



**TOWN OF REDINGTON BEACH
BOARD REGULAR MEETING AGENDA
Wednesday, September 16, 2020
6:30 P.M.**

The Commission meeting for Wednesday, September 16, 2020, is scheduled as planned. However, as we stress public safety and social distancing, the meeting will be held through Zoom virtual meeting.

Through the Zoom meeting, attendees can still hear speakers, ask questions, and otherwise participate in the meeting, (where procedurally appropriate) from the comfort of their home. Attendees do NOT need a camera to participate, all they need is a phone. All materials for the meeting are available on the town's website at: <https://townofredingtonbeach.com/agendas-minutes/>. Click on the current Agenda Packet.

If you would like to speak during public forum, please call or email the clerk at townclerk@townofredingtonbeach.com prior to 3:00 p.m. on September 16th to be included in public forum.

To join Wednesday's virtual meeting at 6:30 p.m. follow the instructions below.

OPTION 1

Join Zoom Meeting by logging into:

<https://us02web.zoom.us/j/85457039806>

Meeting ID: 854 5703 9806

OPTION 2

CALL THIS NUMBER AND ENTER
MEETING ID NUMBER BELOW

1-929-205+-6099 ,85457039806# US
(New York)

1-301-715-8592 ,85457039806# US
(Germantown)

Meeting ID: 854 5703 9806

If you encounter any issues joining the Zoom meeting, please call 727-391-3875. Thank you for your flexibility during this time.

Sincerely,

Mayor and Commissioners
And Town Staff



**TOWN OF REDINGTON BEACH
BOARD REGULAR MEETING AGENDA
VIRTUAL MEETING
Wednesday, September 16, 2020
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	Commissioner Will
Public Works/Parks	Commissioner Steiermann
Finance	Vice Mayor Dorgan
Mayor	
Town Clerk	
Attorney Daigneault	
Boards & Committees	
- 7. CONSENT AGENDA**
 - A. Board Regular Meeting Minutes, September 2, 2020**
 - B. Board Budget Hearing Minutes, September 3, 2020**
 - C. Bill List for Day Ending September 11, 2020**
- 8. UNFINISHED BUSINESS**
 - A. Reconfiguration of Dais**
 - B. RFP: Solid Waste Services update**



9. NEW BUSINESS

- A. FIRST READING: Ordinance 2020-07: An Ordinance of the Town of Redington Beach, Florida, repealing and replacing Chapter 18 (Solid Waste) of the Town Code to remove outdated, preempted or unenforceable provisions and to incorporate current state and federal law requirements; making related findings; providing for codification; severability, and an Effective Date.**
- B. Gulf Blvd Penny IV Interlocal Agreement**
- C. Discussion: Ordinance 2020-06 An Ordinance of the Town of Redington Beach, Florida, Amending Chapter 6 – Buildings and Building Regulations, Article XI – Board of Adjustment of the Town Code to Clarify the Scope of the Powers and Duties of the Board of Adjustment; Making Related Findings; Providing for Codification, Severability, and an Effective Date.**

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
VIRTUAL MEETING
Wednesday, September 2, 2020
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 Virtually on **Wednesday, September 2, 2020, 6:30 p.m.**, in Redington Beach Town Hall at 105 164th Avenue, Redington Beach Florida.

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

Roll Call

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

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

Public Forum: Steve Redman, 16496 Redington Drive, requested the commission put the current dock ordinance on an agenda for further discussion. Discussion amongst the commission and the majority voted to add to the agenda for the first meeting in October.

Vic Lafita, 16125 4th Street East spoke on the issue of parking issues of 4th Street. Deputy DeAngelo spoke on the subject.

David Christ, 16129 4th Street East spoke on the need for a no parking sign on 4th Street. Mayor Simons stated that the ordinance would be reviewed for posting no parking signs.

Reports

Public Safety

- Nothing to Report

Building/Code

- Commissioner Will reported that the stucco is being applied to the wall at Friendship Park and that boulders are being placed around the outfall pipe.

Public Works/Parks

- Commissioner Steiermann reported that the Park Board met on Monday. The shelter was discussed for size and placement.

Finance

- Nothing to Report

Mayor

- The mayors of the three Redington's met regarding the Penny IV for Gulf Boulevard Beautification. An interlocal agreement will be drawn up for the Penny IV to underground the west side of Gulf Blvd. The remaining monies from Penny III can be spend on the design cost.
- The goal is to have in person meetings beginning with the first meeting in October, which would be on the 7th

Town Clerk

- Nothing to Report

Town Attorney

- Nothing to Report

Boards and Committees

- Nothing to Report

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

UNFINISHED BUSINESS

- Reconfiguration of Dais:** The shutters have been installed and the ceiling tiles are completed. The new dais should be delivered and installed by Monday, at which time they can come out and template for the granite. The new chairs have been delivered.
- 2020-2021 Budget:** Town clerk reported that the budget has been updated from the last meeting to include the current insurance rates. The transfer from the general fund to the capital fund was reduced by approximately \$2,400.00 due to the insurance rates. The transfer is \$43,107.00, which will go into the capital fund roads and streets reserve. Vice Mayor Dorgan would like to finalize the draft budget tonight before the first public hearing scheduled for tomorrow. The draft budget includes a 3% wage increase for the employees. A motion by Vice Mayor Dorgan to increase the wages by 3%, seconded by Commissioner Kornijtschuk, motion passed will all ayes. Vice Mayor Dorgan also requested using the draft budget for the first budget hearing. The consensus was to use the draft budget presented.
- RFP: Solid Waste Services:** Attorney Daigneault reported that the final form of the RFP is presented, with the changes that were requested at the last meeting. A motion by Commissioner Kornijtschuk and seconded by Commissioner Will to approve the RFP as submitted. Motion passed with all ayes.

NEW BUSINESS

- Forward Pinellas Appointment: Nomination; Joanne "Cookie" Kennedy:** Town Clerk reported that each Big C municipality need to take formal action on nominating an elected official to Forward Pinellas. Cookie Kennedy would like to be re-appointed for another two year term. A motion by Commissioner Steiermann and seconded by Commissioner Kornijtschuk to nominate "Cookie" Kennedy for another two year term. Motion passed with all ayes. Town clerk will forward this information on to the president of the Big C.

- B. Discussion: Code Revision Chapter 18 Solid Waste:** Attorney Daigneault referred to his memo outlining the changes made to the ordinance. He noted that changes can be made during the first reading and before the 2nd reading and adoption. Questions were asked from commissioners regarding vacant properties, the hours of putting out trash cans, franchise fees, billing, and monthly reports. The attorney commented and will note changes. The first reading of the ordinance will be on September 16th.

Other Business

With no further business, a motion was made by Commissioner Kornijtschuk and seconded by Commissioner Will to adjourn. Regular meeting was adjourned at 7:15 p.m.

Adopted:, 2020

Missy Clarke, CMC, Town Clerk



TOWN OF REDINGTON BEACH, FLORIDA
BOARD BUDGET MEETING MINUTES
VIRTUAL MEETING
Thursday, September 3, 2020
6:00 p.m.

Having been duly advertised as required by law, the **Public Budget Meeting** of the Board of Commissioners of the Town of Redington Beach, Florida, was held VIRTUALLY on **Thursday, September 3, 2020, at 6:00 p.m.**, in Redington Beach town Hall at 105 164th Avenue, Redington Beach Florida.

Mayor Simons called the **Budget Meeting** to order and led the **Pledge of Allegiance**.

Roll Call

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

Agenda: Motion made by Vice Mayor Dorgan and seconded by Commissioner Will to approve the agenda. Agenda approved with all ayes.

Public Forum: None

NEW BUSINESS

- A. 2018-2019 Budget Update:** Vice Mayor Dorgan stated that the budget is balanced and it is status quo. Town clerk reported that the general fund has a budget of \$1,417,762.00, which is 3% higher than last year. The following had an increase: fire and EMS, 3.8%, Police, 2.65%, Group Insurance, 8.9%, general liability, property, work comp a 17% increase.

The Capital Fund has a budget of \$267,709, which includes \$20,000.00 for playground equipment that the park board had requested.

The Storm Water Fund has a budget of \$256,938.00, which includes a grant from the Tampa Bay Estuary of \$30,438.00, the town's portion is \$127,000.00. This is for the stormwater quality improvement project.

The millage rate is 1.8149 mills. The final hearing is scheduled for September 14th at 6:00 p.m.

Jim Hoffman, finance chairman did not have any comments or questions.

Commissioner Will had a question on the roads and streets reserves and repairing the streets.

No other public comment

OTHER BUSINESS

With no further business, motion made by Commissioner Kornijtschuk and seconded by Vice Mayor Dorgan to adjourn. Regular session was adjourned at 6:08 p.m.

Adopted:

Missy Clarke, CMC Town Clerk

Date: 09/11/2020
Time: 11:42 am
Page: 2

Town of Redington Beach

Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
Total Dept. Roads & Streets:							2,276.71
Dept: 572 Parks and Recreation							
101-572-572.430	Utilities						
	DUKE ENERGY	73928-48713	2020-08-31 August 2020	0	08/31/2020	08/31/2020	40.62
							40.62
101-572-572.510	Maintenance Eql						
	DOUDNA'S SEMINOLE MOW	12000	Mower repairs	0	08/28/2020	08/28/2020	504.90
							504.90
101-572-572.522	Gasoline & Oil						
	CHASE CARD SERVICES	171988	Diesel fuel - SPEEDWAY	0	09/03/2020	09/03/2020	30.52
	WEX BANK	105940	Unleaded	0	08/21/2020	08/21/2020	51.46
	WEX BANK	105916	Unleaded	0	08/21/2020	08/21/2020	0.09
	WEX BANK	118760	Unleaded	0	08/31/2020	08/31/2020	52.73
	WEX BANK	132134	Unleaded	0	09/10/2020	09/10/2020	56.10
							190.90
101-572-572.524	Fertilizer & Mulch						
	LARSON & SON LANDSCAPE	27587	Shell for Friendship Park	0	09/11/2020	09/11/2020	156.00
	LARSON & SON LANDSCAPE	27593	Shell for Friendship Park	0	09/11/2020	09/11/2020	156.00
							312.00
Total Dept. Parks and Recreation:							1,048.42
Total Fund General Fund:							13,110.76
Grand Total:							13,110.76

9/10/2020

9440 PAYROLL
9441 PAYROLL
9442 PAYROLL
9443 PAYROLL

2,259.26
1,376.84
1,298.99
958.62

5,893.71

MAYOR SIMONS

COMMISSIONER WILL

COMMISSIONER KORNIJTSCHUK

VICE MAYOR DORGAN
ATTEST:

COMMISSIONER STEIERMANN

Regular Meeting of September 16, 2020

Missy Clarke, CMC, Town Clerk

ORDINANCE NO. 2020 - 07

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA, REPEALING AND REPLACING CHAPTER 18 (SOLID WASTE) OF THE TOWN CODE 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 ensuring 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, Chapter 18 of the Code addresses solid waste collection; and

WHEREAS, Florida Statutes § 180.06(5) provides that a municipality is authorized to provide for the collection and disposal of garbage; and

WHEREAS, Florida Statutes § 403.706(1) provides that municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by or under a contract with a county; and

WHEREAS, Florida Statutes § 403.7063 requires that, in providing services or programs for solid waste management, local governments should use the most cost-effective means for the provision of services, and are encouraged to contract with private persons for any or all of such services or programs in order to assure that such services are provided on the most cost-effective basis; and

WHEREAS, Florida Statutes § 180.14 provides that a municipality's governing board may grant to a private company or corporation the privilege or franchise of exercising the municipality's

corporate powers for such terms of years not longer than 30 years, and upon such conditions and limitations as may be deemed expedient and for the best interest of said municipality for the accomplishment of the collection and disposal of garbage, and that the rates or charges to be made by the private company or corporation to the individual users of the garbage and disposal service operated under said franchise shall be fixed by the municipality's governing board; and

WHEREAS, Florida Statutes § 180.13(2) provides that a municipality's governing board may establish just and equitable rates or charges to be paid to the municipality for the use of the utility by each person, firm or corporation whose premises are served thereby; and provided further, that if the charges so fixed are not paid when due, such sums may be recovered by the said municipality by suit in a court having jurisdiction of said cause or by discontinuance of service of such utility until delinquent charges for services thereof are paid, including charge covering any reasonable expense for reconnecting such service after such delinquencies are paid, or any other lawful method of enforcement of the payment of such delinquencies; and

WHEREAS, Florida Statutes § 166.201 provides that a municipality may raise by user charges or fees authorized by ordinance, amounts of money that are necessary for the conduct of municipal government and may enforce their receipt and collection in the manner prescribed by ordinance not inconsistent with law; and

WHEREAS, Florida Statutes § 197.3632 allows local governments authorized to impose non-ad valorem assessments to use the uniform method of collecting such assessments in that section; and

WHEREAS, the Commission finds and determines that the collection and disposal of solid waste constitutes a benefit to all residential and commercial property, equal to, or in excess of, the cost of providing the Town's solid waste collection services; and

WHEREAS, the Florida Attorney General has opined in AGO 90-39 that a solid waste assessment imposed by a local government upon a determination that the collection and disposal of solid waste constitutes a benefit to all properties equal to or in excess of the cost of providing the services is a non-ad valorem assessment which may be collected pursuant to Florida Statutes § 197.3632; but

WHEREAS, Florida Statutes § 180.135 prohibits a municipality from imposing a lien against rental property where tenants contracted directly for utility services; and

WHEREAS, Florida Statutes § 173.01 provides that the lien of any and all taxes, except those ad valorem taxes collectible by the county tax collector, tax certificates, and special assessments imposed by any incorporated city or town in the state upon real estate may be foreclosed by such city or town by suit in chancery; but

WHEREAS, the Florida Attorney General has opined in AGO 94-57 that while a municipality may impose a lien for unpaid utility services against a property served, it must file its lien by filing with the clerk of the circuit court in order to be effective against creditors or subsequent purchasers; and

WHEREAS, the Town Attorney has submitted his assessment of Chapter 18 of the Code, and has recommended that the Commission make the revisions to that Chapter 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. Chapter 18 (Solid Waste) of the Redington Beach Town Code, inclusive of Code § 18-1 through and including § 18-64 is hereby repealed in its entirety.

Section 2. A new Chapter 18 (Solid Waste) of the Redington Beach Town Code, inclusive of Code § 18-1 through and including § 18-117 is hereby created as follows:

Chapter 18 - SOLID WASTE

ARTICLE I. - IN GENERAL

Sec. 18-1. - Legislative intent.

It is the purpose of this chapter to ensure that areas within the town are adequately provided with high-quality solid waste collection and disposal service. Because of the overriding public health, safety and welfare considerations associated with the provision of this service, it is necessary that the town retain regulatory authority over solid waste collection and disposal. The provisions of this chapter will also ensure that this service is efficient and responsive to public complaints and that the public convenience, aesthetic and environmental considerations, and the public investment in right-of-way property are protected.

Sec. 18-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agent or registered agent means a person registered with the town's code compliance department and designated by the property owner to administer and manage a property.

Apartment building means a building with or without resident supervision occupied or intended to be occupied by more than two persons, or families, living separately with separate

cooking facilities in each unit. For purposes of this chapter, this particular definition shall include a condominium or cooperative building, but not a duplex.

Apartment unit means a room or group of rooms occupied or intended to be occupied as separate living quarters by one or more persons, or a family, containing independent cooking facilities. For purposes of this chapter, this definition shall include a condominium unit or cooperative unit, but not a duplex.

Biohazardous waste means any solid waste that may present a threat of infection to humans. The term includes, without limitation, nonliquid human tissue and body parts; laboratory and veterinary waste containing human-disease-causing agents; used disposable sharps; human blood, human blood products, and any bodily fluids; and other materials representing a significant risk of infection to persons.

Biohazardous waste contractor means a private waste contractor who collects and disposes of biohazardous waste.

Building department director means the town's building official, appointed by the town to administer and enforce the Florida Building Code in the town. This definition also includes the building official's designee(s) working under his/her supervision.

Bulky waste means large item(s) of household refuse, including, without limitation, appliances, furniture, accumulations from major tree cutbacks (exceeding ten inches in diameter and four feet in length), large crates, and like articles.

Business tax shall have the same meaning ascribed in section 20-55.

Business tax receipt shall have the meaning ascribed to the word "receipt" in section 20-55.

Commercial establishment means an establishment dealing in an exchange of goods or services for money or barter. For purposes of this chapter, the term shall include churches, synagogues and schools.

Commercial refuse means all solid waste produced by commercial establishments.

Condominium unit means the same as "apartment unit."

Construction and demolition debris means discarded material generally considered not to be water-soluble or hazardous, including, without limitation, steel, concrete, glass, brick, asphalt roofing material, or lumber from a construction or demolition project. Commingling construction and demolition debris with any amount of other types of solid waste will cause it to be classified as other than construction and demolition debris.

Cooperative unit means the same as "apartment unit."

