



**TOWN OF REDINGTON BEACH
BOARD REGULAR MEETING AGENDA
WEDNESDAY, March 6, 2019
6:30 P.M.**

Town Hall

Assembly Hall

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. APPROVAL OF AGENDA**
- 5. PUBLIC FORUM: Non-Agenda Items Only NOTE:** A three minute time limit applies to all comments from the public on non-agenda items only. If a person wishes to address the Board of Commissioners, please fill out a "Speakers Card" and give it to the Town Clerk prior to the start of the meeting.
- 6. REPORTS**

Public Safety	Commissioner Kornijtschuk
Building/Code	Vice Mayor Will
Public Works/Parks	Commissioner Steiermann
Finance	Commissioner Dorgan
Mayor	
Town Clerk	
Attorney Daigneault	
Boards & Committees	
- 7. CONSENT AGENDA**
 - A. Board Regular Meeting Minutes, February 20, 2019**
 - B. Bill List for Day Ending March 1, 2019**
 - C. Floodplain Management Plan Annual Report 2018**
- 8. OLD BUSINESS**
 - A. Friendship Park Renovations**
 - B. Discussion: Code Revision**
- 9. NEW BUSINESS**
- 10. OTHER BUSINESS**
- 11. ADJOURNMENT**



Note: The Town of Redington Beach Board of Commissioners meet the First and Third Wednesday of each month beginning at 6:30 p.m.

The Town of Redington Beach Board of Commissioners may take action on any matter during this meeting, including items that are not set forth within this agenda. Minutes of the Board of Commissioners meeting may be obtained from the Town Clerk's office. The meetings may be recorded. The Minutes are not transcribed verbatim. It is the policy of the Board of Commissioners to make "action minutes" of all meetings.

Persons requiring a verbatim transcript of any Town meeting (for purposes of appeal or otherwise) should make arrangements to have a certified Court Reporter, at their own cost and expense, present at the meeting.

Persons who wish to appeal any decision made by the Board of Commissioners with respect to any matter considered at this meeting will need a record of the proceedings, and for such purpose 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. (F.S. 286.0105) **Notice Regarding Special Accommodations: (F.S. 286.26)**



TOWN OF REDINGTON BEACH, FLORIDA
BOARD REGULAR MEETING MINUTES
Wednesday, February 20, 2019
6:30 p.m.

Having been duly advertised as required by law, the **Regular Meeting** of the Board of Commissioners of the Town of Redington Beach, Florida, was held on **Wednesday, February 20, 2019, 6:30 p.m.**, in Redington Beach Town Hall at 105 164th Avenue, Redington Beach Florida.

Mayor Simons called the **Regular Meeting** to order and led the pledge of allegiance.

Roll Call

	Present	Absent
Commissioner Dorgan	X	
Commissioner Kornijtschuk	X	
Commissioner Steiermann	X	
Vice Mayor Will	X	
Mayor Simons	X	
Town Attorney Daigneault	X	
Town Clerk Clarke	X	

Agenda: A motion by Commissioner and seconded by Commissioner Steiermann to accept the agenda as presented. Motion passed with all ayes.

Public Forum:

Pete Farnum, 15810 1st Street, asked about the appeal process if a person receives a Stop Work Order. He requested that the review of the towns ordinance for the building department be put on a future agenda to review the due process for the residents on appeals. Attorney Daigneault noted that the ordinance Mr. Farnum handed out to the commission only deals with docks and bulkheads. The appeal process is in section 6.292 of the code and was amended in 2013. A request can be brought to the Board of Adjustment to hear an appeal. Commissioner Steiermann asked Mr. Cushing the steps to take if a red tag was issued. Mr. Cushing responded that a permit would need to be pulled and that it is at his discretion if permit fees and penalties could be reduced.

Barbara Jenkins, 15710 Redington Drive, asked the building official if she had to get a permit if she had receipts to prove that the cost did not exceed the \$1,000.00 threshold. Mr. Cushing responded that if receipts showed it was under the \$1,000.00, a permit would not be needed.

Public Safety

- Nothing to Report.

Building

- Nothing to Report

Public Works

- Park Board is getting a plaque to dedicate the old shelter in Bob Fay's name. Will keep everyone posted as to the date.

Finance

- Nothing to Report

Mayor

- Nothing to Report

Town Clerk

- Nothing to Report

Town Attorney

- Nothing to Report.

Boards and Committees

- Nothing to Report.

CONSENT AGENDA

A. Board Regular Meeting Minutes, 6, 2019

B. Bill list ending for Day ending February 15, 2019

A motion by Commissioner Dorgan and seconded by Vice Mayor Will to approve the consent agenda as presented. No public comment. Motion passed with all ayes.

OLD BUSINESS

- A. Friendship Park Renovations:** Vice Mayor Will reported that he has been unable to get a second estimate for the outfall pipe at Friendship Park. The estimate that was received from G.A. Nichols for \$9,500.00 is in line with what needs to be done. Mayor Simons requested that this be added to the next agenda.
- B. Final Reading of Ordinance 2018-08: An Ordinance of the Town of Redington Beach, Pinellas County Florida, Amending the Goals, Objectives and Policies of the Town of Redington Beach Comprehensive Plan by Amending the Transportation Element to Establish a Mobility Management System and to Delete Transportation Concurrency and to Revise references to the Metropolitan Planning Organization to Forward Pinellas; and by implementing Objective Adopting Pinellas County's Temporary Emergency Housing Ordinance; Providing for severability; and establishing and effective date.** Attorney Daigneault read the ordinance by title only. A motion by Vice Mayor Will and seconded by Commissioner Kornijtschuk to adopt Ordinance 2018-08 on its final reading. Bruce McLaughlin, Town Planner note that this ordinance re-adopts the ordinances passed in 2016 and has gone through the state process and the state has no adverse comments. He noted that there was one change on page two of the ordinance in Section 3. The policies numbers should read 1.1.1.2 and 1.1.1.8. He will make these changes and get them to the clerk. Roll Call vote was taken and motion passed with all ayes with the amended changes to Section 3. No public comment.

	Motion	Second	Aye	Nay	Absent
Commissioner Dorgan			X		
Commissioner Kornijtschuk		X	X		
Commissioner Steiermann			X		
Vice Mayor Will	X		X		
Mayor Simons			X		

- C. **Final Reading: Ordinance 2018-09: An Ordinance of the Town of Redington Beach, Pinellas County, Florida Adopting the Annual Amendment to the Capital Improvements Element of the Town of Redington Beach Comprehensive Plan, Providing for Severability; and Establishing an Effective Date.** A motion by Commissioner Dorgan and seconded by Vice Mayor Will to adopt Ordinance 2018-09 on its final reading. Mr. McLaughlin stated that this is a belated annual update of the capital improvements and the commission is heading in the right direction for the annual amendments. No discussion and no public input. Roll call vote was taken and motion passed with all ayes.

	Motion	Second	Aye	Nay	Absent
Commissioner Dorgan	X		X		
Commissioner Kornijtschuk			X		
Commissioner Steiermann			X		
Vice Mayor Will		X	X		
Mayor Simons			X		

- D. **Final Reading: Ordinance 2018-11: An Ordinance of the Town of Redington Beach, Pinellas County, Florida, Amending the Text of the Capital Improvements Element of the Town of Redington Beach Comprehensive plan by Amending the Threshold amount pursuant to which a town expenditure is considered to be a Capital Expenditure; by Correcting and Updating References to other agencies and the Element of the Current and Anticipated Conditions in the Town, Providing for Severability; and establishing an Effective Date.** A motion by Vice Mayor Will and seconded by Commissioner Dorgan to Adopt Ordinance 2018-11 on its final reading. Mr. McLaughlin noted that the State recommended incorporating the state's comments on water supply and to make similar revisions for other infrastructure. No discussion and no public comment. Roll call vote was taken and motion passed with all ayes.

	Motion	Second	Aye	Nay	Absent
Commissioner Dorgan		X	X		
Commissioner Kornijtschuk			X		
Commissioner Steiermann			X		
Vice Mayor Will	X		X		
Mayor Simons			X		

NEW BUSINESS

- A. **Lynn Burnett, LTA Engineers-LLC:** Darin Cushing introduced Ms. Burnett and had asked her to assess the town's drainage issues. She had made a presentation to the planning board and gave an overview and possible solutions to the town's roads and streets. Ms. Burnett told the commission that she is aware of the challenges the Barrier Islands have and she likes to take an

approach that is outside the box as every community is unique. She noted that there are matching grants available and she could apply for the town to help alleviate flooding. A review of the recommended services was reviewed. A motion by Commissioner Steiermann and seconded by Vice Mayor Will to accept the proposal from LTA to complete the sea level rise planning and analysis, preparation of phasing plan and to apply for the Tampa Bay Environmental Restoration Fund for a cost not to exceed \$7,500.00. No public comment. Motion passed with all ayes.

- B. First Reading of Ordinance 2019-03: An Ordinance of the Town of Redington Beach, Pinellas County, Florida, Amending the Goals, Objectives, and Policies of the Town of Redington Beach Comprehensive Plan by Amending the Future Land Use Element to Create a Matrix of Town and Corresponding Countywide Future Land Use Categories and to Establish Balancing Criteria to use in the Consideration of Future Land Use Map Amendments, Providing for Severability; and Establishing an Effective Date.** Attorney Daigneault read the ordinance by title only. A motion by Commissioner Kornijtschuk and seconded by Vice Mayor Will to adopt the ordinance on its first reading. Mr. McLaughlin stated that this was a revision and needed to be transmitted to the state for approval. No public comment. Motion passed with all ayes, by roll call vote.

