



City Council Work Session
City of Belleair Beach, Florida

Tuesday, February 27, 2024
Community Center, 6:00 PM

PUBLIC MEETING NOTICE
AGENDA

Call to Order
Pledge of Allegiance
Roll Call

1. Code Review – Chapter 10
2. Code Review – Chapter 22
3. Code Review – Chapter 30
4. Code Review – Chapter 50
5. General Business

Adjournment

Any person who decides to appeal any decision of the City Council with respect to any matter considered at this meeting will need a record of the proceedings and for such purposes may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. The law does not require the City Clerk to transcribe verbatim minutes, therefore, the applicant must make the necessary arrangements with a private reporter or private reporting firm and bear the resulting expense. Any person with a disability requiring reasonable accommodation in order to participate in this meeting should call 727-595-4646 or fax a written request to 727-593-1409.

Renee Rose, CMC
City Clerk

Chapter 10 BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. IN GENERAL

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Sec. 10-32. Permits; exception.

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Sec. 10-80. Maintenance of vacant buildings and removal of partially demolished buildings or structures.

Sec. 10-81. Responsibilities of owner and/or operator.

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Sec. 10-87. Indemnification.

Sec. 10-88. Notice of violations.

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DIVISION 2. PERMIT

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Sec. 10-122. Required for submerged land excavations.

Sec. 10-123. Procedure.

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Sec. 10-170. Definitions.

DIVISION 2. SWIMMING POOLS

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Chapter 10 BUILDINGS AND BUILDING REGULATIONS¹

ARTICLE I. IN GENERAL

Sec. 10-1. Regulation of builders.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning.

Builder means any person who is licensed by or holds a certificate of competency from the state or Pinellas County Construction Licensing Board to undertake new construction or to repair, alter or modify existing construction under a contract with the property owner. Such term shall not include a private homeowner in district I or II who elects to undertake or manage such work on his own residential property.

- (b) *Certificate of competency.* Every builder, contractor or other person performing work within the city who is required to be licensed by the state or county shall have a certificate of competency issued either by the state or the Pinellas County Construction Licensing Board before commencing work within the city.
- (c) *Business registration.* All builders and contractors or other persons required to be licensed by the county shall register with the city before commencing work and shall submit a copy of their county license and shall pay an annual administrative filing fee of \$10.00 for recording documentation due October 1 of each year.
- (d) *Insurance requirements.* No registration certificate or renewal thereof shall be issued by the city manager or his designee for builders or contractors without evidence of workers compensation and public liability insurance in the same amount as required for general contractors by the laws of the State of Florida, as amended. The requirement for evidence of workers compensation insurance shall not apply to any person or company exempt therefrom by the operation of F.S. ch. 440. Proof of such exemption shall be required.
- (e) *Enforcement.* The city's code enforcement officer or any law enforcement officer is authorized to enforce the provisions of this section.
- (f) *Penalties.* Violation of the provisions of this article shall subject the violator to a civil infraction and penalties as set forth in section 2-317 of the City Code.

(Ord. No. 86-10, § 2(6-2), 9-8-1986; Ord. No. 05-05, § 1, 8-1-2005; Ord. No. 18-07, § 1, 12-3-2018)

Sec. 10-2. Construction work; lawn and landscaping.

The erection, excavation, demolition, alteration or repair, lawn and/or landscape maintenance of any building or property within the city shall be prohibited between the hours of 6:00 p.m. and 7:00 a.m. on weekdays and Saturdays, all day on Sundays; and the holidays of New Year's Day, Christmas Day, Memorial Day, Fourth of

¹Cross reference(s)—Environment, ch. 22; fire prevention and protection, ch. 26; marine structures, activities and facilities, ch. 30; solid waste, ch. 46; streets, sidewalks and other public ways, ch. 50; utilities, ch. 62; vegetation, ch. 66; floodplain management ordinance, ch. 74; planning, ch. 78; signs, ch. 86; subdivisions, ch. 90; zoning, ch. 94; moving buildings, § 94-254.

State law reference(s)—Building construction, F.S. ch. 553.

July, Labor Day and Thanksgiving, except in case of urgent necessity to protect the public health and safety, and then only with authorization from the city manager or his/her designee or by a resolution of the city council which authorization may be granted for a period of up to three days or other time period established by resolution of the city council while the emergency continues. Such prohibition shall not prevent a property owner, members of the property owner's immediate family or anyone residing on the property from working on his or her property for construction remodeling, alterations, repairs, general maintenance, and lawn and/or landscaping maintenance, so long as such property owner or other authorized person, as aforesaid, complies with all other provisions of this Code, such as excessive noise or other nuisances may be applicable. For purposes of this section, the term "property owner's immediate family" means a person's spouse or the parent, child, grandparent, or siblings of the person or the person's spouse.

(Ord. No. 86-10, § 2(6-2(h)), 9-8-1986; Ord. No. 96-18, § 1, 3-3-1997; Ord. No. 07-02, § 1, 4-2-2007; Ord. No. 10-02, § 1, 4-5-2010; Ord. No. 21-06, § 2, 9-8-2021)

Sec. 10-3. Coastal construction control line.

- (a) *Purpose.* This section establishes within the city the coastal construction control line as the line of reference from which setbacks shall be measured along the Gulf of Mexico for buildings and structures pursuant to F.S. § 161.053 in order to protect the safety, economic, environmental, recreational and community appearance objectives of the city.
- (b) *Required setback.* No building or structure shall be located seaward of the coastal construction control line unless approved by the State of Florida.
- (c) *Interpretation.* Nothing contained in this section shall be construed to conflict with or supersede the authority of the state in regard to establishing the location or relocation of the coastal construction control line, or any waiver or variance to the requirements relative thereto pursuant to F.S. ch. 161, or the requirements and authority of the county construction licensing board. This section shall be administered according to the following requirements:
 - (1) Compliance with the provisions of this chapter shall be independent of any action or authority of the State of Florida pursuant to F.S. ch. 161 and no action by the state shall relieve any person from compliance with the requirements of this chapter.

(Ord. No. 07-02, § 2, 4-2-2007)

Secs. 10-4—10-30. Reserved.

ARTICLE II. BUILDING CODES²

Sec. 10-31. Adopted.

There is adopted by reference all of the codes regarding buildings in effect in the county as adopted by the county construction licensing board as amended or as otherwise required by state law, subject however to such amendments and additions which may appear elsewhere in this article, and except insofar as such provisions, by their very nature, could have no application in the city.

²Cross reference(s)—Code enforcement, § 2-201 et seq.

(Ord. No. 86-10, § 2(6-16), 9-8-1986)

Sec. 10-32. Permits; exception.

- (a) The construction, alteration or repair of a building or structure shall not be permitted or commenced within the city before a building permit has been obtained from the county, an environmental resources permit (ERP) from the Southwest Florida Water Management District, and a National Pollutant Discharge Elimination System including a NPDES permit from the city where applicable in accordance with article II of this chapter and article III of chapter 62.
- (b) A permit shall not be required to be obtained pursuant to subsection (a) of this section for the following types of building activities:
 - (1) Interior and exterior painting, including roof painting, drywall repair of less than 100 square feet and wallpapering.
 - (2) Exterior landscaping modifications, provided precautions are taken to avoid storm drain system contamination.
 - (3) Replacement of floor coverings.
 - (4) Replacement of appliances, including window air conditioners, unless an electrical or gas connection is required other than by a common wall plug.

Permits shall be required for all other activities which are otherwise required by the appropriate codes.

- (c) A violation of subsection (a) shall be enforced by the city's code enforcement officer who is authorized to issue a "stop work order" until the property owner or contractor obtains proper permits from the city or county, or to cite the violator for a code violation.

(Ord. No. 86-10, § 2(6-3(a)), 9-8-1986; Ord. No. 88-30, § 1(6-17), 1-16-1989; Ord. No. 09-02, § 1, 6-1-2009; Ord. No. 14-02, § 1, 6-2-2014; Ord. No. 21-06, §§ 3, 4, 9-8-2021)

Sec. 10-33. Time limits.

- (a) Construction shall be commenced within six months from the issuance of a building permit within the city.
- (b) In residential low (RL) zoning district II, as described in chapter 94, article IV of this Code, construction shall be completed (ready for occupancy) within 18 months from the issuance of the building permit.
- (c) In the residential medium (RM) zoning district I as described in chapter 94 article IV, of this Code, construction shall be completed (ready for occupancy) within 24 months from the issuance of the building permit.
- (d) Such completion times may be extended by the city manager if the delay in the completion of such construction has occurred through circumstances beyond the control of the owner or contractor. A request for an extension shall be submitted in writing to the city manager by the owner or contractor stating the reason(s) that the construction project completion has been delayed and a timetable for completing the project. The city manager may grant a one-time extension of up to six months to complete the project without penalty.
- (e) Failure on the part of a property owner to cause the completion of a construction project pursuant to an issued building permit in accordance within the time limits set forth in this section shall constitute a violation of the City Code, and shall subject the property owner to the imposition of the penalties as set forth in section 10-39(b) of the City Code. As an alternative to the imposition of the fines imposed by section 2-248 of

the City Code, a code enforcement special master may establish specific time limits for the completion of each phase of the construction project, which shall be binding on the property owner. Failure to meet the specific time limits established by the special master for completion of each phase of the construction project may cause the imposition of fines retroactive to the date of the initial order of the special master.

(Ord. No. 86-10, § 2(6-3(b)), 9-8-1986; Ord. No. 03-17, § 1, 10-6-2003; Ord. No. 05-01, § 13, 4-12-2005; Ord. No. 06-02, § 1, 2-6-2006; Ord. No. 07-02, § 3, 4-2-2007; Ord. No. 14-02, § 2, 6-2-2014; Ord. No. 18-07, § 2, 12-3-2018)

Sec. 10-34. Incomplete construction.

If a builder allows partial construction to stand within the city beyond the completion period as set forth in section 10-33, and no attempt is made to secure a new permit and complete the structure, the city may declare the site to be a nuisance or hazard, and may initiate action under chapter 22, article II of this Code to raze, or have razed, the site and bill the property owner for the cost of such razing.

(Ord. No. 86-10, § 2(6-3(c)), 9-8-1986; Ord. No. 14-02, § 3, 6-2-2014)

Sec. 10-35. Sanitary facilities.

A portable sanitary facility shall be supplied to a new construction site within the city after the initial grading has been completed and before the foundation work is begun. Such portable sanitary facility shall be maintained at the site in an inconspicuous or shielded location, to be specified in the site plan, until after the hookup of interior sanitary facilities.

(Ord. No. 86-10, § 2(6-2(d)), 9-8-1986; Ord. No. 18-07, § 3, 12-3-2018; Ord. No. 21-06, § 5, 9-8-2021)

Sec. 10-36. Site debris and hurricane protection.

During construction within the city, the builder shall:

- (a) Take positive action to prevent construction materials and debris from encroaching on adjoining properties or waters.
- (b) Provide receptacles with lids for disposal of food scraps, bottles and cans and arrange for periodic emptying of such receptacles.
- (c) Within 24 hours, comply with an order from the building inspector or code enforcement officer to cleanup the construction site when, in the building inspector's or code enforcement officer's opinion, the site presents safety hazards or adverse appearances beyond what can be reasonably expected.
- (d) Provide a dumpster of sufficient size and with a cover to hold the amount of debris generated at the construction site. The dumpster shall be maintained at the site until removal of such dumpster is approved by the building inspector.
- (e) It shall be a violation of this section for any person to allow construction materials (including, but not limited to, roofing tiles or materials, lumber, scaffolding and debris) to remain loose or otherwise unsecured at a construction site in the city 24 hours after a declared hurricane watch or warning has been issued by city or county emergency management authorities. The requirement to remove or properly secure all construction shall remain in effect until the declared hurricane watch or warning has been officially cancelled. All such construction materials shall be either removed from the construction site or secured in such a manner as to minimize the danger of such materials causing damage to persons or property from high winds or severe flooding. For the purpose of this section,

"secured" shall mean the removal of construction materials into a structure or anchored to the ground by straps or lines sufficient to sustain high winds or flooding.

(Ord. No. 86-10, § 2(6-2(e)), 9-8-1986; Ord. No. 98-04, § 1(6-2(e)), 6-1-1998; Ord. No. 05-05, § 2, 8-1-2005; Ord. No. 18-07, § 4, 12-3-2018)

Sec. 10-37. Damages to public and private property.

Builders within the city shall be held responsible for damages caused by them to public and private property in pursuit of the construction project, and shall promptly take necessary steps to repair or replace any damaged property (including paver base material and concrete washout) within 60 days of becoming aware of or notified of the damage.

(Ord. No. 86-10, § 2(6-2(f)), 9-8-1986; Ord. No. 18-07, § 5, 12-3-2018; Ord. No. 21-06, § 6, 9-8-2021)

Sec. 10-38. Compliance with NPDES requirements.

(a) *Compliance procedures.*

- (1) New or modification building construction within any zoning district in the city shall conform to the provisions of the National Pollutant Discharge Elimination System (NPDES) requirements of the United States Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection (FDEP) as more specifically set forth in the NPDES permit issued by the city; and as set forth in article III of chapter 62 of this Code.
- (2) Authorized official(s), as defined in section 62-72 of this Code, or such other qualified person appointed by the city manager shall, at all times during building construction or development, ensure that construction and contractors maintain a system for control of construction site erosion, sediment and water runoff or other forms of pollution (including paver base material and concrete washout).
 1. Each building site plan for construction shall be reviewed to include the system or method used by the contractor to eliminate or control sedimentation at the construction site and potential pollution of the city's stormwater collection system. The site plan review process by the city must be completed prior to obtaining a building permit.
 2. The person designated by the city manager shall be qualified to perform stormwater, erosion and sedimentation inspections and at a minimum hold a current FDEP stormwater, erosion, and sedimentation control certification.
 3. The person designated by the city manager shall periodically inspect each construction site to ensure the site does not cause erosion or sediment that may result in a discharge into the stormwater system. Detailed records shall be maintained of all site plans and inspections of construction sites in the city for compliance with the city's NPDES permit, and shall report such data to the FDEP for NPDES reporting purposes. All inspections, notes, detailed records and other data collected shall be in accordance with the city's standard operating procedures (SOP) for frequency, detail and compliance in accordance with the city's NPDES permit.
 4. The person designated by the city manager shall report to the city manager and the city engineer all notices of violation or stop work orders issued by the authorized official to any contractor or property owner for noncompliance with the provisions of this section.
 5. A fee in an amount to be set pursuant to an adopted fee schedule shall be paid to the city at the time of submittal of the site plan required by this section to offset the cost of plan review and one inspection. Any site inspected that is found to be noncompliant with federal, state, local law

and city zoning set back requirements will be assessed a reinspection fee of \$100.00 for each additional inspection. The reinspection fee shall be paid in addition to any penalty or assessment imposed on a violator for violation of the provisions of this section. The fees set forth in this subsection may be amended from time to time by resolution of the city council.

- (b) *Contamination of stormwater system.* It shall be unlawful for any person to cause or permit any material to be stored, dumped or otherwise be placed upon any street or public right-of-way within the city so as to cause a discharge of any such material into the city's stormwater system. For the purpose of this subsection, "material" includes, but is not limited to, vegetation, dirt, sand, gravel, pavers, concrete washout, chemicals or any other substance regularly used or created in construction or landscaping projects.

(Ord. No. 03-20, § 1, 1-5-2004; Ord. No. 05-01, § 14, 4-12-2005; Ord. No. 05-02, § 1, 5-2-2005; Ord. No. 05-11, § 1, 10-3-2005; Ord. No. 09-02, § 2, 6-1-2009; Ord. No. 14-02, § 4, 6-2-2014; Ord. No. 18-07, § 6, 12-3-2018; Ord. No. 21-06, § 7, 9-8-2021)

Sec. 10-39. Enforcement, violation and penalty.

- (a) *Stop-work order; revocation of permit.* In the event that any person holding a site development permit pursuant to this article violates the terms of the permit, or implements site development in such manner as to cause erosion, sediment or runoff that adversely or materially affects the stormwater drainage system or the waters or tributaries in or around the city, the person designated by the city manager, communities services department and city engineer may suspend or revoke the site development permit.
- (b) *Violation and penalties.* Any person who violates the provisions of this article or any order issued by the city suspending or revoking a site development permit shall be guilty of a civil infraction punishable in accordance with the provisions section 2-248 of the City Code. Any continued violation of the provisions of this article shall constitute a criminal violation punishable in accordance with the provisions of section 1-15 of the City Code. In addition, the code enforcement special master or a court of competent jurisdiction may order the violator to pay restitution for or to repair any damage caused by a violation of this article.

(Ord. No. 03-20, § 2, 1-5-2004; Ord. No. 14-02, § 5, 6-2-2014; Ord. No. 17-03, § 1, 8-7-2017)

Sec. 10-40. Building permits issued on the basis of affidavit. (§ 107.6.1 FBC)

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 reply 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 shall not extend to the flood load and flood resistance construction requirements of the Florida Building Code.

(Ord. No. 13-02, § 1, 6-3-2013)

Sec. 10-41. Variances in flood hazard zone. (§ 117.1 FBC)

Pursuant to F.S. § 553.73(5), 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 applicable, the provisions of R322 of the Florida Building Code Residential. This section shall not apply to section 3109 of the Florida Building Code.

(Ord. No. 13-02, § 2, 6-3-2013)

Sec. 10-42. Modifications of the strict application of the requirements of the Florida Building Code. (§ 104.10 FBC)

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.

(Ord. No. 13-02, § 3, 6-3-2013)

Secs. 10-43—10-70. Reserved.

ARTICLE III. BUILDING MAINTENANCE³

Sec. 10-71. General provisions.

- (a) *Title.* This article shall be known as the "Building Maintenance Ordinance," and may be cited as such.
- (b) *Purpose and scope.* The intent and purpose of this article is to protect the public health, safety, morals and welfare of the city by:
 - (1) Providing a just, equitable and practicable method whereby all buildings or structures, which from any cause endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants, diminish property values or detract excessively from the appropriate appearance of the area, shall be required to be repaired, vacated or demolished. The provisions of this article are cumulative with and in addition to any other remedy provided by law, including the current editions of the Florida Building Code.
 - (2) Establishing minimum standards governing the condition, occupancy and maintenance of vacant and occupied residential and nonresidential buildings, structures and premises;
 - (3) Establishing minimum standards governing utilities, facilities and other physical components and conditions essential to make such buildings, structures and premises safe, sanitary and fit for human habitation;
 - (4) Fixing certain responsibilities and duties of owners, operators, agents and occupants of such buildings, structures and premises and;
 - (5) Authorizing and establishing procedures for the inspection of vacant and occupied residential and nonresidential buildings, structures and premises and the condemnation and vacation of those residential and nonresidential buildings, structures and premises unfit for human habitation or occupancy.
 - (6) The standards, provisions and requirements contained in this article are deemed to further the goals, objectives and policies contained in the city's comprehensive plan. It is the intent of the city to remove those conditions that contribute to being a nuisance; adversely affect the health, safety and welfare of

³Editor's note(s)—Sections 1 and 2 of Ord. No. 06-01, adopted Feb. 6, 2006, repealed § 10-71 and enacted provisions retitling Art. III, Unsafe, Dilapidated Buildings, to read as herein set out.

Cross reference(s)—Environment, ch. 22.

both the residents and business community of the city; depress and reduce property values; and contribute to the decline and deterioration of neighborhoods and businesses.

- (c) It is also the intent of the city that the maximum possible number of safe, adequate and affordable housing units and nonresidential structures in the city are kept available by encouraging and requiring that vacant units be reconditioned and made fit for occupancy rather than permitting them to be abandoned or neglected, thereby removing them from the housing market and commercial real estate market.
- (d) The provisions of this article shall apply to all buildings or structures that are now in existence or which may be built or placed within the city limits or annexed therein.
- (e) This article is declared to be remedial and essential to the public interest, and it is intended that this article be liberally construed to effectuate the purposes as stated in this section.

(Ord. No. 06-01, §§ 1, 2, 2-6-2006)

Editor's note(s)—Section 1 of Ord. No. 06-01, adopted Feb. 6, 2006, repealed § 10-71, which pertained to repair or demolition, and derived from Ord. No. 88-31, adopted Jan. 16, 1989. Section 2 of Ord. No. 06-01 enacted new provisions to read as herein set out.

Sec. 10-72. Definitions and rules of construction.

For the purpose of this article, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words not defined shall be given their meaning as provided in section 1-2, Definitions and Rules of Construction, of the City Code.

Whenever any words are used in this article, they shall be construed, unless expressly stated to the contrary, to include plurals of those words and shall be construed as if they were followed by the words "or any part thereof." The word "shall" shall be applied retroactively as well as prospectively. Words not defined in this section shall have the meaning normally associated with the word as found in a standard dictionary.

Abandoned building or structure means a building or structure which is not maintained or used to such an extent as to evidence a voluntary relinquishment of the possession of the building or structure by the owner, with the intention of relinquishing ownership and with no expectation or intention of recovering the building or structure.

Accessory structure means a structure the use of which is incidental to that of the main building and which is attached to or located on the same premises as the main building.

Alteration means any change, addition or modification in construction or occupancy.

Blighting influence means any physical condition of property that due to poor maintenance directly or indirectly causes a reduction in the value of surrounding properties.

Brush means any accumulation of the following, but not limited to, grass clippings, hedge and tree trimmings, palm fronds, leaf rakings, and other such debris resulting from the maintenance of lawns and yards.

Building means any structure that encloses a space used for sheltering any occupancy.

Building code means the Florida Building Code adopted by the city, as amended from time to time.

Commercial business means any business or enterprise that offers for sale goods or services, or which in any manner conducts commerce, within the city limits.

Cooking facilities means any equipment, machinery or appliances used in the preparation of food.

Deterioration means the condition or appearance of a building, or parts of a building, characterized by holes, breaks, rotting, crumbling, cracking, peeling, rusting or other evidence of physical decay, neglect or lack of maintenance including the landscaping and the parking areas.

Dilapidated means in a condition of structural disrepair or deterioration to the extent requiring rehabilitation, reconstruction or demolition.

Disrepair means in a deteriorated or dilapidated state.

Dock means any structure, otherwise known as a pier, wharf or loading platform, which is constructed on pilings over open water, or which is supported by flotation on the water.

Dwelling means any building, structure, accessory structure, manufactured home modular home or rooming house which is wholly or partly used or intended to be used for living, sleeping, cooking and eating by human occupants, whether or not such structure, accessory structure, building, trailer, mobile home, manufactured home, modular home or rooming house is occupied or vacant.

Dwelling unit means any room or group of rooms located within a dwelling and forming a single habitable unit for one family with facilities used or intended to be used for living, sleeping, cooking and eating.

Electrical means all work, materials and/or system of electrical wiring for use of light, heat or power, and all connected appurtenances, apparatus or equipment, inside of or attached to any building or structure, lot or premises.

Extermination means the control of insects, rodents, vermin and/or other pests by destroying their harborage places; by removing or making inaccessible those materials that may serve as their food; by poisoning, spraying, fumigating and trapping; or by any other recognized and legal means.

Fire hazard (see *Nuisance*) means any thing or act which increases or may cause an increase of the hazard or menace of fire to a greater degree than reasonable for the conduct of the commercial business on the premises, or which may unreasonably obstruct, delay or hinder or may unreasonably become the cause of an obstruction, a delay, a hazard or an unreasonable hindrance to the prevention, suppression or extinguishing of fire.

Fire marshal means the fire marshal for the Pinellas Suncoast Fire District or successor agency having jurisdiction in the city.

Garbage/rubbish means the animal and/or vegetable waste resulting from the handling, preparation, cooking and/or consumption of food, and wastepaper, plastic or related materials used in the packaging and preparation of foods. All combustible and noncombustible waste materials, including but not limited to nonoperating toys, bicycles, mechanical equipment and machines or parts thereof. The term shall include residue from the burning of combustible materials, paper, rags, cartons, boxes, wood, plastics, rubber, leather, brush, metal cans, metal, mineral matter, glass, crockery, and other nonhazardous materials.

Good state of repair means that a building or structure is safe and habitable for its ordinary and intended use, and that the materials used in any structure or fixture are sound and stable and performing the function for which intended.

Good working condition means that the item is fully operable and functional for the use for which it is intended.

Habitable room means a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes; excluding bathrooms, shower rooms, water closet compartments, laundries, pantries, foyers, connecting corridors, closets and storage spaces.