Dumpster means a container used in the waste industry, and approved for use in the town, with a tight-fitting top and a minimum capacity of one-half cubic yard or between 100 and 133.3 gallons. For purposes of this chapter, compact containers shall also be considered dumpsters.

Duplex means a detached building, divided horizontally or vertically, and designed as two separate units to be occupied by one or more persons, or families, each living separately, with separate kitchens in each housekeeping unit.

Dwelling means a building or portion thereof designed or used for residential occupancy.

Dwelling unit means a room or group of rooms occupied or intended to be occupied as separate living quarters by one or more persons, or a family.

Franchise waste contractor means a private waste contractor, approved pursuant to section 18-63 et seq., who enters into a franchise agreement with the town for the collection and disposal of solid waste in the town, and who pays a percentage of its gross earnings to the town pursuant to this chapter.

Front yard means an open area extending the full width of the lot between the main building and the front lot line.

Garbage means every refuse accumulation of animal, fruit, vegetable or organic matter that attends the preparation, use, cooking and dealing in or storage of meats, fish, fowl, fruit or vegetables, and decay, putrefaction and the generation of noxious or offensive gases or odors, or which, during or after decay, may serve as breeding or feeding material for flies or other germ-carrying insects.

Garbage can or container means a container which has been approved for use in the town, made of galvanized metal, durable plastic or other suitable material of a capacity not less than ten gallons but not to exceed 30 gallons for collection of solid waste awaiting pickup and disposal. Such can or container shall have two handles upon the sides thereof, or a bail, by which it may be lifted, and shall have a tightening solid top.

Garbage facility includes garbage can or container, dumpster and trash container.

Garbage storage facility means a structure enclosed on the bottom and all sides (except the top), which may be open or closed, constructed of solid material, and having sufficient capacity to hold all garbage facilities required for a particular establishment including, without limitation, an apartment building or other multifamily residence, duplex, hotel, and/or a commercial establishment.

Garden means a piece of ground used for the growing of fruits, flowers, or vegetables; a well-cultivated region (e.g. a lawn).

Garden trash means all accumulation of lawn, grass or shrubbery cuttings or clippings and leaf rakings, free of dirt, rock, large branches, and bulky or noncombustible materials, which can be containerized.

Gardener means a person whose business or occupation is the making or tending of gardens.

Grapple service means the use of a claw-like device such as, but not limited to, bobcats, self-loaders, loaders, and backhoes, to pick up construction and demolition debris; large quantities of trash (e.g. rubbish); and bulky waste; but not garbage or commercial refuse, and place it into a truck for disposal.

Grapple service contractor means a private waste contractor who performs grapple service.

Hazardous waste means any solid waste, which, because of its quality, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed.

Hazardous waste contractor means a private waste contractor who collects and disposes of hazardous waste.

Hotel means a building with ten or more dwelling units in which the majority of the dwelling units do not contain kitchens and which is licensed as a hotel.

Industrial waste means any solid waste generated by construction, land clearing, excavating of structures, roads, streets, sidewalks or parkways, and including, without limitation, waste collected for recycling, and oil, grease and petroleum.

Kitchen means a facility for preparing food containing, at a minimum, a sink with running water, a stove, and a refrigerator.

Landscape firm means a business entity engaged in planning to change or changing the natural scenery of a place for a desired purpose or effect. This definition includes state licensed and unlicensed landscape architects, landscape contractors, and landscape maintenance businesses.

Licensee means any person, which includes, without limitation, a corporation, partnership, sole partnership, limited liability corporation, or other business entity engaged in the business of removing, transporting or disposing of solid waste or recyclable materials in the town, and which is duly licensed by the town as provided for by this chapter.

Manager means the same as “operator.”

Multifamily residence means a building occupied or intended to be occupied by two or more families living separately, with separate kitchens in each unit.

Occupant means any person using or having actual possession of any structure, building, lot, or premises, or part thereof.

Offense means a notice of violation that has not been appealed timely or a finding of a violation by a special master following the appeal of a violation.

Operator or manager means any person who has control or use of or is in charge of, or has responsibility for, the care of any structure, building, lot, or premises, or part thereof.

Owner means any person who individually, or jointly or severally with others, holds the legal or beneficial title to any structure, building, lot, or premises (or part thereof), as well as to any facilities or equipment subject to the provisions of this chapter. For purposes of this chapter, the term shall also include an owner’s duly authorized agent, a purchaser, devisee, fiduciary, property holder, or any other person having a vested or contingent interest; in the afore-stated, or, in the case of a lease, the legal holder of the lease, or his legal representative. It is further intended that for purposes of this chapter the term shall also be construed as applicable to the person responsible for the construction, maintenance and operation of a structure, building, lot, premises, facilities, or equipment involved.

Parkway means that area between the edge of the street and the adjacent property line, excluding that area occupied by the sidewalk.

Portable container means a dumpster, rollaway, or similar container designed for mechanized collection.

Premises means real property and includes any buildings or structures thereon.

Private waste contractor means any person engaged in the business of collection and disposal of solid waste within the town limits that has been approved and permitted by the town to perform such service including, without limitation, issued a current business tax receipt by the town to conduct such activity (or perform such service).

Recyclable materials means those materials capable of being recycled and which would otherwise be processed or disposed of as solid waste. Any recyclable material mixed with solid waste shall be considered to be solid waste.

Recycling means any process by which recyclable materials are collected, separated, or processed to be reused or returned to use in the form of raw materials or products.

Recycling container means a container approved by the town for collection of recyclable material by a recycling contractor.

Recycling contractor means a private contractor licensed by the town and state who collects recyclable materials and transports same to a state- or county-licensed recycling facility for processing. Recycling contractors must provide their customers with a separate recycling container for recyclable materials.

Regulated stash area means a disposal site which is either operated by the town or, if approved by the town commission, by a private waste contractor, where trash (e.g. rubbish) may be deposited.

Residential refuse means all garbage and trash (e.g. rubbish) originating in a dwelling or single-family residence.

Restaurant means a commercial establishment maintained and operated as a place where food is regularly prepared, served or sold for immediate consumption on or about the premises, or a commercial establishment where prepared food is called for, delivered to, or taken out by customers.

Rolloff means a container with a minimum capacity of ten cubic yards designed to be transported by a motorized vehicle.

Rolloff compaction container means a rolloff designed to hold or receive compacted garbage or trash.

Rolloff container means a metal container, compacted or open, approved by the town, that is designed and used by rolloff contractors for the collection and disposal of construction and demolition debris; large quantities of trash; and/or bulky waste; but not garbage or commercial refuse.

Rolloff contractor means a private waste contractor licensed by the town who uses rolloff containers for the collection and disposal of construction and demolition debris and/or large quantities of trash and/or bulky waste, but not garbage or commercial refuse.

Roominghouse means a building which is issued a business tax receipt by the town as a roominghouse or boardinghouse, containing less than ten dwelling units, and in which the majority of the dwelling units do not contain kitchens.

Rubbish or trash means refuse accumulations of paper, excelsior, rags, wooden or paper boxes or containers, sweepings and all other accumulations of a nature other than garbage, which are usual to housekeeping and to the operation of stores, offices, and other places of business; and any

bottles, cans or other containers, which, due to their ability to retain water, may serve as breeding places for mosquitoes or other water-breeding insects. Rubbish shall not include industrial waste.

Side yard means an open area between a building and the adjacent side of the lot, and extending from the front yard to the rear yard.

Single-family residence means a detached building designed for or occupied exclusively by one person or one family.

Single-family waste contractor means a private waste contractor who contracts with the town to provide solid waste collection and disposal service to single-family residences.

Single-stream recycling means a process by which certain recyclable materials are mixed together instead of being sorted into separate recycling containers in the collection process.

Solid waste includes bulky waste, commercial refuse, garden trash, tree and shrubbery, garbage, refuse, rubbish, special handling trash, trash, hazardous waste, biohazardous waste, industrial waste, residential refuse, white goods, or other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from domestic, industrial, commercial, mining, or agricultural operations.

Special handling garden trash means accumulation of tree branches, tree limbs, parts of trees, bushes and shrubbery over ten inches in diameter; which does not exceed four feet in length, and is too large to be containerized or bundled and tied.

Special handling wastes means wastes that can require special handling and management, including, without limitation, white goods, furniture, mattresses, and other bulky items of household trash; oils; whole tires; lead-acid batteries; and hazardous and biohazardous wastes; but excluding special handling garden trash.

Structure means anything constructed or erected so that its use requires permanent location on the ground.

Substantial rehabilitation means rehabilitation the cost of which exceeds 50 percent of the replacement value of the structure, as determined by the county property appraiser's office.

Townhouse means a single-family dwelling unit attached to a grouping of same on one building site, with each having separate ingress and egress facilities.

Trash means the same as "rubbish."

Trash container means any container used for temporary storage of trash (e.g. rubbish) approved by the town, but excluding garbage cans.

Tree and shrubbery trash means an accumulation of tree branches, tree limbs, parts of trees, bushes and shrubbery up to three inches in diameter but which does not exceed four feet in length, and which is too large to be containerized or requiring to be bundled and tied.

White goods mean discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances.

Secs. 18-3—18-19. - Reserved.

ARTICLE II. - ADMINISTRATION

Sec. 18-20. - Enforcement of chapter; notice of violation.

- (a) The town's code enforcement officer is hereby authorized and directed to enforce all the provisions of this chapter regulating and governing the accumulation, collection, and disposal of solid waste.
- (b) Upon presentation of proper credentials, a code enforcement officer appointed by the town may enter any building, structure, lot or other premises for the purpose of inspection, or to prevent violations of this chapter. Where such inspection would require an inspection warrant provided for by law, such warrant must be secured prior to such entry.
- (c) The existence of solid waste shall be prima facie evidence that the same was created or placed there by the occupant of the dwelling or commercial establishment; or the owner; or the operator or manager. The existence of the same garbage inside the same garbage containers for four consecutive days upon a premises serviced by a private waste contractor shall be prima facie evidence of a violation of this chapter by the contractor. For purposes of this section premises serviced by a private waste contractor shall not include accounts that have been discontinued by the contractor when notice of discontinued service has been mailed to the owner, occupant, or operator or manager, as well as to the town, prior to the accumulation of the garbage.
- (d) Whenever a designated town code enforcement officer observes a violation (or violations) of this chapter regarding solid waste or an accumulation of solid waste that creates a health hazard, environmental hazard, or nuisance, the code enforcement officer shall order the violation(s) to be corrected within a specified period of time by serving a written notice of violation(s) upon the person causing, or responsible for, such violation and/or health hazard, environmental hazard, or nuisance. Such person shall immediately cease or abate the violation(s).
- (e) A notice of violation shall be served personally or by certified mail upon the property owner or upon the person(s) in lawful possession of the premises, and/or upon the waste contractor servicing the premises. If the person addressed with such notice cannot be found by the town after making reasonable good faith effort, such notice shall be sent by certified mail to the last known address of such person, and a copy of the notice shall be posted in a conspicuous place on the premises. Such notice shall be deemed the equivalent of personal service.
- (f) The notice shall specify any fine(s) that may be due in connection with the violation(s), the time specified by the code enforcement officer to correct the violations, and the procedure for timely payment or appeal of the fine(s).
- (g) If the code enforcement officer determines that the conditions constitute an immediate threat to the health, safety or welfare of the public, he/she may order the immediate correction of the violation(s) at the expense of the occupant, owner, or operator or manager and the town shall have the right to recover such expenses as provided in section 18-21.
- (h) The enforcement of the recycling requirements for the town-wide recycling program for multifamily residences and commercial establishments provided for in article V of this chapter, and the penalties for violations of article V, are provided in sections 18-115 through 18-117 of this chapter.

Sec. 18-21. - Removal of waste by town; penalties for violations.

If the person served with a notice of violation pursuant to section 18-20 does not correct the violation within the specified time, the code enforcement officer may do the following:

- (1) For violations involving failure to remove solid waste, the code enforcement officer may cause the waste to be removed from the premises and charge the actual costs to the owner, occupant, or operator or manager, on a force account basis. Any fine due pursuant to section 18-23 or 18-24 shall also be charged to the owner, occupant, or operator or manager. Failure to pay such costs and fines or to appeal pursuant to section 18-22 within 15 days of receipt of the notice shall result in the imposition of a lien upon the property, in the amount of such costs and fines. Such liens shall be treated as special assessment liens against the subject real property and, until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and to the extent allowed by law, shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved. Such liens shall be enforced by any of the methods provided in Florida Statutes chapter 86; or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions of Florida Statutes chapter 173; or the collection and enforcement or payment thereof may be accomplished by any other method authorized by law. The owner, occupant, or operator or manager shall pay all costs of collection, including reasonable attorneys' fees, incurred in the collection of fines, and other charges, penalties, and liens imposed by virtue of this chapter.
- (2) For violations of this chapter for which no fine is specified in sections 18-23 and 18-24, the town may prosecute the violators pursuant to section 1-14. Fines for such offenses shall be as follows:
 - a. First offense: \$350.00.
 - b. Second offense: \$500.00.
 - c. Third offense: \$1,000.00.
 - d. Fourth or subsequent offense: \$5,000.00.
- (3) For violations which present a serious threat to the health, safety or welfare of the public and/or violations that constitute a fourth or subsequent offense by the same violator, the town may seek injunctive relief and/or, in the case of commercial establishments, revoke the business tax receipt and/or certificate of use of the establishment and/or premises, in addition to all other penalties set forth in this code.

Sec. 18-22. - Appeal to special master.

- (a) Any person receiving a notice of violation and/or a notice of fine may request, within 15 days of receipt of the notice, an administrative hearing before a special master, appointed as provided in section 2-43 of this code, to appeal the decision of the town code enforcement

officer resulting in the issuance of the notice. Procedures and application fee for the scheduling and conduct of the hearing shall be as provided in article III of chapter 2 of this code. Failure to appeal within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, as noticed, and fines and penalties may be assessed accordingly.

- (b) Timely filing of a notice of appeal pursuant to this section shall toll the imposition of a lien pursuant to section 18-21 or 18-46, or enforcement procedures pursuant to section 18-20, until 30 days after the issuance of a written determination by the special master. Any amounts of money due the town pursuant to such determination must be received by the town within 30 days after the issuance of the determination, or a lien shall be imposed upon the property in question, and any other enforcement or collection procedures commenced, as provided by this chapter or under state law.

Sec. 18-23. - Fine schedule for violations issued and applied to owners, agents, tenants, occupants, operators or managers, or persons responsible for the violation.

- (a) Violation(s) of section 18-20: A solid waste violation or accumulation of solid waste that creates a health hazard, environmental hazard or nuisance:

- a. First offense\$1,000.00
- b. Second or subsequent offense2,000.00

- (b) Violations of sections 18-30, 18-31 and 18-32:

Fine for
failure to
correct in
specified time
after notice

- (1) Garbage facilities on public property without a permit:
 - a. First offense, per garbage facility\$200.00
 - b. Second or subsequent offense, per garbage facility1,000.00
- (2) Dumpsters located and kept on front yard or side yard facing street (corner lots)\$200.00
- (3) Dumpsters not kept in approved garbage storage facility200.00
- (4) Owners; occupants; or operator or managers without garbage collection service where required by this chapter (private or town)400.00
- (5) Individual properties with different ownerships sharing the same service, with or without consent, per owner400.00

- (c) Violations of sections 18-33 and 18-34:

- (1) Open lid on garbage facility(ies)\$100.00

- (2) Insufficient garbage facility(ies) capacity200.00
- (3) Insufficient frequency of garbage collection200.00
- (4) Overloaded garbage facility(ies)200.00
- (5) Lack of/or deteriorated garbage facility(ies)200.00
- (6) Garbage or miscellaneous trash around garbage facility(ies)200.00
- (d) Violations of sections 18-34—18-39:
 - (1) Illegal disposal of garbage, trash, industrial and bulky waste:
 - a. First offense\$500.00
 - b. Second or subsequent offense1,000.00
 - (2) Illegal disposal of garden trash, tree and shrubbery trash and/or special handling trash:
 - a. First offense500.00
 - b. Second or subsequent offense1,000.00
 - (3) Illegal disposal of biohazardous and/or hazardous waste:
 - a. First offense2,000.00
 - b. Second or subsequent offense4,000.00

Sec. 18-24. - Fine schedule for violations of sections 18-20; 18-32; 18-33; 18-34; 18-41; 18-54 et seq.; 18-63 et seq.; and 18-70 by private waste contractors.

