construction of expansion joints shall conform to Sections 520 and 522 of FDOT Standard Specifications.

(d) Other: Where the drawings call for sealed joints between walks or concrete medians and curbs, construct such joints in conformance with Sections 520 and 522 of FDOT Standard Specifications.

(6) Trenching — Unpaved Areas.

(a) 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.

(b) 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 Town's, the more stringent requirements shall govern.

(c) 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.

(d) 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.

(e) Unsuitable material below improvement. Wherever excavation of the trench exposes unsuitable materials 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.

(f) Backfill. Only good quality backfill 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 (½) 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.

(g) 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 Town facility designated by the Public Works Director. 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 Town each day of the exchange.

(h) 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.

(i) 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.

(7) Roadway Open Cuts

Trenching in paved areas shall be the same as section (6) above, with the following exceptions and additions:

(a) Pavement cuts.

1. Pavement cuts are prohibited unless one (1) or more of the following conditions exist:

a. Subsurface obstructions such as other existing improvements are in conflict;

b. Existing conditions of the roadway will require reconstruction;

c. The road is scheduled by the Town for reconstruction within two (2) years.

2. The final decision on all road cuts shall be made by the Public Works Director. 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.

(b) Compaction. A compactive effort and testing shall be required in all paved areas.

(c) Backfill. Only good quality backfill 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 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.

(d) Base material. 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 Director shall reserve the right to substitute tests at random locations to verify compaction.

(e) Prime coat. 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.

(f) Surface coat. 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.

(8) 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 non-yielding 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 Director.

D. Testing Standards.

(1) Test and Report Requirements. 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 Director in a timely fashion. Test reports shall be received by the Town 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:

(2) 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 (min. 98% of maximum 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, non-yielding 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 2010 Edition of Standard Specifications for Road and Bridge Construction, Section 121-Flowable Fill, Sections 121-1 through 121-6, or the most current edition.

(3) Backfill paved areas.

(a) Moisture density relationships shall be in accordance with AASHTO T-180-86 for every material change.

(b) In-place density (minimum ninety-eight percent (98%) of maximum 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, non-yielding 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 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.

(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 (minimum ninety-eight percent (98%) of maximum 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.

(5) Asphaltic concrete. Hot mix materials aggregate testing shall be for stability, extraction (bitumen content) and gradation at a minimum frequency of one test per a.m. and one test per p.m. for each day's work. At the discretion of the Public Works Director, core samples may be taken to evaluate in place density as set forth in the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, Section 334.

(6) 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.

E. 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 Town's, the more stringent requirements shall govern.

(1) Protective measures and traffic flow.

(a) 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, the Manual on Uniform Traffic Control Devices (MUTCD), Section V, Construction and Maintenance, as published by the Federal Highway Administration. Other criteria shall be the 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. The most current published date for all references shall apply.

(b) 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.

(c) 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.

(2) Protection of adjoining or adjacent property and improvements. In performing the work authorized by the permit, permittees shall:

(a) 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.

(b) Sweep and clear all obstructions, dirt and debris of any kind from roadways, sidewalks, bike paths and other public thoroughfares daily.

(c) 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 Indialantic.

(d) 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.

(e) 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.

(3) 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. All concrete sidewalks abutting the work shall be replaced with five (5) foot wide by six (6) inch thick concrete with fiber reinforcement as specified herein, unless waived in writing by the Town.(Ord. No. 245, 2.1, 1-16-79; Ord. No. 14-14, 3, 9-16-14)

Sec. 13-24 – 13-34. Reserved.
Repealed (Ord. No. 14-14, 4, 9-16-14)

Sec. 13-35. Overall area grading.

Within the limits of construction and outer limits of clearing and grubbing, all holes and other depressions shall be filled, all mounds and ridges cut down, and the area brought to sufficiently uniform contour that the town's subsequent mowing operations will not be hindered by irregular terrain. (Ord. No. 245, 6, 1-16-79)

Sec. 13-36. Clean-up generally.

During the progress of the work, the utility owner or person doing the work shall clean up the work areas as portions of work are completed. Upon completion of the work, all trash, debris and excess material must be hauled away and disposed of to the satisfaction of the town. The completed work shall be cleaned and graded to a condition at least equal to that existing before the start of construction, including the replacement of shrubs and sodding removed or damaged while in the course of construction. (Ord. No. 245, 7, 1-16-79)

Secs. 13-37--13-51. Reserved.

ARTICLE III. MELBOURNE CAUSEWAY *

Sec. 13-52. Intent.

It is the general purpose and intent of this article to establish regulations governing certain activities on that part of the Melbourne Causeway area which is within the corporate limits of the Town of Indialantic, Florida; to declare certain activities as violations of regulations; and to provide for criminal penalties for violations of the regulations. (Ord. No. 82-302, 1, 12-15-81)

Sec. 13-53. Definitions.

For the purpose of this article, the following definitions shall apply in the interpretation, execution and enforcement of this article. When not inconsistent with the context, words in the plural include the singular, words used in the present tense include the future, words in the singular number include the plural number. The word "shall" is always mandatory, not merely directory.

Median strip means that grassy strip and all improvements between that certain divided highway, US-192 (aka SR-500), within the restricted area, including, but not limited to, that portion of the median strip where the relief bridge is located (the river flows under said bridge at this point on the causeway, and there is access to the river from the median strip).

Person means any person, firm, partnership, association, corporation, company or organization of any kind; but specifically does not include any authorized agent of the Town of Indialantic, City of Melbourne, County of Brevard, State of Florida, or United States, lawfully pursuing his or her duties for said agencies in said restricted area.

Restricted area means that part of the Melbourne Causeway lying within the corporate limits of the Town of Indialantic, Florida. The restricted area lies on either side of US-192 (aka SR-500), from

the eastern edge of the easternmost relief bridge (aka Bridge #700235) which lies approximately 280 feet west of Riverside Place to the middle of the Melbourne Causeway bridge, a/k/a the Ernest Kouwen-Hoven Bridge, on the west.
(Ord. 07-10, 1, 6-19-07; Ord. 12-04, 1, 12-20-11)

Editor's note--Ord. No. 82-302, 1--5, adopted Dec. 15, 1981, enacted provisions not expressly amendatory of the Code; at the editor's discretion, said provisions have been included herein as Art. III, 13-52--13-56.

Sec. 13-54. Regulations.

(a) *Fire.* No person shall ignite, set, build or maintain any fire for any purpose within the restricted area.

(b) *Sleeping, camping and lodging.* No person shall sleep, camp or lodge in the restricted area from dusk to dawn; or set up tents, shacks or any other temporary shelter; or use any vehicle for the purpose of camping or sleeping in the restricted area during said period.

(c) *Activities on median.* No person shall at any time utilize the median strip for any purpose, or perform any activity on the median strip whatsoever, including, for the purpose of illustration, but not limited to walking, running, standing, sitting, sleeping, parking any vehicle, camping or fishing.
(Ord. No. 82-302, 3, 12-15-81)

Cross reference--Sleeping, camping in public place, 10-24

Sec. 13-55. Notice by sign to be posted.

The town is hereby directed to erect and maintain conspicuous signs, as notice to the public, designating the restricted area and prohibited activities. (Ord. No. 82-302, 4, 12-15-81)

Sec. 13-56. Violation of regulations.

Any person violating any of the provisions of this article shall be guilty of a misdemeanor of the second degree and, upon conviction thereof, shall be punished as provided in Florida Statutes, Section 775.082(4)(b) and Section 775.083(1)(e), and as hereafter from time to time duly amended. No person, however, shall be arrested for violation of this article without first being given a verbal warning regarding the regulation said person is violating, and reasonable opportunity to comply with said warning, by an Indialantic police officer or other sworn police officer duly requested to assist.
(Ord. No. 82-302, 5, 12-15-81)

Chapter 13.5

SUBDIVISIONS OF LAND*

Sec. 13.5-1. Definitions.

For the purpose of this article, certain words or terms used herein shall be defined as follows:

Development shall be defined as set forth in Section 380.04, Florida Statutes.

Newspaper of general circulation means a newspaper meeting the requirements of Sections 50.011 and 50.031, Florida Statutes.

Subdivision means and refers to the division of real property into three (3) or more tracts or parcels of land. (Ord. No. 91-2, 1, 11-7-90)

Sec. 13.5-2. Approval required prior to filing plats.

(a) No person shall file for record or cause to be filed for record any plat or map of a subdivision of any tract of land, or portion thereof, located within the town, whereby the tract or portion thereof is shown on the plat or map to be subdivided into lots and blocks, either with or without street rights-of-way, unless the plat or map, before filing for record, shall have been submitted to and approved by the town council.

(b) It shall be unlawful to convey property by reference to a plat or map of a subdivision of any tract of land, or portion thereof, located within the town, unless the plat or map has been previously approved by the town council, or other governmental body having jurisdiction, and filed for record.

(c) All plats or maps of the subdivision of any tract of land, or portion thereof, submitted to the town council shall be prepared consistent with the regulations in Chapter 177, Florida Statutes. (Ord. No. 91-2, 2, 11-7-90)

Sec. 13.5-3. Platting.

(a) *Approval.* No lot or parcel of property shall be platted or replatted without prior approval of the town council.

(b) *Application.* An application for platting or replatting may be obtained from the town clerk and shall be completed by the applicant.

***Cross references**--Planning and development, Ch. 11; zoning and planning board, 17-30 et seq.; board of adjustment, 17-46 et seq.

(c) *Notice of hearing.* Upon receipt of the application, the town clerk shall cause a notice of the application and the time and place of the hearing thereon to be published at least fifteen (15) days and not more than thirty (30) days prior to such hearing, in a newspaper of general circulation, and shall post a copy of said notice in the town hall. The town clerk shall also send by certified mail a notice to those persons owning property within the radius of two hundred (200) feet of the property lines affected by the application.

(d) *Mailed notice.* The mailed notice shall include the following:

(1) That any persons owning property within the said radius above shall have the right to protest the platting or replatting requested.

(2) That protests may be filed in writing in the office of the town clerk not more than ten (10) days after the date the notice was published.

(3) That the person who has timely filed a written protest may be heard at the hearing, giving the time, date, and place of same.

(4) The particulars of the platting application.

(5) That any person desiring to appeal the determination of the town council may need to ensure that a verbatim transcript of the hearing is prepared.

(e) *Protests.* Prior to the public hearing the town clerk shall forward to the town council the application and any protests filed regarding same.

(f) *Costs.* The costs incurred by the town for the required publication of notice(s) and for the required mailing of copies of such notice(s) shall be paid by the applicant submitting the proposed plat or replat. (Ord. No. 91-2, 3, 11-7-90)

Sec. 13.5-4. Construction on unplatted lands.

No development shall be undertaken on unplatted land without the recommendation of the zoning and planning board and approval of the town council, unless said development is in compliance with all provisions of this Code. (Ord. No. 91-2, 4, 11-7-90)

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Chapter 14

TAXATION*

Art. I. Insurance Premium Taxes, 14-1--14-10
Art. II. Public Service Tax, 14-11--14-23

ARTICLE I. INSURANCE PREMIUM TAXES

Sec. 14-1. Property insurance-Levy of tax.

There is hereby assessed, imposed, and levied on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereafter engage in or carry on the business of property insurance as shown by the State of Florida, Department of Insurance, an excise tax in addition to any lawful license or excise tax now levied by the town. The additional tax shall be in the amount of one and eighty-five one-hundredths percent (1.85%) of the gross amount of receipts of premiums from policy holders on all premiums collected on property insurance policies covering property within the town. In the case of multiple peril policies with a single premium for both the property and casualty coverages in such policies, seventy percent (70%) of the premium shall be used as the basis for the one and eighty-five one-hundredths-percent tax. (Ord. No. 91-6, 1, 1-15-91)

Sec. 14-2. Same-When payable.

The excise tax levied by section 14-1 shall be payable annually on the first day of March of each year in the manner specified in Sections 624.509 and 624.5092, Florida Statutes, and Chapter 12B-8, Florida Administrative Code. Funds shall thereafter be paid by the state to the town in the manner provided by law. Said tax shall be deposited in the firefighters' pension trust fund. (Ord. No. 91-6, 2, 1-15-91)

Secs. 14-3--14-5. Reserved.

Sec. 14-6. Casualty insurance-Tax levied.

There is hereby assessed, imposed, and levied on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereafter engage in or carry on the business of casualty insurance, as shown by the records of the State of Florida, Department of Insurance, an excise tax in addition to any license tax or excise tax now levied by the town, which tax shall be in the amount of eighty-five one-hundredths percent (.85%) of the gross amount of receipts of premiums from policy holders on all premiums collected on casualty insurance policies covering property within the town. In the case of multiple peril policies with a single premium for both property and casualty coverages in such policies, thirty percent (30%) of such premium shall be used as the basis for the eighty-five one-hundredths-percent tax above. (Ord. No. 91-7, 1, 1-15-91)

***Cross reference**--Occupational license taxes, Ch. 9.

Sec. 14-7. Same-When payable.

The excise tax levied by section 14-6 shall be payable annually on the first day of March of each year hereafter in the manner specified in Sections 624.509 and 624.5092, Florida Statutes, and Chapter 12B-8, Florida Administrative Code. Funds shall thereafter be paid by the State of Florida to the town in the manner provided by law. (Ord. No. 91-7, 2, 1-15-91)

Secs. 14-8--14-10. Reserved.

ARTICLE II. PUBLIC SERVICE TAX*

Sec. 14-11. Levied.

In addition to all other taxes of every kind now imposed, there is hereby levied by the town on each and every purchase in the town of electricity (not including fuel adjustment), metered or bottled gas (natural or manufactured liquified petroleum gas), and water services, a tax equal to ten percent (10%) of the payments received by the seller of such utility service; in the case of individually metered units in a multi-unit building, each metered unit shall constitute a separate purchase. (Code 1962, 25-2; Ord. No. 267, 1, 8-23-79; Ord. No. 280, 1, 4-30-80; Ord. No. 81-287, 1, 12-30-80; Ord. No. 82-315, 1, 9-21-82; Ord. No. 83-337, 1, 9-20-83; Ord. No. 85-23, 1, 9-17-85; Ord. No. 16-07, 1, 4-13-16)

Sec. 14-12. Applicability of tax.

The tax levied by this article shall also apply to all sales of electricity and gas whether delivered through the medium of a meter or other measuring devices, or otherwise, to premises located in the town. (Code 1962, 25-10; Ord. No. 16-07, 2, 4-13-16)

Sec. 14-13. Exclusion of fuel adjustment charge.

The tax imposed by this article shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. "Fuel adjustment charge" shall mean all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

Sec. 14-14. Exemption for governmental agencies.

The United States of America, State of Florida and the political subdivisions and agencies, boards, commissions and authorities thereof, are exempt from payment of the tax levied by this article. (Code 1962, 25-11)

***State law reference**--Provisions governing public service taxes, F.S. 166.231.

Sec. 14-15. Exemption for churches.

The tax imposed by this article shall not be levied or collected on the purchases of utility services by any recognized church in the state for use exclusively for church purposes.

Sec. 14-16. Seller to collect from purchaser.

In every case the tax shall be collected from the purchaser of such utility service and paid by such purchaser, for the use of the town, to the seller of such utility service at the time the purchaser pays the charge therefore to the seller, and not less often than monthly. (Code 1962, 25-2)

Sec. 14-17. Purchaser failing or refusing to pay.

If any purchaser shall fail, neglect or refuse to pay to the seller the tax imposed by this article, the seller shall have, and is hereby vested with, the right to discontinue immediately further service to such purchaser until the tax and the seller's bill have been paid in full. (Code 1962, 25-3)

Sec. 14-18. Collection and paying over to town.

It shall be the duty of every seller of any utility service described in section 14-11, in acting as a tax collecting medium or agency for the town, to collect from the purchaser for the use of the town the tax imposed and levied by this article and to report and pay over to the town on or before the tenth day of each month all such taxes collected during the preceding calendar month. (Code 1962, 25-4)

Sec. 14-19. Computation.

In all cases where the seller of electricity, metered or bottled gas (natural, liquefied gas or manufactured), and water services, collects the price thereof at monthly periods, the tax levied by this article may be computed on the aggregate amount of sales during such period. The amount of tax to be collected shall be the nearest whole cent to the amount computed. (Code 1962, 25-5; Ord. No. 267, 2, 8-23-79; Ord. No. 16-07, 3, 4-13-16)

Sec. 14-20. Failure of seller to collect.

(a) It shall be unlawful for any seller to collect the price of any sale of a utility service without at the same time collecting the tax levied in respect to such sale.

(b) Any seller failing to collect such tax at the time of collecting the price of any sale shall be liable to the town for the amount of such tax in like manner as if the same had been actually paid to the seller, and the director of finance of the town shall bring all suits and actions and take all proceedings as may be necessary for the recovery of such tax. Provided, however the seller shall not be liable for the payment of the tax upon unpaid bills. (Code 1962, 25-6)

Sec. 14-21. Records of sellers.

(a) Every seller of any utility service on which a tax is levied by section 14-11 shall keep complete records showing all sales within the town of electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), or water services, which records shall show the price charged upon each sale, the date thereof, and the date of payment thereof.

(b) The records shall, at all reasonable times, be open for inspection by duly authorized agents of the town during business hours on any business day, and the agents shall have authority to make such transcripts thereof as they may desire. (Code 1962, 25-7; Ord. No. 16-07, 4, 4-13-16)

Sec. 14-22. Monthly report by seller required.

It shall be the duty of each such seller of utility service each month in paying over to the town the tax collected, to make such report or reports as may be reasonably required on forms to be furnished by the town for that purpose. (Code 1962, 25-8)

Sec. 14-23. Penalty for failure to make report and pay tax.

Any such seller of utility service failing to make the report required by section 14-22 and to pay over to the town the tax collected during the previous month on or before the fifteenth day of each month immediately following the month in which the tax is collected, shall be liable for and, in addition to the tax collected, shall pay a penalty at the time of paying the tax and making the report equal to five percent (5%) of the tax, for each month or part of a month that the report and tax is past due. This penalty shall be in addition to the penalty provided for violation of this Code of Ordinances. (Code 1962, 25-9)

ARTICLE III. COMMUNICATIONS SERVICES TAX

Sec. 14-24. Intent; Definitions.

(a) *Intent.* It is the intent of the town to impose a local communications service tax upon the sales price of communications services within the town in accordance with chapter 202, Florida Statutes.

(b) *Definitions.* The following definitions shall apply to all provisions of this article:

(1) "Communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

(A) Information services.
(B) Installation or maintenance of wiring or equipment on a customer's premises.
(C) The sale or rental of tangible personal property.
(D) The sale of advertising, including, but not limited to, directory advertising.
(E) Bad check charges.
(F) Late payment charges.
(G) Billing and collections services.
(H) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

(2) "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including, but not limited to, electronic publishing, web-hosting service, and end-user 900 number service. The term includes data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information. The term does not include video service.

(3) "Private communications service" means a communications service that entitles the subscriber or user to exclusive or priority use of a communications channel or group of channels between or among channel termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. (Ord. No. 16-07, 5, 4-13-16)

Sec. 14-25. Tax levied; No permit fees assessed.

(a) Tax levied.

(1) As provided in and authorized by chapter 202, Florida Statutes, a communications services tax in the town is hereby levied on each taxable transaction at a rate of 5.80 percent of the sales price of the communications service, that:

(A) Originates and terminates in this state, or

(B) Originates or terminates in this state and is charged to a service address in this state, when sold at retail, computed on each taxable sale for the purpose of remitting the tax due.

(2) With respect to private communications services, the tax shall be on the sales price of such services provided within the town, which shall be determined in accordance with the following provisions:

(A) Any charge with respect to a channel termination point located within the town;

(B) Any charge for the use of a channel between two channel termination points located in the town; and

(C) Where channel termination points are located both within and outside of the town:

(I) If any segment between two such channel termination points is separately billed, 50 percent of such charge; and

(II) If any segment of the circuit is not separately billed, an amount equal to the total charge for such circuit multiplied by a fraction, the numerator of which is the number of channel termination points within the town and the denominator of which is the total number of channel termination points of the circuit.

(3) *Exemptions.*

(A) The tax imposed under this section does not apply to any direct-to-home satellite service.

(B) The tax imposed under this section shall not exceed $25,000 per calendar year on communications services charges billed to a service address located within the town imposing a local communications services tax for interstate communications services that originate outside this state and terminate within this state. This sub-paragraph applies only to holders of a direct-pay permit issued under s. 202.12 (3), Florida Statutes.

(b) No permit fees assessed. Effective October 1, 2001, the town elects not to require the imposition and collection of permit fees from providers of communications services to use or occupy the town's streets or rights-of-way for the installation of communications services. Pursuant to s. 202.20 (1) (c), Florida Statutes, the town does hereby include within the 5.8 percent communications services tax levied, the additional percentage as allowed by law for municipalities that elect not to impose and collect a permit fee for the use of occupancy of the town's streets or rights-of-way. (Ord. No. 16-07, 6, 4-13-16)

Chapter 15

TRAFFIC*

Art. I. In General, 15-1--15-16
Art. II. Parking, Stopping and Standing, 15-17--15-31
Art. III. Abandoned or Junked Vehicles or Parts Thereof, 15-32--15-44
Art. IV. Alcohol Consumption in Motor Vehicles, 15-45--15-49

ARTICLE I. IN GENERAL

Sec. 15-1. Definitions.

Words and phrases used in this chapter shall, for the purposes of this chapter, have the meanings ascribed to them by Florida Statutes, Section 316.003.

Sec. 15-2. Violations.

Except as otherwise provided herein, the violation of any provision of this chapter shall constitute a non-criminal infraction punishable as provided by Florida Statutes, Chapter 318.

Sec. 15-3. Traffic engineer designated.

The director of public works is hereby appointed as traffic engineer of the town. (Code 1962, 26-5)

Sec. 15-4. Powers of traffic engineer.

(a) The traffic engineer, except as otherwise provided by this chapter, and except as otherwise directed from time to time by the town council, shall have the power to regulate the operation or parking of vehicles within the town by placement of proper signs or markers, indicating prohibited or limited parking, restricted speed areas, one-way streets, through or arterial streets, stop streets, "U" turns, play streets, school zones, hospital zones, loading and unloading zones and other signs or markers indicating the place and manner of operating or parking vehicles within the town.

(b) The traffic engineer shall also have the power to designate bus stops and taxicab stands and to erect signs prohibiting the parking of vehicles other than buses and taxicabs in such stands.

(c) The traffic engineer shall also have the power to designate truck routes and to regulate the parking of vehicles of various sizes and weights.

(d) The traffic engineer shall have the power to cause all necessary signs or markers to be erected or placed on any street when he deems such action necessary.

(e) The traffic engineer shall have the power to mark off traffic lines on streets and parts of streets indicating and directing the flow of traffic, when, in his judgment, such action is necessary.

***Cross references**--Vehicles prohibited on beach, 5-40; street encroachments preventing traffic, 13-7; driving past barricades, 13-8; obstructions to vision at street intersections, 17-97.

State law references--Uniform traffic control act, F.S. Ch. 316; general jurisdiction of municipalities, F.S. 316.006(2); municipal legislation on matters covered by Ch. 316 prohibited, F.S. 316.007; specific municipal powers, F.S. 316.008.

(f) The existence of such signs or markers at any place within the town shall be prima facie evidence that such signs or markers were erected or placed by and at the direction of the traffic engineer and in accordance with the provisions of this section. (Code 1962, 26-6)

Sec. 15-5. Driving with children in arms or on lap.

It shall be unlawful to drive or operate any motor vehicle while carrying any child, baby or another person in the driver's arms or seated on his lap. (Code 1962, 26-24)

State law reference--Obstruction to driver's view or driving mechanism, F.S. 316.2004.

Sec. 15-6. Vehicles with tar pots attached.

(a) It shall be unlawful to operate any motor vehicle over the streets of the town upon which or to which any tar pot or tar pot trailer shall have been attached, when such tar pot contains more than half (½) of its capacity in hot tar, pitch, asphalt or other similar substance.

(b) This section shall not apply to equipment when in use in paving or patching streets within the town, provided, such equipment containing such hot liquid or substance shall not exceed a speed of five (5) miles per hour. (Code 1962, 26-25)

Sec. 15-7. Temporary street closures.

The Town Manager shall have the authority to temporarily close streets to through traffic at his discretion. (Ord. 09-10, 1, 5-19-09)

Secs. 15-8 -15-16. Reserved

ARTICLE II. PARKING, STOPPING AND STANDING*

Sec. 15-17. Definitions.

The following words and phrases when used in this article shall have the meanings respectively ascribed to them in this section except where the context otherwise requires:

Clerk means the Clerk of the Circuit and County Courts of Brevard County, Florida.

County means Brevard County, Florida.

Crosswalk means (a) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; (b) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Designated parking space means any parking space posted with a sign bearing the internationally accepted wheelchair symbol and the caption "HANDICAPPED PARKING."

Finance director means the finance director of the Town of Indialantic, Brevard County, Florida.

***Cross references**--Parking on causeway near launching ramps, 5-20; duty to remove parked vehicle at scene of a fire, 7-11; license tax on parking lots, 9-11(83); parking, storage and use of certain vehicles, 17-103.

Handicapped person means any person with permanent mobility problems who has been issued an exemption entitlement pursuant to Sections 316.1958 or 320.0848, Florida Statutes.

Intersection means:

(a) the area embraced within the prolongation or connection of the lateral curblines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another at, or approximately at, right angles; or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict; or

(b) where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two (2) roadways thirty (30) feet or more apart, then every crossing of two (2) roadways of such highways shall be regarded as a separate intersection.

Motor vehicle or *vehicle* means any self-propelled vehicle not operated upon rails or a guideway, but not including any bicycle, or moped, as defined in Section 316.002, Florida Statutes.

Official signs means any sign which is placed or erected by the authority of a public body having jurisdiction for the purpose of regulating traffic or parking.

Official traffic control devices means all signs, signals, markings, and devices not consistent with law, placed or erected by authority of a public body or official having jurisdiction for the purposes of regulating, warning or guiding traffic.

Park or *parking* shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers as may be permitted under this article.

Pedestrian means any person afoot.

Person means any natural person, firm, co-partnership, association, or corporation.

Police officer shall mean a police officer of the Indialantic Police Department.

Private road or *driveway* means any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Public parking space means any parking space on private property which the owner, lessee, or person in control of such property provides for use by members of the public other than employees of such owner, lessee, or person, including, but not limited to, parking spaces at shopping centers, stores, offices, motels, malls, restaurants, and marinas.

Public works department shall mean the Indialantic Public Works Department.

Record bureau means the records bureau of the Indialantic Police Department.

Registered owner means a person who holds the legal title of a vehicle, or, in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof, with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee, or lessee, or mortgagor shall be deemed the registered owner, for the purpose of this article.

Safety zone shall mean the area or space officially set apart within a roadway for the exclusive use of pedestrians and protected or so marked by adequate signs or authorized pavement markings as to be plainly visible at all times while set apart as a safety zone.

Sidewalk means that portion of a street between the curbline, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians.

Stand or *standing* means the halting of a vehicle, whether occupied or not, otherwise than temporarily, for the purpose of, and while actually engaged in, receiving or discharging passengers, as may be permitted by this article.

Stop or *stopping* means, when prohibited, any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or to comply with the directions of a law enforcement officer or traffic control sign or signal.

Street or *highway* means the entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic.

Town means the Town of Indialantic, Brevard County, Florida.

Town council means the Town Council of the Town of Indialantic, Brevard County, Florida.

Traffic means pedestrians, ridden or herded animals, and vehicles, and other conveyances, either singly or together while using any street or highway for purposes of travel. (Ord. No. 81-286, 1, 12-16-80, Ord. No. 92-2, 3, 1-21-92; Ord. 92-6, 4, 4-21-92)

Sec. 15-18. Prohibited in certain areas or spaces; manner of stopping or parking.

(A) PROHIBITED. Within the incorporated areas of the town, except when necessary to avoid conflict with other traffic, or in compliance with law, or the directions of a town police officer, other law enforcement officer, or official traffic control device, no person shall:

(1) Stop, stand, or park a vehicle:

(a) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
(b) On a sidewalk, bike path or bike lane;
(c) Within an intersection;
(d) On a crosswalk;

(e) Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the public works department or the Florida department of transportation indicates a different length by signs or markings;

(f) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
(g) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
(h) At any place where official signs prohibit stopping;
(I) In such manner as to block traffic lanes or to interfere with the orderly flow of traffic so as to constitute a hazard to the passage of emergency vehicles.

(2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(a) In front of a public or private driveway;
(b) Within fifteen (15) feet of a fire hydrant;
(c) Within twenty (20) feet of a crosswalk at an intersection;
(d) Within thirty (30) feet upon the approach to any flashing signal, stop sign or traffic control signal located at the side of a roadway;
(e) Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance;
(f) At any place where official signs prohibit standing;
(g) At any place where official signs prohibit or restrict parking, or in excess of time periods authorized by such signs;
(h) Along or adjacent to any curb painted red or yellow, or across the delineated boundaries of a public parking place.

(B) MANNER. Within the incorporated areas of the town:

(1) Except where provision for angular parking (acute or right angle) has been striped or as otherwise provided in this section, every vehicle stopped or parked upon a two-way street or highway shall be so stopped or parked with the right-hand wheels parallel to and within twelve (12) inches of the right-hand curb or edge of the street or highway.

(2) Except when otherwise provided by this section, every vehicle stopped or parked upon a one-way street or highway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right wheels parallel to and within twelve (12) inches of the right-hand curb or edge of the roadway, or its left wheels parallel to and within twelve (12) inches of the left-hand curb or edge of the street or highway. (Ord. No. 81-286, 2, 12-16-80)

Sec. 15-18.1. Metered parking.

(a) *Definitions.* For the purposes of this section, the following definitions will apply:

(1) *Parking meter.* The words "parking meter" shall mean and include any mechanical or electronic device or meter, not inconsistent with this section, placed or erected for the regulation of parking by authority of this section. Each parking meter installed shall indicate by proper legend, the legal parking time established by the town; and when operated, shall at all times indicate the balance of legal parking time, and at the expiration of such period shall indicate illegal or overtime parking.

(2) *Parking meter space.* The words "parking meter space" shall mean any space within the parking meter zone adjacent to a parking meter, and which is duly designated for the parking of a single vehicle by lines painted or otherwise durably marked on the curb or on the surface of the street adjacent to or adjoining the parking meters.

(3) *Parking meter zone.* The words "parking meter zone" shall mean and include any restricted street, public property or right-of-way upon which parking meters are installed and in operation.

(b) *Designation of metered zone.* The metered parking zone shall include the following areas:

(1) Zone 1: Watson Drive (Sunrise Park) lying east of SR A-1-A, area north of Watson Drive contained in lots 1, 2 and 3 of Block 1 of the resubdivision of Melbourne Beach (Maggie Johnson Plat); Tampa Avenue (Sea Park) lying east of SR A-1-A, both sides of Wavecrest Avenue south of Eighth Avenue to a point lying one hundred and ninety five (195) feet south of 11th Avenue and Lots 11 & 12, Block 28, Plat of Indialantic By the Sea, Plat Book 3, Page 35, Public Records of Brevard County, Florida (Sixth Avenue)

(2) Zone 2: That property lying north of Wavecrest Avenue known as Nance Sea Turtle Park (Lots 8-15, Block 66, Plat of Indialantic By the Sea, Plat Book 3, Page 35, Public Records of Brevard County, Florida);

(3) Zone 3: The south side of Wavecrest Avenue from the boardwalk to the intersection of SR A-1-A and Fourth Avenue

(4) Zone 4: The north side of Wavecrest Avenue from the intersection of SR A-1-A and Fourth Avenue to the boardwalk and then both sides of Wavecrest Avenue south to the southern boundary line of Lot 20, Block 38, Indialantic by-the-Sea, Plat Book 3, Page 35, Public Records of Brevard County, Florida

(5) Zone 5: On both sides of Wavecrest beginning at the northern boundary line of Lot 19, Block 38, Indialantic by-the-Sea, Plat Book 3, Page 35, Public Records of Brevard County, Florida, and continuing south to the south side of that portion of Eighth Avenue lying between SR A-1-A and Wavecrest Avenue

(c) *Placement of meters.* The marking off of individual parking spaces in the metered parking zone described in paragraph (b), and the installation of parking meters in such spaces, is hereby authorized, ratified, and confirmed. The placement of the meters shall be in accordance with applicable town ordinances.

(d) *Deposit of coin required; exceptions.* Except in a period of emergency determined by an officer of the fire or police department, or in compliance with the directions of a police officer, police aide or traffic control sign or signal, when any vehicle shall be parked in any parking space alongside or next to which a parking meter is located, the operator of such vehicle, shall, upon entering the said parking meter space, immediately deposit or cause to be deposited in said meter such proper coin of the United States as is required for said parking meter and as is designated by proper directions on the meter; and when required by the directions on the meter, the operator of such vehicle, after the

deposit of the proper coin or coins, shall also set in operation the timing mechanism on such meter in accordance with directions properly appearing thereon; and failure to deposit such proper coin, and to set the timing mechanism in operation when so required, shall constitute a violation of this section. Upon the deposit of such coin (and the setting of the timing mechanism in operation, when so required) the parking space may be lawfully occupied by such vehicle during the period of time which has been prescribed for the part of the street in which said parking space is located; provided, that any person placing a vehicle in a parking meter space adjacent to a meter which indicates that unused time has been left in the meter by the previous occupant of the space shall not be required to deposit a coin so long as his occupancy of said space does not exceed the indicated unused parking time. If said vehicle shall remain parked in any such parking space beyond the parking time limit set for such parking space, and if the meter shall indicate such illegal parking, then, and in that event, such vehicle shall be considered as parking overtime and beyond the period of legal parking time; and such parking shall be deemed a violation of this section.

(e) *Cost; acceptable coins; hours of operation:*

(1) The cost of parking or standing a vehicle in a parking meter space located in the parking zone shall be as follows:
   a. Zone 1: One dollar twenty-five cents ($1.25) per hour
   b. Zone 2: One dollar twenty-five cents ($1.25) per hour
   c. Zone 3: One dollar twenty-five cents ($1.25) per hour
   d. Zone 4: One dollar twenty-five cents ($1.25) per hour
   e. Zone 5: One dollar twenty-five cents ($1.25) per hour

(2) The parking meters shall be operated in the parking meter zones every day including Sundays and holidays as follows:
   a. Zone 1: between the hours of 6:00 a.m. and 9:00 p.m.- for Town Council declared special events and for occasions authorized by the Town Manager the parking time shall be extended to 11:00 p.m. for those portions of the zone as set by the Town Manager
   b. Zone 2: between the hours of 6:00 a.m. and 1:30 a.m.
   c. Zone 3: between the hours of 6:00 a.m. and 1:30 a.m.
   d. Zone 4: between the hours of 6:00 a.m. and 1:30 a.m.
   e. Zone 5: between the hours of 6:00 a.m. and 9:00 p.m. - for Town Council declared special events the parking time shall be extended to 11:00 p.m.

(f) *Violations.* It shall be unlawful and a violation of the provisions of this section for any person:

(1) To cause, allow, permit or suffer any vehicle registered in his name to be parked overtime;

(2) To cause, allow, permit or suffer any vehicle registered in his name to remain or be placed in any parking space controlled by any parking meter while said meter is displaying a signal indicating that the vehicle occupying such parking space has already been parked beyond the period prescribed for such parking space;

(3) To cause, allow, permit or suffer any vehicle registered in his name to be parked across any line or marking of a parking meter space or in such position that the vehicle shall not be entirely within the area designated by such lines or markings;

(4) To deface, injure, tamper with, open, break, destroy or impair the usefulness of any parking meter installed under the provisions of this section;

(5) To deposit, or cause to be deposited, in any parking meter, any slugs, device or metal substance, or other substitute for lawful coins;

(6) To cause, allow, permit or suffer any vehicle registered in his name to be parked in any manner except front in toward meter.

(7) To cause, allow, permit or suffer any vehicle registered in his name to remain or be placed in any parking space contrary to instructions on a posted sign or direction.

(g) *Collection of deposited money.* The town administration shall provide for the regular collection of the money deposited in said parking meters.

(h) *Penalties:*

(1) Any person violating the provisions of subsections (f)(1), (2) or (3) of this section shall be subject to a fine under the terms and conditions as set forth in section 15-23 of this chapter;

(2) Any person violating the provisions of subsections (f)(4) or (5) herein shall be subject to a fine in an amount not less than two hundred dollars ($200.00) and not more than one thousand dollars ($1,000.00).

(i) *Enforcement.* Section 15-18.1(f)(1), (2), (3), (5) and (6) shall be enforced by parking enforcement specialists, hired specifically to provide parking enforcement, or by town police officers. Section 15-18.1(f)(4) shall be enforced by town police officers in accordance with state statutes, and the penalty for violation shall be in accordance with section 15-18.1(h)(2).

(j) *Parking permits; issuance; display; use agreements.*

(1) Nontransferable, except as stated in sub-section (k) below, parking permits shall be issued by the town on a calendar year basis, expiring December 31 of the year issued for metered zones 1, 3, 4 and 5. Display of such permit shall be by placing the permit on the rear of the vehicle, in a manner easily visible, as approved by the town manager in his reasonable discretion, shall constitute authorization by the town to park in the metered parking zone without complying with subsections (d), (e) and (f)(1) and (f)(2) herein.

(2) The Town Council may approve parking space use agreements with individuals or other legal entities for use of parking spaces within metered parking zones 3 and 4 for other than special events as defined in paragraph (j)(3) below; provided, that the Town Council finds that the application for the proposed parking space use agreement satisfies the following standards:

(A) A demonstrated need for the use agreement is shown to exist by the applicant and other evidence presented;

(B) The parking space use agreement will not be adverse to the public interest;

(C) The number of parking spaces subject to a parking space use agreement shall not exceed the difference between the number of parking spaces a private property owner would be required by the Town Code to have to serve the property to be benefitted minus the number of off-street parking spaces available to serve the property to be benefitted by the parking space use agreement;

(D) The agreement shall provide a license for an individual or legal entity, said individual or legal entity's invitees, to utilize a public parking space for motor vehicular or motorcycle parking. The individual or legal entity executing the parking space use agreement with the Town shall be a licensee. The agreement shall not convey ownership or an easement interest in individual parking spaces, and the agreement shall be acceptable in form and substance to the town manager and town attorney;

(E) Compensation. During the term of the parking space use agreement, compensation shall be paid by the licensee to the Town for each hour between 6:00 a.m. and 1:30 a.m. of each day that the meters are subject to the parking space use agreement. The rate of compensation shall be as follows:

(i) Zone 3: Individual parking spaces may be utilized at a rate of $60 per parking space per calendar year. Said amount may be prorated for use agreements covering partial years provided the partial year is added to the following calendar year.

(ii) Zone 4: One dollar ($1.25) per hour

(F) The licensee shall properly maintain the parking spaces subject to the parking space use agreement. For the purposes of this provision, "maintenance" shall include keeping all of the parking spaces subject to the agreement clean, free of litter, debris, branches, tree limbs, brush, grass, trash, junk, refuse, inoperative motor vehicles, junk cars and complying with the standards established in the town code, from time to time, for maintenance of private properties;

(G) The parking space use agreement shall provide that it may be canceled at anytime for failure of the licensee to adhere to the provisions of said use agreement, or the need to make a public use of the area included within the parking spaces, all as reasonably determined by the town, or upon a valid public need of the Town for the parking spaces. Upon cancellation, the licensee shall have liability for compensation only until the date of cancellation;

(H) The licensee shall indemnify and save harmless the Town from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and causes of action of every kind and nature arising of or in any way connected with the licensee's negligent or other use, occupation, management or control of the parking spaces subject to the use agreement. The licensee will at its own cost and expense, defend any and all claims against the Town, or in which the Town may be impleaded with others in any such action or proceeding arising out of such use or occupancy. The licensee shall agree to satisfy, pay and discharge any and all judgments, orders and decrees that may be entered against the Town in any such action or proceeding to which the Town may be a party and the licensee shall be liable;

(I) The licensee shall continuously provide and maintain at all times during the term of the parking space use agreement, without cost or expense to the Town, policies of insurance including public liability and property damage policies in the amount of $1,000,000.00 single limit liability insuring the licensee and the Town, as an additional insured, against any and all claims, demands, action and causes of action whatsoever for injuries received and damage to the parking spaces or other property in connection with the use or occupancy of the parking spaces subject to the use agreement. All insurance shall be issued by a standard insurance company licensed to do business in the State of Florida by the Florida Insurance Commissioner, of a type and grade acceptable to the town manager/town attorney and shall provide for reasonable notice to the Town prior to cancellation or non-renewal. The licensee shall promptly supply the Town with proof of insurance;

(J) The agreement shall have a duration not to exceed two (2) years;

(K) The licensee shall pay all costs of recording the agreement in the Public Records of Brevard County, Florida; and

(L) The parking spaces subject to a use agreement must specifically and directly serve an operating business in the Town.