	Motion	Second	Aye	Nay	Absent
Commissioner Dorgan			X		
Commissioner Kornijtschuk	X		X		
Commissioner Steiermann			X		
Vice Mayor Will		X	X		
Mayor Simons			X		

- C. Resolution 2019-03: A resolution of the Board of Commissioners of the Town of Redington Beach, Florida Providing for the Town of Redington Beach to become member of the American Flood Coalition.** Attorney Daigneault read the resolution by title only. A motion by Vice Mayor Will and seconded by Commissioner Steiermann to adopt the resolution. Town Clerk reported that this was a request from the former mayor of Carol Gables to join other cities that are flood affected communities in this venture. There are not costs to join and there are no legal obligations. Motion passed with all ayes by roll call vote.

	Motion	Second	Aye	Nay	Absent
Commissioner Dorgan			X		
Commissioner Kornijtschuk			X		
Commissioner Steiermann		X	X		
Vice Mayor Will	X		X		
Mayor Simons			X		

OTHER BUSINESS

Vice Mayor Will stated he thinks the town should start over on renovating Friendship Park instead of repairing what is there. Mr. McLaughlin reported that a permit will need to be obtained for dredging to move the outflow pipe. With no further business, a motion was made by Commissioner Kornijtschuk and seconded by Vice Mayor Will to adjourn. Regular meeting was adjourned at 8:07 p.m.

Adopted:, 2019

Missy Clarke, CMC, Town Clerk

INVOICE APPROVAL LIST BY FUND REPORT

Date: 03/01/2019

Time: 10:58 am

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Town of Redington Beach

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Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
Fund: 101 General Fund							
Dept: 512 Town Clerk							
101-512-512.420	Postage						
	ADRIANA NIEVES	UPS 2019-02-20	Postage for CRS package	0	02/20/2019	02/20/2019	12.33
							12.33
101-512-512.421	Stamps.com						
	CHASE CARD SERVICES	2019-03-01	Stamps.com	0	02/26/2019	02/26/2019	17.99
							17.99
101-512-512.440	Utilities- Water/E						
	DUKE ENERGY	73928-48713 2019-02	February 2019	0	03/01/2019	03/01/2019	225.42
							225.42
101-512-512.480	Promotion/Public						
	AWESOME PARTY INFLATAE	191100650-46	Movies in the Park 2019-03-15	0	02/26/2019	02/26/2019	575.00
							575.00
101-512-512.490	Advertising						
	TIMES PUBLISHING COMPAI	742162	BOC 2-20-19 AD	0	02/11/2019	02/11/2019	1,596.60
							1,596.60
101-512-512.510	Office Supplies						
	APEX OFFICE PRODUCTS	1874429-0	Binders, paper, toilet tissue	0	02/15/2019	02/15/2019	140.00
	APEX OFFICE PRODUCTS	1874876-0	Blue paper, envelopes	0	02/18/2019	02/18/2019	18.48
	FATIMA RAPUANO	22019	Yard sale signs	0	02/20/2019	02/20/2019	120.00
	FLORIDA COMMISSION ON E	2019-02-21	Records Request	0	02/21/2019	02/21/2019	9.30
	WATER BOY INC	61006734	Water Delivery 02-2019	0	02/26/2019	02/26/2019	14.45
							302.23
101-512-512.542	Dues & Subscrip						
	PINELLAS COUNTY TAX 03920	Gulf Blvd 2019-02-26	Ad valorem refund	0	02/26/2019	02/26/2019	287.61
							287.61
Total Dept. Town Clerk:							3,017.18
Dept: 513 Finance & Admin							
101-513-513.495	Janitorial Service						
	HIP CLEANING SERVICE	69	February 2019 Office Cleaning	0	02/28/2019	02/28/2019	180.00
							180.00
Total Dept. Finance & Admin:							180.00
Dept: 521 Law Enforcement							
101-521-521.340	Law Enforcement						
	PINELLAS COUNTY SHERIF	695380	March 2019 Law Enforcement	0	03/01/2019	03/01/2019	21,237.00
							21,237.00
Total Dept. Law Enforcement:							21,237.00
Dept: 541 Roads & Streets							
101-541-541.467	Maint - Street Lig						
	DUKE ENERGY	73928-48713 2019-02	February 2019	0	03/01/2019	03/01/2019	2,297.29
							2,297.29
Total Dept. Roads & Streets:							2,297.29
Dept: 572 Parks and Recreation							
101-572-572.430	Utilities						
	DUKE ENERGY	73928-48713 2019-02	February 2019	0	03/01/2019	03/01/2019	47.86
							47.86
101-572-572.461	Maintenance - Bu						
	CHASE CARD SERVICES	2063145	Light bulbs, swim buoy supplie	0	02/20/2019	02/20/2019	28.41

Date: 03/01/2019

Time: 10:58 am

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Town of Redington Beach

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Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
101-572-572.462	Maintenance - Gr 360 RECREATION	1005	Playground Borders	0	02/15/2019	02/15/2019	149.00
101-572-572.510	Maintenance Equ EVERGLADES FARM EQUIP	W35201	Tractor repairs, oil chg	0	12/04/2018	12/04/2018	2,513.38
101-572-572.521	Twin Towers Ope FLORIDA MONUMENT	190203	5 BRICKS-SULEWSKI,KNEPPE	0	02/19/2019	02/19/2019	130.00
101-572-572.522	Gasoline & Oil CHASE CARD SERVICES	847061	Diesel fuel - SPEEDWAY	0	02/21/2019	02/21/2019	41.71
101-572-572.524	Fertilizer & Mulch SITE ONE LANDSCAPE SUP	89344480-001	Pesticide, herbicide	0	02/28/2019	02/28/2019	864.04
101-572-572.599	Swim Buoys CHASE CARD SERVICES	2063145	Light bulbs, swim buoy supplie	0	02/20/2019	02/20/2019	40.41
Total Dept. Parks and Recreation:							3,814.81
Total Fund General Fund:							30,546.28
Fund: 300 Capital Accounts							
Dept: 539 Department of Public Works							
000-539-539.630	Infrastructure CPWG	19013119	Undergrounding January 2019	0	02/18/2019	02/18/2019	5,060.00
	NORTH REDINGTON BEACH	022119	EMS Building Survey	0	02/20/2019	02/20/2019	630.00
							5,690.00
Total Dept. Department of Public Works:							5,690.00
Total Fund Capital Accounts:							5,690.00
Fund: 400 Storm Water							
Dept: 535 Storm Water							
000-535-535.548	NPDES Drain Cle PINELLAS COUNTY UTILITIE	90014675	2019 NPDES MS4 Permit	0	02/13/2019	02/13/2019	59.65
							59.65
Total Dept. Storm Water:							59.65
Total Fund Storm Water:							59.65
Grand Total:							36,295.93

2/22/2019
2/25/2019

8537 Ed Nicholas

8538 Payroll

8539 Payroll

8540 Payroll

8541 Payroll

8542 Payroll

8543 Payroll

8544 Payroll

8545 Payroll

8546 Payroll

EFT Payroll Liabilities

EFT Retirement

100.00

277.05

277.05

381.75

277.05

277.05

1,759.15

1,349.24

1,197.24

1,251.86

3,108.38

2,438.68

12,694.50

MAYOR SIMONS

VICE MAYOR WILL

COMMISSIONER KORNIJTSCHUK

COMMISSIONER DORGAN

ATTEST:

COMMISSIONER STEIERMANN

Regular Meeting of March 6, 2019

Missy Clarke, CMC, Town Clerk



TOWN OF REDINGTON BEACH
105 - 164th AVENUE
REDINGTON BEACH, FL 33708
PHONE: 727-391-3875 FAX: 727-397-6911
www.townofredingtonbeach.com

TO: Board of Commissioners

FROM: Adriana Nieves, Deputy Town Clerk

DATE: February 19, 2019

RE: Floodplain Management Plan Annual Report 2018

I. STAFF RECOMMENDATION : Staff recommends approval of the attached update to the Local Mitigation Strategy provided by Pinellas County and placement of the report and attachments onto the Town's website.

II. BACKGROUND

The Town of Redington Beach is a barrier island bounded on the west by the Gulf of Mexico and on the east by Boca Ciega Bay located in southeast Pinellas County. The entire Town is located within a Special Flood Hazard Area. The Flood Insurance Rate Map (FIRM) identifies VE areas on the west side of Gulf Blvd and AE zones in the remaining areas.

High tides associated with heavy storms are the basis for flooding in Redington Beach. The historical flood insurance claims in the Town are associated with the following storms: No-Name Storm June 18, 1982; Hurricane Elena August 31, 1985; No-Name Storm March 12, 1993; Tropical Storm Josephine October 7, 1996; and Tropical Storm Debby June 24, 2012. The Town is comprised of mostly pre-FIRM slab-on-grade structures as well as some newly developed, elevated post-FIRM structures.

In 2015 the Town of Redington Beach adopted (Resolution 2015-06) a new local mitigation strategy (LMS) in coordination with Pinellas County and all its municipalities. The Pinellas County LMS Working Group has since met on a regular basis and developed several updates to the local mitigation strategy. The updates are attached to this memo and were adopted by the Pinellas County Board of Commissioners on September 13, 2018. The Pinellas County Working Group has requested that each municipality present the attached report to their legislative body and place the document on the Town's website. The purpose of an LMS is to provide a "blue print" or guide establishing a unified and consistent course of action needed to eliminate or reduce the impact of disasters that threaten Pinellas County and its municipalities. The original requirement to develop a unified community wide local mitigation strategy (LMS) came in early 1998. The intent of the LMS was to control the skyrocketing costs of disasters. Adoption of the LMS is necessary for Pinellas County to be eligible for future Federal funding under the: Pre-Disaster Mitigation Assistance Program, Hazard Mitigation Grant Program (post disaster), Repetitive Flood Claims Program, and Severe Repetitive Loss Program.