- (a) Violations of section 18-20: The existence of the same garbage inside the same garbage container for four consecutive days upon a premises serviced by a private waste contractor:

Fine for
failure to
correct in
specified time
after notice

- a. First offense\$100.00
- b. Second or subsequent offense250.00
- (b) Violations of section 18-32:
 - (1) Dumpsters and rolloffs placed on public property without town permit, per day\$100.00
- (c) Violations of sections 18-33 and 18-34:
 - (1) Deteriorated, rusted, decayed or unserviceable dumpsters150.00
 - (2) Outdoor garbage dumpster(s) without lid100.00

- (3) Failure to remove all garbage and trash placed in garbage can or container and generated by the account being serviced250.00
- (d) Violations of sections 18-54 through 18-59; and 18-63 through 18-70:
- (1) Dumpsters currently in service, overflowing and generating a health hazard, per offense500.00
- (2) Dumpsters not sanitized or disinfected after collection100.00
- (3) Dumpsters not removed after account is closed or permit or license is revoked100.00
- (4) Dumpsters without contractor's identification50.00
- (5) Dumpsters or other garbage facility(ies) installed without permits100.00
- (6) Garbage facilities placed by contractor without permit:
- a. First offense50.00
- b. Second or subsequent offense by same contractor during same town fiscal year200.00
- (7) Contractors not reporting timely a stopped service in writing to the town (temporary or permanent)50.00
- (8) Contractor's truck breaking sidewalks, curb and gutters; contractor's truck driving over sidewalks, curbs, and blocking pedestrian traffic; or breaking water meter, electric meter or other types or lids on town property; cost of replacement by town plus:
- a. First offense100.00
- b. Second or subsequent offense200.00
- (9) Contractors leaving trucks, not servicing accounts, parked within town limits, per day100.00
- (10) Dumpsters not in service and generating a health hazard and dumped on town limits prior to removal, per offense500.00
- (11) Dumpsters not returned by contractor to approved location, per offense50.00
- (12) Dumpsters providing shared service to properties with different ownership, per offense200.00
- (13) Failure to maintain an office in the Tampa Bay region with adequate staff and service or failure to resolve complaints within required time period:
- a. First offenseWarning
- b. Second or subsequent offense100.00
- (14) Failure to remove all garbage, rubbish and trash in garbage can or container and placed within immediate area of owner, occupant, or operator or manager's property line where container is located and, at a minimum, within a radius of ten feet around the container:
- a. First offenseWarning

- b. Second or subsequent offense by same contractor during same town fiscal year50.00
- (15) Contractor's trucks or garbage facilities leaking fluids, per offense50.00
- (16) Violation of collection hours, per offense100.00
- (17) Failure of permanent contractor employees to carry approved identification cards while servicing account(s), per offense50.00
- (e) Payment of town's costs. In addition to the above-stated fines, violators must also pay any costs incurred by the town in the event the town corrects any violation(s) pursuant to sections 18-20 and 18-21.

Secs. 18-25—18-29. - Reserved.

ARTICLE III. – COLLECTION AND DISPOSAL, BILLING AND COLLECTION

DIVISION 1. - COLLECTION AND DISPOSAL

Sec. 18-30. - Removal, storage and disposal of unauthorized garbage facilities found on public property.

- (a) Garbage facilities found on public property without a town permit for that location shall be removed immediately by the town. If the owner, occupant, or operator or manager of the premises is identifiable, the code enforcement officer shall promptly thereafter serve a notice of violation, and notice of removal and storage location of the facility, upon the violator by certified mail.
- (b) Upon removal of a garbage facility pursuant to subsection (a), the town shall retain the facility for a period of 30 days thereafter, during which time the owner, occupant, or operator or manager of the premises may claim the facility upon payment of the town's cost of removal and storage, and payment of the imposed fine.
- (c) Garbage facilities not retrieved within 30 days, pursuant to subsection (b) may be disposed of as provided by law.

Sec. 18-31. - Garbage collection services.

- (a) *Mandatory.* Each dwelling or commercial establishment in the town is required to have a solid waste collection service, and garbage facilities approved by the town.
- (b) *Collection by single-family waste contractors.* All solid waste generated by single-family residences and multifamily residences of eight units or less shall be collected, conveyed and disposed of by a single-family waste contractor(s).
- (c) *Collection by franchise waste contractors.* All solid waste generated by commercial establishments, industrial uses, hotels, rooming houses, multifamily residences of nine

dwelling units or more shall be collected, conveyed and disposed of by franchise waste contractors.

- (d) *Single provider eligible.* A single company or corporation is eligible to serve the town as both a franchise waste contractor and a single-family waste contractor.

Sec. 18-32. - Location of garbage facilities and garbage storage facilities.

- (a) All garbage facilities shall be kept together in or within a walled or enclosed area on private property or (if not on private property) at a location approved by the town. Such area shall not extend into any front yard. On corner lots it shall not extend into any side yard facing a street. Such area shall be accessible to both single-family waste contractors and franchise waste contractors. The area shall be located so that garbage collectors do not have to use stairs or ascend or descend split elevations in the collection process. The location of a garbage facility in an area requiring the garbage collector to use stairs or ascend or descend split elevations in order to accomplish the collection process is deemed to be a health hazard and subject to penalty pursuant to sections 18-21, 18-23 and 18-24.
- (b) A town building permit shall be required for construction of a garbage storage facility, and such facility shall be constructed so as to be compatible in appearance with the building and/or premises it services.
- (c) It shall be the responsibility of the owner, occupant, or operator, or manager of a property, and the franchise waste contractor servicing that property, to ensure the return of garbage facilities to the approved location after collection.
- (d) At no time shall any garbage facility be kept upon any public property, including, without limitation, on any street, alley, sidewalk, other right-of-way, or public land provided, however, that containers provided for pickup of recyclable materials may be placed in front of property between the hours of 12:01 a.m. and 11:59 a.m. on designated pick-up days.
- (e) All new commercial buildings and all new multifamily residences exceeding eight units shall provide a garbage storage facility approved by the town's planning department, public works department, and building department, as to location, size, and such other criteria deemed necessary by applicable law(s).
- (f) All buildings that are undergoing substantial rehabilitation, construction of an addition or additions, or are under new construction or undergoing a change of use must provide a garbage storage facility approved by the town's planning department, public works department, and building department as to location, size and other criteria as required by law or town ordinance.
- (g) All new restaurants and all restaurants undergoing substantial rehabilitation, or construction of an addition or additions, shall have air-conditioned garbage storage facilities approved by the town's planning department, public works department, and building department, as to location, size and such other criteria as required by applicable laws.

Sec. 18-33. - Condition and inspection of garbage facilities.

All garbage facilities shall be maintained in good condition and repair. All such facilities shall be provided with a cover sufficiently tight to deter flies or other insects from having access to the contents of the receptacles. Containers in which wet garbage or trash matter are placed shall be leakproof.

Sec. 18-34. - Minimum capacity requirements for various types of uses and occupancies.

- (a) It shall be the responsibility of the owner, occupant, manager or operator of the premises to provide sufficient temporary garbage and trash storage through the use of approved garbage facilities.
- (b) The garbage cans or containers per property shall not be limited provided each individual property has its approved number of garbage cans or containers, and provided that all garbage is picked up a minimum of twice a week. The mayor or his/her designee has the authority, subject to the commission's alternative direction and the terms of any franchise agreement, to approve the capacity of cans or containers, and the frequency of collection services for an individual property pursuant to the guidelines as set forth below.
- (c) The town divides and classifies solid waste and its handling requirements as follows:

- (1) Residential refuse is all the garbage, trash (e.g. rubbish), or other solid waste generated in any dwelling used for a single-family residence, including, without limitation, a single-family home, duplex, townhouse, apartment, or other multifamily residence. The mayor, subject to the commission's alternative direction and the terms of any franchise agreement, shall determine the necessary capacity of cans or containers and frequency of collection service based on the standard of two 30-gallon cans or containers, per family, in a single-family residence, such as a single-family home, duplex or townhouse; and for apartments, one 30-gallon can or container, per apartment.

If an owner, occupant, or operator or manager uses containers the volume of which is measured in cubic feet or yards, the foregoing requirements shall be computed by assuming that one gallon equals 0.133 cubic foot.

- (2) Commercial refuse is all solid waste generated by commercial establishments including, without limitation, stores, office buildings, restaurants, bars, hotels, motels, markets, schools, churches, and hospitals and other institutional buildings. Minimum requirements for capacity of cans or containers and frequency of collection are as follows:

- a. Restaurants, stores, office buildings, churches, schools, cafeterias, bars, markets, hotels and motels will have container minimum capacities and frequency of service as approved by the mayor, subject to the commission's alternative direction and the terms of any franchise agreement.
- b. The required minimum capacity may be supplied by providing garbage facilities of sufficient size and number as are required to hold the minimum capacity (as defined below), and by providing for all such garbage facilities to be emptied at least twice a week; or by providing cans or containers of lesser sizes or number, provided that the same are emptied on a regularly scheduled basis, but more frequently than twice a week. The product of the capacity of the containers provided multiplied by the

number of times per week the containers are emptied shall equal to the minimum capacity requirements in this subsection b. Minimum capacity requirements may also be met through the use of a garbage or trash compactor, in which event the minimum required capacity of the actual cans or containers provided shall be reduced by the same ratio as the compactor is capable of reducing the bulk of garbage or trash, (as certified by its manufacturer).

c. Where the minimum capacity requirements of this section are met through the use of collections on a basis more frequent than twice a week, or through the use of a garbage or trash compactor, the owner, occupant, or operator or manager shall, if requested by the town, provide proof of the frequency of trash and garbage collections or, in the case of a compactor, the manufacturer's brochures or certification indicating its capacity. If such proof is not provided when requested it shall be presumed that the capacity supplied is that of the containers provided, and that the containers are emptied on a basis no more frequent than once a week.

d. Installation of compactors is subject to approval of the building department director, and a duly issued permit by the building department.

(3) Industrial waste is all solid waste generated by construction, land claims, excavation of structures, roads, streets, sidewalks or parkways, including waste collected for recycling; such as (but not limited to) oils, greases and papers. Any such waste that, due to volume or nature, does not lend itself to collection and incineration, shall be removed through special handling and shall be the responsibility of the person(s) who generates the waste.

(4) Bulky waste. All large items of household refuse, such as appliances, furniture, accumulations from major tree cutbacks, large crates and like articles shall be disposed of by the person(s) who generates the bulky waste.

Sec. 18-35. - Removal of garbage, trash and other items.

(a) Any owner, or occupant of a single-family residence, duplex, or townhouse, shall be required to remove from such property, and the area adjacent to the property between the property line and the paved portion of the public right-of-way, any and all garbage, trash or other solid waste within 24 hours of the time such waste is placed in that area.

(b) It is prohibited for an owner, occupant, or operator or manager of a commercial establishment to transport any type of garbage, trash or other solid waste off the premises on which it was generated. Violators of this section shall be subject to fine and penalty as provided under sections 18-21, 18-23 and 18-24.

(c) This section shall not be deemed to apply to any garbage, trash or other solid waste properly stored for collection in accordance with the provisions of this chapter, or the temporary storage, pending collection, of discarded furniture, appliances, or bedding for a period of less than one week.

Sec. 18-36. - Illegal disposal of solid waste.

Except as provided elsewhere in this chapter, it shall be unlawful to deposit (i.e. dump) garbage, trash or any other solid waste upon any vacant, occupied or unoccupied premises; or upon any street, alley, parkway or park; or in any canal, waterway, bay, ocean, pool or lake within the town.

Sec. 18-37. - Disposal of biohazardous or hazardous waste.

Notwithstanding any other provisions of this chapter, biohazardous and/or hazardous waste shall not be placed in garbage cans, or containers, trash containers or dumpsters for routine collection. Substances in this class shall be segregated and disposed of as provided by state and federal law including, without limitation, the procedures set forth in Florida Administrative Code chapter 17-7, which prohibits the deposit of this type of waste in a sanitary landfill.

Sec. 18-38. - Removal of industrial wastes.

Removal of industrial wastes is the responsibility of the owner, occupant, or operator or manager of the premises; or of the construction contractor performing such work on the premises; or such other person or persons creating or causing the accumulation of such materials on the premises, as the case may be. Such removal must be done by a private waste contractor.

Sec. 18-39. - Disposal of garden trash, tree and shrubbery trash, and special handling garden trash.

- (a) Options. Property owners or occupants serviced by the town shall have the following options for disposal of their garden trash and tree and shrubbery trash. The owner or occupant may:
 - (1) Either containerize the garden trash or bundle the tree and shrubbery trash for town collection; or
 - (2) Transport such material(s) to a regulated stash area and deposit it there, at the owner or occupant's expense.
- (b) Containerized or bundled material. Material that is containerized or bundled shall be placed at curbside no sooner than the evening prior to the scheduled collection day.
- (c) Contractor pickup procedures for garden trash, and tree and shrubbery trash.
 - (1) Garden trash shall be placed into garbage cans or containers, plastic bags, or other weatherproof containers strong enough to support the weight of the material, but not to exceed 50 pounds, and are to be placed curbside for pickup on a regular collection day.
 - (2) Tree and shrubbery trash shall be tied in bundles with material strong enough to support the weight of the bundle, but such bundle shall not exceed 50 pounds, and shall be left at the curb for pickup on a regular collection day.

- (d) Contractor pickup procedures for special handling garden trash. Special handling garden trash will be collected only from town-serviced accounts, and scheduled on a date mutually agreeable to the town and the account.
- (e) Fees. All pickup of garden, tree or shrubbery trash is subject to a fee, which fee shall be determined by the commission.

Sec. 18-40. - Use of regulated stash areas.

The town may establish a regulated stash area(s), as approved by the town commission, and which may be operated by the town or by a private waste contractor, if approved by the town commission. Upon payment of a fee, said fee subject to approval by the town commission, members of the public may deposit such trash or other solid waste at the regulated stash area.

Sec. 18-41. - Exemption for recycling pursuant to interlocal agreement.

Notwithstanding any other provision of this chapter, collection and disposal of recyclable materials pursuant to an interlocal agreement which the town has entered into, or may enter into with Pinellas County, for inclusion in any county curbside recycling program, shall be exempt from the requirements of this chapter and shall be governed by the terms of the most current version of the interlocal agreement.

DIVISION 2. – BILLING AND COLLECTION

Sec. 18-42. - Fees for collection.

Except as otherwise provided in this chapter or in a current franchise agreement, all owners or occupants of residential properties in the town, shall pay the town the fees set forth in this division for the solid waste collection and disposal, including the availability of such service.

Sec. 18-43. - Liability for fees owed to town.

- (a) It shall ultimately be the responsibility and liability of the owner of the property and/or premises to pay the proper service fee and to furnish the necessary number of garbage facility for such property and/or premises, in accordance with the established need therefor, as determined by the commission. A commercial establishment in the same building with a residential unit or with another commercial establishment, even though under the same ownership, shall not be considered a part of such residential unit or other commercial establishment but shall be treated as a separate commercial establishment upon which a separate waste fee shall be due. The operator of the principal business on a premises shall be considered as the operator of any leased department conducted as a part of, or along with, the

principal business for the purpose of fixing responsibility of paying the necessary service fee, and furnishing necessary garbage facilities.

- (b) The service fee required and imposed by this division is the ultimate responsibility of the owner of the property and/or premises. Nothing contained in this chapter shall be construed or interpreted so as to impose such responsibility and liability for payment of the service fee, upon a residential tenant or occupant of any hotel or apartment building.

Sec. 18-44. - Occupation of premises or other obvious waste generation deemed evidence that garbage or trash is being produced.

The fact that any residential dwelling or commercial establishment is occupied, or is otherwise obviously generating waste, shall be prima facie evidence that garbage or trash is being produced and accumulated upon such premises and that, with regard to all premises serviced by the town, fees for the collection and disposal thereof are due. For purposes of this section, obvious generation of waste shall be determined by at least three separate observations of town code enforcement officers that a purportedly unoccupied structure (including the land upon which it is situated) is nevertheless accumulating garbage or trash of the type and volume as would allow a reasonable person to conclude that the garbage or trash is not being dumped on the property but is being generated by some current use thereof.

Sec. 18-45. - When fees payable.

The fees prescribed in this division are payable monthly, in advance, beginning on October 1 of each year. The credits provided in section 18-47 shall also be prorated on a monthly basis. Fees for new occupancies will be fixed on a prorated basis commencing on the date of issuance of a certificate of occupancy. No refunds will be made. All fees shall be payable promptly, upon billing by the town or its contractor.

Sec. 18-46. - Liens; penalty for delinquency in payment of fees; payment of collection costs and attorney fees.

All services charges, fines, and special collections resulting from violations of this chapter, which become due to the town and payable on and after the adoption of this chapter, shall constitute and are hereby imposed as liens against the particular real property involved, and, until fully paid and discharged, shall be imposed as special assessment liens against the subject real property, and shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against said real property. The above-referenced charges shall become delinquent if not fully paid within 15 days after the due date. The maximum rate of interest allowable by law shall accrue to such delinquent accounts. Unpaid and delinquent charges, together with all penalties imposed thereon, shall remain and constitute liens against the real property involved. Such liens shall be enforced by any of the methods provided in Ch. 86, Florida Statutes; or, in the alternative, foreclosure proceedings may

be instituted and prosecuted pursuant to Ch. 173, Florida Statutes; or the collection and enforcement of payment thereof may be accomplished by any other method authorized by law. In addition, to any other charges imposed by this chapter. The owner shall be responsible for payment of any and all costs, including attorney fees and costs, resulting from collection of said fees/charges.

Sec. 18-47. - Schedule of fees for collection and disposal of garbage and trash.