Hobby vehicle shall mean any vehicle, other than commercial, domestic and recreational vehicles as defined by this article, which is designed for, or modified for, personal hobbies such as track racing, mud bogging, off-road driving or other similar activities and which cannot be licensed for street operation.

Hotel, motel or transient lodging means a facility offering transient lodging accommodations on a daily, weekly or monthly rate for up to three months to the general public, catering to transient occupancy.

Hotel, motel or transient lodging unit means a unit designed for transient occupancy and utilized for rental purposes. A unit shall contain bathing and sanitary facilities and may have cooking or eating facilities.

Infestation means the presence of any insects, rodents, vermin or other pests within or around a dwelling, which are detrimental to the public health, safety, and general welfare of the residents or occupants thereof.

Inoperable vehicle shall mean a vehicle or trailer, excluding a hobby vehicle, which is incapable of being lawfully operated on the streets of the state, or is in a state of disrepair. A vehicle or trailer shall be deemed inoperative if one or more parts which are required for the operation of the vehicle are missing, dismantled, inoperative or not attached to the vehicle as designed. A vehicle or trailer without a license plate, with a license plate that is not registered to that vehicle, without a registration sticker affixed to the license plate, or that has a registration sticker affixed to the license plate which has been expired for a period of at least 90 days, shall be deemed to be incapable of being lawfully operated on the streets of the state.

Maintenance means the upkeep of premises in a good state of repair and equipment in working order.

Multiple dwelling means any structure containing two or more dwelling units.

Notice of violation means written notice mailed by certified mail with return receipt of delivery, or actual hand delivery to the owner or occupant in charge of the property.

Nuisance means doing of an unlawful act, or omission of the performance of a duty, or the suffering or permitting any condition or thing to be or to exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others; or
- (2) Offends decency; or
- (3) Is offensive to the senses; or
- (4) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
- (5) In any way renders other persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others; or
- (7) Is declared by ordinance to be a nuisance.

Nuisance condition shall mean:

- (1) Any nuisance as defined by law, or
- (2) Any attractive nuisance which may be detrimental to the health or safety of children whether in a building, on the premises of a building, or upon an unoccupied lot. This includes, but is not limited to:
 - (a) abandoned: wells, shafts, basements, excavations, unclean swimming pools or spas, iceboxes, refrigerators, or motor vehicles;
 - (b) structurally unsound fences or structures;
 - (c) unsecured commercial structures, dwellings, or dwelling units
 - (d) lumber, trash or debris, which may prove a hazard for inquisitive minors;
 - (e) unsanitary conditions or anything offensive to the senses or dangerous to health including, but not limited to, the emission of odors, sewage, human waste, liquids, gases, dust, smoke, vibration, noise or whatever may render air, food, or drink detrimental to the health of human beings;
 - (f) physical conditions including, but not limited to, old, dilapidated, abandoned: scrap or metal, paper, building materials and equipment, bottles, glass, appliances, furniture, rags, rubber, motor vehicles, and parts thereof;
 - (g) physical conditions posing fire hazards;
 - and (h) physical conditions posing a hazard including, but not limited to, dead or damaged trees.

Occupant means any person living, sleeping, cooking, or eating in, or having actual possession of any building, dwelling, structure or accessory structure.

Operator means any person who has charge, care or control of premises or a part thereof.

Owner means any person who individually or jointly holds the legal equitable or beneficial title to any building or structure subject to the provisions of this chapter. The term shall include the owner's duly authorized agent, property holder, operator or any other person having a vested or contingent interest, or, in the case of leased premises, the legal holder of the lease, or his legal representative. It is intended that this term shall be construed to include any person responsible for the construction, maintenance and operation of a building, facilities or premises involved.

Plumbing means the practice, materials and fixtures used in the installation, maintenance, extension and alteration of all piping, fixtures, appliances and appurtenances in connection with any of the following: sanitary drainage or storm drainage facilities, the venting system and the public or private water supply systems, within or adjacent to any building, structure or conveyance; also the practice and materials used in the installation, maintenance, extension or alteration of storm water systems, liquid waste or sewerage systems and water supply systems of any premises to their connection with any point of public disposal or other acceptable terminal.

Premises means any occupied or unoccupied building, accessory structure, dwelling, lot or parcel of land.

Repair means the replacement or renewal of existing work with the same kind of material, or similar, not including additions or new work, for the purpose of maintenance of such building, structure, device or equipment.

Replace means to put something new or in working condition in place of worn, deteriorated or broken material, devices or equipment and to restore it to its former condition.

Sanitary sewer means any sanitary sewer owned, operated and maintained by the County and available for public use for the disposal of sewage.

Sash means the framework in which panes of glass are set in a window or door

Sewage means waste from a flush toilet, bathtub, sink, lavatory, dishwashing or laundry machine, or water-carried waste from any other fixture or equipment or machine.

Skylight means an opening through the roof and ceiling to admit light to a room, including the window portion therein. The assembly may or may not have an operable section to provide ventilation.

Stairway means one or more flights of stairs and the necessary landings and platforms which form a continuous and uninterrupted passage from one story to another, within a building or structure or attached to the exterior of a building or structure.

Story means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above.

Structure means anything constructed, installed or portable, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on a parcel of land or which is attached to something having a permanent location on a parcel of land.

Structurally sound means free of imperfections that affect the intended use of the structure so as not to endanger the health, safety and welfare of the occupants or neighbors.

Supplied means paid for, furnished, or provided by or under control of the owner or operator.

Temporary housing means any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not permanently attached to the ground, to another structure, or to any utilities system on the same premises for more than the time period as approved by the city manager.

Timeshare lodging means a use of a dwelling unit under an arrangement or plan whereby the use of the unit has been segmented over time so that the owners, lessees or holders, regardless of the form of ownership or form in which the right to use is expressed, of such dwelling units have a periodically recurring exclusive right to use of either that unit or another unit in the same development, according to a predetermined fixed schedule, and only if the schedule would permit in any one year a change or turnover of occupancy five or more times. In timeshare lodging facilities, each unit may contain living and sleeping accommodations, sanitary facilities and kitchen or cooking facilities. Timeshare lodging, interval ownership, interval occupancy and similar uses shall be construed to be the same.

Transient lodging means a hotel, motel, or similar building or group of buildings in which sleeping accommodations and sanitary facilities are offered to the public and intended for rental up to three continuous months to transients with daily, weekly or monthly or seasonal charge. A transient lodging facility is distinguished from multifamily dwellings (apartments) where rentals are for periods of three months or longer and occupancy is by residents rather than transients. For purposes of this article, timeshare lodging shall be considered to be transient lodging.

Unsafe structure means a structure that is found to be dangerous to the life, health, property or safety of the public, or the occupants of the structure, by not providing minimum safeguards, by having exposed electrical wiring, having an unsafe or unsanitary plumbing system, by being structurally unsound or unsafe, having faulty construction, or having an unstable foundation that could result in partial or complete collapse.

Vehicle means every device, whether motorized or non-motorized, upon, or by which any person or property is or may be transported or drawn, excepting devices used exclusively upon stationary rails or tracks.

Ventilation means the process of supplying and removing air by natural or mechanical means to or from any structure, building, or dwelling.

Vacant means any structure, building or premises which is not used or occupied.

Washrooms means enclosed spaces containing one or more bathtubs or showers, or both, and which also shall include toilets, lavatories or fixtures serving similar purposes.

Water closet compartment means enclosed space containing one or more toilets, which may also contain one or more lavatories, urinals and other plumbing fixtures.

Watertight means of such tight construction or fit as to be impermeable to water except when under sufficient pressure to produce structural discontinuity.

Weatherproof means capable of withstanding exposure to weather without damage.

(Ord. No. 06-01, § 3, 2-6-2006; Ord. No. 14-02, § 6, 6-2-2014)

Sec. 10-73. Applicability of article; conflicting provisions.

- (a) *Applicability.* Every building and the premises on which it is situated, whether vacant or occupied, except temporary housing in times of local emergency, disaster or necessity, shall comply with the provisions of this article whether or not:
- (1) The use or occupancy of the building or premises is conforming or nonconforming;
 - (2) Such building was constructed, altered or repaired before or after the enactment of this article;
 - (3) Any permits or licenses have been issued for the use or occupancy of the building prior to the effective date of this article; and
 - (4) Any permits or licenses for the installation or repair of equipment or facilities have been issued prior to the effective date of this article.

This article establishes minimum standards for the initial and continual occupancy and use of all such buildings, as well as the maintenance of vacant buildings and properties. This article does not replace or modify standards otherwise established for the construction, repair, alteration or use of the building, equipment or facilities contained therein by the Florida Building Code and other applicable codes. Where there is mixed occupancy, all occupancies therein shall be regulated by and subject to the provisions of this article.

- (b) *Conflicting provisions.* In any case where the provisions of this article impose a higher or lower standard than that set forth in any other ordinance of the city or under the laws of the state, then the higher standard shall prevail.
- (c) *Compliance.* It shall be the duty of each and every owner and operator of a building or premises within the city to comply with the regulations and requirements set forth in this article. No license, permit or certification of occupancy shall be issued unless and until all applicable sections of this article have been complied with. No land or building, or combination thereof, shall be used in a manner inconsistent with or in conflict with the requirements of this article.

(Ord. No. 06-01, § 4, 2-6-2006)

Sec. 10-74. General standards.

No person shall occupy, or let to another for occupancy, any residential or nonresidential property that does not comply with the following requirements:

- (1) Foundations, floors, walls, ceilings, roofs, windows, doors and all other building parts shall be structurally sound, weatherproof, watertight and rodent proof, and shall be kept in a good state of repair. Roof surfaces shall be watertight. Where water is permitted to stand on a roof for cooling purposes, the roof must be designed for that purpose and proper precautionary measures taken to prevent breeding of mosquitoes and other similar insects.
- (2) Gutters and downspouts, where in existence, shall be kept clear of debris and be maintained in a good state of repair and working condition.
- (3) Every inside and outside stairway, porch, balcony, hallway, corridor and every appurtenance to such places shall be maintained in a safe condition and be capable of supporting the loads set forth in the building code and regulations of the city which were in effect at the time of certificate of occupancy. Protecting guardrails and safeguards shall be required on any unenclosed structure over two feet from the ground level and on every interior or exterior stair or stairwell of four or more risers and shall be located in accordance with requirements of the building code which was in effect at the time of certificate of occupancy. Where steps are located adjacent to a doorway, they shall be at least the width of the doorway.
- (4) Every chimney and smoke pipe, and all their flue and vent attachments, shall be maintained in such condition that there will be no leakage or backing up of smoke and noxious gases into the structure.
- (5) Every plumbing fixture, water pipe, waste pipe, drain and gas pipe shall be maintained in good, sanitary working condition, free of leaks and obstructions.
- (6) All electrical wiring and accessories shall be maintained in good, safe working condition and be adequately insulated and protected. No wiring, outlets or connections shall be left exposed so as to create a hazardous condition.
- (7) Every accessory structure shall be kept in a clean and sanitary condition, free from rodents, vermin and infestations. Fences, walls, sheds and similar enclosures shall be maintained in a good state of repair. Every dock, seawall, pier or mooring structure shall be maintained in a good state of repair.

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- (8) Meter rooms shall be clear of any debris and shall not be used for storage. If the meter room is locked and no on-site manager is available, a sign shall be posted indicating where the key to the meter room is kept.
 - (9) All elevators shall be maintained in a safe condition as required by state and local codes.
 - (10) The floor surface of every water closet compartment, bathroom and shower room shall be maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.
 - (11) The occupants of every structure shall be responsible for keeping the premises free from the accumulation of garbage, rubbish and/or waste at all times.
 - (12) Every occupant of any building or structure shall dispose of garbage, rubbish and/or other waste materials in an approved sanitary manner. Garbage shall be placed in the garbage disposal facilities or storage containers with lids as required by all applicable city codes.
 - (13) No owner, occupant or operator of a building, transient lodging facility, transient lodging unit, shall deposit, or cause to be deposited, any garbage, rubbish and/or waste on adjacent properties.
 - (14) The Seawall Manual adopted by the city council.

(Ord. No. 06-01, § 5, 2-6-2006; Ord. No. 18-07, § 7, 12-3-2018; Ord. No. 21-06, § 8, 9-8-2021)

Sec. 10-75. Basic equipment and facilities.

No person shall occupy, or let to another for occupancy, any residential or nonresidential property that does not comply with the following requirements:

- (1) Every dwelling unit and transient lodging unit shall contain a room which affords privacy to a person within that room and which is equipped with a flush water closet and a lavatory basin in good working condition and properly connected to an approved water system and sewer system.
- (2) All buildings shall have a fuse or circuit breaker panel board readily accessible to the occupants of the building.
- (3) Every supplied facility, piece of equipment or utility required in this article shall be maintained in a safe and good working condition. No owner or occupant shall cause any service, facility, equipment or utility required in this article to be removed from or discontinued for any occupied structure except for such temporary interruption as may be necessary while actual repairs, replacement or alterations are in process.
- (4) All buildings shall have permanently affixed address numbers on the front of the building, which shall be clearly visible from the street. Additional numbers may be affixed on a mailbox.
- (5) All residential dwellings shall be supplied with a working and active connection to an approved water supply, wastewater treatment system and electric power provider.

(Ord. No. 06-01, § 6, 2-6-2006; Ord. No. 18-07, § 8, 12-3-2018)

Sec. 10-76. Light and ventilation.

No person shall occupy, or let to another for occupancy, any residential or nonresidential property that does not comply with the following requirements:

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- (1) Every opening beneath a structure, including basement or cellar windows and crawl space, shall be equipped with an approved type of screening or lattice work to keep out animals.
 - (2) Every hall and stairway located in a building used for occupancy shall be provided with not less than one footcandle of natural light throughout or with properly installed electric lighting facilities which provide not less than one footcandle of illumination throughout and which are controlled by the occupants of the structure and available at all times.
 - (3) Every window and exterior door shall be watertight, maintained without cracks and holes and in a good state of repair.
 - (4) Sashes with rotten wood, broken joints or broken or loose mullions or muntins shall be replaced. All broken and missing windows shall be replaced with glass or an approved plastic glazing material in accordance with the current building code regulations. All exposed wood shall be repaired and painted.
 - (5) All windows shall be maintained free of broken glass. Where a window glass becomes cracked to an extent that the largest single portion of the window free of a crack is less than 90 percent of the total surface area of the window glass, the window glass shall be replaced by a pane free of cracks.
 - (6) All openings originally designed as windows shall be maintained as windows, complete with sills, lintels, frame, screen and glass, unless specifically approved by the building official and fire marshall for enclosure. Where a window has been approved for enclosure, it must be enclosed using materials similar to those of which the wall is made including the exterior finish.
 - (7) If glass is broken, the window opening may be boarded for a period not exceeding 60 days. When boarding is used, it shall be of trim fit, sealed to prevent water intrusion, and painted or stained to properly conform with the other exterior portions of the building.

(Ord. No. 06-01, § 7, 2-6-2006)

Sec. 10-77. Maintenance and appearance standards.

The owner and operator of all properties shall maintain the exterior of the premises in such a manner as to conform with all city codes and ordinances; avoid blighting influences on neighboring properties; and avoid the creation of hazards to public health, safety and welfare. Such maintenance and appearance will be judged by the following standards:

- (1) The exterior surfaces of all premises and every structure on the premises, including all parts of the structure and appurtenances, shall be maintained in good condition and shall not show evidence of deterioration, weathering, discoloration, rust, mildew, algae, ripping, tearing, or other holes or breaks. All screened enclosures shall be properly fitted and maintained. All other surfaces shall be maintained free of broken glass, crumbling stone, asphalt, brick or stucco, or other conditions reflective of deterioration or inadequate maintenance.
- (2) All off-street parking spaces and drives shall be paved with asphalt or constructed of concrete, paver bricks or turf block and shall be of smooth surface and in good repair in compliance with city codes.
- (3) Roofs shall be covered with roofing material suitable for exposure to the elements pursuant to the building code. Roofs and roof coverings shall remain structurally sound and watertight and shall not contain visible holes, rips, tears, breaks, or the like. Roofs shall be repaired using like materials to the existing materials. Temporary repairs to a defective roof shall be completed within 30 days of the installation of a protective tarp.
- (4) The roofs of all structures shall be kept in a clean and presentable condition, free of mold and mildew. All roofs shall have a finished appearance, and there shall not be a mix of roofing materials on any one

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- surface. There shall not be an accumulation of debris, other unnecessary materials or vegetation of any type permitted on roofs.
- (5) All swimming pools and spas, either in the ground or above the ground, shall be properly maintained. Pool equipment shall be kept in a workable fashion such that the pool shall not become stagnant and create a health hazard or an area for breeding of insects or vermin.
 - (6) The exterior premises shall be maintained so as to prevent the accumulation of stagnant water on the premises.
 - (7) Exterior premises shall be kept free from the excessive growth of weeds, grass and other foliage. Brush shall be promptly removed. The provisions of this subsection shall also apply to vacant lots and to the premises of business establishments. Water conservation shall be achieved by the selection of appropriate plant materials, the removal of nuisance and invasive vegetation, the use of water-efficient landscaping and irrigation systems, and appropriate maintenance (consistent with section 94-69).
 - (8) Animals and pets shall not be kept in any structure or on any premises in such a manner as to create unsanitary conditions or constitute a nuisance.
 - (9) Except as otherwise provided, live turf grass, groundcover and other vegetative material shall provide complete coverage of the entire yard area free of dead and dying trees and limbs. Play areas, gardens, flower beds, driveways, walks and the like, not intended to have vegetative cover, should be clearly defined and maintained free of uncultivated growth. Yards not using vegetative cover must use a material that meets all city codes, and such material must be maintained free of uncultivated growth.
 - (10) The premises, whether occupied or unoccupied, shall be kept free of all nuisances and any hazards to the safety of occupants, customers, pedestrians and other persons utilizing the premises, and free of unsanitary conditions; and any of the foregoing shall be promptly removed and abated by the owner or operator. It shall be the duty of the owner or operator to keep the premises free of hazards that include but are not limited to the following:
 - a. Loose and overhanging objects, which by reason of location above ground level, constitute a danger of falling on persons;
 - b. Holes, excavations, breaks, projections, obstructions, and excretions of pets and other animals on paths, walks, driveways, parking lots and parking areas, and other parts of the premises which are accessible to or used by persons on the premises;
 - c. Inadequate runoff drains for stormwaters; and
 - d. Exterior porches, landings, balconies, stairs and fire escapes that are not provided with banisters or railings properly designed and maintained to minimize the hazard of falling.
 - (11) Any awning or marquee and its accompanying structural members shall be maintained in a good state of repair. If such awnings or marquees are made of cloth, plastic or similar material, such cloth or plastic shall not show evidence of weathering, discoloration, ripping, tearing or other holes.
 - (12) The exterior of the premises and structure shall be in good state of repair and free from deterioration so as not to constitute a nuisance.
 - (13) All structures and decorative elements of buildings shall be repaired or replaced in a workmanlike manner to match as closely as possible the original materials and construction techniques.
 - (14) All exterior surfaces, which require paint or sealing in order to protect the underlying surface from deterioration shall be so painted or sealed.
 - (15) All exterior surfaces, which have been uniformly painted, shall be maintained free of peeling and flaking. Where large areas (greater than one square foot) of the aggregate of any painted wall shall

have peeling or flaking or previous paint worn away, the entire wall shall be repainted within 90 days. Patchwork painting shall be prohibited, and any patchwork utilized to compare and choose paint colors shall be uniformly repainted within 90 days. Paint stained by exterior watering is exempt unless it is peeling, flaking, or worn.

- (16) Any graffiti shall be removed within 48 hours of its appearance and the surface restored to its original state.
- (17) Where a parking lot is constructed as part of a commercial or multifamily complex, the parking lot and all parking stops, curbing, stripping, surfacing, sidewalks and other parts thereof shall be maintained free of broken surfaces, holes or other similar conditions. All parking lots described in this subsection shall be repainted, repaired or replaced with like material to the original construction.
- (18) Where the building, signs or property is lighted, the lighting shall be maintained and operational at all times.
- (19) Where stormwater drainage has been provided, it shall be maintained and functional at all times.
- (20) Where landscaping or fences have been incorporated in the development plan of a commercial business or where landscaping has been required by the city as part of a development plan, including parking plans, the landscaped areas shall be maintained in a manner to equal and reflect the original landscaping approved for the development plan.
- (21) Where curb cuts are abandoned due to new construction or change of access, the curb cut shall be closed and replaced with a standard sidewalk and curb and gutter arrangement where applicable.
- (22) All advertising structures and awnings and their accompanying supporting members shall be maintained in good repair and shall not constitute a nuisance or safety hazard. All inoperative signs shall be repaired, or shall with their supporting members, be removed forthwith. If such signs, billboards, marquees or awnings including their supporting members are not properly maintained, they shall be removed forthwith. If such awnings or marquees are made of cloth, plastic or a similar material, such awnings or marquees shall be maintained so as not to show evidence of tearing, ripping, fraying, holes, fading or other deterioration that diminishes their function. Where such supporting members have been left from sign removal prior to adoption of the ordinance from which this article is derived, such supporting members shall be removed within six months of the adoption of such ordinance.

(Ord. No. 06-01, § 8, 2-6-2006; Ord. No. 15-02, § 1, 7-6-2015; Ord. No. 18-07, § 9, 12-3-2018; Ord. No. 21-06, § 9, 9-8-2021)

Sec. 10-78. Standards for securing buildings and time limits.

- (a) The boarding of the doors, windows or other openings of any building or structure or any means of securing such opening, shall comply with the following minimum standards:
 - (1) Securing windows and other openings. Windows and similar openings shall be boarded with exterior grade plywood of a minimum thickness of one-half-inch nominal or its equivalent. Vent holes may be required, as deemed necessary for safety. The plywood shall be secured in place by using anchors that will resist vandalism and damage by weather.
 - (2) Hurricane protection systems utilized at all openings shall comply with all the requirements of the Florida Building Code.
 - (3) Painting of boarded openings. All openings boarded for over 30 days shall be painted with a minimum of one coat of exterior paint and shall be painted the same color as the building.

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- (b) The owner of a building shall promptly repair any broken door, window or other opening by securing the necessary building permits so that a temporary boarded up condition is limited. Any such repair must be completed within 30 days from the time the boards are installed.
 - (c) Buildings which have been boarded-up as a result of an order issued by other regulatory agencies having jurisdiction in the city including but not limited to the code enforcement board, police department, or emergency action initiated by the city manager, shall remain boarded in accordance with the specific terms of the order.
 - (d) The requirements of this section may be waived by the city manager when damage to structures has resulted from storm or other natural disasters.

(Ord. No. 06-01, § 9, 2-6-2006)

Sec. 10-79. Demolition of buildings.

Where a building is under the jurisdiction of this article, the building may be demolished by the owner provided that the following requirements are met:

- (1) The owner shall obtain a demolition permit from the county building department.
- (2) All sewer, gas, water, storm drainage lines and similar taps or connections shall be properly closed and disconnected as per approval from the County or appropriate utility company.
- (3) All debris from the building shall be removed from the site.
- (4) The lot shall be graded to a smooth, even, finished grade, free from building material, debris, holes and depressions. The clearing of any parcel shall require a clearing and grubbing permit. The parcel shall be graded so as to provide for stormwater retention.
- (5) Where walls of adjacent buildings become exposed as a result of the demolition, the walls must have all doors, windows, vents or other similar openings closed with material of the type composing the wall. The exposed wall shall be finished so as not to detract from the aesthetics and value of adjacent property, and weatherproofed to prevent deterioration of the wall.
- (6) Notwithstanding the provision of Section 104.5, Florida Building Code, the building official may impose a time limit as an additional condition of a permit for completion of demolition work once such work shall have commenced.
- (7) Demolition work, having commenced, shall be pursued diligently and without unreasonable interruption with due regard to safety, provided that for cause, one or more extensions of time, for periods not exceeding up to 30 days each, may be allowed in writing by the building official. It is the intent of this section to limit the existence of an unsafe condition or nuisance on the premises during the period of demolition operations.

(Ord. No. 06-01, § 10, 2-6-2006)

Sec. 10-80. Maintenance of vacant buildings and removal of partially demolished buildings or structures.

- (a) *Maintenance of vacant buildings.* Maintenance of vacant buildings shall be governed by the following:
 - (1) The exterior of the building and the property (parking areas, yards and landscaping areas) shall continue to be properly maintained in a good state of repair.