(3) The Town Council may approve parking space use agreements for special events with individuals or other legal entities for use of parking spaces within the metered parking zone; provided, that the Town Council finds that the application for and proposed parking space use agreement satisfies the standards set forth in this paragraph. A special event is defined as including but not limited to the following: temporary events such as art shows, or events coinciding with recognized town holidays. The standards include:

(A) A demonstrated need for the use agreement is shown to exist by the applicant and other evidence presented;

(B) The parking space use agreement will not be adverse to the public interest;

(C) The agreement shall provide a license for an individual or legal entity, or said individual or legal entity's invitees, to utilize a public parking space for motor vehicular or motorcycle parking. The individual or legal entity executing the parking space use agreement with the Town shall be a licensee. The agreement shall not convey ownership or an easement interest in individual parking spaces, and the agreement shall be acceptable in form and substance to the town manager and town attorney;

(D) Compensation. During the term of the parking space use agreement, compensation shall be paid by the licensee to the Town for each hour of each day that the Town Code requires parking meters to be operated in the portion of the metered parking zone in which the parking spaces subject to the parking space use agreement are located. The rate of compensation shall be paid to the Town at a rate of 50 cents per hour per parking space;

(E) The licensee shall properly maintain the parking spaces subject to the parking space use agreement. For the purposes of this provision, "maintenance" shall include keeping all of the parking spaces subject to the agreement clean, free of litter, debris, branches, tree limbs, brush, grass, trash, junk, refuse, inoperative motor vehicles, junk cars and complying with the standards established in the town code, from time to time, for maintenance of private properties;

(F) The parking space use agreement shall provide that it may be canceled at anytime for failure of the licensee to adhere to the provisions of said use agreement, or the need to make a public use of the area included within the parking spaces, all as reasonably determined by the town. Upon cancellation, the licensee shall have liability for compensation only until the date of cancellation;

(G) The licensee shall indemnify and save harmless the Town from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and causes of action of every kind and nature arising of or in any way connected with the licensee's negligent or other use, occupation, management or control of the parking spaces subject to the use agreement. The licensee will at its own cost and expense, defend any and all claims against the Town, or in which the Town may be impleaded with others in any such action or proceeding arising out of such use or occupancy. The licensee shall agree to satisfy, pay and discharge any and all judgments, orders and decrees that may be entered against the Town in any such action or proceeding to which the Town may be a party and the licensee shall be liable;

(H) The licensee shall continuously provide and maintain at all times during the term of the parking space use agreement, without cost or expense to the Town, policies of insurance including public liability and property damage policies in the amount of $1,000,000.00 single limit liability insuring the licensee and the Town, as an additional insured, against any and all claims, demands, action and causes of action whatsoever for injuries received and damage to the parking spaces or other property in connection with the use or occupancy of the parking spaces subject to the use agreement. All insurance shall be issued by a standard insurance company licensed to do business in the State of Florida by the Florida Insurance Commissioner, of a type and grade acceptable to the town manager/town attorney and shall provide for reasonable notice to the Town prior to cancellation or non-renewal. The licensee shall promptly supply the Town with proof of insurance; and

(I) The parking spaces subject to a use agreement must serve and benefit a special event actively being held within the Town.

(k) *Establishment of annual fee and discount for parking permit; Limitations generally.* The town council, from time to time, may establish by resolution the price for an annual fee for a parking permit. Said annual fee schedule may include a discount schedule for permits purchased after a certain date. Annual permits may be issued for parking in metered zones 1, 2, 3, 4 and 5. Unless otherwise specified by resolution of the Town Council, rates for an annual permit (January 1st to December 31st), or for a partial year, shall be as follows:

a. Members of Town boards and committees and councilmembers: Two permits per household free;
b. Full-time and regular part-time employees of the Town: one permit per employee free
c. Town residents and non-residents of the Town: $30;
e. Permits issued after May 31st for Town residents and non-residents: $20

Town residents may be issued separate permits for each individual car owned by them or resident members of their family. A Town business in metered parking zones 3 and 4 and non-residents of the Town may obtain not more than one (1) permit at any one time. Should a permit holder wish to transfer a permit to a different vehicle, this transfer may be accomplished by returning the originally issued permit to town hall to be destroyed, revoked and exchanged for another permit. (Ord. No. 82-305, 1, 2-16-82; Ord. No. 82-307, 1, 4-20-82; Ord. No. 82-314, 1, 8-17-82; Ord. No. 82-316, 1, 10-19-82; Ord. No. 85-4, 1, 4-16-85; Ord. No. 85-7, 1, 4-16-85; Ord. No. 85-11, 1, 5-21-85; Ord. No. 89-13, 1, 5-16-89; Ord. No. 89-22, 1, 8-15-89; Ord. No. 89-23, 1, 8-15-89; Ord. No. 95-5, 1, 12-20-94; Ord. 95-11, 1, 6-20-95; Ord. No. 96-4, 1, 1-16-96; Ord. No. 96-7, 1, 7-16-96; Ord. 97-4, 1, 3-4-97; Ord. No. 00-03, 1, 5-16-00; Ord. No. 00-04, 1-2, 5-16-00; Ord. No. 01-11, 1-5, 6-19-01; Ord. No. 03-07, 1-3, 6-17-03; Ord. No. 06-03, 1, 1-17-06; Ord. No. 06-10, 1, 7-18-06; Ord. 08-04, 1, 3-18-08; Ord. 08-11, 1-2, 10-21-08; Res. 11-06, 4-19-11, Ord. No. 12-10, 1, 7-17-12; Ord. 12-13, 1, 8-21-12; Ord. 12-16, 1, 10-16-12; Ord 13-01, 1, 11-20-12; Ord. No. 17-1, 2, 11-9-16; Ord. No. 17-03; 2, 3, 2/8/17 Ord. No. 18-10, 2, 8/8/18)

Sec. 15-19. Parking in spaces for handicapped persons.

No person shall park any vehicle or bicycle in any designated public parking space located on town-owned or leased property, any roadway open to the public and subject to town jurisdiction excepting a state road, or private property within the incorporated areas of the town, unless such person is a handicapped person as defined in this article, or unless such person is momentarily parking in such parking place for the purpose of unloading or loading a handicapped person as defined herein. (Ord. No. 81-286, 3, 12-16-80; Ord. 11-14, 1, 7-27-11)

Sec. 15-20. Parking, commercial vehicles, trailers or heavy vehicles in residential areas.

(a) It is unlawful for any person, firm, company, or corporation to park or permit to be parked any commercial vehicle on any public street or on any privately owned property lying within any residential or residential/professional zoning district as defined in Town Code Section 17-4 within the Town. However, this section shall not prohibit the temporary parking of any such commercial vehicle within any such zone when said commercial vehicle is being used in the process of expeditiously loading or unloading goods or merchandise, for service calls, for town government, approved special events, for on-call tow truck service to the Town, or in the construction or installation of improvements to and/or on the property where so parked within said residential or residential/professional zones. Nor shall this section prohibit the parking or storage of any commercial vehicle within an enclosed garage or in a manner such that said commercial vehicle is not visible to the public or neighboring properties.

(b) Nothing herein contained shall prohibit the parking of vehicles of public or private utility companies including but not limited to cable TV, on any public street for a period of time required in the locating, relocating, installation, servicing, testing or repair of equipment of such companies nor shall the provisions of this section be construed to prohibit the parking of any vehicles used in the construction, repair or maintenance of any road, street or alley in such zoning districts.

(c) For the purpose of this section, vehicles of the following types and sizes shall be considered commercial vehicles:

(1) Trucks and vans with a total overall length in excess of twenty (20) feet.

(2) Trucks, walk-in vans or van type bodies, other than those designed primarily for passengers, having a gross vehicle weight in excess of 6,000 pounds, as established by the manufacturer, including vehicles used, or designed for use in the transporting of goods or merchandise or as a temporary or permanent base, platform, or support of equipment, machinery or power plants.

(3) Truck tractors as defined in Section 316.003(60), Florida Statutes.

(4) Heavy equipment including but not limited to farm or industrial, construction or earth moving equipment, "off-road" vehicles constructed and designed for use as a tool and not as a hauling unit, buses, and wreckers.

(5) Any vehicle, regardless of size or weight, with outside lettering displaying information identifying a business or other nonpersonal use of any kind.

(Code 1962, 26-30; Ord. No. 82-2, 1, 3-18-86; Ord. No. 92-2, 4, 1-21-92; Ord. No. 92-6, 4, 4-21-92; Ord. No. 03-08, 1, 8-19-03)

Sec. 15-21. Parking regulated on Wavecrest Avenue during certain times of the day and year.

(a) Except as otherwise provided herein, parking in town designated parking spaces on Wavecrest Avenue (sometimes referred to as Wave Crest Street) shall be permitted at any time of the day or night. The town council, by resolution, so long as the resolution to change the permissible hours of parking is noticed on the posted agenda, may from time to time, as the need arises, establish the hours during which parking is prohibited on various road segments of Wavecrest Avenue.

(b) Upon adoption of a resolution further prohibiting parking on any segment of Wavecrest Avenue, notice of said change in parking regulations shall be posted in the affected area at least ten (10) days before active enforcement commences.

(c) The town council may authorize various individuals to park on Wavecrest Avenue during hours that parking is otherwise prohibited. Individuals seeking council approval to park on Wavecrest Avenue during hours that parking is otherwise prohibited shall obtain a license or enter into a right-of-way use agreement with the town. All such licenses or right-of-way use agreements must be approved by resolution adopted by the town council. A use agreement or a license may be approved upon such terms as the town council finds to be in the public interest: if the individual seeking council approval demonstrates a public necessity for the use of the right-of-way for parking; to provide overnight parking for individuals residing on or visiting with the occupants of adjacent properties; in the event of a public emergency caused by Act of God, weather conditions, or war; or to provide additional reserved parking for temporary public or private events.

(Ord. No. 94-4, 1, 12-7-93)

Sec. 15-22. Repealed.

Editor's note – Ordinance 94-4, adopted December 7, 1993, repealed this section.

Sec. 15-23. Penalties.

(a) Any person cited for a violation of this article shall be deemed to be charged with a noncriminal violation and shall be assessed a civil penalty according to the following schedule:

	Violation	*Within 10 days*	*After 10 days*	*After 20 days*	*After 30 days*
(1)	Meter violation	$20.00	$25.00	$30.00	$45.00
(2)	Parking overtime	20.00	25.00	30.00	45.00
(3)	Parking over line	20.00	25.00	30.00	45.00
(4)	Parking in a manner contrary to posted directions	20.00	25.00	30.00	45.00
(5)	No parking zone	20.00	25.00	30.00	45.00
(6)	Loading zone	20.00	25.00	30.00	45.00
(7)	Parked double	25.00	35.00	35.00	45.00
(8)	Obstructing traffic	25.00	35.00	35.00	45.00
(9)	Parked on sidewalk	25.00	35.00	35.00	45.00
(10)	Blocking fire hydrant	32.00	32.00	32.00	32.00
(11)	Disabled permit only	100.00	100.00	COURT	COURT

(b) Each day any violation occurs or continues shall be a separate offense. For parking in excess of the time authorized in a public parking space, each succeeding equal time period beyond that authorized as the maximum time period for said parking place shall constitute a separate offense. (Ord. No. 81-286, 4, 12-16-80; Ord. No. 85-3, 1, 4-16-85; Ord. No. 86-4, 1, 2-18-86; Ord. No. 89-24, 1, 7-20-89; Ord. No. 95-5, 2, 12-20-94; Ord. 02-18, 1, 8-20-02; Ord. 09-17, 1, 10-20-09; Ord. 11-14, 2, 7-27-11; Ord. 12-17, 1, 10-16-12; Ord. No. 17-03, 4, 2/8/17)

Sec. 15-24. Issuance of town parking citations.

When any police officer or parking enforcement specialist employed by the town finds a vehicle in violation of the provisions of this article or of signs erected in accord with provisions of this article, said police officer or parking enforcement specialist shall issue a parking citation to the vehicle by placing said citation in a conspicuous place on the vehicle. (Ord. No. 81-286, 5, 12-16-80; Ord. No. 92-2, 4, 1-21-92; Ord. 92-5, 1, 2-18-92; Ord. No. 92-6, 5, 4-21-92)

Sec. 15-25. Procedures governing payment of civil penalties and proceedings to enforce payment for town parking violations.

(a) Any person issued a Town parking citation, pursuant to section 15-24, shall answer the citation by either of the following procedures within ten (10) days after the date of issuance of the citation:

(1) Payment of the penalty indicated on the citation may be remitted to the finance director, pursuant to the directions on such citation, or

(2) A hearing may be requested by the person receiving such citation or the cited vehicle's registered owner for the purpose of presenting evidence before a county judge concerning a parking violation. To request a hearing within ten (10) days of the issuance of the citation, the registered owner or person receiving the citation should take the citation to the Indialantic Town Hall and a hearing will be scheduled for the person at which a County Court judge will determine whether a parking violation has been committed. Any person who requests a hearing and does not appear in accordance with the said statement shall be subject to contempt proceedings or to other such penalties as the court may, in its discretion, impose to require compliance with this article.

(b) Pursuant to the provisions of Section 316.1967, Florida Statutes, an election to request a hearing constitutes a waiver of the right to pay the penalty indicated on the parking citation, and a county judge, after said hearing, may impose a fine not to exceed one hundred dollars ($100.00) plus court costs for each parking violation for which the person receiving the citation or the registered owner is found to be liable.

(c) Upon receipt of a completed parking citation pursuant to section 15-24, the parking enforcement clerk shall notify the registered owner of its issuance if there has been no response to the citation pursuant to subsection (a) hereof. Such notice shall be sent by regular mail and shall inform said registered owner concerning the nature and location of the parking violation and direct compliance as specified in subsection (a)(1) of this section within ten (10) days after the date said notice is mailed, according to the records maintained by the parking enforcement clerk.

(d) The parking enforcement clerk shall not less often than once per calendar month, supply the state department of highway safety and motor vehicles with the registration records of persons who are not in direct compliance with subsection (a)(1) of this section within thirty (30) days of the issuance of the citation. Pursuant to section 316.1967, Florida Statutes, the department shall mark the appropriate registration records of persons so reported, and the provisions of section 320.03(8), Florida Statutes, shall apply to each such person whose registration records have been marked.
Ord. No. 81-286, 6, 12-16-80; Ord. No. 92-5, 2, 2-18-92; Ord. No. 11-11, 1, 5-17-11)

Sec. 15-26. Owner's liability for parking violation.

(a) The owner of a vehicle is responsible and liable for payment of any parking ticket violation unless the owner can furnish evidence that the vehicle was, at the time of the parking violation, in the care, custody or control of another person. In such instances, the owner of the vehicle is required, within a reasonable time after notification of the parking violation, to furnish to the appropriate parking enforcement clerk an affidavit setting forth the name, address, and driver's license number of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle. The affidavit shall be admissible in a proceeding charging a parking ticket violation and shall raise the rebuttable presumption that the person identified in the affidavit is responsible for payment of the parking ticket violation. The owner of a vehicle is not responsible for parking ticket violations if the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(b) At any hearing of the case involving illegal parking in which the owner of said vehicle is being tried under this article, it shall be sufficient evidence upon which the court may rely to establish the name of the registered owner of such vehicle if it can be shown that the name of the registered owner was obtained from the state department of highway safety and motor vehicles. Otherwise, the court may defer the final determination of such case until a certified record or appropriate certificate can be obtained from the office of the department of highway safety and motor vehicles indicating the registered owner of the vehicle on the date on which the citation was issued. (Ord. No. 81-286, 7, 12-16-80; Ord. No. 92-5, 3, 2-18-92)

Sec. 15-27. Disposition of fines and forfeitures for parking violations; authorized costs.

Except as otherwise provided in this section, all monies received by the finance director as a result of the parking citations issued by the town shall be paid to the Town of Indialantic. (Ord. No. 81-286, 8, 12-16-80; Ord. No. 92-5, 3, 2-18-92)

Sec. 15-28. Provisions supplemental to statutes regarding liens for removal of vehicles parked without property owner's consent.

The provisions of this article shall be supplementary to and shall not in any way preclude the Town from utilizing the procedures specified in Chapters 713 and 715, Florida Statutes, governing the towing, storage and liens for the removal and storage of motor vehicles when such vehicles are parked on real property without the property owner's consent. (Ord. No. 81-286, 9, 12-16-80)

Sec. 15-29. When police may impound and remove vehicle.

Members of the police department are hereby authorized to direct the removal and impoundment of motor vehicles under the circumstances hereinafter enumerated:

(a) When a vehicle upon a street is so disabled as to constitute an obstruction to traffic, or the person or persons in charge of the motor vehicle are by reason of physical injury incapacitated to such an extent as to be unable to exercise control over said motor vehicle.

(b) When any vehicle is left unattended upon a street and is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic.

(c) When any vehicle is left unattended or upon a street or other public property continuously for more than twenty-four (24) hours and may be presumed to be abandoned.

(d) At any place where official signs or markings prohibit stopping, standing or parking.

(e) When the driver of such vehicle is taken into custody by the police department and such motor vehicle would thereby be left unattended upon a street or public right-of-way.

(f) When removal is necessary in the interest of public safety because of fire, flood, storm or other emergency reason. (Code 1962, 26-26)

Sec. 15-30. Redemption of impounded vehicle.

No motor vehicle impounded in an authorized garage shall be released therefrom until the towing fee and/or storage charges shall be paid by the owner or his agent. (Code 1962, 26-26)

15-31. Reserved.

ARTICLE III. ABANDONED OR JUNKED VEHICLES OR PARTS THEREOF*

Sec. 15-32. What constitutes abandonment.

Any vehicle, bicycle, or parts thereof to which the last registered owner of record has relinquished all apparent dominion and control, or any vehicle, bicycle, or part thereof, which has been left on public property; or on private property and no arrangement has been made for its removal or storage within an enclosed building with the owner or occupant of the premises upon which it is located within a period of thirty (30) days from the date such vehicle, bicycle or part thereof was left on said property; shall be considered abandoned. (Code 1962, 24-5)

Sec. 15-33. What constitutes junk.

Any vehicle, bicycle or part thereof which is in wrecked, partially dismantled, inoperative or worn out condition which condition is such that the vehicle or parts thereof could not be reasonably repaired shall be considered junk. The absence of a license plate and registration decal or sticker, if required, issued by a governmental agency for the current year and displayed on the motor vehicle to which the license plate is registered, or the absence of a current motor vehicle registration shall constitute prima facie evidence that such vehicle is abandoned, junked or discarded. (Code 1962, 24-6; Ord. No. 94-2, 1, 12-7-93)

Sec. 15-34. Parking, storage on private property.

It shall be unlawful for any person to park, store or leave or permit the parking, storing or leaving of any junk or abandoned vehicle, bicycle, or parts thereof upon any private property within the town for a period in excess of five (5) consecutive days unless such vehicle, bicycle, or parts thereof is completely enclosed within a building or carport or unless such vehicle, bicycle, or parts thereof is so stored or parked on private property in connection with a duly licensed business or enterprise operated and conducted for the repair of said vehicles or bicycles in full compliance with applicable laws, ordinances, or regulations. (Code 1962, 24-7; Ord. No. 94-2, 2, 12-7-93)

Sec. 15-35. Parking, storage on public property.

It shall be unlawful for any person to park, store, or leave junk or an abandoned vehicle, bicycle, or part thereof on any street, road, highway, alley, public way, or on any public property within the town in excess of twenty-four (24) hours. (Code 1962, 24-8)

***State law reference**--Supplemental procedure for removal and destruction of abandoned property, F.S. 705.16.

Sec. 15-36. Police immune from liability.

The chief of police and his designated representatives shall be immune from liability, civil or criminal, for reasonable, good faith trespass upon real property while engaged in the enforcement of this article. (Code 1962, 24-9)

Secs. 15-37--15-44. Reserved.

ARTICLE IV. Reserved.

Editor's note--Ord. No. 17-06, adopted March 8, 2017, repealed Article IV, Alcohol in Motor Vehicles in its entirety as already covered by State Law.

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Chapter 16

TREES AND SHRUBS

Sec. 16-1. Care and supervision of trees.

The care and protection of all trees in the town right-of-way shall be under the supervision of the director of public works. (Code 1962, 27-1; Ord. 09-11, 1, 5-19-09)

Sec. 16-2. Reserved.

Editor's note – Ordinance 09-11, adopted May 19, 2009 repealed this section regarding pruning of shade trees abutting streets.

Sec. 16-3. Repealed.

Editor's note – Ordinance 09-11, adopted May 19, 2009 repealed this section regarding failure to prune shade trees abutting streets.

Sec. 16-4. Permission required for work affecting public trees.

No trees standing or growing on any of the streets or sidewalks or parks in the town shall be cut down or cut into, or the limbs thereof cut off in any way whatsoever, by any person, except by authority of the director of public works. (Code 1962, 24-25, 27-5)

Sec. 16-5. Permission required for plantings in public places.

It shall be unlawful to plant trees, shrubbery or any type of plant life upon rights-of-way of streets or alleys or plots of land designated as parkways or parks within the town without first having obtained permission from the director of public works. (Code 1962, 24-20)

Sec. 16-6. Attachments to public trees prohibited.

No board, wire or other thing shall be nailed to or affixed to or on any tree standing or growing on the streets or sidewalks or parks of the town. (Code 1962, 27-6)

Sec. 16-7. Vegetation obstructing sidewalk.

It shall be unlawful for any owner of any lot or parcel of land abutting upon any sidewalk, to permit any weeds, undergrowth, grass, shrubbery or hedges to grow over or on any sidewalk or to, in any other manner, obstruct or interfere with the safe passage of pedestrian traffic on the full width of the sidewalk. (Code 1962, 24-11)

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Chapter 16.5

WATER MANAGEMENT

Art. I **In General, 16.5-1 – 16.5-15**
Art. II **Water Shortage, 16.5-16 – 16.5-29**
Art. III **Stormwater, 16.5-30 – 16.5-49**
Art. IV **Illicit Discharge, 16.5-50 – 16.5-59**

ARTICLE I. IN GENERAL

Sec. 16.5-1. Drainage onto streets or property of another.

It shall be unlawful for any person to discharge or drain from any premises or lot, used or occupied by such person, or to permit to be discharged or drained from the premises or lot used or occupied by such person, into any street of the town or onto the property of another through or by means of any ditch, drain, trough, pipe, sewer, or to cause by natural lay of the land or otherwise, any dirty or filthy water, suds, sewage or any filthy fluid of any kind to so drain.
(Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-2 – 16.5-15. Reserved.

ARTICLE II. WATER SHORTAGE*

Sec. 16.5-16. Application of article.

The provisions of this article shall apply to all users of water within the town limits of Indialantic. A user of water is an individual, a residence, or a business establishment drawing water from either the municipal water system or a private well, or both. (Ord. No. 81-297, 1, 8-18-81)

Sec. 16.5-17. Authority to implement.

Implementation of this article shall occur by one of two (2) methods:

(1) Automatically, upon receipt by the town of water shortage conditions, as promulgated by the St. John's River Water Management District (SJRWMD);

(2) By resolution of the town council, when the council deems that a water shortage condition exists in the town and/or in the immediate service area of the Melbourne city water supply system.

***Editor's note**--Ord. No. 81-297, 1--6, adopted Aug. 18,1981, did not specifically amend the Code; hence, inclusion herein as Art. II, 16.5-16--16.5-21, was at the editor's discretion.

The town manager, upon notice of a water shortage condition by either of the above methods, shall have the duty to monitor implementation of this article, monitor enforcement as described in section 16.5-19 herein, and shall have the authority to upgrade or downgrade water shortage condition measures, as described in section 16.5-18. The implementation procedures as herein provided may be canceled by the town manager, either upon receipt of notice from the SJRWMD that water shortage conditions no longer exist, or upon similar resolution by the town council. (Ord. No. 81-297, 2, 8-18-81)

Cross reference--Duty of town manager, 2-137 et seq.

Sec. 16.5-18. Water shortage conditions.

(a) *Condition 1:* This is the lowest water shortage condition, the condition normally first implemented upon notice of a water shortage. This condition consists of voluntary cutbacks by users of water. The town manager shall determine the amount of voluntary cutbacks, which shall not be more than fifteen (15) per cent.

(b) *Condition 2:* This a mandatory reduction of fifteen (15) per cent in water consumption; mandatory constraints shall include:

(1) Residential watering of lawns and shrubs shall be limited to the hours of 6:00 p.m. to 9:00 a.m.;

(2) Commercial watering of lawns and shrubs shall be limited to the hours of 6:00 p.m. to 9:00 p.m. and 6:00 a.m. to 9:00 a.m.;

(3) The use of municipal water for the washing of sidewalks, driveways, porches, exteriors of houses or apartments, or other outdoor surfaces shall be prohibited;

(4) The washing of business or industrial vehicles, equipment and machinery, except as required for the public health, shall be prohibited;

(5) The filling of swimming and wading pools not using a filter and recirculating system, and the operation of any ornamental fountain or other structure using water, with or without recirculating water, is prohibited;

(6) The washing of automobiles, trucks, trailers, motor homes, or any other types of motorized equipment shall be prohibited.

(c) *Condition 3:* This is a heightened mandatory reduction of at least fifteen (15) per cent in water consumption. Mandatory constraints shall include:

(1) Residential watering of lawns and shrubs with municipal water, and all commercial watering of lawns and shrubs shall be limited to the hours of 6:00 p.m. to 9:00 p.m.;

(2) Residential watering of lawns and shrubs, using private wells, shall be limited to the hours of 9:00 p.m. to 6:00 a.m.;

(3) The filling of all swimming and wading pools shall be prohibited; maintaining water level is permitted;

(4) The washing of sidewalks, driveways, porches, exteriors of houses, apartments, or other outdoor services shall be prohibited;

(5) All other restrictions of condition 2 shall also apply to condition 3.

(d) *Condition 4:* This is an extreme water shortage condition, requiring extensive water consumption cutbacks; constraints shall include:

(1) All residential and commercial watering of lawns and shrubs shall be limited to the hours of 6:00 p.m. to 9:00 p.m.;

(2) Residences and commercial establishments having street numbers ending in an odd number shall water only on odd numbered days;

(3) Residences and commercial establishments having street numbers ending in an even number shall water only on even numbered days;

(4) All other restrictions of conditions 2 and 3 shall also apply to condition 4.

(e) *Condition 5:* This is an emergency water shortage condition; constraints shall include:

(1) There shall be no use of water, either municipal or private well, for any purpose not related directly to the health and welfare of the residents of Indialantic.

(Ord. No. 81-297, 3, 8-18-81)

Sec. 16.5-19. Enforcement.

For the purpose of enforcing conditions 2 through 5, set out in section 16.5-18, every town police officer and the town's building inspector, acting as the Code enforcement officer, shall be authorized and empowered to enforce the provisions of this article.

During conditions 4 and 5, the town manager shall have the authority to exercise powers of enforcement. (Ord. No. 81-297, 4, 8-18-81)

Sec. 16.5-20. Penalties.

Violators of restrictions imposed during conditions 2 through 4, as set out in section 16.5-18 of this article, upon conviction, shall be subject to the following penalties:

(1) *First offense.* Fine not to exceed twenty-five dollars ($25.00);

(2) *Second offense.* Fine not to exceed fifty dollars ($50.00);

(3) Any individual who has been convicted of a violation of this article three (3) or more times during the same water shortage, upon conviction of each offense after the second conviction during the same water shortage, shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed sixty (60) days in the Brevard County jail, or both. Each day of continued violation shall be considered a separate offense.

Violators of restrictions imposed during condition 5, as set out in section 16.5-18 of this article, upon conviction, shall be subject to a penalty as if the violation was a third or subsequent conviction of violation of the terms of conditions 2 through 4. Each day of continued violation shall be considered as a separate offense. All violators shall first be given proper warning to encourage voluntary compliance. (Ord. No. 81-297, 5, 8-18-81)

Sec. 16.5-21. Exception to maintain sanitation.

The town manager shall have the authority to permit a reasonable use of water in any instance necessary to maintain adequate health and sanitation standards. These permits shall be issued within the sound discretion of the town manager, and shall be issued only upon the showing of good cause, for the uses requested. (Ord. No. 81-297, 6, 8-18-81)

Sec. 16.5.-22 - 16.5-29. Reserved.

ARTICLE III. STORMWATER

Sec. 16.5-30. Short title.

This article shall be known and may be cited as the “Indialantic Stormwater Ordinance.” (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5–31. Purpose.

The purpose of this Chapter is to consolidate, condense and to simplify the Town stormwater management criteria as it relates to development, re-development, water quality, environmentally sensitive lands, retention and detention of surface water runoff; and to specify the performance standards to be utilized within the Town of Indialantic. (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-32. Definitions.

(1) *Definitions.* For the purposes of this section, the following words and phrases shall have the meanings indicated. The word "shall" is always mandatory.

(a) *Agricultural lands* shall mean those lands in any agricultural use including forestry for which an agricultural tax exemption has been granted.

(b) *Applicant* shall mean any person applying for or who has been granted a permit to proceed with a project. (See "person".)

(c) *Aquifer* shall mean an underground formation, group of formations, or a part of a formation, that is permeable enough to transmit, store, or yield usable quantities of water.

(d) *Clearing* means and refers to the removal of vegetation from the land, but shall not include the mowing of grass.

(e) *Consulting engineer* shall include the terms "professional engineer" and "registered engineer" and shall mean a person with specialized knowledge obtained after long and intensive academic preparation who is registered to engage in the practice of engineering under Florida Statute 471.001-471.039. Such engineer may be an employee of another governmental agency.

(f) *Detention* or *to detain* shall mean the collection and temporary storage of storm water in such a manner as to provide for treatment through physical, chemical, or biological processes with subsequent gradual release of the surfacewater.

(g) *Design* shall mean the plan, shown on the site plan by means of contour lines or other symbols, indicating the direction of the grades of the land so as to retain or detain the surface water.

(h) *Development* shall mean the construction, installation, demolition or removal of a structure, impervious surface or drainage facility; clearing, scraping, grubbing, killing or otherwise removing the vegetation from a site; adding, removing, exposing, excavating, leveling, grading, digging, furrowing, dumping, piling, dredging or otherwise significantly disturbing or altering soil, mud, sand, or rock of a site; and the modification or redevelopment of a site.

(i) *Drainage system, natural drainage system* shall mean the system through which water flows; it includes all watercourses, water bodies, and wetlands.

(j) *Engineer,* see consulting engineer.

(k) *Event* shall mean the specific storm which is, or is to be, considered in the design.

(l) *Floodplain* shall mean the one-hundred-year floodplain as defined by the Federal Emergency Management Agency.

(m) *Groundwater* shall mean water below the surface of the ground whether or not flowing through known and defined channels.

(n) *Hydrograph* shall mean a graph of discharge versus time for a selected outfall point.

(o) *Hydrology* shall mean a science dealing with the properties, distribution, and circulation of water on the surface of the land, in the soil and underlying rocks, and in the atmosphere.

(p) *Impervious surface* shall mean a surface which has been compacted or covered with a layer of material so that it will not permit the passage of water. It includes surfaces such as compacted clay, as well as most conventionally surfaced streets, driveways, roofs, sidewalks, parking lots, and other similar surfaces.

(q) *Land* means and refers to the earth that lies above the mean high-water line for land subject to tidal inundation, said mean high-water line being computed as set forth in Section 177.27, Florida Statutes, and the ordinary high-water mark for land adjacent to freshwater bodies.

(r) *Natural system* means and refers to the biological and physical components of the undeveloped land and water which predominantly 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.

(s) *Person* shall mean an individual, partnership, corporation, governmental agency, business trust, estate, trust, association, two (2) or more persons having a joint or common interest, or any other legal entity.

(t) *Retention* or *to retain* shall mean the prevention of, or to prevent, the discharge of a given volume of surfacewater runoff by complete on-site storage where the capacity to store the given volume must be provided by a decrease of stored water caused only by percolation through soil, evaporation, or evapotranspiration.

(u) *Sediment* shall mean 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.

(v) S*edimentation facility* shall mean any structure or area which is designed to hold runoff water until suspended sediments have been settled.

(w) *Site* shall mean any tract, lot, or parcel of land or combination of tracts, lots, or parcels of land which is in one ownership, or contiguous and in diverse ownership, where development is to be performed as part of a unit, subdivision, or project.

(x) *Site plan* means and refers to the plan which shows the means by which an owner/developer will conform with applicable ordinances. This shall include a subdivision plat.

(y) *Surfacewater drainage plan* shall refer to the detailed analysis required by Section 16.5-37 herein for each activity.

(z) *Surfacewater management system* shall refer to the designed features of the property which collect, channel, hold, inhibit, or divert the movement of surfacewater.

(aa) *Surfacewater* or *runoff* shall refer to the flow of water which results from, and which occurs during and immediately following, a rainfall event, the breaking or flushing of a hydrant or water main, the breaking or misdirection of a lawn sprinkler head, or any other source of nonsalt water which results in an over-supply of nonsalt water that is not immediately percolated through the soil.

(bb) *Swale* shall mean a natural or manmade drainage pathway, which if manmade has a top width to depth ratio of the cross section equal to or greater than six (6) to one or side slopes equal to or greater then three (3) feet horizontal to one foot vertical and has a grade as flat as the topography and design condition 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, surfacewater treatment, and nutrient uptake.

(cc) *Town building official* or *inspector* shall mean that individual designated by the town to receive and review applications for land use permits, recommend same for approval or disapproval by the appropriate town authorities, issue permits therefore, and make necessary inspections to see that the provisions of the law are fully observed.

(dd) *Town Manager* means and refers to the Town Manager or such person as the Town Manager shall designate to act in his place.

(ee) *Vegetation* means and refers to all plant growth, especially trees, shrubs, vines, ferns, mosses and grasses.

(ff) *Water body* shall mean any natural or artificial pond, lake, reservoir, or other area which ordinarily or intermittently contains water and which has a discernible shoreline.

(gg) W*atercourse* shall mean 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.

(hh) *Water management structure* shall mean a facility which provides for surfacewater runoff and the controlled release of such runoff during and after a flood or storm.

(ii) *Water retention structure* shall mean a facility which provides for storage of surfacewater runoff.

(jj) *Wetlands* means and refers to 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 purpose of this article, wetlands are those areas which support a dominance of wetland vegetation types listed in Chapter 173.022 Florida Administrative Code. (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-33. Applicability.

This Chapter shall apply in the incorporated areas of the Town, and to all areas not presently within these corporate limits but which are annexed into the limits whether by future council or legislative action. (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-34. Prohibitions

(1) *Drainage; obstructing*. It shall be unlawful to obstruct the flow of storm water by obstructing any ditch or drain on the several alleys and streets of the town or any natural drain located within the town.

(2) No person may subdivide or make any changes in the use of land, or construct any system or structure, or change the size of a structure except as exempted in subsection 16.5-36 without first obtaining a permit from the zoning and planning board as provided herein.

(3) Wetlands and other water bodies shall not be used as sediment traps during development. (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-35. Permitted Uses.

(1) *Wetlands.* Provided the use is permitted with St. Johns River Water Management District and other applicable governmental agencies having jurisdiction over development in wetlands, permitted uses include:

(a) Open space.

(b) Fish and Wildlife Management.

(c) Recreation. (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-36. Exemptions.

For the purposes of this Article, the following activities shall be exempt from further consideration under the provisions set forth herein.

(1) Residential and/or commercial properties where such land is part of, and the surfacewater management is included in, the overall subdivision site plan or construction plan approval;

(2) Bona fide agricultural pursuits where no artificial drainage system will be used to increase the flow of water from the land;

(3) Maintenance work performed for the purpose of public health and welfare;

(4) Any maintenance, alteration, renewal, use, or improvement to an existing structure or systems not materially changing or affecting the rate or volume of surface water runoff;

(5) Residential construction of tracts, lots, or parcels, where the surfacewater drainage plan has already been approved by the zoning and planning board. (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-37. General and Specific Requirements.

(1) *Application.* An application for development and redevelopment should include the following:

(a) Wetland assessment if warranted or a statement that there are no jurisdictional wetlands. The Town, at its discretion, may require a wetland assessment.

(b) Geotechnical evaluation to include

(1) Depth to wet season water table.
(2) Hydraulic conductivity – horizontal and vertical.

(c) Retention of the 10-year 24-hour rainfall event is required on site. The 10-year 24-hour rainfall to be utilized in the stormwater management analysis is 8".

(2) *System design, construction and maintenance requirements.*

(a) Vegetated buffer strips shall be created or, where practicable, retained in their natural state along the banks of all watercourses, water bodies or wetlands where runoff from the buffer cannot be directed to a stormwater management area. The width of the buffer shall be sufficient to prevent erosion, trap the sediment on overland runoff, provide access to the water body and allow for periodic flooding without damage to structures.

(b) Retention/detention basins designed where stormwater is expected to stand as a consideration of design shall use maximum side slopes of five (5) horizontal to One (1) vertical.

(c) Retention/detention basins designed to be dry as a normal condition shall use maximum side slopes of three (3) horizontal to one (1) vertical.

(d) Stormwater systems incorporating below ground storage shall require a site specific stormwater maintenance agreement with the Town to ensure long term function of the system.

(e) The design of water retention or detention structures and flow attenuation devices shall be subject to the approval of the Town building official pursuant to the requirements of this section.

(f) No site alteration shall allow water to become a health hazard or contribute to the breeding of mosquitoes.

(g) In those cases in which the site under consideration is a part of the natural watershed, provision shall be made for waters entering from beyond proposed site limits.

(h) The use of swaled greenways, flow control structures, distilling basins, grease and oil sediment traps and similar devices shall be used to minimize the adverse effects of surface water runoff on both surface and ground waters.

(i) No grading, cutting or filling shall be commenced until erosion and sedimentation control devices have been installed between the disturbed area and the water bodies, watercourses and wetlands.

(j) Land which has been cleared for development and on which construction has not begun for thirty (30) days shall be protected from erosion and sedimentation by appropriate techniques.

(k) Sediment shall be retained on the site of the development.

(1) Development, including grading and contouring, shall take place in a manner that protects the roots and stability of the trees.

(m) The applicant shall check erosion control practices for stability and operation following every one-quarter inch (1/4") rainfall event, but not less than weekly. All needed repairs will be made immediately and recorded.

(n) The applicant shall remove sediment build-up from inlet protection devices to ensure proper management and storage capacities. Sediment control devices shall be cleaned or replaced when the device no longer works effectively.

(o) The applicant shall maintain and/or replace as necessary sediment controlling silt fences to maintain a barrier.

(p) The applicant shall maintain, in adequate condition, all vegetated areas to provide proper ground cover to reduce erosion potential.

(q) The applicant shall design the heavy construction equipment parking and maintenance areas so as to prevent oil, grease and lubricants from entering site drainage features, which include stormwater collection and treatment systems.

(1) The applicant shall provide barriers or silt screens around equipment parking areas to contain spills of oil, grease and lubricants.

(2) The applicant shall have available on-site and shall utilize absorbent filter pads or other methods to clean-up spills immediately after such an occurrence.

(r) The applicant shall minimize wind erosion by employing best management practices (BMP's) which shall include the following and/or other methods as a minimum:

(1) Bare earth areas shall be watered during construction as necessary to minimize the transport of dust, it may be necessary to limit construction vehicle speed if bare earth has not been effectively watered. In no case shall dust be allowed to leave the site that is under construction.

(3) *Maintenance.* The installed system required by this article shall be maintained by the owner. In certain instances involving critical areas and/or structures, the Town Council may determine that maintenance be performed by the Town. In such circumstances all areas and/or other structures to be maintained by the Town must be dedicated to the Town by plan or separate instrument and accepted by the Council. The system to be maintained by the owner shall have adequate easements to protect the Town to permit and, if necessary, to take corrective action should the owner fail to maintain the system properly. If inspection reveals that the owner is not properly maintaining his system, the Town Building Official shall give the owner, in writing, notice of the corrective action to be taken. Should the owner fail to begin corrective action within thirty (30) days of the notice, the Town may enter upon the property and take the necessary corrective action. For the purposes of this section, the owner shall execute and record a document acceptable to the Town attorney, the document to define the specific person/agency responsible for maintenance of the surface water and ground water retention system, and all other fresh water resources including rain water, management system, how this maintenance is to be performed, and the legal mechanism assuring the perpetuation of the maintenance.

(4) *Permitting.* A permit is required for those projects/developments, land clearing, and all other activities which must be considered under the provisions of this section, unless exempted by the Town Building Official in accordance with subsection (4) herein. The requirements of this Surface water management article will be implemented, and must be satisfied completely, prior to final plat or site plan approval.

(5) *Permit fees.* Section 6-11 of the Town of lndialantic Code of Ordinances applies.