- (a) Fees for collection and disposal of garbage and trash other than those set forth herein shall be as established by the Board of Commissioners via resolution or franchise agreement.
- (b) The charges, rates, and other terms for collection and disposal for commercial establishments will be as prescribed in the contract entered into between the particular establishment and the private waste contractor.
- (c) The town shall have the authority to adjust base fees (upwards or downwards, as the case may be) where, in particular instances, the accumulation of solid waste exceeds or falls below that for which the base fee was established.

Secs. 18-48—18-50. - Reserved.

ARTICLE IV. - PRIVATE WASTE CONTRACTORS

DIVISION 1. - GENERALLY

Secs. 18-51—18-53. - Reserved.

DIVISION 2. - LICENSE AND PERMIT

Sec. 18-54. - Licenses, permits, indemnification, and insurance required for all contractors.

The requirements of this division are to:

- (1) Ensure and facilitate the collection of fees to provide uniformity and quality of service from the contractors;
- (2) Minimize wear and tear, traffic congestion, and noxious and noisome materials, odors and activities in and around town streets and other public rights-of-way and public property; and
- (3) Assure that the citizens of the town have safe, efficient, sanitary and qualified licensed contractors.

Sec. 18-55. - Business tax receipt required.

- (a) No person shall engage in the business of disposal and/or collection of any kind of solid waste, or recyclable material within the town without first having been approved by the town, and having secured a current business tax receipt for such activity. The business tax receipt will be issued once an applicant has met all requirements, as set forth in this division and in chapter 18, and has paid the applicable business tax receipt fee.
- (b) Business tax receipts for private waste contractors shall be classified as follows:
- (1) Franchise waste contractors;
 - (2) Rolloff and grapple service contractors;
 - (3) Recycling contractors;
 - (4) Hazardous waste contractors; and
 - (5) Biohazardous waste contractors.
- (c) Only franchise waste contractors shall not be required to obtain separate business tax receipts for servicing rollofts and portable containers; for collection of hazardous and biohazardous waste, and for recycling activities.
- (d) The town shall have the authority to create any additional business tax receipt classifications, as deemed necessary to protect the public health, safety, or welfare, subject to the approval of the town commission.
- (e) Any (and each) application for a business tax receipt for collection and disposal of any kind of solid waste shall require and be subject to the prior approval of the town, which approval, if given at all, shall be obtained prior to issuance of the particular business tax receipt.
- (f) Issuance of a business tax receipt shall require completion of an application form showing the name of the person to be licensed; (or in the case of a corporation or other business entity, the names of the principal partners, owners, officers and directors or the name of the person who will actually manage and operate the business), together with the business and home address of each person; the description of all equipment and vehicles to be used in such collection and disposal; and a description of the method of disposal, including the location of all garbage facilities. The applicant shall also provide evidence that any garbage facility described is licensed or approved by the town pursuant to this chapter. No applicant under this section shall substitute the permanent personnel named in its application, nor the equipment, vehicles, or methodology for disposal and collection, nor the location of garbage facilities described in its application, without first having reported such changes to the town, and obtained the mayor's prior written approval of the substitution/change. In the case of changes in the location of disposal facilities, such changes shall also be approved by the proper authorities of the county and municipality where such disposal facility is located.
- (g) Any business tax receipt granted to a private waste contractor pursuant to this section shall not be assigned, nor shall any receipt remain valid, if the controlling stock ownership or voting rights of a contractor (who is a corporate entity) is transferred or assigned, except with the prior express written approval of the town.
- (h) Assignment or transfer (including, without limitation, the transfer of controlling stock ownership or voting rights) of a franchise waste contractor's business tax receipt and/or franchise agreement must first be approved by resolution of the town commission.

- (i) The foregoing restrictions on stock transfer shall not apply to corporations whose common stock is traded over the New York Stock Exchange or the American Stock Exchange, or that are institutional lenders.
- (j) In the event of any assignment or transfer pursuant to this section, the assignee shall execute an agreement of acceptance, subject to the approval of the commission, evidencing that such assignee accepts the assignment subject to any or all of the provisions of this chapter and, if also a franchise waste contractor, of any applicable franchise agreement with the town; which acceptance shall also include an affirmative statement evidencing such assignee's intent to fulfill the obligations imposed under this chapter.
- (k) Notwithstanding the town's approval of an assignment or transfer of a franchise agreement, and the assignee's acceptance thereof, the original franchisee shall guarantee the performance of its assignee; and such assignment shall always provide the town with full recourse to the original franchisee.
- (l) Any contractor doing business, as specified in subsection (b) of this section, within the town limits, without first obtaining the required business tax receipt, will be subject to enforcement procedures and penalties, as set forth in article III of chapter 20 of this code. Failure to comply with the regulations set forth in this chapter may result in the suspension or revocation of the business tax receipt pursuant to article III of chapter 20.

Sec. 18-56. - Permit required.

The town shall require, and will issue, a permit for each garbage facility, recycling, hazardous and biohazardous waste, rolloff and portable container, for all solid waste accounts in the town serviced by a private waste contractor. The permit for solid waste collection and disposal shall be issued by the town after the contractor has complied with all requirements for obtaining a business tax receipt; any and all other requirements prescribed by this chapter; and has been cleared by the town's finance department. Rolloffs, portable containers and containers for recycling or hazardous and biohazardous wastes shall be included, except that all recycling containers situated in a single location on a property shall require only one permit.

Sec. 18-57. - Observance of federal, state, local regulations.

All private waste contractors shall keep fully informed of all federal, state and local laws, ordinances, codes, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority that in any manner affect the work, or that in any way affect the conduct of their work. Contractors shall at all times observe and comply with all such laws, ordinances, codes, rules, regulations, and orders and decrees. Each private waste contractor shall obtain all required licenses including, without limitation, business tax receipts) and permits to conduct business pursuant to this chapter.

Sec. 18-58. - Indemnification.

Each private waste contractor shall execute an indemnification agreement whereby the contractor covenants to indemnify, hold harmless and defend the town, its officers, agents and employees, against and assumes all liability for any and all claims, suits, actions, damages, liabilities, expenditures or causes of actions of any kind arising from any solid waste collection and/or disposal activities, and/or the use of any public streets for the purposes authorized in this chapter; or resulting or accruing from any negligence, act, omission or error of the contractor, its officers, agents or employees and/or arising from the failure of the contractor, its officers, agents or employees, to comply with each and every covenant of any applicable franchise agreement with the town, or with any other town or county ordinance or state or federal law applicable to its activities and resulting in or relating to bodily injury, loss of life or limb or damage to property sustained by any person. The contractor shall hold the town, its officers, agents, and employees, harmless from and against all judgments, orders, decrees, attorney's fees, costs, expenses and liabilities incurred in and about any such claim, investigation or defense thereof, which may be entered, incurred or assessed as a result of the foregoing. The contractor shall defend, at his sole cost and expense, any legal action, claim or proceeding instituted by any person against the town, its officers, agents and employees, as a result of any claim, suit or cause of action accruing from activities authorized by this chapter.

Sec. 18-59. - Insurance required.

- (a) Each private waste contractor must maintain throughout the entire effective period and/or term of its business tax receipt and/or franchise agreement, whichever term is longer, the following required minimum insurance coverages:

 - (1) *Commercial general liability*, in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. This policy must include coverage for contractual liability and specifically re-state the indemnity agreement set forth in section 18-58. The town must be named as an additional insured on this policy.
 - (2) *Automobile liability*, in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage, covering all vehicles owned, leased or used by the contractor within the limits of the town. The town must be named as an additional insured on this policy.
 - (3) *Workers' compensation and employer's liability*, as required by state law.
- (b) All companies providing insurance shall be authorized to do business in the state and rated B+:VI or better by Best's Key Rating Guide, latest edition.
- (c) No change or cancellation of any insurance coverage shall be made without 30 days' written notice to the town's risk manager.
- (d) All required policies of insurance are intended to be primary coverage to any insurance or self-insurance of the town possesses that may be applied to a loss resulting from the work performed by the contractors pursuant to this chapter.
- (e) All policies shall provide full coverage from the first dollar of exposure. No deductibles will be allowed in any policies.
- (f) As evidence of the above required coverage, the contractor must provide original certificates of insurance to the town's risk manager, which must be approved by the risk manager prior to

the issuance of a business tax receipt, or the commencement date of a franchise agreement, as the case may be. The contractor must submit a new certificate evidencing continuing or replacement coverage prior to the expiration date of the insurance policies and must submit annually certified copies of the liability policies required in subsections (a)(1), (2).

(g) The town reserves the right to increase, by amendment of this section or inclusion as a condition of franchise agreement, the kinds and amounts of insurance coverage required in this section, including the right to make periodic adjustments to the amounts of required coverage for inflation.

(h) Operation of activities by the contractor without the required insurance shall be grounds for revocation or suspension of the contractor's business tax receipt and/or franchise agreement.

Secs. 18-60—18-62. - Reserved.

DIVISION 3. - FRANCHISE

Sec. 18-63. - Required; fees.

Each franchise waste contractor shall pay to the town a franchise fee consisting of a percentage of the contractor's total monthly gross receipts. The town commission shall have the option of raising the franchise fee once yearly, by resolution, following a duly noticed public hearing with 30 days' prior notice to all franchise waste contractors. Such raises shall not exceed two percent of the contractor's total monthly gross receipts yearly. The term "gross receipts" as used in this section shall mean the entire amount of the fees collected by the contractor (whether wholly or partially collected) for solid waste collection and disposal within the town and including, without limitation, but excluding any taxes, and gross receipts from servicing rolloff and portable containers.

Sec. 18-64. - List of accounts.

(a) Each franchise waste contractor shall provide the town with the following information upon initial application for a franchise and, thereafter, at the commencement of each application for renewal:

(1) A current list of the names and addresses of each account franchise;

(2) The frequency of service;

(3) The permit number and capacity of each waste dumpster as per account;

(4) The permit number and capacity for each recycling container, as per account;

(5) The address serviced by each dumpster; and

(6) The address serviced by each recycling container.

(b) No property owner may share an account with another property owner.

- (c) Notwithstanding subsection (a)(1), the contractor shall notify the town, in writing, on a monthly basis, of any changes in its list of accounts.
- (d) Each franchise waste contractor shall notify the Town of all accounts that have been discontinued prior to the accumulation of garbage on the previously serviced premises.

Sec. 18-65. - Monthly report.

Each franchise waste contractor shall deliver to the finance department, on or before the last day of each month, a true and correct monthly report of gross receipts generated during the previous month from accounts within the town. This monthly report shall include the customer names, service addresses, account numbers, and the actual amount of solid waste and of any recyclable materials collected from each customer. Payments of the franchise fee shall be made monthly to the finance department, on or before the last day of each month, for gross receipts for the previous month. Contractors shall, on or before 60 days following the close of their respective fiscal year, deliver to the finance department a statement of annual gross receipts generated from accounts within the town for the preceding fiscal year, certified by an independent certified public accountant. The contractor's failure to provide the certified statement of annual gross receipts within the required time frame shall be grounds for revocation or suspension of the franchise.

Sec. 18-66. - Audit or inspection of licensee's books and records.

Each franchise waste contractor shall allow the town's auditors, upon reasonable notice and during normal business hours (i.e. 9:00 a.m. — 5:00 p.m. Monday through Friday, excluding legal holidays), to audit, inspect and examine the contractor's books and records, and state and federal tax returns, insofar as they relate to town accounts, to confirm the contractor's compliance with this division. This information shall include, without limitation, the following: billing rates, billing amounts, sequentially pre-numbered invoices, signed receipts, trip tickets, computer records, general ledgers, and accounts receivable. Additionally, the town's auditors may communicate directly with contractor's customers for purposes of confirming compliance with this division. Failure to allow access to any books and records in this section shall be grounds for revocation or suspension of the franchise.

Sec. 18-67. - Failure to pay franchise fee; penalties.

If a franchise waste contractor fails to pay any franchise fee (as set forth in section 18-63), when due and within the time provided, the contractor shall pay any and all of the town's expenses for collection of same, including, without limitation, audit costs and reasonable attorney fees and costs. If the contractor fails to pay the full franchise fee on or before the last day of each month, penalty fees for private waste collectors/contractors shall be as follows:

- (1) *Original delinquency.* Any franchise waste contractor who fails to remit any franchise fee imposed by this division within the time required shall pay a penalty of ten percent of the amount of the delinquent fee in addition to the amount of the delinquent fee.

- (2) Continued delinquency. Any franchise waste contractor who fails to remit the franchise fee on or before the 30th day following the date on which the fee first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the delinquent fee, in addition to the amount of the fee, and the ten-percent penalty imposed pursuant to subsection (1). An additional penalty of ten percent of the amount of the delinquent fee shall be paid for each additional 30-day period, or part thereof, during which the franchise fee is delinquent, provided that the total penalty imposed by subsection (1) and this subsection (2) shall not exceed 50 percent of the amount of the franchise fee. This penalty shall be in addition to the franchise fee and interest imposed by this division.
- (3) Interest. In addition to the penalties imposed in subsections (1) and (2) of this section, any franchise waste contractor who fails to remit any franchise fee imposed by this division shall pay interest at the highest legal rate of interest permitted by law on the amount of the franchise fee, exclusive of penalties, from the date on which the franchise fee first became delinquent until paid.
- (4) Penalties merged with franchise fee. Every penalty imposed and all interest accrued under the provisions of this section shall become a part of the franchise fee required to be paid.

Sec. 18-68. - Evidence of payment.

In order to effectively provide for the collection of the required business tax receipts to the town, any person seeking to renew a business tax receipt pursuant to the provisions of chapter 18 shall provide the finance department with evidence of payment of all outstanding solid waste franchise fees, fines, and other charges, as a condition to reissuance or renewal of the business tax receipt.

Sec. 18-69. - Handling of complaints.

Each franchise waste contractor shall maintain an office in the Tampa Bay area with adequate staff and telephone service to handle and resolve all incoming calls and complaints between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. Between the hours of 4:00 p.m. and 8:00 a.m., Monday through Friday, and all day on Saturday and Sunday, including holidays, each contractor shall maintain an answering service or answering machine to receive incoming calls and complaints. Any complaints received by the contractor before noon (12:00 p.m.) shall be resolved before 4:00 p.m. of that same day. Complaints received after noon (12:00 p.m.) but before 8:00 a.m. shall be resolved before noon (12:00 p.m.) of the following day. An emergency telephone number where the contractor may be reached shall be provided to the town.

Sec. 18-70. - Regulations for servicing dumpsters, compactors and other garbage facilities.

Garbage collection equipment shall consist of trucks with leakproof and enclosed bodies, with compactors and sanitizing materials in each truck, and covered in leakproof garbage dumpsters. The location of each dumpster, recyclable material container, and any and all other garbage facility(ies) shall be approved by the town, and a permit will be issued for each. No dumpster, recyclable material container, or any other garbage facility shall be placed or serviced until such permit is issued. Notwithstanding the preceding, in the event any such facility is delivered by a contractor without a permit, the town shall still receive payment for the account in computing the franchise fee due under section 18-63. Contractors shall return dumpsters, recyclable material containers, and any other garbage facilities to approved locations after servicing. Compactors shall not be installed without a permit from the town's building department. Each garbage facility and/or each recycling container must bear the name of the contractor and must be serviced and sanitized at least twice weekly. Garbage facilities or recycling containers located on public property, or without a town permit, shall be deemed abandoned and will be removed by the town at the contractor's expense, pursuant to section 18-100 et seq. Service pickups by trucks are to be made from streets and driveways. Trucks shall not be driven or parked on sidewalks at any time. Contractors may not park any truck on any public or private property within the town when not being used to service accounts. Collection hours for all solid waste or recyclable materials shall be between the hours of 7:00 a.m. and 7:00 p.m. only. All permanent employees of contractors shall carry identification cards at all time(s) while servicing accounts. In addition to the required solid waste and recyclable materials collection pursuant to the provisions of this section 18-70, and other requirements of this chapter, contractors shall include the collection of garbage, rubbish, trash, and recyclable materials, up to and within that immediate area of the owner's private property line where a dumpster, compactor, recycling container, or garbage facility may be located and, at a minimum, within a radius of ten feet surrounding the location of said recycling container, or garbage facility, regardless of whether such garbage, rubbish, trash, or recyclable materials may or may not be included or secured in a recycling container, or other garbage facility. Such immediate collection of garbage, rubbish, trash or recyclable materials shall be incorporated by contractors as part of their regularly scheduled service pickups.

Sec. 18-71. - Selection of franchise waste contractors.

- (a) Except as provided in section 18-75, the town shall not authorize more than five franchise waste contractors for residential and commercial solid waste collections and disposal. Each applicant for a franchise, or for a renewal thereof, shall submit its qualifications, in writing, to the town. The minimum qualifications to be considered in the granting of the franchise shall include:
- (1) Evidence of the applicant's ability to fulfill all duties and requirements of a franchise waste contractor, as set forth in this chapter, and including, without limitation, proper certification and adequate insurance coverage.
 - (2) Certification that the applicant has never defaulted on any government contracts or bid awards.
 - (3) Evidence that the applicant has the potential for a significant amount of business within the town, comprised of either a minimum of 50 committed accounts within the town. In the alternative, and at its sole discretion, the town commission may accept as evidence of

compliance with this subsection, 50 comparable committed accounts from outside of the town.

