



Indian Harbour Beach City Hall
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Ad Hoc Tree Ordinance Committee Meeting Agenda

7:00 p.m. May 24, 2023

LTC NORMAN C. HAYES AND MARILYN C. HAYES
COUNCIL CHAMBER

1. Call to order
2. Pledge of allegiance
3. Roll call
4. Review and approval of minutes from April 26, 2023
5. Review of draft tree preservation ordinance
6. Selection of next meeting date
7. General discussion
8. Public forum
9. Adjourn

ALL PERSONS WISHING TO BE HEARD SHOULD APPEAR IN PERSON AT THESE HEARINGS OR SEND WRITTEN COMMENTS TO THE CITY CLERK. ALL PERSONS AND PARTIES ARE HEREBY ADVISED THAT IF THEY SHOULD DECIDE TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT THE PUBLIC MEETING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, HE OR SHE 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 TO BE BASED. FSS 286.0105. IN COMPLIANCE WITH THE AMERICAN WITH DISABILITIES ACT (ADA), ANYONE WHO NEEDS A SPECIAL ACCOMMODATION FOR THIS MEETING SHOULD CONTACT THE CITY CLERK AT 321-773-3181 AT LEAST 48 HOURS IN ADVANCE OF THIS MEETING.

Tree Committee Minutes

7 pm April 26, 2023
Council Chamber

Call to Order

Meeting called to order at 7:04 pm

Pledge of Allegiance

The committee recited the Pledge of Allegiance to the USA Flag

Roll Call

Present:

Voting Members: Anastasia Doshna, Lisa Rehm, David Botto, Linda Cohen, and Neil Yorio (via phone)

Alternate: Krista Ellingson

Staff: John W. Coffey, ICMA-CM, City Manager; Orrie Covert, Management Analyst

Approval of April 12, 2023 Minutes

Motion to approve the amended minutes by Linda Cohen, second by Lisa Rehm, approved unanimously

Continuing development of a draft tree preservation ordinance

- Discussion of permitting (no permit or permit with no charge). Consensus to not include a permitting process in the draft ordinance.
- Need language to discourage tree abuse hack racking, improper trimming.
- Example was discussed about a neighbor who cut large trees down and a person called the City trying to stop it. City Manager Coffey explained how code violations are handled.
- Discussion of heritage trees, identification, recognition, inclusion in the draft ordinance definition
- Discussion of ideal size and scope of draft
- Staff to resume working on draft ordinance and will present updated drafts to the committee for review and comment. Key components to the draft will include:
 - Purpose
 - Definitions
 - Right place, right plant reference
 - Heritage tree definition
 - Best practices, avoid tree abuse, ANSI standard
 - No permitting
 - Board roles/responsibilities
 - Education
 - Develop and maintain public tree canopy master plan
 - Consult with staff as requested regarding three canopy masterplan implementation

Review of Arbor Day 2023 event

Staff to draft thank you letters to Joanna and IHB Garden Club for Chairperson Doshna's signature

General Discussion

May 24th at 7pm is the next meeting.

Public Forum

N/A

Adjournment

David Botto motion to adjourn, consensus approved at 8:16 pm



City of Indian Harbour Beach Staff Report

Ad Hoc Tree Ordinance Committee Agenda Item

Review of draft Tree Preservation Ordinance

Meeting Date: May 24, 2023

Attachments:

Draft Ordinance and IHB Landscaping Code

Staff Recommendation:

Review draft ordinance and provide staff with feedback regarding how to modify the document.

Background Information:

At the April 26, 2023 Ad Hoc Tree Ordinance Committee Meeting, a consensus was reached to have staff resume drafting of the ordinance for the committee to review and provide direction on how to modify at future meetings. The attached draft ordinance is written in the format of an actual ordinance without the formal title, whereas clauses and boilerplate effective date and signature lines (which will be added later).

Staff recommends the committee review the document and especially the following sections:

- Definition of Protected Trees (Sec. 107-36, page 4).
 - Will there be a minimum DBH required and what that minimum should be?
- Exemption of small trees (Sec. 107-38(2)(g), page 6)
 - Draft includes a 1.5 inch minimum as taken from another ordinance. Will there be a minimum DBH required and what that minimum should be?
- Replacement Tree minimum size (Sec. 107-41(1)(e), page 8)
 - Will there be a minimum size for replacement trees?
- Minimum size of trees to be included in tree surveys (Sec. 107-41(2), page 8)
 - Will there be a minimum size for tree surveys?

- Updated resource for replacement trees (Sec. 107-43(1)(b)
 - Is there a better reference than the one from the Port St. Lucie ordinance?
- Inclusion of a permitting process for all properties except single-family detached single family homes.

The likely remaining steps to adoption include:

1. Once the committee is comfortable with the draft ordinance, staff recommends the committee refer it to City Attorney Bohne for his review and comment.
2. After the committee addresses any concerns raised by Mr. Bohne, the ordinance will be sent to the Planning and Zoning Board for their review and recommendation to the City Council.
3. The City Council will review the recommendation(s) of the Planning and Zoning Board and take one of the following actions:
 - a. If no changes are desired, direct staff to schedule the ordinance for first and second readings at future Council meetings.
 - b. If changes are desired, send draft ordinance back to the Ad Hoc Tree Ordinance Committee to address deficiencies.
 - i. Repeat the above cycle until the ordinance is adopted.

DRAFT TREE PRESERVATION ORDINANCE

TOC

1. Sec. 107.35 Declaration of legislative intent and public policy
2. Sec. 107-36 Definitions
3. Sec. 107-37 Tree Preservation Board
4. Sec. 107-38 Applicability and exemptions
5. Sec. 107-39 Permits required to remove trees
6. Sec. 107-40 Permit procedure and criteria for issuing permits
7. Sec. 107-41 Tree protection and mitigation
8. Sec. 107-42 Tree pruning
9. Sec. 107-43 Replacement trees
10. Sec. 107-44 Removal or destruction of replacement trees prohibited.
11. Sec. 107-45 Penalties
12. Sec. 107-46 Recommended trees
13. Sec. 107-47 Non-recommended trees

Section 1. A new section 107-35 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-35. Declaration of legislative intent and public policy

- (1) These regulations shall be known and may be referred to as the City of Indian Harbour Beach Regulations for Tree Maintenance and Preservation.
- (2) The purpose of this section is to perpetuate the protection, preservation, and conservation of existing trees as an effective means of conserving energy and to preserve trees to improve the aesthetic quality of the City thereby promoting the health and general welfare of the citizenry. It is the intent of this Chapter to
 - (a) Promote the community appearance
 - (b) Enhance and protect property values
 - (c) Promote landscaping methods that provide for the preservation of existing plant communities, re-establishment of native plant communities, and Florida-Friendly concepts to promote water conservation.
 - (d) Improve environmental quality by recognizing the numerous beneficial effects of native trees upon the environment, including:
 - (1) Preserve existing natural trees and vegetation and incorporate native plants, plant communities and ecosystems into landscapes where possible;
 - (2) Improving air and water quality through such natural processes as photosynthesis and mineral uptake
 - (3) Trees are valuable producers of oxygen, a necessary element to the human survival, and serve to reduce the environmentally dangerous carbon dioxide concentration in the air.
 - (4) The leaves of the trees trap and filter out ash, dust and pollen in the air.
 - (5) Reducing and reversing air, noise, heat and chemical pollution through the biological filtering capacities of trees and other vegetation
 - (6) Promoting energy conservation through the creation of shade, thereby reducing heat gain in or on buildings or paved areas
 - (7) Reducing the temperature of the microclimate through the process of evapotranspiration
 - (8) Reducing the use of water and fertilizers needed to maintain non-native trees and plants
 - (e) Maintain and enhance a natural haven for community wildlife
 - (f) Provide citizens with psychological relief from the increasing complexities of a manmade suburban environment
 - (g) Assist in public information, the education of its citizens, and the effective implementation of this Chapter.
- (3) Trees may prevent erosion by stabilizing the soil through their root system and by breaking the force of raindrops pounding upon soil surfaces.

