

Chapter 9 - CONSERVATION RESTRICTED OVERLAY ZONE, MANATEE PROTECTION REGULATIONS

[HISTORY: Adopted by the City Commission of the City of North Port 9-17-1990 by Ord. No. 90-28 (Section 8). Amendments noted where applicable.]

Sec. 9-1. - Title.

This chapter shall be known and may be cited as the "Conservation Restricted Overlay Zone, Manatee Protection Regulations" of the City of North Port, Florida.

Sec. 9-2. - Findings.

- A. The City finds that the development of land within areas designated as Conservation/Restricted Overlay Zones on the City's Future Land Use Map may adversely affect the health, safety and welfare of the community by degrading geological, historical, recreational, economic and aesthetic values, and may adversely affect water quality, water quantity and aquatic and wetland-dependent wildlife.
- B. The City Commission also finds that Manatees are protected under the Marine Mammal Protection Act of 1972 (as amended in 1996), the Endangered species Act (ESA) of 1973, and the Florida Manatee Sanctuary Act (1978).

Sec. 9-3. - Intent.

- A. These regulations are intended to protect, maintain, enhance and restore both the immediate and the long-term health, safety and general welfare of the citizens of the City by:
 - (1) Protecting the public's interest in environmentally sensitive areas from the adverse impacts of development while protecting the rights of property owners.
 - (2) Protecting, maintaining and restoring the chemical, physical and biological integrity of natural habitats, such as wetlands, floodplains and shore lands, within the conservation/restricted area.
 - (3) Protecting, maintaining and restoring the chemical, physical and biological integrity of ground- and surface waters.
 - (4) Preventing activities which adversely impact ground- and surface waters, natural habitats and native flora and fauna.

- (5) Encouraging the construction of stormwater management systems that aesthetically and functionally approximate natural systems.
 - (6) Protecting natural drainage systems.
 - (7) Minimizing runoff pollution of ground and surface waters.
 - (8) Minimizing erosion and sedimentation.
 - (9) Prohibiting certain uses which are detrimental to the Myakkahatchee Creek and Myakka River systems.
 - (10) Minimizing impacts on the City's archaeological resources.
- B. In addition, the intent of the Conservation/Restricted Overlay Zone is to assure that all development within this zone receives special regulatory attention so as to minimize adverse impacts on the City's freshwater, marine and archaeological resources. The Conservation/Restricted Overlay Zone contains three (3) geographical subareas which include the North Myakkahatchee Creek, South Myakkahatchee Creek/Myakka River and the Little Salt Springs Archaeological Site, and provides for the protection of other archaeologically significant sites that may be identified.
- C. In addition, the purpose of this article is also to provide adequate protection of endangered species as defined by the Florida Fish and Wildlife Commission and the West Indian Manatee (*Trichechus Manatus*) through regulation and control of development proposals with an effect on watercraft-related activities that could affect the West Indian Manatee, their habitat, respite areas, travel corridors, or other areas that affect their survival, success and persistence as a species within North Port tidally influenced waters and southwest Florida.

Sec. 9-4. - Relationship to Comprehensive Plan.

The regulations contained herein implement Objective 1 and Policy 1.10, of the Conservation and Coastal Zone Management Element and Goal 2, Policy 2.7.9 of the Future Land Use Element of the Comprehensive Plan, which states that the City will review all applicable ordinances which provide for the protection and enhancement of its critical water resources and biologically productive flora and fauna habitats," and "The City shall coordinate with the Florida Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission, the USFWS, the West coast Inland Navigation District (WCIND), and other local, State, and Federal agencies, as applicable, to maintain and enhance manatee populations throughout the region. Coordination activities may include, but shall not be limited to, development review, enforcement of manatee protection zones, and public education," and "Any multi-family, commercial or office development proposed on property within the City of North Port which abuts the Myakkahatchee Creek flowing

from the Warm Mineral Springs to the Myakka River will be required to contact the Florida Department of Environmental Protection (FDEP) manatee experts to determine the best management practices for development, and any mitigation necessary, to protect manatees which may utilize this tributary."

Sec. 9-5. - Relationship to other regulations.

In addition to meeting the requirements of this chapter, development within the Conservation/Restricted Overlay and Manatee Protection Zones shall comply with all applicable Federal, State, local and water management district regulations, including, but not limited to, existing water quality, stormwater, floodplain, wetland and endangered species regulations.

Sec. 9-6. - Interpretations.

Interpretations of this section shall be made by the City Manager or designee.

Sec. 9-7. - Conflicts.

Whenever the requirements of these regulations differ from those imposed by the City, Federal or State regulation, law or statute, the most restrictive or imposing the higher standards shall apply.

Sec. 9-8. - Appeals.

- A. Any person aggrieved by the interpretation of the City Manager or designee may appeal to the Zoning Board of Appeals. The criteria for granting an appeal shall be based upon substantial competent evidence proving that the interpretation renders the with no reasonable use. The granting of any appeal shall not be in conflict with State Statutes. The Zoning Board of Appeals' decision, based upon previously submitted evidence, may be appealed to the Circuit Court of Sarasota County within thirty (30) days of such decision.

- (1) Applications for an appeal shall be filed pursuant to Sec. 1-10.

Sec. 9-9. - Severability.

If any section, subsection, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

ARTICLE I. - CONSERVATION RESTRICTED OVERLAY ZONE

Sec. 9-10. - Creation of protected environmentally sensitive zones within subareas.

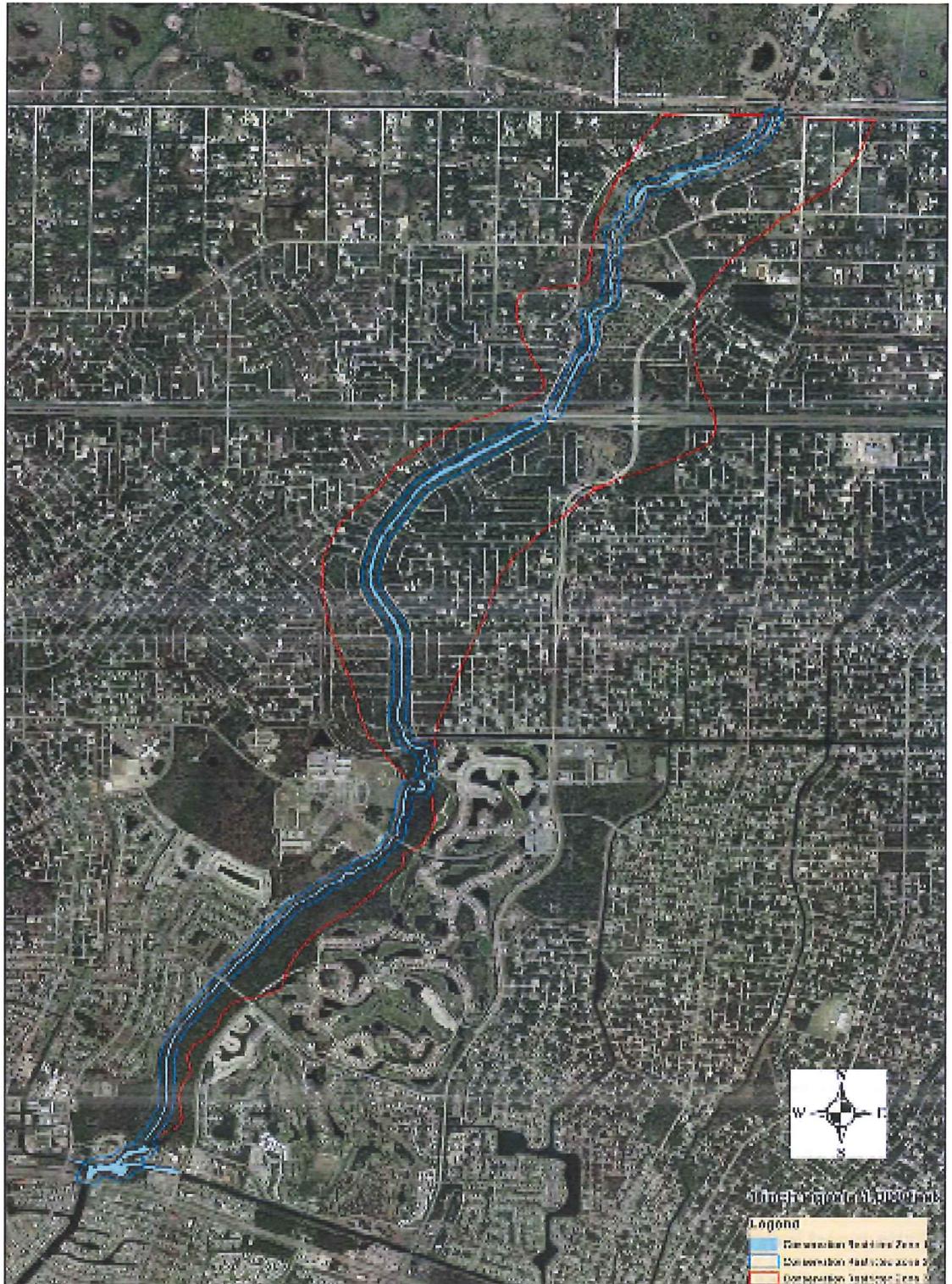


Figure 9-10A

A. North Myakkahatchee Creek subarea.

- (1) There is hereby created a Zone of Maximum Protection (Zone 1) in which special restrictions on development apply. The boundaries of this zone shall be the water area and contiguous jurisdiction wetlands from Mean High Water line of the Myakkahatchee Creek as delineated in Figure 9-10A and Myakkahatchee Creek Bypass Canal rights-of-way.
- (2) There is hereby created a Contiguous Protective Zone (Zone 2) in which special restrictions on development apply. The boundaries of this zone shall be one hundred fifty (150) feet landward from the landward edge of the Zone of Maximum Protection as shown in Figure 9-10A.
- (3) There is hereby created a Conservation Zone (Zone 3) in which special restrictions on development apply. The boundaries of this zone shall be the remainder of the conservation/restricted area landward from the Contiguous Protective Zone (Zone 2).
- (4) Endangered species as defined by the Florida Fish and Wildlife Commission that are sited, shall be reported to the City for tracking purposes.
 - (a) If an endangered species is sited, the following shall apply:
 - (i) A map of the location shall be provided.
 - (ii) The Florida Fish and Wildlife Commission shall be notified within forty-eight (48) hours.
 - (iii) The City shall place a sign indicated the area is restricted.

Sec. 9-11. - Activities presumed to have an insignificant adverse impact on the Zone of Maximum Protection (Zone 1).

- ### A. The following uses and activities are presumed to have an insignificant adverse impact on the beneficial functions of the Zone of Maximum Protection and shall therefore be permitted:
- (1) Scenic, historic, wildlife or scientific preserves.
 - (2) Minor maintenance or repair to existing structures or improved areas.
 - (3) Cleared walking trails having no structural components.
 - (4)

Dredge and fill when it is determined that it is clearly in the public interest and when it is part of an approved plan for the restoration or of the creek area.

Dredge and fill is regulated by Chapter 14, Article III of this Unified Land Development Code.

(5) Stormwater management facilities.

B. All other activities and uses not expressly permitted under this section shall be prohibited unless it is shown by competent and substantial evidence that the specific activity would have no adverse impact on the beneficial functions of Zone 1. Examples of prohibited activities include, but are not limited to:

(1) Digging or excavation of any portion of the Myakkahatchee Creek or its tributaries and interconnected drainage canals, for any purpose, is specifically prohibited without the approval of the City, State and Federal agencies.

(a) State and Federal agencies include Southwest Florida Water Management District (SWFWMD), US Army Corporation of Engineers (USACOE), Florida Fish and Wildlife Conservation Commission (FFWCC), Florida Department of Environmental Protection (FDEP), and Florida Department of State Division of Historical Resources (DHR).

(2) Dumping of any materials directly or indirectly into the Myakkahatchee Creek or its tributaries and interconnected drainage canals, is prohibited. The dumped materials may pollute these waterways which serve as the City's drinking water source. The dumped materials may also obstruct the flow of water in the waterway and increase flooding.

(3) Construction of any catwalks/boardwalk, rock dams or crossings or any kind, over the Myakkahatchee Creek or its tributaries and interconnected drainage canals is prohibited except as approved by the City. If the construction of a catwalk/boardwalk is permitted, additional regulations shall apply as determined by the City Manager or designed. These crossings can obstruct the flow of water in the waterway and increase flooding.

Sec. 9-12. - Activities presumed to have an insignificant adverse impact on the Contiguous Protective Zone (Zone 2).

A. The following uses and activities are presumed to have an insignificant adverse impact on the beneficial functions of the Contiguous Protective Zone (Zone 2) and shall therefore be permitted:

(1) All uses and activities included in Zone 1.

- (2) Educational facilities for the study of wildlife, conservation or ecology.
- (3) Gazebos or similar structures in conjunction with a nature trail or similar trail.
- (4) Unpaved parking facilities and rest rooms related to the construction of passive recreation areas.
- (5) Selective clearing or trimming of vegetation not listed as threatened, endangered, or of special concerns if the activity clearly will not adversely affect the integrity, water quality functions or wildlife habitat functions of the land portion of this zone.
- (6) Single-family homes, provided that the following additional restrictions are applied:
 - (a) Rear yard setback of fifty (50) feet from the Zone 1/Zone 2 boundary.
 - (b) Coverage with an impermeable surface and the clearing or disturbance of vegetation combined shall not exceed twenty-five percent (25%) of the gross area of the lot proposed for development.
 - (c) Alternative or central wastewater systems only. See definition, Chapter 61.
 - (d) Fill placed on the land shall not decrease the water storage capacity or alter the hydrologic regime of the zone.

B. All other activities and uses not expressly permitted under this section shall be prohibited unless it is shown by competent and substantial evidence that the specific activity would have no adverse impact on Zone 2. Examples of prohibited activities include, but are not limited to:

- (1) Dumping of any materials onto City Property or vacant lots in Zone 2.
- (2) Construction of any facilities on City Property in Zone 2 for recreational purposes is prohibited without City approval. These facilities include but are not limited the following: facilities for Bicycle Motocross (BMX) activities, four (4) wheeling, skate boarding, camping.

Sec. 9-13. - Activities presumed to have an insignificant adverse impact on the Conservation Zone (Zone 3).

A. The following uses and activities are presumed to have an insignificant adverse impact on the beneficial functions of the Conservation Zone and shall therefore be permitted:

- (1) All uses and activities in Zone 1.
- (2) All uses and activities in Zone 2.
- (3) Single-family, duplex and multifamily development on alternative wastewater systems if central sewer is not available.

- (4) Commercial development as part of a Planned Community Development District only.
- B. All other activities and uses not expressly permitted under this section shall be prohibited unless it is shown by competent and substantial evidence that the specific activity would have no adverse impact on the beneficial functions Zone 3. Examples of prohibited activities include, but are not limited to:
- (1) Dumping of any materials onto City Property or vacant lots in Zone 3.
 - (2) Construction of any facilities on City Property in Zone 3 for recreational purposes is prohibited without City approval. These facilities include but are not limited to the following: facilities for BMX activities, four (4) wheeling, skate boarding, camping.

Sec. 9-14. - Special design standards within Zone 3.

The following special design standards shall apply within Zone 3 for all commercial, industrial and multifamily development:

- A. Wherever possible, natural buffers a minimum of fifty-two (52) feet in width shall be retained between all development in Zone 3 and all other conservation zones. If a natural buffer does not exist, an equivalent shall be created using native species native to immediate environment.
- B. The developer shall completely restore any portion of either Zone 1 or 2 which is damaged during construction in Zone 3. Complete restoration means that the damaged area shall, within two (2) years, be operating as effectively as the natural system did prior to being damaged. The burden of proof shall rest with the developer in proving that the restoration has been completed.
- C. Other protective measures necessary to prevent significant adverse impacts on the beneficial functions of Zones 1 or 2 owing to development within Zone 3 may be required. The factual basis of the decision to require the measure shall be stated as a finding during the development permit review process. Protective measures may include, but are not limited to, the following:
 - (1) Maintaining natural drainage patterns.
 - (2) Limiting the removal of vegetation to the minimum possible to carry out the development activity.
 - (3) Expeditiously replanting denuded areas.
 - (4) Stabilizing banks and other unvegetated areas.

- D. Using deed restrictions and other legal mechanisms to require the developer and successors to protect the environmentally sensitive areas of the property.
- E. Requiring that all development within Zone 3 shall be setback no less than fifty (50) feet from the landward boundary of Zone 2.
- F. Prohibiting point source and non-point source discharges, except for stormwater, which may be discharged only if it meets the following minimum standard. Stormwater discharges shall include an additional level of treatment equal to fifty percent (50%) of the treatment criteria specified in Sec. 18-10 of this Unified Land Development Code.
- G. Requiring that any development within a PCD (Planned Community Development District) as defined in Chapter 53 of this Unified Land Development Code, shall be required to submit to the City an environmental assessment of the property proposed to be developed. The assessment shall be prepared by a competent ecologist, biologist or related professional. At a minimum, the assessment shall address the presence of affected species, significant archaeological resources and recommend measures to protect significant resources.

Sec. 9-15. - Development within South Myakkahatchee Creek/Myakka River Subarea.

Chapter 49, Wetlands Protection Regulations, of this Unified Land Development Code and all other applicable Federal, State and local environmental regulations, codes and ordinances shall regulate development within the South Myakkahatchee Creek/Myakka River Subarea (US 41 southward).

Sec. 9-16. - Protection of archaeologically significant resources of Little Salt Springs site.

- A. The following uses and activities are presumed to have an insignificant adverse impact on the Little Salt Springs site and shall therefore be permitted:
 - (1) Passive recreation.
 - (2) Scientific research.
 - (3) Structures relating to scientific research.
 - (4) Unpaved parking areas, rest rooms and nature trails.
 - (5) Elevated boardwalks.
- B.

All other activities and uses not expressly permitted under this section shall be prohibited unless it is shown by competent and substantial evidence that the specific activity would have no impact on the archaeological or environmental integrity of the site.

Sec. 9-17. - Protection of other significant archaeological sites.