(6) *Review by Town Building Official.*

(a) The Town Building Official, within five (5) days of submittal, will determine the completeness of the application. Within forty-five (45) days after submission of the completed permit application package, the Town Building Official shall approve, with or without specified conditions or modifications, or shall reject, the proposed plan and shall notify the applicant accordingly. If the Town Building Official has not rendered a decision within forty-five (45) days after plan submission, he must inform the applicant of the status of the review process and the anticipated completion date. If the plan is rejected or modified, the Town Building Official shall state his reasons for rejection or modification. If the applicant feels aggrieved due to rejection, modification, or delay, he may request a hearing before the Town Board of Adjustment.

(b) In cases where the Building Official determines, in his reasonable discretion, that the complexity of the application is such that the Town is unable to administer it, or there will not be sufficient time to be able to comply with the applicant's time schedule, he may hire a Consulting Engineer in which case the permit fee shall be as per Chapter 6, Article I, Section 6-11 of the Town of Indialantic Code of Ordinances.

(7) *Process.*

(a) The applicant shall employ general erosion control Best Management Practices (BMP's) to minimize soil erosion with techniques to be site and plan specific.

(b) The applicant shall install sediment controls including a temporary stabilized construction entrance/exit as the first construction activity.

(c) The applicant shall install silt barriers prior to initiating clearing or earthwork, which shall remain in place until a vegetative cover on all disturbed areas has been established.

(d) The applicant shall maintain the silt barriers, the removal of which will require Building Official authorization. Silt that accumulates behind the barriers and any fill used to anchor the barriers shall be removed concurrently with the removal of the silt barrier by the applicant.

(e) The applicant, after completing final grading for parking areas, will stabilize the area.

(f) The applicant, after completing final grading of the grounds, will permanently vegetate, landscape and mulch said grounds (note: sod is to be placed prior to the removal of silt barriers).

(8) *Inspections.* Subsequent to the applicant's satisfying the requirements of this section, and other applicable ordinances, and the issuance of the appropriate permit, the applicant shall, during construction, arrange for and schedule the following inspections by the Town Building Official:

(a) During clearing operation and excavation, to assure that effective control practices relative to erosion and sedimentation are being followed.

(b) All underground conveyance and control structures, prior to backfilling.

(c) Final inspection when all systems required by the applicant's approved surface water management plan have been installed. (Ord. No. 14-13, 2, 9-16-14; Ord. No. 15-02, 1, 2-11-15)

Sec. 16.5-38. Enforcement.

(1) If the Town Building Official determines that the project is not being carried out in accordance with the approved plan or if any project subject to this section is being carried out without a permit, he is authorized to:

(a) Issue written notice to the applicant specifying the nature and location of the alleged noncompliance, with a description of the remedial action(s) necessary to bring the project into compliance within three (3) working days.

(b) Issue a stop work order directing the applicant or persons in possession to cease and desist all or any portion of the work which violates the provisions of this section, if the remedial work is not completed within the specified time. The applicant shall then bring the project into compliance. (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-39. Reporting.

(1) The applicant shall maintain records of construction activities on the job site and copies of these records shall be submitted to the Town prior to issuance of the certificate of occupancy. These records shall include the following:

(a) Dates when grading activities occur.

(b) Dates when major construction activities temporarily cease on any portion of the site.

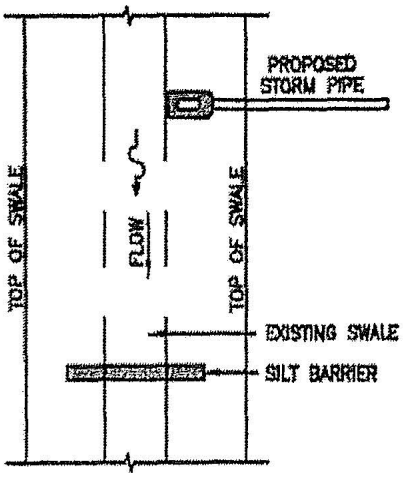
(c) Dates when stabilization measures are initiated on-site.

(d) Inspection reports, for inspections that shall be completed following every one-quarter inch (1/4") rainfall event or on a weekly basis, that summarize the qualifications of the inspector, daily rainfall totals and changes necessary to control erosion.

(e) The applicant certification form ensuring that all subcontractors responsible for erosion control measures execute the form (note: a copy of the applicant certification form shall be submitted to the Town prior to the start of any new construction).

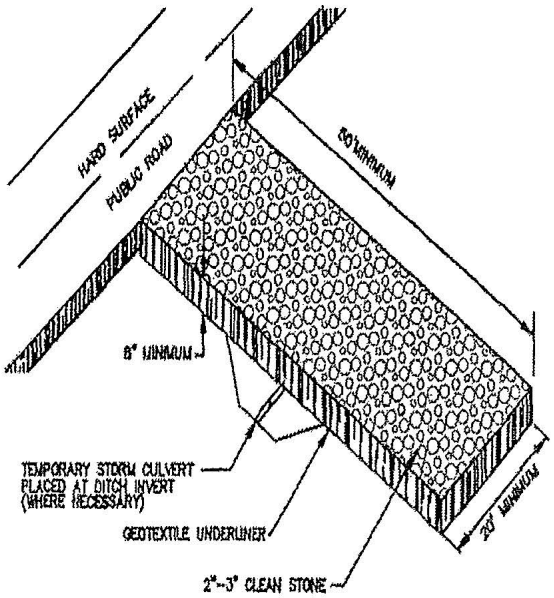
(f) Releases of reportable quantities of oil or hazardous materials, if any (note: the applicant shall notify the national response center at 1-800-424-8802, or a more current number, and all appropriate permitting authorities in writing immediately). Should a reportable spill occur, the applicant will modify activity to insure that such a spill does not re-occur. (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-40. Erosion Control Examples. (Ord. No. 14-13, 2, 9-16-14)



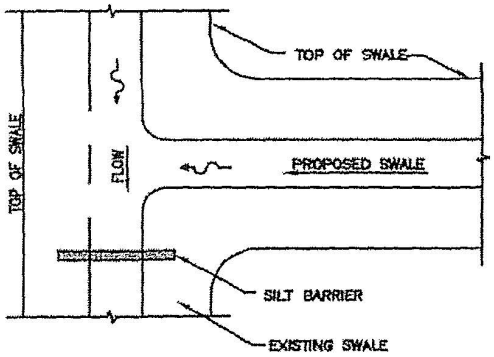
SILT BARRIER AT CONNECTION
OF STORM PIPE TO EXISTING SWALE
N.T.S.

FIGURE 1



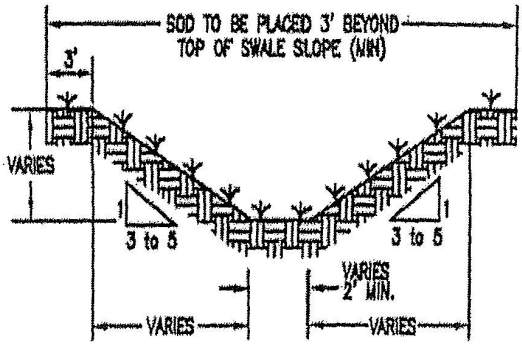
CONSTRUCTION ENTRANCE
NTS

FIGURE 2



SILT BARRIER AT CONNECTION OF SWALE TO EXISTING SWALE
N.T.S.

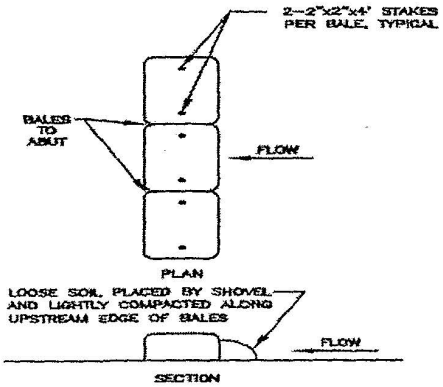
FIGURE 3



TYPICAL TEMPORARY SWALE SECTION
N.T.S.

(TO BE USED FOR ANY TEMPORARY SWALES REQUIRED DURING CONSTRUCTION) NOTE: SLOPES SHALL BE 3 TO 5 : 1 UNLESS OTHERWISE NOTED (TYP)

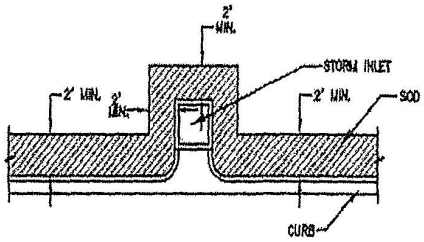
FIGURE 4



BALED HAY BARRIER
NTS

NOT TO BE USED IN LIEU OF SILT FENCING

FIGURE 5



SOD ALONG CURB AND AROUND INLET
N.T.S.

FIGURE 6

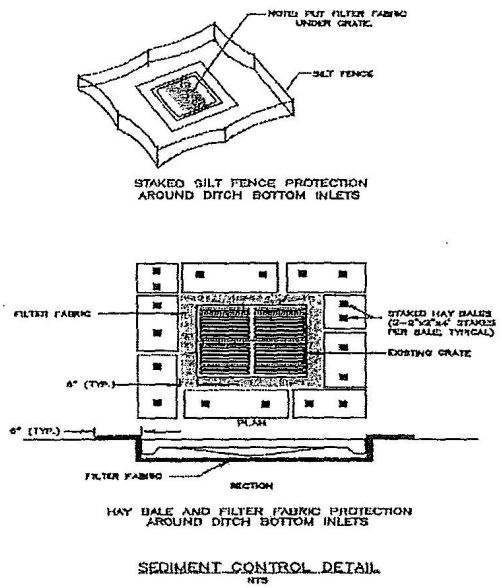


FIGURE 7

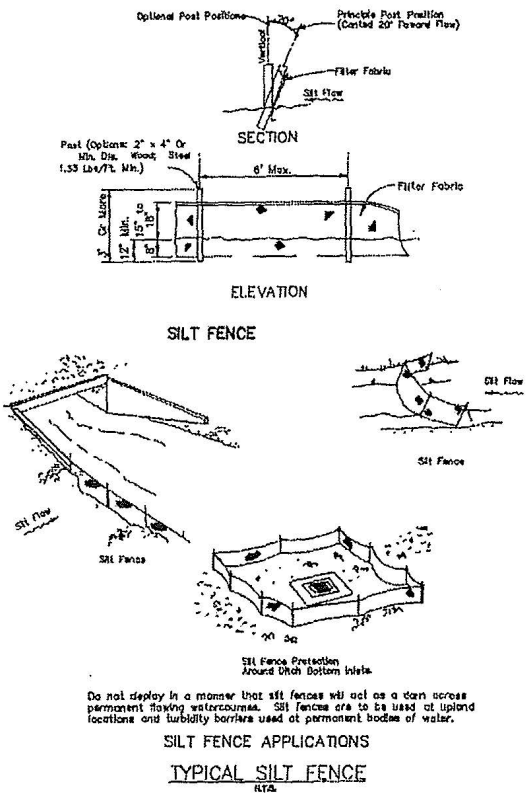


FIGURE 8

Sec. 16.5-41. Penalties.

(1) *Penalties.* Any person who violates or causes to be violated any provisions of this article or permits any such violation or fails to comply with any of the requirements hereof shall be subject to enforcement action of the code enforcement board, pursuant to Florida Statutes. A separate offense shall be deemed committed on each day during or on which a violation or failure to comply occurs or continues. (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-42. Emergency Exemption.

(1) This article shall not be construed to prevent the doing of any act necessary to prevent material harm to or the destruction of life, or real personal property, as the result of a present emergency, including but not limited to fire, infestation by pests, or hazards resulting from violent storms or hurricanes or when the property is in imminent peril and the necessity of obtaining a permit is impractical and would cause unique hardship in the protection of life or property.

(2) A report of such emergency action shall be made to the Town Building Official by the owner or the person in control of the property upon which the emergency action was taken as soon as practicable, but no more than ten (10) days following such action. Remedial action may be required by the Town Building Official subject to appeal to the council in the event of dispute. (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-43 – 16.5-49. Reserved.

ARTICLE IV: ILLICIT DISCHARGES

Sec. 16.5-50. Definitions.

(1) *Definitions.* For purposes of this section, the following words and phrases shall have the meaning indicated.

(a) *Illicit Discharge (or Illegal Discharge)* means any discharge to the Town's MS4 or to waters of the U.S. which is not entirely of stormwater, unless exempted pursuant to section 16.5-52, or the discharge to the Town's MS4 or to waters of the U.S. which is not in compliance with federal, state or local permits.

(b) *Illicit Connection* means either of the following: 1) any drain or conveyance, whether on the surface or subsurface, which allows an illegal or illicit discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharges including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or 2) any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

(c) *Municipal Separate Storm Sewer System (or MS4)* means a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds and other structural BMPs) owned and operated by a local government that discharge to waters of the U.S. or to other MS4s, that are designed solely for collecting, treating or conveying storm water and that are not part of publicly owned treatment works (POTW) as defined by 40 CFR 122.2 or any amendments thereto. (Ord. No. 14-13, 2, 9-16-14; Ord. No. 15-05, 8-12-15)

Sec. 16.5-51. Prohibitions.

(1) *Illicit/Illegal Discharges.* No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than storm water, whether such discharges occur through piping connections, runoff, exfiltration, infiltration, seepage or leaks. Polluting matter includes, but is not limited to, the following:

(a) Petroleum products, including, but not limited to oil, gasoline, grease;

(b) Solid waste;

(c) Paints;

(d) Steam cleaning waste;

(e) Pesticides, herbicides or fertilizers;

(f) Degreasers, solvents;

(g) Sanitary sewage;

(h) Chemically treated cooling water;

(i) Antifreeze and other automotive products;

(j) Lawn clippings, leaves, branches, etc.;

(k) Animal carcasses;

(l) Recreational vehicle waters;

(m) Dyes;

(n) Construction materials;

(o) Any liquids in quantity or quality that are capable of causing a violation of the Town's NPDES storm water permit; and

(p) Solids in such quantities or of such size capable of causing interference or obstruction to the flow of the Town's storm sewer system.

(2) *Illicit connections.*

(a) No person may maintain, use or establish any direct or indirect connection to any storm sewer owned by the Town that results in any discharge in violation of any provision of federal, state, Town of other laws or regulations.

(b) This subsection is retroactive, and applies to illicit connections made prior to the effective date of the article from which this subsection is derived; regardless of whether made under a permit or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.

(c) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(3) *Violation of permits.* Any discharge into the storm water system of the Town in violation of any federal, state, county, municipal or other governmental law, rule, regulation or permit is prohibited, except those discharges set forth in this section or as in accordance with a valid NPDES permit. (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-52. Authorized Exemptions.

(1) The commencement, conduct or continuance of any illicit or illegal discharge to the storm drain system is prohibited except as described as follows:

(a) Water line flushing;

(b) Street cleaning;

(c) Landscape irrigation;

(d) Swimming pool discharges;

(e) Uncontaminated pumped ground water associated with storm pipe installation;

(f) Discharges from potable water sources;

(g) Air conditioning condensate;

(h) Lawn watering;

(i) Individual residential car washing;

(j) Discharges or flows from emergency firefighting activities and emergency response activities done in accordance with an adopted spill response/action plan.

The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Florida Department of Environmental Protection, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system. (Ord. No. 14-13, 2, 9-16-14)

Sec. 16.5-53 - 16.5-59. Reserved.

[The next page is 1057]

Chapter 17

ZONING*

Art. I. In General, 17-1--17-14
Art. II. Reserved, 17-15--17-29
Art. III. Zoning and Planning Board, 17-30--17-45
Art. IV. Board of Adjustment, 17-46--17-61
Art. V. Zoning Map and Zoning Changes, 17-62--17-80
Art. VI. Regulations Generally, 17-81--17-120
Art. VII. District Regulations, 17-121--17-140
Art. VIII. Variances, 17-141--17-156
Art. IX. Nonconforming Uses 17-157--17-165

ARTICLE I. IN GENERAL

Sec. 17-1. Short title.

This chapter shall be known as the "Indialantic Zoning Code" and may be so cited. (Code 1962, 28-1; Ord. 11-13, 1, 7-27-11)

Sec. 17-2. Purpose of provisions.

The provisions of this chapter are designed to:

(a) Lessen congestion in the streets;

(b) Secure safety from fire, panic and other dangers;

(c) Promote the public health and general welfare;

(d) Provide adequate light and air;

(e) Prevent the overcrowding of land;

(f) Avoid undue concentration of population;

(g) Facilitate adequate provisions for transportation, water, electricity, sewerage, schools, parks and other public requirements, and,

(h) Promote and maintain the highest standards of architectural design.

***Editor's note**—Ordinance No. 142, enacted October 3, 1972, and effective immediately upon enactment, which was essentially an updating of the previous zoning ordinances, Ord. No. 50, adopted a new Ch. 28 of the town's 1962 Code of Ordinances. That chapter, as amended, comprises Ch 17 of this Code. Reference in the history notes following the provisions of this chapter to "Code 1962, 28-" are to the provisions of the old Chapter 28 as enacted by Ord. No. 1972.

Cross references—Limitation on number of dogs or cats kept, 4-50; building and construction regulations generally, Ch. 6; license not to permit business prohibited by zoning, 9-8; planning generally, Ch. 11.

(2) The provisions of this chapter are promulgated with reasonable consideration to the predominantly residential character of the town, with all other uses of land being either incidental and convenient thereto, or if existing as a result of extraneous factors, being secondary thereto.

(3) This chapter shall be construed to:

(a) Preserve and enhance the one-family residential character of the town, making provision for such other uses as will contribute to this end; and,

(b) Prohibit such other uses as would be in conflict therewith, and strictly limit the intensity and extent of permitted uses, the intensification and expansion of which would detract from the predominantly one-family residential character of the town, impair property values, or disturb the sense of security of community character that is an inseparable part of the enjoyment of the ownership of property. (Code 1962, 28-2)

Sec. 17-3. Interpretation of provisions.

(a) In interpreting and applying the provisions of this chapter, they shall be construed as the minimum requirements for the promotion of the public health, safety, morals and general welfare of the community. It is not intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties, but where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other provisions, rules, regulations or by easements, covenants, or agreements, the provisions of this chapter shall control. (Code 1962, 28-3)

(b) Notwithstanding that the various zoning districts list as a prohibited use any use which is not a permitted use, the town council notes various uses are so similar to existing permitted uses as to be one and the same. Such uses are permitted by reasonable implication. In reviewing the zoning code to determine whether a use is permitted in a particular zoning district by reasonable implication, the code reviewer shall first be guided by the plain meaning of the code and secondarily by the intent of the town council and zoning and planning board in adopting and drafting the zoning code. The list of permitted uses may include those uses permitted by reasonable implication that are substantially similar in nature and character but not more intense or dense by use, not generating greater amounts of motor vehicle traffic or noise, and in the case of commercial uses, not normally operating earlier in the morning or later at night than other similar permitted uses; provided, that all other uses not expressly permitted or determined to be permitted by reasonable implication shall be prohibited. (Ord. 08-01, 1, 11-20-07)

Sec. 17-4. Definitions.

As used in this chapter, the following words and phrases shall have the meanings indicated:

(1) *Accessory use, accessory building* or *accessory structure.* A subordinate use or building, used for non-living purposes such as storage, located on the lot with the main building, which shall not cause any of the following nuisances to be detectable to the normal senses off the lot: Noise, vibrations, glare, fumes, odors, powders, hazardous materials, liquids, electrical interference in any radio or television receivers, or fluctuations in power line voltage.

(1.1) *Aquifer.* An underground formation, group of formations, or a part of a formation, that is permeable enough to transmit, store, or yield usable quantities of water.

(2) *Alley.* Any public or private right-of-way set aside for public travel less than thirty (30) feet in width.

(3) *Alteration.* As applied to a building or structure, is a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

(4) *Apartment.* Any building containing three (3) or more complete rental living units.

(5) *Area, building.* The aggregate of the maximum horizontal cross section area of the main building on a lot, excluding cornices, eaves, gutters, or chimneys projecting not more than three (3) feet, steps, one-story open porches, bay windows not extending through more than one story and not projecting more than three (3) feet, balconies and terraces.

(6) *Automotive repair facilities.* All mechanical and engine overhaul or repair, body work and painting of automotive vehicles.

(7) *Automotive vehicles.* Any self-propelled vehicle or conveyance designed and used to transport or move persons, animals, freight, merchandise or any substance, and including passenger cars, trucks, buses, motorcycles, scooters, but not including tractors, construction equipment or machinery, or any device used for performing a job except as stated above.

(7.1) *Bed and breakfast.* A use: (i) consisting of a building(s) designed and used as a single-family detached dwelling; (ii) consisting of a single-family dwelling unit together with the rental of one or more, but not to exceed nine (9) dwelling rooms or suites on a short-term basis, usually by the night to tourists, vacationers, or similar transients; (iii) where the provision of meals, if provided at all, is limited to the breakfast meal for overnight guests; and (iv) where the bed and breakfast operation is conducted by an owner or operator of the bed and breakfast facility who physically resides on the premises. A bed and breakfast is not a rooming house or a permanent dwelling except for the owner or operator of the bed and breakfast facility and said individual's family.

(7.2) *Body Piercing.* For commercial purposes the act of penetrating the skin to make, generally permanent in nature, a hole, mark, or scar. Body piercing does not include the use of a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

(8) *Building.* Any structure constructed or used for residence, business, industry, or other public or private purposes or accessory thereto, and including tents, lunch wagons, dining cars, trailers, mobile homes, sheds, garages, accessory buildings, carports, animal kennels, and similar structures whether stationary or movable.

(9) *Building line.* The line between which and the street line or lot line no building or other structure or portion thereof, except as provided in this Code, may be erected above the grade level. The building line is considered a vertical surface intersecting the ground on such line.

(10) *Building permit.* A written authority to build, issued by the building official.

(10.1) *Building site.* Any group of one (1) or more lots or parcels of land occupied or intended for development as a unit, whether or not as part of a larger development site.

(11) *Club vendor.* A private club vending alcoholic beverages and intoxicating liquors without limitation as to alcoholic content, at retail, for consumption upon the premises.

(12) *Cocktail lounge.* A room having a bar and tables set up at all times and used for serving alcoholic beverages and/or food.

(12.1) *Community Residential Home.* A facility in which the owners or operators are subject to licensing and approval by the State of Florida, Department of Health and Rehabilitative Services, and where said owners or operators provide basic care, personal services, and supervision necessary to meet the physical, emotional and social needs of assigned, unrelated residents. A community residential home shall house no more than fourteen (14) assigned residents and shall be categorized by levels, according to the number of assigned residents residing on the premises, the zoning district in which it is permitted, and the requirements contained in article VI. of this zoning code. Residents of these homes shall be as defined in section 419.001(1)(d) of the Florida Statutes (1993), as amended from time to time.
Levels shall be as follows:

1. Level I facility - No more than six (6) assigned residents.
2. Level II facility - Seven (7) to fourteen (14) assigned residents.

(13) *Condominium.* Any multifamily dwelling containing individually owned living units.

(14) *Court.* An unoccupied open space other than a yard on the same lot with a principal building, and fully enclosed on at least three (3) adjacent sides by the walls of the main building.

(15) *Court, inner.* A court enclosed on all sides by exterior walls and lot lines on which walls are allowable.

(16) *Court, outer.* A court enclosed on not more than three (3 sides by exterior walls and lot lines on which walls are allowable, with one side or end open to a street, driveway, alley or yard.

(16.1) *Crushed coquina shell rock (also known as cemented coquina rock).* A small marine clam's hard, mineral-like calcareous covering which has been reduced to particles by pounding or grinding and is relatively dust-free when compared to most other types of gravel and is permeable.

(17) *Cul-de-sac.* A blind alley or street which is open at one end only.

(17.1) *Day.* A day refers to one calendar day and not a business day. When action is required to be taken within a certain number of days and the final day in the time period falls on a weekend, or a town recognized holiday, when the town administration offices are closed for business, the time period shall be extended until the close of business on the next day after the weekend or holiday that the town administrations offices are open for business. When a legal advertisement is to be made a certain number of days prior to a town meeting and the time period ends or begins on a weekend, or a town recognized holiday, when the town administration offices are closed for business, the time period shall not be extended or changed.

(17.2) *Detention* or *to detain.* The collection and temporary storage of storm water in such a manner as to provide for treatment through physical, chemical, or biological processes with subsequent gradual release of the surfacewater.

(18) *Depth of lot* or *lot* depth. The distance measured in the mean direction of the side lines of the lot from the standpoint of the front lot line to the midpoint of the opposite main rear line of the lot.

(19) (a) *Drive-in restaurant.* An establishment serving food and/or drink where provisions are made for customers to drive across the curbs or sidewalk lines and receive service and/or consume food and/or drink in automobiles or other motor vehicles where said vehicle stands or parks in its own separate parking space during the process; and/or establishments where food and/or drink is prepared and/or served outside of an enclosed building, including open-air restaurants, diners, hot dog stands, barbecue stands or similar establishments.

(b) *Drive-through restaurant.* An establishment serving food and/or drink where provisions are made for customers to drive across the curbs or sidewalk lines and place orders for food and/or drink prepared inside and served through window(s) of the restaurant to customers seated in their automobiles or other motor vehicles where said customer places an order by two-way speaker or other means and/or progresses in said vehicle via a designated path to the take-out window and then directly leaves the premises or parks without receiving service from a carhop.

(20) *Duplex.* Two (2) complete living units within one principal building.

(21) *Dwelling.* A house, apartment, or building designed or used primarily for human habitation, but not including boardinghouses or rooming houses, hotels, motels, tourist courts, vacation rentals or other structures for transient residents.

(22) *Dwelling house.* A detached house designed for, and occupied exclusively as, the residence of not more than two (2) families, each living as an independent housekeeping unit.

(23) *Dwelling unit.* One or more rooms providing complete living facilities for one family, including equipment for cooking or provisions for the same, and including a room or rooms for living, sleeping and eating.

(24) *Dwelling, multifamily.* A dwelling or group of dwellings on one plot containing separate living units for three (3) or more families, but which may have joint services or facilities.

(24.1) *Earth station.* See Satellite dish antenna.

(25) *Essential service.* The erection, construction, alteration, or maintenance by public utilities or municipal departments or commissions, of underground or overhead gas, electrical, steam, or water transmission or distribution systems, collection, communication, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith but not including buildings reasonably necessary for the furnishing of adequate service by such public utilities or municipal departments or commissions or for the public health or safety or general welfare.

(26) *Family.* A single individual, doing his own cooking, and living upon the premises as a separate housekeeping unit, or a collective body of persons doing their own cooking and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon birth, marriage, legal right (such as foster children, guardianship, etc.) or other domestic bond as distinguished from a group occupying a boarding house, lodging house, club, fraternity or sorority house. But in no event may more than two (2) persons, eighteen (18) years of age or older, unrelated by birth, marriage or legal right constitute a "family" hereunder.

(27) *Floor area, gross.* The sum of the gross horizontal areas of the several floors of the building excluding areas used for accessory garage purposes and such basement and cellar areas as are devoted exclusively to uses accessory to the operation of the building, All horizontal dimensions shall be calculated from the outside exterior faces of walls.

(27.1) *Fresh water.* Water from lakes, rain or processed water obtained from a water utility system.

(28) *Front lot line.* That property line which abuts on a public street, or in the event the property abuts on two (2) or more streets it shall mean that property line abutting on a street which has been so designated by the owner at the time of his application for a building permit.

(29) *Front yard.* An open unoccupied space (except as permitted herein) on the same lot with a principal building and extending across the width of the lot between the front lot line and the front walls or supports of the principal building regardless of its configuration. The location of the front yard is depicted on the drawing located at the end of this section 17-4. In the event of conflict between this written definition and the drawing, this written definition shall prevail.

(30) *Garage, private.* A building or part thereof accessory to a main building and providing for the storage of automobiles and in which no occupation or business for profit is carried on.

(31) *Garage, public or storage.* A building or part thereof other than a private garage for the storage of motor vehicles and in which service station activities may be carried on.

(31.1) *Glare.* A harsh uncomfortably bright light.

(31.2) *Groundwater.* Water below the surface of the ground whether or not flowing through known and defined channels.

(32) *Half-story.* A story under a sloping roof, the finished floor area of which does not exceed one-half (l/2) the floor area of the floor immediately below it; or a basement used for human occupancy, the floor area of that part of which thus used, does not exceed fifty percent (50%) of the floor area of the floor immediately above.

(33) *Height, building.* The height of a structure shall be determined by the vertical dimension measured from the lowest, minimum permitted finished floor elevation, as determined by applying the Florida Building Code as adopted in Section 6-27, town code, and the provisions of Section 17-92 and Chapter 6.5 of the town code, to the highest point of the roof. Chimneys, air conditioning equipment, ventilators, and elevator shaft extensions shall be excluded in the measurement of building height; however, these exclusions shall not exceed the minimum height established by the Florida Building Code.

(34) *Home occupation.* An occupation carried on by a member of the resident family within the walls of a dwelling unit and not visible or noticeable in any manner or form from outside the walls of the dwelling.

(35) *Hotel.* A multi-story structure for transient or permanent guests, and which may include rooms without cooking facilities and complete apartment facilities. All units of a hotel shall be confined within one structure except for the necessary accessory buildings.

(35.1) *Impervious surface.* A surface which has been compacted or covered with a layer of material so that it will not permit the passage of water downward into the ground.

(36) *Junk.* Any worn-out, cast-off, or discarded article or material which is ready for destruction or has been collected or stored for salvage or conversion to some use. Any article or material which, unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new, shall not be considered junk.

(37) *Junkyard.* The use of more than ten (10) square feet of the area of any lot, whether inside or outside a building, or the use of any portion of that half of any lot that joins any street, for the storage, keeping or abandonment of junk.

(38) *Living area.* That area of a dwelling unit, enclosed, which is protected from the elements and able to be heated, including interior halls, closets, utility and storage areas in the main building but excluding garages, carports, screened porches, and unenclosed areas. All horizontal dimensions shall be calculated from the outside faces of walls.

(39) *Living unit.* The rooms comprising the essential elements of a single housekeeping unit. Facilities for the preparation, storage and keeping of food for consumption within the premises shall cause a unit to be construed as a living unit.

(40) *Loading space.* An off-street space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley or other appropriate means of access.

(41) *Lot.* A piece, parcel or plot of land of at least sufficient size to meet minimum zoning requirements, occupied or to be occupied by one principal building and its accessory buildings and including any required open spaces.

(42) *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.

(43) *Lot, corner.* A lot at the point of intersection of and abutting on two (2) or more intersecting streets, the angles of intersection being not more than one hundred thirty-five degrees (135°). It is the land occupied or to be occupied by the corner building and its accessory buildings.

(44) *Lot, reversed corner.* A corner lot the rear of which abuts upon the side of another lot whether across an alley or not.

(45) *Map.* The official zoning map of the town.

(45.1) *Marijuana.* Marijuana means all parts of any plant of the genus *Cannabis,* whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

(45.2) *Medical marijuana treatment center.* A medical marijuana treatment center is a location at which cultivation or processing of marijuana may occur as permitted by s. 381.986, Florida Statutes.

(45.3) *Medical marijuana treatment center dispensing facility.* A medical marijuana treatment dispensing facility is a facility at which marijuana is dispensed for medical use and which dispensary is licensed by the Florida Department of Health. *See* s. 381.986, Florida Statutes. As used in this definition, the term "medical use" is defined as set forth in s. 381.986, Florida Statutes.

(46) *Motel.* A group of tourist accommodation units and designed primarily for access by automobile.

(47) *Nonconforming building.* A building which does not conform to the provisions of this chapter for all items other than type of use.

(48) *Nonconforming use. A* use of a building or land lawful at the time of the enactment of this chapter that does not conform with the provisions of this chapter for the district in which it is located.

(49) *Occupied.* The use of a building or land for any purpose, and shall include occupancy for residential business, industrial, and public use, as well as for manufacturing and storing facilities.

(49.1) *Outdoor cafe.* An outside area which contains tables and chairs for use in connection with a food service establishment.

(49.2) *Park.* A noncommercial facility designed to serve the recreation needs of the residents of the community. Such facilities include neighborhood parks, community parks, and beach areas, all as depicted on the recreation and sidewalk/bike trial map (existing) – exhibit 13 in the recreation and open space element of the town's comprehensive plan. Such facilities may also include, but shall not be limited to, school and religious institution ball fields, if they meet the above definition. Commercial amusement facilities, such as water slides, go-cart tracks and miniature golf courses shall not be considered parks.

(50) *Parking space.* An area specifically and permanently designed for the parking or storage of motor vehicles and having minimum dimensions of ten (10) feet by twenty (20) feet. When a curb stop or curbing is used as a wheel stop for head-in parking, the twenty-foot dimension may be reduced to eighteen (18) feet of paving plus a two-foot overhang area. Compact car spaces nine (9) feet by eighteen (18) feet may be approved by the zoning and planning board if justified by the configuration of the site plan and a demonstration of control by the owner. Compact car spaces shall not exceed twenty percent (20%) of the total number of automobile parking spaces.

(50.1) *Permeable.* Having the characteristic of permitting the passage of some substances (water) through its interstices or pores.

(50.2) *Pervious.* Being of a substance that can be penetrated or permeated such as a soil that allows passage to lower levels.

(50.3) *Practical difficulty*. In the case of a variance, a practical difficulty is a standard which is similar to but less rigorous than the unnecessary hardship standard. It is a non-self created characteristic of the property. The standard asks whether a literal enforcement of a zoning regulation will create a practical difficulty in the use of the parcel of land for the purpose or in the manner for which it is zoned. Some of the factors that *may* be considered in determining whether a practical difficulty exists include: (i) how substantial the variance is in relation to the requirement sought to be varied; (ii) whether a substantial change will be produced in the character of the neighborhood; (iii) whether the difficulty can be obviated by some method feasible for the applicant to pursue other than by a variance; and (iv) whether, in view of the manner in which the difficulty arose, the interest of justice will be served by allowing the variance. Finding that factors (i) (that the variance requested is not substantial); (ii) (that a substantial change in the character of the neighborhood will not occur if the variance is granted); (iii) (that the difficulty occurring can only be obviated by grant of the variance); and (iv) (that the interest of justice will be served by granting of the variance), are all factors in support of the variance.

(51) *Principal building.* 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 the principal building on the lot on which the same is situated. An attached carport, shed, garage or any other structure with one or more walls or a part of one wall being a part of the principal building and structurally dependent, totally or in part, on the principal building, and a carport, shed, or garage that meets the wind loading, wind borne debris, wind speed, wind resistance and other wind-related requirements of law, the Florida Building Code or the town code shall be deemed part of the principal building. However, a detached and structurally independent carport, garage, covered walkway or other structure shall be deemed an accessory building.

(52) *Private club.* A club operated for the benefit of members only and not accessible to the general public.

(53) *Public use.* Any use of land or a building owned and operated by a municipality, county, state or federal government or agency thereof, and for a public service or purpose.

(54) *Rear yard.* An open unoccupied space (except as permitted herein) on the same lot with the principal building and extending across the width of the lot, except on corner lots, between the rear lot line and the rear walls or supports of the building. The location of the rear yard is depicted on the drawing located at the end of this section 17-4. In the event of conflict between this written definition and the drawing, the written definition shall prevail.

(54.1) *Recreational vehicles.* Trailers, campers, motorhomes, truck-campers, travel trailers, camper buses, boats, boat trailers, boats mounted on trailers, air boats, air boat trailers, air boats mounted on trailers, and vans over seven (7) feet in height which bear the Recreational Vehicle Association (RVA) Seal of Approval, all of which are referred to as RV's.

(54.2) *Residential zoning districts* shall include the R-1-A, R-1-B, R-2, R-3, and R-P zoning districts.

(55) *Restaurant.* An enclosed building in which food and beverages are prepared and served to the public at tables in a dining room or rooms located therein, and shall not include open-air or drive-in restaurants, diners, hot dog stands, barbecue stands, or similar establishments where food is delivered or served to cars, or on stools, outside the main body of the restaurant. The primary business shall be the service of food.

(55.1) *RV's.* See Recreational vehicles.

(56) *Rooming house.* Any dwelling in which more than three (3) persons either individually or as families are housed or lodged for hire, with or without meals. A boardinghouse or furnished room shall be deemed a "rooming house."

(56.1) *Satellite dish antenna.* An antenna, often paraboloid in form, for receiving communication or other signals from satellites along with associated equipment to receive, magnify, interpret, and transfer such signals.

(57) *Semi-public use.* Any use of land or buildings owned and operated by any person, lodge or club, either as a profit or non-profit activity, for a public service or purpose. This shall include privately owned utilities, transportation, recreation, education and cultural activities and services.

(58) *Service station.* Building and premises where petroleum products, grease, batteries, tires, or automotive accessories may be supplied, installed, or dispensed at retail for automobiles or other motor vehicles. Convenience stores, e.g. (but not limited to), a 7-11 Store, Hess Mart, Majik Market, Circle K, Super America, and the like, dispensing gasoline shall be considered automobile service stations. The following general services and sales may also be rendered at service stations:

(a) Sales and servicing of spark plugs, batteries, and distributors and distributor parts;

(b) Tire sale or servicing or indoor repair, but not recapping or regrooving.

(c) Replacement of mufflers and tail pipes, water hose and fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors, and similar items.

(d) Radiator cleaning and flushing;

(e) Lubrication;

(f) Providing and repairing fuel pumps, oil pumps, and lines;

(g) Servicing and repair of the carburetor;

(h) Emergency wiring repairs;

(i) Adjusting and repairing brakes;

(j) Air conditioning servicing; and

(k) The rental of moving trucks or trailers; provided, however, that no more than two (2) such vehicles may be on the service station premises at any one time.

Items (a) through (j) shall be accomplished indoors only.

(59) *Setback building line.* A building line back of the street line.

(60) *Side yard, corner.* An unoccupied space (except as permitted herein) on the same lot with a principal building and extending from the front yard to the rear lot line on the side abutting the street and lying between the side lot line and the walls or supports of the building. The location of the side yard, corner, is depicted on the drawing located at the end of this section 17-4. In the event of conflict between this written definition and the drawing, the written definition shall prevail.

(60.01) *Side yard, interior*. An unoccupied space (except as permitted herein) on the same lot with a principal building and extending from the front yard to the rear yard between the side lot line and the walls or supports of the building. The location of the side yard, interior, is depicted on the drawing located at the end of this section 17-4. In the event of conflict between this written definition and the drawing, the written definition shall prevail.

(60.1) *Sidewalk sale.* A commercial sale or display of goods, products, wares, merchandise, services or material related to services, any one or all of which is sold or displayed on a sidewalk immediately contiguous to the building/commercial premises within which the vendor has for commercial sale or display goods, products, services, or material related to services. The display of goods, products, wares, merchandise, material related to services shall be exempt from this definition when such item is part of an approved sign.

(60.2) *Skateboard.* A recreational device consisting of a narrow slat constructed of wood, steel, plastic, fiberglass, or other material, to the underside of which are affixed wheels or rollers similar to those on roller skates.

(60.3) *Skateboard ramp.* A curved or slanted ramplike structure extending upward at an angle sufficient to facilitate the downward and forward motion of a person while mounted on a skateboard. Nothing stated herein shall be interpreted to waive any requirement of obtaining a permit before constructing a skateboard ramp.

(60.4) *Storage unit, temporary portable*. A temporary portable storage unit means any unit not less than six hundred (600) cubic feet in size, including, but not limited to, a trailer, box, or other shipping container, which is leased by a tenant primarily for use as storage space whether the unit is located at a facility owned or operated by the owner or at another location designated by the tenant.

(61) *Story.* That portion of a building included between the upper surface of any floor and the upper surface of the floor next above; or any portion of a building used for human occupancy between the topmost floor and the roof, but shall not include a basement or cellar not used for human occupancy.

(62) *Street.* Any public or private right-of-way set aside for public travel thirty (30) feet or more in width, including roads, avenues, boulevards, lanes, drives, thoroughfares and highways.

(63) *Street centerline.* The midpoint of the street right-of-way.

(64) *Street right-of-way.* The property line which bounds a right-of-way set aside for use as a street. Where sidewalks exist and the exact location of the right-of-way of the street is unknown, the side of the sidewalk furthest from the centerline of the traveled street shall be considered as the right-of-way.

(65) *Structure.* Anything constructed or erected which requires location on the ground or attached to something having location on the ground, including signs and billboards, but not including fences or walls used as fences.

(65.1) *Surfacewater.* The flow of water that results from a rainfall or other event which creates an over-supply of non-salt water that is not instantly permeated through the soil.

(65.2) *Tattoo.* Any mark or design on or under the skin of a human being by a process of piercing and ingraining a pigment, dye or ink in the skin.

(65.3) *Tattoo Establishments.* Any permanent location, place, area, structure, or business where tattooing is performed. Such establishment shall be licensed under F.S. 381.00777. All Tattoo artists shall be licensed as required by s. 381.0075, F.S. For the purposes of this code, a tattoo establishment or a tattoo artist shall not engage in body piercing.

(66) *Terrace.* An unoccupied open space adjacent to a principal building on one or two (2) sides, prepared with a hard, semi-hard, or improved surface, and uncovered, for the purpose of outdoor living.