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- (2) Signs may be taken down and removed, or, if the sign structure remains, the sign faces are to be replaced with blank panels.
 - (3) All windows, doors and other openings shall be maintained in a watertight condition. If glass is broken within a window, the window opening may be boarded for a period not exceeding 60 days. When boarding is used, it shall be of trim fit, sealed to prevent water intrusion, and painted or stained to properly conform with the other exterior portions of the building.
- (b) *Removal of partially demolished or abandoned building or structures.*
- (1) Buildings or structures that have been damaged or partially demolished or abandoned shall be repaired to a fully habitable condition and a new certificate of occupancy obtained from the building official (for a building designed and intended for human habitation) or demolished in accordance with section 10-79 of this article. In the case of a building or structure not intended for human habitation (such as a freestanding or attached shed or garage structure) such building or structure shall be fully restored so as to accommodate the use for which it was originally intended and designed, or demolished in accordance with section 10-79 of this article. Failure to either restore or demolish such damaged or partially demolished structure or building within six months if repairing, or 90 days if demolishing, from notification by the city manager or designee shall be a violation of this article.
 - (2) In the event that an owner or operator of any property in the city fails or refuses to restore or fully demolish a structure or building with the time period set forth in this section, the city may seek redress in a court of competent jurisdiction for an order directing the owner or operator of any such property to restore or demolish the structure or building, or an order of court directing the city to proceed to contract for the demolition of the structure or building. Any such litigation instituted to enforce the provisions of this article shall include a lis pendens being filed against the property until otherwise judicially ordered. All costs of litigation including attorney fees, cost of demolition and other related costs shall be paid by the owner or operator of property. Any unpaid cost and fees shall operate as a lien against the property with interest at the rate permitted by Florida Statutes.

(Ord. No. 06-01, § 11, 2-6-2006; Ord. No. 18-07, § 10, 12-3-2018)

Sec. 10-81. Responsibilities of owner and/or operator.

- (a) The owner and/or operator shall not occupy, permit another to occupy, or let to another for occupancy a dwelling, dwelling unit, or hotel, motel or other transient lodging unit that is not clean, sanitary, safe and fit for human habitation.
- (b) The owner and operator of a dwelling or dwelling unit shall, jointly and severally:
 - (1) Maintain in a clean and sanitary condition the shared or public areas of a dwelling containing more than one dwelling unit and premises. Shared or public areas shall include yards, courts, driveways, parking areas, lawns and shrubbery.
 - (2) Be responsible for the extermination of any rodents, vermin and other pests in all public or shared areas, and when infestation of other areas is caused by his failure to carry out the provisions of this chapter.
 - (3) The operator of every hotel, motel or other transient lodging shall be responsible for the sanitary maintenance of all walls, floors, ceilings and other parts; and shall be further responsible for the sanitary maintenance of the entire premises where all of the building is under the control of such operator.
 - (4) The operator of every hotel, motel or other transient lodging shall be responsible for the extermination of any insects, rodents, vermin or other pests in such place and shall be further responsible for such

extermination on the entire premises where all of the building within which the hotel, motel or other transient lodging is contained is leased or rented by the operator. Whenever infestation is caused by failure of the owner to maintain the building in a reasonably insect proof and/or rodent proof condition, extermination shall be the responsibility of the owner.

- (5) In every dwelling containing one or more units, the owner shall exterminate all infestations of any insects, rodents, vermin or other pests in or on the premises except where such pests are the responsibility of the occupant as provided in the section 10-82.

(Ord. No. 06-01, § 12, 2-6-2006)

Sec. 10-82. Responsibilities of occupant.

Every occupant of a dwelling or dwelling unit shall be responsible for the following:

- (1) Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises which he occupies and controls, including yards, lawns, courts and driveways. The provisions of this subsection shall also apply to premises of business establishments.
- (2) Every occupant of a dwelling unit shall keep all plumbing fixtures, sanitary facilities, appliances and equipment in a clean and sanitary condition and shall exercise care in their proper use and operation.
- (3) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, vermin, or other pests in or on the premises. Every occupant of a dwelling unit in a building containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested; except that whenever such infestation is caused by the failure of the owner to carry out the provisions of this chapter, extermination shall be the responsibility of the owner. In every dwelling containing one or more units, the owner shall exterminate all infestations of any insects, rodents, vermin or other pests in or on the premises except where such pests are the responsibility of the occupant as provided in the preceding sentence.

(Ord. No. 06-01, § 13, 2-6-2006)

Sec. 10-83. Designation of administrator; inspections; right of entry.

- (a) It shall be the duty and responsibility of the city manager or designee to enforce this article and to obtain compliance with the requirements of this article.
- (b) All inspections, regulations and enforcement of violations of the provisions of this article, unless expressly stated to the contrary, shall be under the direction and supervision of the city manager or designee.
- (c) All buildings, structures and premises as set forth in this article are subject to inspection by the city manager or designee, where probable cause is shown to believe that a violation may exist. Upon presentation of proper identification and credentials to the owner, agent or occupant in charge of the property or premises, and securing oral or written permission from the owner, owner's agent or occupant in charge of the property, the designee may enter on the property and make such inspections as necessary during all reasonable hours.
- (d) If permission for entry for the purpose of inspection of the property is denied, and no emergency exists, the city manager or designee may request the city attorney to procure a court order for entry to the premises.

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- (e) In cases of emergency where imminent threat to the health, safety or welfare of an affected party is believed to exist, the limitations set out in this section will not apply.

(Ord. No. 06-01, § 14, 2-6-2006)

Sec. 10-84. Violation of article; penalty.

- (a) Any person or agent who shall violate a provision of this article, or fail to comply therewith or with any of the requirements thereof, or who shall erect, construct, alter, demolish or move any structure, or has erected, constructed, altered, repaired moved or demolished a building or structure in violation of this article, shall be prosecuted pursuant to section 1-15 of the City Code or prosecuted in the county court pursuant to applicable law.
- (b) Each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this article is committed or continued, and upon conviction of any such violation such person shall be punished within the limits of and as provided by law.
- (c) Notwithstanding any other enforcement procedures set forth in this section or section 2-245 of the City Code, in the event that the property owner or any person having an interest in the property fails to respond to a written communication from the code enforcement officer, including posting of the property, within five days after notice, the city manager may authorize and direct city services or pay a contractor to correct the violation, and to invoice the property owner or any other person having an interest in the property. Failure on the part of the property owner or person having an interest in the property to pay the costs incurred by the city plus interest at 12 percent per annum within 30 days of the corrective action, the city clerk may file a lien on the property, which lien may be foreclosed pursuant to the provisions of section 2-250 of the City Code or as otherwise prescribed by law. The city council shall, by resolution, set such administrative costs plus the actual cost to abate the violation as the council shall deem appropriate.

(Ord. No. 06-01, § 15, 2-6-2006; Ord. No. 09-07, § 2, 10-5-2009; Ord. No. 18-07, § 11, 12-3-2018)

Sec. 10-85. Code enforcement officer.

- (a) *General.* The city manager shall have jurisdiction and control over the administration and enforcement of the provisions of this article. The city manager may appoint a duly authorized representative or representatives to carry out the provisions of this article. The code enforcement officer is hereby designated as the investigating and enforcing authority pursuant to the provisions of this article. The code enforcement officer is hereby authorized and directed to receive all complaints of a violation of this article, to gather all relevant information concerning said complaints, to conduct field investigations and inspections of real property and to enter upon real property in the conduct of its official business pursuant to this article.
- (b) *Notice and orders.* The code enforcement officer shall also be responsible for providing all notices and orders to affected property owners required by this article and to take such other action as is reasonably necessary to accomplish the purpose of this article.
- (c) *Rule making authority.* The city manager shall adopt rules of procedure and regulations for the administration and enforcement of this article.
- (d) *Cumulative action.* Any action to be taken by the code enforcement officer pursuant to this article, in regard to the enforcement of any section hereof, shall be considered cumulative and in addition to penalties and to other remedies provided elsewhere by ordinance or law.

(Ord. No. 14-02, § 8, 6-2-2014)

Editor's note(s)—Ord. No. 14-02, § 7, adopted June 2, 2014, repealed the former § 10-85, and § 8 of Ord. No. 14-02 enacted a new § 10-85 as set out herein. The former § 10-85 pertained to duties of board of adjustments; decisions of board of adjustment and derived from Ord. No. 06-01, adopted February 6, 2006.

Sec. 10-86. Inspections.

- (a) All structures, dwelling units, buildings and premises subject to this article shall be subject to inspection by the code enforcement officer or authorized representatives.
- (b) *Identification.* The code enforcement officer, or authorized representatives, shall be provided with official identification which shall be presented at the time of inspection.
- (c) *Coordination of inspections.* The representative shall explain to the owner, occupant or operator the purposes of the inspection before entering any structure, building or dwelling unit subject to this article. Where practicable, the code enforcement officer shall notify the owner, operator or occupants of dwelling units or building to be inspected, prior to said inspection. Inspection of the interior of structures shall take place during regular business hours of the City of Belleair Beach, or at a time mutually agreed upon by the code enforcement officer, or authorized representatives, and the owner, operator or occupants, unless the code enforcement officer has probable cause to believe a violation of the article exists of such nature as to constitute an immediate threat to the health, safety, or welfare of persons in and/or about the dwelling unit, building, area, structure or accessory structure which would require inspection without delay.
- (d) *Right of entry.* The code enforcement officer shall have the right to entry upon real property while in the discharge of his duties in enforcing the provisions of this article. Before entering into any structure, building, dwelling, dwelling unit or accessory structure subject to this article, the code enforcement officer, or authorized representatives, shall attempt to secure the written consent of the owner, operator or occupant of said premises. Should the code enforcement officer, or authorized representative have probable cause to believe a violation of this article exists in or about the structure, building, dwelling, dwelling unit or accessory structure and the right of entry is refused by the owner, operator, occupant or any other person, or permission cannot be obtained, the code enforcement officer, or authorized representative, may forthwith seek a warrant authorizing the entry and inspection of the structure, building, dwelling, dwelling unit or accessory structure.

(Ord. No. 14-02, § 9, 6-2-2014)

Editor's note(s)—Ord. No. 14-02, § 7, adopted June 2, 2014, repealed the former § 10-86, and § 9 of Ord. No. 14-02 enacted a new § 10-86 as set out herein. The former § 10-86 pertained to right of appeal; procedure for appeals and derived from Ord. No. 06-01, adopted February 6, 2006.

Sec. 10-87. Indemnification.

Pursuant to F.S. § 768.28, as amended, no officer, employee, or agent of the code enforcement officer shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of Belleair Beach shall be by action against the City of Belleair Beach, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The City of Belleair Beach shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(Ord. No. 14-02, § 10, 6-2-2014)

Editor's note(s)—Ord. No. 14-02, § 7, adopted June 2, 2014, repealed the former § 10-87, and § 10 of Ord. No. 14-02 enacted a new § 10-87 as set out herein. The former § 10-87 pertained to conflicting provisions and derived from Ord. No. 06-01, adopted February 6, 2006.

Sec. 10-88. Notice of violations.

(a) *Notice to responsible parties.*

- (1) Upon receipt of a complaint, and upon completion of a field investigation, of violations of this article, the code enforcement officer, or authorized representative, shall give written notice of any alleged violation of the provisions of this article to the owner or responsible person of any dwelling unit, premises, building, structure, accessory structure, lot, plot or tract of land subject to the provisions of this article. Such notice shall be provided in the manner prescribed in this article and in accordance with F.S. ch. 162, as amended.
- (2) If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the special magistrate and request a hearing. If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify the special magistrate and request a hearing.

(b) *Form.* Notice as prescribed in this section shall be in accordance with the following:

- (1) Include the date on which the violation was observed.
- (2) Include the address of the property in violation.
- (3) Indicate and describe the section or sections of this article violated.
- (4) Include the necessary corrective action.
- (5) Provide for a reasonable period of time to comply.
- (6) Describe the penalty for non compliance.

(c) *Method of service.* The written notice required by this section shall be deemed to have been served upon the owner and/or operator if provided by:

- (1) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the city manager; or
- (2) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or
- (3) Mailing a copy of such notice by certified mail, return receipt requested, provided that such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the local government by such owner; however, if said notice is returned as unclaimed or refused, notice may be provided by posting as described in this section and by first class mail directed to the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing.

(d) *Alternative method of service.* In addition to providing notice as set forth in this section notice may also be served by publication or posting, as follows:

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- (1) Notice may be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in Pinellas County. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50, as amended. Proof of publication shall be made as provided in F.S. ch. 50, as amended; or
 - (2) Notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the front door of the county courthouse. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting; or
 - (3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under this section.

(Ord. No. 14-02, § 11, 6-2-2014)

Sec. 10-89. Enforcement.

- (a) *General.* Where applicable to the purpose and scope of this article, the provisions of article V of chapter 2 of the Belleair Beach City Code, as amended and the procedures contained therein are hereby adopted and incorporated into and made a part hereof by reference.
- (b) *Special master.* Violations of any provisions of this article shall be subject, but not limited to, the penalties and remedies of the master as outlined in section 2-247, Belleair Beach City Code, as amended.
- (c) *Other remedies.* The code enforcement officer may institute any other remedies or appropriate action to restrain, correct, or abate violations of this article which shall include, but not be limited to, enforcement procedures as prescribed by F.S. ch. 162, as amended, chapter 61-2246, Laws of Florida as amended by chapter 81-388, Laws of Florida, as amended.

(Ord. No. 14-02, § 12, 6-2-2014)

Sec. 10-90. Condemnation.

- (a) *General.* Condemnation and demolition of buildings, structures, dwellings, dwelling units and accessory structures shall be conducted by the designated code enforcement officer pursuant to this article and as prescribed by chapter 61-2246, Laws of Florida as amended by chapter 81-388, Laws of Florida.
- (b) *Rule making authority.* The code enforcement officer shall adopt rules of procedure and regulations for the administration and enforcement of the condemnation and demolition provisions of this article and other provisions of law prescribed by chapter 61-2246, Laws of Florida as amended by chapter 81-388, Laws of Florida.
- (c) *Placarding.* When the code enforcement officer orders a building or structure to be vacated or condemned, the code enforcement officer, or his authorized agents or representatives, shall placard the premises and order the premises be evacuated or closed to occupancy when the premises are unsafe and constitute a nuisance. The failure of any person to comply with such order within the time designated by said code enforcement officer, will subject anyone occupying any such premises while still condemned or placarded to the penalties of chapter 61-2246, Laws of Florida as amended by chapter 81-388, Laws of Florida.
- (d) *Costs.* All costs incurred by the city for securing or demolishing a building or structure will be assessed against the property in accordance with chapter 61-2246, Laws of Florida as amended by chapter 81-388, Laws of Florida.

(Ord. No. 14-02, § 13, 6-2-2014)

Sec. 10-91 Applicability.

- (a) *Prevalence of state laws and local ordinances.* The standards established by this article do not replace or modify standards established by any other applicable laws or ordinances for the construction, replacement, or repair of structures.
- (b) *Prevailing standard.* In any case where the provisions of this article impose a higher standard than those set forth in any other ordinance or under the laws of the State of Florida, then the standard set forth herein shall prevail. If the provisions of this article impose a lower standard than those set forth in any other ordinance or pursuant to the laws of the State of Florida, then the higher standard set forth in such ordinance or law shall prevail.
- (c) *Application of other codes.* Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the Florida Building Code, as amended. Nothing in this article shall be construed to cancel, modify or set aside any provision of the Land Development Code of Belleair Beach.

(Ord. No. 14-02, § 14, 6-2-2014)

Sec. 10-92. Administration.

- (a) *Enforcement.* The provisions of this article shall be enforced as follows:
 - (1) By the Belleair Beach Special Master pursuant to the authority granted by F.S. ch. 162, as amended and article V, chapter 2 of the Belleair Beach City Code.
 - (2) Repairs. If the special master determines that a violation of this article presents a serious threat to the public health, safety, and welfare or if a violation of this article is irreparable or irreversible in nature, the city manager is authorized to make all reasonable repairs which are required to bring the property into compliance and to charge the violator with the reasonable cost of the repairs. The city manager is not required to make all reasonable repairs which are required to bring the property into compliance. The city manager will give priority to repairs necessary to address violations that pose a serious threat to the public health, safety and welfare.

(Ord. No. 14-02, § 15, 6-2-2014)

Sec. 10-93. Conflicting provisions.

Other ordinances of the City of Belleair Beach City Code in conflict with the provisions of this article are hereby repealed to the extent of such conflict.

(Ord. No. 14-02, § 16, 6-2-2014)

Secs. 10-94—10-100. Reserved.

ARTICLE IV. EXCAVATIONS⁴

DIVISION 1. GENERALLY

Secs. 10-101—10-120. Reserved.

DIVISION 2. PERMIT

Sec. 10-121. Required for land excavations.

It shall be unlawful for any person to move any sand, shell or earth from any land within the corporate limits of the city, except only the necessary removal of sand, shell or earth in connection with an excavation properly made as an incident to the actual construction of a building, swimming pool or in replacement of sand or shell on lots fronting on the Gulf of Mexico which is necessary in the restoration of such lots to their original dimensions if such lots are affected as a result of storm damage or the erection of a seawall or bulkhead as provided for in section 30-72, without obtaining a permit for such removal from the county building department.

(Ord. No. 86-11, § 2(8-16), 9-10-1986; Ord. No. 00.04, § 2, 8-7-2000)

Sec. 10-122. Required for submerged land excavations.

It shall be unlawful for any person to dredge, dig or move any sand, shell or earth from underneath the portion of the waters of the Gulf of Mexico, Clearwater Harbor, or any arm or inlet of such waters, lying within the corporate limits of the city, without obtaining a permit for such removal from the county building department.

(Ord. No. 86-11, § 1(8-17), 9-10-1986; Ord. No. 00.04, § 3, 8-7-2000)

Sec. 10-123. Procedure.

It shall be unlawful for any person to apply to the United States government, Army Corp of Engineers or any other agency of the United States government, or to any other government agency, unit or subdivision, for a permit or authority to dredge, dig or move any sand, shell, earth or bottom material from underneath the portions of the Gulf of Mexico, Clearwater Harbor, or any arm or inlet of such waters, lying within the corporate limits of the city, without obtaining a permit for such removal from the county building department. Such procedure shall not be applicable to the erection of a seawall or bulkhead as provided for in section 30-72.

(Ord. No. 86-11, § 2(8-18), 9-10-1986; Ord. No. 00.04, § 4, 8-7-2000)

Secs. 10-124—10-150. Reserved.

⁴Cross reference(s)—Streets, sidewalks and other public ways, ch. 50.

ARTICLE V. SWIMMING POOLS, HOT TUBS AND SPAS⁵

DIVISION 1. GENERALLY

Secs. 10-151—10-169. Reserved.

Sec. 10-170. 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:

Angle of repose means the maximum angle to the horizontal at which rock, soil, etc will remain without sliding.

Spa means a unit having a therapeutic use but which is not drained, cleaned or refilled for each individual. It includes, but is not limited to, hydrotherapy jet circulation, hot water or cold water mineral baths, air induction bubbles, or any combination thereof. Industry terminology for a spa includes, but is not limited to, "therapeutic pool," "hydrotherapy pool," "whirlpool," "hot spas," etc. This term shall also include hot tubs, jacuzzis and similar facilities.

Swimming pool and pool mean a structure of concrete, masonry or other approved material and finish, located either indoors or outdoors, used or designed to be used for a bathing or swimming purpose by humans, and filled with a controlled water supply, together with appurtenances and equipment used in connection therewith.

(Ord. No. 07-04, § 1, 9-11-2007; Ord. No. 13-10, § 1, 1-6-2014)

DIVISION 2. SWIMMING POOLS⁶

Sec. 10-171. Scope.

- (a) Swimming pools, or parts thereof, shall not be built or constructed within the city, except in conformity with the provisions of this division.
- (b) Spas or therapy pools shall be governed as swimming pools, except as provided for in division 3 of this article.
- (c) In district I, all installed swimming pools shall be engineer certified and must be approved by the county health department.

(Ord. No. 86-19, § 2(23-1), 9-8-1986)

⁵State law reference(s)—Swimming pools, F.S. ch. 515.

⁶State law reference(s)—Residential pool safety act, F.S. ch. 515.

Sec. 10-172. Reserved.

Editor's note(s)—Section 2 of Ord. No. 07-04, adopted Sept. 11, 2007, repealed § 10-172, contractors, which had derived from Ord. No. 86-19, adopted Sept. 8, 1985; and Ord. No. 00-08, adopted Jan. 8, 2001.

Sec. 10-173. Plans; permits; fees.

- (a) Complete design plans, drawn to scale (minimum one inch equals eight feet), shall be submitted to the building official to show compliance with the required swimming pool setbacks. Further, all state and local construction documents, including copies of Residential Swimming Pool and Spa Design Standards prepared by a registered Florida professional engineer, must be presented for review to the building official prior to the issuance of a building permit for construction of all new swimming pools or spas. Signed and sealed engineering plans for the modification or replacement of existing seawalls or seawall caps shall be prepared by a registered Florida professional engineer and submitted for review by the building official.
- (b) A building permit issued by the building official shall be required for the construction, installation or structural renovation of a swimming pool or therapy pool within the city. The pool contractor shall submit all necessary application documents, scale drawings and sealed engineering, as mandated by the county building department, prior to the review and issuance of the building permit. Construction work may not begin on any pool or spa prior to a permit being issued and posted on the job site location. Cosmetic changes to a swimming pool or spa shall not require a building permit.
- (c) Permit fees shall be determined and collected under the guidelines of the established fee schedule of the county building department.

(Ord. No. 86-19, § 2(23-3), 9-8-1986; Ord. No. 00-08, § 2, 1-8-2001; Ord. No. 07-04, § 3, 9-11-2007)

Sec. 10-174. Setbacks; height; width.

- (a) A swimming pool shall not be constructed or located in front of or forward of the principal structure on any parcel.
- (b) The minimum side setback for all swimming pools shall be seven feet on each side property line.
- (c) The minimum rear setback for a swimming pool shall be seven feet, on non-waterfront property.
- (d) The distance from the house or other structural supports (e.g. columns, stairs, etc) to the inside swimming pool wall shall not be less than five feet, excluding a designed swim-out seat on non-waterfront property.
- (e) The engineering principle known as the angle of repose shall not be permitted to justify any variation or reduction of a designated set back. The prohibition against the justification of the angle of repose shall apply to both waterfront and non-waterfront property.
- (f) All setbacks shall be measured from the inside of the swimming pool wall.
- (g) The height of a swimming pool shall be no higher than 18 inches above the crown of the road. Any structural part of any permanently installed in-ground swimming pool or spa shall not be built higher than 24 inches above the pool deck including raised spas, raised pool beams, upper level decks, and raised waterfalls. Auxiliary deck-mounted equipment such as handrails, ladders, grabrails, diving boards and slides shall not be subject to the height limitations set forth in this section.
- (h) Above-ground pools shall not exceed four feet in height from the lot grade level of the property, including decks and/or railings.
- (i) Waterfront setbacks shall be as follows:

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- (1) Gulf frontage setback for swimming pools shall be a minimum of 18 feet from the rear property line or coastal construction control line, as defined in section 10-3 of this Code whichever is more easterly and as otherwise required by state law.
 - (2) Other waterfront setbacks for swimming pools shall be a minimum of 12 feet measured from the center of the seawall cap to the inside of the pool wall, so as not to interfere with the seawall anchors (i.e. deadmen).
 - (3) Swimming pools may be located closer than 12 feet from the seawall so long as a minimum setback of eight feet is maintained from the center of the seawall cap to the inside of the pool wall, and; provided that, prior to the issuance of a construction permit, a signed and sealed certification from a Florida registered engineer is submitted with the permit application showing that the reduced setback will not affect the integrity or function of the seawall, or that approved seawall reinforcement, if needed, will be installed and completed in a minimum of thirty days prior the time of the swimming pool construction. Swimming pool decking and retaining walls shall not included in the computation of set backs.
 - (4) Waterfront setbacks for swimming pools shall be measured from the center of the seawall cap to the inside of the pool wall.
 - (5) The distance from the house or other structural supports (e.g. columns, stairs, etc) to the inside swimming pool wall shall not be less than five feet, excluding a designed swim-out seat.
 - (6) One swim-out is allowed in each swimming pool, which shall be no greater than 22 inches deep measured from the highest point of the pool.
- (j) Set backs from screened enclosures around a swimming pool shall be the same as for the swimming pool, except that no screen enclosure shall be built within the setback on waterfront lots.
- (k) The wall height of a screened enclosure of a swimming pool shall be limited to the current height of the house fascia measured from the deck within the setback area. The maximum height of the screen enclosure roof shall not be more than four feet higher than the wall height of the screen enclosure. In no event shall the maximum screen roof height exceed the height of the peak of the roof on the house.
- (l) Swimming pool equipment, including pumps, heaters and other machinery may encroach within the required setback limits, but not to exceed four feet. Provisions shall be made to reduce the noise generated to a reasonable level by means of unit selections or baffling. A reasonable level of noise shall be less than 60 dB(A) ambient noise level from the nearest bedroom window of the adjacent property structure. All equipment installations shall be concealed from the public.