When competent evidence exists as to the archaeological significance of a parcel of land, the City shall require, before any development commences, that the property owner or developer submit an analysis prepared by a competent professional in the field of archaeology establishing the archaeological significance of the property and providing for the protection of the archaeological resources on the property pursuant to Chapter 58 of the ULDC.

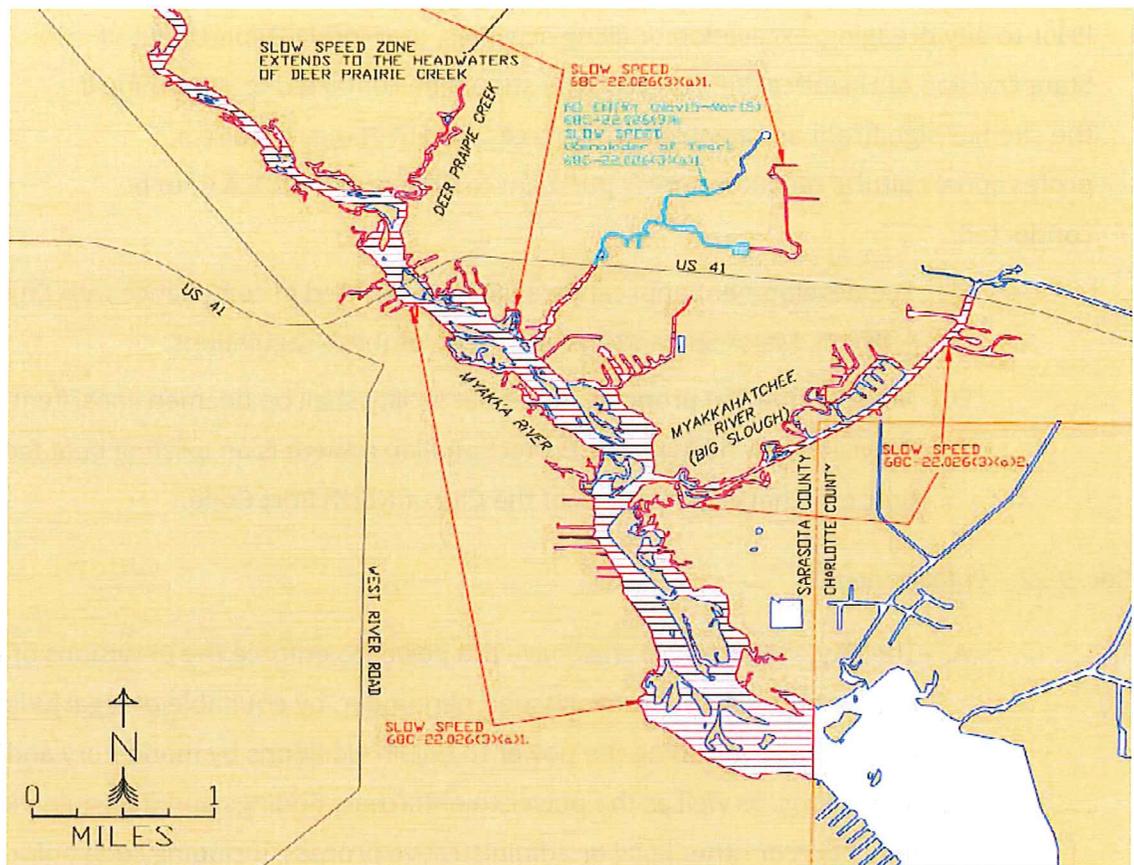
Sec. 9-18. - Uses not specifically mentioned.

Where a developer or other interested party describes a use not specifically cited within these regulations, the Director of the department responsible for land development services shall classify the use as either permitted or not permitted and the requirements that apply. In making that determination, the Director shall review the uses permitted by these regulations. The decision shall state findings substantiating the Director's conclusions. Under no circumstances shall the Director authorize a use not otherwise permitted by these regulations.

ARTICLE II. - MANATEE PROTECTION

Sec. 9-19. - Territorial jurisdiction.

The provisions of these regulations shall be applicable and enforceable throughout all waterways located throughout the City of North Port.



Map shows Sarasota County-wide manatee protection zone.

Sec. 9-20. - Prohibitions.

- A. It shall be unlawful for any person to kill, molest, harass, or cause direct or indirect injury to a manatee or manatee habitation.
- B. It shall be unlawful for any person to collect or possess any part of a West Indian Manatee.

Sec. 9-21. - Review process.

- A. Any development within any waterway in the City of North Port shall be required to submit to the City an application showing the proposed development and its effect on the manatees and their habitats.
- B. The City may require an assessment report. The assessment shall be prepared by a competent ecologist, biologist or related professional. At a minimum, the assessment shall address the presence of affected species, significant archaeological resources and recommend measures to protect significant resources.

Prior to any dredging, excavation or filling activities, the Florida Department of State Division of Historical Resources (DHR) should be contacted to determine if the site has significant archaeological resources. The DHR may require a professional cultural resource survey pursuant to Chapter 1A-46, F.A.C. to be conducted.

- C. The development application shall be submitted in compliance with Chapter 33, Article II, Major Site and Development, of these regulations.
- D. No development proposal for a boat facility shall be deemed consistent with the provisions of the Manatee Protection Plan if there is an existing boat facility on the property that is in violation of the City of North Port Code.

Sec. 9-22. - Enforcement.

- A. The City of North Port shall have the power to enforce the provisions of this article, or any permit and or approval issued hereunder, by equitable or legal judicial proceedings, including the power to enjoin violations by mandatory and prohibitory injunctions, as well as the power to enforce its findings and determinations by injunction or other legal or administrative process, including code enforcement proceedings. Each day of any such violation shall constitute a separate and distinct offense.
- B. The City Manager or designee is hereby authorized to issue a stop work order to a person where the City Manager or designee determines that work at the site:
 - (1) Is proceeding in violation of this section; or
 - (2) Poses an imminent and significant hazard to the public health, safety, or welfare, or to the environment.

Chapter 14 - EARTHMOVING, DREDGING AND FILL REGULATIONS

[HISTORY: Adopted by the City Commission of the City of North Port: 3-26-2001 by Ord. No. 2001-5]

[HISTORY: Adopted by the City Commission of the City of North Port 9-17-1990 by Ord. No. 90-28 (Section 10). Amendments noted where applicable.]

GENERAL REFERENCES

Conservation/Restricted Overlay Zone regulations — See Ch. 9.

Flood damage prevention regulations — See Ch. 17.

Landscaping regulations — See Ch. 21.

Site and development plan regulations — See Ch. 33.

Subdivision regulations — See Ch. 37.

Tree protection regulations — See Ch. 45.

Wetlands protection regulations — See Ch. 49.

Archaeological resource protection — See Ch. 58.

Water pollution control — See City Code Ch. 78.

Watercraft — See City Code Ch. 82.

ARTICLE I. - GENERAL

Sec. 14-1. - Title.

This chapter shall be known and may be cited as the "Earthmoving, Dredging and Fill Regulations" of the City of North Port, Florida.

[Amended 9-13-2016 by Ord. 2016-20]

Sec. 14-2. - Intent.

It is the intent of this regulation to preserve, protect, and improve the public health, safety, comfort, good order, appearance and general welfare, and to conserve and to protect the natural resources within the City of North Port while promoting opportunities for responsible development including associated earthmoving activities.

[Amended 9-13-2016 by Ord. 2016-20]

Sec. 14-3. - Applicability.

- A. These regulations shall apply to any earthmoving, dredging and/or filling activities. Earthmoving, dredging and/or fill activities (including but not limited to construction of seawalls, docks, piers and boat ramps, except for those activities specifically exempted under Chapter 13) shall be defined as activities related to excavation, earthmoving, dredging and/or filling, and any operation that pertains to moving earth products; or to the expansion of existing operations.
- B. All activities proposed for earthmoving, dredging and/or filling shall be suitable for the various purposes proposed in the request for approval. In addition to the standards contained herein, the applicant shall demonstrate to the satisfaction of the Planning and Zoning Advisory Board and City Commission, where applicable, that the proposed earthmoving, dredging and/or filling is specifically adapted and designed for the uses anticipated. The applicant shall also demonstrate that the proposed earthmoving, dredging and/or filling activity and closure plan benefits and complies with the City of North Port Comprehensive Plan, the zoning regulations and other sections of this Unified Land Development Code, and other laws, ordinances and regulations, as applicable.
- C. All earthmoving, dredging and/or filling activities conducted within the Myakka River Protection Zone (MRPZ) shall be regulated by Chapter 57.

[Amended 9-13-2016 by Ord. 2016-20]

Sec. 14-4. - Use of natural features.

The size, shape and orientation of earthmoving, dredging and/or filling and associated activities shall be designed to logically relate to trees, topography, soil type, natural features, and adjacent land uses. All earthmoving, dredging and/or filling shall be designed to maximize the preservation of natural features, protected wildlife species, trees, tree masses, unusual rock formations, watercourses and sites which have historical significance, scenic views or similar assets. All earthmoving, dredging and/or filling activities shall be designed to minimize the size of the excavation with respect to the volume of material proposed for excavation, dredging and/or filling so as to conserve land and natural resources.

[Amended 9-13-2016 by Ord. 2016-20]

Sec. 14-5. - Consideration of flood hazards and conservation restricted areas.

Earthmoving activities or portions thereof proposed to be located within any of the City's designated conservation restricted areas, as depicted on the City's Future Land Use Map, or in any designated flood hazard zone, as depicted on the latest FEMA/FIRM and SWFWMD governing board adopted floodplain maps, shall comply with all applicable City of North Port regulations governing land uses within such areas as set forth in Chapter 9, Conservation/Restricted Overlay Zone Regulations; Chapter 17, Flood Damage Prevention Regulations; and Chapter 18, Stormwater Regulations of this Unified Land Development Code, as well as State and Federal requirements.

[Amended 9-13-2016 by Ord. 2016-20]

Sec. 14-6. - Tree protection and wetland protection.

All proposed earthmoving, dredging and/or filling to be located within the City shall comply, as may be deemed appropriate, with the wetland protection regulations and tree protection regulations set forth in Chapter 49, Wetland Protection Regulations, and Chapter 45, Tree Protection Regulations, of this Unified Land Development Code.

[Amended 9-13-2016 by Ord. 2016-20]

Sec. 14-7. - Land clearing debris.

- A. On-site burying of any land clearing material generated as a result of the earthmoving, dredging and/or fill shall be prohibited, except where the felled trees are mulched in with Sec. 37-23 of these regulations.
- B. All land clearing material generated as a result of earthmoving, dredging and/or filling activities shall be removed from the site prior to the completion of earthmoving, dredging and/or filling activities and the final closure plan.
- C. Land clearing debris may be burned in accordance with Sec. 33-7(D)(1)(e).

[Amended 9-13-2016 by Ord. 2016-20]

Sec. 14-8. - Stormwater management standards.

- A. *General provisions*. A complete stormwater management system shall be provided for the adequate control of stormwater runoff and water quality treatment that originates within the earthmoving, dredging and/or fill site and

development parcel that flows onto or across the property from adjacent lands. Said stormwater management system shall be designed in accordance with the standards given in Chapter 18.

- B. *Relationship to other stormwater management requirements* . In addition to meeting the requirements of this chapter, the design and performance of all stormwater management systems shall comply with applicable State regulations or rules of the Southwest Florida Water Management District (SWFWMD). In all cases, the strictest of the applicable standards shall apply.
- C. *Performance standards* . All earthmoving, dredging and/or fill facilities must be designed, constructed and maintained to meet the following standards:
 - (1) While earthmoving, dredging and/or filling activity is underway and after it is completed, the characteristics of stormwater runoff shall approximate the rate, volume, quality and timing of stormwater runoff that occurred under the site's natural unimproved or existing state, except that the first inch of stormwater runoff shall be treated in a retention/detention system or according to other best management practices as described elsewhere in this chapter.
 - (2) The proposed earthmoving, dredging and/or filling activity shall not violate the State water quality standards.
- D. *Design standards* . To comply with the foregoing performance standards, the proposed stormwater management system shall conform to the following design standards:
 - (1) Detention and retention systems shall be in compliance with Chapter 18.
 - (2) To the maximum extent practicable, natural systems shall be used to accommodate stormwater.
 - (3) The proposed stormwater management system shall be designed to accommodate the stormwater that originates within the earthmoving development parcel and stormwater that flows onto or across the earthmoving development parcel from adjacent lands.
 - (4) The proposed stormwater management system shall be designed to function properly for the life of the system.
 - (5)

A professional engineer registered in the State of Florida shall certify the design and construction of the proposed stormwater management system as meeting the requirements of this chapter.

- (6) No surface water may be channeled or directed into a sanitary sewer.
- (7) The proposed stormwater management system shall be compatible with the stormwater management facilities on surrounding properties or streets, taking into account the possibility that substandard systems may be improved in the future.
- (8) The banks of retention and detention areas shall be sloped at a ratio of no greater than four (4) to one (1) in order to accommodate vegetation, and shown on the closure plan.
- (9) Dredging, filling, clearing of vegetation, deepening, widening, straightening, stabilizing or otherwise altering natural surface waters shall be prohibited unless the activity is in compliance with the regulations set forth in Chapter 49, Wetlands Protection Regulations, Chapter 9, where deemed appropriate, Conservation/Restricted Overlay Zone Regulations and Chapter 13, Docks, Seawalls, Other Structures and Marine Vessels Regulations, and State and Federal regulations.
- (10) Natural surface waters shall not be used as sediment traps during or after earthmoving.
- (11) For aesthetic reasons and to increase shoreline habitat, the shoreline of retention and detention areas shall be sinuous rather than straight where practical and shown on the closure plan.
- (12) Vegetated buffers of sufficient width to prevent erosion shall be retained or created along the shores, banks, or edges of all natural or man-made surface waters.
- (13) Retention and detention areas shall not be located in a floodplain area as delineated on the latest FEMA/FIRM and SWFWMD governing board adopted floodplain maps", except as approved by the designated City Engineer. Any loss of floodplain volume as a result of development within the floodplain shall be mitigated elsewhere on the site, the location of which must be approved by the City.
- (14)

Stormwater discharge facilities which directly discharge to the Myakkahatchee Creek shall include an additional level of treatment equal to fifty percent (50%) of the treatment criteria specified in Sec. 37-24 herein.

- (15) Drainage plans shall provide that stormwater be conveyed to an ultimate positive outfall beyond the outer edge of the development or at the nearest natural outfall.

[Amended 9-13-2016 by Ord. 2016-20]

Sec. 14-9. - Prohibited activities.

A. Oil or natural gas exploration or production.

- (1) No person or entity may engage in any oil or natural gas exploration or production that utilizes well stimulation within the corporate limits of the City of North Port.
- (2) No person or entity may engage in oil or natural gas exploration or production that utilizes well stimulation techniques originating outside the corporate limits of the City of North Port that in any way enters onto, into, or under the ground within the corporate limits of the City of North Port.
- (3) No person or entity may engage in phosphate mining within the corporate limits of the City of North Port.

[Added 12-11-18 by Ord. 2018-43, § 2.01; Amended 12-11-18 by Ord. 2018-40, § 2.01]

Sec. 14-10. - Enforcement.

The provisions of Chapter 17, Code Enforcement, of the Code of the City of North Port and the enforcement procedures and penalties contained therein are hereby adopted and incorporated into and made a part hereof by reference.

[Amended 9-13-2016 by Ord. 2016-20]

Editor's note— Ord. 2018-43, § 2.01, adopted Dec. 11, 2018, renumbered §§ 14-9—14-13 as 14-10—14-14.

Sec. 14-11. - Interpretations.

Interpretations of this chapter shall be made by the designated Public Works Director or City

Engineer or City Manager's designee.

[Amended 9-13-2016 by Ord. 2016-20]

Editor's note— See editor's note for § 14-10.

Sec. 14-12. - Conflicts.

Whenever the requirements of these earthmoving, dredge and fill regulations differ from those imposed by the Federal or State regulation, law or statute, the most restrictive regulation or the regulation imposing the higher standards shall apply.

[Amended 9-13-2016 by Ord. 2016-20]

Editor's note— See editor's note for § 14-10.

Sec. 14-13. - Appeals.

- A. Any person aggrieved by the designated Public Works Director/City Engineer/City Manager designee's interpretation may appeal to the Zoning Board of Appeals. The criteria for granting an appeal shall be based upon substantial competent evidence proving that the interpretation renders the property without reasonable use. The granting of any appeal shall not be in conflict with State law. Applications for an appeal shall be filed pursuant to Sec. 1-10 and Sec. 1-28.

[Amended 9-13-2016 by Ord. 2016-20]

Editor's note— See editor's note for § 14-10.

Sec. 14-14. - Severability.

If any section, subsection, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

[Amended 9-13-2016 by Ord. 2016-20]

Editor's note— See editor's note for § 14-10.

Secs. 14-15, 14-16. - Reserved.

[Repealed 9-13-2016 by Ord. 2016-20]

ARTICLE II. - EARTHMOVING AND STOCKPILING

Sec. 14-17. - Procedure for securing earthmoving plan approval.

- A. Except as specified below, earthmoving, such as borrow pits or excavation, is only allowed after the approval of a special exception.
- B. The following activities are exempt from obtaining a special exception:
 - (1) A development which has incidental earthmoving and is governed by a valid Subdivision Plan, Infrastructure Plan, Minor Site Development Plan, or Major Site Development Plan, in accordance with the requirements of Sec. 14-18.
 - (2) Excavation for ponds no larger than three-fourth ($\frac{3}{4}$) acres and authorized by Article IV of this chapter.
 - (3) Single-family, residentially zoned platted lots.
 - (4) Any similar activity as deemed appropriate by the City Manager or designee.
- C. Prior to the submission of a special exception petition, the petitioner shall schedule a pre-application meeting with City staff and representatives of any other agencies in the State of Florida, as may be required, to discuss the development. The special exception petition shall be submitted pursuant to Chapter 53, Article XXII of the Unified Land Development Code. This process shall be completed prior to an application for an earthmoving permit.
- D. The developer shall submit one (1) copy of a building permit application to the Building Department along with the Earthmoving Plan as outline in Sec. 14-18. Permit application forms are available from the Building Department and shall be prepared as specified below and shall include all required fees and applicable documents, including, but not limited to:
 - (1) The special exception permit;
 - (2) Land clearing/earthmoving permit;
 - (3) Right-of-way use permit;
 - (4) Proof of property ownership and/or affidavit providing permission for proposed activity;

- (5) Developer's agreement or other agreement addressing long-term use of the earthmoving site.
- E. Approval of an earthmoving permit shall only be construed as authority for the developer to commence earthmoving on the proposed development.
- (1) In addition to an earthmoving permit, a building permit may be required.
 - (2) A certificate of completion shall not be issued until the development has been completed in accordance with all of the details and specifications set forth in the approved building permit application.
- F. Time limit for approved permits. Approved earthmoving permits shall be voided if substantial work, as determined by the City Engineer, has not been accomplished within two (2) years. The resubmission of a voided permit shall comply with the regulations that are in effect at the time of resubmission.