(67) *Total floor area.* The areas of all floors of a building including finished attics, finished basements, and all covered areas, including porches, sheds, carports, and garages.

(68) *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.

(69) *Tourist court.* Same as "motel."

(69.1) *Unnecessary hardship*. In the case of a variance, an unnecessary hardship is a standard which is similar to but much more rigorous than the practical difficulty standard. The unnecessary hardship standard is a very restrictive standard. It is a non-self created characteristic of the property in question which renders it virtually impossible to use the land for the purpose or in the manner for which it is zoned. The standard asks whether a literal enforcement of a zoning regulation will create an unnecessary hardship which makes it virtually impossible to use the land for the purpose for which it is zoned.

(70) *Use.* The purpose of which land or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.

(71) *Vacant.* A building or parcel of land either not occupied or used or in non-operative status for a period of one year.

(71.1) *Vacation Rental*. An attached or detached residential structure or dwelling unit that is rented, leased or assigned for tenancies of less than ninety (90) days or three (3) calendar months, whichever time period is less, and for a monetary consideration, or which is advertised or held out to the public as a place periodically rented for a monetary consideration for periods of less than 90 days or three (3) calendar months, whichever time period is less. For the purposes of this chapter, a vacation rental is a commercial use. For the purposes of this definition, subleases for less than 90 days are to be considered as separate rental periods. This definition does not include month-to-month hold-over leases from a previous lease longer than 90 days. Vacation rental use does not include hotels and motels, which are specifically addressed in specific zoning districts. A vacation rental unit may also be a bed and breakfast facility. A vacation rental unit may be located in an apartment or condominium building or a single-family residential dwelling unit, but only as a specifically permitted use as is noted in a particular zoning district.

(71.2) *Variance.* A variance is a modification of, or deviation from, the regulations of chapter 17 of the town code of ordinances, the Indialantic zoning code, which is authorized and approved by the board of adjustment after the board finds that the literal application of the provisions of the zoning code would cause an unnecessary hardship or a practical difficulty in the use or development of a specific parcel of land or building.

(72) *Yard.* An open space (except as permitted herein) other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this Chapter. See also definitions of Front yard; Rear yard; Side yard, corner, and Side yard, interior.
(Code 1962, 28-4; Ord. No. 153, 3, 6-19-73; Ord. No. 261, 1, 9, 10, 11, 19, 7-17-79; Ord. No. 84-344, 1, 3-20-84; Ord. No. 85-21, 1, 8-20-85; Ord. No. 86-2, 1, 3-18-86; Ord. No. 86-11, 4, 4-15-86; Ord. No. 86-13, 2, 6-17-86; Ord. No. 86-17, 2, 8-19-86; Ord. No. 87-2, 1, 12-16-86; Ord. No. 87-3, 3, 2-17-87; Ord. No. 87-9, 2, 8-18-87; Ord. No. 90-13, 1, 2, 1-15-91, Ord. No. 92-4, 1, 2-18-92; Ord. No. 93-4, 1-2, 6-15-93; Ord. 94-7, 2, 1-18-94; Ord. No. 95-1, 1, 11-30-94; Ord. 95-9, 1, 7-18-95; Ord. 95-13, 1, 10-17-95; Ord. No. 02-09, 1, 4-16-02; Ord. No. 04-07, 1, 3-16-04; Ord. No. 08-01, 2, 11-20-07; Ord. No. 11-13, 2, 7-27-11; Ord. 12-02, 13, 11-21-11; Ord. 12-07, 1, 4-17-12; Ord. 16-04, 1, 2-10-16; Ord. No. 16-08, 1, 4-13-16; Ord. No. 17-10, 1, 5/15/17; Ord. No. 17-11, 2, 7/17/17; Ord. No. 17-14, 1, 9/13/17)

Editor's note--Ord No 87-9, 2, adopted Aug 18,1987, did not specifically amend the Code, hence the definitions contained therein have been included as 17-4(1.1), (16.1), (17.1), (27.1), (31.2), (35.1), (50.1), (50.2), (65.1) at the discretion of the editor

Secs. 17-5--17-14. Reserved.

ARTICLE II. RESERVED *

Secs. 17-15--17-29. Reserved.

ARTICLE III. ZONING AND PLANNING BOARD **

Sec. 17-30. Created.

(1) There is created a zoning and planning board consisting of five (5) members and two (2) alternate members to be appointed by the town council, and a nonvoting member appointed by the School Board. To the extent reasonably possible the School Board shall seek to appoint a town resident as the School Board's representative.
(Code 1962, 28-20; Ord. No. 154, 1, 3-19-74; Ord. No. 201, 1, 8-17-76; Ord. No. 82-301, 4, 12-15-81; Ord. No. 03-03, 1, 3-18-03)

Sec. 17-31. Organization.

The zoning and planning board shall elect from among its membership a chairman and a vice-chairman. Said election shall be by a majority vote of the members present and voting in said election, which election shall be held at the board's first meeting in January of each year, or as soon thereafter as may be reasonably possible. The council shall provide a secretary. The board may adopt and amend its rules of procedures, subject to the approval of the town council. The town council shall furnish the board with the supplies and personnel it may need.

Voting is restricted to the five (5) members and the alternate members if they are functioning in a regular member's stead. A quorum will be determined from among the voting members.
(Code 1962, 28-21; Ord. No. 201, 1, 8-17-76; Ord. No. 89-5, 1 , 1-17-89; Ord. No. 90-5, 1, 1-16-90; Ord. 03-03, 2, 3-18-03)

Sec. 17-32. Meetings.

All meetings of the zoning and planning board shall be open to the public and shall be held at the town hall. The zoning and planning board shall meet to hold hearings at the call of the chairman.
(Code 1962, 28-22)

***Editor's note**--Ord. No. 82-301, 2, adopted Dec. 15, 1981, repealed Art. II, 17-15--17-29 of the zoning ordinance, pertaining to the planning commission and its organization, powers, duties, etc.; sections 4 through 6 of said ordinance assigned responsibilities similar to those of the former planning commission to a newly designated zoning and planning board, set out herein as Art. III. The repealed provisions were derived from Code 1962, 28-10--28-14.

****Editor's note**--Ord. No. 82-301, 3, adopted Dec. 15, 1981, amended the zoning ordinance by changing the title of Art. III (formerly, Zoning Board) to Zoning and Planning Board; 4 of said ordinance amended 17-30 to reflect this change; and 5 and 6 enacted new 17-36, 17-37, pertaining to the expanding duties and responsibilities of the redesignated board. In light of the town's changes to this article, the editor has, at his discretion, deleted all references to the zoning board found in 17-31--17-35, and substituted the term, zoning and planning board.

Cross references--Adoption of comprehensive plan, 11-6; designation of land development code, 11-8; local planning agency, 11-10.

Charter reference--Zoning and planning board required, 9.03.

Sec. 17-33. Minutes.

The secretary of the board shall keep minutes of the meetings of the board, showing particularly the action taken on each question considered. All minutes shall be filed with the town clerk and shall be open to public inspection.
(Code 1962, 28-23)

Sec. 17-34. Powers and duties.

The zoning and planning board shall have the powers and duties as prescribed and provided in this chapter, and in addition thereto, shall have such other powers and duties as are provided and prescribed by the Florida Statutes.
(Code 1962, 28-24)

Sec. 17-35. Appeals from decisions.

Appeals from decisions of the zoning and planning board shall be taken to the board of adjustment, provided such appeal is filed with the town clerk in writing within ten (10) days of the zoning board's decision.
(Code 1962, 28-25; Ord. No. 85-16, 2, 6-18-85; Ord. No. 85-18, 2, 8-20-85)

Sec. 17-36. Duties, responsibilities expanded--Authority; duties in general.

The zoning and planning board, in accordance with the Local Government Comprehensive Planning Act of 1975, Sections 163.3161 through 163.3211, Florida Statutes, shall monitor and oversee the effectiveness and status of the comprehensive plan, and recommend to the town council such changes in the comprehensive plan as from time to time may be required.
(Ord. No. 82-301, 5, 12-15-81)

Sec. 17-37. Same--Zoning and planning.

The zoning and planning board shall:

(1) Make a continuing study of the growth of the town, the zoning problems, and the zoning district boundaries and uses; and make recommendations to the town council relative thereto;

(2) Make recommendations to the town council as to future planning and growth of the town, giving due regard to all methods available for the development of the town; and

(3) Conduct a periodic and systematic review of the need for, and the benefits derived from various portions of the land development code as designated in section 11-8, town code. Upon completion of a review of a particular portion of the land development code, the zoning and planning board shall recommend to the town council elimination, continuation, or amendment of said portion of the land development, stating with specificity reasons for such recommendation. In determining what action to take with regard to its recommendation to the town council, the board shall consider the following:

(A) Would the absence of the ordinance or regulation endanger or harm the public health, welfare, economic order, aesthetics, safety, or public interest?

(B) With regard to the ordinance or regulation, is there a reasonable relationship between the exercise of the police power of the town and the protection of the public health, welfare, economic order, aesthetics, safety, or public interest?

(C) Is there a less restrictive method of regulation available which would adequately protect the public?

(D) Does the ordinance or regulation have the effect, directly or indirectly, of increasing the costs of any goods or services for the public, and if so, to what degree?

(E) Is the increase in cost, as a result of the ordinance or regulation, more harmful to the public than the harm that could result from the absence of the regulation?

(F) Was the ordinance or regulation established to resolve a problem or undertake a new program, and if so, has the problem been resolved, or is the new program underway?

(G) What has been the accomplishments or effects to date of the ordinance or regulation?

(H) Is the ordinance or regulation legal?

(I) Is the ordinance or regulation consistent with the currently effective comprehensive plan?

(Ord. No. 82-301, 6, 12-15-81, Ord. No. 98-5, 1, 3-17-98)

Secs. 17-38--17-45. Reserved.

ARTICLE IV. BOARD OF ADJUSTMENT

Sec. 17-46. Created.

(1) There is created a board of adjustment consisting of five (5) regular members and two (2) alternate members appointed by the town council. The alternates will have a voice but not a vote in all board of adjustment deliberations, unless one or more regular members are absent, in which case the alternates are authorized to vote in accordance with their designation as Alternate Number 1 and Alternate Number 2 in that order.

(2) Members of the board shall hold office for one (l) year.
(Code 1962, 28-31; Ord. No. 158, 2, 3-19-74; Ord. No. 201, 1, 8-17-76; Ref. Ord. No. 90-3, 1, 1/16/90)

Sec. 17-47. Organization.

The board of adjustment shall elect from among its membership a chairman and a vice chairman. Said election shall be by a majority vote of the members present and voting in said election, which election shall be held at the board's first meeting in January of each year, or as soon thereafter as may be reasonably possible. The council shall provide a secretary. The board may adopt and amend its rules of procedures, subject to the approval of the town council. The town council shall furnish the board with the supplies and personnel it may need. (Code 1962, 28-32; Ord. No. 201, 1, 8-17-76; Ord. No. 89-6, 1, 1-17-89; Ord. No. 90-4, 1, 1-16-90)

Sec . 17-48. Meetings.

The meetings of the board shall be held at the call of its chairman or at such other times as the board may determine. All meetings shall be open to the public. (Code 1962, 28-32)

Sec. 17-49. Minutes

The secretary of the board shall keep minutes of its showing particularly the action taken on each question considered. All minutes shall be filed with the town clerk and shall be open to public inspection. (Code 1962, 28-34)

Sec. 17-50. Powers and duties.

The board of adjustment shall have the following powers and duties:

(1) As otherwise provided in this chapter, chapter 6 of the town code, and any of the minimum building codes adopted in chapter 6, including but not limited to the Florida Building Code, Florida Building Code, Plumbing, Florida Building Code, Fuel Gas and Florida Building Code, Mechanical.

(2) To grant variances and exceptions, under the provisions of this chapter, chapter 6 of the town code, and any of the minimum building codes adopted in chapter 6, including but not limited to the Florida Building Code, Florida Building Code, Plumbing, Florida Building Code, Fuel Gas and Florida Building Code, Mechanical.

(3) To hear and decide appeals from final decisions of the building official as provided in chapter 6 and any of the minimum building codes adopted in chapter 6, including but not limited to the Florida Building Code, Florida Building Code, Plumbing, Florida Building Code, Fuel Gas and Florida Building Code, Mechanical or the zoning and planning board.

(4) To make determinations as to the exact location of the boundaries of zoning districts in cases of uncertainty with respect thereto.

(5) To determine the exact meaning, intent and purpose of the provisions of this chapter upon written application by any person for such determination.

(6) To hear and decide appeals from final decisions of the town manager with regard to color code matters, as set forth in article III, regarding the color code in chapter 5.5, town code.

(Code 1962, 28-35; Ord. 96-1, 12, 10-17-95; Ord. No. 97-6, 3, 5-6-97; Ord. No. 12-02); 14, 11-21-11)

Sec. 17-51. Appeals to.

(a) Appeals from the final decisions of the building official (other than appeals from decisions made pursuant to the Florida Building Code, Florida Building Code, Plumbing, Florida Building Code, Fuel Gas, or Florida Building Code, Mechanical) , or the zoning and planning board may be taken to the board of adjustment, provided the appeal is filed with the town clerk in writing within ten (10) days of the building official's or the zoning board's decisions, under the following conditions:

(1) By any person aggrieved or by any department of the town affected by any final decision of the building official or zoning board.

(2) All applications for appeal shall be in writing.

(3) An appeal stays all proceedings in furtherance of the action appealed from, unless the building official or zoning board from which the appeal is taken certifies to the board that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed except upon a restraining order granted by the board of adjustment or by a court of record.

(4) Each application for appeal shall specify the section or subsection of this chapter involved, shall set forth the exact interpretation claimed with respect thereto, the use for which a special permit is sought, or the details of the variance applied for and the grounds upon which it is claimed that the variance should be granted, as the case may be.

(5) The building official or zoning board from which the appeal is taken, upon notification by the board of adjustment, shall forthwith transmit to the board of adjustment all papers constituting the record upon which the action appealed from was taken.

(6) The board of adjustment shall cause to be published in a newspaper of general circulation within the town, at least fifteen (15) days prior to the hearing of an appeal, notice of such appeal.

(7) At the hearing on the appeal, the parties in interest may appear in person or be represented by counsel or by an agent.

(8) The board of adjustment shall decide an appeal within thirty (30) days after the hearing thereon.

(9) In deciding on appeals from the decisions of the zoning and planning board or the building official, the board of adjustment may, by a majority vote of its members present at the hearing, affirm the decision appealed from, or, by the concurring votes of four (4) members, may reverse, wholly or in part, or may modify the decisions appealed from, and may make such final decision as the circumstances require, with all the powers of the zoning and planning board or building official from which the appeal is taken. At any meeting where an appeal is heard a quorum shall consist of four (4) members.

(b) Appeals from final decisions of the building official pursuant to the Florida Building Code, Florida Building Code, Plumbing, Florida Building Code, Fuel Gas, and Florida Building Code, Mechanical shall be made as set forth in the aforesaid code, as modified in chapter 6, town code. (Code 1962, 28-36; Ord. No. 83-330, 1,7-19-83; Ord. No. 85-18, 3, 8-20-85; Ord. 96-1, 13, 10-17-95; Ord. No. 12-02, 15, 11-21-11)

Secs. 17-52--17-61. Reserved.

ARTICLE V. ZONING MAP AND ZONING CHANGES

Sec. 17-62. Zoning map adopted.

(a) Use and area districts established. For the purposes of this code, the town of Indialantic is hereby divided into use districts as provided for and enumerated in section 17-63 of this code.

(b) Maps and boundaries. The boundaries of these districts are hereby established as shown on a map on file in the office of the town clerk, which map, with all explanatory matter thereon, shall be deemed to accompany, be, and is hereby made a part of this code. Said map shall be known as the official zoning map of the town of Indialantic, Florida.

(c) The official zoning map shall be identified by the signature of the mayor, attested by the town clerk, and bearing the seal of the town under the following words: "This is to certify that this is the Official Zoning Map referred to Ordinance Number 91-12 of the Town of Indialantic Florida" and dated April 16, 1991.

(d) If, in accordance with the provisions of this code, changes are made in 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 the town council. A zoning number and an ordinance number shall be given to each change and a file of such changes kept by the town clerk.

(e) 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 code. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this code and subject to penalties as provided herein.

(f) 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 stored in a secure location in town hall, or the records of the town clerk, when not in use and readily available to the public. The official zoning map adopted hereby shall be the final authority as to the current zoning status of land in the town.

(g) 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 town 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 map or any subsequent amendment thereof. The new official zoning map shall be identified by the signature of the mayor attested by the following words; "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted April 16, 1991 as part of Ordinance No. 91-12 of the Town of Indialantic, Florida. This replacement map was adopted on [insert date of adoption] by Resolution No. [insert resolution number]." 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.(Code 1962, 28-43, Ord. No. 91-12, 1, 4-16-91)

Sec. 17-63. Districts; division of town into; enumeration.

For the purpose of this chapter the town is divided into eight [eleven] classes of districts:

(1) "R-1A" Single-Family Residence Districts.

(2) "R-1B" Single-Family Residence Districts.

(3) "R-2" Duplex Residence Districts.

(4) "R-3" Multi-Family Residence Districts.

(5) "R-P" Residential-Professional Districts.

(6) "C" Commercial Districts.

(7) "C-1" Restricted Commercial Districts.

(8) "T" Tourist Districts.

(9) "CH" Church Districts.

[(10)"SC" Shopping Center Districts.]

(11) "C-2" Commercial Districts.
(Code 1962, 28-44; Ord. No. 162, 2, 9-17-74; Ord. No. 86-11, 2, 4-15-86)

Sec. 17-64. Classification of annexed territory.

All territory which may be annexed to the town shall be automatically classified in the "R-1A" Residence District until otherwise classified by amendment to the zoning map.
(Code 1962, 28-45)

Sec. 17-65. Classification of unclassified areas.

If any property in the town is not shown on the zoning map as being in a zoning district, such property shall be classified in the "R-1A" Single-Family Residence District until otherwise classified by amendment to the zoning map.
(Code 1962, 28-46)

Sec. 17-66. Classification of riparian areas.

(1) All riparian areas within the corporate limits of the town which are not shown as included within any district shall be subject to all the regulations of the district immediately adjacent thereto.

(2) If the riparian area adjoins two (2) or more districts, the boundaries of each district shall be construed to extend into the water area until they intersect the boundaries of other districts. (Code 1962, 28-47)

Sec. 17-67. Interpretation of boundaries.

Unless otherwise indicated on the zoning map, the boundaries of zoning districts shall be the lot lines, the centerlines of streets, street rights-of-way, alleys, the corporate limits of the town or other geographical or topographical features. Where uncertainty exists as to the boundaries of any district shown on the zoning map, the following rules shall apply:

(1) Where district boundaries are indicated as approximately following street lines, alley lines or lot lines, such lines shall be construed to be the boundaries.

(2) In unsubdivided property or where a district boundary divides a lot equally, the location of such boundary, unless it is indicated by dimensions, shall be determined by use of the scale appearing on the map.

(3) Where a district boundary divides the area of a lot unequally, the district classification and regulations of the larger portion shall apply to the remaining smaller portion of the lot.

(4) Where any public street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment. (Code 1962, 28-48)

Sec. 17-68. Zoning amendments; initiating.

Amendments to this chapter and proposed changes in the zoning map may be initiated in any one or more of the following ways:

(1) By the town council, on its own initiative.

(2) Upon recommendation to the town council by any town committee or board, or by any resident or group of residents submitted through the zoning board.

(Code 1962, 28-49)

Sec. 17-69. Hearing on amendment.

(1) The town council shall hold a public hearing before adoption of any proposed amendment to this chapter or proposed change in the zoning map.

(2) Notice of the time and place of such a hearing shall be published, at least fifteen (15) days and not more than thirty (30) days prior to the hearing, in a newspaper of general circulation in the town, and a copy shall be posted in the town hall.

(3) Where the proposed amendment changes the boundary of an existing zone or revises the classification of an existing zone, all property owners within five hundred (500) feet of property proposed for change shall receive written courtesy notice of such change. The failure to receive this notice shall not affect any action or proceeding taken hereunder. (Code 1962, 28-50)

Sec. 17-70. Re-applications for amendments.

After the town council shall have passed on an amendment to the provisions of this chapter or a proposed change in the zoning map, another application for rezoning the same lot or tract of land shall not be considered by the council for a period of six (6) months thereafter. (Code 1962, 28-51)

Secs. 17-71 - 17-80. Reserved.

ARTICLE VI. ZONING REGULATIONS GENERALLY

Sec. 17-81. Certificates of occupancy.

(1) No land shall be occupied or used and no building or structure hereafter erected, altered or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the building official, stating that the building or structure, or proposed use thereof, complies with the provisions of this chapter.

(2) All certificates of occupancy shall be applied for at the time of application for a building permit. The certificate shall be issued within three (3) days after the erection or alteration shall have been completed.

(3) The building official shall maintain a record of all certificates and copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the building affected.

(4) Under such rules and regulations as may be established by the board of adjustment and filed with the building official, a temporary certificate of occupancy for not more than thirty (30) days for a part of a building may be issued by him.
(Code 1962, 28-57)

Sec. 17-82. Lots of record in residence districts.

The following provisions shall apply to all lots of record in R-1A, R-1B, R-2, R-3 and R-P residence districts:

(1) *Minimum size.* No dwelling shall be erected on a lot that does not meet the minimum area and dimension requirements for the district in which the dwelling is to be erected. A lot not meeting the minimum requirements shall be deemed a "substandard lot of record".

(2) *Substandard lots of record.* Where two (2) or more substandard lots of record with a continuous frontage are under the same ownership, or where a substandard lot of record has continuous frontage with a larger tract under the same ownership, such lots may be combined to form one or more building sites meeting the minimum requirements of the district in which they are located.

(3) *Access.* No dwelling shall be erected on a lot of record which does not abut at least one public street for a distance of at least one hundred (100) feet; or for a distance of twenty five (25) feet along a cul-de-sac, provided that the minimum lot width and area requirements of this section are met.
(Code 1962, 28-59)

Sec. 17-83. Reduction of lot area.

No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in area so that yards, lot area, lot width, building area, or other requirements of this chapter are not maintained. This section shall not apply where a portion of a lot is acquired for a public purpose.
(Code 1962, 28-60)

Secs. 17-84, 17-85. Reserved.

Editor's note--Sections 4 and 5 of Ord. No. 91-2, adopted Nov. 7, 1990, repealed 17-84 and 17-85 in their entireties. Section 17-84 derived from the 1962 Code, 28-61, and 1 of Ord. No. 88-3, adopted Jan. 26, 1988. Section 17-85 derived from the 1962 Code, 28-62. Both sections pertained to platting and construction on unplatted land. Such provisions are now located in 13.5-3 and 13.5-4 of this Code.

Sec. 17-86. Setbacks.

(1) *Setbacks from street centerlines.* All structures and buildings shall be set back from the centerline of the street right-of-way the following minimum distances:

(a) From state and federal highways, fifty-two (52) feet.

(b) From all other streets, fifty (50) feet.

(2) W*here front yard requirements shall govern.* Front yard requirements shall govern where they are greater than the required setbacks.

(3) *Where setbacks shall not apply.* The setback requirements of this section, for dwellings, shall not apply to any lot where the average depth of existing setbacks on the developed lots located within one hundred (100) feet on either side of the lot is less than the minimum required front yard depth. In such case, the front yard setback may be less than that required, but not less than the average of the existing depths for front yards on developed lots within one hundred (100) feet. In no case, however, shall the minimum setback for residences be less than twenty-five (25) feet from the property line, not less than fifty (50) feet from the centerline of the street. The setback requirements of this section shall not apply to the placement of dumpsters or dumpster shielding walls.

(4) *Setback from two or more streets.* Minimum setbacks from two (2) or more streets shall be not less than that specified for the front setback, except as otherwise provided in this chapter.

(5) *Ocean-front.* The front setback line for properties fronting on the Atlantic Ocean is established coterminous with the Coastal Construction Setback Line set by the State of Florida. In addition to the factors normally considered by the board when ruling on variances, the board must also determine that the proposed structures do not have a detrimental effect upon the dune area and are of such a nature that the essential character of the locality will not be altered.
(Code 1962, 28-63; Ord. No. 236, 1, 7-25-78; Ord. No. 90-14, 2, 9-18-90)

Sec. 17-87. Yards and open spaces.

The minimum yard requirements and other open spaces provided by this chapter shall not be encroached upon nor considered as yard or open space or use requirements for any other building.
(Code 1962, 28-64)

Sec. 17-88. Fences; walls.

(1) It is the intent of this section to permit the fencing or enclosing of side yards and rear yards only except that fences within the front yard area of properties located in the C, C-1 and C-2 zoning districts may be permitted as specifically allowed herein. Fences and walls may be constructed parallel to the side and rear property line to a maximum height of six (6) feet, in accordance with the setbacks set forth below. No fence, wall, or partial fence, or partial wall, with the exception that a standard residential light fixture may be

erected at the entrance way, shall be constructed on or within the front setback region that extends from the property line abutting on a street to the front line of the building approximately parallel or parallel to the street. This section does not apply to curbing, edging, or bumper strips of normal height, not to exceed eight (8) inches.

(2) In the C, C-1, and C-2 zoning districts decorative fences may be placed within the front yard area up to the front and side property lines subject to the following:

(a) Maximum height of the fence is three (3) feet excluding caps, finials, posts, etc. which may extend up to six (6) inches.

(b) The fence must be at least 50% open including any vegetation attached to or growing on the decorative fence.

(c) Fencing material must be either aluminum or PVC (polyvinyl chloride).

(d) The fence must consist of predominantly vertical members and the fence must be of a uniform color and height.

(e) Fence color shall be limited to white or the single lightest color sample on one of the color panels contained in the official Town color chart.

(f) Fence placement must not interfere with or obstruct visibility of intersections, driveway curb cuts, sidewalks, etc.

(3) Setbacks.

(a) No fence, wall, or partial fence, or partial wall shall be constructed on front lot lines, nor in the front setback region.

(b) All permitted fences, walls, or partial fences, or partial walls, except those walls shielding dumpsters, shall be setback a minimum of ten (10) feet from any lot line abutting a street. In the case of the front yard it shall be set back a minimum of twenty-five (25) feet, or to the front line of the building, whichever is greater.

In the case of a corner lot, the side yard fence shall be setback a minimum of ten (10) feet from the lot line on the abutting street.

(4) The supporting structure side of all fences shall face to the interior of the fenced property.

(5) Plans showing the location and construction details of all fences, walls, partial fences and partial walls shall be submitted to the building official and a building permit obtained prior to starting construction. Only the following types of fences or walls may be constructed:

(a) Rot- and termite-resistant wood; or wood which has been chemically treated to resist rot and termites;

(b) Ornamental iron, steel or aluminum;

(c) Concrete or masonry, solid or ventilated;

(d) Chain link fences shall be permitted in rear yards only, if rear yard fences abut a street, they must be green, brown or black plastic coated. A chain link fence with slats is not permitted.

(e) White vinyl (PVC)

(6) Swimming pool fences. See section 17-105.

(7) Additional regulations for districts R-3, R-P, C, C-1, C-2 and CH are specified under 'buffer strips' in sections 17-124,17-125,17-126(2)(g), 17-128(n) and (o) and 17-131(2)(g) of this Code.

(8) Additional regulations for areas east of Miramar Avenue (Highway A-l-A): Fences, walls, or partial fences, or partial walls shall not cause the breezeway to be less than the required thirty per cent (30%) as follows. "Breezeway" is defined as a clear, open, vertical area free of construction or buildings extending from the Atlantic Ocean to Miramar Avenue (Highway A-l-A). The thirty per cent (30%) calculation is based on a line parallel to Highway A-l-A to include the percentage of open distance (breezeway) from the building or buildings to the property lines perpendicular to Highway A-l-A. This provision requires a thirty percent (30%) breezeway defined by rectangular dimensions (running basically east to west) with a clear and open line of sight from Highway A-1-A to the ocean. This requirement shall apply regardless of the configuration of platted lots of record (or portions thereof) and regardless of the configuration of a building site (or portion thereof) based on ownership of that site. Those lots whose eastern property line abuts the Atlantic Ocean shall be further restricted as set out by reference in Indialantic Code section 6-31 regarding fencing interfering with the breezeway, which prohibits rear lot north/south fencing and a three (3) foot (sand fence) height limitation on permitted fences running approximately perpendicular to Miramar Avenue and the Atlantic Ocean.

(9) Notwithstanding the above, for any lot in which a side or rear property line abuts a street right-of-way being used solely as a bicycle path for non-motorized vehicles, the requirements of subsection (3)(b) above concerning setback requirements from such property lines actually adjacent to said right-of-way shall be suspended for so long as the right-of-way continues to be used as a bicycle path for non-motorized vehicles and the property owner may erect, upon appropriate application and issuance of a building permit, fencing which shall not extend beyond the property line boundary abutting such right-of-way. This provision shall be in effect for so long as the bordering right-of-way continues to be used as a bicycle path. No other requirements are changed hereby.

(10) A fence surrounding a construction site may be permitted only during construction provided a valid permit has been issued for activity on the site, the existence of the fence is appropriate to the type of construction that has been permitted, is outside of the Town right-of-way, does not exceed six (6) feet in height, does not block the visibility for motorists or bicyclists, and is comprised of chain link.

The property owner, as a condition precedent to receiving a fencing permit required by section 6-11, must sign an acknowledgment and agreement that any permit issued under this subsection (8) shall be valid only for so long as the bicycle path continues to be maintained for non-motorized vehicular traffic, and that in the event any governmental agency determines it advisable, in its sole discretion, to convert such right-of-way to a throughway for motorized vehicles, the provisions of Indialantic Code section 17-88(2)(b) shall be retroactively enforced and all affected property owners, including subsequent grantees, shall be required to comply with said section at their expense within thirty (30) days of receiving notice by the building code enforcement board of the enforceability of section (2)(b). Said applicant shall also agree to put any successor in title on notice of said acknowledgment and agreement.
(Code 1962, 28-65; Ord. No. 81-298, 1, 8-18-81; Ord. No. 86-18, 1, 7-15-86; Ord. No. 90-14, 3, 9-18-90; Ord. No. 95-9, 2, 7-18-95; Ord. No. 02-04, 1, 2-18-02; Ord. No. 03-05, 1, 3-18-03; Ord. No. 05-03, 1, 12-16-04; Ord. No. 11-01, 1, 11-16-10; Ord. No. 17-07, 2, 3/8/17)

Sec. 17-89. Public and semi-public buildings.

(1) Public and semi-public buildings shall conform to the minimum lot, yard setback, and height requirements of the district in which they are located.

(2) For all public or semi-public uses, there shall be off-street parking spaces provided (inclusive of front or side yard requirements) as follows:

(a) Churches and auditoriums, one space for each five (5) seats.

(b) Clubs and lodges, one space for each six (6) members.

(c) Libraries, one space for each five hundred (500) square' feet of floor area which is open to the public.

(d) Government buildings, one space for each three (3) employees.

(e) Schools, one space for each classroom, laboratory and shop room, and in the case of high schools, one space for each ten (10) students.

(Code 1962, 28-66)

Sec. 17-90. Principal and accessory buildings.

(1) One principal building only and its customary accessory buildings may be constructed on any lot. In residence districts, a dwelling shall be deemed the principal building on the lot on which it is located.(Code 1962, 28-67)

Sec. 17-91. Accessory buildings and structures in residential zoning districts.

The following regulations shall apply to accessory buildings and accessory structures located upon any lot within a residential zoning district:

(1) No accessory building or accessory structure shall be: (A) erected in any front or required side yard; (B) used for living quarters, home occupations or professional use; or (C) permitted on any lot without a pre-existing primary structure on the same building site.

(2) Construction, installation or alteration of any accessory building, accessory structure, or utility shed, shall comply with all requirements of building permits prior to final inspection and issuance of a certificate of occupancy or certificate of completion.

(3) There shall be no more than one (1) accessory building and one (1) utility shed permitted on each lot. The total square footage of an accessory building and a utility shed located on the same lot shall not exceed 30% of the required rear yard of the zoning district in which it is to be located.

(4) Barbecue pits: Barbecue pits shall be located in the rear yard only and shall be set back at least ten (10) feet from all lot lines and from any building.

(5) Private Garages: Accessory buildings designed to be used for a private garage shall not exceed 600 square feet and shall conform to the architectural, structural and installation requirements for hurricane force winds the same as the principal building.

(6) Utility sheds: Accessory buildings used as utility sheds or for storage shall be located in the rear yard only and shall not exceed 300 square feet in size and shall meet the structural and installation requirements for hurricane force winds the same as the principal structure. Prefabricated units or kits are required to meet installation requirements of the current coastal building code.

(Code 1962, 28-68, Ord. No. 92-13, 1, 3-16-93; Ord. 95-9, 3, 7-18-95)

Sec. 17-92. Building grade.

(1) The elevation of the finished grade of buildings, other than residential, shall be no less than twelve (12) inches above the elevation of the crown of the street as designated by the town.

(2) The elevation of the finished grade of all residential buildings shall be not less than eighteen (18) inches above the elevation of the crown of the street for the principal building, and no less than ten (10) inches above the elevation of the crown of the street, as designated by the town, for a garage, carport, or parking area.
(Code 1962, 28-69)

Sec. 17-93. Reserved.

Editor's note - Ord. No. 93-5, adopted August 17, 1993, repealed 17-93 which pertained to sheet metal and rolled roofing and derived from Code 1962, 28-70.

Sec. 17-94. Moving buildings into town.

No building shall be moved into the town without prior approval of the zoning board.
(Code 1962, 28-71)

Sec. 17-95. Prefabricated buildings.

No prefabricated building shall be erected within the town without prior approval of the zoning board.
(Code 1962, 28-72)

Sec. 17-96. Road and driveway construction.

No public streets or driveways shall be constructed, except by the town, county or state, without prior approval of the site and specifications by the town council.
(Code 1962, 28-73)

Cross reference--Streets and sidewalks, Ch. 13.

Sec. 17-97. Obstructions to vision at street intersections.

On a corner lot within the area formed by the centerlines of the intersecting streets and a line joining points on such centerlines at a distance of fifty (50) feet from their intersection in the case of all corner lots in the town not adjacent to and/or abutting (on any side) Fifth Avenue and/or SR A1A (Miramar) which shall be at a distance of one hundred (100) feet, there shall be no obstruction to vision between the height of three (3) feet and a height of nine (9) feet above the average grade of each street at the centerline thereof.
(Code 1962, 28-74; Ord. No. 89-14, 1, 6-20-89)

Sec. 17-98. Access for vehicles.

(1) A point or points of access, driveway, or other opening for vehicles onto a public street shall be acted upon in each case by the zoning board.

(2) No point of access shall be constructed within ten (10) feet of the right-of-way line of any public street intersection.

(3) No curbs on town streets or rights-of-way shall be cut or altered without a permit issued by the building official.
(Code 1962, 28-75)

Sec. 17-99. Offstreet parking.

(a) *Single-family dwelling or duplex.* Offstreet parking facilities shall be provided for each single-family dwelling or duplex in accordance with the following regulations:

(1) One garage measuring not less than twenty (20) feet wide and twenty (20) feet deep shall be provided for each single-family dwelling unit. One garage measuring not less than ten (10) feet wide and twenty (20) feet deep shall be provided for each dwelling unit of a duplex or one garage measuring not less than twenty (20) feet wide and twenty (20) feet deep may be provided for both units.

(2) If any existing garage or carport shall be removed, destroyed or enclosed, a replacement shall be provided which shall conform to subsection (1).

(3) No carport shall be enclosed if the replacement required by subsection (2) would infringe upon the side or rear yard requirements of the district in which the single-family dwelling or duplex is located.

(4) Two (2) offstreet parking spaces shall be provided for each dwelling unit in multi-family units.

(b) *R-3, R-P, C, C-l, C-2, SC, T, and CH zoning districts.* Offstreet parking facilities shall be provided for each building site, except for single-family dwellings or duplex family living units, in the following zoning districts: R-3, R-P, C, C-1, C-2, T, and CH zoning districts, pursuant to this Indialantic zoning code and the following standards:

(1) Location standards. Parking spaces for all residential dwellings shall be located on the building site with the main building to be served by the parking. Other uses may provide parking at an offsite location or on a portion of the same site in the R-3, R-P, C, C-1, C-2, SC, T, and CH zoning districts; provided that the zoning and planning board approves a plan which meets the following standards:

a. All standards set forth in this code for onsite parking are otherwise satisfied.
b. There is not sufficient space available to accommodate parking space required by this code or appropriate to serve the building site.
c. If the additional parking is located off-site, at least fifty percent (50%) of the parking spaces required by this code to serve the building site must be located on the site where the principal building is being located. If the additional parking is located on the same principal building site as the principal use but in a different zoning district, at least fifty percent (50%) of the parking spaces must be located on the site in the zoning district where the principal building being served is located.
d. If the additional parking is located off-site, the offsite parking facility or location must commence within five hundred (500) feet of the building site measured by a straight line.
e. If the additional parking is located off-site, the owner of the building site and the owner of the offsite parking location shall submit to the town a restrictive covenant binding lot agreement in form and substance acceptable to the town, reserving the offstreet parking site for offstreet parking for the building site for as long as the parking shall be required. The foregoing agreement shall be in form to be recorded in the public records of Brevard County, and all holders of security interests shall join in and consent to the agreement. The owner submitting the proposed agreement shall also submit to the town a title opinion by a Florida attorney addressed to and for reliance by the town setting forth the fee simple owner of the property, the owners of any security interests such as mortgages, and all encumbrances of record which agreement and title opinion shall be reviewed and approved by the town attorney.
f. Landscaping shall be provided as required for the zoning district in which the offsite parking is provided. However, the zoning and planning board in an effort to maintain compatibility with adjacent properties and to avoid adverse conditions to adjacent properties may require a buffer wall screening the offsite parking area from adjacent properties and may also require additional landscaping for screening purposes or lighting. Signage shall be permitted as set forth in this code for the zoning district in which offsite parking is provided.
g. The town may require a survey of the offsite parking area prepared by a registered and licensed Florida surveyor and mapper, which survey shall be sealed by the surveyor and certified to and for reliance by the town.

(2) *Design standards.*

a. Required offstreet parking areas for three (3) or more motor vehicles shall have individual spaces marked, and all offstreet parking areas no matter how many motor vehicles are to be parked shall be so designed, maintained, and regulated in such a manner that no parking shall be located upon or encroach upon any right-of-way, public street, walk, or alley, and so that any motor vehicle may be parked and unparked without moving another motor vehicle. Offstreet parking may be provided within required setbacks and yard areas. When an area for parking is to include driveways and maneuvering space, the following table shall govern the minimum width of traffic lanes within the parking area:

Angle of Parking (in degrees)	*Minimum Width of Lanes (in feet)*	
	One-Way	*Two-Way*
0	16	22
45	16	Not permitted
90 (perpendicular to curb)	20	22
No Parking Allowed	16	22
60	18	Not permitted

b. A plan showing offstreet parking, landscape buffering and screening, the location of any walls, the location and nature of signage, and the location of lighting, shall be submitted to the town and approved by the zoning and planning board before a permit is issued for the construction of, or the use of, the building, structure, or facility being considered. This plan shall show the location, and accurately designate the number of required spaces, their size, and access aisles, landscape buffering and screening from adjacent sites, signage, lighting, walls, and their relation to the plan.

c. If lighting is provided in the parking area, it shall be arranged to reflect away from residential structures, as well as from any public right-of-way.

d. The surface of the offstreet parking areas shall be covered with a hard-surface coating such as asphalt, concrete, or pervious concrete.

(Code 1962, 28-76; Ord. No. 197, 2, 6-15-76; Ord. No. 90-13, 3, 1-15-91; Ord. No. 02-24, 1, 11-19-02; Ord. No. 18-04; 1; 4/16/18)

Sec. 17-100. Private driveways in residence districts.

A private driveway, at least eight (8) feet wide, graded and surfaced, shall be provided for each garage or carport within a residence district, extending from such garage or carport to the paved portion of the street used by motor vehicles. The requirement that the driveway shall be paved to the portion of the street used by motor vehicles shall only be applicable to newly constructed driveways or driveways repaved or reconstructed after April 19, 2011.
(Code 1962, 28-77; Ord. No. 11-08, 1, 4-19-11)

Sec. 17-101. Facing of business uses.

Business uses, if facing a street, shall face other business or commercial uses across a street if within the same zone, and shall not face residential zones which may front on an intersecting or rear street adjacent to such business or commercial zone.
(Code 1962, 28-78)

Sec. 17-102. Home occupations.

(1) *Defined:* A permitted home occupation is any lawful use performed by an occupant of a dwelling, which does not change the residential character of the dwelling or premises, which is clearly incidental and secondary to the use of the dwelling for dwelling purposes and which meets all provisions of this section.