(Ord. No. 86-19, § 2(23-4), 9-8-1986; Ord. No. 95-08, § 1(23-4), 7-10-1995; Ord. No. 95-13, § 1(23-4), 11-6-1995; Ord. No. 00-08, § 3, 1-8-2001; Ord. No. 01-13, § 1(23-4), 1-7-2002; Ord. No. 07-04, § 4, 9-11-2007; Ord. No. 13-10, § 2, 1-6-2014; Ord. No. 14-05, § 1, 9-8-2014; Ord. No. 17-04, § 1, 9-6-2017)

Sec. 10-175. Protective fence or wall.

- (a) *District I:* Motels, apartment houses, condominiums and other multiple-family dwellings in district I may have swimming pools without a wall or fence, unless otherwise required by state law.
- (b) *District II:* Fences and walls around swimming pools in district II shall conform with the provisions set forth in chapter 94 of this Code and F.S. ch. 515, "Residential Swimming Pool Safety Act," and:
 - (1) Swimming pools shall be completely surrounded by a protective wall or fence, a minimum of four feet in height, unless the pool is entirely screened in. Screen-enclosed pools shall be in compliance with the building setbacks as set forth in chapter 94 of the City Code for swimming pools.

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- (2) On waterfront lots, the seawall side of a swimming pool may be left unprotected, but the other three sides shall be enclosed by a wall or fence running from the house to the side line and then to the water's edge. A gate at some point in the fence or wall leading to the street shall be available for entry to the swimming pool area.

(Ord. No. 86-19, § 1(23-5), 9-8-1986; Ord. No. 07-04, § 5, 9-11-2007)

Secs. 10-176—10-200. Reserved.

DIVISION 3. HOT TUBS AND SPAS

Sec. 10-201. Portable spas and inside spa/therapy pools.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Portable spa and/or therapy pool means any self-contained unit which does not require excavation greater than 12 inches for proper installation, and which is not permanently connected to an outside water source; and is not a structure as defined in chapter 94 of this Code.

- (b) *Special provisions.* Portable spas and therapy pools, or spas and/or therapy pools which are to be installed inside a house, shall conform with the following provisions:
 - (1) Such spas and pools shall not exceed 600 gallons in volume.
 - (2) All spas and pools shall be installed so as to prevent foundation washout in the case of a leak.
 - (3) All electrical service in a room which contains a spa and/or therapy pool must be on a GFI protected circuit.
 - (4) Subsection 10-174(h) shall not be applicable to portable spa and/or inside spa/therapy pool installations.

Ord. No. 86-19, § 2(23-6), 9-8-1986; Ord. No. 91-13, § 1, 2-17-1992)

Chapter 22 ENVIRONMENT

ARTICLE I. IN GENERAL

Secs. 22-1—22-30. Reserved.

ARTICLE II. NUISANCES

DIVISION 1. GENERALLY

Sec. 22-31. Definitions.

Sec. 22-32. Purpose and intent.

Sec. 22-33. Prohibited conditions; declaration of nuisance.

Sec. 22-34. Duty of property owner.

Sec. 22-35. Notice to abate nuisances; posting of property; appeals.

Sec. 22-36. Reserved.

Sec. 22-37. Service of notice.

Sec. 22-38. Abatement by city; notice requirement.

Sec. 22-39. Emergency abatement by city.

Sec. 22-40. Liens for costs of nuisance abatement.

Sec. 22-41. Reserved.

Sec. 22-42. Judicial proceedings for nuisance abatement.

Sec. 22-43. Interpretations.

Sec. 22-44. Conflict with other ordinances.

Secs. 22-45—22-60. Reserved.

DIVISION 2. NOISE

Sec. 22-61. Noise, generally.

Sec. 22-62. Exemptions.

Chapter 22 ENVIRONMENT¹

ARTICLE I. IN GENERAL

Secs. 22-1—22-30. Reserved.

ARTICLE II. NUISANCES²

DIVISION 1. GENERALLY

Sec. 22-31. Definitions.

For the purpose of this article, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words not defined herein shall be given the meaning as provided for in section 1-2, Definitions and Rules of Construction, of the City Code.

Blighted property shall mean any individual commercial or residential structure or improvement that endangers the public's health, safety, or welfare because the structure or improvement upon the property is dilapidated, deteriorated, incomplete or never finished construction, lacks normal maintenance or upkeep, or violates minimum health and safety standards.

Code enforcement officer shall mean any authorized agent or employee of the city whose duty it is to ensure code compliance.

Developed shall mean any lot, tract, or parcel containing a building, structure, paving or other improvements.

Director shall mean the city manager or designee.

Grass or lawn area shall include an area of ground covered with grass and/or associated growth. Trees, shrubs, ornamental grasses, ferns, fruits, and vegetable, herb, spice, flower and other beds are specifically excluded from this definition.

¹Cross reference(s)—Animals, ch. 6; buildings and building regulations, ch. 10; unsafe, dilapidated buildings, § 10-71 et seq.; marine structures, activities and facilities, ch. 30; parks, recreation areas and city facilities, ch. 38; solid waste, ch. 46; streets, sidewalks and other public ways, ch. 50; utilities, ch. 62; vegetation, ch. 66; flood protection, ch. 74; planning, ch. 78; subdivisions, ch. 90; zoning, ch. 94; moving buildings, § 94-254.

State law reference(s)—Environmental control, F.S. ch. 403.

²State law reference(s)—Sanitary nuisances, F.S. ch. 386; public nuisances, F.S. ch. 823.

Hazardous tree shall mean any tree that is injured, terminally diseased or dead and in danger of falling on adjacent property or the right-of-way, or any tree that interferes with utility services, creates unsafe vision clearance, or causing damage to the public right-of-way.

Nuisance shall mean an unlawful act, or omission of the performance of a duty, or the suffering or permitting any condition or thing to be or to exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others; or
- (2) Offends decency; or
- (3) Is offensive to the senses; or
- (4) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
- (5) In any way renders other persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others; or
- (7) Is declared by ordinance to be a nuisance.

Pristine shall mean a lot, tract or parcel or a portion of a lot, tract or parcel, which consists primarily of native plant species that has not been cleared.

Preserve areas shall mean vegetative areas required to be preserved by law.

Public right-of-way shall mean the paved and unpaved area of a highway, roadway, street or alley, or other such strip of land, reserved for public use, whether established by prescription, easement, dedication, gift, purchase, eminent domain or any other legal means.

Property owner shall mean the owner of any lot, tract, or parcel as listed in the current Pinellas County tax records.

Trash/debris/litter shall mean items, which are not usable in their present condition as intended by the manufacturer by reason of being broken, discarded, not maintained or abandoned. Items include, but are not limited to: mechanical equipment, automobiles, boats, trailers, trucks, or any parts thereof, household furnishings, toys, garbage, bottles, paper, cans, rags, dead or decayed animal matter, fruit, vegetables, offal, bricks, concrete, scrap lumber or other building debris or any other refuse of any nature.

Undeveloped shall mean any lot, tract, or parcel which does not currently have any structure or other improvements. Properties having remnants of past development (e.g., improved parking areas, driveways, and floor slab) but which have been substantially cleared shall be considered to be undeveloped property.

Unwholesome shall mean offensive to the senses, unsound in quality or condition, diseased, or decayed.

Weeds shall mean a general term for any undesirable, invasive or troublesome plant species, usually one introduced, out of place, or occurs without intentional cultivation. Weeds are usually plants that are very prolific, invasive, competitive, harmful, destructive, or difficult to control including Brazilian Pepper. Weeds detract from the appearance of grass or lawn areas or other landscape bedding or features; or interfere with the function and health of natural areas. For the purpose of this chapter, dead, dying or unattended plant life, named or unnamed, which is abandoned or overgrown to a height of seven inches or more on developed property or undeveloped property, shall be defined as a weed unless it is on pristine property.

(Code 1981, § 14-1; Ord. No. 97-17, § 14-2, 12-15-1997; Ord. No. 07-01, §§ 1, 2, 2-5-2007; Ord. No. 18-08, § 1, 12-3-2018)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 22-32. Purpose and intent.

This article is enacted for the mutual benefit of all the residents and property owners in the city, and is intended to maintain the present standards of the city and protect the quality of life and property values of its residents and property owners.

(Ord. No. 97-17, § 14-1, 12-15-1997)

Sec. 22-33. Prohibited conditions; declaration of nuisance.

- (a) The maintaining, using, placing, depositing, leaving or permitting to be or remain of any of the items described in subsection (b) of this section on any canal, or other navigable waterway, lot, tract or parcel of land, improved or unimproved, or in any building thereon, in the city, is declared to be and constitute a nuisance and shall be prohibited.
- (b) The existence of any of the following specific conditions or conduct is hereby declared to constitute a public nuisance. For purposes of this article, a public nuisance includes, but is not limited to, the following actions or omissions:
 - (1) Failure to maintain property in accordance with the standards set forth in section 22-34 of this article;
 - (2) A condition or use that causes a substantial diminution of value of property in the vicinity of the condition or use;
 - (3) Any accumulation of weeds, debris, trash, litter, junk, unused building materials or other building debris, untended growth of vegetation, or any other refuse of any nature;
 - (4) Any condition that provides harborage for rats, mice, snakes, other vermin or pests or furnishes a breeding place for flies, mosquitoes, or wood-destroying insects, except on pristine lots and in preserve areas;
 - (5) All unnecessary or unauthorized noises and annoying vibrations, including animal noises;
 - (6) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches;
 - (7) The pollution of any public well, cistern, stream, lake, canal, or body of water by sewage, dead animals, industrial wastes or other noxious substances;
 - (8) Any condition constituting a fire hazard, a hazardous swimming pool or a hazardous tree;
 - (9) The outdoor storage of all or part of any abandoned, dismantled, partially dismantled, inoperative or discarded materials or objects such as vehicle, recreational vehicle, machinery, appliance, farm equipment, aircraft, construction equipment, boat, personal watercraft, trailer, truck, motorcycle, bicycle, scrap metal, building materials, household furnishing, or other such item;
 - (10) The outdoor storage of any vehicle or boat, or parts thereof, without a valid current license plate or other registration certificate, showing said vehicle or part thereof to be titled in the name of the owner or occupier of the property upon which said vehicle or part thereof is located. Failure to have such license or other registration certificate specifically attached to the vehicle or part thereof shall be prima facie evidence that said property is worn-out, scrapped, inoperative, unusable or discarded, as provided in this article;
 - (11) Any wholly or partially manmade pool, pond, other body of water, depression or excavation, or any other condition on the premises wherein water may accumulate and stand in such a manner as to make possible the propagation or production of disease vectors, biting insects, pests or the like;

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- (12) Any lot or parcel of land in whole or part, without a valid building permit, which has been denuded, stripped or otherwise had vegetation upon it removed, or fill placed upon such lot or portion thereof, and which causes the lot or portion thereof to be without vegetation resulting in dust or erosion;
 - (13) Blighted property;
 - (14) Buildings that are abandoned, boarded up for a period of six months, partially destroyed for any period of time, or in a state of partial construction without active progress towards completion. Work shall be considered to be in active progress when the permit has received an approved inspection within 90 days;
 - (15) Any attractive nuisance dangerous to children in the form of abandoned or broken equipment, accessible artificial bodies of water, unfenced swimming pools, excavations, or neglected machinery;
 - (16) Overt blocking of drainage pipes, ditches, channels, public right-of-way, stormwater drainage gutters, and streams so as to cause flooding and adversely affect surrounding property (except when the action is designed to make pedestrian crossings accessible to people with disabilities);
 - (17) Excessive growth or accumulation of weeds, grass, undergrowth or other similar plant materials, reaching a height of seven inches or more on a developed property or undeveloped property, or the accumulation of trash/debris/litter upon property within the city;
 - (18) The lack of maintenance by a property owner of property abutting any dedicated right-of-way in a condition such that weeds or trash are found in and on the right-of-way or such that the weeds, shrubs, vegetation, trash, or any other accumulation extend over the sidewalk, bicycle path, curb line or edge of pavement of an improved right-of-way or private access way or roadway by more than four inches;
 - (19) The lack of maintenance by a property owner abutting any dedicated right-of-way or easement in the city where a height clearance of less than eight feet from the sidewalk pavement measured vertically from the pavement surface is maintained;
 - (20) Any seawall in a condition where the structural integrity is not maintained;
 - (21) Graffiti on any wall, post, column, or other building or structure, or other exterior surface;
 - (22) The feeding or distributing grain or food of any kind or nature in such a manner as to attract birds, fowl or undomesticated animals of any kind or nature, whereby they tend to assemble or herd themselves together in a concentrated area causing a nuisance or potential health and safety hazard to public and private property. Crowing roosters or other noisy fowl are also declared to be a nuisance and shall not be kept or maintained within the city. For the purpose of this subsection, domesticated residential-family pets residing only within the property or residence of a property owner or occupant, fixed bird feeding devices, or free-roaming squirrels shall be exempt from the provision of this subsection;
 - (23) Any unsafe, unsanitary or unsightly condition that is not included above and that endangers the public health, welfare or safety;
 - (24) Children's toys, bicycles, skateboards, garbage cans, tools or any other portable items that are not part of the natural landscaping shall not be left on any of the owner's property and visible from the street longer than for 24 hours.

(Code 1981, § 14-2; Ord. No. 97-17, § 14-3, 12-15-1997; Ord. No. 03-07, § 2, 4-17-2003; Ord. No. 07-01, §§ 3, 4, 2-5-2007; Ord. No. 12-03, § 1, 4-2-2012; Ord. No. 18-08, § 2, 12-3-2018; Ord. No. 21-05, § 2, 9-8-2021)

Sec. 22-34. Duty of property owner.

- (a) It shall be the duty of the owners, lessees or other persons in control of property within the city to maintain their lot, tract or parcel and the abutting right-of-way but not including that area which is paved as roadway consistent with the following standards:
 - (1) The owner, lessee, or person in charge or control of the property, developed or undeveloped, within the city shall cut down and remove all weeds, grass, undergrowth clippings on said property when said weeds, grass, or undergrowth is seven inches or more in height on developed properties and undeveloped properties.
 - (2) Said vegetative material growing in the unpaved portion of the abutting right-of-way shall not be seven inches or more in height.
- (b) Maintenance of the property is the responsibility of the property owner and tenant, and the property owner and tenant shall take all reasonable steps to prevent any landscaping, including trees and hedges, as well as any weeds, grass, or undergrowth, from encroaching on or otherwise affecting any neighboring properties.
- (c) In preserve areas all maintenance requirements shall be determined by the Florida Department of Environmental Protection, except that the entire property shall be kept free of trash, debris and litter.
- (d) Landscape materials shall be maintained reasonably free of weeds and foreign matter and shall be kept in reasonably healthy conditions at all times. All dead material shall be removed. Hazardous trees that potentially may fall on adjacent properties or rights-of-way shall be removed. All owners of real property in the city shall be responsible for the removal or mitigation of hazardous trees on their property.
- (e) The property and adjacent unpaved right-of-way shall be kept free of trash, debris and litter.
- (f) Sidewalks shall be kept free of trash, debris, or litter. Bushes, trees and other vegetative matter shall not obstruct the public sidewalk from the sidewalk surface to a height of eight feet. Irrigation systems shall not overspray the public sidewalk or the roadway.
- (g) Any lot, tract or parcel, including swimming pools thereon, which shall be unwholesome or unsanitary, have stagnant water standing thereon, or be in such other condition as to be susceptible to producing disease shall be drained, regraded or filled by the owner in a manner approved by the city.
- (h) Every lot or parcel of land in whole or part shall have approved ground cover so as to prevent erosion either by wind or water off premises. Any lot or parcel of land in whole or part which has been denuded, stripped or otherwise had vegetation upon it removed, or fill placed upon such lot or portion thereof due to construction or replace/renovation of landscaping shall take appropriate actions to comply with the requirements of the NPDES program and to reduce wind-borne dust or erosion.
- (i) All outdoor lighting, including lighting on docks, shall be designed, installed and maintained to prevent glare and light trespass on abutting property.

(Ord. No. 97-17, § 14-4, 12-15-1997; Ord. No. 99-17, § 2(14-4), 11-15-1999; Ord. No. 07-01, §§ 5, 6, 2-5-2007; Ord. No. 18-08, § 3, 12-3-2018)

Sec. 22-35. Notice to abate nuisances; posting of property; appeals.

- (a) *Failure to comply; form of notice to property owner or owners.* Whenever the city manager, the building official, code enforcement officer or any other authorized city agent becomes aware of or finds that any one or more of the prohibited conditions set forth in section 22-33 exist or the owner of any developed or vacant lot, parcel or tract of land within the city fails to keep such premises in compliance with the standards in section 22-34, it shall be the duty of the city manager to give notice, as provided herein requesting and

directing the owner or owners of such property to remedy the condition within five days after service of such notice.

- (b) Such notice shall be given by hand delivery or by certified mail, addressed to the owner, custodian, agent, lessee, trustee or occupant of the property described, to the address of record as recorded in the current county tax rolls, and shall be deemed complete and sufficient notice when so addressed and deposited in the U. S. mail with proper postage prepaid or certification of the officer of such delivery. The notice shall be in substantially the following form:
- (1) A sufficient description to identify the property upon which the public nuisance exists;
 - (2) A description of the public nuisance to be terminated;
 - (3) A statement that if the custodian, agent, trustee or occupant disputes his/her guilt of a violation of this article, that an appeal before the code enforcement special master may be made to show that the nuisance does not exist and why such public nuisance should not be removed, terminated and abated by the property owner or the city. A petition available from the city clerk, must be made to the special master within five days of the mailing, service or posting of the violation;
 - (4) A statement that the total cost of any such nuisance termination, if made by the city, including administrative costs, shall be a special assessment and lien on the property; and
 - (5) A statement that the notice will be the only notice given for a period of one year from the date of the initial notice. Any other instances of the same violation occurring pursuant to this article shall be remedied by the city without further notice, and the cost plus an administrative fee shall be imposed as a lien upon the violator's property.
- (c) *Mailing and posting of notice.* The mailing or hand delivery of such notice required by this section shall be sufficient proof thereof, and the delivery or service of the notice shall be equivalent to mailing. If the mailing address of any such person is not known to the city manager or designee and the property is unoccupied, then posting of the notice upon the property shall constitute sufficient notice to the owner, custodian, agent, lessee, trustee or occupant thereof, and no additional notice shall be required for any action pursuant to this article.
- (d) *Posting of property.* When posting the property is necessary, such posted notice shall state a description of the public nuisance, the time period allowed for a written petition of appeal to the special master, that termination of the public nuisance by the city shall cause a special tax and lien for the total costs thereof to be placed on the property and that the owner, custodian, agent, lessee or occupant of the property is subject to prosecution for a violation of this article.
- (e) *Appeals.* Within five days after the date of mailing the notice to abate the nuisance, or the delivery, service or posting thereof, as the case may be, the owner, custodian, agent, lessee, trustee or occupant of the property involved shall have the right to appear before the special master for a hearing to show that such public nuisance does not exist; to show why such public nuisance is not unsightly, and does not threaten or endanger the public health, welfare or safety, or to show why such public nuisance cannot be terminated within five days; or to show why such public nuisance should not be removed, terminated and abated by the city as provided in this article. The city and the petitioner may introduce such witnesses and exhibits as are deemed necessary.

(Ord. No. 99-17, § 2(14-5), 11-15-1999; Ord. No. 07-01, §§ 7, 8, 2-5-2007; Ord. No. 17-06, § 1, 10-2-2017)

Sec. 22-36. Reserved.

Editor's note(s)—Section 9 of Ord. No. 07-01, adopted Feb. 5, 2007, repealed § 22-36 in its entirety. Former § 22-36 pertained to contents of notice, and derived from Ord. No. 99-17, adopted Nov. 15, 1999.

Sec. 22-37. Service of notice.

A notice to abate a nuisance shall be served in accordance with the provisions of section 2-261.

(Ord. No. 99-17, § 2(14-7), 11-15-1999)

Sec. 22-38. Abatement by city; notice requirement.

- (a) Upon failure or refusal by the owner and/or occupant of a premises to remedy the condition existing in violation of the requirements of this article within five days after service of notice to do so as provided herein, the city manager or his designee shall proceed to have such condition remedied by contract or direct labor, or both, and the cost thereof and an administrative fee of up to \$500.00 (which may be amended from time to time by resolution of the city council) shall be and become a lien against such property to the same extent and character as the lien for special assessments and with the same penalties and with the same rights of collection, foreclosure, sale and forfeiture as obtained for special assessment liens. The unpaid lien shall accrue interest at the rate of 12 percent per annum.
- (b) Notwithstanding the remedial action that may be taken by the city manager pursuant to this section, nothing contained herein shall prevent the city manager or code enforcement officer from referring the violation(s) of section 22-33 to the special master for review and disposition or to refer the matter to the city attorney to institute appropriate civil proceedings in the circuit court to include reimbursement of attorney's fee, investigative costs, court costs and other relief required.

(Ord. No. 99-17, § 2(14-8), 11-15-1999; Ord. No. 07-01, § 10, 2-5-2007; Ord. No. 18-08, § 4, 12-3-2018)

Sec. 22-39. Emergency abatement by city.

When, in the opinion of the code enforcement officer, and concurrence of the city manager, there is actual and immediate danger to the public or the occupant of a particular property caused by a nuisance on such property, the code enforcement officer shall be authorized and empowered, without written notice or hearing, to order and require such property to be vacated. The code enforcement officer shall immediately post the property, warning of the dangerous condition, and shall then abate such nuisance and prepare a statement of costs incurred in the abatement of such nuisance.

(Ord. No. 99-17, § 2(14-9), 11-15-1999; Ord. No. 05-01, § 15, 4-12-2005)

Sec. 22-40. Liens for costs of nuisance abatement.

- (a) *Due date, delinquency interest rates.* The lien for the cost of clearing lots, parcels or tracts of land or of removing or remedying the conditions thereof found to be in violation of this section, plus any other administrative charges, shall become due and payable 30 days after mailing of a copy of the notice of completion of work by regular mail to the owner(s) of the subject property, except in cases where a petition is filed within such period as provided for in section 22-40(e) and where, upon consideration of such petition, the city council has changed and corrected the amount of lien as filed with the clerk of the circuit court; in such cases the lien shall become due and payable 30 days after such city council action. After the respective due date above is fixed, all unpaid liens shall become delinquent and shall thereafter bear interest at the rate of 12 percent per annum. The lien may be enforced and satisfied by the city pursuant to F.S. ch. 173, as amended from time to time, or by any other method permitted by law. The lien provided for in this section shall not be deemed to be in lieu of any other legal remedies for recovery of such fee, late charges, and accrued interest available to the city.