- (4) Certification that there are no unsatisfied judgments against the applicant.
- (5) Certification that the applicant is not, and will not be, throughout the term of the franchise agreement, affiliated with, as a parent, subsidiary, by virtue of an interlocking directorate, or otherwise, an affiliated entity of any existing, private waste contractor under section 18-54, et seq., or other franchise waste contractor under section 18-63, et seq., including any current or prospective applicants therefore.
- (6) The applicant's ability and commitment to provide its customers with:
 - a. Good service;
 - b. Competitive prices; and
 - c. Demonstrated and/or proposed "green" initiatives.
- (7) The applicant's ability and commitment to provide additional "public benefit(s)" to the town which may include, without limitation, provision of additional waste collection, disposal, and/or recycling services (at no cost to the town) to town rights-of-way, town-owned public buildings, parks, and/or beaches; voluntary cost and/or fee reductions; and/or such other town public benefits and/or services as the town may, in its reasonable judgment and discretion, from time to time, require.
- (b) If more than one applicant for a franchise waste contractors' license qualifies under the minimum qualifications of this division, the issuance of the franchise shall be determined by the town commission, based upon the applicant which the town commission deems, in its sole and reasonable judgment and discretion to have provided the most significant public benefit(s) to the town.

Sec. 18-72. - Term of franchise agreements; initial term; renewal term.

- (a) Effective January 1, 2021, franchise agreements shall have an initial term of five years.
- (b) Prior to the expiration of the initial term of a franchise agreement, the town commission may choose, in its sole discretion, to accept applications for new franchise waste contractors, or, in the alternative, to renew an existing franchise agreement for up to an additional three-year renewal term.

Sec. 18-73. - Recycling requirements for franchise waste contractors.

- (a) Each franchise waste contractor shall, as a condition of the franchise, be required to offer directly, or through a subcontractor, recycling for any and all accounts (as defined below) serviced by the contractor (including, without limitation, any and all commercial and residential accounts).
- (b) Each contract with a franchise waste contractor for waste collection and disposal services (an account) shall include a proposal to provide recycling. Such proposal shall,

to the maximum extent that is commercially feasible, maximize recycling activity in the town, and provide for sufficient flexibility in recyclable materials container size and location (as is both necessary and consistent for the particular account).

- (c) Each recycling proposal shall be required to disclose to the account holder the savings offset that is anticipated as a result of the recycling and the consequent reduction of solid waste disposed; provided, however, that the recycling proposal (and the required savings offset) shall remain within the purview of the franchise waste contractor and the particular account holder to negotiate.
- (d) As of January 1, 2021, all contracts between a franchise waste contractor and an account holder for the collection and disposal of solid waste in the town shall include a provision to offer/provide recycling, consistent with the provisions of this section.

Sec. 18-74. - Bankruptcy or insolvency.

If the franchise waste contractor becomes insolvent or if the contractor files a petition of voluntary or involuntary bankruptcy, its franchise shall be terminable by the town as of the date of filing of the bankruptcy petition or the date the contractor becomes insolvent.

Sec. 18-75. - Exemption to provide for recycling.

- (a) Notwithstanding any other provisions of sections 18-63 through 18-73, until such time as the town commission approves and implements a town-wide recycling program for multifamily residences, which program may also include recycling for commercial establishments, subject to and as permitted by Florida Statutes § 403.7046, (hereinafter, the "town-wide recycling program"), the town may continue to license individual recycling contractors (pursuant to section 18-93 et seq.).
- (b) If the town commission determines at any time to approve and implement a town-wide recycling program, the town shall then meet with the current franchise waste contractors (subject to and as permitted by Florida Statutes § 403.7046), for the purpose of negotiating terms and conditions connected with the provision of recycling pursuant to the town's program, and as to that portion of the program pertaining to multifamily residences. The terms, including rates to be charged by contractors shall be comparable to those established in municipalities in Pinellas, Hillsborough and Manatee Counties for provision of similar recycling services.
- (c) Each franchise agreement between the town and a franchise waste contractor shall require that, in the event that the town commission approves and implements a town-wide recycling program, any franchise waste contractor who opts not to provide the required recycling services for multifamily residences under the town's program, must notify its account holder, in writing, informing them that they may, within 60 days of receipt of the notice, elect to terminate their account and then existing contracts with said contractor, without liability to the account holder.

- (d) If none of the franchise waste contractors come to an agreement with the town within 60 days, the town may, at his/her option, provide recycling pursuant to the approved town-wide program by:
- (1) Entering into an agreement with other persons to provide recycling to accounts serviced by franchise waste contractors;
 - (2) Entering into an interlocal agreement(s); and/or
 - (3) Granting additional franchises to waste contractors who are willing to provide the recycling services required by the town, and who shall also have all privileges and duties of franchise waste contractors as set forth in this chapter (including those pertaining to collection and disposal of solid waste).
- (e) If the town enters into agreement for provision of recycling services pursuant to the approved town program, except for an interlocal agreement, rates charged for recycling in the town by those contractors shall be set and approved by resolution of the town commission.
- (f) Notwithstanding anything to the contrary in this section 18-75 or the town-wide recycling program (if approved and implemented), selection of recycling contractors to service commercial establishments under the program shall be in accordance with the requirements of Florida Statutes § 403.7046, as same be amended from time to time.

Sec. 18-76. - Revocation of franchise.

Failure on the part of a franchise waste contractor to comply in any material way with the provisions of this chapter or with its franchise agreement shall be cause for termination and revocation of the franchise, but no such termination shall take effect if the reasonableness or propriety thereof is protested by the contractor until a court of competent jurisdiction (with right of appeal in either party) shall have found that the contractor has failed to comply in material respect with any of the provisions of this chapter or of the contractor's franchise agreement with the town. If such protest is filed, the contractor shall continue to pay the town the franchise fee required by this chapter and its franchise agreement with the town.

Secs. 18-77—18-79. - Reserved.

DIVISION 4. - SPECIALTY CONTRACTORS

Subdivision I. - Generally

Secs. 18-80—18-83. - Reserved.

Subdivision II. - Rolloff/Portable Waste Container Contractors

Sec. 18-84. - Permit required.

Except as provided elsewhere in this chapter, no person shall engage in the business of removing or disposing of construction and demolition debris or large quantities of trash from any

premises within the town limits without first securing a permit for such activities from the town by paying the business tax receipt amount as set forth in chapter 18, and without showing proof of insurance, as required in section 18-54 et seq. However, franchise waste contractors shall not be required to obtain a separate business tax receipt to service rollofs or portable containers within the town.

Sec. 18-85. - Permits required.

No rolloff container, dumpster or portable container shall be placed or located within the town without a permit from the town. Failure to obtain a permit will result in a penalty of \$100.00 per location.

Sec. 18-86. - Fees and requirements; penalties for non-payment.

The permit fees and requirements for rolloff container and grapple service contractors shall be as follows:

- (1) On-street permit fee. When the rolloff container is to be located on the street, the permit fee shall be 20 percent of the contractor's total monthly gross receipts for the month in which the permit was issued and every month thereafter that the permit is valid. Four barricades with flashing lights shall be posted. In addition, when the rolloff container is to be located in parking meter spaces, an additional fee shall be due, as set forth in appendix A, per meter, per day.
- (2) Off-street permit fee. When the rolloff container is to be located on private property, the permit fee shall be 20 percent of the contractor's total monthly gross receipts for the month in which the permit was issued and every month thereafter that the permit is valid.
- (3) List of accounts. Each contractor shall provide the town with a current list of the names and addresses of each account, upon initial application, and upon any application for renewal, of its permit, the frequency of service, and the permit number and capacity of each rolloff container or dumpster as per account and the address serviced by each rolloff container or dumpster. No property owner may share an account with another property owner.
- (4) Monthly report. Each contractor shall deliver to the town's finance department a true and correct monthly report of gross receipts generated during the previous month (from accounts within the town) on or before the last day of each month. This monthly report shall include the customer names, service addresses, account numbers, and the actual amount collected from each customer. Payments of any fees required in this section shall be made monthly to the finance department, on or before the last day of each month, for gross receipts of the previous month. Contractors having annual gross receipts reported to the town over \$200,000.00 shall, on or before 60 days following the close of their fiscal year, deliver to the finance department a statement of annual gross receipts (generated from accounts within the town) certified by an independent certified public accountant, reflecting gross receipts within the town for the preceding fiscal year.

- (5) Audit or inspection of contractor's books and records. Each contractor shall allow the town auditors, upon reasonable notice and during normal business hours, to audit, inspect and examine the contractor's books and records, and state and federal tax returns, insofar as they relate to town accounts, to confirm the contractor's compliance with this section. This information shall include, but not be limited to, the following: billing rates, billing amounts, sequentially pre-numbered invoices, signed receipts, trip tickets, computer records, general ledgers and accounts receivable sorted by service address. Additionally, the town auditors may communicate directly with customers of the contractor for the purpose of confirming compliance with this section.
- (6) Failure to pay permit fee; penalties for late payment. If the contractor fails to timely pay the full permit fee as set forth in subsections (1) and (2) of this section, the contractor shall pay any and all of the town's expenses for collection of such fees, including, but not limited to, court costs, audit costs and reasonable attorney fees. If the contractor fails to pay the full permit fee on or before the last day of each month, penalty fees for specialty contractors shall be as follows:
- (a) Original delinquency. Any specialty contractor who fails to remit any permit fee imposed by this division within the time required shall pay a penalty of ten percent of the amount of the delinquent fee in addition to the amount of the fee.
- (b) Continued delinquency. Any specialty contractor who fails to remit the permit fee on or before the 30th day following the date on which the fee first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the fee in addition to the amount of the fee and the ten percent penalty imposed pursuant to subsection (1). An additional penalty of ten percent of the amount of the delinquent fee shall be paid for each additional 30-day period, or part thereof, during which the permit fee is delinquent, provided that the total penalty imposed by subsection (a) and this subsection (b) shall not exceed 50 percent of the amount of the permit fee. This penalty shall be in addition to the permit fee and interest imposed by this division.
- (c) Interest. In addition to the penalties imposed in subsections (a) and (b), any specialty contractor who fails to remit any permit fee imposed by this division shall pay interest at the highest legal rate of interest permitted by law on the amount of fee, exclusive of penalties, from the date on which the permit fee first became delinquent until paid.
- (d) Penalties merged with permit fee. Every penalty imposed and all interest accrued under the provisions of this section shall become a part of the permit fee required to be paid.
- (7) Evidence of payment. In order to effectively provide for the collection of the permit fee by the contractor to the town, any person seeking to renew his/her annual business tax receipt pursuant to the provisions of chapter 102, article V, in addition to the requirements contained therein, shall provide to the finance director evidence of payment of all outstanding permit fees, fines and other charges as a condition to reissuance or renewal of the business license.

- (8) Identification of equipment. All equipment utilized to collect and transport solid waste in the town must be conspicuously marked on both sides of the automotive unit with the name of the hauler, tare weight and cubic yard capacity. Identification information must also be marked on all trailer and container units. All markings must be in letters and numerals at least two inches in height.

Sec. 18-87. - Location restrictions.

The town has the right to restrict the location of any rolloff, portable containers, or dumpsters in order to ensure the public's safety and to prevent traffic hazards. It is prohibited to place rolloffs and portable containers in the following locations and areas:

- (1) Alleys, lanes, bridges.
- (2) [other parts of town the Commission may wish to designate]

Sec. 18-88. - Use restrictions.

Rolloff, portable containers, or dumpsters are to be used for the removal of construction and demolition debris or for the removal of large quantities of bulky waste. Construction and demolition debris, and bulky waste, is never to be stored directly on the ground, as rolloff and portable containers must be used at all times. Rolloff and portable containers shall not be used for the removal of garbage or commercial waste.

Sec. 18-89. - Overflowing rolloffs and portable containers.

Overflowing rolloffs and portable containers and dumpsters are prohibited. The town shall have the authority to order the removal by the property owner of any such overflowing rolloff or portable container or dumpster.

Secs. 18-90—18-92. - Reserved.

Subdivision III. - Recycling Waste Contractors

Sec. 18-93. - License required.

No person shall engage in the business of removing, disposing of, or collecting any recycling materials from any property and/or premises within the town limits without first having secured a business tax receipt for such activities from the town by paying the fee set forth in chapter 18, and by showing proof of insurance, as required in section 18-54 et seq.

Sec. 18-94. - Expiration of licenses.

Permits issued to recycling contractors shall be for a term of one year, unless such recycling is pursuant to a franchise agreement, in which case, the permit shall be for the term of the franchise agreement. The town may at any time approve and implement a town-wide recycling program, and may then cease permitting individual recycling contractors. Recycling contractors operating under a valid business tax receipt at the time of commencement of such town-wide program may continue operation until the expiration date of said receipt, but will thereafter cease operation within the town.

Sec. 18-95. - Monthly report.

Each recycling contractor shall deliver annually to the town clerk an accurate report regarding the nature and disposition and volume of recyclable materials collected by it from each account in the town. Upon request by the town, each recycling contractor shall also furnish the town with verifiable information regarding the method and place of final disposal or distribution of said materials.

Secs. 18-96—18-99. - Reserved.

Subdivision IV. - Hazardous, Biohazardous Waste Contractors

Sec. 18-100. - Permit required.

Except as provided elsewhere in this division, no person shall engage in the business of removing, disposing or collecting any hazardous or biohazardous wastes from any premises within the town without first having secured a business tax receipt for such activities from the town by paying the fee set forth in chapter 18, and by showing proof of insurance, as required in section 18-54 et seq., and proof of required state licenses and fee.

Sec. 18-101. - Requirements and fees.

- (a) *List of accounts.* To obtain the permit required by section 18-100, each contractor must provide the town with a list of all of its accounts within the town, expressly stating whether there is hand collection of bags or collection by dumpsters; frequency of service per week; and a description of services.
- (b) *Permit and approval of location required.* After an inspection of the location where the account is going to be serviced and approval of the location by the town, a biohazardous waste permit, valid for one year, will be issued by the town. The fee for each permit will be as established by the commission. This permit is not transferable.
- (c) *Disposal restrictions.* Disposal of hazardous or biohazardous wastes shall be done only in accordance with section 18-37.

Secs. 18-102—90-109. - Reserved.

ARTICLE V. – TOWN-WIDE RECYCLING PROGRAM FOR MULTIFAMILY RESIDENCES AND COMMERCIAL ESTABLISHMENTS

Sec. 18-110. - Recycling program and separation of recyclable materials from solid waste stream required for multifamily residences; owner/association liability; recycling contractors' assistance.

- (a) As of January 1, 2021, every multifamily residence of ten or more dwelling units shall provide a recycling program pursuant to this section or a town-approved modified recycling program pursuant to section 18-114. The property owner shall be liable for the failure to provide a recycling program or a modified recycling program approved by the town, provided, however, that a condominium or cooperative apartment having a condominium association or a cooperative apartment association shall be liable, rather than the individual unit owner(s), for a violation of this subsection. Further, recycling contractors shall assist and provide written notice to the director of public works in identifying multifamily residences subject to this article which do not have a recycling program or, in the alternative, which have allowed a recycling program to lapse or expire.
- (b) As of January 1, 2021, every multifamily residence of ten dwelling units or more shall be required to use a single-stream recycling process to separate, from all other solid waste, the five following recyclable materials:
- (1) Newspaper. Used or discarded newsprint, including any glossy inserts;
 - (2) Glass. Glass, jars, bottles, and containers of clear, green or amber (brown) color of any size or shape used to store and/or package food and beverage products for human or animal consumption, and/or used to package other products, which must be empty and rinsed clean of residue. This term excludes ceramics, window or automobile glass, mirrors, and light bulbs;
 - (3) Metal food and beverage containers. All ferrous and nonferrous (i.e., including, but not limited to, steel, tin-plated steel, aluminum and bimetal) food and beverage containers (i.e., including, but not limited to, cans, plates, and trays) of any size or shape used to store and/or package food and beverage products suitable for human or animal consumption, which must be empty and rinsed clean of residue;
 - (4) Other metal containers. All other ferrous and nonferrous containers used to package household products including, but not limited to, paint cans and aerosol cans, which must be empty and rinsed clean of residue;
 - (5) Plastics. All high density polyethylene (HDPE) and/or polyethylene terephthalate (PET) bottles, jugs, jars, cartons, tubs, and/or other containers, and lids, of any size or shape used to package food, beverages, and/or other household products, or crankcase oil, which must be empty and rinsed clean of residue. This term excludes all plastic film, plastic bags, vinyl, rigid plastic (i.e., toys), and plastic foam materials.

- (c) Every multifamily residence shall be serviced by a recycling contractor licensed by the town and state.