[Amended 9-13-2016 by Ord. 2016-20]

Sec. 14-18. - Exemption submittal requirements.

- A. Where Sec. 14-17(B)(1) exempts earthmoving activities, the following information shall be provided along with the submittal for the Subdivision Plan, Infrastructure Plan, Minor Site Development Plan, or Major Site Development Plan:
- (1) The amount of earth that will be moved onto the site or removed from the site;
 - (2) The estimated number of truck loads required, the hauling route(s) and maintenance of traffic plan (if activity impacts the City's right-of-way). The hauling route should identify where the material will be deposited;
 - (3) A site plan showing stockpiling locations that meet the requirements of Sec. 14-20;
 - (4) A Best Management Plan (BMP) that identifies the appropriate erosion and sediment controls and storm water best management practices to reduce erosion, sedimentations and storm water pollution. The BMP shall be provided for the excavation site and for the excavated material recipient site; and
 - (5) An Environmental Report completed by an environmental professional, shall be submitted for both the proposed excavation site and for the site receiving the excavated material. The report shall show how wildlife and other

environmental resources will be protected or mitigated as a result of the proposed earthmoving. The Environmental Report shall include a wildlife survey conducted per the Florida Fish and Wildlife Conservation Commission (FFWCC) criteria, to indicate whether there are any endangered or protected wildlife species such as but not limited to gopher tortoise. The wildlife survey should be no older than one year from the date of submittal to the City. The Environmental Report shall also include any wetland(s) and other surface waters on site and if present, provide an approved Wetland Jurisdictional survey approved by the appropriate regulatory agency (SWFWMD/FDEP/USACOE). An updated wildlife survey shall be provided if, at the time earthmoving is set to commence, the date on the wildlife survey is older than (1) year.

- B. Exempt earthmoving activities shall be governed by an associated development order for both the excavation site and for the excavated material recipient site. Any changes to the submission requirements of Sec. 14-18(A) shall require a written request to amend the development order.
- C. Exempt earthmoving activities shall be construed as a component of the infrastructure covered by the required bond of Sec. 33-9(A)(20) and Sec. 37-7(A)(7).

[Amended 9-13-2016 by Ord. 2016-20]

Sec. 14-19. - Special exception earthmoving plan.

The earthmoving plan must include the following information, with as many copies as deemed necessary for an adequate review:

- A. A topographic and boundary survey signed and sealed by a registered land surveyor in the State of Florida;
- B. A site and drainage stormwater plan, signed and sealed by a registered engineer in the State of Florida;
- C. A tree location survey, which may be combined as part of the required site and drainage plan or topographic and boundary survey. See Chapter 45, Tree Protection Regulations, of this Unified Land Development Code for further details;
- D.

A site plan showing all areas of proposed excavation, stockpiling, or processing, volume of all excavations, type(s) of earth products to be removed, proposed slopes, contours, setbacks, and methods of dewatering;

- E. Any additional data, maps, plans, surveys or statements as determined by the City to be necessary, depending on the particular use or activity proposed;
- F. Drainage submittal pursuant to Chapter 18, Stormwater Regulations;
- G. Copies of approved permits for all required State and Federal permits, e.g., Southwest Florida Water Management District (SWFWMD), US Army Corp of Engineers, Florida Department of Environmental Protection, US Fish and Wildlife, Florida Fish and Wildlife Conservation Commission, etc.;
- H. An Environmental Report completed by an environmental professional, shall be submitted for both the proposed excavation site and for the site receiving the excavated material. The report shall show how wildlife and other environmental resources will be protected or mitigated as a result of the proposed earthmoving. The Environmental Report shall include a wildlife survey conducted per the Florida Fish and Wildlife Conservation Commission (FFWCC) criteria, to indicate whether there are any endangered or protected wildlife species such as but not limited to gopher tortoise. The wildlife survey should be no older than one year from the date of submittal to the City. The Environmental Report shall also include any wetland(s) and other surface waters on site and if present, provide an approved Wetland Jurisdictional survey approved by the appropriate regulatory agency (SWFWMD/FDEP/USACOE). An updated wildlife survey shall be provided if, at the time earthmoving is set to commence, the date on the wildlife survey is older than (1) year;
 - (1) Structural and vegetative buffers may be required as necessary to prevent adverse visual, noise, vibration, dust, and safety impacts between potentially incompatible land uses;
 - (2) All excavations shall be maintained so as to prevent the creation of sanitary or health nuisances or hazards including mosquitoes, vermin, and the dumping of garbage, trash, hazardous waste, or other refuse;
- I. Test borings in a ratio of one (1) for every twenty thousand (20,000) square feet of surface area to a depth five (5) feet below any proposed excavations;
- J. Closure plan. A closure plan reflecting the proposed condition of the project

following completion of the activity, including but not limited to the following;

- (1) Location and type of land uses, including recreation area, preservation, stormwater, reservoir, etc.;
- (2) Schedule for reclamation by geographic area;
- (3) Access to the property;
- (4) Costs associated with maintenance of the property after closure;
- (5) Maintenance entity information; and
- (6) Upon completion of the excavation, and as a requirement of the closure plan, the excavation shall be left in a free form configuration. Straight-line geometrical excavation designs are not permissible. Excavation shall be of irregular type shape form which enhances the natural environment. As a part of the closure plan for all excavations, a littoral zone meeting the Chapter 18 requirements shall be included;

K. Identification of a designated haul route(s), if applicable, and evidence of existing road conditions. The haul route should include identification of where the material will be deposited and an estimate of the number of truck loads required. Hauling operations shall comply with all applicable limits and restrictions including those pertaining to vehicle registration, safety, and wheel and axle loads. Operations authorized by an earthmoving permit may be suspended or prohibited by the City, upon a determination that any such operations are not in compliance with the provisions of the permit. It shall be the applicant's responsibility to mitigate those impacts on the haul route arising from activities authorized under any earthmoving operation. The City Manager or designee shall determine required mitigation measures on a case-by-case basis and may include any or all of the following:

- (1) Clean-up of material overspills;
- (2) Shoulder grading;
- (3) Pavement patching;
- (4) Pavement and roadway base reconstruction;
- (5) Moving dirt away from the site;
- (6) Pavement maintenance, including resurfacing;
- (7)

Traffic safety improvements such as signing, striping, barrier rails, turn or acceleration lanes with tapers, all meeting American Association of State Highway and Transportation Officials standards, including adding lane capacity;

- (8) Watering and other dust control measures; and
 - (9) Maintenance of traffic plan. When construction activities impact the City's right-of-way, the applicant shall submit a maintenance of traffic plan in accordance with Florida Department of Transportation (FDOT) Design Index Standards;
- L. A bond in the amount of at least ten cents (\$0.10) per cubic yard of material proposed to leave or enter the site and/or a minimum of fifty thousand dollars (\$50,000.00), to insure maintenance of the public roads being utilized by the proposed excavation and insure the completion of the closure plan shall be required. The bond may be for the length of the phase of the excavation activity permitted. Alternatively, the bond may be renewed annually based on closure cost and the volume of remaining material to be transported offsite with the approval of the Finance Director;
 - M. Where appropriate, a study showing the amount of water storage upon completion that may be permitted for use as a public water supply, improvements necessary to maximize the public water supply, and estimated costs of said supply, as determined by the Utility Department Director;
 - N. Maximum excavation depth. Excavation permitted under this section shall not exceed twelve (12) feet in depth, but may be permitted deeper than twelve (12) feet if soil boring data is provided that shows no confining layers and excavation does not penetrate existing aquifers;
 - (1) Approval from the appropriate State agencies such as Southwest Florida Water Management District (SWFWMD) or Florida Department of Environmental Protection (FDEP) shall be obtained;
 - (2) Signed and sealed as-built drawings will be required to prove the maximum depth is maintained; and
 - (3)

All excavated areas shall have side slopes no steeper than one (1) foot vertical for each four (4) feet of horizontal distance to a minimum depth of two (2) feet below normal water level (NWL). Below this depth, the side slopes shall be no steeper than one (1) foot vertical for each two (2) feet of horizontal distance;

- O. Setbacks for excavation site.
 - (1) Minimum setback requirements shall be as follows:
 - (a) From street right-of-way or easement: Fifty (50) feet.
 - (b) From property line: Fifty (50) feet.
 - (2) All required excavation setbacks shall be measured from the highest level on the excavated bank.
 - (3) Borrow pits, and other excavations designed to be left open upon completion shall not be excavated within one hundred (100) feet of any abutting property. This setback requirement does not apply to stormwater retention/detention ponds.
- P. Best Management Plan (BMP). Provide a plan that identifies the appropriate erosion and sediment controls and storm water best management practices to reduce erosion, sedimentations and storm water pollution.

[Amended 9-13-2016 by Ord. 2016-20]

Sec. 14-20. - Stockpiling.

Stockpiling is intended to allow for temporary storage of materials for future use in a construction project to be located on the same property and shall be monitored for compliance with the following criteria through an approved development order:

- A. Stockpiles must be placed to minimize nuisance to the public, with consideration given to storm water drainage routing, dust control, safety, and aesthetic appearance.
- B. Stockpile material shall consist of clean earth fill (Type A), free of construction debris, vegetation, and other deleterious materials not suitable for fills.
- C. BMPs must be in place around all stock piles to prevent silt runoff and erosion control.

- D. Maximum side slope for stockpiles four (4) feet or less will be 1.5(horizontal):1(vertical) and 2(horizontal):1 (vertical) for stockpiles higher than four (4) feet.
- E. Final disposition of an allowable stockpile must occur within twelve (12) months from the date of the Development Order.
 - (1) The property must be constructed to a completed condition within three (3) months of stockpile removal.
 - (2) If an extension is needed, a written request to amend the development order or Special Exception shall be required.

[Amended 9-13-2016 by Ord. 2016-20]

Sec. 14-21. - Reserved.

[Repealed 9-13-2016 by Ord. 2016-20]

ARTICLE III. - DREDGE AND FILL

Dredge and fill regulations shall apply to all developments or new construction associated with dredging and filling activities in the City of North Port, including but not limited to construction of seawalls, docks, piers, boat ramps, canals, and waterways.

Sec. 14-22. - Procedure for securing a dredge and fill plan approval.

- A. In the case the application is for a residential project, the developer shall submit a building application through the building department. If the project is commercial or part of a subdivision or a development prior to the submission of an application, the developer shall schedule a pre-application meeting with City staff and representatives of any other agencies in the State of Florida, as may be required.
- B. Once the fee for dredge and fill has been paid which shall include any required special exceptions permit, the applicant will be required to apply for a dredge and fill approval in accordance with a right-of-way use permit. The approved special exception package shall accompany the permit application.

Sec. 14-23. - Submission requirements for dredge and fill plan.

All commercial or subdivision projects for dredge and fill application shall attend a pre-application meeting.

- A. The dredge and fill plan shall include the following:
 - (1) An explanation of the need and intent of the project.
 - (2) A description of construction methodology.
 - (3) A completed application form.
 - (4) Line sketches.
 - (5) Methods of water quality control.
 - (6) Copies of all State and/or Federal agency permits and/or notices of exemption.
 - (7) Water depths referenced to mean low water MLW or mean high water MHW, as appropriate.
 - (8) A land survey performed within the past eighteen (18) months, signed and sealed by a Florida Licensed Land Surveyor.
 - (9) Tree location survey, which may be combined as part of the required topographic and boundary survey. (See Chapter 45, Tree Protection Regulations, of this Unified Land Development Code).
 - (10) Environmental study performed within one (1) year from the date of application. The study must reflect the utilization of the project by State or Federal listed species and/or presence of wetland or other valuable native habitats; and how these resources will be protected or conserved as a result of the proposed earthmoving dredge and fill activities. This requirement is at the discretion of the Public Works Department.
 - (11) Copies of all approved permits, e.g., SWFWMD.

Sec. 14-24. - Criteria for granting permits.

- A. *Canals.* No new channels or canals for navigational purposes shall be dredged within the city limits unless such channels or canals shall be a minimum depth of six (6) feet below mean low water and a minimum width of seventy (70) feet, and no piling, boat dock or pier shall project more than ten percent (10%) of the width of the waterway right-of-way into said channels or canals. All applications for

dredging channels or canals shall be accompanied by plans and specifications which must be approved by appropriate city departments prior to commencement of the work.

- B. *Duty to remove debris, tools and equipment.* It shall be unlawful to permit debris, residue, tools and equipment resulting from or used during the progress of the work done under this chapter to remain on any lots, alleys, streets or thoroughfares for more than fifteen (15) days after completion of said work, and the responsibility for removal thereof is hereby fixed upon the person in whose name the permit required by this chapter is issued.

- (1) If the debris, residue, tools or equipment heretofore mentioned is not removed within the aforesaid fifteen (15) day period, in addition to the penalties for violation thereof, the Building Inspector may enter upon any premises upon which the same is found and employ such labor and take such steps as may be reasonably required to remove the same, and the cost and expense of such removal shall thereupon be and become a lien upon the premises improved by the work for which the aforesaid permit was issued.

Sec. 14-25. - Procedure for securing dredge and fill permit approval.

- A. The developer shall submit one (1) copy of a building permit application to the Building Department. Permit application forms are available from the Building Department. The permit application shall be prepared as specified below and shall include all applicable documents and required fees.
- B. If a special exception, variance or waiver was required, the approved package must accompany the permit.
- C. Upon receipt of a completed application, and the applicable fees pursuant to the City Commission approved fees as may be amended from time to time, the application shall be reviewed by the City for conformance with applicable regulations set forth in this Unified Land Development Code, Standard Building Codes and all other City regulations.
- D. Upon issuance of the building permit, the agent/developer shall reimburse to the City, any expenses incurred by the City above the application fee within thirty (30) days of invoice receipt. Checks shall be made payable to the City of North Port.
- E.

Approval of a dredge and fill permit. Approval of a dredge and fill permit application shall only be construed as authority for the developer to commence dredge and fill activities of the proposed development. A certificate of completion shall not be issued until the development has been completed in accordance with all of the details and specifications set forth in the approved building permit application.

- F. *Time limit on approval.* Dredge and fill approval in accordance with the requirements specified herein and a right-of-way use permit shall be voided if substantial work, as determined by the Public Works Director, has not been accomplished within two (2) years. Plans so voided shall be resubmitted in compliance with the regulations that are in effect at the time of resubmission.
- G. *Setbacks for excavation site.* Setbacks for excavation site shall be as follows:
 - (1) From street right-of-way or easement a minimum of fifty (50) feet.
 - (2) From property line a minimum of fifty (50) feet.
 - (3) All required excavation setbacks shall be measured from the highest level on the excavated bank.
 - (4) The above setback does not apply to stormwater ponds.
 - (5) Setbacks for ponds excavated on single family platted lots shall be a minimum of twenty-five (25) feet.

Sec. 14-26. - Dredging and fill permit.

- A. A building permit application shall be submitted to the Building Department, which shall contain the following information and documents:
 - (1) *Topographic and Boundary Survey.* Topographic and Boundary Survey performed within the last eighteen (18) months from the application date; signed and sealed by a Florida registered Land Surveyor.
 - (2) *State and/or Federal permits.* Copies of approved permits for all required State and Federal permits, e.g., Southwest Florida Water Management District, etc.
 - (3) *Test boring reports.* Upon request, test borings to a minimum depth of five (5) feet below any proposed or existing grades.
 - (4)

Best management plan. Provide a plan that identifies the appropriate erosion and sediment controls and storm water best management practices to reduce erosion, sedimentations and storm water pollution.

- (5) *Proof of property ownership.* Please provide proof of property ownership for all land that will be effected by the proposed activity. If not owned by the applicant, then provide written permission allowing the activities on site.
- (6) *Right-of-way use permit.*
 - (a) A right-of-way use permit from the City of North Port Public Works Department shall be obtained for all work proposed to be done for all dredge and fill activities within the City's rights-of-way and easements.
 - (b) A right-of-way use permit shall also be obtained in conjunction with a building permit, where the city rights-of-way and easements will be traversed during construction on the lot.
 - (c) Completed permit applications shall be filed at the City of North Port Building Department office concurrent with the completed application for a building permit.
- (7) A special exception permit, variance or waiver, if applicable.

Sec. 14-27. - Prohibition of non-water-dependent fixed structures.

- A. It shall be unlawful for any person to construct, place, install, maintain, permit, allow, suffer or cause the construction, placement, installation, maintenance or existence of any fixed structure in, on, over or upon any of the jurisdictional waters of the City of North Port which does not have a water-dependent use unless approved by special exception.
 - (1) Fixed structures which do not have a water-dependent use include, but are not limited to, residences, offices, hotels, motels, restaurants, lounges, retail or wholesale stores, clubhouses, helicopter pads, meeting facilities, commercial signs, transmitting or receiving antennas and towers or storage or parking facilities.
 - (2) This prohibition shall not apply to fixed structures that were fully permitted on the effective date of this chapter or to their repair, provided that permits are obtained.
 - (3)

Special exception may be granted for restaurants, convention centers, hotels or walkways over or upon the jurisdictional waters of the City of North Port provided that:

- (a) The property is located within an Activity Center.
- (b) The development will cause no adverse effect on the waterway.
- (c) Shall be compatible with surrounding uses.
- (d) The development is open to the public.

Sec. 14-28. - Water quality standards.

The water quality rules and standards as set forth in Chapter 17-3, Florida Administrative Code, existing on the effective date hereof and as may be amended from time to time, are hereby adopted and incorporated by reference as if set forth in full herein. The mixing zones referenced in Chapter 17-4, Florida Administrative Code, are also adopted as if set forth in full herein.