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- (b) *Payment and enforcement of lien and interest thereon.* Each of the liens provided for in this action may be paid within 30 days after mailing of a copy of the notice of completion of work without interest. Thereafter, the amount of the lien, including administrative costs together with interest at the rate of 12 percent per annum and the costs of collection, shall be a lien against the property and shall be collected and enforceable in the same manner as is provided by law for the enforcement of other taxes levied upon the property.
- (c) *Same—Installment payments; waiver of irregularities, interest rates.*
- (1) The lien for the cost of clearing any lot, parcel or tract of land or of removing or remedying the condition thereof found to be violation of this section, if the same is in excess of \$300.00, may be paid in installments at the discretion of the city manager provided, that the owner or owners of such lot, parcel or tract of land shall file with the city manager, on or before the due date, a written undertaking waiving any and all irregularities or illegality in connection with the imposing of such lien.
 - (2) Such installments shall bear interest at the rate of 12 percent per annum from and after the due date of the lien, but any such lien or installment thereof may be paid at any time when accompanied by the payment of interest due upon the entire unpaid balance of the lien to date of payment.
 - (3) Failure to pay any such installment when the same shall become due shall, without notice or other proceeding, cause the entire unpaid balance of the lien to become due and payable forthwith.
- (d) *Statement of costs, filing; publication of work, cost and lien.* As soon as practicable after completion of the work, the city manager shall cause to be executed, and file with the city clerk, a statement of costs and completion of work, which shall certify the completion thereof. The city clerk shall thereafter cause a notice of completion of work to the property owner(s) to be mailed or delivered giving the description of the property, the amount of the cost of the work, the date of completion of the work and the fact that the cost thereof is a lien against the property.
- (e) *Interested persons may petition council to dispute assessed costs, council inquiry.*
- (1) Any person owning all or any interest in property which has been found to be in violation of this section, and upon which remedial work by the city has been done, shall have the right, at any time within 30 days after mailing or delivery of the notice of completion of work under this section, to present to the city clerk a sworn petition stating his interest in the property and alleging that in the opinion of the petitioner the cost of the work exceeds the actual cost thereof or is otherwise erroneous. The amount of the administrative fee may not be appealed.
 - (2) Such petition shall be presented to the council for its consideration at its next regular meeting, provided at least ten days have intervened between the time of the filing of such petition and the date of such meeting, at which time and place the council shall consider the same and make due inquiry into the questions involved. If it shall appear to the satisfaction of the council that the cost as entered is erroneous, then the council shall by motion so declare and shall have the entry thereof in the county records corrected, and shall fix and confirm the amount to be charged against such lot, parcel or tract of land as it shall find just and proper, and the amount so fixed shall stand as the amount of the lien, effective as of the date of completion of the work aforesaid, or the council may confirm the lien in the amount as originally entered in the public records.

(Ord. No. 99-17, § 2(14-10), 11-15-1999; Ord. No. 07-01, §§ 11, 12, 2-5-2007; Ord. No. 18-08, § 5, 12-3-2018)

Sec. 22-41. Reserved.

Editor's note(s)—Section 13 of Ord. No. 07-01, adopted Feb. 5, 2007, repealed § 22-41 in its entirety. Former § 22-41 pertained to a schedule of fees, and derived from Ord. No. 04-01, adopted March 1, 2004.

Sec. 22-42. Judicial proceedings for nuisance abatement.

- (a) Whenever, in the judgment of the city manager or designee, it is necessary for the city to obtain the assistance of the courts to remove, terminate or abate a continuing public nuisance, and in all cases in which the person in possession of the property involved has refused the city manager or designee entry upon such property, the city manager or designee shall request that the city council commence and maintain all necessary actions in a court of competent jurisdiction to assist the city in carrying out its responsibilities under this article. Such actions may encompass any or all of the following proceedings:
 - (1) An application for an injunction or restraining order, whether temporary or permanent, to prevent a person from maintaining or continuing to maintain any of the conditions declared by section 22-33 to be public nuisances, or to compel a person to remove, terminate or abate a public nuisance as provided in this article or to compel the performance of any act specifically required of a person to remove, terminate or abate a public nuisance; or
 - (2) To empower the city manager or designee to enter upon any property whereon a public nuisance exists or is maintained for the purpose of removing, terminating or abating such nuisance and to prevent the person in possession of such property from interfering with the city manager or designee while exercising this power in accordance with the court's order.
- (b) The judicial remedies authorized to be sought by this section are in addition to the power of the city manager to terminate public nuisances granted by this article. The manager or designee shall, as much as possible, terminate public nuisances without recourse to the courts.
- (c) Whenever the city manager or designee has contracted with a private contractor to terminate a public nuisance, as provided in this article, the remedies authorized in this section to be sought for the manager or designee and the city may be sought by the manager or designee on behalf of the private contractor, to the extent that they are necessary to enable the private contractor to terminate the public nuisance.

(Ord. No. 07-01, § 14, 2-5-2007)

Sec. 22-43. Interpretations.

The provisions of this article are to be cumulative to any other provisions of this code. Further, the mere fact that a property condition is lawful under any other law or ordinance does not authorize any condition declared to be a public nuisance by this article, and the mere fact that a property condition does not constitute a public nuisance under this article does not authorize a condition which violates any other law or ordinance.

(Ord. No. 07-01, § 15, 2-5-2007)

Sec. 22-44. Conflict with other ordinances.

Other ordinances of the City Code of the City of Belleair Beach in conflict with the provisions of this division are hereby repealed to the extent of such conflict.

(Ord. No. 07-01, § 16, 2-5-2007)

Secs. 22-45—22-60. Reserved.

DIVISION 2. NOISE³

Sec. 22-61. Noise, generally.

- (a) The following acts which enumeration shall not be deemed to be exclusive are declared to be noise disturbances and shall constitute a violation of this chapter. No sound level measurement is needed to prove the existence of the following noise disturbances:
- (1) *Horns, signaling devices, etc.* The sounding of any horn or signaling device, except as a danger warning, for any unnecessary or an excessive period of time or the unreasonable use of any horn or signaling device, in such a manner as to cause a noise disturbance so as to disturb the peace, health, quiet or comfort of the neighborhood or vicinity thereof.
 - (2) *Radio, amplifiers, television, etc.* The operating or permitting the use or operation of any radio receiving set, musical instrument, television, stereo, car or truck stereo, compact disc or tape player, exterior loudspeaker, or other device for the production or reproduction of sound in a loud and raucous manner so as to disturb the peace, quiet or comfort of the adjacent neighborhood.
 - (3) *Loudspeakers, etc.* The using, operating, or permitted to be used or operated, of any loudspeaker or public address system in such a manner so as to emit loud or raucous noises so as to disturb the peace, health, quiet or comfort of the neighborhood or vicinity.
 - (4) *Yelling, shouting, etc.* Yelling, shouting, hooting, whistling, singing or creating similar noises on the public streets, particularly between the hours of 10:00 p.m. and 7:00 a.m. in such a manner so as to cause a disturbance of the peace, health, quiet or comfort of the neighborhood or vicinity.
 - (5) *Loading and unloading, etc.* The loading, unloading, compacting, opening or otherwise handling boxes, crates, containers, garbage cans, or otherwise similar objects in such a manner so as to cause a disturbance of the peace, health, quiet or comfort of the neighborhood or vicinity.
 - (6) *Construction equipment, etc.* The operating of any equipment used in construction activity, repair, alteration or demolition work on buildings, structures, streets, alleys, or appurtenances thereto with sound-control devices less effective than those provided on the original equipment.
 - (7) *Advertising sound equipment, etc.* Creating, making, or maintaining any loud or raucous noise by the use of any drum, cymbals, loudspeaker, or other similar instruments in the city for the purpose of attracting attention to any performance, show, sale, or display of merchandise, or place of business. This provision does not apply to approved public events.
 - (8) *Bells, whistles, sirens, etc.* Using, in connection with an unauthorized vehicle, any bell or siren similar to that used on ambulances or vehicles of the police, fire departments, and other public safety agencies.

³Editor's note(s)—Sections 1 and 2 of Ord. No. 07-03, adopted March 5, 2007, repealed §§ 22-61 and 22-62, which had comprised Div. 2. Said sections pertained to definitions and certain noises prohibited, respectively and had derived from the 1981 Code and Ord. No. 93-02, adopted March 1, 1993. Sections 2 and 4 of Ord. No. 07-03 enacted similar provisions to read as herein set out.

Cross reference(s)—Excessive noise from pet animals, § 6-37.

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- (9) *Watercraft, etc.* The operating or causing the operation of any motorboat in any waterway, in such a manner so as to disturb the peace, health, and comfort of a reasonable person of ordinary sensibilities.
 - (10) *Explosive fireworks.* Discharging any form of explosive firework or other noise-making incendiary device or object.
 - (11) *Other noises, etc.* The creation or permitting of any loud or raucous noise so as to disturb the peace, quiet or comfort of the adjacent neighborhood.
- (b) The following activities may not be operated or caused to be operated between the hours of 6:00 p.m. and 7:00 a.m. on weekdays and Saturdays, all day on Sundays and the holidays of New Year's Day, Christmas Day, Memorial Day, Fourth of July, Labor Day and Thanksgiving Day, unless for a public works transportation or utilities project approved by the city in subsection (c) below:
- (1) Any equipment used in construction activity, repair, alteration or demolition work on buildings, structures, streets, alleys, or appurtenances thereto with sound-control devices less effective than those provided on the original equipment;
 - (2) Any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist;
 - (3) Any other machinery, appliance, etc., the use of which is attended by loud or raucous noise so as to disturb the peace, health, quiet or comfort of the neighborhood or vicinity thereof.
- (c) Any person desiring to engage in the use of equipment for a public works transportation or utilities project beyond the hours of limitations aforementioned, based upon cases of necessity or in the interest of public health, safety and convenience, may apply to the city manager for a special permit allowing hours of operation other than those specified above. Such permits, if granted, shall be limited to a period of up to 30 days duration, but may be renewed for additional periods of up to 30 days if the emergency or need therefore continues. In the issuance of such permits the city shall weigh all facts and circumstances and shall determine whether the reasons given for the necessity are valid and reasonable, whether the public health, safety and convenience will be protected or better served by granting the permit requested, and whether the manner and amount of loss or inconvenience to the person seeking the permit imposes a significant hardship upon such person.
- (d) The term "loud and raucous noise" shall mean any sound which because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the city limits. The term includes, but is not limited to, the kinds of loud and raucous noise generated by the activities enumerated in subsection (a) when the loud and raucous noise can be heard at a distance of 100 feet or more from the source of the noise measured in a straight line, but not including activities enumerated in section 22-62.
- (e) *Persons responsible.* Any person, owner, agent, supervisor in charge of operating, ordering, directing or allowing the operation or maintenance of a device, a machine, or any noise source creating noise as prohibited in this section shall be subject to enforcement of the provision of this section so long as the person, owner, agent, or supervisor had knowledge or reason to know that the activity was occurring, failed to intervene in an attempt to prevent the activity from occurring, and had the power or authority to prevent the activity from occurring.

(Ord. No. 07-03, §§ 1, 3, 3-5-2007)

Sec. 22-62. Exemptions.

The following noises shall be exempt from the restrictions set forth in the other sections of this chapter:

- (1) Noises of authorized safety signals and warning devices.

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- (2) The generation of sound for the purpose of alerting persons to the existence of an emergency.
 - (3) Noises resulting from any authorized emergency vehicle.
 - (4) Noises resulting from emergency work, which is to be construed as work made necessary to restore property to a safe condition following a public emergency, or work required to protect persons or property from any imminent exposure to danger.
 - (5) Noise from alterations, repairs, general maintenance landscape and yard equipment when conducted or operated by the property owner between the hours of 7 a.m. and 6 p.m. on weekdays and weekends and the holidays of New Year's Day, Christmas Day, Memorial Day, Fourth of July, Labor Day and Thanksgiving Day, provided all motorized equipment are equipped with functioning mufflers or other effective sound control devices similar to those provided on the original equipment.
 - (6) Noises associated with uses or activities whereby an administrative approval to produce such noises for a temporary duration contrary to the restrictions of this chapter has been obtained from the city manager.
 - (7) Community events such as special events and community festivals, etc. Such events or activities shall not start before 9:00 a.m. and those events or activities, shall not extend their activities beyond 11:00 p.m. Any community activity or event, which is proposed to extend beyond 11:00 p.m., must obtain city manager approval.
 - (8) Noise generated from municipally sponsored or approved celebrations or events shall be exempt from the provisions of this section.
 - (9) Noises associated with law enforcement operations.
 - (10) Noises from construction activity, tools or equipment used and operated on a construction site between the hours of 7:00 a.m. and 6:00 p.m. on weekdays and Saturdays excluding the holidays of New Year's Day, Christmas Day, Memorial Day, Fourth of July, Labor Day and Thanksgiving Day, provided that all tools or motorized equipment used in such activity are equipped with all sound-reducing features and equipment originally part of the tool or equipment, or other effective sound control devices similar to those provided or as effective as that installed as original equipment.
 - (11) Noise from generators when operated during power outages. Generators in all residential districts may be operated for testing purposes one time for a period not to exceed 30 minutes in any seven-day period. Testing of generators in all residential districts is permitted between the hours of 11:00 a.m. through 5:00 p.m., Monday through Saturday. No testing of generators in any residential districts is permitted on Sundays or federal holidays.
 - (12) Emergency construction work permitted by an appropriate city official which has become necessary because of a natural or manmade disaster, and which is necessary for the protection of life or property.
 - (13) Public or private transportation vehicles governed by the state or federal noise regulations.
 - (14) Emergency alarms, such as fire or burglar alarms prior to a reasonable opportunity for the owner or tenant in possession of the premises served by such alarm to turn off the alarm.
 - (15) Any authorized use of the city community center pursuant to section 38-141 so long as such activities do not extend beyond midnight, unless otherwise approved by the city manager or his designee.

(Ord. No. 07-03, §§ 2, 4, 3-5-2007; Ord. No. 18-08 , § 6, 12-3-2018)

Chapter 30 MARINE STRUCTURES, ACTIVITIES AND FACILITIES

ARTICLE I. IN GENERAL

Sec. 30-1. Diving or jumping from Causeway Boulevard bridge.

Sec. 30-2. Anchoring or mooring of watercraft.

Secs. 30-3—30-30. Reserved.

ARTICLE II. DOCK, SEAWALLS AND WHARVES

DIVISION 1. GENERALLY

Secs. 30-31—30-50. Reserved.

DIVISION 2. DOCKS, WHARVES AND DAVITS

Sec. 30-51. Construction restricted.

Sec. 30-52. Plans and specifications.

Sec. 30-53. Construction.

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DIVISION 3. SEAWALLS, BULKHEADS AND RETAINING WALLS

Sec. 30-71. Construction standards.

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ARTICLE III. BOATS

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ARTICLE IV. BEACH

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Sec. 30-142. Motorized vessels.

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ARTICLE V. BELLEAIR BEACH MARINA

Sec. 30-181. Promulgation of rules and regulations.

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Sec. 30-185. Failure to keep watercraft in boat slip.

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Sec. 30-187. Number of watercraft in a single boat slip restricted.

Sec. 30-188. Fees.

Sec. 30-189. Maintenance.

Sec. 30-190. Fish cleaning, swimming, diving, fishing and net casting restricted.

Sec. 30-191. Major repairs; right to inspect; liability for damage.

Sec. 30-192. Parking of automobiles.

Sec. 30-193. Responsibility for repairs; erection of signs.

Sec. 30-194. No wake zone; fueling restrictions.

Sec. 30-195. Bicycling, roller skating, roller blading, skateboarding, swimming and diving.

Sec. 30-196. Applicability of other Code provisions; general rules and regulations.

Sec. 30-197. Restricted areas in the marina.

Chapter 30 MARINE STRUCTURES, ACTIVITIES AND FACILITIES¹

ARTICLE I. IN GENERAL

Sec. 30-1. Diving or jumping from Causeway Boulevard bridge.

It shall be unlawful for any person to dive or jump from the bridge on Causeway Boulevard immediately east of city hall.

(Code 1981, § 5-1; Ord. No. 86-9, § 2(5-1), 9-8-1986)

Sec. 30-2. Anchoring or mooring of watercraft.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
- Watercraft* means any ship, vessel, boat, yacht, raft, barge, houseboat or other floating structure.
- (b) *Restricted.* It shall be unlawful for any person to anchor or moor any unattended boat, watercraft or vessel in any of the waterways within the city for a continuous period of 72 hours or more in a 30-day period, or to allow any such anchoring or mooring of any unattended boat, watercraft or vessel for an overnight period in excess of any three nights in a 30-day period. The provisions of this subsection shall not apply to any boat, watercraft or vessel securely moored to a permanent and fixed dock. Occasional use of a watercraft during the time period set forth in this subsection shall not be deemed to interrupt the continuous nature of such anchorage.
- (c) *Occupation or living on board.* It shall be unlawful for any person to occupy or live aboard any watercraft, vessel or boat equipped for habitation in any of the waterways within the city. Such prohibition shall not apply to persons occupying watercraft on a temporary basis for a period not to exceed 72 hours in a 30-day period of time on the condition that the vessel shall contain a Coast Guard approved, self-contained sewage treatment or storage system. Such 72-hour period shall not terminate as a result of temporary absence, interruption of habitation or removal of the vessel, watercraft or boat.
- (d) *Exceptions.* The prohibitions set forth in subsections (b) and (c) of this section shall not be construed so as to prohibit any watercraft, boat or vessel from being anchored or moored within the city, whether in open water or moored to a private dock, wharf, pier, slip, seawall or other structure with the permission of the owner of such property during a period of time reasonably necessary for the protection of the boat from inclement weather conditions, or when any such vessel or watercraft is in distress or because of other emergency conditions for the minimum period necessary to avoid loss of life or property. Subsections (b) and (c) of this section shall not apply to vessels anchored in the Intracoastal Waterway.

¹Cross reference(s)—Buildings and building regulations, ch. 10; environment, ch. 22; parks, recreation areas and city facilities, ch. 38; streets, sidewalks and other public ways, ch. 50; boat or utility trailers, § 58-34; vegetation, ch. 66; flood protection, ch. 74; planning, ch. 78; subdivisions, ch. 90; required improvements for seawalls in subdivisions, § 90-138; zoning, ch. 94.

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- (e) *Discharge of refuse.* It shall be unlawful for the owner or operator of any watercraft, boat or vessel to discharge overboard into the waters within the corporate limits of the city any pollutant, contaminant, sewage, waste derived from sewage, garbage or trash, or refuse of any kind.
 - (f) It is unlawful for a person, firm, or corporation to store, leave, or abandon any derelict boat, watercraft, or vessel in any navigable waters within the city. No boat, watercraft, or vessel that is in an unregistered, derelict, wrecked, junked, or substantially dismantled condition shall be permitted to dock, moor, or tie up at any private seawall, dock, or moorage space within the city, except that such boat, watercraft, or vessel may moor at licensed marine facilities for the purpose of repair.
 - (g) *Violations; penalties.* Any person violating any of the provisions of this section shall be punished as set forth in section 1-15, with a nonvehicular class 4 fine, plus costs. Each person violating any of the provisions of this section shall be deemed guilty of a separate offense for each day, or portion thereof, during which such violation is committed or continued and upon conviction of any such violation.

(Ord. No. 91-15, § 1(5-17), 2-17-1992; Ord. No. 00-02, § 2, 1-8-2001; Ord. No. 21-10, § 2, 12-6-2021)

Secs. 30-3—30-30. Reserved.

ARTICLE II. DOCK, SEAWALLS AND WHARVES

DIVISION 1. GENERALLY

Secs. 30-31—30-50. Reserved.

DIVISION 2. DOCKS, WHARVES AND DAVITS

Sec. 30-51. Construction restricted.

Docks, wharves, piers, mooring piles, groins or other structures, including boat racks, shall not be erected over, or extend into, the waters of the Gulf of Mexico, nor over any plot or lot adjoining the Gulf of Mexico. Construction shall comply with the provisions set forth in this division or any directive replacing such provisions.

(Ord. No. 94-14, § 1(27-16), 9-7-1994; Ord. No. 00-09, § 6, 1-8-2001)

Sec. 30-52. Plans and specifications.

An applicant for a permit to construct, replace or structurally repair a dock, wharf, boat hoist or piling within the city shall first submit plans and specifications to the city for initial review. After the city's initial review, the applicant shall then submit the permit application through the Pinellas County Building Department to the county environmental management department which provides construction permitting and inspection services for the city. Such plans and specifications shall show the relationship of such structure to the property and seawall line, and to adjoining properties and docks. Permit fees shall be based on a fee schedule as amended in the standard county code.

- (1) Each dock constructed on residential property shall not exceed 900 square feet in total surface area, exclusive of a catwalk.

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- (2) The width of a residential dock shall not exceed 30 feet.
 - (3) The length of a residential dock shall not exceed 30 feet from a seawall or waterfront property line involved.
 - (4) Tie poles may be placed 25 feet from the end of an allowable dock.
 - (5) A catwalk may be constructed on the end of an allowable dock, provided it does not exceed 15 feet from the end of the dock.
 - (6) In no event shall an allowable dock encroach more than 25 percent into a navigable waterway.
 - (7) All docks shall meet the requirements set forth in sections 30-53 and 94-214.

(Ord. No. 86-9, § 2(5-30), 9-8-1986; Ord. No. 97-11, § 1(5-30(a)), 7-7-1997; Ord. No. 00-02, § 4, 1-8-2001; Ord. No. 18-09, § 2, 12-3-2018; Ord. No. 21-10, § 3, 12-6-2021)

Sec. 30-53. Construction.

- (a) *Placement.* Moorings or tie-off pilings, with or without existing dock structures, or buoys used to identify the location of a mooring, shall be placed no farther than a maximum distance of 55 feet from a seawall or the waterfront property line involved, and not closer than 12 feet to the projection of any side property line. Boat hoists shall not extend farther than 45 feet from a seawall or waterfront property line and not closer than 12 feet to the projection of any side property line. All docks shall also meet the requirements set forth in section 94-214.
- (b) *Piles.* All newly constructed dock, boat hoist and wharf piles shall have a base support structure of 3,500 psi test concrete, and have a minimum cross section of ten inches by ten inches, and reinforced with four one-fourth-inch steel bars embedded in the concrete not less than two and one-half inches from the outer face of the pile. Nine-inch diameter wood marine piles with chromated copper arsenate salts treatment with two and one-half pounds salt per cubic foot of wood, retention type C per American Wood Protection Association Standard P-5, dated 2001 may be substituted for the ten-inch by ten-inch concrete piles used in docks, boat hoists or wharves.
- (c) *Materials.* Mooring, tie-off and davit piles may be of Southern Pine piles treated with chromated copper arsenate type A, B or C in accordance with American Wood Protection Association Standard A-2, with a minimum retention and distribution of solid preservative of 2.5 PCF in the zone one and one-half inches to two inches from the surface, or 3,500 psi reinforced concrete.
- (d) *Penetration of piles.* All dock and boat hoist piles shall have a minimum penetration of six feet in the water bed.
- (e) *Lumber material.* All lumber material used for docks, wharves, piles, or other marine structures shall be pressure treated.
- (f) *Hardware.* All hardware used for docks, wharves, piles, and structures shall be aluminum, brass, bronze or stainless steel.
- (g) *Repairs and alterations.* Docks, wharves, piles, or other marine structures shall not be repaired, modified or altered, except in conformance with the requirements set forth in this division.
- (h) *Maintenance.* All permits for docks, wharves, piles, and structures, shall be issued on the condition that such construction will be maintained in a safe condition, at all times. If any dock, wharf, pile, or structure falls into a state of disrepair and becomes a dangerous structure creating an unreasonable risk of bodily injury to any person who may walk thereon, such structure shall be either removed or repaired so as to conform to the requirement of this division.

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- (i) *Placement of davits.* Motorized or manual davits may be installed immediately adjacent to a dock or on the upland side of the seawall. If installed on the upland side of the seawall, the provisions set forth in subsection (a) of this section shall determine the placement of davits with respect to the side property lines.
 - (j) *Catwalks.* Catwalks may form a part of a dock structure, but shall be no wider than four feet and shall be no longer than 45 feet from a seawall or the waterfront property line.
 - (k) *Exceptions.*
 - (1) For the city-owned property known as the "Belleair Beach Marina":
 - a. Tie-off pilings, boat hoists and associated catwalks may be placed up to the extended side property lines, but no farther than a maximum distance of 45 feet from the seawall cap;
 - b. Section 30-52(1)—(6) and subsections (a) and (i) of this section shall not apply; and
 - c. All construction at the Belleair Beach Marina shall conform to the uniform design plan for the marina.

(Ord. No. 91-14, § 1, 2-17-1992; Ord. No. 95-05, § 1, 6-5-1995; Ord. No. 95-10, § 1, 9-5-1995; Ord. No. 97-11, § 1(5-30(e)—(o)), 7-7-1997; Ord. No. 03-08, § 1, 5-5-2003; Ord. No. 18-09, § 2, 12-3-2018; Ord. No. 21-10, § 4, 12-6-2021)

Secs. 30-54—30-70. Reserved.

DIVISION 3. SEAWALLS, BULKHEADS AND RETAINING WALLS

Sec. 30-71. Construction standards.

Seawalls shall not be erected, repaired or replaced within the city, except on the lot line along the shore or seawall line that has been established and approved by the county engineer, the state and the city, and only after a permit has been issued therefor by the city. Construction standards for seawalls and bulkheads shall be as set forth in this division.