Sec. 18-111. - Recycling program and separation of recyclable materials from solid waste stream required for commercial establishments; joint and several liability; recycling contractors' assistance.

- (a) As of January 1, 2021, every commercial establishment shall provide a recycling program pursuant to this section or a town-approved modified recycling program pursuant to section 18-114. The failure of a commercial establishment to provide a recycling program or a modified recycling program shall result in joint and several liability for the property owner(s) and the owner(s) and operator(s) of the commercial establishment. Further, recycling contractors shall assist and provide written notice to the director of public works in identifying commercial establishments which do not have a recycling program or, in the alternative, which have allowed a recycling program to lapse or expire.
- (b) As of January 1, 2021, every commercial establishment shall be required to use a single-stream recycling process to separate, from all other solid waste, three of the following seven recyclable materials:
- (1) Newspaper, cardboard, magazines, and catalogues, telephone books and/or directories, and office paper. As defined, but not limited to, the same type(s) of recyclable materials as provided in subsection 18-110(b)(1);
 - (2) Glass. As defined and including the same type(s) of recyclable materials as provided in subsection 18-110(b)(2);
 - (3) Metal food and beverage containers. As defined and including the same type(s) of recyclable materials as provided in subsection 18-110(b)(3);
 - (4) Other metal containers. As defined and including the same type(s) of recyclable materials as provided in subsection 18-110(b)(4), but also, for purposes of this subsection (4), including scrap metal, which shall mean used or discarded items suitable for recycling, consisting predominantly of ferrous metals, aluminum, brass, copper, lead, chromium, tin, nickel or alloys thereof including, but not limited to, bulk metals such as large metal fixtures and appliances (including white goods such as washing machines, refrigerators, etc.), but excluding metal containers utilized to store flammable or volatile chemicals, such as fuel tanks;
 - (5) Plastics. As defined and including the same type(s) of recyclable materials as provided in subsection 18-110(b)(5);
 - (6) Textiles;
 - (7) Wood. Clean wood waste and/or pieces generated as by-products from manufacturing of wood products. It excludes clean yard waste and clean waste (i.e., natural vegetation and minerals such as stumps, brush, blackberry vines, tree branches, and associated dirt, sand, tree bark, sand and rocks), treated lumber, wood pieces, or particles containing

chemical preservatives, composition roofing, roofing paper, insulation, sheetrock, and glass.

- (c) Every commercial establishment shall be serviced by a recycling contractor licensed by the town and state.

Sec. 18-112. - Unauthorized collection of designated recyclable materials.

Only those recycling contractors that have been authorized and licensed by the town and the state to collect designated recyclables in the town shall be authorized to collect recyclable materials under this article. All recycling contractors shall comply with all applicable state and town laws and regulations.

Sec. 18-113. - Public education program; requirements for recycling contractors; warning period; enforcement date.

- (a) The town shall engage in public education efforts and shall not prosecute individuals who unknowingly fail to provide a recycling program or a town-approved modified recycling program, or unknowingly fail to separate recyclable materials from all other solid waste materials required to be separated by this article, until as provided in subsections (c) and (d) of this section.
- (b) All recycling contractors must appropriately designate the recycling collection containers they provide to customers. The containers must contain the appropriate signage and information, as shall be established and approved by the town pursuant to subsection (c) below, that allows users to clearly and easily identify the container for recycling.
- (c) Beginning January 1, 2021, the town shall provide for a six-month warning period, through and including June 30, 2021, in which warning tickets shall be issued to persons who fail to provide a recycling program, or a town-approved modified recycling program, or fail to separate recyclable materials from all other solid waste materials, regardless of knowledge or intent.
- (d) Beginning July 1, 2021, this article shall be enforced and penalties shall be applied and imposed for violations of this article as provided in sections 18-115 and 18-116.

Sec. 18-114. - Modified recycling programs.

- (a) Recycling programs which incorporate modifications, substitutions or reductions to the requirements of sections 18-110 and 18-111 may be submitted to the town's public works director ("director") for approval. Approval, rejection, or approval with conditions of the proposed modified recycling program shall be determined by the director. The director shall consider the following factors in evaluating the proposed modified recycling program:

- (1) Whether the establishment operates a recycling program, and is self-hauling the materials to a recyclable material vendor.
- (2) Whether the establishment generates a lesser number of recyclable materials than the required minimum types of recyclables required in sections 18-110 or 18-111, as applicable.
- (3) Whether the establishment generates and recycles materials not listed in section 18-110 or section 18-111, as applicable.
- (4) Whether the establishment is contracting with a permitted private hauler for collection services, which services provide for a post-collection separation of recyclable material, and which:
 - (i) Generate recyclable materials which comply, in kind and quantity, with the recycling requirements provided for in section 18-110 or section 18-111, as applicable; and
 - (ii) Utilize a materials separation facility which is permitted in accordance with all applicable federal, state and local laws.
- (b) Any person seeking approval of a modified recycling program shall submit an application in such form as is prescribed by the director. All modified recycling programs shall be reviewed on an annual basis and applicants shall be required to confirm or revise the information contained in their applications at that time. An application for approval of a modified recycling program shall include, but not be limited to, the following documentation, as appropriate to the specific application:
 - (1) Supporting documentation to evidence self-haul activities, which shall include proof of source-separation activities and copies of receipts from recyclable material purchasers.
 - (2) A waste composition study of the waste generated by the applicant, which shall cover a representative time period of no shorter than one week.
 - (3) A copy of the applicable contract with a post-collection separation facility, specifying materials and volumes recycled which are attributable to the applicant.

Sec. 18-115. - Enforcement.

- (a) The town's code enforcement officer is hereby authorized and directed to enforce all the provisions of this article regulating and governing the accumulation, collection, recycling, and disposal of recyclable materials.
- (b) Whenever the code enforcement officer observes a violation(s) of this article, or an accumulation of recyclable materials that creates a health hazard, environmental hazard, or nuisance, the code enforcement officer shall order the violation(s) to be corrected within a specified period of time by serving a written notice of violation(s) upon the property owner or upon the manager or other person in charge. Such person(s) shall immediately cease or abate the violation(s).

- (c) If the code enforcement officer determines that the conditions constitute an immediate threat to the health, safety or welfare of the public, the code enforcement officer may order the immediate correction of the violation(s) at the expense of the property owner, manager, or other person in charge, and the town shall have the right to recover such expenses as provided in subsection 18-21(1).
- (d) A notice of violation shall be served personally or by certified mail upon the property owner, or upon the manager or other person in charge of the premises. If the person addressed with such notice cannot be found by the town after making a reasonable good faith effort, such notice shall be sent by certified mail to the last known address of such person, and a copy of the notice shall be posted in a conspicuous place on the premises. Such notice shall be deemed the equivalent of personal service.
- (e) Beginning July 1, 2021, violators of sections 18-110 and 18-111 shall be issued one warning and shall correct the violation within 30 days. If the violation is not corrected within 30 days, a notice of violation shall be issued. After one warning, violators of sections 18-110 and 18-111 shall be issued a notice of violation. All notices of violations shall specify any fine or penalty that may be due in connection with the violation(s), the time specified by the code enforcement officer to correct the violation(s), and the procedure for timely payment or appeal of the fine or penalty.

Sec. 18-116. - Penalties for violations of this article; removal of recyclable materials by town; liens imposed for failure to pay fines or appeal.

- (a) Penalties for violations of subsections 18-110(a) and 18-111(a) shall be as follows:
 - (1) For the first violation, a fine of \$350.00.
 - (2) For the second violation, a fine of \$500.00.
 - (3) For the third violation, a fine of \$1,000.00.
 - (4) For the fourth violation, a fine of \$2,500.00.
- (b) The penalty for violation of subsections 18-110(b) and 18-111(b) shall be as follows:
 - (1) For the first violation, no fine.
 - (2) For the second or subsequent violations, a fine of \$100.00.
- (c) The penalty for all other violations of this article shall be \$250.00 for each violation.
- (d) Any penalty due pursuant to this article shall be charged to the person or entity as provided in subsection 18-110(a) or subsection 18-111(a). Failure to pay such costs and penalties, or to appeal pursuant to section 18-117 within 15 days of receipt of the notice of violation shall result in the imposition of a lien upon the premises, in the amount of such costs and penalties. Such liens shall be treated as special assessment liens against the subject real property and, until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved. Such liens shall be enforced by any of the methods provided in Florida Statutes chapter 86; or, in the alternative, foreclosure

proceedings may be instituted and prosecuted under the provisions of Florida Statutes chapter 173; or the collection and enforcement or payment thereof may be accomplished by any other method authorized by law. The owner, occupant, operator, or manager of the premises shall pay all costs of collection, including reasonable attorneys' fees incurred in the collection of fines, and other charges, penalties, and liens imposed by virtue of this chapter.

- (e) For violations which (i) present a serious threat to the health, safety or welfare of the public, and/or (ii) constitute a fourth or subsequent offense by the same violator under subsection 18-116(a), the town may seek injunctive relief and/or, in the case of commercial establishments, revoke the business tax receipt and/or certificate of use of the establishment and/or premises, in addition to the penalties set forth in subsections 18-116(a), (b), or (c), as applicable.

Sec. 18-117. - Appeal to special master.

- (a) Any person receiving a notice of violation pursuant to this article may request, within 15 days of receipt of the notice, an administrative hearing before a special master to appeal the decision of the code enforcement officer resulting in the issuance of the notice. The procedures for the scheduling and conduct of the hearing shall be as provided for other code enforcement appeal hearings. Failure to appeal within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and fines and penalties may be assessed accordingly.
- (b) Timely filing of a notice of appeal pursuant to this section shall toll the imposition of a lien or enforcement procedures pursuant to section 18-117, until 30 days after the issuance of a written determination by the special master. Any costs or penalty amounts due the town pursuant to such determination must be received by the town within 30 days after the issuance of the determination, or a lien shall be imposed upon the premises, and any other enforcement or collection procedures may be commenced, as provided by this chapter or under state law.

Section 3. 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 4. 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 4. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Sections 1 and 2 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2020, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2020, by the Board of Commissioners of the Town of Redington Beach, Florida.

James Simons, Mayor

Attest:

Approved as to form:

Missy Clarke, CMC, Town Clerk

Jay Daigneault, Town Attorney

From: Lowack, Brian <blowack@co.pinellas.fl.us>
Sent: Wednesday, September 2, 2020 5:08 PM
To: Missy Clarke
Cc: Nick Simons
Subject: Penny IV Gulf Blvd Agreement
Attachments: Gulf Blvd Penny IV Interlocal Agreement - Clean Final for signatures.pdf; Exhibit A to Penny IV Gulf Blvd Interlocal (004).pdf; PDF Exhibit B to Gulf Blvd interlocal - Clearwater and IS Projects.pdf

Missy,

Attached is the Penny IV Gulf Boulevard Agreement. It is my hope that your Board is able to consider the Agreement in September. This will enable the Board of County Commissioners to consider the Agreement in October.

Thank you for the cooperation that went into creating this Agreement. Please do not hesitate to contact me directly with any questions you may have.

Brian Lowack

Interim Director, Housing and Community Development
Assistant to the County Administrator
Mid & South Unincorporated Pinellas,
Intergovernmental Liaison
315 Court St, Clearwater, FL 33756
Office (727) 464-3485
Cell (727) 480-5228
blowack@pinellascounty.org

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All government correspondence is subject to the public records law.

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 202____, by Pinellas County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and the City of Belleair Beach, Town of Belleair Shore, City of Clearwater, City of Indian Rocks Beach, Town of Indian Shores, City of Madeira Beach, Town of North Redington Beach, Town of Redington Beach, Town of Redington Shores, City of St. Pete Beach, and the City of Treasure Island, hereinafter referred to as the "Cities".

RECITALS:

WHEREAS, Section 212.055(2), Florida Statutes, authorizes the County to levy a local government infrastructure sales surtax ("Surtax") of one percent (1%) throughout Pinellas County, Florida, subject to referendum approval, to finance, plan and construct infrastructure as defined therein; and

WHEREAS, on November 7, 1989, the levy of the Surtax for an initial ten (10) year period was approved by a majority of those voting on the question at a referendum, and the County and municipalities representing a majority of the incorporated population entered into an interlocal agreement dated September 19, 1989, providing for the distribution of the Surtax, which expired on January 31, 2000; and

WHEREAS, on March 25, 1997, the extension of the Surtax for an additional ten (10) years was approved by a majority of those voting on the question at a referendum, and the County and municipalities representing a majority of the incorporated population entered into an interlocal agreement dated August 6, 1998, providing for the distribution of the Surtax, which expired on January 31, 2010; and

WHEREAS, on March 13, 2007, the extension of the Surtax for an additional ten (10) Years (Penny III) was approved by a majority of those voting on the question at a referendum and the County and municipalities representing a majority of the incorporated population entered into an interlocal agreement dated April 29, 2008 providing for the distribution of the Surtax, which expired on December 31, 2019; and

WHEREAS, on November 7, 2017, the extension of the Surtax for an additional ten (10) years ("Penny IV") was approved by a majority of those voting on the question at a referendum and the County and municipalities representing a majority of the incorporated population entered into an interlocal agreement dated August 1, 2017 providing for the distribution of the Surtax, which expires on December 31, 2029; and

WHEREAS, the County recognized that the Pinellas County Gulf Boulevard Improvement Program - April 2007 ("Improvement Plan") is of countywide importance and may be funded by the Surtax, and the County was willing to contribute to the costs of the Improvement Plan projects from the County's share of the Surtax and did so through an interlocal agreement with the Cities dated July 10, 2012 ("Penny III Gulf Blvd. Interlocal"); and

WHEREAS, the Penny III Gulf Blvd. Interlocal agreement expired September 30, 2019, but the County on August 20, 2019, by Resolution 19-55 elected to continue to provide funding to the cities to allow them to complete work contemplated to be done under the expired agreement through September 30, 2021; and

WHEREAS, the Improvement Plan remains incomplete and will not be completed through the remaining projects and funding from the expired agreement and the County recognizes that the completion of the Improvement Plan continues to be of countywide

importance, and the County is willing to contribute to the costs of the Improvement Plan projects from the County's share of the Surtax as provided herein.

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration, the County and Cities agree as follows:

Section 1. CONDITIONS PRECEDENT.

This Agreement will be effective upon final execution by all of the Cities and the County.

Section 2. COUNTY'S RESPONSIBILITIES.

A. The County agrees to fund a sum not to exceed \$35 million ("Penny IV Assistance"), on a reimbursement basis, from its Penny IV Surtax proceeds for Eligible Projects, as defined herein, consistent with the Improvement Plan. Expenditures for the actual cost of projects by each of the individual Cities consistent with the Improvement Plan and the requirements of Section 212.055(2), Florida Statutes, will be reimbursed by the County if certification has been presented by the City seeking reimbursement and the Barrier Islands Government Council (BIG C) that the expenditure for a Project is a subpart of and in conformance with the Improvement Plan ("Eligible Projects") and the requirements of Section 212.055(2), Florida Statutes. This Agreement has no effect on Resolution 19-55 and any amount remaining from the Penny III Gulf Blvd. Interlocal will be reimbursed only in accordance with that resolution. The Penny IV Assistance will be expended solely on undergrounding of utilities within Gulf Boulevard until all utilities are underground within the Gulf Boulevard corridor with the following two exceptions:

- 1) The City of Clearwater \$750,000 Penny IV Assistance for the Eligible Project work described in Exhibit B; and
- 2) The Town of Indian Shores \$500,000 Penny IV Assistance for the Eligible Project work described in Exhibit B.

The Clearwater and Indian Shores Penny IV Assistance amounts may be expended the above described Eligible Projects at any time during the term of this Agreement but invoicing for the Eligible Project is limited to the annual amount for each city in Exhibit A in any County fiscal year.

Once the undergrounding of utilities within Gulf Boulevard has been completed throughout the entire corridor, then and only then may any other reimbursement for other Eligible Projects be made to the remaining Cities. Notwithstanding the Penny IV Assistance shown on Exhibit A as available to any particular City, once that City has completed its portion of the undergrounding, any remaining amount may be reallocated in the County Administrator's sole discretion after consultation with the BIG C, to another City or Cities as needed to ensure that all undergrounding is completed prior to any other Eligible Project expenditures of County Surtax funds under this Agreement. The foregoing sentence does not apply to Clearwater or Indian Shores Penny IV Assistance amounts.

Beginning in Fiscal Year 2020-21, Cities may request funds on a quarterly basis in arrears from the County for reimbursement of expenditures for Eligible Project work completed on or after January 1, 2020. Such reimbursements will not exceed any City's Penny IV Assistance annual amounts contained in Exhibit A. Invoices for Eligible Projects must include evidence that payments have been made and any other documentation the County may reasonably require and may be submitted no more frequently than quarterly.

B. Except as otherwise provided herein, the County will provide funding to each City for up to six(6) years beginning in Fiscal Year (FY) 2020-2021 as depicted in the attached table contained in Exhibit A.