- (4) Trees reduce the quantity of surface runoff and reduce the percentages of impervious surfaces.
- (5) Trees help purify water by removing the nutrients from waters passing through the ground from the surface to the Indian River Lagoon.
- (6) Trees provide shade and transpire water which helps to moderate temperatures and cleanse the air.
- (7) Trees provide food, shelter and essential habitat for wildlife.
- (8) Trees provide valuable visual aesthetics and psychological contrast to the urban environment.
- (9) Trees are a valuable asset and increase the economic and aesthetic value of developed and undeveloped properties.

Section 2. A new section 107-36 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-36 Definitions

Biodiversity - Biodiversity is all the different kinds of life found in one area—the variety of animals, plants, fungi, and even microorganisms like bacteria that make up our natural world. Each of these species and organisms work together in ecosystems, like an intricate web, to maintain balance and support life.

Certified Arborist – An arborist certified by the International Society of Arboriculture (ISA).

D.B.H. – Diameter at breast height

Drought tolerant - Plant species that will survive on natural rainfall without supplemental irrigation after a period of establishment.

Florida friendly plants - The plant will thrive in our local climate and soil, requiring little care. Florida Friendly plants however do not necessarily need to be native plants.

Florida native plants - A species occurring within the state boundaries prior to European contact, according to the best available scientific and historical documentation

Heritage trees - Trees that are important because of their great size, notable longevity, unusual form, location at the extreme of their natural growing range or association with history.

Invasive species - Introduced plants and animals that cause harm to the environment, the economy, and/or human health. Often displacing native species, these invaders skew the delicate balance between animals, plants, and important processes such as water flow and fire.

Keystone species - A species on which other species in an ecosystem largely depend, such that if it were removed the ecosystem would change drastically. The 5% of native plants that provide 75% of the food that supports the terrestrial food web.

Mycorrhizae - Beneficial fungi growing in association with plant roots, and exist by taking sugars from plants 'in exchange' for moisture and nutrients gathered from the soil by the fungal strands. The mycorrhizas greatly increase the absorptive area of a plant, acting as extensions to the root system.

Non-native plants - Also referred to as exotic or alien, are plants that have been introduced to an area from their native range, either purposefully or accidentally.

Pleached – Denoting or consisting of branches that are entwined or interlaced to form a hedge or provide cover for an outdoor walkway.

Problem trees – Trees that are not a good long-term fit for a location for a multitude of reasons including, but limited to: wrong tree, wrong place; insect damage; lightning; damage, wind damage; vandalism; organic or inorganic soil composition; etc.

Protected trees - Mature trees, excluding palm trees, with a diameter at breast height (D.B.H.) of 12 inches or more, any replacement tree, and any tree that is represented in a landscape plan, street tree planting plan, or other planning document for the purposes of securing an approved building permit, clearing permit, or certificate of occupancy.

Replacement trees – A tree, preferable list in Sec. 107-46, planted after a protected tree is removed.

Salt tolerant - Sea spray can cover foliage and soil even a few miles from the ocean, and salt water can intrude into ground water and wells.

Tender - Susceptible to injury from cold weather, opposite of hardy

Tree mitigation account – A simplified means of describing a miscellaneous revenue account that mitigation or penalties receipts are received and then used to offset a budget amendment to a Public Works Department expenditure account used for maintenance of trees on City property.

Wind resistant plants - Plants that are less likely to suffer broken branches or snapped trunks during storms

Section 3. A new section 107-37 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-37 Tree preservation board

- (1) Purpose: The City of Indian Harbour Beach, Florida hereby creates a City Tree Preservation Board.
- (2) Membership: The City Tree Preservation Board shall consist of five voting members and two alternates to be appointed by the City Council. The members of said board shall be residents of the city and shall serve at the pleasure of the City Council. Voting membership ideally should be comprised of representatives of the following segments of the community:
 - Residents (2)
 - Commerce
 - Development
 - Landscaping

(3) Term of Office: The initial appointments to the City Tree Preservation Board shall be as follows:

- Two members appointed for a term of three years.
- Two members appointed for a term of two years.
- One member appointed for a term of one years

Thereafter all appointments shall be made for a term of three years and any member may be reappointed from term to term upon approval of the City Council. Appointments to fill any vacancy shall be for the remainder of the unexpired term of office. Any member who fails to attend two of three successive meetings without cause and without prior approval of the Chairperson shall automatically forfeit her or his appointment and the City Council shall promptly fill such vacancy.

(4) Compensation: Members of the Tree Preservation Board shall serve without compensation.

(5) Meetings: The Tree Preservation Board shall establish a regular meeting schedule no less than once a quarter.

(6) Operation: Members of the Tree Preservation Board shall annually elect a chairperson and vice-chairperson by majority vote to preside over the board's meetings. The chairperson and vice-chairperson may take part in all deliberations and vote on all issues. A majority of the members shall be a quorum for the transaction of business.

(7) Duties and Responsibilities: The Tree Preservation Board shall have the following duties and responsibilities:

- (a) Plan and host Indian Harbour Beach's annual Arbor Day Ceremony.
- (b) Promote best practices in tree selection, planting, care, and trimming.
- (c) Consult with City staff, upon request, regarding care and maintenance of trees on City property.
- (d) Develop and present annually a written community tree management program and supporting work plan with which, upon acceptance by City Council, shall constitute the official Comprehensive Tree Plan for the City of Indian Harbour Beach, Florida.
- (e) Make recommendations to the City Council upon any matter coming within the scope of its work, as deemed necessary.
- (f) Other duties as assigned by the City Council.

Section 4 A new section 107-38 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-38. Applicability and exemptions

(1) Applicability.

This article applies to trees on public and private property.