(2) There shall be no indication that the dwelling, premises or any vehicles are used for the home occupation; no sign shall be displayed; and all activity associated with the occupation that is performed at the home address shall be performed within the dwelling.

(3) The home address shall not be used in any type of advertising nor in any type of listing, except for:

a. Directories or listings which are legally required and prepared or maintained by or at the direction of governmental bodies.

b. Listings in telephone directories.

c. Business cards.

d. Professional directories.

(4) No commodities shall be sold within the dwelling, and no display or storage of products shall be made on the premises outside of the dwelling or be in any way visible outside the dwelling. No chemicals or toxic materials may be stored in amounts in excess of those normally related to the residential use of the dwelling. The home occupation shall not displace a use required for the dwelling by this Code; for example, the following shall not be displaced: Use of a carport or garage for storage of materials or equipment is in violation of section 17-99.

(5) No equipment, process or use shall be used or made in such home occupation, which creates noise, vibrations, fumes, glare, odors, powders, hazardous materials, liquids or electrical interference detectable to the normal senses, or harmful to flora or fauna, off the lot. In the case of electrical interference, no equipment or process shall be used which creates visible or audible interference in any radio or television receiver off the premises, or causes fluctuations in power line voltage off the premises.

(6) There shall be no pattern of vehicular traffic, caused by the home occupation, to and from the residence, in excess of two (2) vehicles per day, other than that by the occupants themselves.

(7) All home occupations require an occupational license, such license being issued subject to approval by the building official.

(8) The building official may deny, revoke, or cancel an occupational license granted for a home occupation if the building official determines that:

a. There was a material misstatement of information in the application; or

b. The home occupation fails to meet the requirements of this section.

(9) The denial, revocation, or cancellation of an occupational license for a home occupation may be appealed to the board of adjustment pursuant to sections 17-50 and 17-51. All property owners within two hundred (200) feet of the dwelling in which the proposed home occupation shall be operated shall be notified in writing of the appeal by the board of adjustment within ten (10) days following the filing of said appeal. Said written notice shall be deemed a courtesy and failure to receive this notice shall not affect any action or proceeding taken by the board of adjustment. (Code 1962, 28-79; Ord. No. 261, 20, 7-17-79; Ord. No. 83-326, 1, 3-15-83; Ord. No. 84-347, 1, 4-17-84; Ord. No. 89-10, 2--4, 4-18-89; Ord. No. 90-7, 1, 2-20-90)

Sec. 17-103. Parking, storage, and use of certain vehicles.

(a) *Purpose.* It is the intent of this section to establish the length and to authorize the parking and storage locations of RV's (which are defined herewith).

(b) *Storage and use of RV's (recreational vehicles) such as campers, trailers, motorhomes, and boats.* Trailers, motorhomes, campers, truck campers, travel trailers, campers, buses, air boats, air boat trailers, air boats mounted on trailers, boats, boat trailers, boats mounted on trailers, and certain vans defined in section 17-4(54.1), hereinafter referred to as "R.V.'s," which do not exceed forty (40) feet in overall length, may be parked, stored, or stopped on any lot provided that:

(1) An RV(s), when so situated, shall not be used for residential, office or commercial purposes.

(2) An RV(s) shall not be connected in any manner to utilities except for the purpose of charging batteries thereon. Use of RV's for sleeping, housekeeping, or living quarters while so situated shall not be permitted.

(3) Parking and storage provisions:

a. An RV(s) shall only be located to the rear of the front structure line of the property and of the adjacent property.
b. When a corner lot is involved and the RV is located on the side abutting the intersecting street, it shall only be located no less than twenty-five (25) feet from that side lot line, which corner side yard, as defined in section 17-4(60) of this code, extends from the front yard to the rear lot line on the side abutting the intersecting street, and,
c. All RV's, including those mentioned in subsection (b)(3)a. and (2) above, shall be located in side or rear yards of a lot.
d. An RV(s) shall not be located on any part of the road right-of-way except when moving.
e. An RV(s), if collapsible, shall be parked or stored in its collapsed condition only.
f. The sites upon which an RV is parked shall be well kept and free from weeds and other unsightly growth.
g. This section shall not prevent convenient parking in front of structure line for purposes of loading and unloading as necessary for periods of time not to exceed forty-eight (48) hours.

(c) *Cargo trailers.* Only one cargo trailer per residence, up to fourteen (14) feet in overall length is permitted but must be parked as any RV except for purposes of loading, unloading and delivery for such periods of time as may be necessary under the varying circumstances but in no case over forty-eight (48) hours. Additional uses of cargo trailers not herein set forth specifically may be permitted by special permit as provided in subsection (b)(1) above.

(d) *RV's over forty (40) feet and cargo trailers over fourteen (14) feet.* RV's which exceed forty (40) feet in length, and cargo trailers which exceed fourteen (14) feet in overall length, whether powered or unpowered, shall not be permitted except for purposes of loading, unloading and delivery for such periods of time as may be necessary under the varying circumstances but in no case over forty-eight (48) hours.

(e) *Trailer parks.* Trailer parks shall not be permitted within the town, except that trailer parks on any property to be annexed by the town shall be ruled upon by the town council at the time of annexation.

(f) *Structure line.* For purposes of this section 17-103, structure line shall be defined as the front line where the main structure on said premises commences.
(Code 1962, 28-80; Ord. No. 239, 1, 9-19-78; Ord. No 86-2, 1, 3-18-86; Ord. No. 88-17, 1, 10-25-88; Ord. 94-14, 1, 7-19-94; Ord. 95-9, 4, 7-18-95; Ord. No. 98-7, 1, 8-18-98)
Cross reference--Parking regulations generally, 15-17 et seq.

Sec. 17- 104. Group housing developments.

Group housing developments of two (2) or more dwellings to be constructed on a plot of ground under single ownership of two (2) acres or more, not subdivided into the customary streets and lots and which shall not be so subdivided, may be developed provided that:

(1) Maximum population density (land area per family) is not exceeded.

(2) Maximum building density (percent of land covered) is not exceeded.

(3) Height limits and front, side or rear yard requirements shall be met in accordance with the district in which such group housing is permitted.
(Code 1962, 28-81)

Sec. 17-105. Swimming pools.

(1) Every outdoor private or public swimming pool shall be completely surrounded by a fence or wall six (6) feet in height, or by an enclosure which must be eight (8) feet in height. Said fence, wall, or enclosure shall be so constructed as to not have openings, holes, or gaps larger than four (4) inches in any dimension, except for doors and gates. If a picket fence is erected or maintained, the vertical and/or horizontal gap between pickets shall not be more than four (4) inches. A dwelling house or accessory building may be used as part of such enclosure provided it meets the requirements in subsection (3)(a) below.

(2) All gates or doors opening to the pool area shall be equipped with a self-closing and self-latching device located at least five (5) feet above the ground. All doors or gates of a dwelling or accessory building which forms part of the enclosure must comply with subsection (3)(d) below.

(3) Residential swimming pools, spas and hot tubs must meet at least one of the following additional safety requirements:

(a) The pool must be isolated from access to a home by an enclosure that meets the following pool barrier requirements:

1. The barrier must be at least 4 feet high on the outside;
2. The barrier may not have any gaps or openings larger than 4" or indentations, protrusions, or structural components that could make it possible to climb over the barrier;
3. The barrier must be placed around the perimeter of the pool and must be separate from any fence, wall or other enclosure surrounding the yard unless the fence, wall or other enclosure or portion thereof is situated on the perimeter of the pool, is being used as part of the barrier, and meets the barrier requirements of this section;
4. The barrier must be placed at least three (3) feet away from the water's edge;
5. The structure of an above ground swimming pool may be used as its barrier or the barrier for such a pool may be mounted on top if its structure; however, such structure or separately mounted barrier must meet all barrier requirements of this section. In addition, any ladder or steps that are the means of access to an above ground pool must be capable of being secured, locked, or removed to prevent access or must be surrounded by a barrier that meets the requirements of this section;
6. Gates that provide access to swimming pools must open outward away from the pool and be self-closing and equipped with a self-latching locking device, the release mechanism of which must be located on the pool side of the gate at least five (5) feet above the ground;
7. A wall of a dwelling may serve as part of the barrier if it does not contain any door or window that opens to provide access to the swimming pool; and
8. A barrier may not be located in a way that allows any permanent structure, equipment or similar object to be used for climbing the barrier;

(b) The pool must be equipped with a manually or power-operated safety pool cover that meets all of the performance standards of the American Society for Testing and Materials (ASTM) in compliance with standard F1346-91.

(c) All doors and windows providing direct access from the home to the pool must be equipped with an exit alarm that has a minimum sound pressure rating of 85 dB A at 10 feet; or

(d) All doors providing direct access from the home to the pool must be equipped with a self-closing, self-latching device with a release mechanism placed no lower than four and one-half (4 ½) feet above the floor.

(4) The inside edges of the swimming pool (the waterline) shall be setback at least ten (10) feet from the lot lines for interior lots and at least fifteen (15) feet from the lot line on a corner lot whose side yard abuts a street.

(5) Enclosures and/or decking shall be setback at least four (4) feet from all lot lines for interior lots and at least ten (10) feet from the lot line on a corner lot whose side yard abuts a street..

(6) All swimming pools shall conform to the applicable provisions of the building code as adopted in Chapter 6, Town Code and the Sanitary Code of the State of Florida.

(7) Notwithstanding any other requirement of this section, any lot which abuts the Indian River shall not be required to erect a fence along the lot line abutting and running parallel to such body of water if the fencing running perpendicular to such body of water shall be extended out into the water for a distance of at least three (3) feet.
(Code 1962, 28-82; Ord. No. 81-298, 2, 8-18-81; Ord. No. 86-12, 1, 5-20-86; Ord. 95-9, 5, 7-18-95; Ord. 01-02, 1, 1-16-01)

Sec. 17-106. Signs.

(1) *Generally.* This section [sections 17-106 through 17-106.5] shall be known as the "Indialantic Sign Ordinance" [or "the ordinance"] and may be cited as "the sign code." Its intent is to make it possible to erect adequate, yet decorous, identifying signs. This section accomplishes that goal. The section [sections 17-106 through 17-106.5] is enforceable under section 1-9, general penalty, Indialantic Code of Ordinances. Violators will receive written notification from the code enforcement officer, requesting compliance within a specified time. Noncompliance by that time will result in the issuance of a written notice of hearing before the code enforcement board which has the authority to levy substantial daily penalties.

(2) *Purpose.* It is the intent of this ordinance to promote and protect the public health, safety, general welfare and aesthetics of the Town of Indialantic, Florida, by regulating the existing and proposed posting, display, erection, use and maintenance of signs and advertising structures within the town. Signs placed on land or on a building for identification or advertising shall be deemed to be accessory and incidental to subject land, building or use.

It is hereby recognized that regulation of location, size, placement, and certain features of signs is necessary to enable the public to locate goods, services and facilities, without difficulty and confusion, and to prevent wasteful use of natural resources in competition among businesses for attention. It is specifically intended to avoid excessive proliferation and clutter among such competing businesses.

It is further intended to prevent hazards to life and property and to assure the continued attractiveness of the community, to protect property values, to create a more attractive economic and business climate, to enhance and protect the physical appearance of the community, and to preserve the scenic natural beauty of the town.

It is further determined that signs which may lawfully be erected and maintained under the provisions of the ordinance are consistent with customary usage. Signs which may not lawfully be erected or maintained under the provisions hereof are not consistent with customary usage and are an unwarranted invasion of the rights of legitimate business interests and of the public.

(3) *Definitions.* For the purposes of sections 17-106 through 17-106.5, the following words and phrases shall have the meaning herewith assigned to them unless the context requires a different definition which, in that case, shall appear at that point in the context:

Attached sign: A removable sign attached to the building to which it is related.

Awning: A rooflike cover, securely fastened on one side or end to a building, and the balance of which extends over or before a place (as over walkway or before a window) as a shelter and whose bottom edge is at least seven (7) feet above the highest grade level beneath it.

Awning sign: A sign which is suspended from, attached to, applied to, or forms any part of any awning or canopy, and which does not extend beyond the limits of the awning either horizontally or vertically.

Banner: Any advertising device, composed primarily of paper, fabric or other material, supported by wire, rope or similar means, including decorative streamers, with or without lettering thereon.

Building: Any structure constructed or used for residence, business, industry or other public or private purposes, or accessory thereto, and including tents, lunch wagons, dining cars, trailers, mobile homes, sheds, garages, accessory buildings, carports, animal kennels, and similar structures whether stationary or movable.

Business area: A defined area, consisting of at least two hundred forty (240) square feet, either on a plot of land or in a building such as a store or office, which is owned or rented by an occupant and used for other than residential purposes.

Canopy: A covering over a walkway extending from a building wall.

Changeable copy sign: A sign on which the message may be changed manually.

Construction sign: A sign, placed on the property of a construction project, listing names of the people or firms engaged in the project.

Convenience store: A retail establishment that stocks limited quantities of popular items such as milk, bread, etc., and usually is open for business earlier and later than other stores.

Detached sign: A sign which is attached to and supported by mountings other than the structure itself to which it is related.

Directional sign:

(a) A sign, consisting of three (3) or less words, which may have an arrow, placed beside a roadway to point the direction to a place or building;
(b) Off-premise sign of a temporary nature to direct the public to a special event or function.

Flashing light: Illumination produced by any type of source which turns on and off, or appears to turn on and off, at a rate other than that rate used by street lights.

Illuminated sign:

(a) *Externally illuminated:* Any sign which reflects light from a source that is intentionally directed upon the sign;
(b) *Internally illuminated:* Any sign designed to provide artificial light through translucent material from a light source within the sign concealed from exterior view.

Light source: Any man-made product which produces illumination.

Marquee sign: An identification placard or board mounted on a permanent roof-like projection over the entry to a building.

Mobile or portable sign: Any visual advertising, identification or informational device or placard which is readily movable.

Mural: A mural is a type of sign which consists of a painting or artistic work composed of pictures or arrangements of color. Murals are applied to and made integral with a wall or ceiling surface.

Nonconforming sign: A sign or sign structure which does not conform to the requirements of this ordinance.

Occupant: One who is in possession of a premises under title, lease or other rental plan.

Painted wall sign: Any sign painted directly on any exterior building wall or door surface.

Permanent window sign: Any sign which is painted, applied or attached on the interior or exterior surface of windows or doors, or any sign which is three-dimensional in character and is affixed with screws, bolts, nails, etc., to the interior surface of the window or door.

Perpendicular: Being at right angles to, and projecting outward from, the exterior wall of a building or structure.

Placard: A notice posted in a public place.

Political sign: A sign concerning candidacy for public office or urging action on any ballot issue in a forthcoming election.

Real estate sign: A temporary sign erected by the owner or agent advertising the real property upon which the sign is located for rent, for lease, for sale, or open house.

Rider sign: A small sign bearing a word or short phrase to be attached above or below a real estate sign.

Roof overhang or underhang signs: Signs which project from the roof line that abut or nearly abut a building, to identify the various businesses in the building.

Roof sign: A sign erected over or on, and wholly or partially dependent upon, the roof of any building for support, or attached to the roof above the eave line in any way.

Sign: Every ground sign, mural, wall sign, flag, banner, pennant, balloon, temporary sign, marquee, awning sign, announcement, declaration, figure, writing, graphic or pictorial presentation, number, illustration, figure, insignia, symbol, picture, painted wall sign, drawing or three-dimensional figure, which is used to announce, display, direct attention to, or otherwise make anything known, when the same is placed out-of-doors in view of the general public or designed to be viewed from public rights-of-way, alleys, other public property, and/or the areas visible to the public.

Structure: Anything constructed or erected which requires location on the ground or attached to something having location on the ground, including signs and billboards, but not including fences or walls used as fences.

Temporary sign: A sign whose uses are limited to political, real estate, construction, garage sales and directional purposes.

Transient sign: A sign made of paper, cardboard or particle board placed on the inside of windows and doors.

Window sign: Any sign which is painted on, applied to, attached to, or projected upon or within the interior or exterior of a window area, including doors.

(4) *Building identification.* Letters or numbers, or both, placed on a building to designate the name of the building are permitted and are not to be considered an occupant's sign. Said name and numbers are not to exceed nine (9) square feet.

(5) *Permits.*

(a) *Permit required.* Any person or firm intending to construct, erect, alter, change colors, install, replace, or relocate any sign on any building, structure, awning, lot or right-of-way within any zoning district shall first obtain a sign permit from the building official.

(b) *Permit waived.* Permits are not required for those temporary signs that are specifically authorized in this Code in section 17-106.3(1) through (5). Temporary signs are limited in the number that may be used and will be supervised by the town's code enforcement officer and the police department. They are: Construction signs, real estate signs, garage sale signs,

directional signs, and political signs. However, no such signs shall be placed on any tree or utility pole.

(c) *Permit fees.* Application, initial inspection and square footage fees are required for all signs, with the exception of subparagraph (e) below. A fee schedule may be obtained at the town hall.

(d) *Penalty fee.* Double the usual fees may be assessed for signs that are or have been erected prior to receiving an official sign permit from the town.

(e) *Fees waived.* Sign permits or fees are not required for the replacement signs which are the exact duplicates of signs damaged during a town council declared "natural disaster." Application, inspection and square footage fees are not required in cases of minor alterations, such as changes in color, provided a permit is obtained from the building official prior to work commencing.

(Ord. No. 84-344, 4, 3-20-84; Ord. No. 84-349, 1, 6-19-84; Ord. No. 91-9, 1, 1-15-91; Ord. No. 97-6, 4, 5-6-97; Ord. No. 04-08, 1, 4-20-04; Ord. No. 10-10, 1, 8-17-10; Ord. No. 14-10, 17, 7-15-14; Ord. No. 14-10, 2, 7-15-14)

Sec. 17-106.1. [Sign] plan and construction standards.

(1) *Plan required.* Applications for permits shall be accompanied by a dimensioned plan, sketch or scale drawing clearly showing the proposed sign with lettering superimposed thereon in correct proportion and type style and with notation of the type of materials and lettering. A dimensioned plan, sketch or scale drawing shall be furnished, clearly showing the proposed location of the sign, either on a plot plan for a detached sign, or on an elevation drawing of the building for an attached or painted sign. Locations and types of lighting shall be given.

(2) *Construction standards.* All signs must be aesthetically pleasing, artistically created, and of professional quality. All signs must be designed, constructed and maintained in accordance with the Florida Building Code. All signs shall be able to withstand the force of one hundred thirty (130) miles per hour wind. The top of all poles, on which signs are mounted, shall not be above the top horizontal edge of the sign unless the poles are part of the design of the sign.

(3) *Lighting.* The source of light of illuminated signs or illumination in shop windows, display windows and displays, in or upon any land or ground, building or structure, shall be concealed from exterior view except as specifically permitted. Intensities of illumination shall not exceed those stipulated in the Building Code. All electric lights on all types of signs (wood, plastic, metal, etc.) shall be grounded in accordance with the National Electrical Code.

(4) *Neon signs.* Nonflashing, nonmoving neon signs, not to exceed in area ten percent (10%) of each window's total area or three (3) square feet in area, whichever is smaller, may be mounted on or near the inside surface of store windows. A nonflashing, nonmoving neon sign bearing the word "open" may occupy all of the glass area of a transom over the doorway to the street.

(5) *Warning signs.* Signs with words or symbols denoting "Danger" are permitted only on buildings, equipment, fences or other locations, provided that actual danger to life and limb could result from trespassing or ignorance of proper precautions.

(6) *Content.* All signs, except for murals, shall be limited to identifying the occupant, the street number, and the street name; and the type of products or merchandise or services sold, handled, or conducted on the premises on which the sign is located. If desired, the sign may include a picture of, or a miniature of, or a full-size sample of, one of the wares available on the premises, provided that all of the information, including the ware is contained within the size limitations of the sign.

(7) *Permit number.* Each sign shall include in an unobtrusive area its sign permit number, directly following or directly underneath the words "Permit No." and such words and number shall be legible for inspection from ground level.
(Ord. No. 84-344, 4, 3-20-84; Ord. No. 11-17, 2, 8-16-11; Ord. No. 14-10, 3, 7-15-14)

Sec. 17-106.2. Prohibited signs.

The following types of signs are specifically prohibited:

(1) *Obsolete signs.* Any sign, except for a mural, displayed which no longer identifies a bonafide business or service organization conducted upon the premises (or identifies a service no longer conducted on the premises) shall be removed, taken down, or completely obliterated within thirty (30) days after written notice by the building official or the code enforcement officer.

(2) *Other prohibited signs:*
   (a) Mobile, portable, billboard, flags (except as part of a sidewalk sale, grand opening, special event, or anniversary sale conducted pursuant to Section 13-3 or Chapter 17 of this code), or banner (except as specifically authorized by the town council or as part of a sidewalk sale, grand opening, special event, or anniversary sale conducted pursuant to Section 13-3 or Chapter 17 of this code). The official flags of the State of Florida and the United States of America, as well as all other flags of all other nations, are excluded from the definition of prohibited signs;
   (b) Signs which will constitute a hazard or a potential menace to life or limb or which will endanger public safety in any manner. The building official may require the removal of any sign which is not properly maintained or which otherwise shows evidence of neglect or which, in his opinion, will become unsafe and constitute a hazard to life, limb or property or in any other manner endanger public health and safety. Should such sign not be removed after the expiration of a twenty-four (24) hour written notification from the building official, properly receipted by the owner or tenant, regarding the inherent danger of said sign then Town of Indialantic employees shall have the power to remove said sign and the code enforcement officer shall send to the owner of said sign a written notice of hearing before the code enforcement board;
   (c) Any sign that has any intentional motion or rotation of any part of the structure or of the sign, or the display of intermittent, rotating, flowing or flashing lights;
   (d) Real estate "SOLD" signs;

(e) Any sign using the word "Stop" or "Danger" (except as provided in section 17-106.1.(5)) or implying the need of a requirement of stopping or the existence of danger, or which is a copy of or imitation of official traffic signs, unless such sign has been installed by an authorized governmental agency;
(f) Any sign that would or does obstruct the view of the operator of a vehicle approaching corners or obstruct any direction of the operator's vision needed to safely pilot the vehicle;
(g) A sign or any portion of a sign that overhangs or is installed in any street right-of-way except permitted temporary real estate and garage sale signs and related directional signs;
(h) Any sign that is suspended across any public street, avenue, alley or other public road except those signs established by town, county, state, and federal governments;
(i) A sign that is painted, printed, posted, nailed, placed or otherwise affixed to any curb, sidewalk, tree, light standard, utility pole, hydrant, bridge or structure within the right-of-way of any street, avenue, alley or other public thoroughfare within the town limits, except those signs established by town, county, state or federal governments;
(j) A sign that is placed in such manner as to obstruct physical egress through any door, window or fire escape of any building.
(k) Any sign that is animated, which has physical action or motion, or the appearance thereof including that which may be referred to as an electronically controlled changeable message sign.

(3) *Disposition of removed signs.* Signs removed by town employees will be stored on town property for a period of thirty (30) days. After that time all unclaimed signs will, at the option of the town manager, be destroyed.
(Ord. No. 84-344, 4, 3-20-84; Ord. 94-7, 3, 1-18-94; Ord. No. 09-09, 1, 4-21-0; Ord. No. 11-17, 3, 8-16-11; Ord. No. 14-10, 4, 7-15-14)

Sec. 17-106.3. Permitted temporary signs.

The following temporary signs are permitted:

(1) *Real estate signs:* The following regulations govern the use and placement of temporary real estate signs. These are small signs advising that the property upon which they are placed is "For Sale," "For Rent," or "For Lease." They shall be removed within forty-eight (48) hours after the property has been sold, rented or leased.

(a) The permitted wording on, and size of, real estate signs shall consist of only the following:
1. The owner's or the realtor's name, address, telephone number, and the insignia of his organization;
2. The words "For Sale," "For Rent," or "For Lease";
3. If desired, not more than two (2) "rider" signs, not more than six (6) inches in height and twenty (20) inches in length, each of which may bear word(s) such as "Pool" or "By Appointment Only" or "Owner Financed", etc., may be attached to the twenty (20) by twenty-four (24) inch sign;
4. The above signs shall not exceed twenty (20) inches by twenty-four (24) inches in

overall dimension.

(b) The sign shall not be located closer than fifteen (15) feet from any edge of the pavement of any street, except that signs in vacant lots shall be placed at least two (2) feet inside the lot line.

(c) There shall not be more than one (1) sign showing the owner or principal broker, except that for corner properties there may be one (1) such sign on each street.

(d) In addition, one (1) sign not exceeding overall dimensions of twenty (20) inches by twenty-four (24) inches, with the words "Open House" to indicate that a building is open for inspection, may be displayed at all times. In the case of corner properties there may be one such sign on each street.

(e) The signs permitted may not be illuminated, flashing, rotating or moving types. No other flags, banners or other displays may be used. All signs shall be removed from the property within forty-eight (48) hours from the time a contract has been executed between the seller and the buyer of the property for the sale of the property.

(f) Any real estate sign that has been erected for more than twenty-four (24) consecutive months or thirty (30) total months within a three (3) year period shall be and is hereby deemed to be nontemporary, and shall require a permit to remain erected, with the applicant demonstrating good cause why same should not be removed.

(2) *Construction signs.* One (1) temporary construction sign may be displayed on a lot or plot on which construction work is in progress, in accordance with the following provisions:

(a) The sign shall be located inside the property lines;

(b) In all districts, except residential zoning districts, the sign shall not exceed thirty-two (32) square feet in area. In residential zoning districts, the sign shall not exceed twenty (20) inches by twenty-four (24) inches in overall dimension.

(c) The sign shall display nothing more than: the names of the owner, financial institution, architect, contractor or builder and subcontractors; the use of the structure; the words "Now Leasing," "Now Selling," or "Now Available"; and telephone number(s). A picture or drawing may be included on the sign. No other wording, numbers or other information is permitted;

(d) In the residential districts, those signs required by law, such as building permits, shall be posted without a permit;

(e) The sign shall not be illuminated; and

(f) The sign is to be removed within forty-eight (48) hours after issuance of the final unconditional certificate of occupancy.

(3) *Garage sale signs.* Temporary garage sale signs shall be allowed on property, provided:

(a) The sign shall not exceed twenty (20) by twenty-four (24) inches in overall dimension;

(b) The sign shall not be located closer than fifteen (15) feet to any edge of any pavement of any street;

(c) There shall not be more than one (1) sign stating:
1. The words "Garage Sale" and street address;
2. Not more than three (3) names of the days of the week on which the garage sale is to be conducted;
3. The hours of the day during which the sale will be conducted;

(d) The same information can appear on both sides of the sign;

(e) No sign shall be illuminated, nor moving, nor have lights. No flags, banners, nor other displays shall be used;

(f) All garage sale signs shall be removed from the property within thirty (30) minutes after the closing hour of each day of the garage sale.

(4) *Directional signs.* A maximum of two (2) temporary directional signs shall be allowed on various rights-of-way, provided:

(a) The sign shall not exceed twelve (12) inches in height by eighteen (18) inches in length;

(b) The sign shall not be located closer than fifteen (15) feet to any edge of any pavement of any street, except that signs placed on vacant lots shall be placed at least two (2) feet inside the lot line. The sign shall not exceed thirty-six (36) inches in height above the ground;

(c) The words on the sign shall be either "Garage Sale" or "Open House," with an arrow pointing horizontally either to the right or the left. The same words may appear on both sides of the sign. The direction of the arrow may be reversed on the opposite side of the sign;

(d) The signs shall not be illuminated nor moving. No flags, banners, lights, nor other displays shall be used;

(e) Directional signs shall be removed from each and every right-of-way within thirty (30) minutes after the closing hour of each day of the garage sale or the open house.

(5) *Political signs.*

(a) *Temporary political signs on public property.* If the sign becomes a hazard to public health and safety, the police, the building official, the public works director, or the code enforcement officer hereby shall have the authority to remove the sign immediately.

1. Persons hand carrying political signs may stand on sidewalks or nonpaved portions of public rights-of-way or in parks but on no other public property.

2. No political signs shall be placed in the sidewalk or paved portion of the right-of-way.

3. On an area in front of or alongside of a lot, on a public right-of-way, or a combination thereof in the following land use classifications: R-1-A, R-1-B, R-2, R-3, R-P and T, there shall be not more than four (4) non-illuminated political signs, each not more than four (4) square feet in area. The top of the sign shall not exceed a height of thirty-six (36) inches above the crest of the road. Temporary political signs may not otherwise be placed on public rights-of-way. Any such political sign may only be installed with the express consent of the owner or lessee of the abutting lot or principal structure or portion of said principal structure. Said owner or lessee shall be responsible for the placement and removal of such signs.

4. For county, state and national elections, no political sign shall be erected or displayed earlier than thirty-five (35) days before the date on which the qualifying period opens for the candidate whose name is advertised on the political sign. In the case of political signs advertising a referendum issue subject to such an election ballot, no such sign shall be erected or displayed earlier than seventy-five (75) days before the referendum election at which the referendum issue advertised on said political sign shall be voted upon. For all town elections, no political sign shall be erected or displayed earlier than 45 days prior to the election in which the candidate or referendum issue will be voted on. Political signs which advertise issues or points of view not subject to a referendum election shall not be subject to this sub-paragraph 4.

5. No political sign is to remain displayed to the public on said lot longer than forty-eight (48) hours after the closing of the polls for the campaign for which the political sign was erected. "Campaign" as used in this subparagraph shall include all primaries, special elections, and general elections at which the candidate's name or referendum to be voted upon by electors shall appear on the ballot. Political signs which advertise issues or points of view not subject to a referendum election shall not be subject to this sub-paragraph 5.

6. For all town elections candidates for any town office, or in the case of town referendum issues (including but not limited to charter or ordinance amendments), any individual or the chairman of any political committee, seeking to place a referendum issue on the ballot, shall be requested to sign a form containing a

statement that the candidate, individual, or political committee chairman agrees to comply with the requirements of this section. The town clerk shall place said form in the qualifying packets of all town candidates. Failure to sign said form shall not invalidate or otherwise operate to deny any person the right to qualify for elective office or to have placed on the ballot a referendum issue.

(b) *Temporary political signs on private property.*

1. No political sign shall be placed or displayed on or within fifty (50) feet from any polling place on the day of any election, unless permitted by the supervisor of elections or the clerk of the election precinct, or unless the sign is erected and displayed as permitted by Section 102.031, Florida Statutes.
2. On each lot a maximum of four (4) non-illuminated political signs, each not more than four (4) square feet in area, shall be permitted. Any such political sign may only be hand-carried or installed with the express consent of the owner or lessee of the lot or principal structure or portion of said principal structure, all on said lot. Said owner or lessee shall be responsible for the placement and removal of such signs.

3. For county, state and national elections, no political sign shall be erected or displayed earlier than thirty-five (35) days before the date on which the qualifying period opens for the candidate whose name is advertised on the political sign. In the case of political signs advertising a referendum issue subject to such an election ballot, no such sign shall be erected or displayed earlier than seventy-five (75) days before the referendum election at which the referendum issue advertised on said political sign shall be voted upon. For all town elections, no political sign shall be erected or displayed earlier than 45 days prior to the election in which the candidate or referendum issue will be voted on. Political signs which advertise issues or points of view not subject to a referendum election shall not be subject to this sub-paragraph 3.

4. No political sign is to remain displayed to the public on said lot longer than forty-eight (48) hours after the closing of the polls for the campaign for which the political sign was erected. "Campaign" as used in this subparagraph shall include all primaries, special elections, and general elections at which the candidate's name or referendum to be voted upon by electors shall appear on the ballot. Political signs which advertise issues or points of view not subject to a referendum election shall not be subject to this sub-paragraph 4.

5. For all town elections candidates for any town office, or in the case of town referendum issues (including but not limited to charter or ordinance amendments), any individual or the chairman of any political committee, seeking to place a referendum issue on the ballot, shall be requested to sign a form containing a statement that the candidate, individual, or political committee chairman agrees to comply with the requirements of this section. The town clerk shall place said form in the qualifying packets of all town candidates. Failure to sign said form shall not invalidate or otherwise operate to deny any person the right to qualify for elective office or to have placed on the ballot a referendum issue.

(6) *Sidewalk sales, special events, and anniversary sales.* As part of and during any sidewalk sale, special event, or anniversary sale, a merchant (for a duration not exceeding seven (7) consecutive days as permitted) may display:

(a) One banner or one flag not exceeding a size of three (3) feet by five (5) feet. Display of any banner or flag, any part of which exceeds fourteen (14) feet in height above ground level, shall be prohibited.
(b) Strings of pennants may be displayed, provided that:
    1. The display of pennants is conducted such that no part of any pennant is displayed at a height exceeding fourteen (14) feet above ground level; and
    2. No pennant has any wording or symbol upon it; and
(c) Signage, the wording of which is not legible from any paved roadway.

(7) *Failure to remove temporary signs* within the allotted period may result in a summons to the code enforcement board, which has the power to assess substantial daily penalties.

(8) Special Event:

(a) Signs, banners, and flags (without wording or symbols) may be temporarily erected in recognition of Special Events (e.g. town birthdays) as determined by the town council. A non-fee permit must be obtained from the town manager who will be responsible for authorizing the location of such temporary signs, banners, and flags. The signs, banners, or flags cannot extend over a curb or sidewalk in the street and their placement will not be erected for more than two (2) weeks prior to the event and will be removed within forty-eight (48) hours of the conclusion of the event.

(b) Signs, banners and flags (without wording or symbols) may be temporarily erected at a Special Event during the Special Event as authorized by Section 5-8 subject to the sole discretion of the Town Manager or his designee.

(Ord. No. 84-344, 4, 3-20-84; Ord. No. 84-349, 2, 6-19-84; Ord. No. 86-24, 1, 11-18-86; Ord. No. 91-9, 2, 1-15-91; Ord. No. 94-7, 4, 1-18-94; Ord. No. 95-2, 1, 11-30-94; Ord. No. 00-12, 1, 10-17-00; Ord. No. 04-02, 1-2, 2-17-04; Ord. No. 04-12, 1, 9-14-04; Ord, 06-09, 2, 6-20-06; Ord. 09-09, 2, 4-21-09; Ord. No. 11-02, 1-2, 12-16-10; Ord. 12-06, 1, 3-5-12; Ord. 14-01, 1, 11-17-13)

Sec. 17-106.4. Signs authorized in the various zoning districts

Only those types of signs that are listed below are permitted in the following zoning districts:

(1) *R-l-A Single-Family Residence Districts.* Only the following temporary signs: real estate (see Section 17-106.3 (1)), construction (see Section 17-106.3(2)), garage sale (see Section 17-106.3 (3)), directional (see Section 17-106.3 (4)) and political (see Section 17-106.3 (5));
   (a) Building numbering is required in accordance with Section 13-9;
   (b) Any sign that is affixed to a fence must be comprised of plastic or metal and must be placed in such a manner that it faces a street adjacent to the property upon which the fence has been installed unless otherwise permitted by law.

(2) *R-l-B Single-Family Residence Districts.* Only the temporary signs permitted for R-l-A;
   (a) Building numbering is required in accordance with Section 13-9;
   (b) Any sign that is affixed to a fence must be comprised of plastic or metal and must be placed in such a manner that it faces a street adjacent to the property upon which the fence has been installed unless otherwise permitted by law.

(3) *R-2 Duplex Residence Districts.* Only the temporary signs permitted for R-l-A;
   (a) Building numbering is required in accordance with Section 13-9;

(4) *R-3 Multifamily Districts:*
   (a) The temporary signs permitted for R-l-A;
   (b) One attached, mural, or painted sign; (See Definition of Attached Signs.) The area enveloped by the sign shall not exceed twenty-four (24) square feet and must comply with all of the other requirements of signs authorized in C and C-l districts;
   (c) One detached sign: The same regulations apply as for attached signs. The sign must be erected inside the lot lines;
   (d) Building numbering is required in accordance with Section 13-9;

(5) *RP Residential-Professional Districts:*
   (a) Residential use: Temporary signs as permitted for District R-1-A, except that garage sales are permitted only for the remaining residences in these districts;
      1. Building numbering is required in accordance with Section 13-9;

   (b) Professional use:
      1. Only the following temporary signs are permitted: Construction (see Section 17-106.3(2)), real estate (see Section 17-106.3(1)), directional (see Section 17-106.3(4)), and political (see Section 17-106.3(5));
      2. Grand opening signs are permitted only once for each occupant or change of ownership of the property, or only once after each extensive remodeling of the premises, which must cost at least fifteen percent (15%) of the assessed valuation of the building. Grand opening signs shall not exceed eighteen (18) inches by forty-eight (48) inches in size and shall not be displayed for more than seven (7) days;

3. One (1) attached sign identifying professional offices is permitted; provided, that the attached sign does not exceed twelve (12) square feet in area and does not protrude more than one (1) foot beyond the exterior wall of the building. The attached sign may be a mural. Only one (1) such sign is permitted for each business or service, except for offices occupying a corner lot where one (1) such identical sign is permitted on each street side. Where parking is provided in the area, an identical sign is permitted on the rear of the building.
4. The height of all attached signs shall not exceed the eave line of the building or structure;
5. A grand opening banner may be permitted for a duration not exceeding seven (7) consecutive days as permitted provided that the banner does not exceed a size of three (3) feet by five (5) feet. Display of any banner, any part of which exceeds fourteen (14) feet in height above ground level shall be prohibited. Grand opening banners are permitted only once for each occupant or change of ownership of the property, or only once after each extensive remodeling of the premises which must cost at least fifteen percent (15%) of the assessed valuation of the building.
6. Building numbering is required in accordance with Section 13-9.

(6) *C, C-l, and C-2 Commercial Districts.*

(a) Temporary signs. The following temporary signs are allowed: construction (see Section 17-106.3 (2)), real estate (see Section 17-106.3 (1)), political signs on private property (see Section 17-106.3 (5) (b)), sidewalk sale (see Section 17-106.3 (6)), grand opening sign (see Section 17-106.4 (6) (b)), grand opening banner (see Section 17-106.4(6) (g)), grand opening sign (see Section 17-106.4 (6) (i)). The following temporary signs are not allowed: garage sale (see Section 17-106.3 (3)), political signs on public property (see Section 17-106.3 (5) (a)), and directional (see Section 17-106.3 (5) (b)).

(b) *Attached and painted (on the building surface) signs:* The following conditions regulate signs attached or painted upon any front, rear or side surface of the occupant's building, which include but is not limited to mural signage, provided the signs comply with all other requirements of this section:

1. Only one wall of the building may have an attached sign(s), except in the case of buildings with rear entrances and buildings on corner lots. The signs on this wall shall be subject to the following restrictions:
   a. There shall not be more than one sign per occupant;
   b. No sign shall exceed thirty-two (32) square feet in area;
   c. The area of the sign, or combined area of the sign, shall not exceed ten percent (10%) of the surface area of the wall. Calculation of the surface area shall include doors and windows;
2. In the case of rear entrances, each such entrance may have one (1) sign not to exceed twelve (12) square feet in area over or beside the rear entrance;
3. In the case of buildings located on corner lots, a sign not to exceed thirty-two (32) square feet is permitted on the wall which is closest to the side street, unless the property owner requests a different but parallel wall that faces the side street (only one wall facing the particular side street may have signs).

4. The zoning and planning board has the authority, upon application, to permit an attached sign on any one face (and on the side street face of corner lot buildings) to encompass an area up to five percent (5%) of the total exposed face of the building. This provision is applicable to large buildings whereon such sized signs will be proportional to those permitted for smaller buildings. The board will evaluate such proposed sign in relation to the size of the building, its general appearance, and its architectural similarity to neighboring buildings;
5. The sign may be constructed of multiple parts and its content shall be limited to permanent letters, numerals, insignia, and a picture of, or a miniature of, or a full-size sample of one of the wares available on the premises, provided that all of the information, including the ware is contained within the size limitations of the sign. No portion of an attached sign shall protrude more than one (1) foot beyond the wall on which the sign is attached.
6. The height of attached signs shall not exceed the eave line of the building.

(c) *Permanent door and window signs.* (See definition.) Permanent signs may be attached to or painted upon doors and windows provided that:

1. No more than twenty-five percent (25%) of the total door and window area shall be covered, but in no event shall the coverage exceed fifty-eight (58) square feet;
2. All window areas between three (3) feet and four (4) feet above the crown of the building's street shall be free from any type of sign or any other obstruction;
3. All areas in glass doors, or in windows in other types of doors, shall be kept free of any type of sign or any other obstruction which prevents clear sight for ingress and egress, except signs warning of hazards to health and safety;
4. The construction of the permanent sign shall be limited to long-lasting letters, numbers and insignia. An interior message composed of replaceable letters and numerals may be changed without obtaining a sign permit.