ARTICLE IV. - LAKES AND PONDS

Sec. 14-29. - Excavations for lakes and ponds.

A. Scope.

- (1) The requirements of this section shall apply to any man-made lake, pond or similar water body accessory to a single-family or nonresidential use. The construction of lakes, ponds or similar water bodies shall be permitted as an accessory use in the AG, CG, ILW, PCD and GU Zoning Districts and may be located in any yard. This section does not include ornamental ponds fountains, waterfalls or other similar accessories under fifty (50) square feet in total area and less than two (2) feet in depth, typically used as an embellishment to landscaping.

B. Maximum excavation depth. Excavation permitted under this section shall not exceed twelve (12) feet in depth.

- (1) Excavation depth may be permitted deeper than twelve (12) feet if soil boring data is provided that shows no confining layers and excavation does not penetrate existing aquifers.
- (2)

Approval from the appropriate State agencies such as Southwest Florida Water Management District (SWFWMD) and Florida Department of Environmental Protection (FDEP) shall be required.

- (3) Signed and sealed as-builts will be required to prove the maximum depth is maintained.
- C. Setbacks for excavation site. Setbacks from street a right-of-way or easement shall be a minimum of fifty (50) feet and a minimum of fifty (50) feet from a private property line. All required excavation setbacks shall be measured from the highest level on the excavated bank.
 - D. Excavation banks/slopes. The design of shorelines of lakes and ponds shall be sinuous rather than straight whenever practicable. The banks for all excavations permitted under this section shall be sloped at a ratio not greater than four (4) horizontal to one (1) vertical out to a depth of two (2) feet below the normal water elevation. The slopes shall be no greater than two (2) horizontal to one (1) vertical thereafter.
 - E. The pond is recommended to be constructed to accept the run-off from the proposed impervious areas on the parcel. Excavation of material from the pond site can be used to provide fill for the site. Hauling excavated material off-site is not permitted unless an earthmoving plan is approved pursuant to Chapter 14 requirements of these regulations. An approved SWFWMD ERP permit for borrow pit will also be required to haul excavated material off-site. The pond should be sized to provide attenuation and treatment of stormwater run-off from a twenty-five (25) year twenty-four (24) hour storm. A typical pond design is available from the City's Engineering Department upon request.
 - F. If a fire hydrant is not available within five hundred (500) feet of the building structure, a dry hydrant connection is required if practicable, with a wet pond construction to allow emergency service vehicles to quickly connect to the pond water and provide fire protection. A typical dry hydrant connection design is available from the City's Engineering Department upon request.
 - G. Approval required.
 - (1) All excavations for the construction of lakes or ponds consistent with the requirements of this section shall be required to obtain a permit from the City.
 - (2) A permit from the Southwest Florida Water Management District shall be

obtained (when required) before any City permit is issued.

- H. Wetland areas. Excavation for the purpose of constructing lakes and ponds as an accessory use to a residential use shall not be permitted in wetland areas as defined within this Code. (see Chapter 49), Wetlands Protection Regulations, of this Unified Land Development Code.) Under no circumstances shall an excavation connect to a natural surface water body or drainage facility.

Sec. 14-30. - Right-of-way use permit.

- A. In the case any lake or pond is to be developed or constructed within the City's right-of-way, the owner/applicant shall be required to obtain a R-O-W use permit.
 - (1) Application for a R-O-W use permit shall be pursuant to Sec. 14-24.

ARTICLE V. - DEFINITIONS

Sec. 14-31. - Scope.

Unless otherwise expressly stated, the following words and terms shall, for the purposes of this Chapter, have the meanings provided. Where not defined, such terms shall have ordinarily accepted meanings as the context implies. [Added 12-11-18 by Ord. 2018-43, § 2.02]

Sec. 14-32. - Definitions.

- A. ACID WELL STIMULATION TREATMENT or ACIDIZING - Any type of well stimulation treatment that uses, in whole or in part, the application or injection of one or more acids into a well or underground geological formation to enhance production of oil and/or gas.
- B. EXPLORATION - The process of trying to find accumulations of oil and natural gas trapped under the Earth's surface.
- C. HYDRAULIC FRACTURING or FRACKING - Any type of well stimulation treatment that involves a high-pressure injection of hydraulic fracturing fluids containing a mix of water and/or sand and/or chemicals into underground geological formations.
- D.

NATURAL GAS - Any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the Earth and which maintains the gaseous or rarefied state at standard temperature or pressure conditions.

- E. PHOSPHATE MINING - The extraction of phosphate ore from the earth by whatever process including the removal of overburden for the purpose of reaching underlying ore, the reclamation of previously mined land, the transporting, washing, sizing, flotation, storage, drying, grinding and shipping of the phosphate, and all activities reasonably related thereto, except chemical processing.
- F. PRODUCTION - The phase that occurs after successful exploration and development and during which hydrocarbons are drained from an oil or gas field.
- G. WELL STIMULATION - A well intervention, exploration, operation, or maintenance procedure performed by injecting fluid into a rock formation in order to increase production at an oil or gas well. This includes but is not limited to hydraulic fracturing or fracking and acid well stimulation treatment or acidizing.

[Added 12-11-18 by Ord. 2018-43, § 2.02; Amended 12-11-18 by Ord. 2018-40, § 2.02]

Chapter 18 - STORMWATER REGULATIONS

[HISTORY: Adopted by the City Commission of the City of North Port:]

GENERAL REFERENCES

Conservation/Restricted Overlay Zone regulations — See Ch. 9.

Dredge and fill regulations — See Ch. 13.

Flood damage prevention regulations — See Ch. 17.

Landscaping regulations — See Ch. 21.

Site and development plan regulations — See Ch. 33.

Subdivision regulations — See Ch. 37.

Tree protection regulations — See Ch. 45.

Wetlands protection regulations — See Ch. 49.

Archaeological resource protection — See Ch. 58.

Sec. 18-1. - Title.

This chapter shall be known and may be cited as the "Stormwater Regulations" of the City of North Port, Florida.

Sec. 18-2. - Findings.

- A. It is important to ensure that stormwater management activities for site development are conducted in a manner that promotes public health, safety, and welfare.
- B. Without appropriate stormwater regulations, site development activities may cause adverse impacts to watersheds, drainage patterns, native habitats, water quality, land use compatibility, historical resources, and roads.
 - (1) The City of North Port adopts these stormwater regulations to protect public health, safety, and general welfare.

Sec. 18-3. - Intent.

It is the intent of these stormwater regulations to preserve, protect, and improve the public health, safety, comfort, good order, appearance and general welfare, and to conserve and to protect the natural resources within City of North Port while promoting opportunities for responsible development.

Sec. 18-4. - Relationship to State and Federal regulations, Comprehensive Plan.

Before any site development is to begin, appropriate State and/or Federal permits shall be obtained, when necessary, and presented to the City. In the case where a State and/or Federal permits are not necessary, a copy of an exemption letter or other authorization shall be presented to the City. The project must also be in compliance with the City's Comprehensive Plan.

Sec. 18-5. - Applicability.

- A. *General provisions.* A complete stormwater management system shall be provided for the adequate water quality treatment and control of stormwater runoff that originates within the development. The design of the stormwater conveyance system shall also divert or bypass off-site run-off from adjacent lands that flows onto or across the development, so as not to adversely affect these adjacent lands.
- B. *Relationship to Comprehensive Plan.* The stormwater management regulations in this chapter implement the objectives and policies set forth in the Stormwater Element and the Conservation and Coastal Zone Management Elements of the City's adopted Comprehensive Plan.
- C. *Relationship to other stormwater management requirements.* In addition to meeting the requirements of this chapter, the design and performance of all stormwater management systems shall comply with applicable State regulations to include but not limited to rules of the Southwest Florida Water Management District (SWFWMD) and Florida Department of Environmental Protection (FDEP). In all cases, the strictest of the applicable standards shall apply.
- D. *Exemptions.* The following development activities are exempt from these stormwater management requirements, except that steps to control erosion and sedimentation must be taken for all development.
 - (1) The construction of a single-family or duplex residential unit and accessory structures on a single parcel of land.

- (2) Any development within a subdivision if each of the following conditions has been met:
 - (a) Stormwater management provisions for the subdivision were previously approved and remain valid as part of a final plat or development plan.
 - (b) The development is conducted in accordance with the stormwater management provisions submitted with the final plat or development plan.
- (3) Bona fide agricultural activities, including forestry, provided that farming activities are conducted in accordance with the requirements set forth in an approved soil conservation service plan and forestry activities are conducted in accordance with the Silviculture Best Management Practices (BMP) Manual (1979 or latest edition), published by the Florida Division of Forestry. If the conservation plan and forestry BMPs are not implemented accordingly, this exemption shall become void.
- (4) Maintenance activity that does not change or affect the quality, rate, volume or location of stormwater flows on the site or of stormwater runoff.
- (5) Action taken under emergency conditions to prevent imminent harm or danger to persons or to protect property from imminent fire, violent storms, hurricanes or other hazards. A report of the emergency action shall be made to the City as soon as practicable.

Sec. 18-6. - Procedure for securing stormwater management plan approval.

Prior to the submission of an application, the applicant should discuss with the City Stormwater Manager, City staff, and other agencies such as SWFWMD, FDEP and Army Corp. of Engineers (ACOE) on the requirements of stormwater regulations.

Sec. 18-7. - Submission requirements for stormwater management systems.

Besides the submission requirements under Chapter 33, following are additional submission requirements that should be provided for the stormwater management system review prior to issuance of a Development Order (DO). A stormwater design submittal checklist is available on the City website under the Stormwater Division to facilitate submittal of a complete package. Applicant shall complete and submit with the application package, the latest checklist from the City's website. This checklist will be revised on an as-needed basis.

- A. Approved State permits, e.g. SWFWMD or FDEP, Environmental Resource Permit (ERP), and SWFWMD approved stamped plans—Two (2) hard copies.
- B. Color Aerial and Legible Boundary and Topographic Survey—Two (2) legible hard copies. This survey shall be performed within one (1) year from the application date and signed and sealed by a Florida Registered Land Surveyor. If there are any topographic changes within this one (1) year time period, a more recent topographic survey shall be required.
 - (1) Include sufficient on-site topographic elevations and contour lines to facilitate interpretation of direction of stormwater flow. Include sufficient off-site topographic elevations to show all off-site stormwater flow onto project site. Clearly indicate the vertical datum (NGVD29 or NAVD88) used.
 - (2) Provide the Big Slough Watershed floodplain map that is considered by SWFWMD as the most appropriate information available for floodplain impact and compensation analysis. Include the one hundred (100) year flood elevations and footprint. Clearly indicate the vertical datum (NGVD29 or NAVD88) used.
 - (3) Include a benchmark. Clearly indicate the vertical datum (NGVD29 or NAVD88) used.
- C. Soil conservation service (SCS) soils survey map or soil boring analysis report to support the selection of the seasonal high water elevation (SHWE) used in the design—Two (2) legible hard copies.
- D. Stormwater Design Plans—Digital copy of the proposed construction plans in AutoCAD and PDF format—One (1) CD copy. See number of hard copies of plans required under Chapter 33. The plans must be signed and sealed by a Florida Licensed Professional Engineer.
 - (1) Paving grading and drainage plans:
 - (a) Sufficient proposed elevations, cross sections and details should be provided to show how flow is directed to the Stormwater management system. Clearly indicate the vertical datum (NGVD29 or NAVD88) used.
 - (b) All off-site flows onto proposed project areas must be diverted so as not to cause adverse off-site impacts.
 - (c) All required drainage and maintenance easements must be clearly

shown.

- (d) The proposed pervious and impervious area and total project area must be included in the plans with the corresponding curve numbers. The amount of impervious area shall be minimized to the maximum extent practicable. The proposed pervious and impervious area and corresponding curve number information shall also be supplied on the plans for each future outparcel served by the proposed master stormwater systems.
 - (e) Provide pond contour lines, cross sections and labels corresponding to the pond bottom, change in slope, lower end of the littoral zone, upper end of the littoral zone, control water elevation (CWE), design high water elevation (DHWE) and top of berm. Six (6) inches of freeboard is recommended between the DHWE and the top of bank.
 - (f) Legible water control structure details and skimmer to show the bottom of skimmer to be a minimum of four (4) inch below the control water elevation and the top to be equal or higher than the DHWE.
 - (i) A concrete pad shall be provided below the skimmer to prevent vegetation from growing up through the skimmer.
 - (ii) Sufficient clearance shall be maintained between this concrete pad and the skimmer bottom to avoid flow restriction.
 - (g) Cross sections of all ponds, swales and channels proposed. Check that slopes are no steeper than 4:1 (horizontal to vertical).
 - (h) Typical lot grading plan for residential subdivisions.
 - (i) Littoral zone planting plan listing non-invasive aquatic species, and showing spacing of plants with guaranteed survival rate of at least eighty-five percent (85%).
 - (j) Fountain or aeration device for wet ponds with deep pool.
 - (k) Evaluate and apply to the maximum extent practicable, low impact development (LID) design concepts including stormwater reuse for irrigation.
- (2) Best Management Plans (BMPs) and National Pollutant Discharge Elimination System (NPDES) surface water pollution prevention plan (SWPPP).
- (a) Show the location and details of the erosion, sediment and turbidity

control measures.

- (b) Include notes on how turbidity in stormwater runoff will be monitored and corrective actions needed if turbidity level is higher than twenty-nine (29) NTUs above background.
 - (c) Provide at the preconstruction meeting one (1) hard copy of any required NPDES SWPPP and Notice of Intent (NOI).
 - (3) Dewatering plans.
 - (a) Show the location of the dewatering sites, the dewatering pump, sediment sump, methods to retain or detain discharge, methods of isolating the dewatering areas, flow path and points of discharge of the water and the duration of the dewatering.
 - (b) A sectional detail of the dewatering pump should be provided to include the dewatering pump (include pump rate in cfs on the plans), sediment sump (include dimensions), piping, temporary berm, and turbidity barriers.
 - (c) Provide calculations supporting the dimension of the sediment sumps, and the capacity of the sediment pumps.
 - (4) Floodplain impact and compensation.
 - (a) The footprint area of one hundred (100) year floodplain impact and floodplain compensation provided shall be clearly shown on the plans, together with representative cross sections.
- E. Drainage Treatment and Attenuation Analysis—Two (2) hard copies signed and sealed by a Florida Licensed Professional Engineer. Provide also one (1) CD copy of the input and output data of any hydraulic model or spreadsheet analysis used.
 - (1) Include legible pre-development and post-development basin maps with corresponding acreages, curve numbers (CN), flow arrows showing connectivity and time of concentration (Tc) overlaid on existing and proposed conditions topographic elevations.
 - (2) Provide attenuation analysis—Hydraulic modeling using software such as Interconnected Pond Routing (ICPR) or CHAN software is preferred. Spreadsheet attenuation calculations using the Rational Method is also acceptable for drainage areas ten (10) acres or less.

- (3) Include the printout of the node/reach schematic diagram and input and output data of the pre-development and post-development hydraulic model if used, including a printout of the peak discharge rate and the hourly flows from all discharge points leaving the project site.
- (4) If the rational method is used (for project area ten (10) acres or less), provide the spreadsheet attenuation calculations for the design storm event. Outflow may not commence until the first inch has accumulated in the retention area. To compensate for the fact that flow out of the pond does not begin to flow in the initial ten (10) minutes, the critical pond volume for attenuation must be increased by twenty percent (20%).
- (5) Provide Tc calculations using TR-55 methodology or equivalent.
- (6) Provide table summary of proposed pervious and impervious areas for each drainage basin and corresponding CN and Tc for the pre-development and post-development conditions.
- (7) Provide tabular summary of elevation/area/volume data for each stormwater pond at the following elevations—Pond bottom, change in slope, lower end of the littoral zone, upper end of the littoral zone, control water elevation (CWE), design high water elevation (DHWE) and top of berm.
- (8) Provide treatment calculations based on one (1) inch of runoff over the entire project area and recovery of treatment volume analysis.
- (9) Provide calculations supporting size of drawdown orifice or weir notch if applicable.
- (10) Provide floodplain impact and compensation analysis based on one hundred (100) year flood elevation in compliance with the latest FEMA/FIRM and SWFWMD governing board adopted floodplain maps.

F. Operation and Maintenance (O&M) Plan—Two (2) hard copies.

- (1) Provide an O&M plan that includes a schedule of maintenance and inspection, and details on how to rehabilitate or retrofit the system if the system does not function as designed.
- (2) O&M plan must be signed by the owner accepting the responsibility to adhere to the plan.

G. Prior to issuance of a Certificate of Occupancy (CO), the following shall be submitted:

- (1) Complete set of as-built site and stormwater plans, signed and sealed by a Florida Licensed Professional Engineer. Any deviations shall be clearly marked and approved by the City prior to issuance of a CO—One (1) hard copy.
- (2) Digital copy of the as-built plans in AutoCAD and PDF format.
- (3) Approval from SWFWMD to transfer the surface water management system into operation—One (1) hard copy.

Sec. 18-8. - Flood hazard areas, conservation restricted areas and floodplain encroachment.

Site development proposed to be located within any of the City's designated conservation restricted areas, as depicted on the City's Future Land Use Map, or in any designated flood hazard area, shall comply with all applicable regulations governing land use within such areas as set forth in Chapter 9, Conservation/Restricted Overlay Zone Regulations, Manatee Protection Regulations, and Chapter 17, Flood Damage Prevention Regulations, of this Unified Land Development Code.

Sec. 18-9. - Tree protection and wetland protection.

All proposed stormwater management systems to be located within the City shall comply, as may be deemed appropriate, with the wetland protection regulations and tree protection regulations set forth in Chapter 49, Wetland Protection Regulations, and Chapter 45, Tree Protection Regulations, of this Unified Land Development Code.

Sec. 18-10. - Stormwater management standards.