(Ord. No. 94-14, § 1(27-14), 9-7-1994; Ord. No. 00-09, § 5, 1-8-2001)

Sec. 30-72. Compliance.

All seawalls, bulkheads, retaining walls and other beach and shore protection facilities constructed, restored, altered, projected or prolonged on the shoreline of the Gulf of Mexico or the waters of Clearwater Harbor, within the municipal limits of the city, shall be in accordance with the provisions of this division.

(Ord. No. 86-9, § 2(5-31), 9-8-1986; Ord. No. 89-5, § 1, 5-15-1989)

Sec. 30-73. Permit required.

Construction falling within the provisions of this division shall not be undertaken without first securing a permit therefor from the person designated as building official by the city. The owner of the lands on which the work is to be performed shall be responsible for securing any additional required permits from the county and any other state or federal agency having jurisdiction in accordance with laws in effect at the time the construction is proposed.

(Ord. No. 89-5, § 1, 5-15-1989)

Sec. 30-74. Review of permit applications; inspections for compliance.

An applicant for a permit shall first submit a permit application including supporting data and drawings to the city for initial site plan review. After the city's initial site plan review, the applicant shall then submit the permit application through the Pinellas County Building department to the county environmental management department which provides construction permitting and inspection services for the city. All permit applications under this division and supporting data and drawings shall be reviewed to ensure that the criteria for design, materials quality and construction methods prescribed by this division have been complied with. During construction, periodic inspections as deemed necessary shall be made to ensure adherence to the details of construction shown on the approved permit drawings. The city shall not enforce specific permit provisions of other permitting agencies unless such provisions are shown on the city-approved construction permit documents.

(Ord. No. 00-02, § 6, 1-8-2001; Ord. No. 18-09 , § 3, 12-3-2018)

Sec. 30-75. Professional design of facilities required.

- (a) All work for which a permit is required under the provisions of this division shall have a site specific design prepared by a state registered professional engineer or architect having competence in this field of practice. Signed and sealed drawings and specifications for the proposed construction shall be submitted with the permit application. A current signed and sealed survey of the property, clearly defining existing site conditions and specifically identifying the location of the coastal construction control line or bulkhead line, if applicable, property lines and the mean high water line shall be furnished with the construction drawings. The proposed construction shall be designed to adequately perform under all reasonably foreseeable conditions of service. The design professional shall consider all factors relevant to the design, including but not limited to forces of wind, tides, waves, including storm and hurricane wave action, beach or bottom soils stability, seasonal variations in supporting soil elevations, maximum expected erosion and scour conditions, wall exposure heights, active and passive earth pressures, and dead and live superimposed loads.
- (b) Particular consideration shall be given to the effect that the proposed completed work will have on existing facilities and conditions of abutting and neighboring properties. There shall be included in the construction drawings explicit details to show construction personnel how to interface the new work with existing shoreline protection facilities which abut the project site. The person designated as building official by the city may require, as a condition of issuance of the permit, temporary measures to ensure stability of adjacent facilities during construction of the new work.

(Ord. No. 89-5, § 1(d), 5-15-1989)

Sec. 30-76. Minimum criteria for design and construction.

The criteria for design, structure type, quality of materials and methods of construction presented in this section are the minimum criteria, and are not to be construed as being applicable to all sites and conditions. The design professional has the responsibility for determining the appropriate level of design and construction applicable to a particular site. Where the minimum standard is determined to be inappropriate, then a higher criteria shall be applied, where necessary, to satisfy actual site and estimated service conditions. A different minimum criteria is prescribed in this section to work bordering on the Gulf of Mexico and on the shoreline of Clearwater Harbor.

- (1) The specifications for concrete and reinforcing steel materials proposed for use in shoreline structures shall be as identified in the current editions of the Florida Department of Transportation Standard

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Specifications for Road and Bridge Construction, referred to in this section as "standard specifications." Concrete shall be class IV, 3,500 psi, 28-day strength. Reinforcing steel shall be grade 60, deformed bars. Where concrete design cover is less than four inches, epoxy coating of the reinforcing steel shall be provided. The construction drawings shall include a materials specification block identifying the materials grade, type and strength required for the project and the basis of the structural design, i.e., ultimate strength design or working stress design.

- (2) Where proposed construction is beyond the limits of the established coastal construction control line, the applicant for a city permit shall include with his application a copy of his current permit for the proposed work as issued by the state department of natural resources. The design and construction drawings submitted for city approval shall incorporate any special construction features that are a specific condition of the state department of natural resources' permit.
- (3) Continuity of a smooth and continuous plan alignment of rigid shoreline structures shall be provided. Wherever possible, special transition sections shall be provided at the interface between different structure types, for example, between an existing concrete slab and cap bulkhead and a proposed new massive seawall or revetment type structure.
- (4) Anchored bulkhead type reinforced concrete sheet pile wall facilities constructed on the Gulf of Mexico shall meet the following requirements:
 - a. Wall slabs shall be minimum thickness of eight inches; minimum length of 12 feet, with maximum exposed wall face height under eroded beach conditions not more than 50 percent of the actual slab length; reinforcing steel shall be equivalent to one no. 6 rebar at six inches on centers, and one no. 4 bar at 18 inches on centers.
 - b. Anchorage systems minimum criteria shall have the equivalent of one no. 9 rebar tie-back spaced at ten feet on centers, structurally connected to the wall system and anchor. The tie-back shall be fully encased in one continuous length of schedule 40 PVC plastic pipe. The concrete anchor shall provide a bearing area of not less than 7.5 feet, and contain not less than 7.5 cubic feet of concrete, with a backfill cover of not less than 3.0 feet to finish grade. Reinforcing steel shall not be less than two no. 5 rebars placed both horizontally and vertically.
 - c. Concrete seawall caps shall not be less than 12 inches in height and 18 inches in width. Reinforcing steel shall consist of not less than four no. 5 rebars running continuously with placement held by no. 3 stirrups on centers not exceeding 24 inches. Design concrete cover over rebars shall not be less than three inches. Joints, where provided in the seawall cap, shall not be coincident with a joint in the seawall slab. A structural tie for continuity shall be provided with abutting property walls or with a return wall constructed at the applicant's property line.
 - d. A commercial grade geo-textile filter material shall be constructed at the back face of the seawall slabs extending from a point 18 inches below the lowest expected eroded beach elevation to the bottom of the seawall cap and then horizontally for at least five feet.
 - e. The minimum top profile elevation for structures permitted under this subsection along the shoreline of the Gulf of Mexico is an elevation of 6.00 (National Geodetic Vertical Datum (NGVD)).
- (5) New structures for shoreline protection along Clearwater Harbor shall be constructed on the applicant's property line, the controlling mean high water line, or, if a reconstructed facility, on the general alignment of the preexisting wall or bulkhead line. Previously existing irregularities in alignment shall be eliminated, wherever feasible.
 - a. The minimum top profile elevation for structures permitted under this subsection along the shoreline of Clearwater Harbor is an elevation of 5.00 (NGVD).

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- b. A commercial grade geo-textile filter material shall be included in the design. Filter fabric shall be placed behind new sheet pile walls and, as a minimum, shall extend vertically from 18 inches below the bay bottom elevation to the bottom of the seawall cap, and then horizontally for at least five feet in the retained soil. Filter fabric may also be installed as part of a toe scour protection system.
 - c. Anchored bulkhead type reinforced concrete sheet pile wall facilities constructed on the shoreline of Clearwater Harbor shall meet the following criteria:
 - 1. Wall slabs shall be a minimum nominal thickness of six inches; minimum length of ten feet; maximum exposed wall face height under eroded beach or water bottom conditions shall not be more than 50 percent of the actual slab length; and have reinforcing steel equivalent to one no. 5 rebar at six inches on centers and one no. 4 bar at 18 inches on centers.
 - 2. Anchorage systems shall have one no. 8 rebar spaced at ten feet on centers and shall be structurally connected to the wall system and anchor. The tie-back shall be fully encased in a continuous length of schedule 40 PVC plastic pipe. The concrete anchor shall provide a bearing area of not less than 4.5 feet; contain not less than 4.5 cubic feet of concrete; and have backfill cover of not less than 2.0 feet to finish grade. Reinforcing steel shall be not less than two no. 5 rebars placed both horizontally and vertically.
 - 3. Concrete seawall caps shall not be less than 12 inches in height and 18 inches in width. Reinforcing steel shall consist of not less than four no. 5 rebars running continuously with placement held by no. 3 stirrups on centers not exceeding 24 inches. Design concrete cover over rebars shall not be less than three inches. Joints, where provided in the seawall cap, shall not be coincident with a joint in the seawall slab. A structural tie for continuity shall be provided with abutting property walls or with a return wall constructed at the applicant's property line.
 - d. Aluminum seawall installations may be constructed along the tidal shoreline of Clearwater Harbor in accordance with the following minimum requirements:
 - 1. Fabrication standards and tolerances for aluminum materials shall conform to specifications listed in the aluminum association's "Aluminum Standards and Data," latest edition, for marine and similar type structures. The method of testing for conformity to material specifications for chemical composition or mechanical properties shall be as prescribed in such publication. The person designated as building official by the city may require, at his discretion, certification of materials furnished for an aluminum seawall installation constructed under this section. Where a commercial aluminum seawall system is prescribed by the design engineer as satisfying his design basis, and is shown on the approved construction drawings, only that commercial system, including all of its specific components, shall be constructed. Proposed alternates shall require design engineer certification and building official approval prior to being constructed.
 - 2. Aluminum sheet piles shall be fabricated from aluminum alloy 6061-T6. The chemical composition of such aluminum sheet piles shall conform to ASTM designation B221 alloy 6061. Minimum thickness of sheeting shall be 0.125 inch. Minimum ultimate tensile strength shall be 38,000 psi, with a minimum yield point strength of 35,000 psi. Sheets shall be commercially rolled aluminum shapes with a locked tongue and groove edge construction providing for tightfitting of installed sheeting. The sheet cross section and section modulus prescribed for a particular installation shall meet or exceed the modulus defined by the design professional engineer for the site conditions as shown on the city approved construction drawings.

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3. Caps, wales, anchor rods and backing beams shall be made from aluminum alloy 6061-T6. Only commercially rolled shapes for members fabricated from sheets shall be used. Welding filler wire used in all welds on the wall system shall be AWS-ASTM classification ER5356 with chemical composition conforming to ASTM designation B285. Bolts, rods and nut materials shall conform to the chemical requirements of ASTM designation B211. All rods and bolts for connectors shall be of the diameter specified by the design engineer. Threads shall be American Standard Course Thread Series, class 2, free fit. In lieu of aluminum bolts and nuts, stainless steel bolts and nuts of the same diameter may be used. Stainless steel fasteners shall be type 18-8 (300 series) conforming to ASTM specification A 193B8.
 4. Anchors may be fabricated from aluminum sheeting and backing beams conforming to the material specifications included in this section or, as an alternative, may be constructed of concrete. If such anchors are constructed of concrete, the anchors shall have the same bearing area as prescribed for the aluminum anchor, and concrete reinforcing steel shall be provided as prescribed in this section.
 5. Exposed height of aluminum seawall installations shall not exceed 7.00 feet.
 6. Maximum allowable stress in bending or tension in aluminum elements of a seawall shall not exceed 0.50 times the ultimate tensile strength of the material. Maximum allowable calculated compressive stress in concrete shall not exceed 0.45 times the concrete design strength at 28 days.
 7. In considering loading on soils, a minimum factor of safety of 2.5 shall be applied to calculations for sheet pile toe failure and for anchor system failure under the most severe conditions of design loading. In no case, however, shall the imbedded length of any sheet pile in the bay bottom be less than five feet, nor shall the spacing of anchor rods be more than ten feet on centers.
 8. Backfill placement against aluminum seawall components shall be granular soil materials not highly alkaline or acidic. Contact surfaces between aluminum and concrete shall be treated with a clear methacrylate lacquer or mastic material for corrosion prevention unless the construction drawings specifically indicate such treatment is not required.

(Ord. No. 89-5, § 1(e), 5-15-1989)

Sec. 30-77. Alternative design and construction type proposals.

This section recognizes the continuing changes and improvements in design technology, materials and methods of construction. Where a construction permit application is submitted proposing a construction type, material or method not directly measurable by the minimum criteria listed in this division, but is otherwise consistent with the provisions of this division with respect to professional site evaluation and design, the person designated as building official by the city shall make the decision as to the acceptability of the proposed construction on the basis of his judgement of expected equivalent performance.

(Ord. No. 89-5, § 1(f), 5-15-1989)

Sec. 30-78. Exemptions.

Special purpose shoreline facilities proposed for construction on public lands by governmental authorities having ownership of such lands, and for which facilities the governmental authority will exercise ongoing operation

and maintenance are exempt from the provisions of this division. Such facilities may include, but shall not be limited to, vehicle and vessel access structures, stormwater treatment works, weirs and overflow structures.

(Ord. No. 89-5, § 1(g), 5-15-1989)

Sec. 30-79. Staircase construction.

- (a) Staircases shall be erected so as to be parallel to the existing seawall, except staircases erected over toe scour. In no instance shall a staircase be attached to the seawall. The maximum width of a staircase shall not exceed four feet.
- (b) Staircase poles shall be a minimum of six inches by six inches, with a minimum penetration of four feet into the ground.
- (c) Staircase rails and uprights shall be two inches by six inches only.
- (d) Galvanized bolts and nails shall be used in staircase construction.
- (e) Staircase treads shall be nailed only.

(Ord. No. 86-9, § 2(5-32), 9-8-1986)

Secs. 30-80—30-110. Reserved.

ARTICLE III. BOATS

Sec. 30-111. Minimum wake zones.

- (a) The following minimum wake zones are established for the waters of Clearwater Harbor within the corporate limits of the city, unless otherwise posted as a no wake zone, as more specifically shown on the exhibit on file:
 - (1) For a distance of 400 feet directly east of the eastern shoreline, south from County Bridge No. 154208 to the southernmost city limit, 3,126 total feet of shoreline.
 - (2) For a distance of 150 feet directly east of the easternmost shoreline, north from County Bridge No. 154208 to the northernmost city limit, and in all tributaries and manmade and natural canals north of County Bridge No. 154208.
- (b) The city shall erect, or cause to be erected, appropriate signs in designated minimum wake areas within the city subject to state and federal regulations.
- (c) A violation of this section shall constitute a noncriminal infraction as set forth in F.S. § 327.73.

(Ord. No. 96-07, § 1(5-33), 5-6-1996; Ord. No. 98-18, § 1(5-33), 2-1-1999; Ord. No. 99-10, § 1(5-33), 8-16-1999)

Secs. 30-112—30-140. Reserved.

ARTICLE IV. BEACH

Sec. 30-141. Gulf of Mexico safety zone.

- (a) *Designated.* There is created a designated safety zone for restricted watercraft operation within the corporate boundaries of the city extending 100 yards from the shoreline into the Gulf of Mexico, and running parallel to the city's shoreline along the Gulf of Mexico.
- (b) *Operation of watercraft.* The operation of any watercraft within the safety zone that threatens persons, property, watercraft and the use of the waters of the Gulf of Mexico shall constitute a violation of this section; provided, however, that watercraft intending to anchor at a location within the defined safety zone area may proceed at idle speed. Such restriction shall not apply to any watercraft entering the safety zone as a result of an actual emergency; nor shall it apply to any official emergency vessels.
- (c) *Mooring to markers or buoys.* The mooring of any watercraft to markers or buoys placed by the city or other authorized governmental body shall be prohibited.
- (d) *Erection of signs or markers.* The city may erect, or cause to be erected, appropriate signs in designated safety zone areas within the city, subject to state and federal regulations.
- (e) *Violation; penalties.* A violation of this section shall constitute a noncriminal infraction as set forth in F.S. § 327.73.

(Ord. No. 99-15, § 1(5-34), 11-15-1999; Ord. No. 01-10, § 1, 9-5-2001)

Sec. 30-142. Motorized vessels.

Motorized vessels may not be launched from the Belleair Beach Causeway lying within the city limits.

Sec. 30-143. Sailboats.

Hobie-cats or similar sailboats with masts over 15 feet in height may not be launched from the Belleair Beach Causeway lying within the city limits.

Sec. 30-144. Prohibited activities.

It shall be unlawful for any person to engage in any of the following prohibited activities while using or entering upon any public beach within the city, except as may otherwise be provided in chapter 38 of this Code:

- (1) *Pets or other animals.* Dogs, cats or other animals of any kind shall not be permitted on any beach, whether on a leash or running free, except service animals required by persons who are disabled.
- (2) *Motorized vehicles and electric bicycles.* Motorized vehicles and electric bicycles (as defined by F.S. § 316.003(23)) shall not be permitted on any beach at any time, except for authorized police, fire or rescue emergency vehicles, public vehicles required to perform services on the beach or commercial vehicles contracted by the city to perform services on the beach.
- (3) *Motorized watercraft.* Motorized watercraft shall not be permitted to be launched, retrieved, moored or docked at any beach at any time, except for authorized coast guard, police, fire or rescue watercraft. Nothing in this subsection shall prohibit the temporary launching or mooring of any watercraft propelled exclusively by human power or the wind. For the purpose of this subsection, the term "temporary mooring" means mooring from sunrise to sunset.
- (4) *Open fire or grills.* Open fires or electric, gas or charcoal grills shall not be permitted on any beach at any time.

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- (5) *Possession and consumption of alcoholic beverages or use of glass containers.* A person shall not enter upon any beach while such person is in possession of any alcoholic beverage, or consume any alcoholic beverage, except as permitted by the city manager. Further, no person shall enter upon any beach while such person is in the possession of any glass container.
 - (6) *Live music, parties or special events.* Live music of any kind shall not be permitted on any beach, nor shall any social event, party or similar event consisting of ten or more people be held on the beach without first having obtained prior written permission from the city manager.
 - (7) *Tents, cabanas, canopies, umbrellas and game equipment.* The placement of tents, cabanas, umbrellas and game equipment shall be permitted on a beach only during the period from sunrise to sunset.
 - (8) *Motion picture or television production.* Motion pictures or television productions shall not be permitted on any beach without first having obtained prior written permission from the city manager. Nothing in this subsection shall prohibit members of any news media from videotaping or conducting a live broadcast from any beach in connection with a scheduled activity or a current news event.
 - (9) *Aircraft operation.* No person shall take off or land any unlicensed or unregistered manned or unmanned aircraft of any kind within the corporate limits of the city including model or remote operated aircraft, except for police, fire, rescue air med-evac or other public safety aircraft, without first having obtained prior written permission from the city manager. Except for public safety aircraft, no person shall operate any manned aircraft over any beach area at an altitude below that authorized by the Federal Aviation Administration. Unmanned aircraft intended to operate within the corporate limits of the city shall comply with all applicable provisions of the FAA Reauthorization Act of 2018.
 - (10) *Fireworks.* A person shall not enter upon any beach while in possession of any fireworks, sparklers or other incendiary devices or objects; nor shall any person cause any fireworks, sparklers or other incendiary devices to be ignited or exploded over, on or into any beach without first having obtained prior written permission from the city manager.

(Ord. No. 98-10, § 1(5-35), 11-2-1998; Ord. No. 05-01, § 16, 4-12-2005; Ord. No. 14-04, § 1, 7-7-2014; Ord. No. 18-09, § 4, 12-3-2018; Ord. No. 21-10, § 5, 12-6-2021)

Sec. 30-145. Regulations.

The following regulations are established for the public beach along the Gulf of Mexico within the corporate limits of the city:

- (1) *Posting of signs or markers.* There shall be no swimming limitation buoys or markers installed in the waters of the Gulf of Mexico along the beach. Signs of appropriate size and lettering shall be prominently displayed at the beach accesses which shall read, "No Lifeguard On Duty—Swim At Your Own Risk."
- (2) *Hours.* The public beach shall be open to the public 24 hours per day, seven days per week.

(Ord. No. 98-10, § 1(5-36), 11-2-1998)

Secs. 30-146—30-180. Reserved.

ARTICLE V. BELLEAIR BEACH MARINA

Sec. 30-181. Promulgation of rules and regulations.

The city council shall be empowered to promulgate by resolution all rules and regulations for the use, operation and maintenance of the Belleair Beach Marina, and such rules and regulations shall be posted at the marina and at any other place directed by the city council. In the event of an emergency relating to health, safety or welfare of the property of the city and its residents, or property located in the marina, the city manager may promulgate emergency rules and regulations, which are appropriate, in his judgment, to deal with such emergency, which rules and regulations shall be subject to adoption, repeal or amendment by the city council at a regular or special meeting. Such rules and regulation promulgated by the city manager shall remain in full force and effect until they are repealed or amended. The city manager may also deal with situations and circumstances not covered by the rules and regulations in a manner deemed by him to be in the best interest of the city.

(Ord. No. 94-17, § 28-1, 10-17-1994; Ord. No. 05-01, § 17, 4-12-2005)

Sec. 30-182. Enforcement.

The city manager shall be vested with full power and authority to enforce the provisions of this article. It shall be the duty of the city manager to grant or withhold consents when the consent of the city is required by this article or the rules and regulations described in section 30-181 and, except where otherwise specifically provided in this Code, to perform all other duties of the city under this Code relating to the operation and use of the marina.

(Ord. No. 94-17, § 28-3, 10-17-1994; Ord. No. 05-01, § 18, 4-12-2005)

Sec. 30-183. Utilization of facilities.

All persons owning or operating any watercraft in, or otherwise utilizing the facilities of, the marina shall be governed by and subject to the rules and regulations described in section 30-181. Any such person shall by such act fully accept all of the provisions of this article, including all provisions for confiscation or forfeiture for violations of this article, and shall hold the city, its officers, agents and employees harmless for any act of the city or such officers, agents and employees in pursuance thereof. Any violation of the rules and regulations contained in this article shall be punishable by a class IV fine as set forth in section 1-15.

(Ord. No. 94-17, § 28-2, 10-17-1994; Ord. No. 96-13, § 1(28-2), 9-4-1996)

Sec. 30-184. Lease or use agreement.

The owner or operator of any watercraft shall not occupy a boat slip in the marina without first entering into a lease or use agreement with the city or its designee in a form promulgated by the city council.

(Ord. No. 94-17, § 28-4, 10-17-1994)

Sec. 30-185. Failure to keep watercraft in boat slip.

If a lessee or licensee of a boat slip shall fail to keep his watercraft in the boat slip for a period of 180 days, the right to occupy such boat slip shall revert to the city, and the boat slip may be considered vacant and subject to reassignment; provided, however, that if the owner or operator of such watercraft shall take the watercraft for a cruise of more than 90 days, or shall remove the watercraft from the boat slip for repairs that are anticipated to take more than 180 days to complete, in each case intending to return upon the completion of such cruise or repairs, he may so notify the city in writing, stating the length of absence and agreeing to pay all fees and other

charges accruing with respect to such boat slip during such period of absence, and the boat slip assignment shall not be forfeited.

(Ord. No. 94-17, § 28-5, 10-17-1994; Ord. No. 21-10, § 6, 12-6-2021)

Sec. 30-186. Failure to comply.

If a watercraft is kept in a boat slip in violation of this article, the rules and regulations described in section 30-181 or the vessel owner's lease or use agreement with the city, the city may take possession and custody of the watercraft for a period of two weeks before confiscating such watercraft, and during such period of time the city shall use reasonable diligence in an effort to locate the owner of the watercraft and, if such owner is located, he shall be given notice that if all charges, fees, fines, damages and expenses due to the city are paid within five business days from the date of delivery of such notice, and if the watercraft is removed from the boat slip by the owner during such five-day period, the watercraft will not be confiscated, and upon failure to pay such charges and to remove such watercraft as set forth in this subsection, such watercraft shall be confiscated forthwith by the city and shall be sold or otherwise disposed of in any manner prescribed by law. In addition to any manner specifically provided by law, the watercraft and any motors, equipment and personal property aboard such watercraft may be sold at public or private sale in the discretion of the city, and the city may purchase such items at such sale. The proceeds of any sale, after deducting any rentals, fines or other charges owed by the watercraft owner to the city, shall be held by the city for 90 days. If within such 90-day period the owner or other person entitled to such proceeds shall claim the proceeds from such sale, such proceeds shall be paid to him. If such proceeds are not claimed, all such proceeds shall revert to the general fund of the city.

(Ord. No. 94-17, § 28-6, 10-17-1994)

Sec. 30-187. Number of watercraft in a single boat slip restricted.

It shall be unlawful for any person to moor more than one watercraft in a single boat slip within the marina.