(2) Exemptions

- (a) Trees with less than a D.B.H. of one and one-half inches in diameter are exempt from the provisions of this Chapter.
- (b) Trees that are determined by the City to be dead are exempt from the permit and fee requirements of this Section.
- (c) Non-native fruit trees cultivated or grown for the specific purpose of producing edible fruit, including, but not limited to: mangos, avocados, or species of citrus.
- (d) Government owned preserve and parks lands.
- (e) Utility companies authorized to provide utility service may remove protected tree(s) that endanger public safety and welfare by interfering with utility service in an existing utility easement or public right-of-way, provided work is done by or under the control of the operating utility company and said company has received all necessary licenses or permits to provide utility service within the easement.
- (f) During the period of locally declared emergencies, such as a hurricane, flood or any other natural disaster, the requirements of this Section may be temporarily waived by the City Manager, so that private or public work to restore order in the city will in no way be hampered.
- (g) Single family detached residential property
 - (1) The following exemption is found in Florida Statutes 163.045 Tree pruning, trimming, or removal on residential property
 - (a) For purposes of this section, the term:
 - (1) "Documentation" means an onsite assessment performed in accordance with the tree risk assessment procedures outlined in Best Management Practices - Tree Risk Assessment, Second Edition (2017) by an arborist certified by the International Society of Arboriculture (ISA) or a Florida licensed landscape architect and signed by the certified arborist or licensed landscape architect.
 - (2) "Residential property" means a single-family, detached building located on a lot that is actively used for single-family residential purposes and that is either a conforming use or a legally recognized nonconforming use in accordance with the local jurisdiction's applicable land development regulations.
 - (b) A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on a residential property if the property owner possesses documentation from an arborist certified by the ISA or a Florida licensed landscape architect that the tree poses an unacceptable risk to persons or property. A tree poses an unacceptable risk if removal is the only means of practically mitigating its risk below moderate, as determined by the tree risk assessment procedures

outlined in Best Management Practices - Tree Risk Assessment, Second Edition (2017).

- (c) A local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.
- (d) This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to Florida Statutes 403.9321-403.9333.

Section 5. A new section 107-39 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-39. Permit required to remove trees

- (1) Permit required for tree removal.

Trees requiring tree removal permits. Except as provided for in the Chapter, no person shall, directly or indirectly, cut down, substantially alter, destroy, remove, relocate, damage, or authorize any such act involving a protected tree situated on land within the city, without first obtaining a tree removal permit.

- (2) No permit shall be required to remove non-native invasive or undesirable species listed under Sec. 107-10 and Sec. 107-46.

Section 6. A new section 107-40 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-40. Permit procedure and criteria for issuing permits

- (1) Permits for the removal or relocation of a protected tree shall be obtained by filing an application with the Buildingnign Department. Approval of the application and issuance of a tree removal permit shall be required prior to any changes to an existing developed site.
- (2) No tree removal permit shall be issued unless the Building Official or her/his designee finds that at least one of the following criteria is satisfied with respect to each protected tree designated for removal:
 - (a) The tree is located within the net buildable area of a given site as identified on the tree survey and site plan by the applicant.
 - (b) The tree is located within an existing or proposed right-of-way.
 - (c) The tree is located within an existing or proposed easement, stormwater management tract or facility, provided that only the minimum area reasonably necessary for the service or use shall be considered for purposes of determining whether there is necessity for tree removal.
 - (d) The tree is located where it creates or will create a safety or health hazard or a nuisance with respect to existing or proposed structures or vehicles or pedestrian

routes and there is no reasonable alternative to relocate or reconfigure the improvements. The Building Official or her/his designee may require verification of claim(s) be provided by a statement from a certified engineer or certified arborist in the State of Florida.

- (e) The tree is located where it interferes with the installation, delivery, or maintenance of proposed or existing utility services to the site.
- (f) The tree is confirmed by the Building Official, her/his designee, or by a certified arborist to be diseased, severely injured, or in danger of falling.
- (g) The tree unreasonably prevents development of a lot or parcel of the physical use thereof. However, a tree removal permit shall not be granted where the applicant has failed to design and locate the proposed improvements so as to minimize the removal of trees consistent with the permitted use of the lot or parcel under the zoning ordinance as amended.

(3) In lieu of submitting a tree removal permit application, an applicant may submit a no tree verification statement stating that no trees protected by this Chapter exist on site. If such statement is verified by the Building Official or her/his designee no permit will be required.

(4) Tree removal applications for trees located on 'common' property must be accompanied by a letter from the Board of Directors of the Homeowner's Association indicating the majority of the Board voted to have the tree be removed.

(5) Inspections. An application for a tree removal permit constitutes consent by the property owner and/or applicant for the City to conduct site inspections on the subject property, pursuant to permit requirements.

Section 7. A new section 107-41 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-41. Tree protection and mitigation

- (1) Any tree removal permit shall require a mitigation plan. Any replacement trees that are the subject of such mitigation shall be planted, or preserved before issuance of a certificate of occupancy or similar authorization. Mitigation shall be as follows:
 - (a) Replacement trees should be size appropriate for the parcel.
 - (b) Property owners are strongly encouraged to use trees listed in Sec. 107-46.
 - (c) Trees listed in Sec. 107-10 are prohibited from being planted as replacement trees.
 - (d) The City strongly discourages property owners from planting trees listed in Sec. 107-47 as replacement trees
 - (e) Any tree which is the subject of a mitigation plan shall be replaced at a ratio of one inch D.B.H. for each inch of D.B.H. removed unless the site cannot handle the number of trees as determined by the Building Official or her/his designee.

- (2) A tree location survey, identifying all existing trees with a D.B.H. of **12 inches or greater** is required. This tree location survey drawing shall be overlaid directly upon the parcel survey to provide the accurate location of all existing trees which are proposed to be destroyed, relocated, or preserved, the botanical name, and common name of each tree, and the diameter (to the nearest half inch at 4.5 feet above ground), height and canopy spread of each tree. The survey shall also include a statement indicating how trees not proposed for removal or relocation are to be protected during construction, if applicable. The number of trees to be retained, removed, and the new trees to be replanted by diameter to the nearest half inch shall be shown.
- (3) The replanting design shall provide adequate space for root and crown development.
- (4) The property owner shall be responsible for maintenance of the mitigation trees, such responsibility to include replacement of unhealthy and dead trees.

Section 8. A new section 107-42 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-42 Tree pruning

- (1) It is recommended all trees in the City shall be allowed to develop into their natural habit of growth and shall not be topped, pleached or pruned into topiary, espalier or other unnatural shapes. Trees may be pruned to maintain health and vigor by removal of dead, weak, damaged or crowded limbs, diseased and insect infested limbs, and branches which rub other branches.
- (2) The City highly discourages the over-pruning of palm trees because removal of green fronds starves the tree of vital nutrients. ANSI A300 Pruning Standards should be followed by professionals performing work in the city.
- (3) Copies of ANSI A300 are available for review at City Hall.

Section 9. A new section 107-43 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-43 Replacement Trees

- 1) Replanting Requirements
 - (a) The City recommends property owners use trees listed in Sec. 107-47 of this Chapter when replacing problem trees.
 - (b) Replacement trees shall be of a species appropriate for the placement area and comply with the principle of "right plant, right place." Additional resources, such as Costello, L.R. & Jones, K.S. Reducing Infrastructure Damage By Tree Roots: A Compendium of Strategies, 2003, should be consulted.