C. The County will retain all funds until payment is made to the Cities as provided for in this Agreement. Subject to the County's ability to reallocate funds to complete all undergrounding of utilities within Gulf Boulevard, any funds not reimbursed to a City in a fiscal year will rollover each year until the termination of this Agreement. The County's payment for Eligible Project costs cannot exceed the amount depicted in that City's annual Penny IV Assistance (taking into account any amounts that may have rolled over from a previous fiscal year under this Agreement). In the event a City: 1) does not proceed to complete undergrounding of utilities contemplated herein, or; 2) subsequent to undergrounding utilities, complete another Eligible Project (or Eligible Projects) on the Improvement Plan within available remaining amounts of Penny IV Assistance, or; 3) funds are not otherwise paid to a City prior to the expiration of the term or termination of this Agreement subject to the terms herein, all remaining funds will be retained by the County for uses solely within the discretion of the County.

D. The sums payable to the Town of Belleair Shore may be paid to the City of Belleair Beach for Eligible Projects shared by these two Cities.

E. The County is not obligated to provide any support related to any Eligible Projects beyond the funding described in the Agreement.

Section 3. CITIES' RESPONSIBILITIES.

A. The Cities are solely responsible for designing, contracting and managing completion of Eligible Projects. The Cities must provide and procure all permits and licenses, pay all charges and fees and give all notices necessary and incidental to the lawful performance of the work done related to this Agreement, including but not limited to right of way utilization

permits from the County or the state. The Cities are responsible for maintaining, repairing, replacing and upgrading Eligible Projects in perpetuity.

B. Each City is responsible to provide to the County Administrator, in writing and in a form acceptable to the County:

1. Within 3 months of execution of this interlocal agreement by the City, a detailed work plan reflecting the intended projects, including expected timelines and anticipated expenditures by fiscal year; and
2. Beginning in July 2021, not later than July 31 each year, an annual status report that reflects the progress on each element of the work plan.

C. The Cities are responsible for assuring that providers of services performed pursuant to this Agreement comply with all applicable local, state and federal directives, orders and laws, including but not limited to Equal Employment Opportunity (EEO), Minority Business Enterprise (MBE) and Occupational Safety and Health Administration (OSHA).

D. The Cities must provide requests for reimbursement under this Agreement to the Pinellas County Office of Management and Budget in accordance with the limitations of this Agreement.

E. Each City hereby agrees to indemnify, defend, and hold harmless the County and all of its officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any act, error, omission, or negligent act by each individual City, its agents, or employees, arising from or during its performance of this Agreement, from the construction, operation, maintenance, repair or replacement by each individual City of its Eligible Project, except that neither the Cities, their agents, nor their employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent

act by the County or any of its officers, agents or employees during the performance of the Agreement.

Section 4. NON-APPROPRIATION.

This Agreement is not a general obligation of the County. It is understood that neither this Agreement nor any representation by any County official, officer or employee creates any obligation to appropriate or make monies available for the purposes of the Agreement beyond the fiscal year in which this Agreement is executed. The obligations of the County as to funding required pursuant to the Agreement are limited to an obligation in any given fiscal year to budget and appropriate from legally available Penny IV Surtax proceeds, after funding secured obligations or loans, essential and necessary infrastructure services for jail and criminal justice related facilities and other obligations contained in the terms of the August 1, 2017 Interlocal Agreement, activities in the Pinellas County Capital Improvement Program funded by the Surtax proceeds (Penny for Pinellas), and events, which in the sole discretion of the County, constitute an emergency requiring the use of Surtax funds. No liability to the Cities shall be incurred by the County beyond the monies budgeted and available for the purpose of the Agreement. If funds are not appropriated by the County for any or all of this Agreement for a new fiscal period, the County is not obligated to pay any sums contemplated by this Agreement beyond the portions for which funds were appropriated. The County agrees to promptly notify the Cities in writing of any subsequent non-appropriation, and upon such notice, this Agreement will terminate on the last day of the current fiscal year without penalty to the County and all undistributed funds will be retained by the County. Notwithstanding the foregoing, the County is not prohibited from pledging any legally available Surtax proceeds for any obligations heretofore or hereafter

incurred, which pledge will be prior and superior to any obligations of the County pursuant to this Agreement.

Section 5. TERM OF AGREEMENT.

A. The term of this Agreement will commence upon the date the Agreement has been executed by all Cities and the County and end on September 30, 2026).

B. Obligations under this Agreement which by their nature should survive, including, but not limited to any and all obligations relating to record retention, indemnification and maintenance and operation of the Eligible Projects will remain in effect after termination or expiration of this Agreement.

Section 6. AUDIT.

County reserves the right to audit Cities' records as such records relate to this Agreement. County will have access to such records on a reasonable basis from the effective date of the Agreement, for the duration of the Agreement and until thirty-six (36) months after the date of the final payment by the County to the Cities.

Section 7. NON-DISCRIMINATION.

The Cities and the County will not discriminate against any applicant for employment or employee with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of age, sex, race, color, religion, national origin, sexual orientation, or disability. The Cities and the County will, during the performance of this Agreement, comply with all applicable provisions of federal, state and local laws and regulations pertaining to prohibited discrimination.

Section 8. AMENDMENTS TO THE AGREEMENT.

Any amendment to this Agreement must be in writing and approved by all of the Cities and the County.

Section 9. FILING OF AGREEMENT.

This Agreement will be filed with the Clerk of the Circuit Court, as provided in Section 163.01(11), Florida Statutes.

Section 10. EXECUTION OF AGREEMENT.

This Agreement may be signed in counterparts by the Cities and County.

Section 11. PRIOR AGREEMENT SUPERSEDED.

This Agreement supersedes any prior agreements between the parties on this subject matter.

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed by the proper officers thereof, as of the day and year indicated on each signature page.

<ADDITIONAL SIGNATURE PAGES FOLLOW>

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by the proper officers thereof, as of the day and year first above written.

ATTEST:
KEN BURKE, CLERK

PINELLAS COUNTY, FLORIDA, by and
through its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
Chair

[SEAL]

IN WITNESS WHEREOF, the parties hereto have caused this Interlocal Agreement to be executed as of the day and year first written above.

ATTEST:

TOWN OF REDINGTON BEACH

By: _____
City Clerk

By: _____
Mayor

PENNY IV UNDERGROUNDING PROJECTS FUNDING BY FISCAL YEAR

City/Town	ROW Footage	% of Footage	Max Available **	2020/21	2021/22	2022/23	2023/24	2024/25	2025/2026
Clearwater *	N/A	N/A	\$750,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	ONLY
Belleair Beach	14,471	8.7294%	\$2,946,157	\$240,057	\$676,525	\$676,525	\$676,525	\$676,525	Amounts Rolled Forward from
Belleair Shore	5,431	3.2761%	\$1,105,700	\$90,094	\$253,901	\$253,901	\$253,901	\$253,901	Unspent
Indian Rocks Beach	27,982	16.8796%	\$5,696,867	\$464,189	\$1,308,170	\$1,308,170	\$1,308,170	\$1,308,170	Previous
Indian Shores *	N/A	N/A	\$500,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	Years
Redington Shores	11,760	7.0940%	\$2,394,223	\$195,085	\$549,785	\$549,785	\$549,785	\$549,785	Unpaid
No. Redington Beach	7,954	4.7981%	\$1,619,358	\$131,948	\$371,853	\$371,853	\$371,853	\$371,853	Amounts as of 09/30/2026
Redington Beach	10,638	6.4172%	\$2,165,795	\$176,472	\$497,331	\$497,331	\$497,331	\$497,331	are not available
Madeira Beach	22,524	13.5872%	\$4,585,671	\$373,647	\$1,053,006	\$1,053,006	\$1,053,006	\$1,053,006	to Cities
Treasure Island	25,786	15.5549%	\$5,249,783	\$427,760	\$1,205,506	\$1,205,506	\$1,205,506	\$1,205,506	
St. Pete Beach	39,228	23.6635%	\$7,986,445	\$650,747	\$1,833,924	\$1,833,924	\$1,833,924	\$1,833,924	
Totals	165,774	100%	\$35,000,000	\$3,000,000	\$8,000,000	\$8,000,000	\$8,000,000	\$8,000,000	
\$203.89 per ROW Foot	* Clearwater to receive \$750,000								
	*Indian Shores to receive \$500,000								

** Due to rounding total amount actually equals \$34,999,999. This does not affect the Maximum Penny IV Assistance available to each City as shown here.

Exhibit B

Penny IV Gulf Blvd. Undergrounding Interlocal Agreement

Clearwater Eligible Projects (not to exceed \$750,000.00 in Penny IV reimbursement):

- Mandalay Channel pedestrian bridge underpass construction
- Illuminated crosswalks along the major pedestrian corridors on the beach: near Pier 60/Coronado, S. Gulfview at Bayway/Parkway Dr./Gulf Blvd.

Indian Shores Eligible Projects (not to exceed \$500,000.00 in Penny IV reimbursement):

- A Public Art project as enumerated in Section 18 of the plan.
- Wayfinding and monument signs.
- Replacement of up to eight bus shelters

These projects may include design, engineering, demolition, landscaping, irrigation, lighting and other costs.

BRUCE McLAUGHLIN CONSULTING SERVICES, INC.

900 Gulf Boulevard, Suite 303
Indian Rocks Beach, Florida 33785
Phone: 727/595-7634 Fax: 727/593-9581
Email BruceSandy@aol.com

September 11 2020

RB

Meeting Date: September 16, 2020

Agenda Item 9.e

MEMORANDUM

TO: Honorable Mayor and Members, Town Board of Commissioners

FROM: R. Bruce McLaughlin, AICP, MCIP, Town Planner

SUBJECT: Ordinance 2020-06, Board of Adjustment Powers and Duties

EXECUTIVE SUMMARY

The current Board of Adjustment provisions are found in Chapter 6 of the Town Code and grant the Board jurisdiction over “this chapter.” As a result, the Town Attorney’s office has become concerned (and I concur) that the Board lacks jurisdiction to hear applications related to other Code chapters including Appendix A, Zoning, and Chapter 5, Boats, Docks and Waterways. Ordinance 2020-06 clarifies that the Board’s jurisdiction includes all land use related matters in the Town Code and updates the Code. The LPA recommended adoption of the Ordinance. **I RECOMMEND THAT THE TOWN BOARD REVIEW ORDINANCE 2020-06 ON ITS MERITS.**

BACKGROUND

Applicant	Town of Redington Beach
Affected Area	Entire Town

THE REQUEST

That the Town Board review proposed Ordinance 2020-06 on its merits.

HISTORY

The current regulations for the Board of Adjustment are found in Chapter 6, Article XI of the Town Code. The Article was derived from Ordinance 2013-02.

The key provisions governing the Board of Adjustment are:

Sec. 6-289. - Powers and duties.

The board of adjustment shall have the following powers and duties:

- (a) To authorize upon application in specific cases such exception/variance **from the term of this chapter** as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary and undue hardship.
- (b) To consider written applications for a special exception/variance when it demonstrates that:
 - (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
 - (2) A literal interpretation **of the provisions of this chapter** would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of **this chapter** and would work unnecessary and undue hardship on the applicant.

Town of Redington Beach Code, § 6-289, [Emphasis Added]

(It should also be noted that nowhere in the Town Code are provisions made for “special exceptions,” a “term of art” in zoning and land use planning. Thus, pursuant to § 6-289, the Board of Adjustment is granted jurisdiction to hear a type of application that does not exist under the Town Code.)

However, the more important issue is the limitation on the Board of Adjustment’s jurisdiction to Chapter 6 of the Town Code, “this chapter” as referenced in Article XI. This limitation casts

doubt on the Board of Adjustment's jurisdiction to hear variances under the other Chapters of the Town Code, including at least:

- (1) Chapter 5, Boats, Docks and Waterways;
- (2) Chapter 6, Buildings and Building Regulations
- (3) Chapter 7, Concurrency Management System
- (4) Chapter 9, Fire Prevention and Protection
- (5) Chapter 10, Floodplain Management
- (6) Chapter 17, Signs
- (7) Chapter 18.5, Stormwater
- (8) Chapter 19, Right-of-Way Utilization
- (8) Appendix A, subject to the limitations of the Town Charter ¹

Proposed Ordinance 2020-06 grants the Board of Adjustment authority to hear **any** variance application from any land use related regulation in the Town Code, including from the Chapters listed above, thereby remedying the current concern that the Board is without jurisdiction to hear these other variances.

NOTICE

No notice other than the notice of the Board of Commissioners' meeting and the posting of the agenda is required for this meeting.

LOCAL PLANNING AGENCY RECOMMENDATION

Acting pursuant to its general authority for the Town's comprehensive planning program pursuant to § 163.3174(4), Florida Statutes, 2019, the Planning Board/Local Planning Agency has recommended that the Town Board adopt Ordinance 2020-06.

AUTHORITY

Pursuant to §§ 4 and 5 of the Town Charter, the Town is governed by the Board of Commissioners which may exercise all powers available to a municipality under the Constitution and laws of the State of Florida. Those powers include preparing and adopting land development

¹ Some variances from Appendix A are also variances from provisions of Chapter 6 and have been considered as such.

regulations and the tools to implement and enforce those regulations including the variance process and the role of a Board of Adjustment in implementing the variance process.

ANALYSIS

The Need for a Variance Process

At present, the Board of Adjustment has jurisdiction to grant variances only from Chapter 6 of the Town Code. However, the variance mechanism is like a “safety valve” to preserve the constitutionality of a land development regulation: *Crone v. Town of Brighton*, 119 N.Y.S.2d 877 (N.Y. Int. App. 1952), or as an “escape hatch” from the strict application of land development regulations: *Lincourt v. Zoning Board of Review, City of Warwick*, 201 A.2d 482 (R.I. 1964).

The year after the Supreme Court found zoning regulations to be constitutionally permissible, (*Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 121 (1926)), the Court decided *Gorieb v. Fox*, 274 U.S. 603, 47 S.Ct. 675 (1927). In *Gorieb*, the Court held:

... The proviso evidently proceeds upon the consideration that an inflexible application of the ordinance may under some circumstances result in unnecessary hardship. In laying down a general rule, such as the one with which we are here concerned, the practical impossibility of anticipating and providing in specific terms for every exceptional case which may arise, is apparent. And yet the inclusion of such cases may well result in great and needless hardship, entirely disproportionate to the good which will result from a literal enforcement of the general rule. Hence **the wisdom and necessity here of reserving the authority to determine whether, in specific cases of need, exceptions may be made** without subverting the general purposes of the ordinance. We think it entirely plain that the reservation of authority in the present ordinance to deal in a special manner with such exceptional cases is unassailable upon constitutional grounds. [Citations Omitted, Emphasis Added]

Gorieb tracked the provisions of the *Standard State Zoning Enabling Act*.²

² Advisory Committee on City Planning and Zoning; US Department of Commerce, Herbert Hoover, Secretary, 1926.

Sec. 7 BOARD OF ADJUSTMENT. Such local legislative body may provide for the appointment of a board of adjustment and [may] authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

Variances are not a way of avoiding the law: they are a recognition that no zoning ordinance or other land development regulation could possibly anticipate every land use situation that might arise and the provision of a mechanism for dealing with individual cases. *See, e.g., Brown, Robert N., Varying the Variance, Cleveland APA Planning & Zoning Workshop, Cleveland, Ohio, November 13, 2015:*

In fact, variances are essential to the proper functioning and administration of a zoning code. *Ibid.*

The foregoing is true not just of zoning regulations but of all land development regulations which implement the Town's Comprehensive Plan. Since the potential to seek and be granted a variance is essential to the implementation of the Town's Comprehensive Plan through the enforcement of the implementing land development regulations, it is equally essential that the variance power of the Board of Adjustment be established clearly, cogently and in a legally sufficient fashion.

The Proposed Amendments

Ordinance 2020-06 makes a number of changes to Article XI of Chapter 6 of the Town Code. The two most important changes are to clarify that the Board of Adjustment has jurisdiction over most variance requests from the land development regulations found in various chapters of the Town Code and to codify the criteria which the Board of Adjustment **must** apply in considering any variance application.

As noted above, the Board of Adjustment's jurisdiction is expressed throughout Article XI as being over requests for variances from the provisions of "this chapter." It has recently been determined that this language limits the Board of Adjustment's jurisdiction and that the Board does not have jurisdiction to consider variance applications from other chapters of the Town Code, particularly Chapter 5 pertaining to docks and seawalls. Ordinance 2020-06 clarifies that,

with three exceptions, the Board of Adjustment has jurisdiction to consider variance requests from any land development regulation wherever found in the Town Code.

The types of variances which may not be considered by the Board of Adjustment are with respect to permitted land uses and permitted densities in zoning districts pursuant to Appendix A; to the maximum height of buildings; for nonconforming docks, and from any provision of the Town's Comprehensive Plan. Otherwise, Ordinance 2020-06 confers on the Board of Adjustment jurisdiction to hear applications for variances from any land development regulation found in the Town Code.