(Ord. No. 94-17, § 28-7, 10-17-1994)

Sec. 30-188. Fees.

All users of boat slips shall enter into a lease or use agreement in a form approved by the city council, and such users shall pay, for the use of a boat slip, the rental and other charges, if any, set forth in such agreement. The rates for the rental of boat slips shall, from time to time, be prescribed by resolution of the city council, and the rates of rental may be changed by the city, from time to time, without advance notice.

(Ord. No. 94-17, § 28-8, 10-17-1994)

Sec. 30-189. Maintenance.

All docks and walks adjacent to boat slips shall be kept clean by the user of the boat slip, and no refuse shall be thrown overboard, including, but not limited to, waste oil, and no refuse shall be left on any part of the marina.

(Ord. No. 94-17, § 28-9, 10-17-1994)

Sec. 30-190. Fish cleaning, swimming, diving, fishing and net casting restricted.

- (a) It shall be unlawful for any person to clean any fish upon the piers, seawalls or walks, or upon any other portion of the marina property within the city. All persons having fish, or fish parts, in their possession shall dispose of such fish, or fish parts, by sanitary methods, and in such a manner as will not create a health hazard, pollution hazard or public nuisance. The cleaning of fish is permitted aboard a watercraft only, and such cleaning shall be done in a neat, sanitary manner, and it shall be the responsibility of the watercraft owner or operator to properly dispose of fish, fish parts and bait.
- (b) It shall be unlawful for any person to swim, dive, fish or cast a net from the piers, seawalls or walkways of the marina property, or from any watercraft docked at the marina. The provisions of this subsection shall not be applicable to any watercraft owner or his agent from entering into the waters in or around the marina to inspect or clean the bottom of any watercraft docked in the marina.

(Ord. No. 94-17, § 28-10, 10-17-1994; Ord. No. 99-04, § 1(28-10), 7-6-1999)

Sec. 30-191. Major repairs; right to inspect; liability for damage.

- (a) Major repairs to a watercraft shall not be made in the marina without the written consent of the city.
- (b) All watercraft shall be kept in a good, presentable condition at all times.
- (c) The city shall have the authority to require the proper mooring of all watercraft within the marina, and to inspect the ropes and mooring lines of all watercraft in the marina. If, after inspection or during an emergency, the city shall deem it advisable, the city may procure necessary lines, related fixtures and other equipment to ensure safe and adequate mooring, at the boat slip occupant's expense.
- (d) The city, or any officer, agent or employee of the city shall not be liable for damage caused to or by a watercraft of any boat slip owner, but the boat slip owner shall, by executing a lease or use agreement relating to a boat slip, accept full responsibility for any damage to or loss of any kind caused by or related to the use of his/her watercraft.

(Ord. No. 94-17, § 28-11, 10-17-1994; Ord. No. 21-10, § 7, 12-6-2021)

Sec. 30-192. Parking of automobiles.

Automobiles shall not be parked at the marina, except in designated parking places. Certain parking places within the marina may be designated for parking by permit only, in which case the appropriate permit shall be obtained and displayed in accordance with the marina rules and regulations adopted by city council. The following provisions shall be applicable to all persons parking motor vehicles at the marina parking area within the city:

- (1) *Hours.* Except for boat owners and their guests who rent boat slips at the marina as set forth in article V of this chapter, all other parking of motor vehicles shall be restricted to the hours between 6:00 a.m. and 11:00 p.m.
- (2) *Entrances and exits.* Any motor vehicle operator entering, parking and exiting the parking area at the marina shall follow all prescribed signs, including the designation of parking spaces.
- (3) *Violation; penalties.* Any person violating any provision of this section shall be punished as provided in section 58-38.

(Ord. No. 94-17, § 28-12, 10-17-1994; Ord. No. 98-10, § 1(5-37), 11-2-1998; Ord. No. 99-08, § 1(3-16(b)), 8-16-1999)

Sec. 30-193. Responsibility for repairs; erection of signs.

- (a) It shall be unlawful for any person to make any repairs, alterations or additions to the boat slips, walks or piers. All such repairs shall be done by the city or its designee.
- (b) Signs shall not be erected in or about the marina without the written consent of the city. All signs erected at the marina shall be in accordance with this Code.

(Ord. No. 94-17, § 28-13, 10-17-1994)

Sec. 30-194. No wake zone; fueling restrictions.

- (a) The area in and around the marina shall be a no wake zone.
- (b) Gasoline or other volatile fuels carried upon docks, walks or watercraft shall be in a container complying with the laws and regulations of the state and with this Code, and shall be plainly marked to indicate the nature of the contents, or dispensed by an authorized fuel company under contract with the city.

(Ord. No. 94-17, § 28-14, 10-17-1994; Ord. No. 98-17, § 1(28-14), 12-21-1998)

Sec. 30-195. Bicycling, roller skating, roller blading, skateboarding, swimming and diving.

- (a) Bicycling, roller skating, roller blading or skateboarding shall not be allowed from the docks, walkways and seawalls within the marina.
- (b) All swimming and diving shall be prohibited within the marina.

(Ord. No. 94-17, § 28-14, 10-17-1994)

Sec. 30-196. Applicability of other Code provisions; general rules and regulations.

- (a) All other provisions of this Code applicable to the use of the marina which are not in conflict with this article are declared to be applicable to the marina, including, but not limited to, the provisions of section 30-2.
- (b) The following rules and regulations shall apply to the marina:
 - (1) A boat owner may not sublease a boat slip or permit boats owned by others to be berthed in the boat slip rented by such owner.
 - (2) All boats berthed in the marina must be seaworthy and capable of moving under their own power.
 - (3) Water shall not be wasted, and the boat owner shall furnish a hose which has a positive shutoff at the discharge end of such hose.
 - (4) Docks shall be kept clear of stored materials.
 - (5) Hoses and electric current lines shall not run across the dock.
 - (6) Open fires, including charcoal grills, shall not be permitted on any docks, piers or boats in the marina at any time.
 - (7) Boats may receive fuel from a fuel service dock or authorized fuel dispensing company approved by the city. Fuel shall not be permitted to be pumped or transferred from the boat to a container on the dock area.

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- (8) All boats berthed in the marina shall conform to all federal, state, city and county regulations concerning boat safety devices and equipment.
 - (9) Birds shall not to be fed from boats or piers at any time.
 - (10) Pets are permitted in the marina only if they do not disturb others. Pets shall be under control when such pets are upon docks, piers or boats in the marina.
 - (11) Trailers of any kind shall not be parked at the marina facility.

(Ord. No. 94-17, § 28-16, 10-17-1994; Ord. No. 98-17, § 2(28-16), 12-21-1998)

Sec. 30-197. Restricted areas in the marina.

The area in the Belleair Beach Marina immediately adjacent to and along the docks, catwalks and walkways is restricted to boat owners and their invited guests. It shall be unlawful for any person to trespass in such designated areas of the marina protected by a fence and properly posted.

(Ord. No. 03-11, § 1, 9-8-2003)

Chapter 50 STREETS, SIDEWALKS AND OTHER PUBLIC WAYS

ARTICLE I. IN GENERAL

Sec. 50-1. Roadway intersection visibility.

Secs. 50-2—50-30. Reserved.

ARTICLE II. FRANCHISES

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Sec. 50-140. Savings clause.

Chapter 50 STREETS, SIDEWALKS AND OTHER PUBLIC WAYS¹

ARTICLE I. IN GENERAL

Sec. 50-1. Roadway intersection visibility.

- (a) To minimize traffic hazards at street or road intersections, no structure or landscaping shall be erected, installed or maintained which obstructs the view of motorists at an intersection within the city at a level that exceeds 30 inches in height.
- (b) The areas of property located at a corner formed by an intersection of two or more public streets or roadways with two sides of the triangle area being measured 25 feet in length along the abutting edge of the roadway forming the sides or legs of the triangle from their point of intersection, and the third line being the hypotenuse connecting to the ends of the other two side lines.
- (c) No fence, planting, wall or other structure shall be erected, constructed, installed or maintained within 6 feet of a fire hydrant or other emergency apparatus.
- (d) No fence, planting or other structure shall be erected, constructed, installed or maintained within the triangle described in this section.

(Ord. No. 06-03, § 1, 2-6-2006)

Secs. 50-2—50-30. Reserved.

ARTICLE II. FRANCHISES²

Sec. 50-31. Limitation of powers.

Nothing contained in this article shall operate in any way, except as specifically stated in this article, to limit the city council in the exercise of any of its lawful powers regarding public utilities, or to prohibit the city council from imposing in a grant such further provisions and restrictions as it may deem to be in the public interest, provided that such provisions and restrictions are not inconsistent with the provisions of this article or the constitution of the state.

¹Cross reference(s)—Any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, or repairing any street saved from repeal, § 1-8(5); buildings and building regulations, ch. 10; excavations, § 10-101 et seq.; environment, ch. 22; marine structures, activities and facilities, ch. 30; parks, recreation areas and city facilities, ch. 38; peddlers and solicitors, § 42-31 et seq.; flood protection, ch. 74; planning, ch. 78; subdivisions, ch. 90; required improvements for streets in subdivisions, § 90-132; required improvements for sidewalks in subdivisions, § 90-133; moving buildings, § 94-254.

²Cross reference(s)—Franchises, app. B.

(Ord. No. 01-02, § 1(21-1), 6-18-2001)

Sec. 50-32. When required.

A franchise shall be required within the city when any person shall construct or maintain any wire, pole, conduit, pipe, track or structure, except service connections to any such wire, pole, conduit, pipe, track or structure belonging to customers, over, under or on any street or alley or property of the city which is intended to remain there for a period of more than six months, or when any person shall engage in a public service business. The term "public service," as used in this article, refers to services which, by their nature, are necessary and convenient to the public generally, and are usually and customarily furnished to the people of the city with or without competition from others, such as the furnishing of regular transportation, communications, water, electricity, gas, sewerage, etc.; provided, however, that this article shall not apply to any business which the laws of the state or the United States may permit without a franchise from the city. However, nothing in this article shall be construed to authorize any person to build, construct or maintain any object or structure on, over or under any street, alley or property of the city, or to obstruct, excavate, fill or alter any such object or structure without a permit when required by law or ordinance, or exempt any person from any tax or obedience to any ordinance which the city has lawfully made.

(Ord. No. 01-02, § 1(21-2), 6-18-2001)

Sec. 50-33. Granted by the city council.

The city council may, by ordinance or contract, grant permission to any person to construct and operate a public utility in the streets and public grounds of the city, but no such grant or renewal shall be made in violation of any of the limitations contained in this article.

(Ord. No. 01-02, § 1(21-3), 6-18-2001)

Sec. 50-34. Period of grants.

A grant or franchise shall not be exclusive, nor shall it be made for a longer period than 30 years. All grants of rights to make extensions of any public utility shall be subject, as far as practicable, to the terms of the original grant. If a grant or franchise previously approved by the city council expires by its term and the franchisee fails or refuses to execute an acceptable franchise agreement with the city, the previously approved grant or franchise shall continue to remain in full force and effect from year to year until renewed by the city council and the franchisee.

(Ord. No. 01-02, § 1(21-4), 6-18-2001)

Sec. 50-35. Implied terms.

A franchise shall not be implied, but shall rest upon a written ordinance, or contract signed by the city council and adopted in same manner as an ordinance, and spread at large upon the minutes of the city council. The terms shall not be implied in construing any franchise by which the city is held to have surrendered or abdicated its police power to regulate the business conducted under a franchise, or any power given to it by law to prescribe reasonable rates for public service or of taxation upon the privileges enjoyed or property owned by the beneficiary of the franchise. The failure of the city council or any officer to enforce any right of the city; to terminate an expired or forfeited franchise; or take steps to oust the beneficiary of a franchise for its enjoyment shall not be construed or implied to be a waiver of any legal right of the city. Where the beneficiary of a franchise, after its expiration of forfeiture or other termination, or any person who is without a franchise, shall use the

streets, alleys or public property of the city, or who shall conduct a public service business requiring a franchise, without violating any law or ordinance that is otherwise binding upon the beneficiary of a legal and subsisting franchise, and without objection from the city council, shall be deemed to be acting or operating under a license certificate revocable at the pleasure of the city council; provided, however, that nothing in this section shall be construed to exempt any person from obedience to ordinances and regulations applicable to the streets, alleys and public property or to be established rates for public service, or to the manner of furnishing such service, or from the payment of property, license or excise taxes, or obtaining a permit requiring an ordinance.

(Ord. No. 01-02, § 1(21-5), 6-18-2001)

Sec. 50-36. Conditions.

- (a) The city council shall, in an ordinance or contract granting or renewing a franchise to construct and operate a public utility, prescribe the kind and quality of product or service, or service to be furnished, the manner in which public streets and grounds shall be used and occupied, and other terms and conditions conducive to the public interest. Such grants or franchises shall provide that the rate to be charged shall at all times be under the supervision, direction and control of the city council, and no rate shall be in effect unless it is approved by the city council unless the regulation of such rate is prohibited by law, provided the rate allowed shall be sufficient to ensure a reasonable return on the investment.
- (b) All grants and grant renewals shall reserve to the city the right to terminate such grants and renewals upon purchasing all of the property and property rights of the utility, as well as any extensions of such utility, within and without the city, used in or connected with such utility and extensions as set forth in the ordinance making the grant renewal, at the price either fixed in the ordinance or to be fixed in the manner provided in the ordinance, if so purchased by the city. Nothing in such ordinance shall prevent the city from acquiring the property of any such utility by condemnation proceedings, or in any other lawful manner. Upon the acquisition by the city of the property of an utility, all grants or renewals shall terminate at once.

(Ord. No. 01-02, § 1(21-6), 6-18-2001)

Sec. 50-37. Extension by annexation or merger.

It shall be provided in every grant or franchise that, upon the annexation of any territory to the city, the portion of such utility that may be located within such annexed territory and upon streets, alleys or public grounds shall thereafter be subject to all terms of the grant as though it were an extension made under such grant.

(Ord. No. 01-02, § 1(21-7), 6-18-2001)

Sec. 50-38. Right of regulation.

All grants shall be subject to the right of the city, whether in terms reserved or not, to control at all times the distribution of space in, over, under or across streets, alleys or public grounds occupied by the public utility fixtures, and, when in the opinion of the city council the public interest so requires, such fixtures may be caused to be removed, reconstructed, relocated, altered or discontinued; and the city shall at all times have the power to pass all regulatory ordinances affecting such utilities which, in the opinion of the city council, are required in the interests of the public health, safety or accommodation.

(Ord. No. 01-02, § 1(21-8), 6-18-2001)

Sec. 50-39. Assignability.

All franchises which involve the use of the streets, alleys or city property, or the principal object of such franchise is to furnish public service, are and have been granted because of confidence in the beneficiary of the privilege, and the belief that such beneficiary will fully perform all duties to the city and the public, according to their respective rights and the law, and no such franchise shall be assignable except with the approval of the city council.

(Ord. No. 01-02, § 1(21-9), 6-18-2001)

Sec. 50-40. Forfeitures.

If any action shall be instituted or prosecuted, directly or indirectly, by the grantee of any grant, or by the stockholders or creditors, to set aside or have declared void any of the terms of the grant, the whole of such grant may thereby be forfeited and annulled at the option of the city council. All such grants shall make a provision for the declaration of a forfeiture by the city council for the violation by the grantee of any of the terms of such grant.

(Ord. No. 01-02, § 1(21-10), 6-18-2001)

Sec. 50-41. Accounts and reports.

- (a) Every person operating a public utility within the city limits shall keep and maintain at some place within the city suitable and complete books of accounts showing, in detail, the assets, financial obligations, gross revenues, net profits and all of the operations of such utility which are usually shown by a complete system of bookkeeping.
- (b) Each such person, within 90 days after the end of its fiscal year, when required by the city council, shall file with the city council a report for the preceding fiscal year, showing the gross revenue, net profits, expense of repairs, improvements and additions, amount paid for salaries, amount paid for interest and discounts, other expenses of operation and such other information as the city council may prescribe from time to time. If the city council shall prescribe the form for such reports, then such reports shall be made in the form prescribed.
- (c) It shall be the duty of each person to furnish such supplementary or special information about its affairs as the city council may demand, and the city council shall, at any and all reasonable times, have access to all of the books, records and papers of every such person with the privilege of taking copies of such books, records and papers, or any part thereof. The duties prescribed in this section may be specifically enforced by appropriate legal proceedings, and, in addition, each such person, for failure to comply with the provisions of this section, shall be liable to the city in the sum of \$500.00 per day for each day of such failure, which shall be recovered in a civil action in the name of the city.

(Ord. No. 01-02, § 1(21-11), 6-18-2001)

Sec. 50-42. Revocation.

When it shall appear that the beneficiary of any franchise, or any person claiming to have a franchise, has violated a material term of such franchise, or has neglected or refused to obey a valid ordinance or regulation, or, if such person is in the public service business, has repeatedly overcharged its customers, or has failed or refused, without reasonable cause, to furnish adequate service to all who are willing to pay for such service and conform to reasonable regulations, the city council may inform such person of such charges, and shall give a reasonable notice of the time and place of a hearing on the matter, at which the city council shall hear evidence to sustain and refute the charges, and if such charges are sustained, the franchise may be revoked. The city council may, however, find

such charges to be sustained, but may suspend revocation of the franchise pending remedy of the default, and during a continuance of obedience to the duties imposed upon such person by law and ordinance. If an order of revocation is made, it may be made effective at a future time in order to avoid injury and inconvenience to the public, during which such franchisee shall be under obligation to continue to furnish public services, if any is required by the franchise. In any event, upon revocation, the franchisee having or claiming the franchise shall be granted a reasonable time in which to close its business and remove its property from the streets, alleys or city property, and the franchisee shall be required to repair and restore the streets, alleys or city property to the condition of such streets, alleys or city property before such removal.

(Ord. No. 01-02, § 1(21-12), 6-18-2001)

Sec. 50-43. Special privileges.

The city council may grant special privileges or permits to any person for the use of sidewalks, parkways or public grounds, or any part thereof, for the operation of utilities, but such privileges shall be revocable at the pleasure of the city council.

(Ord. No. 01-02, § 1(21-13), 6-18-2001)

Sec. 50-44. Retrospective effect.

This article shall be prospective in operation, and shall also be retrospective to the full extent that it may be consistent with the constitution and laws of the state and the United States. Nothing in this article shall affect or modify any of the provisions, terms and conditions contained in Ordinance No. 01-03.

(Ord. No. 01-02, § 1(21-14), 6-18-2001)

Secs. 50-45—50-80. Reserved.

ARTICLE III. COMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY³

Sec. 50-81. Intent and purpose.

It is the intent of the city to promote the public health, safety and general welfare by providing for the placement or maintenance of communications facilities in the public rights-of-way within the city; adopting and administering reasonable rules and regulations which are consistent with state and federal law, including F.S. § 337.401, the city's home rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities in the public rights-of-way by all communications services providers; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the city shall be governed by, and comply with, all applicable federal and state laws.

(Ord. No. 01-04, § 1(21-21), 3-5-2001)

³Cross reference(s)—Telecommunication towers and antennas, § 94-291 et seq.

State law reference(s)—Use of right-of-way, F.S. §§ 337.401—337.404.

Sec. 50-82. 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. Where not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and the word "may" is permissive. Words not otherwise defined in this section shall be construed to have their common and ordinary meaning.

Abandonment means the permanent cessation of all uses of a communications facility, provided this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used, for example, the cessation of all use of a cable within a conduit where the conduit continues to be used shall not be an abandonment of a facility in public rights-of-way.

Communications services mean the transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point, or between or among points, by or through an electronic, radio, satellite, cable, optical, microwave or other devised medium or method, regardless of the protocol used for such transmission or conveyance. Notwithstanding the services listed in this definition, for purposes of this article, the term "cable service," as defined in F.S. § 202.11(2), is not included in this definition, and cable service providers may be subject to other city ordinances.

Communications services provider means any person, including a municipality or county, providing communications services through the placement or maintenance of a communications facility in public rights-of-way. This term shall also include any person, including a municipality or county, that places or maintains a communications facility in public rights-of-way, but does not provide communications services.

Communications facility, facility and system mean any permanent or temporary plant, equipment and property, including, but not limited to, cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances and other equipment or pathway placed or maintained, or to be placed or maintained, in the public rights-of-way of the city, and used, or capable of being used, to transmit, convey, route, receive, distribute, provide or offer communications services.

FCC means the Federal Communications Commission.

In public rights-of-way and in the public rights-of-way mean in, on, over, under or across the public rights-of-way.

Person means and includes any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include all city, county, state or other public entities to the extent such public entities act as a communications services provider.

Place or maintain, placement or maintenance and placing or maintaining mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, shall be considered to be placing or maintaining the facilities. A person providing service only through resale or through use of a third party's unbundled network elements shall not be considered to be placing or maintaining the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way does not constitute placing or maintaining facilities in the public rights-of-way.

Public rights-of-way means a public right-of-way, public utility easement, highway, street, bridge, tunnel or alley for which the city is the authority which has jurisdiction and control and may lawfully grant access to

pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. This term shall not include private property, any real or personal city property, except as described in this definition, and city buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

Registrant means a communications services provider that has registered with the city in accordance with the provisions of this article.

Registration and *register* mean the process described in this article whereby a communications services provider provides certain information to the city.

(Ord. No. 01-04, § 1(21-22), 3-5-2001)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 50-83. Registration for placement or maintenance.

- (a) A communications services provider who desires to place or maintain a communications facility in public rights-of-way in the city shall first register with the city in accordance with this section. Subject to the terms and conditions prescribed in this section, a registrant may place or maintain a communications facility in public rights-of-way.
- (b) A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Registration under this section governs only the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes or regulations may apply to the placement or maintenance in the public rights-of-way of facilities that are not communications facilities. Registration shall not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the city's or another person's facilities, or from complying with all applicable city ordinances, codes or regulations, including the provisions of this article.
- (c) Each communications services provider who desires to place or maintain a communications facility in public rights-of-way in the city shall file a single registration with the city, which shall include the following information:
 - (1) The applicant's name;
 - (2) The name, address and telephone number of the applicant's primary contact person in connection with the registration, and the person to contact in case of an emergency;
 - (3) For registrations submitted prior to October 1, 2001, the applicant shall state whether it provides local service and/or toll service;
 - (4) Evidence of the insurance coverage required under this article and acknowledgment that the registrant has received and reviewed a copy of this article, which acknowledgment shall not be deemed an agreement; and
 - (5) The number of the applicant's certificate of authorization or license to provide communications services issued by the state public service commission, the Federal Communications Commission, or other federal or state authority, if any. If an applicant does not provide a state public service commission certificate of authorization number, and the applicant is a corporation, proof of authority to do business in the state, such as the number of the certificate from or filing with the department of state, shall be provided.
- (d) Registration application fees shall be as follows:
 - (1) Each applicant for a registration shall submit a registration application fee with the application, which shall not be refunded if the application is withdrawn, provided the registrant may credit the

registration application fee as provided in F.S. § 337.401(3). Fee amounts shall be established by resolution of the city council, and shall be in an amount not to exceed the city's costs and expenses incurred in connection with reviewing and approving the registration. If the registration application fee is insufficient to cover all costs or expenses incurred by the city in connection with review and approval of the registration, the applicant shall reimburse the city for any such costs and expenses in excess of the registration application fee following receipt of written notice, which shall explain any additional costs or expenses. This subsection shall be repealed and shall have no force or effect on or after October 1, 2001.

- (2) No registration application fees shall be imposed on or after October 1, 2001.
- (e) The city shall review the registration information submitted by the applicant. Such review shall be by either the city attorney, city engineer or code enforcement officer or his designee. If the applicant submits information in accordance with subsection (c) of this section, the registration shall be effective and the city shall notify the applicant in writing of the effectiveness of such registration. If the city determines that the information has not been submitted in accordance with subsection (c) of this section, the city clerk shall notify the applicant in writing of the noneffectiveness of the registration and the reasons for such noneffectiveness. The city shall reply to an applicant within 30 days after receipt of the registration information from the applicant. Noneffectiveness of the registration shall not preclude an applicant from filing subsequent applications for registration under the provisions of this section.
- (f) A registrant may cancel a registration upon written notice to the city stating that the registrant will no longer place or maintain any communications facilities in public rights-of-way within the city, and will no longer need to obtain permits to perform work in public rights-of-way. A registrant shall not cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.
- (g) Registration shall not, in and of itself, establish a right to place or maintain, or priority for the placement or maintenance of, a communications facility in public rights-of-way within the city, but shall establish for the registrant a right to apply for a permit, if permitting is required by the city. Registrations are expressly subject to any future amendment to or replacement of this article, and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted.
- (h) A registrant shall renew its registration with the city by April 1 of even-numbered years in accordance with the registration requirements in this section, except that a registrant that initially registers during the even-numbered year when renewal would be due, or the odd-numbered year immediately preceding such even-numbered year, shall not be required to renew such registration until the next even-numbered year. Within 30 days of any change in the information required to be submitted pursuant to subsection (c) of this section, except, as of October 1, 2001, pursuant to subsection (c)(3) of this section, a registrant shall provide updated information to the city. If no information in the then existing registration has changed, the registration renewal may state that no information has changed. Failure to renew a registration may result in the city restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this section.
- (i) In accordance with applicable city ordinances, codes or regulations, a permit may be required of a communications services provider who desires to place or maintain a communications facility in public rights-of-way. An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements have been met.