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III. National Flood Insurance Program – Community Rating System

The Town of Redington Beach has participated in the Community Rating System (CRS) since 1993. This is a program within the National Flood Insurance Program (NFIP) that rewards communities that perform flood mitigation-related activities that go above and beyond the minimum standards of the NFIP. The reward is a percentage reduction of the flood insurance premiums of those policy holders who own property within Town. The Town of Redington Beach had a class change in 2012 from a Class 8 to a Class 7 certification, which gives residents a 15% discount on their flood insurance annual premium. The Town has annual CRS re-certifications as well as 5-year cycle visits. The last 5-year cycle visit was November 2018 and we anticipate maintaining our current class rating.

Activities included in the Town's CRS program include map information, outreach projects, flood protection information, open space preservation, higher regulatory standards, flood data maintenance, stormwater management, repetitive loss area analysis, floodplain management planning and drainage system maintenance. All elevation certificates are available for review on the Town's website and on file in Town Hall.

IV. Recent Developments

Semi-annually, the Town has all stormwater drains inspected, jetted, vacuumed and all debris removed.

In 2014, 8 homeowners were awarded FMA grants to elevate their houses. 6 structures were demolished and rebuilt and one was elevated. Additionally, through private financing, many other pre-FIRM, slab-on-grade structures have been removed, and replaced with elevated, flood-proofed structures.

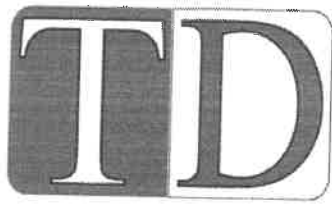
The Town of Redington Beach has adopted Ordinance 2016-09, updating the Floodplain Management Ordinance to ensure consistency with State and Federal requirements for participation in the NFIP.

V. Approval Process and Documentation

This annual evaluation of the Floodplain Management Plan and related programs (CRS and LMS) is submitted to the Board of Commissioners at the March 6 regular meeting for approval through the Consent Agenda.

This report and attachments are available at Town Hall and the Town's website for the public / media review.

VI. List of Exhibits: 1) Pinellas County LMS 2017 Annual Report with Attachment 1



T R A S K
DAIGNEAULT
—LLP—
A T T O R N E Y S

THOMAS J. TRASK, B.C.S.*
JAY DAIGNEAULT
RANDY MORA
ERICA F. AUGELLO
DAVID E. PLATTE
PATRICK E. PEREZ
ROBERT M. ESCHENFELDER, B.C.S.*

** Board Certified by the Florida Bar in
City, County and Local Government Law*

MEMORANDUM

DATE: February 26, 2019

TO: Mayor James "Nick" Simons
Vice Mayor David Will
Commissioner Fred Steiermann
Commissioner Tom Dorgan
Commissioner Tim Kornijtschuk

FROM: Jay Daigneault, Esq., Town Attorney

RE: Redington Beach Code Revision Project (Chapters 1 through 3)

Dear Mayor, Vice Mayor, and Commissioners:

As you will recall, the Town Commission assigned the Town Attorney's Office to conduct a "top to bottom" review of the Town Code (minus the Land Development Code) with the goal of modernizing the Code and ensuring it was up to date.

The Town has codified its ordinances over time into a Town Code (the Code) which sets forth the cumulative law of the Town. The Town Commission regularly adopts ordinances amending the Code. However, many portions of the Code date back to 1980, with other portions of the Code not having been updated for ten or more years. Since part of the Commission's duties include the necessity to ensure that the Town's ordinances, as codified in the Code, are up to date, reflect current Florida and federal statutory and case law, that they reflect current actual Town operations, and that they do not contain outdated, redundant or erroneous provisions, it made this review assignment.

In processing the assignment, I will be delivering it to the Commission in segments as this will be easier for both Commissioners and interested citizens to focus on with respect to what changes are being recommended. This first submission covers Chapters 1 through 3 of the Code, and the recommended ordinance is attached for your review. What follows is a summary and explanation of the changes I am recommending:

- Section 1-5, entitled *History notes*, and § 1-6 entitled *Reference notes and editor's notes*, are recommended to be repealed. One tenet of code drafting is to remove unnecessary clutter from a code. After all, a code is intended to communicate the law to the public as

clearly as possible. These sections merely state legal truisms long recognized by the courts, and they do not need to be repeated in the Town's Code.

- Similarly, I recommend repealing § 1-8 of the Code, entitled *Amendments*. All this section does is describe the mechanical process and look of an ordinance and, again, since Florida's statutes already provide for what an ordinance must contain, this section is not necessary. In fact, it could be used to try to undermine an ordinance which, though legally sound when examined under Florida law, was drafted in a slightly different way than the way the Code sets out.
- Section 1-10 (now to be numbered 1-7) deals with the effect of repeal or amendments to the Code. While the current language is fine, I have added language at the beginning of the section to clarify that the effect of any given ordinance can be set forth within the actual ordinance itself. Otherwise, the Commission would have no flexibility in that regard. And I have added language at the end to make it clear that if the Commission completely repeals a Code section and someone is currently under a code citation for violating that code, the citation would be rescinded.
- I also recommend repealing § 1-13 of the Code, entitled *Altering Code*. This section makes it an offense to "change or amend" the Code or to "insert or delete pages" of the Code. In light of modern codification systems and the Clerk's maintenance of official records, this is an antiquated provision no longer seen in local codes. Further, to the extent anyone made such an attempt for a fraudulent reason, there are various Florida criminal statutes which would address such conduct.
- Section 1-14 is the Town's general penalty section, setting forth the potential penalties. While I do not recommend changing the standard \$500 or 60 days in jail elements which are founded in Florida law, I do recommend removal of subsections (f) and (g). In addition to referencing statutes of 2004, subsection (f) merely states a truism that the Town may use any enforcement method available to it. However, Florida statutes already provides for this right, and so repeating it in subdivision (f) is unnecessary. In like manner, subsection (g) provides that in addition to code enforcement efforts, the Town may seek to have a nuisance abated "as provided by law." Again, Florida statutes already provides for the method whereby the Town would have the right to abate a nuisance and repeating that in the Code has no legal effect. Finally, as to § 1-14, I have relocated the language in subsection (h) concerning how violation notices are served (which really does not belong in the general penalty section) into a new division on code enforcement to be discussed shortly.
- I have amended the statutory reference in § 1-15 (dealing with court cost assessments). It currently refers to Florida Statutes § 943.25(5), but the language in that old section of law has for years been moved to Florida Statutes § 938.15.
- I have moved § 1-16 (legal notices) into a new division in Chapter 2 of the Code, which is reviewed further herein.
- Chapter 2 deals with Administration. Article I (general) is currently empty. However, I have created three new divisions to go within Article I. The first division is entitled *Legal*

notices and service of process. Into this division, I have moved the language in § 1-16 concerning legal notices, and I have also inserted a new section 2-2 entitled *Service of process*. This new section solidifies that process servers must follow Florida law concerning which Town officials to serve with court process, and in what order, and helps the Town avoid any assertion that the Town Clerk or any other person who may be in Town Hall on a given day accepted service on behalf of the Town.

- The next new division in Article I of Chapter 2 that I created is entitled *Boards and Committees*. This division provides for ad hoc and standing boards and committees, how the members of same will be appointed by the Commission, how they will conduct their business, and how they will make reports to the Commission. The new division also ensures that any board or committee which may wield quasi-judicial authority will have procedures which have been review and approved by the Town Attorney to ensure due process standards are followed.
- The new division also clarifies that membership on Town boards or committees is not a property right and that members may be removed by the Commission at its discretion. The language also ensures the Town Clerk and Town Attorney will provide clerical, logistical and legal support for these boards and committees as they may need.
- The final new division I have created in Article I of Chapter 2 of the Code is division 3, which addresses claims against officers and employees. I am recommending adding these provisions to the Code since it is important for the Town's officers and employees to understand how the law will apply should a claim be made against one or more of them, how legal representation would be provided, and the limits of the Town's authorization to provide for counsel to individual officers and employees and to cover claims against them. While we always hope we would never need to turn our attention to these provisions, having the clarity of what the Town's obligations are placed in the Code at a time of calm can be helpful should there ever be a time where such claims are made.
- Article III of Chapter 2 of the Code deals with code enforcement. After having reviewed the current code, it was my determination that the best course of action would be to remove all of the current language and start fresh. Several factors went into this decision. First, since the Town has moved away from the code enforcement board model of enforcement, many of the sections were no longer relevant since they focused on that method. In addition, certain other sections were entwined between the board model and the magistrate model, and doing a "track changes" model would look quite confusing. Furthermore, the current code uses the title "special master", however the Florida Legislature, recognizing the negative history of the word "master" revised the statutes many years ago to convert the word to magistrate.
- In addition to my recommended new Code sections concerning code enforcement making the "magistrate" change, I have removed various provisions of the current code which have not kept up with court rulings concerning the level of notice which a local government must provide to violators when moving through the enforcement process.
- The new language also provides greater clarity as to the appointment and retention of the special magistrate and the role of the Clerk in the assignment of cases to the magistrate.