A. *Performance standards.* All developments must be designed, constructed and maintained to meet the following standards:

- (1) While development activity is underway and after it is completed, the characteristics of stormwater runoff shall approximate the rate, quality and timing of stormwater runoff that occurred under the site's natural unimproved or existing state. The first inch of stormwater runoff shall be treated in all stormwater management systems (retention/detention systems).
- (2) The proposed development and development activity shall not violate the water quality standards as set forth in Chapters 62-4, 62-302, 62-520, 62-522 and 62-550, F.A.C., including any anti-degradation provisions of paragraphs 62-4.242(1)(a) and (b), subsections 62-4.242(2) and (3), and Rule 62-302.300,

F.A.C. The surface water management facilities shall also comply with the requirements of the Statewide Stormwater Treatment Rule upon its adoption by SWFWMD and FDEP.

B. *Design standards.* To comply with the foregoing performance standards, the proposed stormwater management system shall conform to the following design standards:

(1) All stormwater management systems shall be designed to meet the SWFWMD Environmental Resource Permit (ERP) rules with the following additional requirements:

- (a) The water quality treatment volume for all types of stormwater treatment systems shall correspond to one (1) inch of runoff over the entire project area (including the pond area). This treatment volume shall be recovered and be available within time-frame per SWFWMD criteria. The portion of the treatment volume that can be counted towards the attenuation volume shall be per SWFWMD criteria.
- (b) Six (6) inches of freeboard is recommended between the design high water elevation and the top of bank in the stormwater ponds. The top of berm width shall be sufficient for maintenance vehicle access.
- (c) The level of service criteria for a surface water management system is given in the following tables:

STORMWATER QUANTITY LEVEL OF SERVICE AND DESIGN CRITERIA

I.	New Buildings: The finished floor elevation of all new building structures shall be set above the 100-year flood elevation.		
II.	New Roadways Access: New roadways shall be designed to be passable during flooding under the following storm events.		
	Road Type		Design Storm 24-hr Duration
	A.	Evacuation	> 100
	B.	Arterials	100*

	C.	Collectors	25*
	D.	Neighborhood	25*
	<p>* For arterials, collectors and neighborhood roads, roadway flooding < 6" depth measured at the outside edge of pavement is considered passable. No flooding is allowed on any portion of an evacuation road.</p>		
III.	<p>Existing Roadways Access: The level of service for improvements to existing roadways may be adjusted from the above criteria, based on existing conditions such as existing road right-of-way area, on-site and adjacent topography, and vehicular use of the roadway.</p>		
IV.	<p>New Site Development: The available stormwater pond attenuation volume for new site developments must be capable of attenuating per SWFWMD criteria. Within a new development, the stormwater runoff piping and conveyance system hydraulic grade line (HGL) analysis shall be based on a 25-year 24-hour duration storm event and shall not cause any adverse flooding impacts on-site or off-site. Deliberate flooding of a parking area in a 25-year 24-hr storm event is not allowed. The tail water for the HGL analysis shall be based on the stage in the receiving pond at the time of peak flow.</p> <p>The City Stormwater Manager can allow a greater level of flooding during the peak of a 25-year storm event on a case-by-case basis, if sufficient documentation is provided to show that this level of flooding cannot be avoided, and the flooding can be demonstrated to not adversely impact public health and safety, natural resources or other property. The flood depth and duration of the flooding must be defined in the attenuation analysis, and justification provided to show why public health and safety is not compromised.</p>		

- (2) Natural systems may be used to accommodate stormwater, but a hydroperiod analysis shall be provided to demonstrate no adverse impact to the natural system and the required pretreatment volume shall be provided pursuant to SWFWMD requirements.
- (3) The proposed stormwater management system shall be designed to treat and attenuate the stormwater that originates within the development. The design of the stormwater conveyance system shall also divert or bypass off-site run-off that flows onto or across the development, from adjacent lands, so as not to adversely affect any adjacent lands.
- (4) The proposed stormwater management system shall be designed to function properly for the life of the system.
- (5) The design and construction of the proposed stormwater management system shall be certified as meeting the requirements of this chapter by a professional engineer registered in the State of Florida.
- (6) No surface water may be channeled or directed into a sanitary sewer.
- (7) The proposed stormwater management system shall be properly maintained by the specified operation and maintenance (O&M) entity. An O&M plan must be submitted to the City for review and approval. If the system is not properly operated and maintained, the City will perform the required O&M functions and lien the property for reimbursement as necessary. Upon completion of construction, all regarding of swales to design elevation within City drainage or road rights-of-way (ROW), will be the responsibility of the Department of Public Works.
- (8) For purposes of public safety, water quality treatment and maintenance, all stormwater management areas shall have stabilized side slopes no steeper than 4:1 (horizontal: vertical).
 - (a) For wet ponds the 4:1 slope shall be maintained to a depth of two (2) feet below the SHWE elevation. The slopes shall be no greater than 2:1 (horizontal: vertical) thereafter. For sites with wide fluctuations in ground water levels particularly in the dry season, it is recommended

that the 4:1 slope requirement be extended to at least five (5) feet below the proposed SHWE in order to avoid steep exposed banks during the dry season and corresponding erosion.

- (b) For purposes of public safety, exposed pond side slopes designed steeper than 4:1 will require protective measures to prevent accidental incursion into the retention or detention area.
 - (c) For dry ponds, shallow swales and channel, slopes proposed steeper than 4:1 (horizontal to vertical) will require approval by the City Manager or designee on a case-by-case basis and no adverse effect to safety and erosion will need to be demonstrated.
- (9) Dredging, clearing of vegetation, deepening, widening, straightening, stabilizing or otherwise altering natural surface waters shall be prohibited unless the activity is in compliance with the regulations set forth in Chapter 49, Wetlands Protection Regulations, Chapter 9, Conservation/Restricted Overlay Zone Regulations and Chapter 13, Docks, Seawalls And Other Water Dependent Structures.
 - (10) Natural surface waters shall not be used as sediment traps during or after development.
 - (11) For aesthetic reasons and to increase shoreline habitat, the shoreline of retention and detention areas shall be sinuous rather than straight where practical.
 - (12) Water reuse and conservation shall, to the maximum extent practicable, be achieved by incorporating the stormwater management system into irrigation systems serving the development. The design plans for the stormwater reuse systems shall be submitted and all necessary SWFMWD permits obtained. The development will have to show just cause of why the stormwater management system is not used for irrigation.
 - (13) A six (6) foot low maintenance vegetated buffer zone is recommended to prevent erosion and provide water quality treatment along the shores, banks or edges of man-made surface waters. The required vegetated buffer around a natural wetland is specified under Chapter 49, Wetland Protection Regulations.
 - (14)

In phased developments, the stormwater management system for each integrated stage of completion shall be capable of functioning independently as required by this chapter. A phasing plan shall be submitted for approval.

- (15) All retention and detention facilities, except natural water bodies used for this purpose, shall be accessible for maintenance from streets or public rights-of-way or easements.
- (16) Stormwater management systems shall not be located in a one hundred (100) year floodplain except as approved by the City Manager or designee and SWFWMD. Any loss of floodplain volume as a result of development within the one hundred (100) year floodplain shall be compensated. The method and extent of floodplain compensation requires the approval of the City Manager or designee and SWFWMD.
- (17) Design requirements with respect to floodplain encroachment and floodplain compensation.
 - (a) If the proposed development encroaches into the one hundred (100) year floodplain, then floodplain compensation shall be provided per SWFWMD criteria.
 - (b) The equivalent excavation method of floodplain compensation is the preferred method of floodplain compensation. Supporting calculations shall be submitted to the City for review. The footprint area of floodplain impact and floodplain compensation provided shall be clearly shown on the plans, together with representative cross sections. Detailed floodplain impact and compensation volume calculations shall be provided.
 - (c) Other methods of floodplain compensation that are acceptable to SWFWMD will be acceptable to the City also. In lieu of the equivalent excavation method of floodplain compensation, the Big Slough Watershed hydraulic model that is considered by SWFWMD as the most appropriate information available may be used with the proposed development, to demonstrate no adverse impacts on-site or off-site for the one hundred (100) year design storm. The analysis using the Big Slough Watershed hydraulic model must show no significant increase in off-site stages. As the Big Slough Watershed hydraulic model is a very detailed and extensive model, to ensure a fair and reasonable analysis,

the developer must pay the fees specified in the Fee Ordinance as adopted by the City Commission, in order for the City to retain a consultant to perform this hydraulic analysis using the Big Slough Watershed hydraulic model. Selection of the consultant will be mutually agreeable to both the City and the Developer.

- (18) Stormwater discharge facilities which directly discharge to the Myakkahatchee Creek shall include an additional level of treatment equal to fifty percent (50%) of the treatment criteria specified in Sec. 18-10 herein.
- (19) Drainage plans shall provide that stormwater be conveyed to a positive outfall. Discharge points and flow rates must match between the pre-development and post-development conditions.
- (20) A littoral zone planting plan shall be provided showing the proposed location(s) of the littoral zone(s), plant types, spacing of plantings and a typical pond cross section showing the littoral zone.
 - (a) The size of the littoral zone shall follow the criteria as required by the SWFWMD.
 - (b) The depth of the water between the seasonal high water elevation (SHWE) of the pond and the littoral shelf shall typically be two (2) feet. A maximum three (3) feet of water depth can be allowed provided littoral zone plants are proposed that can survive at this water depth.
 - (c) The littoral zone shall be concentrated near the outfall of each pond. Surface water run-off shall be directed to the deep pool of the pond and not into the littoral zone in order to avoid short circuiting the treatment capacity provided by the pond.
 - (d) The littoral zone shall be planted with aquatic plants species. Native plant species are encouraged. Aquatic plants that are prohibited under the Florida Department of Environment Protection Chapter 62C-52 will not be allowed. In particular, the invasive species e.g. cattails (*Typha* spp. 1) shall not be planted or allowed to grow in the littoral zone or on the periphery of the pond.
 - (e) Centers of vegetation shall be no farther apart than three (3) feet for herbaceous individual plants or clumps, or five (5) feet for floating-leaved species.

- (f) Supplemental planting will be required on an annual basis if survival falls below eighty-five percent (85%) or if coverage is less than eighty-five percent (85%).
 - (g) Required littoral zone vegetation shall be maintained in perpetuity by a designated responsible entity or the owner of the property. Invasive plant species shall be removed from the pond as part of routine pond maintenance.
 - (h) With approval from SWFWMD, overgrowth of littoral zone plants maybe be trimmed but all trimmings and decaying vegetation must be removed from the pond and not allowed to accumulate in the pond.
- (21) For a wet detention pond, an aeration device shall be used in the deep pool area to increase the oxygen content of the water to improve water quality treatment. The aeration capacity of the device shall be sufficient to avoid anoxic (oxygen depleted) conditions in the pond. Anoxic conditions may result in buildup of algae, turbidity, scum, and foul smells from the pond and even fish kills. This oxygen depleted water when flushed in the City's canals and Myakkahatchee Creek system, will deteriorate the quality of the City's potable water sources and can cause downstream detrimental environmental effects.
- (a) If the wet detention pond is located in an area that is not visible to the public or visitors to the site, a bubbler aerator or mixer can be used.
 - (b) All other wet detention ponds shall have a fountain or waterfall type of water feature to improve water quality treatment and provide an aesthetic appeal. The aeration device shall have a timer to ensure compliance with State and City water preservation requirements.
 - (c) On a case-by-case basis, the aeration device requirement may be waived if approved by the City Stormwater Manager.

C. General requirements for drainage culvert pipe construction.

- (1) No certificate of occupancy or other required final approval for any development may be issued until an appropriate culvert has been installed in accordance with City standards.
- (2)

No person shall construct or install a culvert within the right-of-way or easement of the City without a currently valid culvert permit. The applicant shall provide the proposed length and material of the pipe with the permit application. [Amended 1-30-2012 by Ord. No. 2011-32]

- (3) Specifications for culvert pipes shall be according to the requirements under Chapter 33.

D. Sustainable developments and Low Impact Development Design.

- (1) In order to protect the limited, valuable natural resources within the City, developments must proceed in a sustainable manner. Sustainable measures such as construction to Florida Green Building Standards, LEED Certification and use of Low Impact Development (LID) designs are encouraged. The design engineer must demonstrate in the stormwater design, that LID practices are incorporated to the maximum extent practicable. Examples of LID design practices are to minimize impervious areas, and encourage the use of pervious pavement, green roofs, rain cisterns, reuse of stormwater for irrigation, direct runoff to bioretention/biotreatment vegetated swale areas prior to discharge stormwater pond, Florida Friendly native landscaping, and other surface water quality improvement controls and devices.
- (2) Treatment trains incorporating LID design shall be practiced to achieve pollutant load reduction in a developed site in accordance with the Statewide Stormwater Treatment Rule when adopted by SWFWMD and FDEP.

Sec. 18-11. - Interpretations.

Interpretations of this section shall be made by the City Manager or designee.

Sec. 18-12. - Conflicts.

Whenever the requirements of these regulations differ from those imposed by the City, Federal, or State regulation, law or statute, the most restrictive or imposing the higher standards shall govern.

Sec. 18-13. - Appeals.

Any person aggrieved by the City Manager or designee's interpretation may appeal to the Zoning Board of Appeals. The criteria for granting an appeal shall be based upon substantial competent evidence proving that the interpretation renders the property unbuildable. The granting of any appeal shall not be in conflict with State Statutes. The Zoning Board of Appeals' decision may be appealed to the Circuit Court of Sarasota County within thirty (30) days of such decision.

(1) Applications for an appeal shall be filed pursuant to Sec. 1-10.

Sec. 18-14. - Severability.

If any section, subsection, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Chapter 45 - TREE PROTECTION REGULATIONS

[HISTORY: Adopted by the City Commission of the City of North Port 4-8-2002 by Ord. No. 2002-16. This ordinance also repealed former Ch. 45, Tree Protection Regulations, adopted 9-17-1990 by Ord. No. 90-28 (Section 7), as amended. Amendments noted where applicable.] [Amended 11-26-2007 by Ord. No. 07-47]

For the purpose of this chapter FOOTPRINT OF HOUSE will include the gross area of exterior walls of the primary structure, including the area of all windows and door installed therein. Also included are the areas of required amenities, such as driveway, drain field, septic tank, well and water lines. A ten (10) foot clearance from the exterior walls and each required amenity will be granted to ensure proper growth of the tree and will help to eliminate damage to the structures in the future.

GENERAL REFERENCES

Trees — See Ch. 210.

Sec. 45-1. - Title.

This chapter shall be known and may be cited as the "Tree Protection Regulations" of the City of North Port, Florida.

Sec. 45-2. - Findings of fact.

Studies have established and the City of North Port, Florida, now finds and determines that trees:

- A. Are proven producers of oxygen, a necessary element for the survival of mankind;
- B. Appreciably reduce the ever-increasing and environmentally dangerous carbon dioxide content of the air and play a vital role in purifying the air;
- C. Play an important role in the hydrologic cycle, transpiring considerable amounts of water each day, and they precipitate dust and other particulate airborne pollutants from the air;
- D. Play an important role in cleansing stormwater runoff which passes from the surface to groundwater;
- E. Stabilize the soil and play an important and effective part in soil conservation

and erosion and flood control;

- F. Are an invaluable physical and psychological addition to making life more comfortable by providing shade and cooling air, reducing noise levels and glare, and breaking the visual monotony of development on the land;
- G. Provide wildlife habitat and fulfill other important ecological roles;
- H. Provide shade and thereby reduce energy consumption;
- I. Abate noise and create attractive buffering between incompatible land uses;
- J. Furnish a canopy to protect other vegetation from the elements;
- K. Are critical to the present and future health, safety and welfare of the citizens of North Port;
- L. Preservation of trees adds an economic benefit to the City's tax base; and
- M. Preservation of trees contributes to the beauty of the urban environment.

Sec. 45-3. - Relationship to Comprehensive Plan.

The Tree regulations in this chapter implement Objective 3 of the Conservation and Coastal Zone Management element of the Comprehensive Plan, which states that, "The City shall encourage the preservation of existing native vegetation, the creation of an urban forest, and the use of xeriscape methods for landscaping public and private development. Tree preservation activities and the planting of trees shall result in an overall, citywide, phased-in, tree canopy no later than build-out that ranges from thirty-five percent (35%) to eighty percent (80%) of the tree canopy that existed at the time of adoption of this Comprehensive Plan in 1997," as well as the following policy statements hereunder:

"Policy 3.1: Every three to five years the City shall review, and amend as applicable, the Land Development Regulations applying to tree protection and landscaping guidelines for development to promote the preservation and use of native and drought tolerant species in landscaping in order to reduce the depletion of the surficial aquifer."

"Policy 3.2: The City will continue to review landscape/tree ordinances from other communities and, further, review tree protection/preservation initiatives that would benefit the City. Based upon these reviews, revisions to the tree protection and landscape code shall be implemented."

"Policy 3.3: The Land Development Regulations shall continue to prohibit the planting of exotic noxious vegetation such as Melaleuca quinquenervia, Brazilian Pepper (Schinus terebinthifolius), and Australian Pine (Casurina) as listed by state authorities."

"Policy 3.4: The City shall utilize the incentive program provided in the Land Development Code for developers/builders to provide appropriate trees to the City when a lot is cleared for development and the developer/builder removes existing native trees. Further, the City shall be aggressive in its enforcement of violations to the tree and landscape code.["]

"Policy 3.5: The City shall plant trees, on City property only, according to the following priorities:

1. In existing neighborhoods to replace dead or dying street trees.
2. In existing neighborhoods to complete existing street tree patterns.
3. On parks sites, open space areas, or other appropriate public areas to provide shaded picnic or pedestrian walkways.
4. In gateway areas, as defined in the Future Land Use Element. Upon adoption of this policy, the City shall prioritize this sub-policy by planting a maximum of 25% of developer/builder provided trees to gateway areas for a two year period.
5. On sites containing public buildings frequented by citizens such as City Hall, Multi-purpose building, etc.
6. Along arterial and collector roadways that traverse the City."

"Policy 3.6: Recognizing that factors, both natural and man induced, will result in the diminution of the City's natural forest/tree canopy as the City continues to grow, the City shall, through policies, regulations, and programs strive to develop an urban forest comprised of a mix of native forest land and planted trees which maintains or enhances the City's tree canopy to levels equivalent to 35% - 80% of the tree canopy that existed at the time of adoption of this Plan in 1997."

"Policy 3.7: Prior to 2011, the City shall conduct a study to determine the approximate percentage of coverage offered by the City's tree canopy at the time of adoption of this Plan in 1997."