(d) *Detached signs.* (See definition.) Exactly the same information may appear on both sides of any sign. The following provisions shall apply:

1. Each building may have one (1) thirty-two (32) square foot sign which may be shared by all business areas within the building;
2. Or, where the signs can be placed at least twenty (20) feet apart, each business area may have a separate detached sign not to exceed nine (9) square feet in area;
3. Or, if there are more than four (4) business areas located in one building, the building may have two (2) detached signs, each having a maximum of twenty-four (24) square feet, provided the signs are at least fifty (50) feet apart;
4. A detached sign may not be placed within twenty (20) feet of any other detached sign;
5. Where the building is accessible from the rear and does not abut a residential district, a second detached sign, not to exceed thirty two (32) square feet, permanently anchored in the ground, is permitted in the rear for each business. For property abutting a residential district a second detached sign, not to exceed nine (9) square feet, permanently anchored in the ground, is permitted in the rear for each business. However, if several businesses are served by one common driveway, each such sign shall be permanently affixed to the same common mounting permanently anchored in the ground;

6. Detached signs may be illuminated in accordance with section 17-106.1(3).
7. The height of detached signs shall not exceed the top of the roof or fourteen (14) feet above the ground level at the front of the building, whichever is the lesser;
8. There shall be at least seven (7) feet clearance below the bottom of the sign, unless the top of the sign is not higher than six (6) feet above the ground level at the front of the building.
9. The top of all poles, on which signs are mounted, shall not be above the top horizontal edges of the sign unless the poles are part of the design of the sign.

(e) *Transient signs.* A sign made of paper, cardboard, or particle board placed on the inside of windows and doors.

1. Transient signs may be affixed to the inside of doors and windows or otherwise displayed from inside structures, provided that:

a. No more than twenty-five percent (25%) or fifty-eight (58) square feet less the square footage for any permitted permanent door and window signs, whichever is the lesser, of the total door and window area is covered;
b. No portion of any transient sign shall exceed fourteen (14) feet in height above ground level;
c. All window areas, between three (3) feet and four (4) feet above the crown of the building's street level, shall be free from any type of sign or any other obstruction;
d. All areas in glass doors, or in windows in other types of doors, shall be kept free of any type of sign or any other obstruction which prevents clear sight for ingress and egress, except signs warning of hazards to health and safety;
e. The message on a sign containing movable letters and numerals may be changed without obtaining a sign permit.
f. No transient sign shall be erected, placed, or otherwise displayed on any property, lot, or parcel of land, without a sign permit obtained from the town. Sign permits may be obtained at no cost from the town manager or said manager's designee at anytime during regular business hours of the town hall. All permit applicants must include in their application the name, address, and telephone number of both the property owner and lessee, if any, and the permit applicant.

   The application must be executed by the applicant who must have written approval from the property owner or lessee to obtain sign permits from the town. The application shall include the text, symbols, pictures, wording and the like to be placed on the sign.
g. Sign permits shall be issued for a period of not more than 30 consecutive calendar days but permits are renewable.

2. Transient signs pertaining to civic affairs such as town birthdays, parades, Police Explorer's car wash, Halloween party, etc., after obtaining a gratuitous permit from the town manager, may be temporarily erected for not more than two (2) weeks prior to the affair, provided the signs are placed at least fifteen (15) feet away from any edge of any street, except that the signs may be located between the curb and the sidewalk on Fifth Avenue and Miramar Avenue provided that no part of the sign extends over the curb.

(f) *Banner:* A banner may be permitted for a duration not exceeding seventy-five (75) consecutive days as permitted provided that the banner does not exceed a size of three (3) feet by five (5) feet. Display of any banner, any part of which exceeds fourteen (14) feet in height above ground level shall be prohibited.

(1) Strings of pennants may be displayed, provided that the display of pennants is conducted such that no part of any pennant is displayed at a height exceeding fourteen (14) feet above ground level and no pennant has any wording or symbols on it. Such strings of pennants may not be displayed for more than thirty (30) consecutive days.

(2) Only one banner (which is suggested for a business opening soon, celebrating a grand opening, celebrating an anniversary, or experiencing a major remodeling) may be permitted in a calendar year unless ownership changes.

(g) Banner: A sidewalk sale, special event, and anniversary sale opportunity may result in a permit being issued for a banner for a duration not exceeding seven (7) consecutive days as permitted (see Section 17-106.3 (6)).

(h) *Opening Soon and /or Grand Opening Sign*: Opening soon and/or grand opening signs are permitted only once for each occupant or change of ownership of the property. Grand opening signs are allowed after each extensive remodeling of the premises, which must cost at least fifteen percent (15%) of the assessed valuation of the building. Opening soon and/or grand opening signs shall not be more than eighteen (18) inches by forty-eight (48) inches in size and shall not be displayed more than a combined seventy-five (75) days. Opening soon signs are permitted only during a period of time prior to the property being allowed to open for business.

(7) *S-C Shopping Center Districts:* All provisions of the C and C-1 Districts apply except as modified below:

(a) Attached signs, excluding murals, may be mounted on the roof;

(b) The height of attached signs shall not exceed the height of the roof at the ridge-pole;

(c) Each business area may have an attached sign not to exceed, in area, thirty-two (32) square feet or ten percent (10%) of the total exposed building face's square feet, whichever is greater;

(d) Detached signs are not permitted, except one (1) detached sign is permitted for each shopping center. The actual sign area shall not exceed ten (10) feet in height and fifteen (15) feet in width. The supporting structure shall not exceed twenty (20) feet in height and twenty (20) feet in width. The total height of the entire structure and sign shall not exceed thirty (30) feet in height;

(e) Where the business unit is available from the rear, a second sign not to exceed nine (9) square feet in area may be attached to the rear of the building unit.

(f) In the case of buildings located on corner lots, a sign not to exceed thirty-two (32) square feet is permitted on the wall which is closest to the side street, unless the property owner requests a different but parallel wall that faces the side street, and a wall that is perpendicular to the side street instead.

(8) *T-Tourist Districts:* All sign provisions for the C and C-1 Districts apply, except that:

(a) Garage sale and directional signs are permitted only for residences;

(b) The attached sign and detached sign may contain, in addition to other allowed material, not more than five (5) of the words or pseudo-phrases which follow: "No Vacancy," "Vacancy," "Housekeeping Units," "Kitchenettes," "Ocean View," "Pets Welcome," "No Pets," or such other words as are specifically authorized upon application to the zoning and planning board;

(c) Signs permitted on property used for single-family residences and duplexes are the same as permitted in the R-1-B District;

(d) Signs permitted on property used for multifamily residences are the same as permitted in the R-3 District;

(e) Signs permitted for nonresidential property are the same as permitted in the C and C-1 Districts, except that not more than one (1) detached sign is permitted.

(f) Lighting of signs for a bed and breakfast facility shall only be external to the sign.

(9) *CH-Church Districts:*

(a) Bulletin boards, attached signs (including but not limited to murals), and similar signs of churches shall be permitted (instead of commercial detached signs) and shall not exceed thirty-two (32) square feet in area, shall not exceed eight (8) feet in height, shall be located within the property lines, and shall not exceed one (1) sign facing each street;

(b) The bulletin boards may contain changeable letters and numerals, both of which may be changed without obtaining a sign permit.

(10) *Private parking lots signs:*

(a) Detached, attached or paint-on structure, signs in black and white or uniform in color to the building exterior to regulate parking lots are permitted as follows:

1. One detached directional sign per entry, and one per exit, to and from a parking lot, is permitted. The content of these signs shall be limited to one or two of the following words: "Enter," "Entrance," "In," "Exit," "Egress," "Out," "Only," and may bear a directional arrow. Each sign shall have a maximum area of two (2) square feet, the top of the sign and its support shall not be more than three (3) feet above the ground, and it shall be located not less than three (3) feet from the edge of the pavement of any street, except, where a paved sidewalk exists, it shall be located on the property side of the sidewalk, not closer than one foot to the sidewalk;
2. Markings on the surface of the paved parking areas shall be limited to arrows and traffic-flow-directional words, such as "Drive-up Window," "Drive-up Lane," "Drive-up Tellers";
3. In addition, one parking space identification sign lettered only on concrete car stops or curbs is permitted per parking space, not to exceed three (3) inches in height and eighteen (18) inches in length;

4. In addition, one (1) parking lot identification sign per street from which there is an entrance to said lot is permitted. The content of this sign shall be limited to any or all of the following words: "Private Parking for Customer Of," plus only the name or identifying symbol and the address of the business, institution, professional association, or service corporation. The maximum size of each such sign shall not exceed four and one-half (4 1/2) square feet. If the nine (9) square foot "Tow Away" sign described in paragraph 5., below is used, the above information must be included on the tow away sign in lieu of a separate sign;
5. Any property owner desiring to use vehicle tow away signs must do so in accordance with Section 715.07, Florida Statutes, as amended from time to time. Signs shall not exceed nine (9) square feet;
6. Signs for disabled persons' parking spaces [shall be] as provided in Chapter 316, Florida Statutes;
7. For establishments selling beer, wine or other alcoholic beverages, as defined in chapter 3, town code, not exceeding two (2) parking lot signs meeting the requirements of section 3-10(c), town code.

(b) Sign permits must be obtained from the town prior to painting, construction and erection of the above signs, with the exception of paragraph 3.; but the provisions of paragraph 3., must be fully complied with.

(11) *Beautification recognition signs:* Signs representing an award for beautification of grounds or buildings presented by the Town, after obtaining a gratuitous permit from the town manager, may be temporarily erected for not more than thirty (30) days provided the signs are placed at least fifteen (15) feet away from the edge of any street pavement. These signs may be placed in any zoning district.

(Ord. No. 84-344, 4, 3-20-84; Ord. No. 84-349, 3, 6-19-84; Ord. No. 86-11, 3, 4-15-86; Ord. No. 90-8, 1, 2-20-90; Ord. No.95-1, 2, 11-30-94; Ord. No. 97-1, 3, 12-3-96; Ord. No. 97-7; 5-6-97; Ord. No. 02-07, 1, 4-16-02; Ord. No. 03-06, 1, 4-15-03, Ord. No. 04-01, 1, 12-16-03; Ord. No. 05-02, 1, 12-16-04; Ord. No. 05-11, 1, 6-21-05; Ord. No. 06-01, 1, 12-14-05; Ord. No. 07-01, 1, 11-21-06; Ord. No. 09-9, 3-5, 4-21-09; Ord. No. 11-17, 4, 8-16-11; Ord. No. 13-15, 1, 10-15-13; Ord. No. 14-10, 5, 7-15-14; Ord. No. 15-06, 1, 9-9-15; Ord. No. 16-02, 1, 11-12-15; Ord. No. 16-15, 2, 10-12-16; Ord. No. 17-13, 2, 8/9/17)

Editor's note--Ord. No. 84-349, 3, enacted June 19,1984, amended 17-106.4 by the addition of provisions designated as 17-106.4(a); however, inasmuch as provisions so designated had previously been set out, the editor has, at his discretion, redesignated the provisions of Ord. No. 84-349, 3 as 17-106.5(10).

Sec. 17-106.5. Nonconforming signs.

A nonconforming sign or sign structure existing within the town limits on or after the effective date of this ordinance shall be subject to removal. Removal of such signs, signs that were or are erected without a permit, "grandfathered" nonconforming signs, abandoned signs, damaged signs or other nonconforming signs, shall be achieved as follows:

(1) *At the time of owner or occupant change.* All nonconforming signs in existence, at the time a property is sold or rented as a new and separate business area, shall be made to conform or shall be replaced after thirty (30) days notice by the code enforcement officer;

(2) *All others.* All other owners of nonconforming signs shall be granted a reasonable period, as set forth below, in which to amortize the cost of such signs. In return for such amortization period, all nonconforming signs must be maintained in good condition by their owners. At the conclusion of the time periods herein set forth, all such nonconforming signs shall be removed in accordance with section 17-106.5(7) below:

(a) Nonconforming signs consisting of materials that have a monetary value of less than five hundred dollars ($500.00) shall be removed within five (5) years from the effective date of this ordinance. The monetary value shall be determined by the building official, whole opinion may be appealed to the board of adjustment;

(b) Nonconforming signs consisting of materials that have a monetary value of at least five hundred dollars ($500.00), but less than one thousand dollars ($1,000.00) shall be removed within ten (10) years from the effective date of this ordinance. The monetary value shall be determined by the building official, whose opinion may be appealed to the board of adjustment;

(c) Nonconforming signs consisting of materials that have a monetary value of at least one thousand dollars ($1,000.00) shall be removed within fifteen (15) years from the effective date of this ordinance;

(d) The zoning and planning board may extend the period of use of a nonconforming sign for up to an additional five (5) years beyond the initial period, when, in its judgment, the useful life of the sign has not been completely amortized. In no event, however, shall any nonconforming sign remain in existence for more than twenty (20) years from the effective date of this ordinance;

(3) *Fee waived.* At the time a nonconforming sign is replaced, a permit for a conforming sign shall be issued with no fee attached;

(4) *Abandoned signs. A* landowner shall not permit any sign which has been erected upon his land to be abandoned upon such land. Thirty (30) days after the cessation of business at such location, it shall be presumed that an on-premise sign has been abandoned. On-premise signs whose words, numbers or other symbols are completely obliterated by paint or other neutralizing agent are not deemed abandoned by this section;

(5) *Occupancy change.* Any change in the type of occupancy of property on which any nonconforming sign is located, shall cause the removal of all nonconforming signs within thirty (30) days;

(6) *Mixture of conforming with nonconforming signs prohibited.* No conforming sign or sign structure shall be erected on the same premises with an existing nonconforming sign until the nonconforming sign has been removed or made conforming. However, in Residential-Professional, Commercial, Shopping Center or Tourist Districts, the fact that one particular business or activity has a nonconforming sign or sign structure will not prohibit another business or activity on the same premises from erecting a conforming sign or sign structure;

(7) *Removal of nonconforming signs.* Nonconforming or abandoned signs erected in the town shall be removed in accordance with the procedures established by the code enforcement board.

(Ord. No. 84-344, 4, 3-20-84)

Sec. 17-107. Industries prohibited.

All industrial or manufacturing uses are prohibited.

(Code 1962, 28-84)

Sec. 17-108. Permitted uses incorporated by reference.

Where uses are permitted by reference to another district, all requirements of the referenced district must be adhered to for that particular use, except that setbacks shall conform to the district in which the property is located.

(Code 1962, 28-85; Ord. No. 84-346, 1, 4-17-84)

Sec. 17-109. Additions to existing structures.

Additions must be architecturally compatible with the existing construction in the reasonable discretion of the building official with the advice and consent of the zoning board.

(Code 1962, 28-26; Ord. No. 88-18, 1, 10-25-88)

Sec. 17-110. Density in all zones.

(1) The maximum density for all zones in the town shall not be greater than twenty-five (25) units per acre, and

(2) Densities will be computed on the area of the lot(s), i.e., within the boundaries of the lot lines, except those lots which border on the Atlantic Ocean. Density for the latter will be computed as above except that the Ocean Bluff Line will be used as the eastern boundary of the lot(s) for this purpose.

(Code 1962, 28-87; Ord. No. 153, 2, 6-19-73)

Sec. 17-111. Satellite dish antennas.

(1) Satellite dish antennas forty (40) inches and larger in diameter are hereby permitted as accessory uses in all zoning districts subject to the following regulations and conditions to protect the rights of other property owners and at the same time protect the public health and safety and preserve the aesthetic value and quality of Indialantic's primarily residential character.

(2) The maximum permitted diameter of the satellite dish shall be ten (10) feet.

(3) If mounted on the ground, the maximum height to the top of the satellite dish antenna shall be fourteen (14) feet above the grade level of the first floor of the principal structure.

(4) The dish antenna in any residential zoning district (including and limited to the R-1-A, R-1-B, R-2, R-3, and R-P zoning districts) shall be set back from both side and rear lot lines a distance of not less than one-half (l/2) the maximum height of the satellite dish as installed. In no case shall the antenna be in the front or side yard.

(5) In any residential zoning district (including and limited to the R-1-A, R-1-B, R-2, R-3, and R-P zoning districts) a dish antenna may not be mounted on the roof of the principal or accessory structure and must be detached from the principal structure. In the commercial, church, and tourist zoning districts (including and limited to the C,- C-1, C-2, SC, T, and CH zoning districts) the antenna may be roof mounted. All satellite dish antennae shall meet the building height limitations in this section and in effect in the zoning district in which they are located, plus a maximum of fourteen (14) feet.

(6) The dish antenna must be mounted on a permanent foundation engineered and anchored to withstand wind velocity of one hundred and sixty (160) miles per hour which shall be certified in the installation instructions furnished by the antenna's manufacturer (or by a registered professional structural engineer). Installation to these specifications shall be under the supervision of and approved by the town building official. The material used shall be made to conform and blend, to the greatest extend practicable, with surrounding areas and structures, taking into consideration color, ability to receive or transmit a signal to a given satellite or receiver, and location. The dish antenna shall contain no advertising or signage that is discernible from a distance of ten (10) feet or more.

(7) In any residential zoning district wherein the principle use on any lot is for residential purposes (including and limited to the R-1-A, R-1-B, R-2, R-3, and R-P zoning districts) dish antennas shall be limited to one antenna per principal residential structure.

(8) The satellite dish antenna station, including guy wires, supporting structures, and accessory equipment, shall be located and designed so as to minimize visual impact on adjacent properties and from public streets, beaches, rights-of-way and bodies of water. To the extent that screening does not interfere with the reception or transmission of a signal the dish antenna shall be screened through the use of landscaping or architectural features which harmonize with the elements and characteristics of the property and adjacent properties. The materials used in constructing the earth stations shall not be unnecessarily bright, shiny, garish, or reflective. The antenna dish system shall by no means be portable.

(9) Dish antennas shall meet all manufacturer's specifications. The mast or tower shall be of noncombustible and corrosive resistant material. The miscellaneous hardware such as brackets, turnbuckles, clips, and similar equipment subject to rust or corrosion, shall be protected with a zinc coating by either galvanizing or sheradizing process after forming, or by use of stainless steel fittings. These finishes are selected to guard against corrosion and to protect the elements against electrolytic action due to the joining of dissimilar metals.

(10) All dish antennas shall be maintained in good working condition and in accordance with all requirements of this subsection and shall at all times be connected for operation. All dish antennas shall be subject to periodic inspection to insure compliance under this section. No additions, changes, or modifications shall be made to a dish antenna unless the addition, change, or modification is in conformity with this subsection, the building code, and the development permit.

(11) Application for a building permit to install, construct, or increase the height of a television station, radio station, or satellite dish receiver or transmit antenna shall be made upon such forms required by the town, and the applicant shall submit a site plan showing adjacent properties, possible views, and all screening features plus location of structures and plantings on the subject property. Such site plans may be hand-drawn sketches, not necessarily to scale, but must show all dimensions and measurements such as lot line setbacks and location of any easement on the lot.

(12) If the antenna is roof-mounted, it must conform to applicable construction standards contained in the Florida Building Code. Building plans with construction and erection methods shall be approved by a registered professional structural engineer. Final approval of a building application for a transmit dish antenna system is contingent upon receipt of any necessary Federal Communication Commission frequency plan and approvals.

(13) Administrative exception approval.

(a) Upon submittal of a site plan, the Town Manager or his designee may grant an exception from the strict application of any of the provisions of this section, which imposes an impediment to clear signal transmission by the requested transmit satellite dish antenna or clear signal reception by the requested receive signal satellite dish antenna, upon determining that:

1. The location of foliage on adjacent property not owned by the applicant, structures, or living trees, will cause an impediment to clear signal transmission by the requested transmit satellite dish antenna or clear signal reception by the requested receive signal satellite dish antenna;
2. That the exception requested is the minimum exception that is needed to permit clear signal transmission by the requested transmit satellite dish antenna or clear signal reception by the clear signal receive signal satellite dish antenna; and
3. That the criteria in this section cause the applicant a practical difficulty in erecting and utilizing the requested satellite dish antenna.

(b) It is the intent of the Town Council that the exception review pursuant to this subsection be accomplished expeditiously, as part of the site plan review, and at no cost to the applicant. Any denial of an exception shall be subject to appeal to the town council for de novo review of the determination of the Town Manager, or his designee. This exception procedure is not intended to preclude the application for or consideration of a variance pursuant to article VIII of this chapter 17.

(Ord. No. 86-13, 1, 6-17-86; Ord. No. 92-3, 1, 1-21-92; Ord. No. 12-02, 16, 11-21-11; Ord. 13-11, 1, 6-25-13)

Sec. 17-112. Skateboard ramps.

(1) Skateboard ramps are permitted in the R-1-A, R-1-B, R-2, R-3 and R-P zoning districts. Skateboard ramps must meet the following conditions:

(a) are restricted to use only between the hours of 8:00 a.m. and 9:00 p.m. Eastern time;
(b) are allowed, when in use, only in front of the front structure line and in the side yard if maintained a minimum of ten (10) feet from the side lot lines;
(c) may be stored, when not in use, in a side or rear yard without restriction as to setback;
(d) are allowed in front of the front structure line only during permitted hours of use;
(e) will not be allowed in the paved street or public right-of-way;
(f) will not be illuminated;
(g) will be in good repair and not be in a deteriorated state; and
(h) will not exceed four (4) feet in height.

(2) In all other districts, skateboard ramps shall be placed far enough from public sidewalks and public streets so as to prevent the user of the skateboard ramp from moving onto said sidewalk or street as a partial or complete result of the momentum generated by the use of the ramp. No person shall allow the erection, placement or maintenance of a skateboard ramp on his property in violation of this Section. Violation of this provision shall be enforced by the Indialantic Code Enforcement Board pursuant to its rules and procedures in accordance with Florida Statutes Chapter 162.

(Ord. No. 87-3, 1, 2-17-87; Ord. 02-08, 1 4-16-02; Ord. 12-11, 1, 8-21-12)

Editor's note--Ord. No. 87-3, 1, 2, adopted Feb. 17, 1987, purported to amend the Code by adding provisions designated as 17-111 and 17-111.1. Inasmuch as 17-111 already existed in the Code, the editor has redesignated these provisions as 17-112 and 17-113.

Sec. 17-113. Skateboard users.

(a) No person shall be upon, ride, or in any way propel himself through use of a skateboard on the public beach boardwalk located parallel with and adjacent to the Atlantic Ocean.

(b) [Violation, citation, etc.]

(1) Any law enforcement officer shall have the power to issue a citation for violation of this section. Such citation shall state the date, time, and place of the issuance of the citation, the name and address of the person in violation, the date of the offense, the offense committed, the amount of the fine, directions as to payment of the civil infraction or request for a hearing, statement as to the effect of the election to request a hearing rather than pay the fine listed on the citation, the name and signature of issuing officer, and the name and signature of person receiving the citation.

(2) A violator may pay the fine as provided for hereinbelow in subsection (b)(3) and waive his right to a hearing before a county court judge.

(3) Penalties imposed for the violation of this ordinance [sections 17-112 and 17-113], shall be:

a. Ten dollars ($10.00) per incident, if paid to the finance director of the town within ten (10) days of issuance of the citation.
b. Fifteen dollars ($15.00) per incident if paid to the finance director of the town more than ten (10) days but within twenty (20) days of issuance of the citation.

(4) If the fine outlined in subsection (b)(3) is not paid within the twenty (20) day period outlined therein, the clerk shall cause the violator listed on the citation to be served with a court summons requiring payment or attendance at a hearing at a time and place specified on such summons. A county judge, after a hearing, may make a determination as to whether a violation of this ordinance has been committed and may impose a sentence.

(5) Nonpayment of the penalty within such twenty (20) day period shall be prima facie evidence of the violator's election to waive the right to pay the fine imposed in (b)(3)a. or b.

(6) A hearing may be requested by the person receiving such citation for the purpose of presenting evidence before a county judge concerning violation of this ordinance [sections 17-112 and 17-113]. The cited person must request a hearing within twenty (20) days of the issuance of such citation by informing the clerk of the County Court of Brevard of such intention. Any person requesting a hearing who does not appear in accordance with such request, shall be subject to contempt proceedings or to such other penalties as the court may, in its discretion, impose to require compliance with this section.

(7) An election to request a hearing constitutes a waiver of the right to pay the fine indicated on the citation.

(Ord. No. 87-3, 2, 2-17-87)

Note--See editor's note following 17-112.

Sec. 17-114. Repealed.

[The next page is 1116]

Sec. 17-115. Community Residential Homes.

(a) *Applicability generally.* All community residential homes shall comply with all applicable requirements set forth in this section.

(b) *Dispersal of facilities.*

(1) In any residential zoning district the minimum distance between an existing level I community residential home principal structure and a proposed level I community residential home principal structure shall be 1,000 feet.

(2) No proposed level II community residential home principal structure shall be located within 1,200 feet of another level II community residential home principal structure in a multi-family zoning district.

(3) No level II community residential home principal structure shall be located within 500 feet of a R-1-A or R-1-B single-family zoning district in the town of Indialantic; a 1-RS, 2-RS, or 3-RS single-family zoning district in the town of Melbourne Beach, or a REU, RR-1, SEU, SR, EU, EU-1, EU-2, RU-1-7, RU-1-9, RU-1-11, RU-1-13, RA-2-4, RA-2-6, RA-2-8, RA-2-10, RRMH-1, RRMH-2.5, RRMH-5, TR-1, TR-1A, TR-2, TRC-1, or PUD single-family zoning district in unincorporated Brevard County.

(4) Distance shall be measured from the nearest point of a community residential home principal structure or district line of a R-1-A or R-1-B single-family zoning district to the nearest point of a proposed community residential home principal structure.

(c) *Neighborhood compatibility.* In residential zoning districts, the external appearances of group home structures and building sites shall maintain the general character of the area. Exterior building materials, landscaping, fences and walls, and general design shall be compatible with those of surrounding dwellings.

(d) *Facility standards.* Each community residential home shall:

(1) Have not less than 500 square feet of living area per assigned resident.

(2) Have not less than a minimum of one (1) bathroom, containing a sink, toilet, and shower or tub, for each two (2) assigned residents plus one (1) similarly equipped bathroom for the owner/operator of the home.

(3) Be designed in such a manner that all assigned residents shall have internal access from assigned bedroom areas to the living and dining areas, if the community residential home is a single family or duplex structure.

(4) Be designed consistent with Section 11 of the Florida Accessibility Code for Building Construction, January, 1994 edition.

(e) *Parking.* Each community residential home shall have one (1) off-street parking space for every two (2) assigned residents plus two (2) parking spaces for the owner or operator of the home. In addition each community residential home shall have at least one (1) off-street parking space for each non-resident staff member.

(f) *Signage.* Except as permitted in section 17-106.3 or section 17-106.4, no signs shall be permitted for community residential homes.

(g) *Firesafety, building and construction-related regulations.*

(1) *Firesafety regulations.*

(A) Community residential home for children.

1. All community residential homes for six or more children unrelated to the proprietor and licensed pursuant to section 409.175, Florida Statutes (1993), as amended from time to time, shall comply with the Uniform Fire Safety Standards for Residential and Nonresidential Child Care Facilities, chapter 4A-41, Florida Administrative Code. All other community residential homes for children shall comply with the Standard Fire Prevention Code adopted pursuant to section 7-60, town code.
2. All community residential homes for children shall comply with the applicable edition of the National Fire Protection Association (NFPA) 101, Life Safety Code, as adopted pursuant to Rule 4A-41.007, Florida Administrative Code.

(B) Community residential homes for developmentally disabled persons.

1. All community residential homes for developmentally disabled persons (excepting children as set forth in Rule 4A-38.020(3)(a), Florida Administrative Code), shall comply with the Uniform Fire Safety Standards for Residential Facilities for Individuals with Developmental Disabilities, chapter 4A-38, Florida Administrative Code.
2. All community residential homes for developmentally disabled persons shall comply with the applicable National Fire Protection Association (NFPA) 101, Life Safety Code, as adopted pursuant to Rule 4A-38.023, Florida Administrative Code.

(C) Community residential homes for adult congregate living facilities.

1. All community residential homes for adult congregate living facilities shall comply with the Uniform Fire Safety Standards for Adult Congregate Living Facilities, chapter 4A-40, Florida Administrative Code.
2. All community residential homes for adult congregate living facilities shall comply with the applicable provisions or alternatives of the National Fire Protection Association (NFPA) 101, Life Safety Code, as adopted pursuant to chapter 4A-40, Florida Administrative Code.

(D) Other community residential homes. All community residential homes for other than adult congregate living facilities, developmentally disabled persons, or child-caring facilities, shall comply with the Standard Fire Prevention Code adopted pursuant to section 7-60, town code, and the National Fire Protection Association (NFPA) 101, Life Safety Code, adopted pursuant to section 7-60, town code.

(2) *Building and construction related codes.* All community residential homes shall comply with applicable minimum standard building codes, and other building and construction related codes, adopted pursuant to chapter 6, town code.

(h) *State regulations.* Violations of applicable federal or Florida statutes and administrative regulations shall be deemed violations of this code.

(i) *Termination.* The owner or operator of a community residential home shall notify the town building department within fifteen (15) days of the discontinued use of a structure as a community residential home.

(j) *Administrative permit.*

(1) All operators of community residential homes shall submit an application for an administrative permit to the town's director of community development. Said application shall contain the Florida Department of Health and Rehabilitative Services license and appropriate documentation, as determined by the director of community development, to determine compliance with this section. Upon receipt of an application, the director of community development shall notify all property owners within two hundred (200) feet of the community residential home lot of the filing of an application for a community residential home administrative permit. Notices shall be deemed sufficiently given if mailed, first class U.S. mail to the address of the property owner as shown on the most current ad valorem tax rolls on file at town hall. No permit shall be issued until at least fifteen (15) calendar days after the date of mailing of notices.

(2) Community residential homes shall be subject to the home occupation regulations of section 17-102, town code. Simultaneous with the application for an administrative permit, the applicant shall file an application with payment of the occupational license tax for a home occupational license as set forth in section 9-11.

(3) Upon a determination by the director of community development of compliance with this code by the applicant for an administrative permit, the permit shall be issued. The administrative permit shall be valid for one (1) year from the date of issuance. Renewal shall be accomplished in the same manner as the original application.

(Ord. 95-13, 2, 10-17-95)

Sec. 17-116. Temporary portable storage units.

The Town Manager may issue permits for the placement of units on property within the Town. The following regulations shall apply to the placement of temporary portable storage units upon lots in all zoning districts:

(1) A permit shall be obtained prior to setting the unit on the property.

(2) A maximum of one (1) unit per property can be considered for permitting; provided, however, that the Town Manager may issue a permit for one (1) additional unit if the following conditions are satisfied:

(a) The permit applicant must present substantial, competent evidence of the need for the issuance of a permit for an additional unit. The evidence must demonstrate that the permit applicant has so many articles of personal property that two (2) units are needed for storage on the property at the same time, or that the permit applicant's personal property is stored in such a manner that an additional unit is needed to be located on the property at the same time;

(b) The additional unit shall be located on the property only at the same time that the primary or first unit is also on the same property; and

(c) Both units shall be placed on the property in such a manner so as not to encroach on property not owned by the permit applicant, block the public use of roadways adjacent to the permit applicant's property, not cause a visual obstruction to motor vehicle operators on public rights-of-way or to those individuals leaving the permit applicant's property and entering a public right-of-way.

(3) A site drawing shall be submitted showing the location on the property where the unit will be placed, size of the unit and distance to all applicable property lines and all other buildings or structures. This plan shall be reviewed and subject to approval by the Town Manager, or said Manager's designee.

(4) The property must be occupied by a principal building.

(5) All units shall be set back a minimum distance of ten (10) feet from all property lines except the property line abutting the street used as access for the unit, which shall be five (5) feet.

(6) The unit shall be removed within ten (10) calendar days after permit issuance.

(7) No more than twelve permits may be secured within a twelve-month period and a minimum of twenty (20) days shall exist between the issuance of permits for the same property.

(8) The size of the unit shall not exceed:

(a) a height of eight (8) feet; and

(b) one hundred and thirty (130) square feet in size.

(9) In the event of a tropical storm or hurricane watch issued by the National Weather Service, the Town shall have the right to order the supplier to remove the temporary storage unit by providing the supplier seventy-two (72) hours notice of removal. In the event of a tropical storm or hurricane warning issued by the National Weather Service, the temporary storage unit shall be immediately removed by the supplier after the warning being issued.

(10) Final action by the Town Manager with regard to issuance of a permit may be appealed to the Town Council by an aggrieved party. An "aggrieved party" shall include: (a) the permit applicant; (b) the owner or occupant of real property located immediately adjacent to the property on which the unit(s) shall be placed; or (c) a person suffering greater injury than others in the community or suffering a different type of injury than other persons in the community. Appeals to the Town Council shall be filed with the Town Clerk within not more than ten (10) days after the rendition of a decision to approve or disapproved issuance of a permit by the Town Manager. Appeals to the Town Council shall be *de novo*.

(Ord. No. 04-07, 2, 3-16-04)

Sec. 17-117. Vacation Rentals.

(a) *Performance Standards*. All vacation rentals dwellings qualifying under this section shall meet the following performance standards. These performance standards shall be included in the rental agreement and conspicuously posted inside the unit.

(1) Parking. For single family residential homes used as vacation rentals, there shall be at least two designated and available off-street parking space per unit.

(2) Excessive or late noise. Noise emanating from the resort dwelling shall not disturb the peace and quiet of the neighborhood vicinity in which the vacation rental is located. Sounds produced from any radio, stereo, television, amplifier, musical instrument, phonograph, device emitting sounds or audible noise, or similar device, shall not be discernable at the property line of the vacation rental unit after 10:00 PM and before 8:00 AM on Monday through Friday or before 9:00 AM Saturday and Sunday. The ambient noise level of the neighborhood is considered excessive which is discernable at the property line of a complainant is excessive noise after 10:00 PM and before 8:00 AM (weekdays) or 9 AM (Saturday and Sunday).

(3) Vehicles shall not be placed on the street or in yards. Watercraft and trailers shall comply with the provisions of Section 17-103 of the Town Code.

(4) No recreation vehicles shall be used for sleeping or overnight accommodations at or adjacent to the vacation rental unit.

(5) All trash and debris on the vacation rental property must be kept in covered trash containers.

(6) Vacation rentals must be registered, licensed and at all times be in compliance with

all applicable state requirements contained in chapters 212 (Florida Tax & Revenue Act) and 509 (Public Lodging Establishments), Florida Statutes, as implemented by the Florida Administrative Code, as may be amended.

(7) The name, address, and telephone number of the vacation rental manager(s), the telephone number of town code enforcement department and the town police department shall be posted prominently inside each rental unit.

(b) *Prohibitions, enforcement, and penalties.*

(1) It shall be unlawful for any vacation rental unit owner, landlord, tenant, agent or other representative of a landowner to rent, lease, advertise or hold out for rent any structure or unit for vacation rental use in any district where a vacation rental use is prohibited.

(c) *Prima facie* evidence of vacation rental of a dwelling unit shall include (i) registration or licensing for short-term rental or transient rental use by the state under chapters 212 (Florida Tax and Revenue Act) and 509 (public lodging establishments), Florida Statutes; (ii) advertising or holding out a dwelling unit for vacation rental use; (iii) reservations, booking arrangements or more than one (1) signed lease, sublease, assignment, or any other occupancy or agreement for compensation, trade, or other legal consideration addressing or overlapping any period of eighty-four (84) days or less; (iv) the use of an agent or other third person to make reservations or booking arrangements; (v) on a non-homestead property, different occupants have been observed on at least two separate occasions within any 90 day period; or (vi) on a non-homesteaded property, different vehicles with different license plate tags have been observed parked on at least two separate occasions in any 90 day period.

(d) In addition to any other remedies available to the town, the town or any adversely affected party may enforce the terms of this section in law or equity; provided, that enforcement may only be against the owner, operator, manager, landlord, or tenant of a vacation rental unit. An "adversely affected party" is a resident or property owner of the town whose property is located within three-hundred (300) feet of the vacation rental unit involved in an action brought pursuant to this sub-section. An adversely affected party may seek injunctive relief in a court of competent jurisdiction to prevent a violation of the zoning code or this section. Attorney's fees and costs incurred in an action to enforce these regulations concerning vacation rental use(s) may be awarded to a substantially prevailing party at the discretion of the court.

(Ord. No. 08-01, 3, 11-20-07)

17-118--17-120. Reserved.

ARTICLE VII. DISTRICT REGULATIONS

Sec. 17-121. "R-1-A" Single-Family Residence Districts.

Within "R-1-A" Single-Family Residence Districts the following regulations shall apply:

(1) *Permitted uses.* The following uses only shall be permitted:

(a) Single-family dwellings.
(b) Parish houses.
(c) Essential municipal uses.
(d) Public utilities serving the neighborhood area, excluding towers, buildings or storage areas.

(e) Gardening activities customarily incidental to single-family dwellings.
(f) Satellite dish antenna in the manner specified in section 17-111.
(g) Community residential home (level I facility only) subject to satisfying the standards set forth in section 17-115, town code.

(2) *Accessory buildings, structures and uses.*

(a) Accessory buildings, structures and uses customarily incidental to any use permitted by this section shall be allowed.
(b) All accessory buildings and structures located in the rear yard shall be set back not less than four (4) feet from all lot lines. On corner lots when the lot abuts two (2) intersecting streets, accessory use structures shall be set back not less than twenty-five (25) feet from any lot line abutting a street or public right-of-way. All accessory use structures shall be set back not less than five (5) feet from any principal or primary permitted use.
(c) All accessory uses shall meet the requirements of section 17-91.

(2.5) *Prohibited uses.* The following are specifically prohibited uses. Merely because a use is not specifically listed does not mean that the use is not prohibited.
(a) All uses which are not permitted uses.
(b) Vacation rental.
(c) Bed and breakfast facilities.
(d) Medical marijuana treatment center dispensing facility.

(3) *Building height limitation.*

(a) The maximum height (see definition) of any building other than an accessory use shall be thirty (30) feet and the building shall not exceed two (2) stories.
(b) The maximum height permitted for an accessory use structure shall be eight (8) feet, if the use is set back at least four (4) feet from the rear and side lot lines. The maximum height permitted for an accessory use structure shall be increased one and one-half (1 1/2) feet to a maximum of fourteen (14) feet for each additional one (1) foot that the accessory structure is set back, in excess of four (4) feet, from the rear and side lot lines.

(4) *Lot area.* The minimum area of any lot shall be ten thousand (10,000) square feet.

(5) *Lot dimensions.* The minimum dimensions of any lot shall be:

(a) Depth, one hundred (100) feet.
(b) Width at building line, one hundred (100) feet.

(6) *Front yards.* Front yards shall be not less than twenty-five (25) feet in depth.

(7) *Side yards.* Side yards shall be not less than:

(a) Interior lots, ten (10) feet in depth on each side.
(b) Where side yard of a corner lot abuts one of two (2) intersecting streets, twenty-five (25) feet in depth on the side abutting the street and ten (10) feet in depth on the other side.

(8) *Rear yards.* Rear yards shall be not less than twenty (20) feet in depth.

(9) *Living area.* The minimum living area of any dwelling shall be at least nineteen hundred and fifty (1,950) square feet.

(10) *Grading and drainage.* Section 17-114 applies.

(Code 1962, 28-90; Ord. No. 153, 1, 6-19-73; Ord. No. 261, 2, 12, 13, 7-17-79; Ord. No. 87-4, 2, 2-17-87; Ord. No. 92-3, 2, 1-21-92; Ord. No. 92-4, 2, 2-18-92; Ord. 92-13, 2, 3-16-93; Ord. 95-9, 6, 7-18-95; Ord. No. 95-13, 3, 10-17-95; Ord. No. 08-01, 4, 11-20-07; Ord. No. 17-10, 2, 5/15/17; Ord. No. 17-14, 2 9/13/17)

Sec. 17-122. "R-1-B" Single-Family Residence Districts.

Within "R-1-B" Single-Family Residence Districts the following regulations shall apply:

(1) *Permitted uses.* The following uses only shall be permitted:

(a) Single-family dwellings.
(b) Parish houses.
(c) Essential municipal uses.
(d) Public utilities serving the neighborhood area, excluding towers, buildings or storage areas.
(e) Gardening activities customarily incidental to single-family dwellings.
(f) Satellite dish antenna in the manner specified in section 17-111.
(g) Community residential home (level I facility only) subject to satisfying the standards set forth in section 17-115, town code.

(2) *Accessory buildings, structures and uses.*

(a) Accessory buildings, structures and uses customarily incidental to any use permitted by this section shall be allowed.
(b) All accessory buildings and structures located in the rear yard shall be set back not less than four (4) feet from all lot lines. On corner lots when the lot abuts two (2) intersecting streets, accessory use structures shall be set back not less than twenty-five (25) feet from any lot line abutting a street or public right-of-way. All accessory use structures shall be set back not less than five (5) feet from any principal or primary permitted use.
(c) All accessory uses shall meet the requirements of section 17-91.

(2.5) *Prohibited uses.* The following are specifically prohibited uses. Merely because a use is not specifically listed does not mean that the use is not prohibited.
(a) All uses which are not permitted uses.
(b) Vacation rentals.
(c) Bed and breakfast facilities.
(d) Medical marijuana treatment center dispensing facility.