- New language concerning the mechanics of the enforcement process, from beginning of citation issuance through the hearing process carefully tracks what is required in Florida Statutes Chapter 162, as further interpreted by the appellate courts.
- Article IV of Chapter 2 of the Code deals with Emergency Management. Sections 2-97 and 2-98 address the authority of the Mayor and Commissioners during emergencies, and curfew, respectively. These provisions, which date to at least 1980, have become inconsistent with current Florida law concerning such matters. Florida Statutes § 252.38(2) and § 870.043 both address themselves to the authority a local Mayor will have in a declared emergency, and to the necessity of the Town to coordinate with county and state officials in regional or statewide emergencies. After organizational re-numbering, a new § 2-62 outlines in more detail what authority the Mayor will have in the event of an emergency. New § 2-63 and § 2-65 provide greater detail as to how an emergency is declared, communicated and ended. New § 2-64 addresses curfews and makes the language of the Code consistent with the Florida statute on the same topic.
- I am also recommending a new § 2-66, entitled *Hazardous emergency response cost recovery*. While the Town is geographically small, we know that tanker trucks and other potentially hazardous vehicles move through Gulf Boulevard and contractors and others may, given the work they perform, create the need for a costly emergency response within the Town. Florida Statutes Chapters 166 and 252 allow the Town to put this Code provision in place which can assist first responding agencies in their efforts to recover costs incurred in emergency response, incident assessment, control, containment and abatement efforts directly related to hazardous material emergency response within the town limits. Again, this is a provision which we hope to never need to use, but it can be useful legally to have it in the Code should such an event occur.
- Finally, Chapter 3 of the Code addresses alcoholic beverages, and only contains only two small sections. In this Chapter, I am only recommending one change. Section 3-2 provides for a restriction on the sale of alcoholic beverages within 500 feet of the Town recreation center or town park. I recommend inserting new language at the front of that restriction simply acknowledging that the Town may, by issuing a temporary special event permit, allow for such sales.

The foregoing represent an overview of all of the substantive revisions I am recommending for Chapters 1 through 3 of the Code. In addition to the foregoing changes, you will see that I am recommending re-numbering various Code sections to places in the Code where the provisions make more logical sense, or to accommodate the removal of surrounding Code sections. These numbering changes will, in my opinion, make the Code easier to understand but do not make any change in the policies within those sections.

As always, please do not hesitate to contact me should you have concerns regarding this matter.

/s/ Jay Daigneault, Esq.
Town Attorney

ORDINANCE NO. 2019 - 04

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA, AMENDING CHAPTERS 1 THROUGH 3 OF THE TOWN CODE CONCERNING TOWN ADMINISTRATION TO REMOVE OUTDATED, PREEMPTED OR UNENFORCABLE PROVISIONS AND TO INCORPORATE CURRENT STATE AND FEDERAL LAW REQUIREMENTS; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Redington Beach (the Town) has codified its ordinances over time into a Town Code (the Code) which sets forth the cumulative law of the Town; and

WHEREAS, the Town Board of Commissioners (the Commission) regularly adopts ordinances amending the Code; and

WHEREAS, however, many portions of the Code date back to 1980, with other portions of the Code not having been updated for ten or more years; and

WHEREAS, part of the Commission's duties include the necessity to ensure that the Town's ordinances, as codified in the Code, are up to date, reflect current Florida and federal statutory and case law, that they reflect current actual Town operations, and that they do not contain outdated, redundant or erroneous provisions; and

WHEREAS, in light of the foregoing, the Commission has charged the Town Attorney with the task of conducting a complete review of the Town's Code (excluding the Land Development Code) and to bring forward any recommended revisions to the Code which would alleviate any of the aforementioned potential concerns with the Code's current text; and

WHEREAS, the Town Attorney has submitted his assessment of Chapters 1 through 3 of the Code, and has recommended that the Commission make the revisions to those Chapters as are set forth in this Ordinance; and

WHEREAS, the Commission has considered the Town Attorney's recommendations and finds them to be consistent with the goals of the Commission; and

WHEREAS, the Commission therefore finds that it is in the best interests of the Town, and its citizens, property owners and businesses to adopt this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Beach, Florida, that:

Section 1. Sections 1-5 and 1-6 of the Redington Beach Town Code, respectively entitled *History notes* and *Reference notes and editor's notes*, are hereby repealed in their entirety.

Section 2. Section 1-7 of the Redington Beach Town Code, entitled *Provisions considered as continuation of existing ordinances*, is hereby renumbered as Section 1-5.

Section 3. Section 1-8 of the Redington Beach Town Code, entitled *Amendments to Code*, is hereby repealed in its entirety.

Section 4. Section 1-9 of the Redington Beach Town Code, entitled *Ordinances not affected by Code*, is hereby renumbered as Section 1-6.

Section 5. Section 1-10 of the Redington Beach Town Code is hereby renumbered as Section 1-7, and is amended to read as follows:

Sec. 1-7. - Effect of repeal or amendment of ordinances.

- (a) Unless otherwise provided for in the repealer ordinance, the repeal or amendment of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed or amended took effect, nor the obligation of any contract entered into under the prior ordinance.
- (b) The repeal or amendment of an ordinance shall not affect any punishment or penalty incurred before the repeal or amendment took effect, or any suit, prosecution or proceeding pending at the time of the repeal or amendment, for an offense committed or cause of action arising under the repealed or amended ordinance. Notwithstanding the foregoing, the repeal or amendment of any ordinance which would have the effect of making the conduct or condition which is the subject of a pending code enforcement citation, violation notice, or other enforcement action no longer a violation of this code, said pending citation, notice or enforcement action shall be withdrawn or dismissed by the code enforcement officer.

Section 6. Section 1-11 of the Redington Beach Town Code, entitled *Supplementation of Code*, is hereby renumbered as Section 1-8.

Section 7. Section 1-12 of the Redington Beach Town Code, entitled *Severability of parts of Code*, is hereby renumbered as Section 1-9.

Section 8. Section 1-13 of the Redington Beach Town Code, entitled *Altering Code*, is hereby repealed in its entirety.

Section 9. The codifier shall show Sections 1-10 through 1-13 as reserved.

Section 10. Section 1-14 of the Redington Beach Town Code is hereby amended to read as follows:

Sec. 1-14. - General penalty; injunctive relief~~continuing violations~~.

- (a) In this section, "violation of this Code" means any of the following:
 - (1) Doing an act that is prohibited or made or declared unlawful or an offense by ordinance or by rule or regulation authorized by ordinance.
 - (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
 - (3) Failure to perform an act if the failure is declared an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.
- (b) In this section, "violation of this Code" does not include the failure of a town officer or town employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.
- (c) Except as otherwise provided, a person convicted of a violation of this Code shall be punished by a fine not exceeding \$500.00, imprisonment for a term not exceeding 60 days or by any combination thereof. ~~With respect to violations of this Code that are continuous with respect to time, each day the violation continues is a separate offense.~~
- (d) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise.
- (e) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief.
- ~~(f) The town may use any enforcement method authorized or allowed by law including, but not limited to, the issuance of a citation, a summons, or a notice to appear in county court pursuant to F.S. (2004), Chs. 162 and 166, as the same may be amended from time to time, notification and citation to the code enforcement special master (in lieu of a code enforcement board as provided for in chapter 2, article III, divisions 2 and 3 of this Code) pursuant to F.S. (2004), Ch. 162, as the same may be amended from time to time, and arrest for violation of any municipal ordinance as provided for in F.S. (2004), Ch. 901, as the same may be amended from time to time. This section shall not prevent any civil action to enforce or compel compliance with the town's Code.~~
- ~~(g) In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of the Charter, this Code or any ordinance shall be deemed a public nuisance and may be abated by the town as provided by law, and each day that such condition continues shall be regarded as a new and separate violation.~~
- ~~(h) When a violation of the Code is deemed to exist, the building official and/or code enforcement officer or designee shall issue a certified letter or hand deliver a notice of advising them of the violation, along with a copy of the provisions of the Code relating to the violation and granting them up to 30 days to comply. If, after the time period for correction of the violation has~~

~~expired, the violation still exists, the code enforcement officer or his/her designee may issue a complaint/arrest affidavit (form COCR59) or like affidavit to the offending party. If service of the notice of violation cannot be effected by one of the foregoing methods, the posting of a copy of the notice in a conspicuous place in or about the premises or the structure affected by the notice shall be deemed proper service of the notice.~~

Section 11. Section 1-15 of the Redington Beach Town Code is hereby amended to read as follows:

Sec. 1-15. - Court cost for use in law enforcement training programs.

There is hereby assessed by the town, in compliance with F.S. § ~~938.15943.25(5)~~, an additional \$2.00 as court cost against every person convicted of violation of a municipal ordinance in any proceedings, except for violations relating to parking of vehicles, in the town; further, \$2.00 shall be deducted from every bond estreature or forfeited bail bond related to such penal ordinances for any offense, except that relating to parking of vehicles, in the town. Such funds as levied and assessed as additional court costs or taken from the bonds shall be used exclusively for law enforcement education expenditures for members of the police department of the town. The use and expenditures of such funds shall be in accordance with training and education programs for police personnel as established by the chief of police with the approval of the town commission.

Section 12. A new Division 1 of Article I of Chapter 2 of the Redington Beach Town Code, entitled *Legal notices and service of process*, and inclusive of Sections 2-1 and 2-2, is hereby created.

Section 13. Section 1-16 of the Redington Beach Town Code, entitled *Official/legal notices; posting of*, is renumbered as Section 2-1.

Section 14. A new Section 2-2 of the Redington Beach Town Code is hereby created to read:

Sec. 2-2. – Service of process.