The second major change found in Ordinance 2020-06 is the codification of the criteria for granting a variance. These criteria:

- Unusual hardship;
- Not self-created;
- Minimum variance necessary;
- Variance will not confer a special benefit;
- Denial of rights enjoyed by other property owners; and
- In the public interest

(Draft Ordinance page 3, lines 13 - 40)

are enshrined in planning and zoning practices and principles and in the common law.³

However, these criteria are not currently articulated in Article XI of Chapter 6 of the Town Code. To properly align Article XI with land use planning and zoning principles and with the common law these criteria are being written into the Code.

The Board of Adjustment is further required to make findings that a variance application comports with the criteria for a variance, a requirement that is unchanged by Ordinance 2020-06.

Other changes proposed by Ordinance 2020-06 include, but are not limited to:

- Deletion of references to special exceptions since that is a zoning technique not employed by the Town;
- Elimination of some internal paperwork requirements;
- Expanding the prohibited time for a re-application for a denied variance;

³ They are also enumerated in some state zoning enabling laws in substantially the same language.

- Permitting the Building Official to grant *de minimis* variances;
- Expanding the notice requirements for dock variances; and
- Establishing a 60 day time frame within which the work authorized by a variance must obtain a building permit.

The foregoing changes and the other changes that can be found in Ordinance 2020-06 will enhance the variance process in the Town and offer significant additional protections to the Town and its residents and property owners.

RECOMMENDATION

THAT THE TOWN BOARD OF COMMISSIONERS REVIEW ORDINANCE 2020-06 ON ITS MERITS.

TOWN OF REDINGTON BEACH
ORDINANCE NO. 2020 - 06

**AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA,
AMENDING CHAPTER 6 – BUILDINGS AND BUILDING REGULATIONS,
ARTICLE XI. – BOARD OF ADJUSTMENT OF THE TOWN CODE TO
CLARIFY THE SCOPE OF THE POWERS AND DUTIES OF THE BOARD
OF ADJUSTMENT; MAKING RELATED FINDINGS; PROVIDING FOR
CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

WHEREAS, the Town Board of Commissioners regularly adopts ordinances amending the Code; 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 actual Town operations, do not contain outdated, redundant or erroneous provisions, and are harmonious with other provisions in the Town Code; and

WHEREAS, in light of the foregoing, the Commission desires to update the authority and clarify the powers and duties of the Town's Board of Adjustment in light of recent changes to other provisions in the Town's Code; 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 and

WHEREAS, the Redington Beach Planning Board has recommended adoption of this Ordinance.

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

SECTION 1. Chapter 6 – Buildings and Building Regulations, Article XI. – Board of Adjustment, is amended as follows:

Sec. 6-288. - General.

- (a) A board of adjustment is hereby established, to consist of five members and two alternates, designated as such to be appointed by the town commission, each for a term of three years; provided that in initial appointments, three terms shall be for one year, two for two years, and two alternates for three years. All members must be electors of the ~~city~~ Town. No member of the board shall be an official or employee of the town.

- 1
2 (1) *Alternate members.* Alternate members may act in the temporary absence or
3 disability of any regular member or when a regular member is otherwise
4 disqualified in a particular case.
5
6 (2) *Member removal.* Members of the board may be removed from office for cause
7 by the town commission on written notice and after public hearing.
8
9 (3) *Vacancies.* Vacancies shall be filled by the town commission within 30 days after
10 the vacancy occurs for the unexpired term of the member affected.
11
12 (b) The board shall elect a chairman and vice chairman who shall be a member of the board
13 of adjustment. Terms of all offices under this subsection shall be for one year, with
14 eligibility for reappointment.
15
16 (c) The board shall adopt rules for transaction of its business, and shall keep a record of its
17 resolutions, findings and determinations, which shall be public record. The board shall
18 keep minutes of its proceedings, showing the vote of each member on each question, or if
19 absent or failing to vote indicating such fact.
20
21 (d) Meetings of the board shall be held at the call of the chairman and at such times as the
22 board may determine. Minutes of the board shall be filed promptly in the office of the
23 town clerk. ~~Copies of every application and appeal, notice of public hearing, and~~
24 ~~resolution of the board shall be forwarded to each member of the town commission.~~
25
26 (e) The town commission is authorized and empowered to appropriate such funds that are
27 necessary to conduct the work of the board. The town commission is authorized to
28 establish a schedule of fees to be charged by the board. The board shall have the
29 authority to expend all sums made available for its use from fees and other sources for the
30 purpose and activities authorized by this chapter.
31
32

33 **Sec. 6-289. - Powers and duties.**
34

35 The board of adjustment shall have the following powers and duties:
36

- 37 (a) To authorize upon application in specific cases such ~~exception/~~ variances from the terms
38 of ~~this chapter~~ the Town's Code of Ordinances unless otherwise specifically excepted,
39 that as will not be contrary to the public interest where, owing to special conditions, a
40 literal enforcement of ~~the~~ those provisions of ~~this chapter~~ would result in unnecessary and
41 undue hardship.
42

(b) To consider written applications for a ~~special exception~~/variance when it is demonstrated demonstrates that:

- (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other similarly situated lands, structures, or buildings in the same district; and
- (2) A literal interpretation of the provisions of ~~this chapter~~ the applicable code would deprive the applicant of rights commonly enjoyed by other similarly situated properties in the same district under the terms of ~~this chapter~~ the applicable code ~~and would work unnecessary and undue hardship on the applicant.~~
- (3) No variance shall be granted unless the applicant demonstrates by relevant, competent, and substantial evidence that the following criteria have been satisfied:
 - a. The property has an unusual hardship not suffered by others similarly situated properties within the same district;
 - b. The hardship of the property was not self-created by the applicant and was not the result of an action taken with the applicant's prior knowledge or approval. Further, no variance may be granted arising from illegal construction of a structure or an illegal use of the premises which would otherwise have required a permit to be issued and which construction was commenced illegally. Under such conditions, the property owner shall have no legal right to apply for a variance and the board shall have no legal right to grant a variance;
 - c. The requested variance is the minimum variance necessary to permit the reasonable use of the property;
 - d. The requested variance will not confer on the applicant any special privilege that is denied by the applicable code to other similarly situated property owners;
 - e. The literal interpretation of the applicable code would deprive the applicant of rights commonly enjoyed by other similarly situated property owners;
 - f. The requested variance will not be contrary to the public interest and will be in harmony with general intent and purpose of the applicable code.

(c) To hear and decide appeals where it is alleged there is error in any order, decision,

1 or determination of the building code administrator in the administration or interpretation of the
2 building regulations of the Town of Redington Beach. This appeals process is limited to the
3 provisions of the Town's Code and does not allow for appeals of interpretation or application of
4 the Florida Building Code, or other similar code which the Town may adopt from time to time.

5
6 ~~—— (d) — No amendment, repeal or change whatsoever or exception/variance of any kind to~~
7 ~~those certain zoning ordinances of the town restricting, providing and establishing certain zones~~
8 ~~and zoning of the town, shall be made or affected unless a resolution is duly passed and adopted~~
9 ~~by the board of commissioners of the town proposing such change and calling for an election;~~
10 ~~either at a special or general election or other specific election, whereupon, the registered voters~~
11 ~~of the town shall vote upon the question for affirmation or approval or disaffirmation or~~
12 ~~disapproval of the resolution and the proposition contained therein respecting any amendment,~~
13 ~~repeal or change of any nature in the present zoning laws and ordinances of the town.~~
14 ~~Amendment, repeal or change of any exception/variance to those certain zoning ordinances of~~
15 ~~any kind must be approved by at least two thirds of the voters, voting on such amendment, repeal~~
16 ~~or change.~~

17
18 ~~—— (e) — The board of adjustment is specifically prohibited from granting any exception or~~
19 ~~variance whatsoever from the laws, regulations, ordinances or other restrictions relating to the~~
20 ~~overall height of buildings and structures within the town as set forth in Section 20 of the Charter~~
21 ~~of Redington Beach and section 5(c) and (d) of the building regulations of appendix A, zoning,~~
22 ~~of the Redington Beach Code.~~

23
24 ~~The board of adjustment shall not consider not permitted or non-conforming use of lands,~~
25 ~~structures or buildings in the same zoning district, or not permitted or non-conforming use of~~
26 ~~lands, structures, or buildings in other zoning districts as grounds for the issuance of a special~~
27 ~~exeption/variance.~~

28
29 (d) *Prohibited Variances.* The board of adjustment is specifically prohibited from
30 hearing and granting any variance from:

- 31
32 (1) The provisions of Appendix A to the Town's Code of Ordinances restricting,
33 providing, and establishing certain zones and zoning of the Town;
34
35 (2) The overall height of buildings and structures within the Town as set forth in
36 Section 20 of the Charter of Redington Beach and sections 5(c) and (d) of the
37 building regulations of Appendix A of the Redington Beach Code;
38
39 (3) The regulations governing non-conforming docks set forth in section 5-57 (a)(7)
40 of the Redington Beach Code; and
41
42 (4) Any provision of the Town's Comprehensive Plan.

(e) The board shall not consider any petition or application for the same request for a period of 30 120 days from the ~~effective~~ date of the order on a previous action on the petition or application.

(f) A *de minimis* or administrative variance may be granted by the Town's building code administrator without being presented to the board of adjustment so long as it meets the following criteria:

- (1) The structure or use at issue was constructed or commenced lawfully and with the proper permits;
- (2) Such a variance would not be contrary to the public interest or give special benefit to the property owner requesting such a variance;
- (3) The variance, if granted, would not be in violation of the Town's Comprehensive Plan; and
- (4) The deviation being sought does not exceed twelve inches for setbacks and accessory structure heights, or one percent for measurements pertaining to lot dimensions or area. All other prohibitions on the granting of variances contained in Section (d) above are applicable to *de minimis* variances.

Denial of a *de minimis* variance may be appealed to the board of adjustment subject to the variance criteria set forth in section (b) above.

Sec. 6-290. - Procedures.

When an application for ~~special exception~~/variance is submitted:

(a) A public hearing shall be held. Any party may appear in person, by agent, or by attorney.

(b) ~~Except as provided herein, d~~Due notice of the public hearing shall be given by no less than 30 days' written notice ~~(in writing)~~ mailed to the applicant and to all property owners within 150 feet of any property line of the applicant as determined by the Pinellas County Property Appraiser's Office. For a dock variance application for a property located on an inside radius as such is defined herein, notice of the variance application shall be given to all property owners with property that fronts on the inside radius. For the purposes of this subsection, "inside radius" means a curvilinear length of shoreline wherein the shoreline recedes from the waterway, thereby creating a cove, inlet or bay or similar physical feature, ~~or exceptions as determined by the building code administrator (exceptions would be docks which would entail a greater~~

distance). Board of adjustment members, and the building code administrator and the town commissioners shall also be notified at least 14 days prior to the public hearing.

(c) The board of adjustment shall make findings as to whether the requirements as set forth in section 6-289 have been met by the applicant.

(d) The board of adjustment shall further make a finding whether the reasons set forth in the application justify the granting of the ~~special exception~~/variance, and whether the ~~special exception~~/variance is the minimum ~~special exception~~/variance that will make possible the reasonable use of the land, building, or structure of the applicant.

(e) The board of adjustment shall further make a finding that the granting of the ~~special exception~~/variance will be in harmony with the general purpose and intent of ~~this chapter~~, the applicable provisions of the Town Code and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

(f) The board of adjustment, in granting any ~~special exception~~/variance, may ~~prescribe~~ impose appropriate conditions and safeguards in conformity with the applicable code sections this chapter, including time limits for beginning and for completion of any action involved by the variance. Violation of such conditions and safeguards, when made a part of the terms under which the ~~special exception~~/variance is granted, shall be deemed a violation of ~~this chapter the Town Code~~, and all such violations shall be governed by the code enforcement ordinance and presented to the special master in accordance with chapter 2, administration, article III, code enforcement, sections 2-55 through 2-93 of the Code of Redington Beach.

(1) — ~~The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties as set forth in chapter 2, administration, article III, code enforcement, sections 2-55 through 2-93 of the Code of Redington Beach.~~

(2) — ~~It shall be a violation for any person to destroy, move, remove, or deface or obscure any sign or notice erected or posted pursuant to the requirements of this chapter and any person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties as set forth in chapter 2, administration, article III, code enforcement, sections 2-55 through 2-93 of the Code of Redington Beach.~~

(3) — ~~Nothing herein contained shall prevent the town from taking any other lawful action necessary to prevent or remedy any violation.~~

(g) Any variance granted under the provisions of this code shall expire within sixty (60) days from the date of the executed order granting the variance, unless a building permit for

1 construction or alteration has been issued in accordance with the plans and conditions upon
2 which the variance was granted.

3
4 (h) Upon receiving a request in writing at least thirty (30) days prior to the scheduled
5 expiration date of the variance, the board of adjustment may, in its discretion, grant a one-time
6 thirty (30) day extension calculated from the date the original variance would have expired,
7 provided proper public notice by mail has been given and the request is one made in good-faith.
8
9

10 **Sec. 6-291. - Appeals from decisions of the board of adjustment.**

11
12 Any person aggrieved by any decision of the board, may seek judicial review of such decision in
13 a court of competent jurisdiction as provided by law. ~~by filing a notice of appeal, in the form~~
14 ~~prescribed by the Florida Appellate Rules, in the circuit court, within 30 days of the execution of~~
15 ~~the order to be appealed.~~ The decision of the board of adjustment shall be considered a final
16 administrative action, and shall only be subject to review based upon the record established at the
17 hearing before the board.
18
19

20 **Sec. 6-292. - Appeals to the board of adjustment.**

21
22 It is the intent of this article that all questions of interpretation and enforcement of the
23 Building Code and Building Regulations of the Town of Redington Beach shall be first presented
24 to the building code administrator.
25

26 (a) Appeals to the board of adjustment concerning interpretation or administration of
27 the Town's Building these rRegulations or for special exception or variance under these
28 ~~regulations~~ may be taken by any person aggrieved by any decision, determination, or requirement
29 of the building code administrator.
30

31 (b) Such appeals shall be taken within 30 days, by filing a notice of appeal specifying
32 the grounds of appeal with the building code administrator. The building code administrator
33 shall forthwith transmit to the board of adjustment all papers constituting the record upon which
34 the building code administrator took the action appealed.
35

36 (c) The board of adjustment shall fix a reasonable time for the hearing of the appeal,
37 giving public notice thereof in the same manner as for ~~special exceptions/~~variances, as provided
38 in section 6-290, as well as due notice to the parties in interest, and decide the same within a
39 reasonable time. At the hearing, any party may appear in person or by agent or attorney.
40

41 (d) An appeal stays all proceedings in furtherance of the action appealed unless the
42 building code administrator, from whom the appeal is taken, certifies to the board after notice of

1 appeal is filed that, in the administrator's opinion, a stay would cause a hazard to life or property.
2 In such event, the proceedings shall not be stayed except by ~~restraining order granted a~~
3 supermajority vote by the board or by an injunction issued by a court of competent jurisdiction,
4 on notice to the administrator and ~~on due~~ with good cause shown.
5
6

7 **Sec. 6-293. - Schedule of fees, charges and expenses.**
8

9 (a) The town commission shall establish a schedule of fees, charges, and expenses
10 and a collection procedure for review by the board of adjustment. The schedule of fees shall be
11 posted in the office of the building code administrator and town clerk, and may only be amended
12 by the town commission.
13

14 (b) The fee and administrative costs for a ~~special exception~~/variance heard by the
15 board of adjustment shall be \$250.00 and \$50.00 for administrative or *de minimis* variances.
16 There shall be no additional fee for an appeal as set forth in section 6-291.
17

18 (c) Until all applicable fees, costs and expenses have been paid in full, no action shall
19 be taken on any application or appeal.
20

21 (d) In addition to the fee schedule outlined above, the petitioner shall be responsible
22 for the payment of any extraordinary expenses incurred by the town, at a cost consistent with the
23 reasonable expenses in analyzing or reviewing all or any part of an application. The
24 extraordinary expenses may be occasioned by the town's retention of the services of a third-party
25 consultant. The petitioner will be advised of the necessity of such expense prior to it being
26 incurred. The petitioner and the building code administrator must jointly approve an estimated
27 cost amount before these charges can be authorized. Upon the request of the petitioner, the town
28 commission may review such extraordinary expenses as to its necessity and amount. The charges
29 for extraordinary expenses will be paid in advance to the town in the form of cash or certified
30 check at the agreed upon cost.
31
32

33 **Sec. 6-294. - Severability clause.**
34

35 Should any section or provision of this article be decided by ~~the courts~~ a court of competent
36 jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the
37 balance of this article.
38
39

40 **SECTION 2.** For purposes of codification of any existing section of the Redington
41 Beach Code herein amended, words underlined represent additions to original text, words
42 ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain

unchanged.

SECTION 3. 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 4. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

SECTION 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2020, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2020, by the Board of Commissioners of the Town of Redington Beach, Florida.

James Simons, Mayor
Attest:

Missy Clarke, CMC, Town Clerk

Approved as to form:

Jay Daigneault, Town Attorney

C:\Red Bch\Board of Adjustment\Code RewriteC.wpd