Sec. 45-4. - Intent.

The provisions of this Chapter 45 are intended and shall be construed, implemented and

enforced to achieve the following public purposes:

- A. Preserve existing trees;
- B. Develop a mix of native forests and planted trees which shall maintain or enhance the City's tree canopy at buildout of the City. The 1995 USGS Digital Ortho Quarter Quads, or other measurement tools are provided by the Florida Forestry Service and approved by the City Manager or designee. The USGS quad maps are available electronically at the City of North Port Planning and Zoning Department or on the City's website. The City shall make copies of the electronic files available at a reasonable cost;
- C. Take full advantage of the benefits of trees to the community listed in Sec. 45-2 above;
- D. Some tree species are more beneficial than others as necessary contributors to the City's environment and it is not necessary to protect each and every species in order to attain the public benefit of a tree protection and replacement ordinance;
- E. Establish a comprehensive tree management program for the planting, pruning, care, maintenance and preservation of trees, plants, vegetation and shrubs on public property, places and rights-of-way within the City;
- F. Designate the City of North Port Beautification and Tree Council as the advisory organization to counsel the City Commission on matters relating to the planting, care, maintenance, and preservation of trees, plants, vegetation and shrubs on public property, places and rights-of-way within the City; and
- G. To provide a smooth transition from the rural environment to the built environment.

Sec. 45-5. - Prohibitions.

- A. It shall be a violation of this chapter for any person or persons to remove or cause any tree or trees to be removed from any property within the City without first obtaining a tree removal permit in accordance with the provisions of this chapter, unless otherwise exempt under Sec. 45-6. This prohibition extends to all vacant and undeveloped property on which any form or type of new development, construction, renovation or demolition is to occur.
- B.

For lots and parcels one (1) acre or greater in size, trees planted in the defensible space (as defined in this chapter) shall meet the guidelines and criteria established by the University of Florida Cooperative Extensive Service, Protecting Your Home From Forest Fires and Developing Land in Florida with Fire in Mind: Recommendations for Designers, Developers and Decision Makers. Documents are available at the City of North Department responsible for land development services and on the web: <http://edis.ifas.ufl.edu>. Hardwood trees shall be the only species permitted in the thirty-five (35) foot area defined as the defensible space. (Homeowners are encouraged to follow all of the guidelines contained in the documents.)

- C. Tree removal on any lot or parcel is not permitted unless associated with a development permit specified in Sec. 45-7.
- D. The topping of any tree or sculpting the trees into a desired shape other than the natural shape shall be prohibited.
- E. Any trimming of mangroves shall be in compliance with all Federal, and State regulations and is prohibited without the prior approval of the Department of Environmental Protection (DEP).

[Amended 9-23-2013 by Ord. No. 2013-19]

Sec. 45-6. - Tree removal permit exemptions.

All zoning districts, residential and non-residential, shall be required to meet a minimum standard of thirty-five percent (35%) canopy coverage at maturity. This standard shall apply to all individual lots, parcels, and/or large developments. Tree removal permit exemptions shall apply to the following:

- A. Tree removal and tree relocation on a residential lot, after a certificate of occupancy has been issued for the residential dwelling(s). This exemption shall not apply to the following:
 - (1) Conservation or land preservation areas.
 - (2) Trees planted or relocated pursuant to a tree permit.
 - (3) Satisfaction of an approved landscape plan.
 - (4) Where the residential dwelling is to be demolished and reconstructed.
 - (5) Any heritage tree on any property.
- B. Voluntary annexation petitions.
- C. Tree removal necessary for the construction of public roads, public utilities,

public landfills or public stormwater facilities.

- D. Tree removal necessary for the maintenance of existing roads, utilities or stormwater facilities within rights-of-way easements, performed or contracted by any government entity or duly authorized utility.
- E. Agricultural land.
 - (1) A lot or portion thereof that is classified by the Sarasota County Property Appraiser as bona fide agricultural land under the agricultural assessment provisions of F.S. § 193.461 and where tree removal is undertaken solely for agricultural purposes. This exemption shall not apply to any tree removal in preparation for, or in anticipation of, any development or any construction of nonagricultural improvements. For the purposes of this chapter, evidence of such preparation, anticipation or application includes:
 - (a) Building permit for nonagricultural use.
 - (b) Special exception.
 - (c) Rezone.
 - (d) Development of regional impact.
 - (e) Site and development plan.
 - (f) Subdivision plan.
 - (g) Master plan.
 - (h) Other development approval.
 - (2) Submittal of plans listed in this section within six (6) years of the date of tree removal permit shall invalidate this exemption and require an after-the-fact and/or mitigation in accordance with this chapter.
- F. Plant or tree nurseries with regard to only those trees grown on the premises and specifically for sale to the general public in the ordinary course of such plant or tree nurseries' businesses.
- G. Tree farms consisting of planted stands of pine or other commercial-managed species on private property and with regard to only those trees that are being grown and managed for sale as pulp, paper, or timber products, or a site in which trees are grown as an agricultural product for the nursery industry. A natural stand of pines is eligible to qualify for an exemption if the property owner can clearly demonstrate that the pine stand has been managed for a minimum of two (2) years for timber production in compliance with a timber or

forest management plan filed with and approved by either the State of Florida Division of Forestry, the Natural Resources Conservation Service or a consulting forester.

- H. Removal of any species as specified in Sec. 21-6 of this Unified Land Development Code.
- I. Dead trees. A letter and photograph, which is taken within ten (10) days of date of letter, shall be submitted to the City Manager or designee one (1) week prior to tree removal informing City that tree is being removed. All existing single-family and duplex residential development properties are exempt from this requirement.
- J. Any plans or actions undertaken by a governmental agency or an agency's authorized agent(s).
- K. Fire fighting and prescribed burning authorized by a governmental agency or agency's authorized agent(s).
- L. Governmental personnel or agencies in the performance of their official duties and meeting the requirements of Sec. 45-16.

[Amended 9-23-2013 by Ord. No. 2013-19]

Sec. 45-7. - Permit criteria, procedures and fees.

- A. Unless exempt under Sec. 45-6 above, no person shall remove or cause to be removed any tree or trees from any property within the City or begin any type of construction, development, renovation or demolition thereon without a tree removal and protection permit issued by the City. Violation of these regulations shall constitute a fine as set forth in subsections below.
- B. It is the intent of this section that no permit shall be granted for the removal of any tree where the applicant has failed to design and locate all proposed improvements to minimize the removal of trees consistent with the use of the property allowed by the Unified Land Development Code (ULDC), as amended, and the applicable elements of the City Comprehensive Plan, Ordinance No. 97-27, as amended. Accordingly, tree removal and protection permits shall only be issued when any of the follow criteria is met, and if applicable, project phasing is clearly identified in an approved development order, as tree removal permits shall be issued by phase only:
 - (1) The trees pose a safety hazard to pedestrian or vehicular traffic or unmanageably threaten to cause disruption to utility services;

- (2) The trees pose an immediate safety hazard to buildings, structures or other improvements. Immediate safety hazard referred to herein means hazards such as disease, decay, and/or structural instability as determined by the City Manager or designee.
- (3) The trees prevent reasonable vehicular access to a lot;
- (4) A statement that the trees unreasonably prevent development of a lot or the physical use thereof, or if State or local regulations require fill to the extent that trees cannot be saved and the required elevations are certified by the project engineer; or
- (5) A statement by a qualified arborist or other professional as approved by the City Manager or designee that the trees are diseased or are weakened by age, storm, fire or other injury or as a result of suppression by other trees or vines or site conditions to the extent that they have lost most of their function and value or pose a danger to persons, property, improvements or other trees. It is the intent of this provision that no permit shall be granted for the removal of any tree if the hazard can be abated by any other reasonable means.
- (6) Meets the tree removal criteria in Sec. 45-8.

C. Application; environmental assessment report in lieu of application.

- (1) In order to obtain a tree removal permit, an application meeting the requirements established by this chapter shall be submitted to the City Manager or designee for review and appropriate action prior to or concurrent with the submission of:
 - (a) Building permit application.
 - (b) Upon approval of appropriate development order for:
 - (i) Minor site and development plan.
 - (ii) Major site and development plan.
 - (iii) Subdivision plan, infrastructure areas only.
 - (iv) Special exception approval.
 - (c) All building permits; minor, and major, site plans; and special exception applications as stated above shall include copies of approved local, State, and Federal permits.

(2)

For all proposed zoning changes, an environmental assessment report, prepared by a professional environmental scientist, shall be submitted in lieu of a tree removal and protection permit application. The City Manager or designee shall approve the scope of the environmental assessment report.

- D. Any written application submitted to the City Manager or designee shall authorize City staff to enter onto and inspect the property of the applicant to determine if the applicant is in compliance with the provisions of this chapter.
- E. This section applies to fees for tree removal where a permit has been issued based on an inaccurate tree location survey or tree inventory plan, and does not apply to removal of trees without a permit. If trees have been removed without a permit, Sec. 45-14 shall apply. A tree location survey or tree inventory is required for all development applications which shall be simultaneously submitted with the tree removal permit application and shall be at the same scale as the plans that show the location of the proposed development. Tree location surveys or tree inventory plans shall be incorporated in a site plan that provides the following information:
 - (1) The shape and dimensions of the property, together with existing and proposed locations of structures, utilities (i.e., power lines, water, sewer) and other improvements, if any;
 - (2) Locations of existing trees four and one-half (4½) inches diameter at breast height (DBH) or greater, identified by common or botanical name. Trees proposed to remain, to be transplanted, or to be removed shall be identified. Groups of trees in close proximity (five (5) feet spacing or closer) may be designated as a "clump" of trees, with the predominate species, estimated number and average DBH and total DBH listed. Limited clearing may be necessary to provide proper preparation of the tree location survey, however, only minimal disturbance shall be permitted according to accepted industry standard of care (mowing or bush hogging to provide foot access only);
 - (3) If existing trees are to be transplanted, the proposed relocation for such trees, together with a statement as to how such trees are to be protected during land clearing and construction and maintained after construction;
 - (4) A statement indicating how trees not proposed for removal or relocation are to be protected during land clearing and construction;
 - (5) Locations and dimensions of all setbacks and easements required by the Unified Land Development Code of the City;
 - (6) Statements as to grade changes proposed for the property and how such

changes will affect trees;

- (7) Any proposed tree replacement; and
 - (8) The total number, type and location of trees proposed for removal in tabular form.
 - (9) Counted trees shall be marked with a four (4) inch "X" with a surveyor's keel or with a ribbon.
 - (10) For any tree that is missed in the count the City shall assess a mitigation fee of twenty-five dollars (\$25.00) per tree.
 - (11) For any heritage tree that is missed in the count, the City shall assess a mitigation fee of one hundred dollars (\$100.00) per tree.
 - (12) Administrative processing fee for tree inventories are listed below. Land clearing fees are in addition to the following inventory fees:
 - (a) Lots ten thousand (10,000) square feet or less: Seventy-five dollars (\$75.00).
 - (b) Lots ten thousand one (10,001) square feet up to one (1) acre: One hundred twenty-five dollars (\$125.00).
 - (c) Residential parcels one (1) acre to five (5) acres: One hundred fifty dollars (\$150.00) per acre.
 - (d) Commercial parcels one (1) acre or above: Two hundred dollars (\$200.00) per acre.
- F. In the event there are no trees on the property, the applicant may, in lieu of a tree location survey or tree inventory plan, submit a notarized statement to that effect. The City shall verify any such statement by an on-site inspection of the property.
- G. Upon receipt of a complete application and all required supporting documentation, the City Manager or designee shall conduct a field inspection to determine if the information is sufficient for review and if the proposed plan is in compliance with the provisions of this chapter.
- (1) The review for single- and two-family lots shall be made within ten (10) calendar days of receiving a completed application.
 - (2) The review for other parcels shall be made within ten (10) calendar days of receiving a completed application.
 - (3) Upon completion of the review, the City Manager or designee shall notify the applicant that the application is either insufficient, does not comply with the provisions of this chapter or that the permit is approved or approved with stipulations and/or conditions.

- H. Should an additional tree or trees need to be removed after a permit has been issued, the applicant shall obtain an amended permit prior to the removal pursuant to subsection (G) above. This amended permit shall be reviewed within five (5) calendar days. Failure to amend the permit prior to removal of the tree shall constitute a violation of this chapter and shall be assessed two hundred fifty dollars (\$250.00) per tree removed.
- I. If a tree to be retained dies after a tree removal permit has been issued but before the issuance of a certificate of occupancy, the applicant shall notify the City Manager or designee and request an inspection prior to the removal of the dead tree(s). An inspection will be made within seventy-two (72) hours of notification by the applicant. Failure to notify the City Manager or designee prior to the removal of any dead tree constitutes a violation of this chapter and shall be assessed two hundred fifty dollars (\$250.00) per tree removed.
- J. Before any certificate of occupancy is issued, the City Manager or designee shall conduct a final tree inspection of the property to ensure that the provisions of this chapter have been complied with. Final inspections shall be scheduled by the applicant and will be completed within two (2) calendar days after notification by the applicant after grade is complete.
 - (1) No certificate of occupancy shall be issued until all provisions of this chapter have been fully complied with.
- K. Tree removal shall only be performed by the resident homeowner, a person(s) under the homeowner's direct control or a contractor licensed by the City.
- L. The City Commission shall, by resolution, set reasonable fees and charges for the implementation of this chapter, which will substantially finance the expenses of tree protection-related activities.
 - (1) Anyone who commences development, construction, renovation or demolition without obtaining a permit shall be required to obtain an after-the-fact permit at double the regular permit fee or a five hundred dollars (\$500.00) fine, whichever is greater, for residential, and/or mitigate the impact of said action in accordance with the provisions of Sec. 45-11 of this chapter.
 - (2) However, payment of such after-the-fact permit fees or mitigation shall not preclude nor be deemed a substitute for prosecution of violations of this chapter.
- M.

The tree removal and protection permit shall be prominently posted on the subject property for the duration of the clearing activity and shall be present at the zoning rough inspection. Failure to post such a permit as specified above shall result in a fine of one hundred dollars (\$100.00) and immediate discontinuation of all construction activity.

[Amended 9-23-2013 by Ord. No. 2013-19]

Sec. 45-8. - Tree canopy development standards.

- A. All zoning districts shall be required to meet a minimum standard of thirty-five percent (35%) canopy coverage at maturity. This standard shall apply to all individual lots, parcels and/or large developments. The following options are available in all zoning districts to achieve the thirty-five percent (35%) canopy coverage.
 - (1) Preserve existing trees sufficient to meet the canopy coverage.
 - (2) Preserve a portion of existing trees and supplement with new trees.
 - (3) Clear entire lot or parcel and plant new trees.
 - (4) The property owner shall be responsible for the continuing maintenance and replacement of unhealthy or dead trees. Tree canopy development standards do not expire upon the issuance of the final certificate of occupancy or the certificate of completion.
 - (5) To receive credit for canopy requirements, trees shall be located within the immediate area or phase for which trees are required. Trees in a different or future phase may not be counted as tree canopy in the current development phase.
- B. If a property owner in a residential subdivision, Residential Single-Family (RSF), Residential Manufactured Home (RMH), or Agricultural (AG) Zoning District desires to construct a home or has constructed a home and wishes to clear the entire lot without replanting of trees, the property owner may:
 - (1) Clear the entire lot or parcel and pay a mitigation fee calculated by using the cost of a potted live oak installed at three hundred dollars (\$300.00) per tree. The requirements shall be calculated on two (2) trees for the first seven thousand five hundred (7,500) square feet and one (1) tree for each additional two thousand five hundred (2,500) square feet.
 - (2)

Clear a portion of the lot, supplement with new trees and pay mitigation fees if the required canopy coverage cannot be met, calculated pursuant to Sec. 45-8(B) (1) above.

[Amended 9-23-2013 by Ord. No. 2013-19]

Sec. 45-9. - Administrative variance.

Administrative variances shall only be used to promote site plan flexibility on residential and commercial parcels and/or lots for the express purpose of tree preservation. The City Manager or designee shall only issue administrative variances for front, side and/or rear yard setbacks for projects meeting the criteria in this section. Administrative variances shall not be issued for easement encroachments. Applicants requesting administrative variances shall submit a site plan and written statement(s) using the Maximum Setback Encroachment Permissible Table and addressing the following criteria:

- A. Setback encroachment necessary to preserve tree(s) meeting definitions in this chapter: Greater than four and one-half (4½) inches diameter at breast height (DBH).
- B. Setback encroachment shall not create an undue burden to adjacent property owners.
- C. Statement of how tree(s) shall be protected and preserved.
- D. Statement that tree(s) shall not be removed after the variance is issued unless tree(s) meets exemption criteria in this chapter or a tree removal permit is submitted.
- E. Any tree(s) removed after an administrative variance is issued and without a tree removal permit shall be subject to all of the violation enforcements in Sec. 45-14.
- F. Administrative variances are based on twenty-five percent (25%) setback encroachments. At the sole discretion of the City Manager or designee, additional variance area may be granted.

Maximum Setback Encroachment

Zoning	Front Yard	Rear Yard	Side Yard	Waterfront Yard
District	(feet)	(feet)	(feet)	(feet)

RSF-2	6.25	6.25	Interior: 2.5	N/A
			Abut road: 3.75	
			Waterfront: 6.25	
			Abut road: 3	
			Waterfront: 6.25	
RSF-3	6.25	6.25	Interior:1.5	N/A
			Abut road: 3	
			Waterfront: 6.25	
RTF	6.25	6.25	Interior: 2	N/A
			Abut road: 3.75	
			Waterfront: 6.25	

RMF	6.25	6.25	2.5 (½ bldg. height not < 10) Abut road: 6.25	Prior to 9/17/1990: all areas (platted/unplatted) w/ a twenty-foot drain./util. easement: 5. New subdivisions platted after 9/17/1990: 6.25
RMH	3.75	2.5	Interior: 1.25	N/A
			Abut road: 2.5	
AG	10	10	10	10
CG	6.25	3.75 (Lots > 200 in depth)	Interior: 0	5
			Abut road: 3.75	
GU	6.25	5	2.5	5
ILW	6.25	Interior: 2.5	Interior: 0	5
			Abut road: 2.5	Abut road: 3.75
			Abut water: 5	Abut water: N/A
OPI	10	5	5	N/A
PCD	Grp. 1:10	Grp. 1: 5	Grp. 1: 5	Grp. 1: N/A

	Grp. 2: 10	Grp. 2: 5	Grp. 2: 5	Grp. 2: N/A
	Grp. 3:	Grp. 3: 2.5	Grp. 3: 2.5	Grp. 3: N/A
	6.25	Grp. 4: 5	Grp. 4: 5	Grp. 4: N/A
	Grp.4: 10	Grp. 5: 5	Grp. 5: 5	Grp. 5: N/A
	Grp.5: 10			

Sec. 45-10. - Tree protection during development.