Pursuant to Florida Statute § 48.111, in any action in which the town is a defendant, the service of process upon the town shall be on the mayor or, in the mayor's absence, on the vice-mayor or, in the absence of both, any commissioner. Attempted service upon the town clerk, town attorney, or any other employee or agent of the town shall not be effective.

Section 15. A new Division 2 of Article I of Chapter 2 of the Redington Beach Town Code, entitled *Boards and committees*, and inclusive of Sections 2-10 through 2-14, is hereby created to read:

DIVISION 2. - BOARDS AND COMMITTEES

Sec. 2-10. - Ad hoc committees.

From time to time, the town commission may create ad hoc committees to advise the commission on specific issues or matters affecting the health, safety and welfare of the citizens of the town or which relate to the operation of the town government. Such committees shall cease to exist upon the completion of their assigned mission, or when otherwise disbanded by the commission. Such committees shall have a membership composition as determined by the commission.

Sec. 2-11. - Standing board or committee.

The commission may create standing boards and committees in accordance with the town Charter. Commissioners shall nominate town residents or other persons who are qualified to serve on such boards and committees. The commission shall, by majority vote, appoint members and alternates to boards and committees from those nominated. At their inaugural meeting and once per year thereafter, each board and committee shall appoint a chairperson to preside at each meeting. Only the chairperson of a board or committee, or such other person as is designated by the chair or authorized by a majority of the board or committee, shall give reports to the commission on the board or committee's work and deliberations.

Sec. 2-12. - Reports of boards and committees; procedures.

While the commission may also request live presentations, each board or committee required or authorized to report to the commission shall do so in writing, and shall return the petition, resolution, account or other papers submitted for consideration. All reports and resolutions shall be filed with the town clerk and entered on the minutes. At their inaugural meeting, and as thereafter required to ensure effective operation of meetings, each board or committee shall adopt such procedural rules as may be needed. All such rules shall be reviewed by the town attorney to ensure any due process rights of parties will be satisfied, and that the requirements of the law, including the Sunshine Law, have been addressed.

Sec. 2-13. - Membership limited; removal of members.

Current commissioners or town employees shall not be eligible to hold a position on any standing or ad hoc committee established by the commission unless otherwise required by law. Continued membership on a board or committee is not a right, and the commission reserves the right to remove any member thereof when it determines, in its sole discretion, that doing so is in the town's best interests.

Sec. 2-14. – Logistical and legal support of boards and committees.

The town clerk and town attorney shall respectively ensure that town boards and committees subordinate to the commission receive adequate clerical support and legal counsel so as to ensure they are able to effectively perform the duties assigned to them. Such support shall include assistance in being aware of and complying with the requirements of the ethics, sunshine, and public records laws.

Section 16. A new Division 3 of Article I of Chapter 2 of the Redington Beach Town Code, entitled *Claims against officers and employees*, and inclusive of Sections 2-20 through 2-25, is hereby created to read:

DIVISION 3. – CLAIMS AGAINST OFFICERS AND EMPLOYEES

Sec. 2-20. – Defense of civil actions; scope of coverage.

- (a) Pursuant to Florida Statutes § 111.07, the town is authorized to provide an attorney to defend any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers, employees, or agents for an act or omission arising out of and in the scope of his or her employment or function, unless, in the case of a tort action, the officer, employee, or agent acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
- (b) Defense of such civil action includes, but is not limited to, any civil rights lawsuit seeking relief personally against the officer, employee, or agent for an act or omission under color of state law, custom, or usage, wherein it is alleged that such officer, employee, or agent has deprived another person of rights secured under the Federal Constitution or laws. Legal representation of an officer, employee, or agent of the town may be provided by the city attorney or by an attorney provided by any applicable insurance provider.
- (c) For purposes of this section, a “complaint for damages or injury” shall include actions properly brought under 42 U.S.C. § 1983, Florida Statutes § 768.28 or pursuant to Florida

Statutes Chapter 760; but shall not include actions brought for alleged violations of the Florida Sunshine Law, the Florida Public Records Act, the Florida Code of Ethics for Public Officers and Employees, the Florida Election Code, or brought under the Florida Declaratory Judgment Act.

- (d) Any attorney's fees paid from town funds for any officer, employee, or agent who is found to be personally liable by virtue of acting outside the scope of his or her employment, or to have been acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, may be recovered by the town in a civil action against such officer, employee, or agent. For purposes of this subsection, the finding of personal liability by virtue of the above-noted reasons may be made by the court or other judicial or quasi-judicial officer, by a jury, by an arbitrator, or by the town council.
- (e) If the town is authorized pursuant to this section to provide an attorney to defend a civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers, employees, or agents and the town council, in its sole discretion, declines to provide such attorney, the town shall reimburse any such defendant who prevails in the action for court costs and reasonable attorney's fees. For purposes of this section, the term "prevails" shall mean that the officer, employee or agent succeeded on at least one significant issue in the litigation. While a final merits determination is not required to "prevail", an officer, employee or agent shall not be deemed to have "prevailed" where the action is dismissed by the plaintiff if the dismissal was predicated on the payment of damages or attorney fees to the plaintiff, where the officer, employee or agent concedes that he or she committed a tort including a civil rights violation, or where the dismissal is without prejudice.

Sec. 2-21. – Defense of other statutory actions.

(a) Pursuant to Florida Statutes § 286.011(7), the town is authorized, but not required, to reimburse a town officer, employee or agent for any portion of his or her reasonable attorney's fees whenever he or she is charged with a violation of the Florida Sunshine Law and is acquitted or otherwise found by the court or other judicial or quasi-judicial officer, or by a jury, to have not violated that law.

(b) Pursuant to Florida Statutes § 112.317(7), the Florida Commission on Ethics is authorized, in its discretion, to award defense fees to a town officer, employee or agent accused of a violation of the Florida Code of Ethics for Public Officers and Employees, if the officer, employee or agent successfully defends the charges before the Ethics Commission, and the Commission finds that the accuser knew the complaint was false or recklessly disregarded whether the complaint was false. However, the town is not authorized to pay for or reimburse such expenses, and town funds shall not be used for that purpose.

(c) The town is authorized, but not required, to reimburse an officer, employee or agent for any portion of his or her legal defense fees associated with an action brought against him or her under the Florida Public Records Act. However, such reimbursement is not authorized where the officer,

employee or agent has not first prevailed in the action. For purposes of this section, the term “prevails” shall mean that the officer, employee or agent succeeded on at least one significant issue in the litigation. While a final merits determination is not required to “prevail”, an officer, employee or agent shall not be deemed to have “prevailed” where the action is dismissed by the plaintiff if the dismissal was predicated on the payment of damages or attorney fees to the plaintiff where the officer, employee or agent concedes that a violation occurred, or where the dismissal is without prejudice.

Sec. 2-22. – Payment of final judgments or settlements.

(a) Pursuant to Florida Statutes § 111.071, the town is authorized, but not required, to expend available town funds to pay:

(1) Any final civil judgment, including damages, costs, and attorney’s fees, arising from a complaint for damages or injury suffered as a result of any act or omission of action of any town officer, employee, or agent in a civil or civil rights lawsuit described in Florida Statutes § 111.07. If the civil action arises under Florida Statutes § 768.28 as a tort claim, the limitations and provisions of that law governing payment shall apply. If the action is a civil rights action arising under 42 U.S.C. § 1983, or similar federal statutes, payments for the full amount of the judgment may be made unless the officer, employee, or agent has been determined in the final judgment to have caused the harm intentionally.

(2) Any compromise or settlement of any claim or litigation as described in paragraph (a), subject to the limitations set forth in that paragraph.

(3) Any reimbursement required under Florida Statutes § 111.07 for court costs and reasonable attorney’s fees when the town has failed to provide an attorney and the defendant prevails.

(b) For purposes of this section, a “final judgment” means a judgment upon completion of any appellate proceedings.

(c) “Agency of the state” or “state agency,” as used in this section, includes an executive department, a constitutional officer, the Legislature, and the judicial branch.

(d) This section is not intended to be a waiver of sovereign immunity or a waiver of any other defense or immunity to such lawsuits.

(e) The town shall not pay or reimburse for any part of any final judgment or settlement which constitutes punitive damages unless required to do so by law.

Sec. 2-23. – Defense of criminal charges prohibited.

The town is prohibited by law from providing a legal defense to any officer, employee or agent for the defense of any criminal charge, whether or not that charge is associated with or arises from the exercise or performance of officer’s, employee’s or agent’s official powers or duties. Therefore, no town funds shall be expended for such purposes.

Sec. 2-24. - Conditions of coverage.

To be eligible for the payment of town funds to defend or resolve claims against a town officer, employee or agent, such officer, employee or agent must agree to the following conditions:

- (1) The officer, employee or agent must provide full cooperation to the town in the defense of the claim or action through the prosecution of any appeal. This shall include, but not be limited to, providing statements under oath and all evidence in his or her possession to the town's attorney promptly upon request.
- (2) The officer, employee or agent shall not communicate with, give statements to, or otherwise provide evidence to any attorney, investigator or other person concerning the claim or action, other than to the town's attorney, insurance adjuster or other authorized representative, without the town's consent. Nothing herein shall be construed as prohibiting any employee from exercising his or her rights under the Florida Public Employee's Whistleblowers Act.
- (3) The officer, employee or agent shall tender to the town attorney the complaint, summons, process or other pleading immediately after he or she is served with such documents.
- (4) Counsel selected to defend the officer, employee or agent shall be at the sole discretion of the town council.
- (5) The town shall have full right to compromise and settle all claims against the officer, employee or agent, except that the town will not include a term of settlement admitting liability or statutory violations on the part of the officer, employee or agent unless such person agrees to such term of settlement.
- (6) In the event of damages arising from a counterclaim against any aggrieved party, the town shall be entitled to all damages from such party.
- (7) All funds received from a collateral source by an officer, employee or agent to pay any cost, fee, judgment or settlement of a claim or action for which the town is paying or has paid shall be deducted from such amounts, and said officer, employee or agent must agree to subrogate all rights to recover from such collateral sources to the town.