- (c) Problem trees shall be replaced at 1:1 for each tree removed, unless the size of the parcel or environmental factors prohibit such plants. Property owners who believe replanting in an area will result in unfavorable long-term outcome for the tree may request the Building Official or her/his designee to administratively waive this requirement.
- (d) Replacement trees shall only be planted within an easement so as not to interfere with the use of that easement. Only size appropriate replacement trees shall be planted under any present or planned overhead or underground utility.
- (e) Replacement trees shall not be planted within any City rights-of-way or without approval of the Building Official or her/his designee.
- (f) Where possible, replacement trees shall be installed in the same location as the problem tree was formerly located.
- (g) If all of the replacement trees cannot be replaced on site, the applicant shall contribute to the tree mitigation account.

(2) Maintenance of replacement trees

- (a) Replacement trees must live and thrive for a minimum of two years. The owner and their successor(s) in title shall be responsible for maintaining the health of all replacement trees for a minimum of two years from the date of planting.
- (b) The Building Official, or her/his designee, at her/his discretion, can inspect and monitor any replacement tree planting during the guarantee period, and will notify the owner of any corrections needed and/or of information required concerning the maintenance of the replacement trees. Correction may include structural pruning, removing dead and broken branches, replanting, or re-staking as needed.
- (c) If a replacement tree is not thriving or is significantly damaged or dead in the opinion of the Building Official, or her/his designee, during the guarantee period the owner or their successor shall make corrections or replace the replacement tree.

Section 10. A new section 107-44 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-43 Removal or Destruction of Replacement Trees Prohibited

1. Once planted, replacement trees shall not be removed or destroyed, unless it is to replace dead, dying, or damaged trees during the guarantee period or as directed by the Building Official or her/his designee, without a permit pursuant to this Chapter.

Section 11. A new section 107-45 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-45 Penalties

- (1) If a protected tree is removed without a permit or otherwise in violation of this Chapter, the tree shall be replaced and the property owner shall pay double the permit fee, of which one-half will be credited to the tree mitigation account. Each tree removed in violation of this article or any permit issued pursuant to this article shall constitute a separate violation. If a replacement tree cannot be planted as validated by the Building Official or her/his designee, the property owner shall make payment into the City's tree mitigation account an amount equal to the cost of the three (3) to one (1) ratio of what the replacement tree would have costed.
- (2) Any person found in any other violation of these regulations shall be subject to a fine of not less than twenty-five dollars (\$25.00) for a first offense, fifty dollars (\$50.00) for a second offense, and one hundred dollars (\$100.00) for a third or subsequent offense. Funds generated by said penalties shall be used by the City for the purchase of trees, supplies, and/or rental of equipment to maintain trees on City property.

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Section 12. A new section 107-46 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-46 Recommended trees

Hardwood Trees

Keystone tree	Wind resistant	Salt tolerant	Flood tolerant	Prefers dry soil	Edible fruits
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Small Trees

<i>Quercus chapmanii</i>	Chapman oak	X	X		
<i>Carya floridana</i>	Scrub hickory	X	X		
<i>Prunus umbellata</i>	Hog plum	X			X
<i>Rhus copallina</i>	Shining sumac	X			
<i>Vaccinium arboreum</i>	Sparkleberry	X	X	X	X
<i>Viburnum obovatum</i>	Walter's viburnum	X		X	X
<i>Ilex vomitoria</i>	Yaupon holly		X	X	X

Medium Trees

<i>Carpinus caroliniana</i>	American hornbeam	X	X		X
<i>Pinus elliottii</i> var. <i>densa</i>	Florida slash pine	X			
<i>Quercus germinata</i>	Sand live oak	X	X	X	
<i>Quercus myrtifolia</i>	Myrtle oak	X	X		
<i>Conocarpus erectus</i>	Buttonwood		X	X	
<i>Coccoloba uvifera</i>	Seagrape			X	X
<i>Coccoloba diversifolia</i>	Pigeon plum		X		X

Large Trees

<i>Quercus virginiana</i>	Live oak	X	X	X	
<i>Carya floridana</i>	Scrub hickory	X	X	X	X
<i>Pinus clausa</i>	Sand pine	X		X	X
<i>Pinus palustris</i>	Longleaf pine	X	X		X
<i>Bursera simaruba</i>	Gumbo limbo		X	X	

Palm Trees

Common Name	Scientific Name	Brevard Native Size	Salt Tolerance			Cold Tolerance		Sun Tolerance		Comments
Recommended										
Saw Palmetto	<i>Serenoa repens</i>	Yes	Small up to 10'	High	High	High				Native to IHB Dark green
Florida Silver Palm	<i>Coccothrinax argentata</i>	No	Small up to 8'	High	Med.	High				leave that are silver
Dwarf Palmetto	<i>Sabal minor</i>	No	Small up to 6'	Low	Very med.	High	Moderate	– grows in shade in habitat	Wide ranging palm species.	Only some subspecies suitable for IHB.
Scrub Palmetto	<i>Sabal etonia</i>	No	Small up to 4'	Med.	High	High	Moderate to High		Thrives in sandy soils.	Rare, native to Miami.
Miami Palmetto	<i>Sabal miamiensis</i>	No	Small up to 8'	Med.	High	High	Moderate to High		Probably extinct in the wild.	
Cabbage Palm	<i>Sabal palmetto</i>	Yes	Medium up to 30'	High	High	High			FL state tree	
Florida Thatch Palm	<i>Thrinax radiata</i>	No	Medium up to 15'	High	Med.	High			Bright green leaves	Nearly extinct in the wild (FL Keys)
Buccaneer Palm	<i>Pseudophoenix sargentii</i>	No	Medium up to 15'	High	Med.	High			Clustering palm.	Susceptible to Ganoderma fungal disease.
Everglades Keys Thatch Palm	<i>Acoelorrhaphis wrightii</i>	No	Medium up to 15'	Med.	High	High			Light green eave that are silver underneath	
Royal Palm	<i>Roystonea regia</i>	No	Large up to 50'	Med.	Med.	High			Self-cleaning large heavy leaves that can cause damage when they drop	

Section 13. A new section 107-47 is hereby added to Chapter 107 of the Code of Ordinances of the City which new section shall read as follows:

Sec. 107-46 Non-recommended trees

(1) The following trees are classified as invasive species by the University of Florida and should not be planted or maintained in the City on public or private property.

<i>Albizia julibrissin</i>	Mimosa tree
<i>Albizia lebbeck</i>	Woman's tongue
<i>Bauhinia variegata</i>	Orchid tree
<i>Bischofia javanica</i>	Bishopwood
<i>Calophyllum antillanum</i>	Santa Maria
<i>Cinnamomum camphora</i>	Camphor tree
<i>Cupaniopsis anacardiooides</i>	Carrotwood
<i>Eugenia uniflora</i>	Surinam cherry
<i>Ficus microcarpa</i>	Laurel fig
<i>Ligustrum lucidum</i>	Glossy privet
<i>Lumnitzera racemosa</i>	Kripa, black mangrove
<i>Manilkara zapota</i>	Sapodilla
<i>Phyllostachys aurea</i>	Golden bamboo
<i>Psidium cattleianum</i>	Strawberry guava
<i>Psidium guajava</i>	Common guava
<i>Scaevola taccada</i>	Half flower, beach naupaka
<i>Senna pendula</i> var. <i>glabrata</i>	Climbing cassia
<i>Terminalia catappa</i>	Tropical almond
<i>Triadica sebifera</i>	Chinese tallow
<i>Vernicia fordii</i>	Tung oil tree

(2) Prohibited trees are listed in Sec. 107-10 of this Chapter.