- A. Prior to and during land clearing, the owner, developer or agent shall clearly mark (with colored flagging) all trees proposed to be removed and shall erect barricades around all trees to be protected. The barricades shall remain in place and be in good condition throughout construction. Barricades may be removed for the final grading; this does not relieve the purpose of the protective zone, all tree standard precautions shall be adhered to. Removal of other vegetation within the protected zone (area around trees to be saved) may be accomplished only by mowing or hand clearing. If improvements are to be located within the protected zone of trees, clearing by machinery will be allowed, but only in the area and to the extent necessary to install the improvements. The owner, developer or agent shall not cause or permit the movement of equipment or the storage of equipment, material, debris or fill to be placed within the required protective barrier.
- B. During the construction stage, the owner, developer or agent shall not cause or permit the cleaning of equipment or material or the storage or disposal of waste materials such as paints, oils, solvents, asphalt, concrete, mortar or any other material within the dripline of any tree or group of trees.
- C. No damaging attachment wires, signs or permits may be attached or fastened to any tree, other than support wires for a tree.
- D. Barricades shall be erected at the drip line unless prior arrangements have been made via an on-site meeting with the City Manager or designee to agree on other preservation techniques for the protection of the root zone. Tree protection fencing

shall be wood, plastic, or chain-link fencing. The posts shall be driven into the ground to hold the fencing in an upright position throughout the construction on the site. Other measures may include but are not limited to: reducing the area on one (1) or more sides of the barricade, root pruning, installing protective mulch layer or pruning of canopy for accessibility. These techniques shall be agreed upon in writing and shall be posted with the land clearing permit. If the barricades are not kept up or are not put up, fines will be assessed in accordance with the Building Department's re-inspection fees included in the City-wide fee schedule as may be amended from time to time.

- E. In lieu of erecting barricades as required in subsection D above, large property areas containing trees and separated from construction or land clearing areas by road rights-of-way, lakes, retention areas and utility easements may be barricaded by placing stakes not more than fifty (50) feet apart, connecting the stakes with a line of string, and tying colored ribbon to the string; or using three (3) inch wide, heavy gauge barricade tape from stake to stake along the outside perimeters of such areas to be cleared.
- F. Silt barriers, hay bales, or similarly effective erosion control barriers will be required in any area where erosion or siltation may cause damage to trees.
- G. Where elevation changes are proposed within the protected zone of trees, the applicant will be required to install retaining walls or drain tiles unless the applicant demonstrates that such protection would be impractical. The applicant shall have the choice of the type or design. These root protection measures shall be in place prior to the deposition of fill or excavation of soil from the protected zone.
- H. The City Manager or designee shall conduct periodic inspections of the site during land clearing and construction in order to ensure compliance with this chapter.
- I. The applicant(s) is required to remove all felled plant material and/or rubbish from site with ten (10) days of felling.

Sec. 45-11. - Tree replacement, relocation and mitigation.

A. Replacement trees.

- (1) Except for the exemptions provided under Sec. 45-6, replacement tree(s) shall:
 - (a) Be an approved tree from the tree priority list;
 - (b) Be a minimum of eight (8) feet high and three (3) inch caliper measured six (6) inches above the ground when planted;

- (c) Have the potential to meet the tree canopy requirements pursuant to Sec. 45-8;
 - (d) Be Florida Department of Agriculture Nursery Grade No. 1 or better as per Grades and Standards for Nursery Plants;
 - (e) Be placed so that they will develop freely and when mature will not crowd utility lines or other structures;
 - (f) Have a root ball planted at the proper height and in accordance with accepted nursery standards;
 - (g) Have a mulched bed at least three (3) feet in diameter and three (3) inches deep and set back six (6) inches from the base of the tree to conserve water, promote growth, and prevent disease; and
 - (h) Be staked, when necessary, in a way that will not injure the tree with broad straps of soft material around the trunk tied loosely enough to allow the trunk to move in the wind.
- (2) Selection of the species of replacement tree(s) shall come from the Priority Tree List. A list of acceptable replacement trees (tree priority list) will be on file in the Building Department. Alternatives, with respect to size and species, may be approved if the applicant demonstrates that such substitutions will be consistent with the purposes and intent of this chapter. Written approval from the City Manager or designee is required prior to planting any alternative tree.
- B. Heritage tree mitigation fees. Fees shall be assessed on a diameter at breast height (DBH) inch for the trees meeting the minimum DBH requirement for protection under this chapter.
- (1) In no event shall the mitigation fee for any one (1) tree be less than one hundred dollars (\$100.00) per inch at DBH. In addition, a one hundred dollars (\$100.00) fee for labor and handling shall be assessed per tree and the cost of replacement trees.
 - (2) Any tree up to twenty-nine and seven-eighth (29 7/8) inches DBH does not require mitigation.
 - (3) Any tree between four and one-half (4½) inches and twenty-nine and seven-eighth (29 7/8) inches that is preserved will receive a tree credit toward the thirty-five percent (35%) minimum canopy requirement only, unless found in the footprint of what is proposed to be built.
- C.

In order to fulfill the primary stated intent of Chapter 45 to preserve existing trees, the following incentives are available to satisfy the thirty-five percent (35%) canopy coverage requirement identified in Sec. 45-8.

- (1) Tree credits will be given in accordance to canopy coverage shown on the Priority Tree List.
 - (2) Preservation of a heritage tree will allow for double the canopy coverage shown on the Priority Tree List.
- D. In lieu of paying mitigation fees, the applicant may donate property to the City as part of a tree/environmental mitigation program. Properties being considered for donation shall meet a City-identified need and be approved by the City Manager or designee. In evaluating the property for donation, the City Manager or designee shall consider these criteria: percentage of tree canopy and location of the property adjacent to any waterway identified as the Myakkahatchee Creek or public preservation areas.
- (1) Property donated pursuant to this subsection shall not be eligible for development of any kind except for passive recreational use such as hiking trails, canoe/kayak launches, bird watching, etc.
- E. Timing and location. Trees required by this chapter to be replaced or relocated shall be properly planted, mulched and staked and showing no signs of distress prior to the issuance of a certificate of occupancy and shall not be located closer than three (3) feet to any property line if it causes an obstruction to the drainage system or six (6) feet from any utility line or City easement. Replacement trees shall not be planted underneath or near overhead utility lines unless they are a species that, when mature, will not interfere with the utility line.
- (1) The planting site shall have sufficient root zone and canopy space to allow the tree(s) to grow to a mature size.
- F. Tree survival. Consultation with the City Manager or designee is required during the entire tree planting process. The City assumes no liability for the survival of any trees.
- (1) The property owner shall be responsible for the continuing maintenance and replacement of unhealthy or dead trees. Tree canopy development standards do not expire upon the issuance of a certificate of occupancy or a certificate of completion.
 - (2) Single-family and duplex development(s) are exempt from warranty requirements and bond but shall maintain thirty-five percent (35%) canopy coverage.

- (3) The City Arborist will do random inspections to ensure the survival of planted trees.
- G. When a heritage tree falls in to the footprint of a roadway that is unable to be rerouted to save the tree on a commercial development as determined by the City, the developer may choose from the following options:
- (1) Plant a tree caliper inch per inch replacement in the boundaries of the property, in addition to the thirty-five percent (35%) minimum canopy requirement.
 - (2) Pay the heritage tree mitigation fee as set forth in this chapter.
- H. Where heritage tree(s) fall in the footprint of the building of a commercial development, mitigation fees shall be paid as set forth in this chapter.

[Amended 9-23-2013 by Ord. No. 2013-19]

Sec. 45-12. - Heritage and champion trees.

- A. The heritage designation is conferred on the large trees that are the major distinguishing feature of North Port's urban forest. All native tree species are designated heritage trees when they reach the size of thirty (30) inches diameter at breast height (DBH). In the case of multi-stemmed trees where there is union of wood above grade, the DBH shall be measured on each stem and added together to count as one (1) tree.
- (1) For all zoning districts, the permitting procedure and criteria for heritage trees shall be consistent with Sec. 45-7 and shall include the additional criteria enumerated below. In any event, the more restrictive permit procedure and criteria for heritage trees shall apply.
- B. Heritage trees additional permitting criteria.
- (1) Removal or relocation shall only be permitted by the City. The removal of any heritage tree as determined by the City, will require a permit for removal regardless of whether a certificate of occupancy has been granted.
 - (2) For proposed relocations of heritage trees, a tree management plan that includes a two (2) year survivability element shall be required. The management plan may include either a tree survey or tree inventory plan.
 - (3) For proposed removals, a tree inch for tree inch mitigation fee shall be in accordance with Sec. 45-11(B).
 - (4)

Heritage tree mitigation will not be required for those trees located within the footprint of the residential unit. This applies only to situations where there is not an alternative to re-position the residential unit location on the lot to avoid removal of the tree.

- C. Champion tree: identified by the State Division of Forestry as being the largest of their species within the State or by the American Forestry Association as the largest of their species in the United States.
 - (1) For all zoning districts, the permitting procedure and criteria for champion trees shall be consistent with Sec. 45-7 and shall include the additional criteria enumerated below. In any event, the more restrictive permit procedure and criteria for champion trees shall apply.
 - (2) Champion tree additional permitting criteria.
 - (a) A tree condition and assessment report by an environmental scientist that identifies the extent of the root system, boundary of dripline and management plan. A tree survey accompanied by an aerial meeting the criteria of this chapter shall be included in the report.
 - (b) No development shall occur within the dripline as established by the tree condition report.
 - (c) A champion tree is not eligible for removal or relocation.
 - (d) If a champion tree is located on a single-family or duplex lot platted prior to the adoption date of this chapter and prevents development, the City shall either trade property for a separate yet equal lot or acquire the lot(s) for public benefit.

[Amended 9-23-2013 by Ord. No. 2013-19]

Sec. 45-13. - Establishment of tree fund.

There is hereby established a City of North Port Tree Fund to be administered by the City's Department of Financial Services. All mitigation fees and monetary fines for violations of this Ordinance or Chapter 21 of this Unified Land Development Code shall be deposited into this special Tree Fund. The Tree Fund shall be used to advance the stated intent of Chapter 45 by engaging in the following activities;

- (1) Purchasing property within the City to be used only for tree preservation purposes;

- (2) Planting trees from the Tree Priority List on public lands within the City according to the priorities identified in Policy 3.5 of the Conservation and Coastal Zone Management element of the Comprehensive Plan;
- (3) Educating the public on proper care of trees;
- (4) Maintaining tree health and safety on public lands within the City. Money used from the Tree Fund for the purpose of tree maintenance shall be used exclusively for those trees planted with Tree Fund money; and
- (5) Purchasing conservation easements on privately owned property within the City.

Sec. 45-14. - Enforcement, penalties for offenses, appeals.

- A. In order to ensure compliance with the provisions of this chapter, the City may:
 - (1) Issue stop-work orders for any development, construction, renovation or demolition or portion thereof only where regulated trees are affected;
 - (2) Withhold the issuance of any building or other permit unless the permit does not impact or exacerbate the violation and at the discretion of the City Manager or designee;
 - (3) Withhold the issuance of any certificate of occupancy or required inspection;
 - (4) Use any other enforcement remedy granted by the North Port Unified Land Development Code or the North Port Code;
 - (5) Employ all available remedies in law or equity, including, but not limited to, injunctive relief to enjoin and restrain any person from violating its provisions, money damages and all costs and expenses of the litigation; and/or
 - (6) Assess monetary fines or penalties.
- B. Penalties for offenses. This section applies to any tree removal without a permit.
[Amended 1-30-2012 by Ord. No. 2011-32]
 - (1) Each unauthorized removal of a single tree protected by this chapter shall be a separate violation or offense.
 - (2) In a case where clearing has occurred and the number of trees removed is unable to be determined by the City Manager or designee the penalties for offenses shall be as follows:

Residential: Two thousand five hundred dollars (\$2,500.00) fine shall be assessed per each ten thousand (10,000) square feet of lot/parcel or fraction thereof. In addition, the applicant shall secure an after-the-fact permit at double the permit fee, for permits other than a single-family dwelling built on a lot platted by General Development Corporation or Atlantic Gulf Corporation.

Non-residential: Five thousand dollars (\$5,000.00) per each ten thousand (10,000) square feet of lot/parcel or fraction thereof and required to plant four (4) replacement trees per ten thousand (10,000) square feet of lot/parcel and fraction thereof. In addition, the applicant shall secure an after-the-fact permit at double the permit fee. [Amended 1-30-2012 by Ord. No. 2011-32]

- (3) In a case where clearing has occurred and the number of trees removed are able to be determined by the City Manager or designee:

Residential: Two hundred fifty dollars (\$250.00) per tree plus an after-the-fact permit at double the fee.

Non-residential: Five hundred dollars (\$500.00) per tree, plus the replanting of four (4) replacement trees per ten thousand (10,000) square feet of lot/parcel or fraction thereof. In addition, the applicant shall secure an after-the-fact permit at double the fee. [Added 1-30-2012 by Ord. No. 2011-32]

- (4) Each violation of this chapter for the illegal removal of a heritage or champion tree on any lot, parcel or tract of land, other than single-family, shall be the cost of the legal removal pursuant to regulations set forth in Sec. 45-12 and an additional five thousand dollars (\$5,000.00) and the planting of four (4) replacement trees or payment to the Tree Replacement Fund of the penalty and an amount equal to four (4) replacement trees plus actual staff costs, including, but not limited to, time, resources, material or expenses of investigation and administration caused by the violation. [Amended 1-30-2012 by Ord. No. 2011-32]

- (a) If there is evidence that a heritage tree existed but the actual size of the tree is unable to be determined, a ten thousand dollar (\$10,000.00) fine shall be assessed, plus the cost to legally remove a tree at thirty (30) inches times one hundred dollars (\$100.00) or three thousand dollars (\$3,000.00), the replanting of four (4) trees, and the cost of an after-the-fact permit at double the fee. [Added 1-30-2012 by Ord. No. 2011-32]

- (5) Fines and tree replacement shall be determined and assessed by the City Manager or designee, who shall give notification to the property owner or authorized agent and corrective action must be taken prior to commencement of additional work. [Amended 1-30-2012 by Ord. No. 2011-32]
- (6) Failure to pay assessed fines and/or plant tree replacements within thirty (30) days of receiving notice thereof shall be a separate violation of this chapter. This will result in the fine being double the original amount. No permits or certificates of occupancy shall be granted to the property owner and/or his or her agents while either such fine remains unpaid and/or tree replacements are unplanted. Failure to comply shall result in the fine doubling every ninety (90) days. [Amended 1-30-2012 by Ord. No. 2011-32]

Sec. 45-15. - Jurisdictional applicability.

The provisions of this chapter shall apply and be effective throughout the incorporated geographical area and boundaries of the City of North Port.

Sec. 45-16. - Emergency tree removal.

When it is necessary to expedite the removal of any trees in the interest of public safety, health, and general welfare following high winds, storms, hurricanes, tornados, floods, freezes, fires or other man-made or natural disasters, the City Commission may, by resolution, declare an emergency and suspend the requirements of this chapter for a period of up to thirty (30) days in the affected areas.

Sec. 45-17. - Effective date.

This chapter and the provisions thereof shall take effect immediately upon adoption by the City Commission and allocation of funding to implement the ordinance.

Sec. 45-18. - Tree planting incentive.

The City Administration shall develop a program to provide the original property owner(s) with the ability to replace trees that were removed and a mitigation fee was paid. The amount of this replacement shall not exceed the amount of the mitigation fee.

Sec. 45-19. - Priority tree list.

See chart below.