Sec. 2-25. - Reservation of rights and immunities.

- (a) To the extent the town undertakes the defense of its officers, employees or agents as provided for in this article, it nevertheless reserves its right to seek indemnification, reimbursement and/or recovery for any judgment or settlement made, or court costs incurred, and all attorney's fees incurred in the defense of these officers, employees or agents such persons, where it is determined that such individuals acted or failed to act because of fraud, corruption or malice; acted in bad faith, with malicious purpose, in a manner exhibiting wanton and willful disregard of human or civil rights, safety or property; was not entitled to protection

under this article or under state law; or fails to cooperate in good faith in the defense of the claim.

(b) The provisions of this article shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer or insured under any policy of insurance.

(c) Nothing in this section shall be construed as a waiver by the town or by any town officer, employee or agent, of any claim of immunity, including sovereign immunity, applicable to any action.

Section 17. Article III (Code Enforcement) of Chapter 2 (Administration) of the Redington Beach Town Code is hereby repealed in its entirety.

Section 18. A new Article III (Code Enforcement) of Chapter 2 (Administration) of the Redington Beach Town Code, inclusive of Sections 2-40 through 2-56, is hereby created to read:

ARTICLE III. – CODE ENFORCEMENT

DIVISION 1. – GENERAL PROVISIONS

Sec. 2-40. - Intent.

It is the intent of this article to promote, protect, and improve the health, safety, and welfare of the citizens of the town by authorizing the appointment of a special magistrate with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in the town, where a pending or repeated violation continues to exist.

Sec. 2-41. - Applicability; optional enforcement.

Pursuant to Florida Statutes Chapter 162, the town is authorized to create or abolish by ordinance local government code enforcement systems. This division creates a code enforcement system that gives a code enforcement special magistrate designated by the commission the authority to hold hearings and assess fines against violators of the town's code. A special magistrate shall have the same status as a code enforcement board as provided under Chapter 162, and in this article. The provisions of this division shall in no way be construed to limit the power of the town to proceed in any other civil or criminal proceeding or in any other forum to enforce its code.

Sec. 2-42. - Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates and requires a different meaning.

Code enforcement officer means any agent or employee of the town whose duty it is by virtue of job description, contract, or other lawful designation to assure code compliance through investigation and enforcement. In addition to any other person so designated, a Deputy Sheriff is authorized to enforce the town's codes according to the provisions in this article.

Days means consecutive calendar days.

Repeat violation means a violation of a provision of any town code by a person or business who has been previously found by the code enforcement special magistrate or through any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within five years prior to the violation, notwithstanding the location of the prior violation(s).

Sec. 2-43. – Appointment of special magistrate; role of town attorney.

- (a) The commission may, from time to time, appoint one or more persons to serve as code enforcement special magistrate. Such persons must be members in good standing of The Florida Bar and possess such other skills and experience as the commission may require.
- (b) Unless otherwise specified by contract, special magistrates shall have no set term of appointment. Upon initial appointment to preside over a case, a special magistrate shall review the identity of the alleged violator(s) so as to ensure the magistrate does not have any family, business or other such involvement with the violator(s) such that a conflict of interest would be present. Should such a conflict be identified, the special magistrate shall recuse her or himself and an alternative magistrate will be appointed to preside over the case. The recusal standards established in the Florida Supreme Court's judicial conduct code will control such questions.
- (c) The town clerk shall assign any violation notice referred by the code enforcement officer for hearing to the special magistrate. In the event more than one person is appointed special magistrate, the clerk shall endeavor to rotate assignments on a random basis.
- (d) The code enforcement officer is authorized to present cases before the special magistrate. If requested by the code enforcement officer, the town attorney shall represent the town by presenting cases before the special magistrate.

Sec. 2-44. - Enforcement procedures.

- (a) It shall be the duty of the code enforcement officer to initiate enforcement proceedings of the various codes. Neither the commission nor the special magistrate shall have the power to initiate such enforcement proceedings.
- (b) Except as provided in subsections (c) and (d), if a violation of the code is found, the code enforcement officer shall notify the violator and allow a reasonable time for the violator to correct the violation. Should the violation not be corrected within the time allowed (including

any extensions the code enforcement officer determines to be reasonable under the circumstances), the code enforcement officer shall notify the town clerk that a special magistrate hearing is requested. The town clerk shall, thereafter, notify the special magistrate of the referral and coordinate with the magistrate on the scheduling of the hearing. The town clerk shall also ensure a written notice of such hearing is hand delivered or mailed as provided in Florida Statutes § 162.12 to the violator. Notice may additionally be served by publication or posting as provided in Florida Statutes § 162.12. If, within the time provided by the code enforcement officer for correction, the violation is corrected but then recurs, or if the violation is not corrected, the violation is still considered a violation and shall still be presented to the special magistrate even if, prior to the hearing, the violation is corrected, and the notice of hearing shall so state.

- (c) If a repeat violation is found, the code enforcement officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, may immediately notify the clerk to schedule a special magistrate hearing. If the repeat violation has been corrected by the time of the hearing, the special magistrate shall schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator.
- (d) If the code enforcement officer 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 enforcement officer shall make a reasonable effort to notify the violator and may immediately notify the clerk and request a special magistrate hearing.
- (e) If the owner of property that is subject to an enforcement proceeding before the special magistrate or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

 - (1) Disclose, in writing, the existence and the nature of the proceeding to the transferee.
 - (2) Deliver to the transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding.
 - (3) Provide written disclosure to the transferee that the transferee will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.
 - (4) File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the above-required disclosures made to the new owner, within five days after the date of the transfer.

If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall, upon proper motion made, be afforded a reasonable continuance to allow the new owner to correct the violation, secure legal counsel, or for other good cause shown. If the new owner corrects the violation before the re-scheduled hearing, the code enforcement officer may, if he or she determines that the new owner has acted in good faith to promptly come into compliance, file a dismissal of the violation and request cancellation of the hearing.

Sec. 2-45. - Conduct of hearing; costs.

- (a) Upon request of the code enforcement officer, or at such other times as may be necessary, the special magistrate may call a hearing to hear any outstanding notices of violations or any related motions. The town clerk shall ensure that adequate hearing space within town hall, or at such other location within the town as would be appropriate, is secured for the hearing. The town clerk shall serve as the clerk for the hearing officer and shall keep and maintain a copy of all official records of the case including exhibits admitted into evidence. However, it shall be the responsibility of any party to such hearing to secure a certified court reporter should a record of the proceedings be desired.
- (b) If the local governing body prevails in prosecuting a case before the special magistrate, it shall be entitled to recover all costs incurred in prosecuting the case before the code enforcement board or magistrate and such costs may be included in the lien authorized by law.
- (c) The special magistrate shall proceed to hear the cases on the agenda for that day. However, the special magistrate may, in its/his/her discretion, continue any case until the next agenda upon a showing of good cause at the time of or prior to the scheduled hearing. All testimony shall be under oath. The special magistrate shall take testimony from the code enforcement officer, the alleged violator and any other witnesses called by the parties and allowed to testify by the special magistrate. The parties shall have the opportunity to give testimony, present witnesses and to cross-examine adverse witnesses in person or through their attorney. The formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The special magistrate may impose the rule of witness exclusion during the hearing if so requested by a party. While the special magistrate may, in his or her discretion, permit others to attend the hearing, as such hearings are not meetings of collegial governmental bodies, Florida Statutes § 286.011 is not applicable to the hearing.
- (d) At the conclusion of the hearing, the special magistrate shall issue a final order containing findings of fact and conclusions of law, and shall therein affording the proper relief consistent with the findings and conclusions, and within the limits provided for in Florida Statutes Chapter 162. A certified copy of any such order which imposes a daily fine or awards allowable costs to the town may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the code enforcement board or special magistrate shall issue an order acknowledging compliance that shall be recorded in the public records.

Sec. 2-46. - Authority of the special magistrate.

The special magistrate shall have the authority to:

- (1) Adopt rules for the conduct of the hearings.
- (2) Issue subpoenas to alleged violators and witnesses to attend hearings.
- (3) Issue subpoenas for evidence when so requested by a party.

- (4) Take testimony under oath.
- (5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Sec. 2-47. - Administrative fines; costs of repair; liens.

- (a) The special magistrate, upon notification by the code enforcement officer that a special magistrate order requiring compliance by a date certain has not been complied with by said date, or upon a finding by the special magistrate that a repeat violation has occurred, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the special magistrate for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found by the code enforcement officer to have occurred or is discovered to exist. Additionally, if the violation is a violation described in subsection 2-44(d) of this code, the special magistrate shall notify the town commission, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the town to make further repairs or to maintain the property and does not create any liability against the town for any damages to the property if such repairs were completed in good faith. If, after due notice and hearing, the special magistrate finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in subsection (b).
- (b) With respect to all fines and liens, the special magistrate shall abide by and be vested with the following powers and discretion:
 - (1) A fine imposed pursuant to this section shall not exceed \$250.00 per day for a first violation and shall not exceed \$500.00 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (a). However, if the special magistrate finds the violation to be irreparable or irreversible in nature, it/he/she may impose a fine not to exceed \$5,000.00 per violation.
 - (2) In determining the amount of the fine, if any, the special magistrate shall consider the following factors:
 - a. The gravity of the violation;
 - b. Any actions taken by the violator to correct the violation; and
 - c. Any previous violations committed by the violator.
 - (3) The special magistrate may reduce a fine imposed pursuant to this section.
 - (4) In addition to such fines, the special magistrate may impose additional fines to cover all costs incurred by the town in enforcing its codes and all costs of repairs pursuant to subsection (a). In determining the amount of such fines, the special magistrate shall consider the criteria set forth in subsection (b)(2).
- (c) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation

exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this division shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the town, and the commission may execute a satisfaction or release of lien entered pursuant to this section. Upon filing and recording of such a lien, it shall remain a lien against each such property until paid. After three months from the filing of any such lien which remains unpaid, the special magistrate may authorize the town attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this division may be foreclosed on real property which is a homestead under Florida Constitution, Article X, Section 4. The money judgment provisions of this section shall not apply to real property or personal property which is covered under Florida Constitution, Article X, Section 4(a).