CHAPTER 107. - LANDSCAPE CODE

Sec. 107-1. - Title and intent.

- (1) This chapter shall be known as the "Landscape Code of the City of Indian Harbour Beach."
- (2) The provisions of this chapter are intended to promote and foster the appearance of the city; to provide for the installation and maintenance of landscaped areas around certain land developments; to protect the character and stability of residential areas adjacent to developing land; and to conserve the value of both developing land and surrounding property.

Sec. 107-2. - General requirements for landscaping.

Unless otherwise specified in the succeeding sections of this chapter, landscaping shall meet the following requirements upon all property zoned for commercial, industrial, institutional and multifamily use in accordance with the zoning ordinance of the city:

- (1) Installation. All elements of landscaping shall be installed as to meet all other applicable ordinances and code requirements of the city. Landscaped areas shall require protection from vehicular encroachment as provided in this section and sections 107-3 and 107-4 of this chapter.
- (2) Maintenance. The owner shall be responsible for maintaining such landscaping in a healthy, neat and orderly condition. The owner shall provide each landscaped area with a readily available water supply with a minimum of one (1) outlet within one hundred (100) feet of all plant material to be maintained.
- (3) Plant material.
 - (a) Quality. Plant materials used in conformance with provisions of this section shall equal or exceed the standards for Florida No. 1 as given in "Grades and Standards For Nursery Plants," Part I, 1963, and Part II, State of Florida, Department of Agriculture, Tallahassee, and any amendments thereto. Grass sod shall be clean and reasonably free of weeds and noxious pests or diseases. Grass seed shall be delivered to the job site in containers with Florida Department of Agriculture tags attached indicating the seed grower's compliance with the department's quality control program.
 - (b) Trees. Trees shall be species having a minimum mature spread or crown greater than fifteen (15) feet and trunks which can be maintained in a clean condition with over seven (7) feet of clear wood. Trees having a minimum mature spread or crown less than fifteen (15) feet may be substituted by grouping the same as to create the minimum fifteen-foot crown spread. Trees shall be a minimum of seven (7) feet in

overall height immediately upon planting. Trees of species providing roots known to cause damage to public roadways or other public works shall not be planted closer than twelve (12) feet to such public works, unless the tree root system is completely encased with a container for which the minimum interior dimensions shall be five (5) feet square and five (5) feet deep.

- (c) Shrubs and hedges. Shrubs shall be a minimum of two (2) feet in height immediately upon planting. Hedges shall be of no deciduous species and planted and maintained so as to form a continuous, unbroken; solid, visual screen within one (1) year after planting.
- (d) Vines. Vines shall be a minimum of twelve (12) inches in height immediately upon planting and may be used in conjunction with fences, screens or walls to meet physical barrier requirements as specified.
- (e) Ground covers. Ground covers in lieu of grass shall be planted in such manner as to present a finished appearance and reasonably complete coverage within three (3) months after planting.
- (f) Lawn grass. Grass shall be species normally grown as permanent lawns in the city.
- (g) Existing plant material. The building official may, in his discretion, adjust the application of the above standards, in part or in whole, to allow credit for healthy plant material on a site prior to its development if such an adjustment is consistent with the intent of this chapter.

Sec. 107-3. - Landscaping adjacent to public rights-of-way including streets and walks.

Between any improved property zoned for commercial, industrial, institutional or multifamily use and an adjacent public right-of-way, including streets or walks, landscaping shall be installed in accordance with the following requirements:

- (1) The landscaped strip shall be a minimum of five (5) feet in width.
- (2) An average of one (1) tree shall be planted within each fifty (50) lineal feet or fraction thereof in a planting area of at least twenty-five (25) square feet for each tree.
- (3) A hedge, wall or other durable landscape screen at least two (2) feet in height shall be installed.
- (4) If said durable screen is of nonliving material, one (1) shrub or vine shall be planted abutting the screen for each lineal ten (10) feet. Such shrubs or vines shall be planted along the street side of the screen or of sufficient height at the time of planting to be readily visible over the top of the screen.
- (5) The remainder of the required landscaped area shall be landscaped with grass, ground

cover or other landscape material.

- (6) All ground between the right-of-way and off-street parking or other vehicular use area shall be landscaped.

Sec. 107-4. - Perimeter landscaping for commercial, industrial and institutional properties.

Between any improved property zoned and used for commercial, industrial or institutional purposes and any adjacent property other than a public right-of-way, landscaping shall be installed in accordance with the following requirements.

- (1) A wall, hedge or other durable landscape screen at least five (5) feet in height between the common lot line and the off-street parking or other vehicular use area shall be installed.
- (2) Live screening materials shall be planted in a strip not less than seven (7) feet in width.
- (3) Perimeter landscaped areas shall be protected from vehicular encroachment by the use of curbing or wheel stops.
- (4) An average of one (1) tree shall be planted within and for each seventy-five (75) lineal feet or fraction thereof and in an area of at least twenty-five (25) square feet for each tree.
- (5) The strip shall be landscaped with grass, ground cover or other landscape material.

Sec. 107-5. - Perimeter landscaping for multifamily housing.

Between any improved property zoned and used for multifamily housing and any adjacent property other than a public right-of-way, landscaping shall be installed in accordance with the following requirements:

- (1) An opaque screen, no more than six (6) feet in height and maintained at all times in a sightly condition, shall be constructed between any off-street parking or other vehicular use area and the common lot line.
- (2) A landscaped strip, no less than ten (10) feet wide, running parallel with all common property lines.
- (3) Perimeter landscaped areas shall be landscaped with an average of one (1) tree for each fifty (50) lineal feet or fraction thereof.
- (4) The remainder of the required landscaped areas shall be landscaped with grass, ground cover or other specified landscape material.

Sec. 107-6. - Landscaping of the interior of off-street parking and vehicular use areas.

The interior of off-street parking areas and other vehicular use areas upon property developed for commercial, industrial, institutional or multifamily uses shall be landscaped to define aisles and other

vehicular areas and to provide relief from the expanse of paving. Such landscaping shall meet the following requirements:

- (1) At least ten (10) square feet of interior landscaping shall be provided for each parking space, excluding those spaces abutting a perimeter for which landscaping is required, excluding all parking spaces which are directly served by an aisle abutting and running parallel to this perimeter.
- (2) Each separate landscaped area shall be a minimum of fifty (50) square feet with a minimum dimension of five (5) feet and shall include at least one (1) tree. The remaining area shall be adequately landscaped with shrubs, ground cover or other authorized landscaping material.
- (3) There shall be not less than an average of one (1) tree for each one hundred (100) square feet of the interior landscaped area or fraction thereof.
- (4) All planting areas except those abutting the perimeter of a parking lot or area shall be enclosed with a continuous perforated curb.
- (5) If the application of this section will seriously limit the function of the area, the interior landscaping may be relocated near the perimeter of the paved area including the perimeter adjacent to a building on the site. Such required interior landscaping which is relocated shall be in addition to the perimeter landscaping required.
- (6) The front of a vehicle may encroach upon any interior landscaped area when said area is at least three and one-half (3½) feet in width for each abutting parking space and protected by wheel stops or curbing. Two (2) feet of the landscaped area may be part of the required depth of each abutting parking space.