(3) *Building height limitation.*

(a) The maximum height (see definition) of any building other than an accessory use shall be thirty (30) feet and the building shall not exceed two (2) stories.
(b) The maximum height permitted for an accessory use structure shall be eight (8) feet, if the use is set back at least four (4) feet from the rear and side lot lines. The maximum height permitted for an accessory use structure shall be increased one and one-half (1 1/2) feet to a maximum of fourteen (14) feet for each additional one (1) foot that the accessory structure is set back, in excess of four (4) feet, from the rear and side lot lines.

(4) *Lot area.* The minimum area of any lot shall be ten thousand (10,000) square feet.

(5) *Lot dimensions.* The minimum dimensions of any lot shall be:

(a) Depth, one hundred (100) feet.
(b) Width at building line, one hundred (100) feet.

(6) *Front yards.* Front yards shall be not less than twenty-five (25) feet in depth.

(7) *Side yards.* Side yards shall be not less than:

(a) Interior lots, ten (10) feet in depth on each side; or,
(b) Where side yard of a corner lot abuts one of two (2) intersecting streets, twenty-five (25) feet in depth on the side abutting the street and ten (10) feet in depth on the other side.

(8) *Rear yards.* Rear yards shall be not less than twenty (20) feet in depth.

(9) *Living area.* The minimum living area of any dwelling shall be seventeen hundred and fifty (1,750) square feet.

(10) *Grading and drainage.* Section 17-114 applies.

(Code 1962, 28-91; Ord. No. 153, 2, 6-19-73; Ord. No. 162, 4, 9-17-74; Ord. No. 261, 3, 14, 7-17-79; Ord. No. 87-4, 3, 2-17-87; Ord. No. 92-3, 3, 1-21-92; Ord. No. 92-4, 3, 2-18-92; Ord. No. 92-13, 3, 3-16-93; Ord. 95-9, 7, 7-18-95; Ord. 95-13, 4, 10-17-95, Ord. 08-01, 5, 11-20-07; Ord. No. 17-10, 3, 5/15/17, Ord. No. 17-14, 3, 9/13/17)

Sec. 17-123. "R-2" Duplex Residence Districts.

Within "R-2" Duplex Residence Districts the following regulations shall apply:

(1) *Permitted uses.* The following uses only shall be permitted:

(a) Single-family dwellings.
(b) Parish houses.
(c) Essential municipal uses.
(d) Public utilities serving the neighborhood area, excluding towers, buildings or storage areas.
(e) Gardening activities customarily incidental to single-family dwellings.
(f) Duplex family living units
(g) Satellite dish antenna in the manner specified in section 17-111.
(h) Community residential home (level I or II facilities) subject to satisfying the standards set forth in section 17-115, town code.

(2) *Accessory buildings, structures and uses.*

(a) Accessory buildings, structures and uses customarily incidental to any use permitted by this section shall be allowed.
(b) All accessory buildings and structures located in the rear yard shall be set back not less than four (4) feet from all lot lines. On corner lots when the lot abuts two (2) intersecting streets, accessory use structures shall be set back not less than twenty-five (25) feet from any lot line abutting a street or public right-of-way. All accessory use structures shall be set back not less than five (5) feet from any principal or primary permitted use.
(c) All accessory uses shall meet the requirements of section 17-91.

(2.5) *Prohibited uses.* The following are specifically prohibited uses. Merely because a use is not specifically listed does not mean that the use is not prohibited.
(a) All uses which are not permitted uses.
(b) Vacation rentals.
(c) Bed and breakfast facilities.
(d) Medical marijuana treatment center dispensing facility.

(3) *Building height limitation.*

(a) The maximum height (see definition) of any building other than an accessory use shall be thirty (30) feet and the building shall not exceed two (2) stories.

(b) The maximum height permitted for an accessory use structure shall be eight (8) feet, if the use is set back at least four (4) feet from the rear and side lot lines. The maximum height permitted for an accessory use structure shall be increased one and one-half (1 1/2) feet to a maximum of fourteen (14) feet for each additional one (1) foot that the accessory structure is set back, in excess of four (4) feet, from the rear and side lot lines.

(4) *Lot area.* The minimum area of any lot shall be ten thousand (10,000) square feet.

(5) *Lot dimensions.* The minimum dimensions of any lot shall be:

(a) Depth, one hundred (100) feet.
(b) Width at building line, one hundred (100) feet.

(6) *Front yards.* Front yards shall be not less than twenty-five (25) feet in depth.

(7) *Side yards.* Side yards shall be not less than:

(a) Interior lots, ten (10) feet in depth on each side.
(b) Where side yard of a corner lot abuts one of two (2) intersecting streets, twenty-five (25) feet in depth on the side abutting the street and ten (10) feet in depth on the other side.

(8) *Rear yards.* Rear yards shall be not less than twenty (20) feet in depth.

(9) *Living area.* The minimum living area of any dwelling shall be:

(a) Single-family units, thirteen hundred and fifty (1,350) square feet.
(b) Duplexes, one thousand (1,000) square feet.

(10) *Parking spaces.* Section 17-99 applies.

(11) G*round covering.* In addition to meeting the following requirements, a landscaping plan shall be submitted to the town along with architectural plans.

(a) At least twenty percent (20%) of the parcel of land must be devoted to lawn or plants. At least half of the minimum required landscaping must be contained in the front yard area.
(b) A landscape buffer of not less than five (5) feet wide shall be provided between parking areas and near side lines.
(c) A landscape buffer of not less than five (5) feet wide shall be provided along front property line except for ingress and egress areas.

(12) *Density.* The maximum density for this zone shall not be greater than fifteen (15) units per acre.

(13) *Grading and drainage.* Section 17-114 applies.

(Code 1962, 28-92; Ord. No. 153, 1, 6-19-73; Ord. No. 234, 1, 3-21-78; Ord. No. 261, 4, 15, 7-17-79; Ord. No. 87-4, 4, 2-17-87; Ord. No. 92-3, 4, 1-21-92; Ord. No. 92-4, 4, 2-18-92; Ord. No. 92-13, 5, 3-16-93; Ord. 95-9, 8, 7-18-95; Ord. 95-13, 5, 10-17-95; Ord. No. 08-01, 6, 11-20-07; Ord. No. 17-10, 4, 5/15/17; Ord. No. 17-14, 4, 9/13/17)

Sec. 17-124. "R-3" Multi-Family Residence Districts.

Within "R-3" Multi-Family Residence Districts the following regulations shall apply:

(1) *Permitted uses.* The following uses only shall be permitted:

(a) Single-family dwellings.
(b) Parish houses.
(c) Essential municipal uses.
(d) Public utilities serving the neighborhood area, excluding towers, buildings or storage areas.
(e) Gardening activities customarily incidental to single-family dwellings.
(f) Duplex family living units
(g) Multiple-family living units
(h) Satellite dish antenna in the manner specified in section 17-111.
(i) Community residential home (level I or level II facilities) subject to satisfying the standards set forth in section 17-115, town code.

(2) *Accessory buildings, structures and uses.*

(a) Accessory buildings, structures and uses customarily incidental to any use permitted by this section shall be allowed.
(b) All accessory buildings and structures located in the rear yard shall be set back not less than four (4) feet from all lot lines. On corner lots when the lot abuts two (2) intersecting streets, accessory use structures shall be set back not less than twenty-five (25) feet from any lot line abutting a street or public right-of-way. All accessory use structures shall be set back not less than five (5) feet from any principal or primary permitted use.
(c) All accessory uses shall meet the requirements of section 17-91.

(2.5) *Prohibited uses.* The following are specifically prohibited uses. Merely because a use is not specifically listed does not mean that the use is not prohibited.
(a) All uses which are not permitted uses.
(b) Vacation rentals.
(c) Bed and breakfast facilities.
(d) Medical marijuana treatment center dispensing facility.

(3) *Building height limitation.*

(a) The maximum height (see definition) of any building other than an accessory use shall be thirty (30) feet and the building shall not exceed two (2) stories.

(b) The maximum height permitted for an accessory use structure shall be eight (8) feet, if the use is set back at least four (4) feet from the rear and side lot lines. The maximum height permitted for an accessory use structure shall be increased one and one-half (1 1/2) feet to a maximum of fourteen (14) feet for each additional one (1) foot that the accessory structure is set back, in excess of four (4) feet, from the rear and side lot lines.

(4) *Lot area.* The minimum area of any lot shall be ten thousand (10,000) square feet.

(5) *Lot dimensions.* The minimum dimensions of any lot shall be:

(a) Depth, one hundred (100) feet.
(b) Width at building line, one hundred (100) feet.

(6) *Front yards.* Front yards shall be not less than twenty-five (25) feet in depth.

(7) *Side yards.* Side yards shall be not less than:

(a) Interior lots, ten (10) feet in depth on each side.
(b) Where side yard of a corner lot abuts one of two (2) intersecting streets, twenty-five (25) feet in depth on the side abutting the street and ten (10) feet in depth on the other side.

(8) *Rear yards.* Rear yards shall be not less than twenty-five (25) feet in depth.

(9) *Living area.* The minimum living area of any dwelling shall be:

(a) Single-family units, 1350 sq. feet.
(b) Duplexes, 1,000 sq. ft. for each unit.
(c) Apartments, 800 sq. ft. for each unit.
(d) Condominiums, 1,000 sq. ft. per unit.

(10) *Parking spaces.* Section 17-99 applies.

(11) *Ground covering.* In addition to meeting the following requirements, a landscape plan shall be submitted to the town along with architectural plans.

(a) At least twenty percent (20%) of the parcel of land must be devoted to lawn or plants. At least half (1/2) of the minimum required landscaping must be contained in the front yard area.
(b) A landscape buffer of not less than five (5) feet wide shall be provided between parking areas and near side lines.
(c) A landscape buffer of not less than five (5) feet wide shall be provided along front property line except for ingress and egress areas.

(12) *Density.* The maximum density for this zone shall be not greater than fifteen (15) units per acre.

(13) *Buffer wall.* Where the property abuts property in the R-1-A District, R-1-B District, or R-2 District, a solid wall, six (6) feet high and at least six (6) inches thick, constructed of brick, block, mortar, or similar building materials, and sufficient to obstruct the view of such abutting residential property, shall be provided. The buffer wall shall be placed at the common property line of the R-3 District and the R-1-A District, R-1-B District or R-2 District and shall parallel the length of the common boundary. A wooden fence is strictly prohibited.

(14) *Grading and drainage.* Chapter 16.5, Article III applies.

(Code 1962, 28-93; Ord. No. 153, 1, 4, 6-19-73; Ord. No. 154, 5, 1-15-74; Ord. No. 261, 5, 16, 7-17-79; Ord. No. 81-298, 3, 8-18-81; Ord. No. 87-4, 5, 2-17-87; Ord. No. 92-3, 5, 1-21-92; Ord. No. 92-4, 5, 2-18-92; Ord. No. 92-13, 5, 3-16-93; Ord. No. 95-9, 9, 7-18-95; Ord. No. 95-13,6, 10-17-95; Ord. No. 02-04, 2, 2-18-02; Ord. 08-01, 7, 11-20-07; Ord. No. 15-05, 1, 8-12-15; Ord. No. 17-10, 5, 5/15/17; Ord. No. 17-14, 5, 9/13/17)

Editor's note--Ord. No. 81-298, 3, adopted Aug. 18, 1981, enacted provisions designated as 28-93(12), which provisions have been included herein as 17-124(13).

Sec. 17-125. "R-P" Residential-Professional Districts.

Within "R-P" Residential-Professional Districts, the following regulations shall apply:

(1) *Permitted uses.* The following uses only shall be permitted:

(a) Single-family dwellings.
(b) Parish houses.
(c) Essential municipal uses.
(d) Public utilities serving the neighborhood area, excluding towers, buildings or storage areas.
(e) Gardening activities customarily incidental to single-family dwellings.
(f) Duplex family living units
(g) Multiple-family living units
(h) Satellite dish antenna in the manner specified in section 17-111.
(i) The professional activities listed below, to the extent that they do not involve the manufacture, preparation, or sale of an article or commodity on or from within the premises except that uses accessory to the principal permitted uses shall be allowed:

(1) Accountants.
(2) Architects.
(3) Attorneys.
(4) Barber shops/beauty salons
(5) Chiropractors.
(6) Dental labs
(7) Dentists.
(8) Engineers.
(9) Existing church building.
(10) Insurance brokers.
(11) Optometrists.
(12) Osteopaths.
(13) Physicians.
(14) Real estate brokers.
(15) Consultants to the above.
(16) Professional activities similar and conforming to the standards governing the above and not more detrimental, objectionable, or annoying to the community.

(j) Community residential home (level I or level II facilities) subject to satisfying the standards set forth in section 17-115, town code.

2) *Standards governing permitted uses.* The following standards shall govern uses:
   (a) No odor, dust, fumes, gas, smoke or other atmospheric pollutants shall be disseminated beyond the boundaries of the immediate site of the building in which the use is conducted.
   (b) Noise level from operations shall be negligible. No noise or vibration resulting from or in connection with the use shall be perceptible from any part of any residence district.
   (c) There shall be no glare resulting from or in connection with the use that is observable from outside the boundaries of the Residential-Professional "RP" District.
   (d) The vehicular traffic resulting from or in connection with the use shall not add materially to the traffic on streets that primarily serve residence districts.
   (e) The use shall not be otherwise detrimental, objectionable, or annoying to the owners or occupants of nearby property.

(2.5) *Prohibited uses.* The following are specifically prohibited uses. Merely because a use is not specifically listed does not mean that the use is not prohibited.
   (a) All uses which are not permitted uses.
   (b) Vacation rentals.
   (c) Bed and breakfast facilities.
   (d) Medical marijuana treatment center dispensing facility..

(3) *Building height limitation:*

   (a) The maximum height (see definition) of any building other than an accessory use shall be thirty (30) feet and the building shall not exceed two (2) stories.
   (b) The maximum height permitted for an accessory use structure shall be eight (8) feet, if the use is set back at least four (4) feet from the rear and side lot lines. The maximum height permitted for an accessory use structure shall be increased one and one-half (1 1/2) feet to a maximum of fourteen (14) feet for each additional one (1) foot that the accessory structure is set back, in excess of four (4) feet, from the rear and side lot lines.

(4) *Lot area.* The minimum area of any lot shall be ten thousand (10,000) square feet.

(5) *Lot dimensions.* The minimum dimensions of any lot shall be:
   (a) Depth, one hundred (100) feet.
   (b) Width at building line, one hundred (100) feet.

(6) *Front yards.* Front yards shall be not less than twenty-five (25) feet in depth.

(7) *Side yards.* Side yards shall be not less than:
   (a) Interior lots, ten (10) feet in depth on each side;
   (b) Where side yard of a corner lot abuts one of two (2) intersecting streets, twenty-five (25) feet in depth on the side abutting the street and ten (10) feet in depth on the other side.

(8) *Rear yards.* Rear yards shall be not less than twenty (20) feet in depth.

(9) *Living and professional use areas.*

(a) The minimum living area of any dwelling shall be:
(1) Single-family dwellings--1350 square feet.
(2) Duplex dwellings--800 square feet per unit.
(3) Multi-family dwellings--800 square feet per unit.
(4) Condominiums--1000 square feet per unit.
(b) The minimum area for any professional use shall be 1000 square feet per unit.

(10) *Parking spaces.*
(a) All offstreet parking facilities shall meet the requirements of section 17-99.
(b) For professional uses, one parking space for every four hundred (400) square feet of floor area devoted to such use, excluding storage space, shall be provided.

(11) *Rental use.* Renting rooms shall be permitted, provided the area devoted to such use shall not exceed twenty-five (25) percent of the total area of any dwelling unit.

(12) *Signs.* Section 17-106 applies.

(13) *Buffer wall.*

(a) Where the property abuts property in the R-l-A District, R-l-B District, R-2 District, or R-3 District, a solid wall, six (6) feet high and at least six (6) inches thick, constructed of brick, block, mortar, or similar building materials, and sufficient to obstruct the view of such abutting residential property, shall be provided.

(b) The buffer wall shall parallel the length of the common boundary between the subject property located within the R-P District and the R-1-A District, R-1-B District, R-2 District, or R-3 District. The buffer wall shall be placed at the common property line of the R-P District and the R-1-A District, R-1-B District, R-2 District, or R-3 District. A wooden fence is strictly prohibited.

(c) The buffer wall shall be installed when there is a substantial improvement to the R-P zoned property. As used in this paragraph the term "substantial improvement" means:
(1)A change in the use of a major and material nature. For example, a change from a residential use to a professional office use would constitute a major and material change,
(2) Clearing of an entirely undeveloped property and making use of the property. For example - use of the property as a parking lot,
(3) Demolition of an existing principal structure and construction of a new principal structure for use as a professional office,
(4) An expansion of the floor area of an existing professional office structure by ten percent (10%) or more: or
(5) Construction of a professional office structure on undeveloped property.

(14) *Ground covering.* In addition to meeting the following requirements, a landscape plan shall be submitted to the town along with architectural plans.

(a) At least twenty percent (20%) of the parcel of land must be devoted to lawn or plants. At least half (1/2) of the minimum required landscaping must be contained in the front yard area.

(b) A landscape buffer of not less than two (2) feet wide along the side property lines shall be provided.

(15) *Density.* The maximum density for this zone shall be not greater than fifteen (15) units per acre.

(16) *Accessory buildings, structure and uses.*

(a) Accessory buildings, structures and uses customarily incidental to any use permitted by this section shall be allowed.
(b) All accessory buildings and structures located in the rear yard shall be set back not less than four (4) feet from all lot lines. On corner lots when the lot abuts two (2) intersecting streets, accessory use structures shall be set back not less than twenty-five (25) feet from any lot line abutting a street or public right-of-way. All accessory use structures shall be set back not less than five (5) feet from any principal or primary permitted use.
(c) All accessory uses shall meet the requirements of section 17-91.

(17) *Grading and drainage.* Chapter 16.5, Article III applies.

(Code 1962, 28-94; Ord. No 153, 1,5, 6-19-73; Ord. No. 154, 4, 1-15-74; Ord No. 197, 1, 6-15-76; Ord. No. 261, 6, 17, 7-17-79; Ord. No. 81-298, 4, 8-18-81; Ord. No. 84-344, 2, 3-20-84; Ord. No. 87-4, 6, 2-17-87, Ord. No. 87-9, 3, 8-18-87 Ord. No. 90-13, 4, 1-15-91; Ord. No. 92-3, 6, 1-21-92; Ord. No. 92-4, 6, 2-18-92; Ord. No. 92-13, 6- 3-16-93; Ord. 95-9, 10, 7-18-95; Ord. 95-13, 7, 10-17-95; Ord. No. 97-9, 1, 7-1-97; Ord. No. 00-05, 1-3, 11-21-00; Ord. No. 02-04, 3, 2-18-02; Ord. No. 08-01, 8, 11-20-07; Ord. No. 15-05, 2, 8-12-15; Ord. No. 17-10, 6, 5/15/17; Ord. No. 17-14, 6, 9/13/17

Sec. 17-126. "C" and "C-1" Commercial Districts.

Within "C" and "C-1" Commercial Districts, the following regulations shall apply:

(1) *Permitted uses.* The following uses only are permitted:

(a) Air conditioning equipment (sales only).
(b) Aquariums and supplies.
(c) Architects.
(d) Arts and crafts.
(e) Attorneys.
(f) Bakeries (retail only).
(g) Banks, trust companies, savings institutions, finance companies and similar financial institutions.
(h) Barber shops.
(i) Beauty salons.
(j) Brokers (securities).
(k) Bridal service and gifts.
(l) Candy shops.
(m) Carpeting.
(n) China and crystal stores.
(o) Chiropractors.
(p) Clothing stores.
(q) Cocktail lounges, package stores and other establishments selling alcoholic beverages, excluding those operated in conjunction with, and/or as part of, a restaurant, motel, hotel, club or lodge. The location shall be at least seven hundred and fifty (750) feet from any presently existing church, public school or other establishment selling alcoholic beverages other than beer or wine. Distance to be determined by the route of walking on public sidewalks or right-of-way and not direct air route, and shall be measured between the main entrances of such facilities as described herein.
(r) Decorators.
(s) Dental labs
(t) Dentists.
(u) Department stores.
(v) Doctors.
(w) Drug stores.
(x) Dry cleaners, Class IV.
(y) Dry goods stores.
(z) Electric appliances.
(aa) Electronic sales and service.
(bb) Fabric shops.
(cc) Florists.
(dd) Furniture stores.
(ee) Gift shops (personal and household).
(ff) Glassware.

(gg) Greeting cards.
(hh) Hardware stores.
(ii) Hearing aids and service.
(jj) Heating equipment (sales only).
(kk) Hobby shops.
(ll) Hosiery and lingerie.
(mm) Housewares.
(nn) Insurance offices.
(oo) Jewelry stores.
(pp) Laundries (pickup only).
(qq) Laundromats.
(rr) Massaging equipment.
(ss) Maternity wear.
(tt) Music stores.
(uu) Office supplies.
(vv) Opticians.
(ww) Optometrists.
(xx) Photo finishing and supplies.
(yy) Plastics.
(zz) Real estate.
(aaa) Restaurants (not including drive-in, open-air, barbecue or similar establishments).
(bbb) Service stations subject to the requirements of Section 17-126(2)(i), town code.
(ccc) Shoe stores, shoe repair.
(ddd) Shopping centers.
(eee) Sportswear and sporting goods.
(fff) Stereo centers.
(ggg) Swimming pool equipment.
(hhh) Tackle, fishing and marina supplies stores.
(iii) Television sales and services.
(jjj) Ten cent stores.
(kkk) Trailer supplies.
(lll) Travel agencies.
(mmm) Commercial or professional uses which conform to the standards governing permitted uses contained in this section, and which are no more detrimental, objectionable or annoying to the welfare of the community, than the uses enumerated in this subsection.
(nnn) Drive-through restaurant.
(ooo) Tattoo establishment.

(2) *Standards governing permitted uses.* The following standards shall govern new uses and changes of existing uses:

(a) No odor, dust, fumes, gas, smoke or other atmospheric pollutants shall be disseminated beyond the boundaries of the immediate site of the building in which the use is conducted.

(b) Noise level from operations shall be negligible. No noise or vibration resulting from or in connection with the use shall be perceptible from any part of any residence district.

(c) There shall be no glare resulting from or in connection with the use that is observable from outside the boundaries of the "C" Commercial District.

(d) The vehicular traffic resulting from or in connection with the use shall not add materially to the traffic on streets that primarily serve residence districts.

(e) Every use customarily conducted within a building, except for sidewalk sales as authorized by Section 13-3, Town Code, shall be conducted in a building enclosed on all sides with permanent walls, it being the intention of this provision to prohibit open front buildings for any use except as an accessory garden structure.

(f) The use shall not be otherwise detrimental, objectionable, or annoying to the owners or occupants of nearby property.

(g) *Buffer wall.* Where the property abuts property in the R-1-A District, R-1-B District, R-2 District, R-3 or R-P Districts, a solid wall, six (6) feet high and at least six (6) inches thick, constructed of brick, mortar or similar building materials and sufficient to obstruct the view of such abutting residential property, shall be provided. The buffer wall shall be placed at the common property line of the C and C-1 District and the R-1-A District, R-1-B District, R-2 District, R-3 District or R-P District and shall parallel the length of the common boundary. A wooden fence is strictly prohibited.

(h) A drive-through restaurant may only be operated if there is a minimum distance of two thousand (2,000) feet measured along the applicable street or streets center line from the nearest points of the lot boundaries between an existing drive-through restaurant and the proposed drive-through restaurant.

(i) Service stations/convenience stores with gas pumps. Service stations or convenience stores with gas pumps shall be governed by the following provision:

(1) There shall be a minimum distance of seven-hundred fifty (750) feet between service stations or convenience stores with gas pumps as measured from the nearest property boundary.

(2) Minimum lot size: 40,000 square feet.

(3) Minimum floor area: 300 square feet.

(4) Setbacks for tanks: 50 feet from any lot line, 100 feet from residential zoning districts, and 100 feet from mean or ordinary high water line of the Indian River Lagoon.

(5) Tank storage must be underground.

(6) Outdoor loudspeakers are prohibited.

(3) *Prohibited uses.* The following uses are prohibited. Merely because a use is not specifically listed does not mean that the use is not prohibited.

(a) Abattoirs and slaughterhouses.
(b) Automobile seat covers.
(c) Automotive dealers.
(d) Automotive parts and service.
(e) Automotive repair shops.

(f) Awnings, screened enclosures and cabanas.
(g) Billiard parlors, poolrooms and similar places of amusement.
(h) Boat sales, repairs and service.
(i) Bowling alleys.
(j) Bus terminals.
(k) Car wash.
(l) Cemeteries.
(m) Ceramic tile, sales and service.
(n) Commercial garages.
(o) Commercial swimming pools.
(p) Dance halls.
(q) Drive-ins, diners, barbecue stands, open-air restaurants and similar establishments.
(r) Dwellings.
(s) Farm supplies, feed and fertilizer.
(t) Feed distributors.
(u) *Reserved.*
(v) Fortunetellers, clairvoyants and similar activities.
(w) Heating equipment, installation and maintenance.
(x) Hospitals.
(y) Landscaping.
(z) Loans (short term).
(aa) Lumber companies.
(bb) Marine repairs.
(cc) Mobile homes, sales and service.
(dd) Motorcycles, sales and service.
(ee) Nurseries (landscaping).
(ff) Outboard motor service.
(gg) Outdoor amusement devices.
(hh) Outdoor business activities.
(ii) Pawnbrokers.
(jj) Pest control.
(kk) Print shops.
(ll) Septic tank supplies and service.
(mm) Sheet metal.
(nn) Reserved.
(oo) Steam laundries.
(pp) Storage or disposal of junk, rags, or other waste material.
(qq) Storage warehouses.
(rr) Tire recapping.
(ss) Tourist camps.
(tt) Undertaking establishments.
(uu) Used car lots.
(vv) Well drilling and equipment.
(ww) Yards for contractors or other construction materials or equipment.

(xx) Other uses which are as detrimental, objectionable or annoying to the welfare of the community as the uses described in this subsection.

(yy) Any enterprise which is deemed deleterious or harmful to the public health, safety, welfare or morals of this primarily residential town and its adult citizens and children, and which is not in accordance with prevailing contemporary community standards, taking into account federal and state statutes, Constitutional decisions, as well as the respective Constitutions themselves; including but not limited to, by way of example only, "adult" book stores, "massage" parlors and "nudie" shows.

(zz) Vacation rentals.

(aaa) Bed and breakfast facilities.

(bbb) Medical marijuana treatment center dispensing facility.

(ccc) All uses which are not permitted uses.

(4) *"C-l" Commercial Districts.* There shall be established on the zoning map of the town a commercial district designated as "C-1" which will have the same permitted uses and be subject to the same prohibited uses as provided for "C" Commercial Districts except that such area shall be subject to the following additional prohibited uses:

(a) Liquor stores.

(b) Cocktail lounges or bars.

(c) Service stations.

(d) Laundromats.

(e) Trailer supplies.

(5) *Grading and drainage.* Chapter 16.5, Article III applies.

(6) *Lot area.* The minimum area of any lot shall be five thousand (5,000) square feet.

(7) *Side yards.* No side yards are required between adjoining commercial properties; however, side yards on corner lots require a side setback of fifteen (15) feet from the side street.

(8) *Setbacks.*

(a) All commercial buildings on Fifth Avenue shall be set back fifteen (15) feet from the street right-of-way lines.

(b) All buildings on lots facing or bordering on Fourth Avenue and Sixth Avenue shall be set back twenty-five (25) feet from the street right-of-way line.

(c) All buildings on lots facing or adjacent to residential districts shall be set back twenty-five (25) feet from the nearest point of the residential district.

(9) Repealed.

(10) *Access control.*

(a) A point or points of driveway, or other opening for vehicles onto a public street, shall be acted upon in each case by the zoning board.
(b) No point of access shall be constructed within ten (10) feet of the right-of-way line of any public street intersection.
(c) No curbs on town streets or rights-of-way shall be cut or altered without a permit issued by the building inspector.
(d) Any parking areas which have access to Miramar Avenue, Fifth Avenue, or Riverside Drive shall have a curb not less than six (6) inches high nor less than six (6) inches wide separating such parking areas from such adjacent roadways and their sidewalks if any.

(11) *Offstreet parking.*

(a) A minimum of two (2) offstreet parking places shall be provided for the first four hundred (400) square feet per each commercial building, excluding storage space, plus one parking space for each additional four hundred (400) square feet of floor space, excluding storage space. Restaurants, bars, and lounges, all must have at least one space for each three (3) seats.
(b) All offstreet parking areas shall meet the requirements of section 17-99(b).

(12) *Signs.* Section 17-106 applies.

(13) *Building height limitation.* The maximum height (see definition) of any building shall be thirty-five (35) feet and the building shall not exceed three (3) stories.

(14) *Architectural design.*

(a) All new construction after 1 March 1972 must follow a distinctive and tasteful architectural period theme. (For example, Early American, Colonial, Mediterranean, Old English, Contemporary, etc.) The theme must be compatible with existing community architecture.
(b) Landscaping shall be five percent (5%) of total lot area. Attention must be given to provide some minimum landscaping in the front setback area.
(c) Architectural treatment compatible with period theme must be given to all storefront windows. Exposed untreated masonry or stucco walls should be avoided.
(d) Designs of signs must also be compatible with the period theme.
(e) A site plan must be submitted to and approved by the zoning board in accordance with section 17-129.

(15) *Accessory buildings and uses permitted in "C" and "C-1" districts.*

(a) Satellite dish antenna in the manner specified in section 17-111.

(Code 1962, 28-95; Ord. No. 149, 1, 3-20-73; Ord. No. 211, 1, 4-19-77; Ord. No. 234, 2, 3-21-78; Ord. No. 250, 1, 3-20-79; Ord. No. 261, 7, 7-17-79; Ord. No. 83-336, 1, 2, 10-18-83; Ord. No. 85-19, 1, 8-20-85; Ord. No. 85-20, 1, 8-20-85; Ord. No. 86-6, 8-18-87; Ord. No. 88-9, 1, 6-28-88; Ord. No. 89-2, 1, 3, 5, 1-17-89; Ord. No. 90-13, 5, 1-15-91; Ord. No. 92-3, 7, 1-21-92; Ord. No. 93-4, 3, 6-15-93; Ord. No. 94-7, 5, 1-18-94; Ord. No. 00-05, 4, 11-21-00; Ord. 02-04, 4, 2-18-02; Ord. No. 08-01, 9, 11-20-07; Ord. No. 15-05, 3, 8-12-15; Ord. No. 17-10, 7, 5/15/17; Ord. No. 17-11, 3, 7/17/17; Ord. No. 17-14, 7, 9/13/17)

Sec. 17-127. "T" Tourist Districts.

Within "T" Tourist Districts, the following regulations shall apply:

(1) *Permitted uses.* The following uses only shall be permitted, subject to prior review and approval of plans by the zoning board:

(a) Uses permitted in "R-P" Residential-Professional Districts.
(b) Any multiple-living unit, hotels, motels. Hotels or motels must contain not less than ten (10) rental units.
(c) Hotels and motels of not less than ten (10) rental units are permitted to have related service activities such as restaurants or shops, provided such uses are situated on and are part of the hotel or motel building and that the sale of alcoholic beverages shall conform to the provisions of this Code. Total floor area devoted to shops operated within a hotel or motel building shall be no greater than one thousand (1,000) square feet. There shall be no more than three (3) such establishments per hotel or motel.
(d) Clubs.
(e) Lodges.
(f) Bed and breakfast facilities.
(g) Vacation rentals.

(2) *Accessory buildings and uses.*

(a) Accessory buildings and uses customarily incidental to any use permitted by this section shall be allowed.
(b) Where a parcel of land is developed with more than one building, buildings will be spaced by at least twenty (20) feet between outside walls.
(c) All accessory buildings shall be located in the rear yard and set back not less than four (4) feet from all lot lines.
(d) Satellite dish antenna in the manner specified in section 17-111.

(2.5) *Prohibited uses.* The following are specifically prohibited uses. Merely because a use is not specifically listed does not mean that the use is not prohibited.

(a) All uses which are not permitted uses.
(b) Medical marijuana treatment center dispensing facility.

(3) *Lot area.* The minimum area of any lot shall be ten thousand (10,000) square feet.

(4) *Lot dimensions.* The minimum dimensions of any lot shall be:

(a) Depth, ninety (90) feet.
(b) Width, one hundred (100) feet.

(5) *Front yards.* Front yards shall be not less than twenty-five (25) feet in depth.

(6) *Side yards.* Side yards on interior lots shall be not less than ten (10) feet in depth on each side. Side yards on corner lots shall be not less than twenty (20) feet on the street side.

(7) *Rear yards.* Rear yards shall be not less than fifteen (15) feet in depth.

(8) Living area. The minimum living area of any dwelling shall be:
(a) Motels--300 square feet per unit.
(b) Apartments (construction commenced or building permit issued prior to October 1, 2007) -500 square feet per unit.
(c) Condominiums/Apartments/Vacation rentals--1,000 square feet per unit.
(d) Bed and breakfast facilities -- 200 square feet per dwelling room or suite, which may include a bathroom, with at least one common area for the use of guests from all dwelling rooms or suites only.

(9) *Parking spaces.*

(a) There shall be provided offstreet parking for each living or rental unit as designated in each of the following categories:
(1) Hotels, motels--One space per unit.
(2) Duplexes and apartment houses with rental units--One and one-half (1 l/2) spaces per unit.
(3) Separately and/or privately owned apartments, triplexes, condominiums, vacation rentals, or co-op apartments--Two (2) spaces per unit.
(4) Restaurants and lounges will be required to meet an additional parking requirement of one parking space for every five (5) seats.
(5) Bed and breakfast facility -- one space per unit (dwelling room).

(b) All offstreet parking areas shall meet the requirements of section 17-99(b).

(10) *Advertising signs.* Section 17-106 applies.

(11) *Floor area ratio.* The floor area ratio is defined as the gross floor area of a building on a lot or parcel, divided by the total area of the lot or parcel. The maximum floor area of buildings or structures erected after 1 April 1971 in a "T" district shall be determined by a floor area ratio of 2.0.

(12) *Ground covering.* In addition to meeting the following requirements, a landscape plan shall be submitted along with architectural plans.

(a) At least twenty percent (20%) of the parcel of land must be devoted to lawn or plants.
(b) A landscape buffer of not less than five (5) feet wide shall be provided between parking areas and near side lines.
(c) A landscape buffer of not less than five (5) feet wide shall be provided along front property line except for ingress and egress areas.

(13) *Building height limitation.* The maximum height (see definition) of any building shall be thirty-five (35) feet and the building shall not exceed three (3) stories.

(14) *Density.* The maximum density for this district shall be not greater than twenty-five (25) units per acre for motels and not greater than twenty (20) units per acre for all other multifamily uses.

(15) *Oceanfront setbacks.* All buildings must be set back not less than twenty-five (25) feet from the bluff line or not less than fifty (50) feet of the mean high water line along the Atlantic Ocean (see section 17-86), whichever is greater.

(16) *Breezeways.* A minimum thirty percent (30%) breezeway will be maintained on all property in the tourist zone. The breezeway is defined as a clear, open vertical area free of construction or buildings running from the ocean to Highway A1A . The thirty percent (30%) calculation is measured on a line parallel to Highway A1A to include the percentage of open distance (breezeway) from the building to the property lines perpendicular to Highway A1A. This provision requires a thirty percent (30%) breezeway defined by rectangular dimensions (running basically east to west) with a clear and open line of sight from Highway A-1-A to the ocean. This requirement shall apply regardless of the configuration of platted lots of record (or portions thereof) and regardless of the configuration of a building site (or portion thereof) based on ownership of that site.

(17) *Grading and drainage.* Chapter 16.5, Article III applies.

(Code 1962, 28-96; Ord. No. 149, 2, 3-20-73; Ord. No. 151, 3, 5-1-73; Ord. No. 153, 1, 6-19-73; Ord. No. 154, 1--3, 1-15-74: Ord. No. 261, 8, 18, 7-17-79; Ord. No. 87-4, 8, 2-17-87; Ord. No. 87-9, 5, 8-18-87; Ord. No. 90-13, 6, 1-15-91; Ord. No. 92-3, 8, 1-21-92; Ord. No. 95-1, 3, 11-30-94; Ord. 03-05, 2, 3-18-03; Ord. No. 08-01, 10, 11-20-07; Ord. No. 15-05, 4, 8-12-15; Ord. No. 17-10, 8, 5/15/17; Ord. No. 17-14, 8, 9/13/17)

Sec. 17-128. CH church districts.

(a) *Intent.* The provisions applicable to this district are intended to apply to an area which can serve the needs of the community for public and semi-public facilities of an educational, religious, recreational, or cultural nature. Within the "CH" Church District, the regulations in this section shall apply.

(b) *Permitted uses.* The following uses only shall be permitted within this district:

(1) House of worship or church.
(2) Parish house.
(3) Church-related uses, such as pre-school or nursery schools and child care facilities.
(4) Recreational uses, including only open spaces, parks, and playgrounds.

(c) *Accessory buildings and uses.* All accessory uses shall meet the requirements of section 17-91. The following accessory uses are permitted:

(1) Satellite dish antenna in the manner specified in section 17-111.
(2) Accessory ecclesiastical buildings.
(3) Meeting rooms.
(4) Parking areas.
(5) Any other accessory use of one or more of the principal uses clearly incidental to the principal permitted use and in keeping with the character of the zoning district.

(d) *Prohibited uses.* The following are specifically prohibited uses.

(1) Vacation rentals.
(2) Bed and breakfast facilities.
(3) Medical marijuana treatment center dispensing facilities.
(4) Any use which is not specifically or provisionally permitted by this section.

(e) *Building height limitation.*

(1) The maximum height (see definition) of any building other than an accessory use shall be thirty-five (35) feet, and the building shall not exceed two (2) stories.

(2) The maximum height permitted for an accessory use structure shall be eight (8) feet, if the use is set back at least four (4) feet from the rear and side lot lines. The maximum permitted height for an accessory use structure shall be increased one and one-half (1 1/2) feet to a maximum of fourteen (14) feet for each additional one (1) foot that the accessory structure is set back, in excess of four (4) feet, from the rear and side lot lines.

(f) *Lot area.* The minimum area of any lot shall be ten thousand (10,000) square feet.

(g) *Lot dimensions.* The minimum dimensions of any lot shall be:

(1) Depth, one hundred (100) feet.

(2) Width at building line, one hundred (100) feet.

(h) *Front yards.* Front yards shall be not less than twenty-five (25) feet in depth.

(i) *Side yards.* Side yards shall be not less than:

(1) Interior lots, ten (10) feet in depth on each side;

(2) Where the side yard of a corner lot abuts one of two (2) intersecting streets, twenty-five (25) feet in depth on the side abutting the street and ten (10) feet in depth on the other side.

(j) *Rear yards.*

(1) Rear yards shall be not less than twenty (20) feet in depth.

(2) All accessory buildings shall be located in the rear yard and set back not less than four (4) feet from all lot lines. On corner lots when the lot abuts two (2) intersecting streets, accessory use structures shall be set back not less than fourteen (14) feet from any lot line abutting a street or public right-of-way. All accessory use structures shall be set back not less than five (5) feet from any principal or primary permitted use.

(k) *Use areas.* The minimum area for any principal permitted use shall be 1,000 square feet per unit.

(l) *Parking spaces.*

(1) All off-street parking facilities shall meet the requirements of sections 17-89 and 17-99, town code.

(2) For governmental uses, one parking space for every four hundred (400) square feet of floor area devoted to such use, excluding storage space, shall be provided.

(m) *Signs.* Signage as permitted for the CH and R-P zoning districts as set forth in section 17-106, *et seq.*, town code, shall be permitted. All other signage is prohibited.

(n) *Buffer wall.*

(1) Where the property abuts property in the R-1-A District, R-1-B District, R-2 District, or R-3 District, a solid wall, six (6) feet high and at least six (6) inches thick, constructed of brick, block, mortar, or similar building materials, and sufficient to obstruct the view of such abutting residential property, shall be provided. A wooden fence is strictly prohibited.

(2) The buffer wall shall parallel the length of the common boundary between the subject property located within the "CH" District and the R-1-A District, R-1-B District, R-2 District, or R-3 District. The buffer wall shall be placed at the common property line of the "CH" District and the R-1-A District, R-1-B District, R-2 District, or R-3 District.

(3) The buffer wall shall be installed when there is a substantial improvement to the "CH" zoned property. As used in this paragraph the term "substantial improvement" means:

(A) A change in the use of an existing structure of a major and material nature. For example, a change from a residential use to a house of worship, educational, or governmental use would constitute a major and material change;

(B) Clearing of an entirely undeveloped property and using the property as a parking lot;

(C) Demolition of an existing principal structure and construction of a new principal structure for use as a house of worship or related or accessory use;

(D) A major and material renovation of an existing principal structure; provided, that the structure is to be used for educational, or house of worship purposes;

(E) An expansion of the floor area of an existing professional office structure by ten percent (10%) or more; or

(o) *Ground covering.* In addition to meeting the following requirements, a landscape plan shall be submitted to the town along with architectural plans.