(d) Pursuant to Florida Statutes § 695.01(3), a lien by the town that attaches to real property for a code enforcement fine or penalty is valid and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration only if:

(1) the lien is recorded in the official records of the county in which the property is located, and

(2) the recorded notice of lien contains:

a. the name of the owner of record,

b. a description or address of the property, and

c. the tax or parcel identification number applicable to the property as of the date of recording.

Sec. 2-48. - Duration of lien.

No lien provided under this article and applicable state law shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is commenced pursuant to subsection 2-47(c) in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the town is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action. The town shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of *lis pendens* is recorded.

Sec. 2-49. - Appeals.

An aggrieved party, including the local governing body, may appeal a final administrative order of the code enforcement board or special magistrate to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the code enforcement board or special magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed.

DIVISION 2. - SUPPLEMENTAL ENFORCEMENT PROCEDURES IN COUNTY COURT

Sec. 2-50. - Citation system procedure; issuance; filing; notice.

- (a) The provisions of this section are additional and supplemental means of enforcing the town's codes or ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances. Nothing contained in this section shall prohibit the town from enforcing its codes or ordinances by any other means.
- (b) A violation of this code is a civil infraction. A code enforcement officer is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance and that the county court will hear the charge. The citation will be filed and heard in the County Court for Pinellas County, Florida.
- (c) Prior to issuing a citation, a code enforcement officer shall provide notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period, a code enforcement officer may issue a citation to the person who has committed the violation. A code enforcement officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if a repeat violation is found or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

Sec. 2-51. - Form and content of citation.

- (a) Pursuant to Florida Statutes § 162.21(3)(c), a citation issued by a code enforcement officer shall be in a form prescribed by the town and shall contain:
 - (1) The date and time of issuance.
 - (2) The name and address of the person to whom the citation is issued.
 - (3) The date and time the civil infraction was committed.
 - (4) The facts constituting reasonable cause.
 - (5) The number or section of the code or ordinance violated.

- (6) The name and authority of the code enforcement officer.
- (7) The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
- (8) The applicable civil penalty if the person elects to contest the citation.
- (9) The applicable civil penalty if the person elects not to contest the citation.
- (10) A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

Sec. 2-52. - Deposit of citation with county court; refusal to sign and accept.

- (a) After issuing a citation to an alleged violator, a code enforcement officer shall deposit the original citation and one copy of the citation with the county court.
- (b) Pursuant to Florida Statutes § 162.21(6), any person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree, punishable as provided in Florida Statutes § 775.082 or § 775.083.

Sec. 2-53. - Application of division provisions.

The provisions of this part shall not apply to the enforcement pursuant to Florida Statutes §§ 553.79 and 553.80 (the Florida Building Code adopted pursuant to Florida Statutes § 553.73) as applied to construction, provided that a building permit is either not required or has been issued by the town. For the purposes of this subsection, the term “building codes” means only those codes adopted pursuant to Florida Statutes § 553.73.

Sec. 2-54. - Penalty for violation.

- (a) Findings of violations will subject the violator to a maximum fine of \$500.00. The fine for a violator who elects not to contest a violation citation shall be \$250.00.
- (b) Any person charged with a violation of a town ordinance in county court may appear and contest the citation, and if found to be in violation, may appeal such finding as provided in the Florida Rules of Civil Procedure.

Sec. 2-55. - Notice to appear.

- (a) Notwithstanding Florida Statutes § 34.07, a code enforcement officer, designated pursuant to this chapter, may issue a notice to appear at any hearing conducted by a county court if the officer, based upon personal investigation, has reasonable cause to believe that the person has

violated a code or ordinance. A notice to appear means a written order issued by a code enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time. If a person issued a notice to appear under this section refuses to sign such notice, the code enforcement officer has no authority to arrest such person.

- (b) Prior to issuing a notice to appear, a code enforcement officer shall provide written notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no fewer than five days and no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the prescribed time period, a code enforcement officer may issue a notice to appear to the person who has committed the violation. A code enforcement officer is not required to provide the person with a reasonable time period to correct the violation prior to issuing a notice to appear and may immediately issue a notice to appear if a repeat violation is found, or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare or that the violator is engaged in violations of an itinerant or transient nature, as defined by local code or ordinance within the jurisdiction, or if the violation is irreparable or irreversible.

ARTICLE III. – ENFORCEMENT BY CIVIL ACTION

Sec. 2-56. - Civil actions to enforce town codes.

In addition to other provisions of law or this code authorizing the enforcement of the town's codes, the town may enforce any violation of its code by filing a civil action in the same manner as instituting a civil action. The action shall be brought in county or circuit court, whichever is appropriate depending upon the relief sought.

Section 19. Section 2-96 of the Redington Beach Town Code, entitled *Definition*, is renumbered as Section 2-60.

Section 20. Sections 2-97 and 2-98 of the Redington Beach Town Code are hereby repealed in their entirety.

Section 21. The following sections 2-61 through 2-..... are hereby added to Article IV (Emergency Management) of Chapter 2 (Administration) of the Redington Beach Town Code, as follows:

ARTICLE IV. – EMERGENCY MANAGEMENT

Sec. 2-61. - Intent.

- (a) It is the intent of this article to provide the necessary organization, powers, and authority to enable the timely and effective use of all available town resources to prepare for, respond to and recover from emergencies or disasters, natural and manmade, likely to affect the security, safety, or health of the town and its residents, whether such events occur within or beyond the corporate limits of the town.
- (b) Nothing herein shall be intended to relieve town employees or contractors of their assigned duties, responsibilities, and functions.
- (c) Nothing herein shall be construed as a delegation of authority to abridge or diminish the legislative powers of the town commission.

Sec. 2-62. - Powers; duties; responsibilities.

- (a) The mayor shall direct all emergency management functions for the town, and shall have the following powers, duties and responsibilities:
 - (1) To make a declaration of emergency for the reasons set forth in this article;
 - (2) To direct the creation, revisions and exercise of emergency response plans conforming to state and county emergency plans for the mitigation of preparation for, response to, and recovery from emergencies or disasters;
 - (3) To direct the efforts of the town staff in the preparation for, response to, and recovery from emergency conditions;
 - (4) To recommend a budget to the commission for the creation and maintenance of emergency response capabilities;
 - (5) To promulgate, during a declared emergency, regulations necessary for the protection of life and property, establishment of public order, and control of adverse conditions affecting public welfare resulting from the emergency;
 - (6) To coordinate the public information function of the town and to coordinate a town emergency awareness program;
 - (7) To direct the development and maintenance of the town's emergency plans, including annual revisions;
 - (8) To direct the development of a temporary town emergency operations center (EOC) to include equipment, staffing, and operational procedures necessary for the management and control of emergency conditions; and
 - (9) To provide and coordinate a town training program in emergency response and management.
- (b) The mayor may designate an emergency management planning team, which may include staff and volunteers, which, under the mayor's oversight, shall:
 - (1) Assist in staffing the EOC during an emergency or state of local emergency; and

- (2) Assist in the creation, revision, and exercise of emergency operations plans and ensure that all relevant town officials, employees and agents are trained as to their respective roles and responsibilities with respect to the town's response to emergency conditions.

Sec. 2-63. - Declaration of a state of local emergency.

- (a) When in the judgment of the mayor, or, in his or her absence or incapacity, the vice-mayor or in his or her absence or incapacity any other member of the commission, a civil emergency or state of emergency as defined by Florida Statutes § 870.043 exists, said official is authorized to declare such emergency.
- (b) Any declaration of a state of local emergency and all emergency regulations activated under the provisions of this article shall be confirmed by the town commission by resolution within two working days of such declaration, or at the next regular or special meeting of the town commission, whichever comes first, unless the nature of the local emergency renders a meeting of the commission impractical. The resolution confirming the declaration shall basis for the declaration, the expected duration of the state of emergency, and such other emergency policies or actions as the commission deems appropriate.
- (c) The following policies shall, as necessary, also be effective during the period of a state of local emergency:
- (1) The town may utilize all available resources as reasonably necessary to cope with the effects of the emergency, including emergency expenditures authorized by the mayor, with a report made to the town commission subsequent to the termination of the emergency declaration.
- (2) The town may make provisions for availability and use of temporary emergency housing and emergency warehousing of materials for citizens.
- (3) The town may confiscate merchandise, equipment, vehicles, or property needed to respond to the emergency. Reimbursement shall be within 60 days and at a customary value. Such action shall be taken by the town mayor only in extreme situations, where no resources from any other governmental agency are available, and only when necessary to prevent imminent death, injury or loss of property in the town.
- (d) Pursuant to Florida Statutes § 252.38(2), the town shall coordinate its emergency management activities with those of the county emergency management agency. To the extent the town has not elected to adopt an emergency management program, it shall be served by the county's emergency response agencies. To the extent the town, by resolution, elects to establish an emergency management program, the town must comply with all laws, rules, and requirements applicable to county emergency management agencies as set forth in Florida Statutes Chapter 252 and elsewhere. If the town elects to adopt its own emergency management plan, the plan must be consistent with and subject to the applicable county emergency management plan. The town is required to coordinate all requests for state or federal emergency response assistance with the county.
- (f) In the event of a declared emergency, the mayor is authorized to engage in the following activities without compliance with the normal town procedures:

- (1) Performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community;
- (2) Entering into contracts for emergency goods or services;
- (3) Incurring obligations to respond to emergency conditions; and
- (4) Obtaining labor resources to respond to emergency conditions.