Sec. 107-7. - Variations to landscape requirements.

The building official and the city council shall have the power, in their discretion to reduce or relocate the number of trees required in sections 107-3 through 107-6 based upon demonstrated unique characteristics of the site in question. Any such reduction or relocation shall comply with the intent of this chapter.

Sec. 107-8. - Landscaping at intersections and points of access to public rights-of-way.

- (1) No landscaping, tree, fence or wall shall obstruct visibility at any intersection or at any point of access to a public right-of-way. Notwithstanding any other section of this chapter, the city shall have the authority to order the removal of any such landscaping, tree, fence or wall which is found to cause such obstruction of visibility.
- (2) No hedge, plant, tree or other landscaping shall exceed two and one-half (2½) feet in height in

the area defined as the "triangle of cross-visibility" in Figure 1 below.

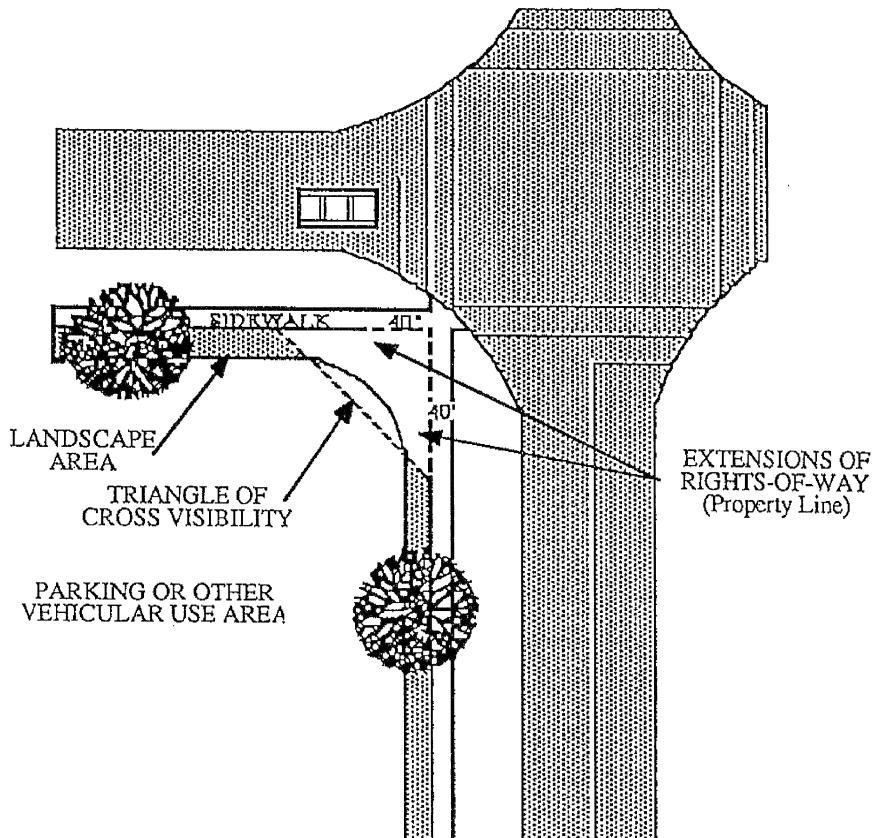


FIGURE 1

Sec. 107-9. - Site plan requirements for landscaping.

All site plans required by the zoning ordinance of the city shall show the location and description of all landscape materials and the location of sprinklers and water outlets as required by this chapter. No building permit shall be issued by the building official unless such site plan shows that the landscaping for a proposed building or development conforms to the requirements of this chapter, and no certificate of occupancy shall be issued unless the landscaping is completed in accordance with the approved site plan.

Sec. 107-10. - Prohibited landscaping materials.

The following types of trees shall not be used to meet the requirements set forth in sections 107-2 through 107-9 of this chapter:

Australian Pine (*Casuarina spp.*)

Brazilian Pepper (*Schinus spp.*)

Cajaput or Paperbark (Melaleuca spp.)

Punk (Melaleuca spp.)

Brazilian Oak (Casuarina spp.)

Eucalyptus (Eucalyptus spp.)

Sec. 107-11. - Prohibited locations for certain trees.

The following types of trees shall not, after the effective date of this chapter, be placed or planted in any part of the city within ten (10) feet of street pavement, a sidewalk located within a public right-of-way, or any public water or sanitary sewer line:

Australian Pine (Casuarina spp.)

Brazilian Pepper (Schinus spp.)

Cajaput or Paperbark (Melaleuca spp.)

Punk (Melaleuca spp.)

Brazilian Oak (Casuarina spp.)

Eucalyptus (Eucalyptus spp.)

If any plant material is located within such an area on the effective date of this chapter and subsequently grows to such an extent that it damages or threatens to damage street pavement, a sidewalk located within a public right-of-way, or any public water or sanitary sewer line, such plant material may be removed by the city after notice to the owner of such plant material.

Sec. 107-12. - Landscaping adjacent to stormwater management system.

Between any improved property zoned for residential, multifamily, commercial, industrial or institutional use and an adjacent stormwater management system, which for purposes herein means the designed features of any property which collects, conveys, channels, holds, inhibits or diverts the movement of stormwater, including, but not limited to swales, canals and ponds, the following standards shall apply:

- (1) Vegetative buffers or other ground cover that provide soil stabilization and retard erosion must be installed.
- (2) Non-vegetative ground cover, sand, soil, rocks, mulch, gravel, stone, or other material shall be used and installed in such a manner that it will not run off into any stormwater

management system or otherwise interfere with the drainage of the system. Design standards shall be employed in landscaped areas to prevent erosion and loss of soil, prevent silting and the accumulation of material from the property and sedimentation of a stormwater management system and off-property surface water bodies and facilities.