(1) At least twenty percent (20%) of the parcel of land must be devoted to lawn or plants. At least half (1/2) of the minimum required landscaping must be contained in the front yard area.

(2) A landscape buffer of not less than two (2) feet wide along the side property lines shall be provided.

(p) *Grading and drainage.* Grading and drainage shall be constructed, maintained, and operated pursuant to the requirements of Chapter 16.5, Article III, town code.

(Code 1962, 28-97; Ord. No. 162, 1, 9-17-74; Ord. No. 92-3, 9, 1-21-92; Ord. 99-1, 1, 1-19-99; Ord. No. 02-04, 5, 2-18-02; Ord. 08-01, 11, 11-20-07; Ord. No. 15-05, 5, 8-12-15; Ord. No. 17-14, 9, 9/13/17)

Sec. 17- 129. Site plan approval.

(1) Except as provided in section 6-10 of the Code of Ordinances of the Town of Indialantic, no building permit shall be issued until a site plan has been approved by the zoning board.

(a) In reviewing such site plan the zoning board shall consider the location, size, height, spacing, appearance, character and utilization of any building, structure or use and their appurtenances, access and circulation of vehicles and pedestrians, streets, parking area, yards and open spaces, landscaping, and relationship to adjacent property.

(b) The zoning board may attach to its approval of a site plan any reasonable conditions, limitations or requirements which are found necessary in its judgment to effectuate the purpose of this section and carry out the spirit and purpose of the zoning ordinance.

(2) A site plan, for the purposes of this section, shall include, but not necessarily be limited to the following:

(a) Site plan with grades or contours.
(b) Elevations, floor plans and uses of all buildings and structures.
(c) Location and character of all outside utilities.

(d) All curb cuts, driveways, parking areas, loading areas, and surfacing materials of same.

(e) All pedestrian walks, malls, yards, and open spaces.

(f) Location, size, character, height and orientation of all signs.

(g) Location, height and general character of walls and fences.

(h) Location and general character of landscaped areas and the common and botanical name of all trees, shrubs, and plants, with the number and size of each category or individual item, and the proposed watering and continued care in order to maintain the landscaping in accordance with approved site plan.

(i) All buildings constructed in those areas designated as special hazard areas on the current flood hazard boundary maps published by the Department of Housing and Urban Development, Federal Insurance Administration, shall have all finished floor elevations related to Coast and Geodetic Survey mean sea level datum.

(3) The zoning board shall not approve such plan unless it finds that such site plan conforms to all applicable provisions of the Town Code of Ordinances, that adequate off-street parking and loading facilities are provided for owners, tenants, visitors, and employees, and that adequate protection and separation are provided for contiguous and nearby residential property.

(4) *Modification of site plan.* Any change in use of buildings, structures, land or water, or institution of new uses, or alteration of or addition to buildings or structures shall be in accordance with a new or modified site plan conforming and approved pursuant to this section.

(5) *Approval not transferable; time limit.* Whenever site approval shall have been granted, it shall not be considered to run with the land. The site plan approval shall terminate twelve (12) months thereafter if construction has not been started. Extensions of up to six (6) months each may be made by the zoning board at its discretion. In the event the property receiving site plan approval shall be sold, transferred, leased, or the ownership thereof changed in any way whatsoever, before the approved construction is completed the site plan approval shall become null and void.
(Code 1962, 28-98A; Ord. No. 217, 1, 10-18-77; Ord. No. 89-11 2, 4-18-89; Ord. No. 07-03, 1, 12-19-06)

Sec. 17-130. "SC" Shopping Center Districts.

Within "SC" Shopping Center Districts, the following regulations shall apply:

(1) *Permitted uses:* All uses permitted in "C" Districts.

(2) *Standards governing permitted uses.* The same standards as provided for in "C" Districts.

(3) *Prohibited uses.* The same as prohibited in "C" Districts, including but not limited to:

(a) Medical marijuana treatment center dispensing facility.
(b) All uses which are not permitted uses. Merely because a use is not specifically listed does not mean that the use is not prohibited.

(4) *Grading and drainage plans:* The same as provided for in "C" Districts.

(5) *Lot area.* The minimum area for any "SC" zoning shall be not less than five (5) contiguous acres.

(6) *Side yards.* The same as in "C" Districts.

(7) *Setbacks:*

(a) All buildings shall be set back forty (40) feet from the principal front road right-of-way line.

(b) The shopping center shall have a twenty (20) foot minimum rear access road, either private or public.

(8) *Buffer wall:* The same as provided for in "C" Districts. Buffer area shall not include area fronting on a principal road.

(9) *Access control.* The same as provided for in "C" Districts.

(10) *Offstreet parking.* The surface of the offstreet parking areas shall be covered with a hard-surface coating such as asphalt or concrete. All offstreet parking facilities shall meet all other requirements of section 17-99(b).

(11) *Signs.* Paragraphs (1), (2), (3) and (4)(a) of section 17-106 apply. Paragraph (4)(g)(1) of section 17-106 also applies, with the words ". . . nor shall any sign exceed the height of the roof line." added to the end thereof.

(a) Signs attached to or painted on the windows and doors of the individual businesses will not exceed twenty-five percent (25%) of total door or window area.

(b) One detached sign will be permitted for each shopping center. The actual sign area shall not exceed ten (10) feet in height and fifteen (15) feet in width. The supporting structure for the sign shall not exceed thirty (30) feet in height and twenty (20) feet in width.

(c) Signs overhanging sidewalks or walkways will not be so long as to extend beyond the roof overhang and of sufficient height to preclude any hazard to pedestrians.

(12) *Accessory buildings and uses.*

(a) Satellite dish antenna in the manner specified in section 17-111.
(Code 1962, 28-98; Ord. No. 221, 1, 1-17-78; Ord. No. 87-9, 6, 8-18-87; Ord. No. 90-13 7, 1-15-91; Ord. No. 92-3, 10, 1-21-92; Ord. No. 17-10, 10, 5/15/17; Ord. No. 17-14, 10, 9/13/17)

Sec. 17-131. C-2 commercial districts.

Within C-2 commercial districts, the following regulations shall apply:

(1) *Permitted uses.* The following uses only are permitted:

(a) Accountants.
(b) Architects.
(c) Attorneys.
(d) Aquariums and supplies.
(e) Arts and crafts.
(f) Bakeries (retail only).
(g) Beach equipment rentals.
(h) Candy shops.
(i) China and crystal stores.
(i) Clothing stores.
(k) Cocktail lounges and bars in conjunction with a restaurant wherein the primary business shall be the service of food. The location shall be at least seven hundred and fifty (750) feet from any presently existing church or public school. Distance to be determined by the route of walking on public sidewalks or right-of-way and not direct air route, and shall be measured between the main entrances of such facilities as described herein.
(l) Decorators.
(m) Dentists.
(n) Department stores.
(o) Drive-through restaurants.
(p) Drug stores.
(q) Dry goods stores.
(r) Reserved.
(s) Fabric shops.
(t) Florists.
(u) Gift shops (personal and household).
(v) Greeting cards.
(w) Hobby shops.
(x) Hosiery and lingerie.
(y) Housewares.
(z) Ice cream and yogurt shops.
(aa) Insurance offices.

(bb) Jewelry stores.
(cc) Maternity wear.
(dd) Music stores.
(ee) Opticians.
(ff) Optometrists.
(gg) Photo finishing and supplies.
(hh) Physicians.
(ii) Real estate brokers.
(jj) Restaurants (not including drive-in, open-air, barbecue or similar establishments).
(kk) Sandwich shops.
(ll) Shoe stores.
(mm) Sportswear and sporting goods.
(nn) Travel agencies.
(oo) Commercial or professional uses which conform to the standards governing permitted uses contained in this section, and which are no more detrimental, objectionable or annoying to the welfare of the community, than the uses enumerated in this subsection.

(2) *Standards governing permitted uses.* The following standards shall govern new uses and changes of existing uses:

(a) No odor, dust, fumes, gas, smoke or other atmospheric pollutants shall be disseminated beyond the boundaries of the immediate site of the building in which the use is conducted.

(b) Noise level from all operations shall be negligible. No noise or vibration resulting from or in connection with the use shall be perceptible from any part of any residential district.

(c) There shall be no glare resulting from or in connection with the use that is observable from outside the boundaries of the C-2 commercial district.

(d) The vehicular traffic resulting from or in connection with the use shall not add materially to the traffic on the streets that primarily serve residence districts.

(e) Every use customarily conducted within a building shall be conducted in a building enclosed on all sides with permanent walls, except for sidewalk sales as authorized by Section 13-3, Town Code.

(f) The use shall not be otherwise detrimental, objectionable, or annoying to the owners or occupants of nearby property.

(g) Buffer wall. Where the property abuts property in the R-1-A district, R-1-B district, R-2 district, R-3 district or R-P districts, a solid wall, six (6) feet high and at least six (6) inches thick, constructed of brick, mortar or similar building materials and sufficient to obstruct the view of such abutting residential property, shall be provided. The buffer wall shall be placed at the common property line of the R-1-A District, R-1-B District, R-2 District, R-3 District or R-P District. A wooden fence is strictly prohibited.

(h) A drive-through restaurant may only be operated if there is a minimum distance of two thousand (2,000) feet, measured along the applicable street or streets centerline(s) from the nearest points of the lot boundaries between an existing drive-through restaurant and the proposed drive-through restaurant.

(3) *Prohibited uses.* The following uses are prohibited:

(a) Abattoirs and slaughterhouses.
(b) Air conditioning equipment sales and service.
(c) Automobile seat covers.
(d) Automotive dealers.
(e) Automotive parts and service.
(f) Awnings, screened porches and enclosures.
(g) Banks.
(h) Barber shops.
(i) Beauty shops.
(j) Billiard parlors, poolrooms and similar places of amusement.
(k) Boat sales, repairs and service.
(1) Bowling alleys.
(m) Bridal service and gifts.
(n) Brokers.
(o) Bus terminals.
(p) Carpeting.
(q) Car wash.
(r) Cemeteries.
(s) Ceramic tile, sales and service.
(t) Churches.
(u) Cocktail lounges, package stores and other establishments selling alcoholic beverages, excluding those operated in conjunction with, and/or as part of, a restaurant.
(v) Commercial garages.
(w) Commercial swimming pools.
(x) Convenience stores.
(y) Dance halls.
(z) Drive-in restaurants, barbecue stands, open-air restaurants and similar establishments.
(aa) Dry cleaners.
(bb) Dwellings
(cc) Electrical appliances.
(dd) Electronics sales and service.
(ee) Farm supplies, feed and fertilizer.
(ff) Feed distributors.
(gg) Fishing bait (live).
(hh) Fortunetellers, clairvoyants and similar activities.
(ii) Furniture stores.

(jj) Glassware.
(kk) Hardware stores.
(ll) Hearing aids and service.
(mm) Heating equipment.
(nn) Hospitals.
(oo) Hotels, motels and lodges.
(pp) Landscaping.
(qq) Laundries and laundromats.
(rr) Loan offices.
(ss) Lumber companies.
(tt) Massage equipment.
(uu) Marine repairs.
(uu.1) Medical marijuana treatment center dispensing facility.
(vv) Mobile homes, sales and service.
(ww) Motorcycles, sales and service.
(xx) Nurseries (landscaping).
(yy) Outboard motor service.
(zz) Outdoor amusement devices.
(aaa) Outdoor business activities.
(bbb) Pawnbrokers.
(ccc) Pest control.
(ddd) Plastics manufacturing and/or distribution.
(eee) Print shops.
(fff) Septic tank supplies and service.
(ggg) Service stations.
(hhh) Shopping centers.
(iii) Steam laundries.
(jjj) Stereo centers.
(kkk) Storage or disposal of junk, rags, or other waste material.
(lll) Storage warehouses.
(mmm) Swimming pools.
(nnn) Television sales and services.
(ooo) Ten cent stores.
(ppp) Tire recapping.
(qqq) Tourist camps.
(rrr) Undertaking establishments.
(sss) Used car lots.
(ttt) Well drilling and equipment.
(uuu) Yards for contractors or other construction materials and equipment.
(vvv) Other uses which are as detrimental, objectionable or annoying to the welfare of the community as the uses described in this subsection.

(www) Any use which is deemed deleterious or harmful to the public health, safety, welfare or morals of this primarily residential town and its adult citizens and children, and which is not in accordance with prevailing contemporary community standards, taking into account federal and state statutes, constitutional decisions, as well as the respective constitutions themselves; including but not limited to, by way of example only, "adult" book stores, "massage" parlors and "nudie" shows.
(xxx) Vacation rentals.
(yyy) Bed and breakfast facilities.
(zzz) All uses which are not permitted uses.

(4) *Grading and drainage plans.* Chapter 16.5, Article III applies.

(5) *Lot area.* The minimum area of any lot shall be five thousand (5,000) square feet.

(6) *Side yards.* No side yards are required between adjoining commercial properties; however, side yards on corner lots require a side setback of fifteen (15) feet from the side street.

(7) *Setbacks:*

(a) All commercial buildings on Fifth Avenue shall be set back fifteen (15) feet from the right-of-way line.

(b) All building on lots facing or bordering on either Fourth Avenue or Sixth Avenue shall be set back twenty-five (25) feet from the right-of-way line.

(c) All buildings on lots facing or adjacent to residential districts shall be set back twenty-five (25) feet from the nearest point of the residential district.

(8) *Access control.*

(a) A point or points of driveway, or other opening for vehicles onto a public street, shall be acted upon in each case by the zoning and planning board.

(b) No point of access shall be constructed within ten (10) feet of the right-of-way line of any public street intersection.

(c) No curbs on town streets or rights-of-way shall be cut or altered without a permit issued by the public works director.

(d) Parking areas located entirely upon private property shall have a curb not less than six (6) inches high and not less than six (6) inches wide separating such parking area from the adjacent sidewalk or roadway.

(9) *Parking.*

(a) Each business identity in this C-2 district must maintain, as the required minimum of offstreet parking spaces, the following:

1. A minimum of two (2) offstreet parking spaces shall be provided for the first five hundred (500) square feet per each commercial building, excluding storage space, plus one parking space for each additional five hundred (500) square feet of floor space, excluding storage space. Restaurants, bars, and lounges must have at least one space for each four (4) seats.
2. All offstreet parking facilities shall meet the requirements of section 17-99(b).

(b) Notwithstanding anything to the contrary hereinabove, those establishments in existence as of March 1,1986 within this district, which are only permitted as a result of Article IX of Chapter 17, Indialantic Code of Ordinances entitled Nonconforming Uses (or their successors in interest), may continue in business so long as the provisions of said Article IX (with the exception of the deadlines imposed by section 17-159 which are hereby repealed as to said businesses) are otherwise complied with in all respects.

(c) The following lots are in the above category and each and every one of the said lots must continue (subject to the provisions of subsection (d) herein below) to maintain the listed number of off-street parking spaces as well:

Block Number:	*Lot(s) Numbered:*	*Minimum Number of Spaces*
37	12	4
37	13, 14, 15, 16	18
38	1,2	11
38	3, 24, 25, 26	27
38	4,5	10
38	6, 7, 22, 23	19
38	27,28	15

(d) Should any of the above buildings situated on the lots, or the lots themselves, come under the provisions of the aforementioned Article IX, sections 17-158 through 17-165 with the exception of section 17-159, as aforesaid, thereby requiring conformity with the Code as per section 17-157, then all requirements of this district must be complied with in all respects because subsection (b) would no longer be applicable to the situation.

(e) All on-street parking within the district shall be metered except for the handicap, expressly repealing ordinance 82-316.

(10) *Signs.* Section 17-106 applies.

(11) *Building height limitation.* The maximum height (see definition: Height, building) of any building shall be thirty-five (35) feet and the building shall not exceed three (3) stories.

(12) *Landscaping.* Landscaping shall be five (5) percent of the total lot area. Attention must be given to provide attractive landscaping in any setback area visible from public right-of-way.

(13) *Site plan.* A site plan must be submitted to and approved by the zoning and planning board in accordance with section 17-129 of the Code of Ordinances.

(14) *Accessory buildings and uses.*

(a) Satellite dish antenna in the manner specified in section 17-111.

(Ord. No. 86-11, 1, 4-15-86; Ord. No. 87-4, 9, 2-17-87, Ord. No. 87-9, 7, 8-18-87; Ord. No. 89-2, 2, 4, 6, 1-17-89; Ord No. 90-13, 8, 1-15-91; Ord. No. 92-3, 11, 1-21-92; Ord. No. 94-7, 6, 1-18-94; Ord. No. 02-04, 7, 2-18-02; Ord. No. 05-08, 1, 2, 3-15-05; Ord. 08-01, 13, 11-20-07; Ord. No. 15-05, 6, 8-12-15; Ord. No. 17-10, 11, 5/15/17; Ord. No. 17-14, 11, 9/13/17)

Sec. 17-132. Outdoor cafes.

Notwithstanding the prohibitions set out in Sections 17-126(2)(e), 17-126(3)(q), and any other conflicting provisions of the Indialantic Code of Ordinances, a business properly operating an enclosed restaurant may operate a contiguous outdoor cafe, providing the following requirements are met:

(1) Such outdoor cafe must adhere to the following codes and regulations:

(a) All town, county and state health regulations;
(b) The Fire Prevention and Life Safety Codes adopted by the town;
(c) Building and construction codes of Indialantic, and
(d) The Indialantic Zoning Code.

(2) Only contiguous property leased or owned by the restaurant may be used for outdoor cafe seating. Such property must be adjacent to the licensed establishment.

(3) Alcoholic beverages may be served only when all the following requirements are met:

(a) The restaurant operating the outdoor cafe possesses a valid alcohol license for such restaurant and outdoor cafe service;

(b) Any additional licenses required by state or county law for such outdoor cafe are secured;

and

(c) The regulations set out in Chapter 3 of this Code are followed.

(4) Inspection and approval from the fire department as well as the building department is required prior to opening such outdoor cafe for business, and required periodically thereafter.

(5) A minimum of fifteen (15) square feet per seat shall be required; however, in no case shall the maximum number of outdoor seats exceed fifty percent (50%) of the total number of indoor seats.

(6)(a) Outdoor seating is allowed from 7:00 a.m. to 10:00 p.m. only, except as provided in (6)(b).

(6)(b) Outdoor seating is allowed Monday through Thursday from 7:00 a.m. until 12:30 a.m. the following day – Friday and Saturday from 7:00 a.m. until 1:30 a.m. the following day - on Sunday from 7:00 a.m. until 11:30 p.m. – for those outdoor cafes that are situated in the "C" or "C-1" district and all sides of the outdoor café abut "C" or "C-1" district property.

(6)(b)(1) Permission may be granted by the Town Manager at his discretion to extend the hours that outdoor seating is allowed on special occasions, providing that request for such permission is made at least forty-eight (48) hours in advance.

(7) No candles nor any other nonelectrical illumination device are permitted in outdoor cafe areas in which any flammable overhead cover is used.

(8) Outdoor lighting shall not be neon or garish, shall not alternate on and off, and shall be of sufficient intensity to provide safe movement. All outdoor lighting shall be properly guarded and directed so as not to shine on traffic or other property in a disturbing or unsafe way.

(9) The atmosphere pollutant standards set out in section 17-126(2)(a) and (b) shall be the responsibility of the proprietor to enforce.

(10) No music, public address system, or outdoor entertainment is allowed.

(11) At any part of a ground floor outdoor cafe not blocked by a building, there shall be maintained or constructed a fence, not less than three (3) feet high surrounding the outdoor cafe area subject to the following provisions:

(a) Maximum overall height of the fence shall not exceed four (4) feet except by an additional six (6) inches for caps, finials or top of posts; the supporting structure side of all fences shall face to the interior of the fenced property.

(b) Fence construction must provide at least 50% visibility.

(c) Fence must have a bottom rail a maximum of two (2) inches above the ground, floor surface or deck.

(d) Fence must be constructed from rot- and termite-resistant wood; or wood which has been chemically treated to resist rot and termites; ornamental iron, steel or aluminum; concrete or masonry wood, metal, masonry materials, tempered glass, or polycarbonate resin (i.e. Lexan®). PVC or chain link fence materials are prohibited. Other non-prohibited materials may be considered by the Zoning & Planning Board.

(e) Hedges are not permitted to be used as the required outdoor café fence.

(f) Fence construction and color must be compatible with the principal building color scheme.

(g) Fence may have openings to allow ingress/egress of patrons.

(h) Such fence shall be set back no less than three (3) feet from the boundary line of the property.

(i) Such fence shall be measured from the floor surface of the deck on the outdoor café side of the fence.

(12) No preparation of food whatsoever shall take place in the outdoor cafe area.

(13) Provisions for parking shall be in accordance with the requirements of section 17-126(11), except in the C-2 district, where parking shall be in accordance with section 17-131(9)(c), as amended from time to time.

(14) During its normal business hours, the cafe property and adjacent property within a radius of three hundred (300) feet free shall be kept free of debris resulting from the operation of the restaurant.

(Ord. No. 86-17, 1, 8-19-86; Ord. No. 90-16, 1, 9-18-90; Ord. No. 02-12, 1, 6-18-02; Ord. No. 03-12, 1, 10-21-03; Ord. No. 05-1, 1, 12-16-04; Ord. No. 05-07, 1, 1-18-05; Ord. No. 05-09, 1, 4-19-05; Ord. No. 05-10, 1, 4-19-05; Ord. No. 06-07, 1, 3-21-06; Ord. No. 09-08, 1, 3-17-09)

Sec. 133. Medical marijuana treatment centers; public or private elementary, middle, or secondary schools.

(a) All medical marijuana treatment centers or medical marijuana treatment center dispensing facilities, as described in s. 381.986, Florida Statutes, must comply with the Florida Building Code, the Florida Fire Prevention Code, or any local amendments to the Florida Building Code or the Florida Fire Prevention Code.

(b) At such time as the preemption to the State of Florida on local government regulation of medical marijuana treatment center cultivating or processing facilities is repealed, no medical marijuana treatment center cultivating or processing facilities may be located in the town.

(c) Medical marijuana treatment centers. A medical marijuana treatment center may not be located within five hundred (500) feet of the real property that comprises a public or private elementary school, middle school, or secondary school. *See* s. 381.986(11)(a), Florida Statutes. The distance for determining the minimum distance separation shall be measured by following a straight line from the outer property line of the location at which the medical marijuana treatment center is proposed to be located to the nearest outer property line of a public or private elementary, middle, or secondary school.

(d) Schools. The location of a proposed public or private elementary school, middle school, or secondary school shall be at least five hundred (500) feet from any presently existing medical marijuana treatment center. The distance for determining the minimum distance separation shall be measured by following a straight line from the outer property line of the location at which the medical marijuana treatment center is proposed to be located to the nearest outer property line of a public or private elementary, middle, or secondary school.

(Ord. No. 17-10, 12, 5/15/17; Ord. No. 17-14, 12, 9/13/17)

Secs. 17-134--17-140. Reserved.

ARTICLE VIII. VARIANCES

Sec. 17-141. Authority.

(a) The board of adjustment may grant variances in specific cases to vary or alter the strict application of any of the requirements of this chapter, whereby such application of a particular requirement would result in a practical difficulty or an unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved.

(b) To obtain a variance the applicant must demonstrate to the board of adjustment that:

(1) A practical difficulty or an unnecessary hardship is caused by the literal application and enforcement of the zoning code provision from which a variance is sought;

(2) The granting of the variance will not authorize a use prohibited, or result in a use variance, in the district in which the property is located;

(3) The preponderance of evidence presented at the variance hearing does not demonstrate that the granting of the variance will seriously impair the use of adjacent property, or significantly reduce the value of adjacent property, regardless of the zoning district in which the adjacent property is located;

(4) The need for the variance is made necessary by the unique character of the property;

(5) The need for the variance is not caused in any way by the owner or occupant of the property upon which the variance is sought;

(6) That the request for a variance is not solely based on an economic disadvantage to the owner or occupant of the property upon which the variance is sought, because an economic disadvantage to an applicant does not constitute a hardship or practical difficulty sufficient to warrant the granting of a variance; and

(7) That the request for a variance is not solely based on a need or desire of the owner or occupant of the property upon which the variance is sought to be obtained to gain an economic benefit, because an economic advantage to an applicant does not constitute a hardship or practical difficulty sufficient to warrant the granting of a variance.

(c) In determining whether to grant a variance the board of adjustment may consider the goals, objectives and policies of the comprehensive plan.

(d) In granting a variance, the board of adjustment may prescribe any conditions that it deems necessary or desirable in the furtherance of the purpose of this chapter.

(e) If a variance is granted with the effect being that a building permit is required, the building permit must be obtained within twenty-four (24) months of the approval date, after that time, the variance is void. If a permit is issued and that permit expires then the variance is also terminated, or expires, with the permit.

(Ord. No. 11-13, 3, 7-27-11; Ord. No. 17-08, 2, 4/12/17)

Sec. 17-142. Application.

Any person desiring a variance shall file with the town clerk, who shall provide a true copy of the published legal notice concerning said application to interested parties pursuant to section 17-143, a written application. Each application for variance shall specify the section and subsection of the chapter of the Indialantic Code of Ordinances involved, shall set forth the exact variance desired with respect thereto, shall furnish a site plan on which the variance is to occur, shall explicitly define the details of the variance involved, and shall state the basis on which the variance is requested.
(Code 1962, 28-103; Ord. No. 84-345, 1, 4-17-84; Ord. No. 88-6, 1, 5-24-88)

Sec. 17-143. Notice of hearing.

(1) Upon receipt of the application for a variance, the town clerk shall cause a notice of the application and the time and place of the hearing thereon to be published, at least fifteen (15) days and not more than thirty (30) days prior to such hearing, in a newspaper of general circulation in the town, and shall post a copy in the town hall. The town clerk shall mail a copy of such notice to those persons owning property within the radius of two hundred (200) feet of the property affected by the application.

(2) The notice shall state that written comments regarding the proposed variance may be filed with the town clerk prior to the public hearing or interested parties may appear at the public hearing.
(Code 1962, 28-104; Ord. No. 03-01, 1, 1-21-03)

Sec. 17-144. Application and comments to be forwarded to board of adjustment.

Prior to the public hearing, the town clerk shall forward to the board of adjustment the application and statement of consent, together with any written comments filed with the clerk.
(Code 1962, 28-105; Ord. No. 03-01, 2, 1-21-03)

Sec. 17-145. Hearing; final action.

At the public hearing, the board of adjustment shall consider the application and any written comments, hear any person desiring to be heard, and authorize or refuse to authorize the issuance of a permit for a variance in accordance with the application as it shall deem advisable in the promotion of substantial justice and the preservation of the public health, safety, morals and general welfare. (Code 1962, 28-106; Ord. No. 03-01, 3, 1-21-03)

Sec. 17-146. Repealed.

Editor's note - Ordinance No. 03-01 adopted January 21, 2003 repealed this section regarding appeals relating to variances.

Secs. 17-147--17-156. Reserved.

ARTICLE IX. NONCONFORMING USES

Sec. 17-157. Conformity to use regulations.

No building or land shall be used in whole or in part, and no building or part thereof shall be erected, moved, or altered except for use expressly permitted by and in conformity with the provisions for the district in which it is located.
(Code 1962, 28-113)

Sec. 17-158. Nonconforming uses.

Where, on February 3, 1959, or immediately prior to the amendment of this chapter, the lawful use of any building, structure, or land that exists 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, provided the following conditions are met:

(1) *Unsafe structures.* Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any portion of a building or structure declared unsafe by proper authority.

(2) *Alterations.* A nonconforming building or structure may be altered, improved, or reconstructed provided that such work does not increase its nonconformity.

(3) *Extension.* Except as otherwise permitted by this sub-paragraph, no nonconforming use may be enlarged, increased, or altered, nor extended to occupy a greater area of land than was occupied on February 3, 1959, or on the effective date of an amendment to this chapter making the use nonconforming unless the use is changed to a use permitted in the district in which such use is located. A nonconforming use shall not be extended to displace a conforming use, but the extension of a lawful use to any portion of a nonconforming building or structure shall not be deemed the extension of such nonconforming use.

(4) *Changes.* No nonconforming building, structure or use shall be changed to another nonconforming use.

(5) No nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel of land occupied by such use on February 3, 1959, or on the effective date of an amendment to this chapter for the district for which such land is located making such use nonconforming.

(Code 1962, 28-114; Ord. No. 93-8, 1, 10-19-93)

Sec. 17-159. Nonconforming structures.

(a) Where a lawful structure exists, prior to the effective date of adoption or amendment of this chapter which makes the structure nonconforming 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:

(1) No such structure may be enlarged or altered in a way which increases its nonconformity. The addition of a floor to any structure which is nonconforming by virtue of the fact that the horizontal plane of any in the structure encroaches into a required yard setback shall not be interpreted to be an enlargement or alteration of said structure in violation of this section; provided, that the additional floor is conforming to the zoning regulations.

(2) Any structure or portion thereof may be altered to decrease its nonconformity.

(3) Should such 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.

(b) Structures and lot sizes made illegal as a result of condemnation. In the event that the Florida Department of Transportation (FDOT), Brevard County, or the Town of Indialantic condemn private property to acquire road right-of-way, and the condemnation results in the elimination or decrease of the required perimeter landscaping, results in insufficient yard requirements (setbacks), or results in a parcel that does not meet the minimum lot size, such private property shall not become nonconforming and may continue as long as it remains otherwise lawful.
(Ord. No. 93-8, 2, 10-19-93; Ord. No. 03-02, 1, 1-21-03)

Sec. 17-160. Reserved.

Editor's note - Ordinance No. 93-8, adopted October 19, 1993 repealed this section regarding certificate of nonconforming use.

Sec. 17-161. District changes.

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the provisions of this article shall also apply to any nonconforming uses existing therein. (Code 1962, 28-117)

Sec. 17-162. Discontinuance

A nonconforming use of a building or premises which has been discontinued shall not thereafter be returned to such nonconforming use. A nonconforming use shall be considered discontinued:

(1) When the intent of the owner to discontinue the use is apparent;

(2) When the characteristic equipment and the furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within one-hundred eighty days, unless other facts show an intention to resume the nonconforming use;

(3) When it has been replaced by a conforming use;

(4) When it has been changed to another use under permit from the zoning board.
(Code 1962, 28-118; Ord. No. 93-8, 4, 10-19-93; Ord. No. 99-5, 1, 10-19-99)

Sec. 17-163. Reserved.

Editor's note - Ordinance No. 93-8, adopted October 19, 1993 repealed this section regarding unlawful use.

Sec. 17-164. Restoration.

Nothing in this chapter shall prevent the reconstruction, repairing, rebuilding and continued use of any nonconforming building or structure damaged by fire, collapse, explosion, or Acts of God, wherein the expense of such work does not exceed fifty percent (50%) of the assessed valuation of the building or structure at the time such damage occurred. (Code 1962, 28-120; Ord. 93-8, 6, 10-19-93)

Sec. 17-165. Wear and tear.

Nothing in this chapter shall prevent the reconstruction, repairing or rebuilding of a nonconforming building, structure, or part thereof, rendered necessary by wear and tear or deterioration provided that such reconstruction, repair or rebuilding does not increase its nonconformity and the cost of such work shall not exceed fifty percent (50%) of the assessed valuation of such building or structure at the time such work is done, nor prevent compliance with the provisions of the building code relative to the maintenance of buildings or structures. (Code 1962, 28-121; Ord. 93-8, 6, 10-19-93)

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Chapter 18

ENVIRONMENTAL PROTECTION*

Art. I. WETLAND PROTECTION

Sec. 18-1 – 18-10. Reserved.

Editor's note: Ord. 14-13 repealed Sec. 18-1 through 18-6 – Wetlands Protection – and incorporated it into Chapt. 16.5

ARTICLE II. STORMWATER RUNOFF; FERTILIZER

Sec. 18-11. Definitions.

For this article, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

(a) "Application" or "Apply" means the actual physical deposit of fertilizer to turf or landscape plants.

(b) "Applicator" means any Person who applies fertilizer on turf and/or landscape plants within the town.

(c) "Approved Best Management Practices Training Program" means a training program approved by the town manager that includes a minimum, the most current version of the Florida Department of Environmental Protection's "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008", as revised and any more stringent requirements set forth in this article.

(d) "Best Management Practices" means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

(e) "Code Enforcement Officer, Official, or Inspector" means any designated employee or agent of the Town whose duty it is to enforce codes and ordinances enacted by the Indialantic Town Council.

(f) "Commercial Fertilizer Applicator" means any Person who applies fertilizer on turf and/or landscape plants within the Town in exchange for money, goods, services or other valuable consideration.

(g) "Fertilize", "Fertilizing", or "Fertilization" means the act of applying fertilizer to turf, specialized turf, or landscape plants.

(h) "Fertilizer" means any substance or mixture of substances, except pesticide/fertilizer mixtures such as "weed and feed" products, that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

(i) "Guaranteed Analysis" means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

(j) "Institutional Applicator" means any Person, other than a non-commercial or commercial Applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional Applicators shall include, but shall not be limited to, owners and managers of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

(k) "Landscape Plant" means any native or exotic tree, shrub or groundcover (excluding turf).

(l) "Low Maintenance Zone" means an area consisting of a minimum of twenty-five (25) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, and similar types of activities.

(m) "Pasture" means land used for livestock grazing that is managed to provide feed value.

(n) "Person" means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

(o) "Prohibited Application Period" means the time period during which a flood watch or warning, or a tropical storm watch or warning, or a hurricane watch or warning is in effect in any portion of the town, issued by the National Weather Service, or if heavy rain (i.e. rainfall that is equal to or greater than two inches in a twenty-four hour period) is likely.

(p) "Restricted Application Period" means June 1 through September 30.

(q) "Slow Release", "Controlled Release", "Times Release", "Slowly Available", or "Water Insoluble Nitrogen" means nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product.

(r) "Town Manager" means the Town Manager of the Town of Indialantic, or an administrative official of the Town government designated by the Town Manager to administer and enforce the provisions of this article.

(s) "Turf", "Sod", or "Lawn" means a piece of grass-covered soil held together by the roots of the grass.

(Ord. 10-3, 2, 4-20-10; Ord. 14-07, 1, 4-21-14)

Sec. 18-12. Applicability.

This article shall be applicable to and shall regulate any and all Applicators of Fertilizer and areas of Application of Fertilizer within the area of the Town, unless such applicator is specifically exempted by the terms of this article from the regulatory provisions of this article. This article shall be prospective only, and shall not impair any existing contracts. (Ord. 10-3, 3, 4-20-10)

Sec. 18-13. Timing of fertilizer application.

No Applicator shall apply Fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period or during the Restricted Application Period. (Ord. 10-3, 4, 4-20-10; Ord. 14-07, 2, 4-21-14)

Sec. 18-14. Fertilizer free zones.

Fertilizer shall not be applied within twenty-five (25) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (*see* Chapter 62-340, Florida Administrative Code) or from the top of a seawall. Newly planted turf and/or landscape plants may be fertilized in this zone only for a sixty (60) day period beginning thirty (30) days after planting, but caution shall be used to prevent direct deposition of nutrients into the water. (Ord. 10-3, 5, 4-20-10; Ord. 14-07, 3, 4-21-14; Ord. 14-09, 1, 6-11-14)

Sec. 18-15. Low maintenance zone.

A voluntary twenty-five (25) foot low maintenance zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. No mowed or cut vegetative material should be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this zone. (Ord. 10-3, 6, 4-20-10; Ord. 14-07, 4, 4-21-14)

Sec. 18-16. Fertilizer content and application rates.

(a) Fertilizers applied to turf and/or landscape plants within the Town shall be formulated and applied in accordance with Rule 5E-1.003(2), Florida Administrative Code.

(b) Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in (a) above for turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test.

(c) The nitrogen content of fertilizer applied to turf or landscape plants shall contain at least fifty percent (50%) slow release nitrogen.

(d) Fertilizer containing nitrogen or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first thirty (30) days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the Stormwater Pollution Prevention Plan for that site. (Ord. 10-3, 7, 4-20-10; Ord. 14-07, 5, 4-21-14; Ord. 14-09, 2, 6-11-14)

Sec. 18-17. Application practices.

(a) Spreader deflector shields are required when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including wetlands.

(b) Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.

(c) Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.

(d) Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.

(e) In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.
(Ord. 10-3, 8, 4-20-10)

Sec. 18-18. Management of grass clippings and vegetative matter.

In no case shall grass clippings, vegetative material, and/or vegetative debris either intentionally or accidentally, be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways. (Ord. 10-3, 9, 4-20-10)

Sec. 18-19. Exemptions.

The provisions set forth above in this article shall not apply to:

(a) *bona fide* farm operations as defined in Florida Right to Farm Act, Section 823.14, Florida Statutes; provided, that fertilizers are applied in accordance with the appropriate best management practices manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.

(b) other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock provided that fertilizers are applied in accordance with the appropriate best management practices manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.
(Ord. 10-3, 10, 4-20-10)

Sec. 18-20. Training.

(a) All commercial and institutional applicators of fertilizer within the Town shall abide by and successfully complete the six- hour training program in the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries" offered by the Florida Department of Environmental Protection through the University of Florida Extension "Florida-Friendly Landscapes" program.

(b) Non-commercial applicators not otherwise required to be certified, such as private citizens on their own residential property, are encouraged to follow the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers.
(Ord. 10-3, 11, 4-20-10)

Sec. 18-21. Licensing of commercial applications

(a) All commercial applicators of fertilizer within the Town shall abide by and successfully complete training and continuing education requirements in the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries" offered by the Florida Department of Environmental Protection through the University of Florida IFAS "Florida-Friendly Landscapes" program prior to obtaining a Business Tax Receipt for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial Fertilizer Applicators shall provide proof of completion of the program to the Clerk's office within 180 days of the effective date of this ordinance.

(b) All businesses applying fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has an appropriate Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries" training certificate and shall provide proof of completion of the program to the Clerk's office within 180 days of the effective date of this ordinance.
(Ord. 10-3, 12, 4-20-10)

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Chapter 19

CABLE TELEVISION-Repealed

Sec. 19-1. Repealed.
(Ord. No. 94-8, 1, 5-17-94; Ord. No. 16-06; 1; 4-13-16)

Sec. 19-2. Repealed.
(Ord. 94-8, 2, 5-17-94; Ord. No. 16-06, 2, 4-13-16)

Sec. 19-3. Repealed.
(Ord. 94-8, 3, 5-17-94; Ord. 95-3, 1, 11-30-94; Ord. No. 16-06, 3, 4-13-16)

Sec. 19-4. Repealed.
(Ord. 94-8, 4, 5-17-94; Ord. No. 16-06, 4, 4-13-16)

Sec. 19-5. Repealed.
(Ord. No. 94-8, 5, 5-17-94; Ord. No. 16-06, 5, 4-13-16)

Sec. 19-6. Repealed.
(Ord. No. 95-3, 2, 11-20-94; Ord. No. 16-06, 6, 4-13-16)

Sec. 19-7. Repealed.
(Ord. 95-3, 3, 11-30-94; Ord. No. 16-06, 7, 4-13-16)

Sec. 19-8. Repealed.
(Ord. No. 95-3, 4, 11-30-94; Ord. No. 16-06, 8, 4-13-16)

Sec. 19-9. Repealed.
(Ord. No. 95-3, 5, 11-30-94; Ord. No. 16-06, 9, 4-13-16)

Sec. 19-10. Repealed.
(Ord. No. 95-3, 6, 11-30-94; Ord. No. 16-06, 10, 4-13-16)

Sec. 19-11. Repealed.
(Ord. No. 95-3, 7, 11-30-94; Ord. No. 16-06, 11, 4-13-16)

Sec. 19-12. Repealed.
(Ord. No. 95-3, 8, 11-30-94; Ord. No. 16-06, 12, 4-13-16)

Sec. 19-13. Repealed.
(Ord. No. 95-3, 9, 11-30-94; Ord. No. 16-06, 13, 4-13-16)

Sec. 19-14. Repealed.
(Ord. No. 95-3, 10, 11-30-94; Ord. No. 16-06, 14, 4-13-16)

Sec. 19-15. Repealed.
(Ord. No. 95-3, 11, 11-30-94; Ord. No. 16-06, 15, 4-13-16)

Sec. 19-16. Repealed.
(Ord. No. 95-3, 12, 11-30-94; Ord. No. 16-06, 16, 4-13-16)

Sec. 19-17. Repealed.
(Ord. No. 95-3, 13, 11-30-94; Ord. No. 16-06, 17, 4-13-16)

Sec. 19-18. Repealed.
(Ord. No. 95-3, 14, 11-30-94; Ord. No. 16-06, 18, 4-13-16)

State Law Reference-Local government authority to grant franchises for cable television service and to regulate cable television services preempted to State of Florida, F.S. Sections 610.102 and 610.104.

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