(Ord. No. 01-04, § 1(21-23), 3-5-2001)

Sec. 50-84. Notice of transfer, sale or assignment of assets.

If a registrant transfers, sells or assigns its assets located in public rights-of-way incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this article. Written notice of any such transfer, sale or assignment shall be provided by such registrant to the city within 20 days after the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided in section 50-83 within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the city clerk that the transferee, buyer or assignee is the new applicant.

(Ord. No. 01-04, § 1(21-24), 3-5-2001)

Sec. 50-85. Placement or maintenance.

- (a) A registrant shall at all times comply with and abide by all applicable provisions of the state and federal law and all city ordinances, codes and regulations in placing or maintaining a communications facility in public rights-of-way.
- (b) A registrant shall not commence to place or maintain a communications facility in public rights-of-way until all applicable permits, if any, have been issued by the city or other appropriate authority, except in the case of an emergency. The term "emergency" means a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a preexisting service. The registrant shall provide prompt notice to the city of the placement or maintenance of a communications facility in public rights-of-way in the event of an emergency, and shall obtain an after-the-fact permit if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency. The registrant acknowledges that, as a condition of granting such permits, the city may impose reasonable rules or regulations governing the placement or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The city may issue a blanket permit to cover certain activities, such as routine maintenance and repair, that may otherwise require individual permits.
- (c) As part of any permit application to place a new or replace an existing communications facility in public rights-of-way, the registrant shall provide the following:
 - (1) The location of the proposed facilities, including a description of the facilities to be installed, where the facilities are to be located and the approximate size of facilities that will be located in public rights-of-way;
 - (2) A description of the manner in which the facility will be installed (i.e., anticipated construction methods or techniques);
 - (3) A maintenance or traffic plan for any disruption of the public rights-of-way;
 - (4) Information on the ability of the public rights-of-way to accommodate the proposed facility, if available, and such information shall be provided without certification as to correctness, to the extent such information is obtained from other persons;
 - (5) If appropriate, given the facility proposed, an estimate of the cost of restoration to the public rights-of-way;
 - (6) The timetable for construction of the project, or each phase thereof, and the areas of the city which will be affected; and

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- (7) Such additional information as the city finds reasonably necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application to review such permit application.
- (d) To the extent not otherwise prohibited by state or federal law, the city shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of public rights-of-way.
- (e) All communications facilities shall be placed or maintained so as to not unreasonably interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin any of the public rights-of-way. The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way, as well as joint trenching or the collocation of facilities in existing conduit is strongly encouraged, and should be employed wherever feasible. The director of public works or city engineer may promulgate reasonable rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way consistent with this article and other applicable law.
- (f) All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.
- (g) After the completion of any placement or maintenance of a communications facility in public rights-of-way, or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to its original condition before such work. If the registrant fails to make such restoration within 30 days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the city may perform such restoration and charge the costs of the restoration against the registrant in accordance with F.S. § 337.402. For a period of 12 months following the original completion of the work, the registrant shall guarantee its restoration work, and shall correct any restoration work that does not satisfy the requirements of this article, at its own expense.
- (h) Removal or relocation, at the city's direction, of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404.
- (i) A permit from the city shall constitute authorization to undertake only certain activities in public rights-of-way in accordance with this article, and shall not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.
- (j) A registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.
- (k) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. ch. 556.
- (l) The registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way, and shall take all reasonable steps to safeguard work site areas.
- (m) Upon the request of the city, and as notified by the city of the other work, construction, installation or repairs as set forth in subsection (r) of this section, a registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject public rights-of-way, and the registrant may be required to reasonably alter its placement or maintenance schedule, as necessary, to minimize disruptions and disturbance in the public rights-of-way.
- (n) A registrant shall not place or maintain its communications facilities so as to interfere with, displace, damage or destroy any facilities, including but not limited to sewers, gas or water mains, storm drains, pipes, cables or conduits of the city, the county or any other person's facilities lawfully occupying the public rights-of-way of the city.

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- (o) The city shall make no warranties or representations regarding the fitness, suitability or availability of the city's public rights-of-way for the registrant's communications facilities and any performance of work, costs incurred or services provided by the registrant shall be at the registrant's sole risk. Nothing in this section shall affect the city's authority to add, vacate or abandon public rights-of-way, and the city makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.
 - (p) The city shall have the right to make such inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article.
 - (q) An application for a permit to place a new or replace an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way. If the plans provided require revision based upon actual installation, the registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the city, provided such electronic format is maintained by the registrant. Such plans, in a format maintained by the registrant, shall be provided at no cost to the city.
 - (r) The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications and other types of facilities, cables or conduits, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in public rights-of-way occupied by the registrant. The city further reserves, without limitation, the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the city, and within such limits as they may be altered from time to time.
 - (s) A registrant shall, on the request of any person holding a permit issued by the city, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting such raising or lowering of facilities, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days' advance written notice to arrange for such temporary relocation.
 - (t) A wireless facility that is a portion of a communications facility, such as an antenna (wireless facility), which is attached to a legally maintained vertical structure in the public rights-of-way, such as a light pole or utility pole (vertical structure), shall be subject to the following:
 - (1) Such wireless facilities may not extend more than ten feet above the highest point of the vertical structure;
 - (2) Such wireless facilities which are attached to a vertical structure located in public rights-of-way that is five feet or less in width and is located adjacent to real property used as a single-family residence shall be flush-mounted to the vertical structure;
 - (3) Such wireless facilities shall not have any type of lighted signal, lights or illuminations unless required by an applicable federal, state or local rule, regulation or law;
 - (4) Such wireless facilities shall comply with any applicable Federal Communications Commission emissions standards;
 - (5) The design, construction and installation of such wireless facilities shall comply with any applicable building codes;
 - (6) Commercial advertising shall not be allowed on such wireless facilities; and
 - (7) Any accessory equipment and related housing in the public rights-of-way that are used in conjunction with such a wireless facilities shall comply with any applicable local rules, regulations, ordinances or laws governing the placement and design of such equipment.

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- (u) Vertical structures, such as towers, whose sole purpose is to serve as a mounting device for antennae, are expressly prohibited from being placed in the public rights-of-way unless applicable zoning and land use laws or regulations allow such structures to be placed within the zoning district in which such public rights-of-way are located or to which they are adjacent.

(Ord. No. 01-04, § 1(21-25), 3-5-2001)

Sec. 50-86. Suspension of permits.

- (a) The city may suspend a permit for work in the public rights-of-way for one or more of the following reasons:
 - (1) Violation of permit conditions, including conditions set forth in the permit, this article or other applicable city ordinances, codes or regulations governing placement or maintenance of communications facilities in public rights-of-way;
 - (2) Misrepresentation or fraud by the registrant in a registration or permit application to the city;
 - (3) Failure to properly renew or ineffectiveness of registration; or
 - (4) Failure to relocate or remove facilities as may be lawfully required by the city.
- (b) The city clerk shall provide notice and an opportunity to remedy any violation of subsections (a)(1)—(a)(4) of this section, each of which shall be reasonable under the circumstances.

(Ord. No. 01-04, § 1(21-26), 3-5-2001)

Sec. 50-87. Appeals.

Final written decisions of the director of public works or city engineer suspending or denying a permit, denying an application for a registration or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the code enforcement officer within 30 days of the date of the final written decision to be appealed. Any appeal not timely filed as set forth in this section shall be waived. The code enforcement officer shall schedule an appeal hearing before the code enforcement board. The appeal hearing procedures shall be governed by the applicable provisions set forth in this Code for the code enforcement board.

(Ord. No. 01-04, § 1(21-27), 3-5-2001)

Sec. 50-88. Involuntary termination of registration.

- (a) The city may terminate a registration under this article if:
 - (1) A federal or state authority suspends, denies or revokes a registrant's certification or license to provide communications services;
 - (2) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice to do so; or
 - (3) The registrant ceases to use all of its communications facilities in public rights-of-way and has not complied with the provisions set forth in section 50-85.
- (b) Prior to termination of registration, the registrant shall be notified by the director of public works or city engineer with a written notice setting forth all matters pertinent to the proposed termination action, including which of the provisions set forth in subsections (a)(1)—(a)(3) of this section is applicable as the reason for such termination action, and describing the proposed action of the city with respect to such

termination. The registrant shall have 60 days after receipt of such notice within which to address or eliminate the reason for such termination action, or within which to present a plan, satisfactory to the director of public works or city engineer, to accomplish the elimination of the reason for such termination action. If the plan is rejected, the director of public works or city engineer shall provide written notice of such rejection to the registrant, and shall make a recommendation to the city council regarding a decision as to termination of registration. A decision by the city to terminate a registration may only be accomplished by an action of the city council. A registrant shall be notified by in writing of any decision by the city council to terminate its registration. Such written notice shall be sent within seven days after the decision of the city council.

- (c) In the event of a termination of registration, the former registrant shall notify the city of the assumption, or anticipated assumption, by another registrant of ownership of the registrant's communications facilities in public rights-of-way, or provide the city with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a registrant fails to comply with this subsection, the determination of noncompliance shall be subject to appeal as provided in section 50-87.
- (d) The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, taking possession of the facilities where another person has not assumed the ownership or physical control of the facilities or requiring the registrant, within 90 days of the termination or such longer period as may be agreed to by the registrant, to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to the original condition before the removal of such facilities.
- (e) A terminated registrant shall, in any event, take such steps as are necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the city.
- (f) In the event of termination of a registration, this section shall not authorize the city to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is registered with the city, if required.

(Ord. No. 01-04, § 1(21-28), 3-5-2001)

Sec. 50-89. Compliance.

A communications services provider with an existing communications facility in the public rights-of-way of the city shall have 60 days from the effective date of the ordinance from which this article is derived to comply with the terms of this article, including, but not limited to, registration, or be in violation of this article.

(Ord. No. 01-04, § 1(21-29), 3-5-2001)

Sec. 50-90. Insurance.

- (a) A registrant shall provide, pay for and maintain, to the city's satisfaction, the types of insurance set forth in this section. All insurance shall be from responsible companies duly authorized to do business in the state, and having a rating reasonably acceptable to the city. All liability policies shall provide that the city is an additional insured as to the activities set forth in this article. The required insurance coverages shall be evidenced by properly executed certificates of insurance forms. The certificates of insurance shall be signed by the authorized representative of the insurance company, and shall be filed and maintained with the city annually. Thirty days' advance written notice by registered, certified or regular mail or facsimile, as determined by the city, shall be given to the city of any cancellation, intent not to renew or reduction in the insurance policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the city.

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- (b) The limits of coverage of insurance required shall not be less than the following:
- (1) Worker's compensation and employer's liability insurance, worker's compensation state statutory requirements, employer's liability, \$1,000,000.00 limit each accident, \$1,000,000.00 limit per accident and \$1,000,000.00 limit per each employee.
 - (2) Comprehensive general liability:
 - a. Bodily injury and property damage, \$3,000,000.00 combined single limit each occurrence.
 - b. Automobile liability, bodily injury and property damage, \$1,000,000.00 combined single limit each accident.

(Ord. No. 01-04, § 1(21-30), 3-5-2001)

Sec. 50-91. Indemnification.

- (a) A registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the city, its officials, boards, members, agents and employees against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief and costs and expenses incurred by the city arising out of the placement or maintenance of its communications system or facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article; provided, however, that a registrant's obligation under this article shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the city, which includes, but is not limited to, the city's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. The city agrees to notify the registrant in writing within a reasonable time of the city receiving notice of any issue it determines may require indemnification. Nothing in this section shall prohibit the city or its insurers from participating in the defense of any litigation by its own counsel and at its own cost if, in the city's reasonable belief, there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted as denying to either party any remedy or defense available to such party under the laws of the state, or as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28.
- (b) The indemnification requirements set forth in this section shall survive and be in effect after the termination or cancellation of a registration.

(Ord. No. 01-04, § 1(21-31), 3-5-2001)

Sec. 50-92. Construction bond.

- (a) Prior to issuing a permit where the work under the permit will require restoration of public rights-of-way, the city may require a construction bond to secure the restoration of the public rights-of-way. Notwithstanding the foregoing, a construction bond may only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security fund as provided in section 50-93.
- (1) Twelve months after the completion of the restoration work in public rights-of-way in accordance with the construction bond, the registrant may eliminate the bond. However, the city may subsequently require a new bond for any subsequent work in the public rights-of-way.
 - (2) The construction bond shall be issued by a surety having a rating reasonably acceptable to the city, subject to the approval of the city council, and shall provide the following:

"For 12 months after issuance of this bond, this bond may not be canceled, or allowed to lapse, until 60 days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

- (b) The rights reserved by the city with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the city may have under this article, or at law or equity.
- (c) The rights reserved to the city under this section are in addition to all other rights of the city, whether reserved in this article or authorized by another law, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the city may have.

(Ord. No. 01-04, § 1(21-32), 3-5-2001)

Sec. 50-93. Security fund.

At or prior to the time a registrant receives its first permit to place or maintain a communications facility in public rights-of-way after the effective date of the ordinance from which this article is derived, the registrant may be required to file with the city for city council approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of \$100,000.00 or other appropriate amount having as a surety a company qualified to do business in the state, and acceptable to the city council, which shall be referred to as the "security fund." The security fund shall be maintained from such time through the earlier of the transfer, sale, assignment or removal of all communications facilities in public rights-of-way, or 12 months after the termination or cancellation of any registration. The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon the registrant by the provisions of this article. The security fund shall be furnished annually, or as frequently as necessary, to provide a continuing guarantee of the registrant's full and faithful performance at all times. If a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this article, subject to section 50-84, there shall be recoverable, jointly and severally, from the principal and surety of the security fund, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any facilities of the registrant in public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. Notwithstanding the foregoing, the city may, in its discretion, not require a security fund or may accept a corporate guarantee of the registrant or its parent company.

(Ord. No. 01-04, § 1(21-33), 3-5-2001)

Sec. 50-94. Enforcement.

- (a) A registrant's failure to comply with provisions of this article shall constitute a violation of this article, and shall subject the registrant to the code enforcement provisions and procedures as provided in chapter 2, article V of this Code. In addition, violation of this article may be punishable as provided in section 1-15 as a class 1 offense.
- (b) Failure of the city to enforce any requirements of this article shall not constitute a waiver of the city's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

(Ord. No. 01-04, § 1(21-34), 3-5-2001)

Sec. 50-95. Abandonment.

- (a) Upon the abandonment of a communications facility owned by a registrant in public rights-of-way, the registrant shall notify the city within 90 days of such abandonment.

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- (b) The city may direct the registrant by written notice to remove all, or any portion, of such abandoned facility at the registrant's sole expense if the city determines that the abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but not be limited to, a determination that such facility:
- (1) Compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way;
 - (2) Prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available; or
 - (3) Creates a maintenance condition that is disruptive to the public right-of-way's use.

In the event of a situation as described in subsection (b)(2) of this section, the city may require the third person to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.

- (c) If the city does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the city, shall be deemed to consent to the alteration or removal of all, or any portion, of the facility by the city or another person at such third party's cost.
- (d) If the registrant fails to remove all, or any portion, of an abandoned facility as directed by the city within a reasonable time period as may be required by the city under the circumstances, the city may perform such removal and charge the cost of the removal against the registrant.

(Ord. No. 01-04, § 1(21-35), 3-5-2001)

Sec. 50-96. Force majeure.

If a registrant's performance of or compliance with any of the provisions of this article is prevented by a cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused, and no penalties or sanctions shall be imposed as a result; provided, however, that such registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For the purposes of this article, causes or events not within a registrant's control shall include, but not be limited to, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within the registrant's control, and thereby not falling within this section, shall include, but not be limited to, the registrant's financial inability to perform or comply, economic hardship and misfeasance, malfeasance or nonfeasance by any of registrant's directors, officers, employees, contractors or agents.

(Ord. No. 01-04, § 1(21-36), 3-5-2001)

Sec. 50-97. Reservation of rights and remedies.

- (a) The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
- (b) This article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of the ordinance from which this article is derived, and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of the ordinance from which this article is derived, to the full extent permitted by state and federal law.

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- (c) The adoption of the ordinance from which this article is derived is not intended to affect any rights or defenses of the city or a communications service provider under any existing franchise, license or other agreements with a communications services provider.
 - (d) Nothing in this article shall affect the remedies the city or registrant has available under applicable law.
 - (e) Any person who uses the communications facilities of a registrant, other than the registrant that owns the facilities, shall not be entitled to any rights to place or maintain such facilities in excess of the rights of the registrant that places or maintains the facilities.

(Ord. No. 01-04, § 1(21-37), 3-5-2001)

Secs. 50-98—50-130. Reserved.

ARTICLE IV. TELECOMMUNICATIONS USE OF RIGHT-OF-WAY⁴

Sec. 50-131. Purpose and application.

- (a) The purpose of this article is to establish fees for occupation of the city's rights-of-way for telecommunications facilities of telecommunications companies not otherwise paying a fee to the city for occupation of the city's rights-of-way. Any telecommunications company paying fees for the occupation of the city's rights-of-way for telecommunications facilities as of the effective date of the ordinance from which this article is derived shall continue to pay fees to the city as the company has been paying them.
- (b) The fees imposed pursuant to this article shall apply to all telecommunications companies occupying the city's rights-of-way for telecommunications facilities and not otherwise paying a fee to the city for occupation of the city's rights-of-way.
- (c) The fees imposed pursuant to this article are a fee and not a tax as specified in F.S. § 337.401, and therefore:
 - (1) The payments to be made pursuant to this article shall not be deemed to be in the nature of a tax;
 - (2) Such payments shall be in addition to any and all taxes of a general applicability; and
 - (3) The fee specified in this section is consideration for occupation of the city's rights-of-way, including all public easements, for the purpose of erecting, constructing and maintaining telecommunications systems.

(Ord. No. 01-07, § 1(21-40), 6-18-2001)

Sec. 50-132. 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:

Telecommunications company has the same meaning as set forth in F.S. § 364.02(12).

(Ord. No. 01-07, § 1(21-43), 6-18-2001)

Cross reference(s)—Definitions generally, § 1-2.

⁴Cross reference(s)—Telecommunication towers and antennas, § 94-291 et seq.

Sec. 50-133. Fees for occupation of rights-of-way.

Any telecommunications company providing local telephone service in the city, as defined in F.S. § 203.012(3), and which is occupying municipal streets or rights-of-way within the corporate limits of the city with poles, wires or other fixtures, shall pay a fee to the city in the amount of one percent of the gross receipts on recurring local service revenues for services provided within the corporate limits of the city by such telecommunications company. Included within the fee shall be all taxes, licenses, fees, in kind contributions accepted pursuant to F.S. § 337.401 and other impositions, except ad valorem taxes and amounts for assessments for special benefits, such as sidewalks, street paving and similar improvements, and occupational license taxes levied or imposed by the city upon the telecommunications company.

(Ord. No. 01-07, § 1(21-41), 6-18-2001)

Sec. 50-134. Additional fees.

- (a) If a telecommunications company which provides telecommunications services defined as toll services in F.S. § 203.012(7), 2000 edition, occupies the city's right-of-way, the telecommunications company shall pay to the city annually \$500.00 per linear mile, which amount is prorated for any portion thereof, for any cable, fiber optic or other pathway that makes physical use of the city's right-of-way. Such annual fee shall be prorated to reflect the expiration date of the ordinance from which this article is derived, and shall be payable annually, in advance. If a telecommunications company which is required to pay a fee pursuant to this section increases the amount of its facilities occupying the city's right-of-way after such advance payment has been made, but prior to the expiration date of the ordinance from which this article is derived, the fees due for the additional facilities shall be prorated and paid in full at the time the facilities are installed in the city's rights-of-way.
- (b) The fee or other consideration imposed pursuant to this section shall not apply in any manner to any telecommunications company which provides local telephone service as defined in F.S. § 203.012(3) for any services provided by such telecommunications company.

(Ord. No. 01-07, § 1(21-42), 6-18-2001)

Sec. 50-135. Payment of fees.

The fees provided for in section 50-133 shall be paid by the telecommunications company to the city in quarterly installments. The installment payments shall be based upon such gross receipts on recurring local service revenues for the immediately preceding installment period, or portion thereof, after the effective date of the ordinance from which this article is derived, and shall be made within 30 calendar days following the end of the period. Past due payments or underpayments shall bear interest accrued from the last day of the quarter for which the payment was due. Interest shall be paid at the state statutory rate of interest on judgments as established by F.S. § 55.03. Payments shall include a statement as to how the fee amount was determined, and the statement shall be certified by the telecommunications company's chief financial officer or other duly authorized representative of the company.

(Ord. No. 01-07, § 1(21-44), 6-18-2001)

Sec. 50-136. Records and audits.

- (a) If the city wishes to verify the payments due to the city under this article, the telecommunications company shall permit the city or a designated representative of the city, upon reasonable advance written notice, and

during normal business hours at the location of the telecommunications company where such records are maintained in the city, at another location satisfactory to the city or elsewhere pursuant to subsections (a)(1) or (a)(2) of this section to review or audit the telecommunications company's billing and payment records kept in the ordinary course of business upon which the payments were based. If a telecommunications company's records are not maintained in the city, the telecommunications company shall:

- (1) Pay all reasonable expenses, including travel, following the provisions of F.S. § 112.061(6), (7) and (8), to the city for the city to have a review or audit performed; or
 - (2) Provide the city with access to copies of the telecommunications company's records in the city, or within 55 miles of the city, or by an electronic method satisfactory to the city.
- (b) Without the specific written consent of a telecommunications company's audit representative, however, no company records may be duplicated or taken from the telecommunications company's premises, and the city shall maintain the confidentiality of the information disclosed in the records and use the information solely for the purposes of verifying payments by the telecommunications company. Acceptance of payment shall not be construed as a release or accord and satisfaction of any claim the city may have for sums due and payable under this article unless the city agrees in writing. If the city, pursuant to final audit findings, determines that there exists a difference between the amount due to the city and the amount paid to the city, indicating an underpayment to the city, in excess of five percent of the amount due, such telecommunications company shall pay all reasonable costs, fees and expenses of the audit.

(Ord. No. 01-07, § 1(21-45), 6-18-2001)

Sec. 50-137. Nonwaiver provision.

The ordinance from which this article is derived is adopted consistent with the provisions of F.S. § 337.401, and other applicable provisions of law. This article shall not be construed as a waiver or limitation of the power of the city to prescribe and enforce reasonable rules and regulations pursuant to applicable provisions of law.

(Ord. No. 01-07, § 1(21-46), 6-18-2001)

Sec. 50-138. Registration and permits.

If required by applicable city ordinances, codes or regulations, a telecommunications company shall be registered with the city and obtain all permits that are required by the city regarding occupation of the city's public rights-of-way for telecommunications facilities.

(Ord. No. 01-07, § 1(21-47), 6-18-2001)

Sec. 50-139. Enforcement.

If any telecommunications company fails to abide by any of the provisions of this article, the city may, in addition to the imposition of sanctions for violation of a city ordinance, seek relief in a court of competent jurisdiction for a judgment to recover any and all losses, damages or punitive damages sustained by the city, including reimbursement of reasonable attorney's fees and actual costs incurred.

(Ord. No. 01-07, § 1(21-48), 6-18-2001)

Sec. 50-140. Savings clause.

Nothing contained in this article shall be intended to repeal or otherwise modify any communications, telecommunications or television cable franchise ordinance or agreement in effect as of the effective date of the ordinance from which this article is derived.

(Ord. No. 01-07, § 1(21-49), 6-18-2001)