- (3) Where a landscaped area consists of exposed soil, sand, rock, stone, gravel, mulch or non-vegetative ground cover a buffer strip shall be provided to prevent erosion, silting or sedimentation between the stormwater management system and any such landscaped area. The buffer strip shall be of sufficient width to prevent erosion, silting or sedimentation. The buffer strip shall be of sufficient height to prevent erosion, silting, and sedimentation into the stormwater management system. The buffer may consist of grass, a retaining wall or some other feature that is designed to prevent erosion, silting or sedimentation into a stormwater management system.
- (4) In addition to other penalties provided for in this code, if the building official determines that a project is not being carried out in accordance with the approved plan or if any project is being carried out without a required permit, he is authorized to:
 - (a) Issue written notice to the applicant specifying the nature and location of the alleged noncompliance, including a description of necessary remedial actions.
 - (b) Issue a stop work order directing the applicant or person in possession of the building permit to cease and desist all or any portion of the work which violates this article, until the remedial work has been completed to the satisfaction of the building official. The applicant shall then bring the project into compliance or be subject to a denial of the certificate of occupancy for the project.
 - (c) Any order pursuant to subsection (a) or (b) of this section shall become final, unless the person named in the order requests, in writing, by certified mail, a hearing before the building official no later than ten (10) working days after the date such order is served. Failure to act in accordance with the order after receipt of written notice shall be grounds for revocation of all city permits issued for that project which would be affected by or would affect the stormwater management system.
- (5) Any person who violates or causes to be violated any section of this article or permits any such violation or fails to comply with any of the requirements of this article shall be punished by a fine to be imposed by the city council equivalent to the cost of having complied with the regulations. Each calendar day when such violations occur shall constitute a separate offense. In addition to any other remedies, the violations of this article may be restrained by injunction, and otherwise abated in any manner provided for by law.
- (6) The provisions herein shall apply to all new construction or development. It is also the

intent herein to have existing developed properties to come into compliance with this section. To meet this goal existing properties requesting a development order from the city will be required to install the required buffer strip. Furthermore, all existing properties, regardless of whether a development order is requested, shall come into compliance with the provisions for the installation of the buffer strip within a period of three (3) years from the adoption of this section.

(7) Upon request by any person required to meet the requirements of this section the zoning board of appeals may grant or deny a variance to this section as provided in article XVI, section 2 of the city's zoning code.

Sec. 107-13. - Short title.

These regulations shall be known and may be referred to as the City of Indian Harbour Beach Regulations for Installation, Maintenance, and Operation of Sensing Devices on Automatic Landscape Irrigation Systems.

Sec. 107-14. - Administrative standards.

Whenever, in the course of administration and enforcement of these regulations, it is necessary and desirable to make any administrative decision, then, unless other standards are in these regulations, the decision shall be made so that the result will not be contrary to the spirit and purpose of this ordinance or injurious to the surrounding neighborhood or the community at large.

Sec. 107-15. - Purpose and intent.

These regulations requires the proper installation, repair, and operation of moisture sensing devices on automatic lawn and landscape irrigation systems by licensed contractors and property owners or manager, provides for licensing of contractors that work on such irrigation systems, and provides penalties.

Sec. 107-16. - Definitions.

- (1) "Licensed contractor" shall mean any person licensed or registered under Chapter 489, Florida Statutes, or authorized under any county or municipal license or tax certificate to design, install, repair, maintain, or adjust a landscape irrigation system within the jurisdiction of the city.
- (2) "Soil moisture sensor" means a soil-based device that assesses the available plant soil moisture in order to minimize the unnecessary use of water and optimize the effectiveness of an irrigation system.

- (3) "Rain sensor" means a low voltage electrical or mechanical component placed in the circuitry of an automatic landscape irrigation system that is designed to restrict operation of a sprinkler controller when precipitation has reached a pre-set quantity.
- (4) "Evapotranspiration-based (ET) controller" means a controller that calculates soil moisture from known weather and related inputs. An ET-based controller:
 - (a) Receives and monitors weather data or on-site environmental conditions including, but not limited to, solar radiation, wind speed, temperature, relative humidity, rainfall, and soil moisture; and
 - (b) Calculates or determines the amount of moisture input to and moisture lost from the soil and plants; and
 - (c) Automatically creates or adjusts the irrigation schedule to apply only the amount of water that is necessary to maintain adequate soil moisture.
- (5) "Person" means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

Sec. 107-17. - Applicability.

- (1) These regulations shall apply to all licensed contractors within the jurisdiction of the city who install or perform work on automatic irrigation systems regardless of when such installation or work is performed.
- (2) These regulations shall also apply to any person who purchases, installs or operates an automatic landscape irrigation system on their property. For purposes of this subsection (2), these regulations shall only apply when a person purchases, installs or operates an automatic irrigation system after January 1, 2014, on their property. This subsection also applies to any person which replaces an existing automatic irrigation system on their property after January 1, 2014. For purposes of this subsection (2) the term "replaces" means the removal and installation of more than fifty (50) percent of an existing automatic irrigation system.

Sec. 107-18. - General provisions.

- (1) In accordance with Section 373.62(1), Florida Statutes, devices, such as soil moisture sensors, evapotranspiration-based controllers or rain sensors, shall be required on automatic irrigation systems to prevent irrigation during periods of sufficient moisture. Any person who purchases, installs or operates an automatic landscape irrigation system after January 1, 2014, on their property must properly install, maintain, and operate, in accordance with manufacturer specifications, technology that inhibits or interrupts operation of the system during periods of sufficient moisture. This subsection also applies to any person which replaces an existing

automatic irrigation on their property after January 1, 2014.

- (2) In accordance with Section 373.62(2), Florida Statutes, a licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on the system. If such devices are not installed, or are not functioning properly, the contractor must install new devices or repair the existing ones and insure that each is operating properly before completing other work on the system.
- (3) In accordance with Section 373.62(3) (a) and (b), Florida Statutes, a licensed contractor performing work on an automatic landscape irrigation system shall report systems that are not in compliance with Section 373.62, Florida Statutes, to the city's building official. Failure of a contractor to report non-compliant systems within five (5) business days is punishable by fines as specified in the violations and penalties section of these regulations. A system that is repaired by the contractor is brought into compliance and need not be reported.
- (4) In accordance with Section 373.62(3)(b), Florida Statutes, regular maintenance and replacement of worn or broken moisture sensing equipment, such as soil moisture or rain sensors, is not a violation of Section 373.62, Florida Statutes, or these regulations if such repairs are made within thirty (30) days from the time non-compliance is noted.

Sec. 107-19. - Licensing of contractors performing work on irrigation systems.

All contractors performing work on irrigation systems within the incorporated area of the city, shall be licensed or registered under Chapter 489, Florida Statutes, or hold a county or municipally-issued license or business tax certificate that permits work on irrigation systems.

Sec. 107-20. - Violations and penalties.

Failure of a licensed contractor to report to the city's building official automatic landscape irrigation systems that are not in compliance with these regulations and Section 373.62, Florida Statutes, which requires properly operating devices to inhibit or interrupt the operation of the irrigation system during periods of sufficient moisture, shall be subject to a fine of not less than twenty-five dollars (\$25.00) for a first offense, fifty dollars (\$50.00) for a second offense, and one hundred dollars (\$100.00) for a third or subsequent offense. Funds generated by penalties imposed under this section shall be used by the city for the administration and enforcement of Section 373.62, Florida Statutes, and the corresponding sections of these regulations, and to further water conservation activities.

Sec. 107-21. - Short title and purpose and intent.

These regulations shall be known as the "City of Indian Harbour Beach Fertilizer Application

Regulations". These regulations regulate the proper use of fertilizers by any applicator; requires proper training of commercial and institutional fertilizer applicators; establishes training and licensing requirements; establishes a prohibited application period; specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. These regulations require the use of best management practices which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of fertilizers. These secondary and cumulative effects have been observed in and on the city's natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of the city residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

Sec. 107-22. - Definitions.