Sec. 2-64. - Curfew.

- (a) Pursuant to the authority provided in Florida Statutes § 870.045, once an emergency has been declared, the mayor is authorized to order a general curfew. A general curfew shall prohibit any person being, walking, running, loitering, standing or motoring upon any beach, highway, boulevard, street, avenue, alley, public property or vacant premises within the corporate limits of the town, except persons officially designated as having duties with reference to an emergency. The curfew limitations set forth above, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing, and parking, shall not apply to persons designated as providing essential services such as fire, police, and hospital services, including the transportation of patients, utility emergency repair workers, debris removal services deployed by the town or the county, and emergency calls by physicians.
- (b) If the mayor orders a general curfew, he or she shall, if practical, issue and disseminate the curfew order to the public by as broad a manner as is practicable under the circumstances, including providing notification of the order to the county sheriff, county administrator, and the radio, television and print media, as well as on the town website and available social media platforms.

Sec. 2-65. - Termination of a state of emergency.

A state of emergency shall be terminated by the mayor or a resolution of town commission when the conditions supporting the declaration no longer exist, and when the town's administration is able to manage the conditions without extraordinary assistance and powers. Notice of such termination shall be made to the public by the mayor in the same manner as set forth in section 2-64(b).

Sec. 2-66. - Hazardous emergency response cost recovery.

- (a) Title. This section shall be known as the "Hazardous Material Emergency Response Cost Recovery Policy."
- (b) Intent and purpose. This section is intended to provide for recovery by the town of costs incurred in emergency response, incident assessment, control, containment and abatement efforts directly related to hazardous material emergency response within the town limits.

- (c) Authority. The town has the authority to adopt this section pursuant to the provisions of Florida Statutes Chapters 166 and 252.
- (d) Jurisdiction. This section shall apply to the corporate limits of the town.
- (e) Definitions. As used in this section, the following words and phrases shall have the meaning indicated unless the context otherwise requires:

Costs means all reasonable and necessary expenses that are incurred by the town as a direct result of the hazardous materials emergency response, including but not limited to the following:

- (1) Emergency response, incident assessment, control, containment and abatement of a hazardous materials incident, to include costs associated with transportation and temporary storage of hazardous materials if such transportation and temporary storage is necessary to control and contain the hazardous materials incident.
- (2) Ensuring the safety of the public, both on and off the site of the hazardous materials incident.
- (3) Repairing or replacing equipment if said equipment was damaged or destroyed as a direct result of the hazardous materials incident.
- (4) Equipment, including rental equipment, utilized by the town to the extent such labor and equipment is necessary for emergency response, incident assessment, control, containment and abatement of the immediate hazard.
- (5) Contract labor and equipment utilized by the town for emergency response, incident assessment, control, containment and abatement of the immediate hazard.
- (6) Overtime costs for compensation of town employees for the time devoted specifically to the hazardous materials incident.
- (7) Labor and equipment utilized by the town via a mutual aid agreement for emergency response, incident assessment, control, containment and abatement of the immediate hazard.
- (8) Disposable materials and supplies consumed and expended as a result of the hazardous materials incident, including but not limited to, absorbents, foams, neutralization agents, over pack drums or containers.
- (9) Decontamination of equipment that is contaminated during the hazardous materials incident.
- (10) Laboratory costs for purposes of analyzing samples taken during the release.

Emergency response means the provision of authorized assistance during and following a hazardous material incident and to reduce the likelihood of secondary damage, and may include incident assessment, control, containment and abatement of the immediate hazard.

Hazardous material means a substance or material that the United States Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal Hazardous Materials Transportation Law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials

designated as hazardous in the Hazardous Materials Table (see 49 C.F.R. 172.101), and materials that meet the defining criteria for hazard classes and divisions in 49 C.F.R. 173.

Hazardous material incident means actual or threatened release of a hazardous substance or material, including hazardous waste, which poses an imminent threat to the environment and/or to the health, safety or welfare of the population and requires emergency response, incident assessment, control, containment and abatement of the immediate hazard.

Person means an individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, governmental entity, or any other legal entity.

Release means the accidental or intentional, sudden or gradual spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers and other receptacles containing any hazardous material or substance or waste or pollutant or contaminant) whether such release occurs from a fixed facility or while the materials are being transported.

Responder means any person authorized to participate in the town coordinated emergency response to a hazardous material incident.

Responsible party means the person or persons who cause or allow a release of a hazardous material or substance or who had custody or control of the hazardous material or substance at the time of such release.

(f) Hazardous materials incidents—Liability for costs. Any responsible party shall be liable for the payment of all reasonable and necessary costs incurred by the town or its agents for emergency response, incident assessment, control, containment and abatement of the immediate hazard as a direct result of the hazardous material incident.

(g) Hazardous materials incidents—Exceptions. The authority to recover costs under this section shall not include costs incurred for actual fire suppression service, which is normally or usually provided within the town by the Seminole and Madeira Beach Fire Departments or their authorized agents.

(h) Collection and disbursement of funds for cost recovery.

(1) Agent for collection. The town shall be responsible for collecting invoices from responders to a hazardous material incident and presenting a bill to the responsible party for costs.

(2) Procedure for responders. When responding to a hazardous material incident, the town clerk shall keep a detailed record of the costs attributable thereto.

(3) Procedure for responders submittal of invoices to town. An invoice identifying eligible costs under this article shall be submitted by responders to the town within 30 days after the cost was incurred or identified. Submitted invoices must include sufficient documentation for cost reimbursement (i.e. copies of time sheets for specific personnel, copies of bills for the materials, equipment and supplies procured or used, etc.). Accepting invoices from agencies outside the town shall not incur liability to the town to pay costs from such agencies until payment is received by the town from the responsible party.

(4) Method of billing and payment. The town shall submit one or a series of consolidated invoices to the responsible party, identifying the responders (i.e. agencies, agents or municipalities) and their specific costs for reimbursements. The responsible party shall issue a separate certified check made payable to each responder that submitted an invoice. The checks will be sent to the town within 60 days of receiving a consolidated invoice. The town shall disburse the checks to the responders.

(i) Methods of enforcement.

(1) Supplemental beneficial projects. This section shall not prohibit the town from entering into binding agreements with the responsible party for remedial actions such as supplemental beneficial projects (SBPs) in lieu of monetary payment, provided that all or part of the responders agree with the SBP in lieu of payment or the town accepts the SBP and compensates the other responders. SBPs are projects which a responsible party agrees to undertake to benefit the emergency response entity but is not otherwise legally required to perform. The SBP must have a direct benefit to the responding entity of the town and the value of the SBP can be used to offset monetary payment on a dollar for dollar basis. There is no minimum or maximum amount of monetary payment that can be offset by a SBP.

(2) Civil action. The town may enforce these provisions by civil action in a court of competent jurisdiction for the collection of any amounts due hereunder plus administrative collection costs, attorneys' fees, or for any other relief that may be authorized by law.

(3) Remedies at law. The town may seek any or all available remedies at law, to include the provisions of this article, against any parties responsible for any hazardous materials incident, to include those actions and remedies available under the U.S. Bankruptcy Code relating to such matters.

(i) Conflict with other laws.

(1) Whenever the requirements or provisions of this section are in conflict with the requirements or provisions of any other lawfully adopted ordinance, the more restrictive requirements shall apply as to the matters in conflict, and all provisions of this section not in conflict shall remain in full force and effect.

(2) This section shall not restrict or replace cost recovery from funding sources available under state and federal regulations including but not limited to the revolving fund established under section 311(K) of the Federal Water Pollution Trust Fund established under Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9611); and the hazardous materials account of the state division of emergency management operating trust fund established under Chapter 252, Florida Statutes.

(3) This section shall not restrict or replace any legal remedy or cause of action otherwise available to the town, responding public safety agencies, or responsible parties.

Section 22. Section 3-2 of the Redington Beach Town Code is hereby amended to read as follows:

Sec. 3-2. - Location of alcoholic beverage establishments.

- (a) Except when associated with a special event which the town has authorized by permit or otherwise, nNo establishment shall engage in the sale of alcoholic beverages if located within 500 feet of the town recreation and community center or town park.
- (b) The distance set forth in subsection (a) of this section shall be a straight-line distance between the closest point on the property occupied by the enumerated uses in subsection (a) of this section and the closest point on the property to be occupied by the establishment applying for permits to sell alcoholic beverages.

Section 23. For purposes of codification of any existing section of the Redington Beach Code herein amended, words underlined represent additions to original text, words ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 24. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 25. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Sections 1 through 22 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 26. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2019, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2019, by the Board of Commissioners of the Town of Redington Beach, Florida.

Attest:

James Simons, Mayor

Missy Clarke, CMC, Town Clerk

Approved as to form:

Jay Daigneault, Town Attorney