- (1) "Administrator" means the city's city manager, or an administrative official of the city designated by the city manager to administer and enforce the provisions of these regulations.
- (2) "Application" or "apply" means the actual physical deposit of fertilizer to turf or landscape plants.
- (3) "Applicator" means any person who applies fertilizer on turf and/or landscape plants in the city.
- (4) "Board or governing board" means the city council of the city.
- (5) "Best management practices" means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.
- (6) "City" shall mean the City of Indian Harbour Beach.
- (7) "Code enforcement officer, official, or inspector" means any designated employee or agent of the city whose duty it is to enforce codes and ordinances enacted by the city.
- (8) "Commercial fertilizer applicator", except as provided in Section 482.1562(9), Florida Statutes, means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator.
- (9) "Fertilize," "fertilizing," or "fertilization" means the act of applying fertilizer to turf, specialized turf, or landscape plants.
- (10) "Fertilizer" means any substance or mixture of substances that contains one (1) or more

recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

- (11) "Guaranteed analysis" means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.
- (12) "Institutional applicator" means any person, other than a private, non-commercial or a commercial applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional applicators shall include, but shall not be limited to, owners, managers or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.
- (13) "Landscape plant" means any native or exotic tree, shrub, or groundcover (excluding turf).
- (14) "Low maintenance zone" means an area a minimum of ten (10) feet wide adjacent to watercourses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.
- (15) "Person" means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.
- (16) "Prohibited application period" means the time period during which a flood watch or warning, or a tropical storm watch or warning, or a hurricane watch or warning is in effect for any portion of the city, issued by the National Weather Service.
- (17) "Approved best management practices training program" means a training program approved per Section 403.9338, Florida Statutes, or any more stringent requirements set forth in this article that includes the most current version of the Florida Department of Environmental Protection's "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008," as revised, and approved by the city manager or an administrative official of the city designated by the city manager.
- (18) "Saturated soil" means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of these regulations, soils shall be considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water.
- (19) "Restricted application period" means June 1 to September 30.
- (20) "Slow release," "controlled release," "timed release," "slowly available," or "water insoluble nitrogen" means nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product.

- (21) "Turf," "sod," or "lawn" means a piece of grass-covered soil held together by the roots of the grass.
- (22) "World Meteorological Organization definition of heavy rain": Rainfall greater than or equal to fifty (50) mm (two (2) inches) in a 24-hour period.
- (23) "Urban landscape" means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section, agriculture has the same meaning as in Section 570.02, [Florida Statutes].

Sec. 107-23. - Applicability.

These regulations shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the area of the city, unless such applicator is specifically exempted by the terms of these regulations. These regulations shall be prospective only, and shall not impair any existing contracts.

Sec. 107-24. - Timing of fertilizer application.

No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the prohibited application period, or to saturated soils. In addition, fertilizer containing nitrogen or phosphorus shall not be applied to turf or landscape plants during the restricted application period.

Sec. 107-25. - Fertilizer free zones.

Fertilizer shall not be applied within ten (10) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code). Newly planted turf and/or landscape plants may be fertilized in this zone only for a sixty-day period beginning thirty (30) days after planting if needed to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

Sec. 107-26. - Fertilizer content and application rates.

- (1) No fertilizer containing phosphorous shall be applied to turf or landscape plants in the city unless a soil or plant tissue deficiency is verified by a University of Florida, Institute of Food and Agriculture Sciences, approved testing methodology. In the case that a deficiency has been verified, the application of a fertilizer containing phosphorous shall be in accordance with the rates and directions provided by Rule 5E-1.003(2), Florida Administrative Code. Deficiency verification shall be no more than two (2) years old.

- (2) The nitrogen content of fertilizer applied to turf or landscape plants within the city shall contain at least fifty (50) percent slow release nitrogen per guaranteed analysis label.
- (3) Fertilizers applied to turf within the city shall be formulated and applied at rates that are in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, Labeling Requirements for Urban Turf Fertilizers.
- (4) Fertilizer containing nitrogen or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first thirty (30) days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the stormwater pollution prevention plan for that site.

Sec. 107-27. - Application practices.

- (1) Spreader deflector shields are required when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including wetlands.
- (2) Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.
- (3) Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.
- (4) Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.
- (5) In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

Sec. 107-28. - Management of grass clippings and vegetative matter.

In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

Sec. 107-29. - Exemptions.

The provisions set forth above in this ordinance shall not apply to:

- (1) Bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14 Florida Statutes;
- (2) Other properties not subject to or covered under the Florida Right to Farm Act that have

pastures used for grazing livestock;

- (3) Any lands used for bona fide scientific research, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture.
- (4) Vegetable gardens owned by individual or community property owners and trees grown for their edible fruit.

Sec. 107-30. - Training.

- (1) All commercial and institutional applicators of fertilizer within the incorporated area of the city, shall abide by and successfully complete the six-hour training program in the "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008" offered by the Florida Department of Environmental Protection through the University of Florida Extension "Florida-Friendly Landscapes" program, or an approved equivalent.
- (2) Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers.

Sec. 107-31. - Licensing of commercial applicators.

- (1) Prior to 1 January 2014, all commercial applicators of fertilizer within the city, shall abide by and successfully complete training and continuing education requirements in the "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008", offered by the Florida Department of Environmental Protection through the University of Florida IFAS "Florida-10 friendly Landscapes" program, or an approved equivalent program, prior to obtaining a city local business tax certificate for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial fertilizer applicators shall provide proof of completion of the program to the city within one hundred eighty (180) days of the effective date of this ordinance.
- (2) After 31 December, 2013, all commercial applicators of fertilizer within the city, shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a commercial fertilizer applicator per 5E-14.117(18) F.A.C.
- (3) All businesses applying fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one (1) employee has a "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008" training certificate prior to the business owner obtaining a local business tax certificate.

Owners for any category of occupation which may apply any fertilizer to turf and/or landscape plants shall provide proof of completion of the program to the city.

Sec. 107-32. - Penalties and enforcement.

Any person found in violation of these regulations shall be subject to a fine of not less than twenty-five dollars (\$25.00) for a first offense, fifty dollars (\$50.00) for a second offense, and one hundred dollars (\$100.00) for a third or subsequent offense. Funds generated by penalties imposed under this section shall be used by the city for the administration and enforcement of Section 403.9337, Florida Statutes, and the corresponding sections of this ordinance, and to further water conservation and nonpoint pollution prevention activities.

Sec. 107-33. - Conflicts and relationship to other laws.

Whenever regulations or restrictions imposed by this ordinance conflict with other ordinances or regulations, or are either more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rule or regulation, the regulations, rules or restrictions which are more restrictive or which impose the highest standards or requirements shall govern.

Sec. 107-34. - Severability.

This ordinance and the various parts, sections, subsections and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, subsection, section, or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of the ordinance shall not be affected thereby. If any part, sentence, paragraph, subsection, section or clause be adjudged unconstitutional or invalid as applied to a particular property, building, or other structure, it is hereby provided that the application of such portion of the ordinance to other property, buildings, or structures shall not be affected thereby.