Major Shade Trees: Canopy Potential at Maturity: 1,500 square feet

N. America Native (+) Non Native (-)	Common Name	Latin Name	Spread	Hardiness/ Height	Range	Persistence
+	American Elm	<i>Ulmus Americana</i>	50-70	70-90	2A-9B	Deciduous
-	Chinese Elm	<i>Ulmus Parvifolia</i>	35-45	40-65	5B-10A	Deciduous
+	Winged Elm	<i>Ulmus Alata</i>	30-40	45-75	6A-9B	Deciduous
-*****	Eucalyptus	<i>Eucalyptus Sideroxylon</i>	35-50	35-70	10A-11	Evergreen
+	Pignut Hickory	<i>Carya Glabra</i>	25-35	50-75	4B-9A	Deciduous
+	Water Hickory	<i>Carya Aquatica</i>	50-60	50-90	6B-9A	Deciduous
+*****	Florida Mahogany	<i>Swietenia Mahogoni</i>	35-50	50-80	10B-11	Semi-Evergreen
+	Southern Magnolia	<i>Magnolia Grandiflora</i>	35-50	60-80	6B-10A	Evergreen
+	Red Mulberry	<i>Morus Rubra</i>	35-45	40-70	5A-9B	Deciduous

+	Live Oak	<i>Quercus Virginiana</i>	60-100	50-75	7B-10B	Semi-Evergreen
+	Shumard Oak	<i>Quercus Shumardii</i>	35-60	75-90	5B-9B	Deciduous
-	Silk Oak	<i>Grevillea Robusta</i>	25-35	60-100	9B-11	Evergreen
+	Southern Red Oak	<i>Quercus Falcata</i>	60-70	60-80	7A-9B	Deciduous
+	Water Oak	<i>Quercus Nigra</i>	50-80	50-75	6A-10A	Semi-Evergreen
+	Sycamore	<i>Plantanus Occidentalis</i>	70-80	70-90	4B-9A	Deciduous

*****Denotes Trees Susceptible to Frost

Intermediate Shade Trees: Canopy Potential at Maturity: 1,000 square feet

[Amended 1-30-2012 by Ord. No. 2011-32]

N. America Native (+) Non Native (-)	Common Name	Latin Name	Spread	Hardiness/ Height	Range	Persistence
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-	Red Bay	<i>Persea Borbonia</i>	25-40	30-65	7A-11	Evergreen
_*****	Camphor	<i>Cinnamomum Camphora</i>	45-65	50-60	9B-11	Evergreen
+	Catalpa	<i>Catalpa Speciosa</i>	35-45	35-70	4B-9A	Deciduous
+	Southern Red Cedar	<i>Juniperis Virginiana</i>	25-35	25-50	7B-10A	Evergreen
+	Bald Cypress	<i>Taxodium Distichtum</i>	25-35	50-75	4A-10B	Deciduous
+	Pond Cypress	<i>Taxodium Ascendens</i>	20-40	50-75	5B-10A	Deciduous
_*****	Jacaranda	<i>Jacaranda Mimosifolia</i>	40-50	35-50	9B-11	Deciduous
-	Juniper	<i>Juniperus Chinensis</i>	15-25	40-50	4A-10A	Evergreen
+	Red Maple	<i>Acer Rubrum</i>	40-60	50-75	4A-10B	Deciduous
-	Sand Live Oak	<i>Quercus Geminate</i>	50-80	25-50	8A-10A	Semi- Evergreen
_*****	Black Olive	<i>Bucida Buceras</i>	35-40	25-40	10B-11	Evergreen
_*****	Hong Kong Orchid	<i>Bauhinia x Blakeana</i>	15-30	25-50	9B-11	Evergreen

+	Common Persimmon	<i>Diospyros Virginiana</i>	20-35	40-60	4B-9B	Deciduous
+	Loblolly Pine	<i>Pinus Taeda</i>	25-35	50-75	6B-9A	Evergreen
+	Long Leaf Pine	<i>Pinus Pilustras</i>	35-50	60-90	7A-10A	Evergreen
-	Norfolk Island Pine	<i>Araucaria Heterophylla</i>	35-50	100-200	10A-11	Evergreen
+	Slash Pine	<i>Pinus Ellioti</i>	35-50	75-100	7A-11	Evergreen
_*****	Golden Poinciana	<i>Peltophorum Pterocarpum</i>	25-35	25-50	10A-11	Semi- Evergreen
_*****	Royal Poinciana	<i>Delonix Regia</i>	50-70	25-50	10A-11	Semi- Evergreen
_*****	Floss Silk	<i>Chorisia Speciosa</i>	25-35	25-50	9B-11	Deciduous
+	Sugarberry	<i>Celtis Laevigata</i>	50-60	50-70	5A-10B	Deciduous
+	Sweetgum	<i>Liquidambar Styraciflua</i>	35-50	50-70	5B-9B	Deciduous
+*****	Black tupelo	<i>Nyssa Sylvatica</i>	25-35	65-75	4B-9B	Deciduous

*****Denotes Trees Susceptible to Frost

Medium Shade Trees: Canopy Potential at Maturity: 500 square feet						
N. America Native (+) Non Native (-)	Common Name	Latin Name	Spread	Hardiness/ Height	Range	Persistence
+	Carolina Ash	<i>Fraxinus Caroliniana</i>	25-35	25-50	7B-10A	Deciduous
+	Loblolly Bay	<i>Franklinia Lasianthus</i>	15-25	25-50	7A-9B	Evergreen
-	Sweet Bay Magnolia	<i>Magnolia Virginiana</i>	15-30	15-40	5A-10A	Evergreen
+*****	Geiger Tree	<i>Cordia Sebestena</i>	15-25	15-25	10B-11	Evergreen
*****	Golden Rain Tree	<i>Koelreuteria Elegans</i>	20-30	20-40	5A-9B	Deciduous
+	American Holly	<i>Ilex Opaca</i>	15-30	35-50	5B-9B	Evergreen
+	Dahoon Holly	<i>Ilex Cassine</i>	15-25	25-40	7A-11	Evergreen
+	East Palatka Holly	<i>Ilex Opaca E.P. Holly</i>	15-25	25-50	7A-9B	Evergreen

+	Cherry Laurel	<i>Prunus Caroliniana</i>	15-25	25-40	8A-10A	Evergreen
+*****	Black Mesquite	<i>Prosopis Velutina</i>	20-25	15-25	8B-11	Semi- Evergreen
+	Sand Pine	<i>Pinus Clausa</i>	15-25	25-50	7A-10A	Evergreen
-	Podocarpus	<i>Podocarpus Falcatus</i>	25-35	30-40	10A-11	Evergreen
+*****	Pond Apple	<i>Annona Glabra</i>	15-25	15-25	10A-11	Evergreen
+	Chapman Oak	<i>Quercus Chapmanii</i>	25-35	20-40	8B-10B	Semi- Evergreen
..*****	Pink Trumpet	<i>Tabebuia Heterphylla</i>	15-25	15-35	10A-11	Semi- Evergreen

*****Denotes Trees Susceptible to Frost

Small Shade Trees: Canopy Potential at Maturity: 250 square feet						
N. America Native (+) Non Native (-)	Common Name	Latin Name	Spread	Hardiness/ Height	Range	Persistence

-	Arborvitae	<i>Platycladus Orientalis</i>	15-20	15-20	6A-10A	Evergreen
+	Bottle Brush	<i>Callistemon Viminalis</i>	15-25	15-25	9B-11	Evergreen
+*****	Green Buttonwood	<i>Conocarpus Erectus</i>	25-35	25-35	10B-11	Evergreen
+*****	Silver Buttonwood	" " var. <i>Sericeus</i>	25-35	25-35	10B-11	Evergreen
-*****	Cassia	<i>Senna Spectabilis</i>	15-20	15-20	10B-11	Evergreen
+	Crape Myrtle	<i>Lagerstremia Indica</i>	five-25	ten-30	6B-10A	Deciduous
+	Yaupon Holly	<i>Ilex Vomitoria</i>	ten-15	15-20	7A-10A	Evergreen
-	Loquat	<i>Eriobotrya Japonica</i>	25-35	15-25	8A-11	Evergreen
-*****	Mahoe	<i>Hibiscus Elatus</i>	15-25	20-30	10A-11	Evergreen
+*****	Marlberry	<i>Ardisia Escallonioides</i>	five-15	15-20	7A-11	Evergreen
+*****	Pigeon Plum	<i>Coccoloba Diversifolia</i>	15-25	15-25	10B-11	Evergreen

+*****	Sea Grape	<i>Coccoloba Uvifera</i>	20-30	20-35	10A-11	Evergreen
+	Simpson Stopper	<i>Myrcianthes Fragrans</i>	15-25	15-25	9B-11	Evergreen
+	Wax Myrtle	<i>Myrica Cerifera</i>	15-20	15-30	7A-10B	Evergreen
+ *****	All Palms Are Equal to 250 square feet of canopy coverage points.					

*****Denotes Trees Susceptible to Frost

Sec. 45-20. - Street tree requirements.

- A. All street development, including all City of North Port street projects, will be required to landscape the streets by using trees from the North Port Priority Tree List in Sec. 45-19 above. For all new developments being processed as a major site and development plan, subdivision plan, or development master plan, the property owner shall install street trees along all adjacent streets and streets that are internal to the development tract.
 - (1) Major shade trees shall be placed along major roadways within a subdivision and along all collector and arterial roadways. Minor roadways shall have trees from any of the tree list categories.
 - (2) Trees intended to be used for the understory, small trees, and hedge forming trees, shall be used sparingly for the concealing of structures, including but not limited to, electrical boxes, backflow preventers, and the like. Large and medium shade trees will be used for canopy coverage purposes.
- B. Street trees to be installed will not count for the thirty-five percent (35%) minimum canopy requirement or buffer requirements.
- C. All street trees shall be chosen from the City's Major Shade Tree List and conform to

the following planting guidelines for landscape design:

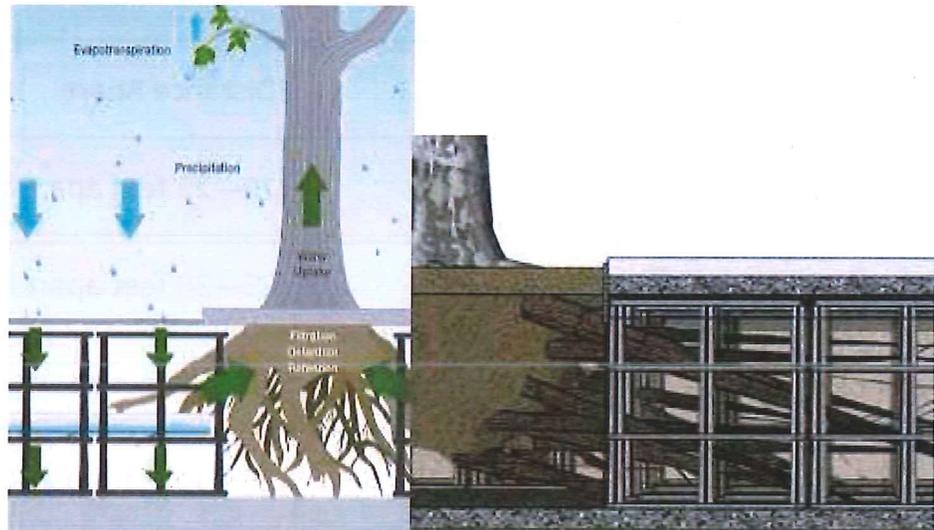
- (1) Plantings shall be low to moderate water and maintenance needs and be adapted to local urban environmental conditions.
- (2) Native species are preferred but are not required as long as the non-native species are proven adapted to the natural ecosystems of the City of North Port.
- (3) Street trees shall be spaced to allow for maximum canopy potential and shall be planted on center.

Type of Tree	Distance Apart
Small Shade Tree	20—25 feet apart from each other
Medium Shade Tree	25—30 feet apart from each other
Intermediate Shade Tree	30—35 feet apart from each other
Major Shade Tree	35—40 feet apart from each other

- (4) If the required infrastructure interferes with the distance spacing requirement of street trees, the minimum distance to ensure survival of the street tree shall be used.
- (5) Root barriers.
 - a. All street trees shall have a root barrier installed, if any of the following applies:
 - i. Any small or medium shade trees planted five (5) feet or closer (measured from center of the tree) to any street, sidewalk, driveway, underground utilities or structure.
 - ii. Any major medium and major shade trees planted within the ten (10) feet of the designated planting location and is adjacent to any street, sidewalk, driveway, underground utilities or structure.
 - b. All root barrier(s) installation shall be linear. The applicant shall provide installation details and specifications with landscape plans.
 - c.

Where root barriers are required for street trees and the root barrier installation is not feasible, one (1) of the following methods shall be utilized in lieu of the root barrier installation:

- i. Soil cell system to incorporate trees in areas where sidewalks are present to support large tree growth and provide on-site stormwater management.



- ii. Mechanical compaction of the soil before paving and the use of thicker concrete with wire mesh reinforcement to prolong the life of the sidewalk whether tree roots are present or not.
- iii. Meander the sidewalk away from the tree, to the greatest extent possible, to allow for the main structural root system to grow and prevent the upheaving of the sidewalk in the future.



D. Protection of trees in the public right-of-way and other public places.

- (1) It shall constitute a violation of this chapter for any person to abuse, destroy, top, or mutilate any tree or shrub in the right of way, or to attach or place any rope, wire, sign, or poster to or on any tree in the public right of way, or to allow any gaseous, liquid, or solid substance which may be harmful to trees to come in contact with any portion of the tree or tree's root system.
- (2) No person shall deposit, place, store, park, or maintain upon any tree or root area of any street tree, or other plantings, in a public right of way or other public places, any vehicle, stone, brick, concrete, soil, or other materials that may impede the free passage of water, air, and fertilizer to the roots of any street tree growing therein.
- (3) All street trees in public rights of way or other public places, near any excavation or construction of any building, structure, utility line, or street work, shall be guarded during the construction period with a substantial fence or wooden barricade; however, no barricade shall be placed within one-half ($\frac{1}{2}$) the area of the drip line.

[Amended 9-23-2013 by Ord. No. 2013-19]

ARTICLE I. - CANOPY ROADWAYS

[Added 1-30-2012 by Ord. No. 2011-32]

Sec. 45-21. - Purpose.

It is the purpose of this article:

- A. To designate, preserve, promote, and protect canopy roads in the City of North Port.
- B. To provide regulations that will protect canopy roads in the City of North Port and encourage property owners to protect trees along canopy roads.
- C. To increase economic value of properties and neighborhoods, encouraging quality development.
- D. To protect the environment of the City.
- E. To aid in the reduction of air pollution by protecting the capacity of trees to produce oxygen and sequester carbon dioxide.
- F. To help reduce potential damage from wind.
- G. To provide shade and act as a noise barrier.
- H. To assist in the absorption of rainwater into the ground, thereby protecting against potential damages from soil erosion and flooding, as well as reducing the cost of handling stormwater by artificial means.
- I. To conserve, protect and enhance the aesthetic and scenic beauty of the City.

Sec. 45-22. - Canopy road designation.

- A. The City Commission is authorized to designate roads as canopy roads and set standards for the implementation of this article. Such standards shall be set by resolution. Requests for additional canopy road designations may be made by residents, City staff, and the North Port Beautification and Tree/Scenic Highway Committee. Requests will be coordinated and brought through the North Port Beautification and Tree/Scenic Highway Committee to the City Commission for approval.
- B. Canopy roads shall have characteristics as set forth below.
 - (1)

A canopy road shall have a minimum length of four hundred (400) feet and a minimum of fifty percent (50%) overhead coverage (excluding invasive species), per section of travelway as measured by branching, drip line, shadows, and other visual cues; or

- (2) Where a road to be designated does not currently meet the requirements for overhead coverage, the requirements in subsection 45-22(B)(1) can be met by future coverage estimates that meet the requirements as determined by canopy coverage calculations and/or through additional plantings of protected trees; and
 - (3) A canopy road shall consist of a minimum of seventy-five percent (75%) native and/or naturalized species; and
 - (4) A canopy road may be composed of more than one (1) segment of differently named roads providing they are contiguous and the combined length meets the minimum requirement.
 - (5) The City Commission may waive these requirements if it determines such waiver to be in the best interests of the health, safety and welfare of the City.
- C. Canopy roads shall have appropriate signage:
- (1) For identification of the canopy road.
 - (2) For protection of tree height.
- D. Canopy road tree location inventory. Each designated canopy road shall have a tree location inventory performed to identify protected trees.

Sec. 45-23. - Authorization for removal or disturbance of protected trees in designated canopy road zones.

- A. It is the intent of this provision that no permit shall be granted for the removal of any protected trees where the applicant has failed to design the proposed improvements to minimize the impacts on the Canopy Road Zone (CRZ). It shall constitute a violation of this article for any person to remove or disturb any protected tree within a Canopy Road Zone unless it has been determined that such protected tree:
- (1) Poses a safety hazard to people, buildings, structures, or vehicles; or
 - (2) Is diseased or so weakened by age, storm or other injury so as to pose a danger to persons, property, utilities, or improvements; or
 - (3) Unreasonably prevents development of a lot, parcel, or other lands or the physical use thereof.
- B.

Permit application for protected tree removal or disturbance. An application meeting the requirements of this article shall be submitted for review to the department responsible for land development services pursuant to Sec. 45-7 unless otherwise exempt as provided in this article. The exemptions in Sec. 45-6 do not apply to this article.

- C. Permitting procedure for the removal of trees in a CRZ. A land clearing permit is required before any tree removal of any kind is conducted within the CRZ. An application meeting the requirements of this article shall be submitted to the administrator for review and recommendation, prior to or concurrent with subdivision plans or a site and development plan or an application for a building permit, whichever is first required.
 - (1) Where development requires approval under the ULDC, the tree removal permit shall not be issued until after the subdivision plan or site and development plan is approved. The written application shall constitute a written authorization for City staff to enter the property to conduct inspections to determine if the applicant is in compliance with the provisions of this article.
 - (2) A tree location survey for the lot shall be submitted with the application. The tree location survey shall show the information required in Sec. 45-22(A) and (B) at a scale sufficient to enable the determination of matters required under this article.
- D. Requirements for Canopy Road Zone land clearing permits.
 - (1) Applicant shall submit a plan showing proposed scope of work to include protected trees (by species and DBH), the scaled location of the Canopy Road Zone, and the proposed location of the tree protection barricades.
 - (2) If encroachments into the CRZ are proposed, a plan will be required to be prepared by an ISA certified arborist, an American Society of Consulting Arborists (ASCA) member arborist, landscape architect, or other specialist in the field of arboriculture specifying the methods to be utilized to preserve the vegetation. This plan shall address protection of the root system, crown, and stems of the trees, a means of supplying water and essential elements to the root system, and the proposed location of the tree protection barricades. This plan shall be subject to approval by the City.
 - (3) Pre-application inspection service. City staff shall be available for pre-application conferences or inspections of the site involved.
 - (4)

Upon receipt of the complete application, the administrator will conduct a field inspection to determine if the information is sufficient for review, and if the proposed plan is in compliance with the provisions of this article. Upon completion of the review, the administrator will notify the applicant that the application is either insufficient, does not comply with the provisions of these regulations, or that the permit is approved, or approved with stipulations.

- (5) If a protected tree dies after a land clearing permit has been issued and prior to the issuance of a Certificate of Occupancy or Certificate of Completion, the applicant shall notify the City and request an inspection, prior to the removal of the dead tree. An inspection shall be made within two (2) days of the notification by the applicant. Failure to notify the administrator prior to the removal of any CRZ protected tree constitutes a violation of this article.
- (6) All permits will require a final inspection to ensure compliance with the provisions of this article. Final inspections shall be scheduled by the applicant after completing the project.
- E. Trimming within the CRZ shall be limited to fourteen (14) feet clearance over the travelway for vehicles and eight (8) feet over walkways for pedestrian clearance.
- F. Border trees shall be included in the Canopy Road Zone.

Sec. 45-24. - Protection of canopy road trees.

- A. Utility pruning should only provide minimum safe clearance to protect utility lines with consideration for the combined movement of the conductors near trees in severe weather, the species of the tree, and the voltage of the conductor where applicable.
- B. Location of protected trees. All protected trees which will be disturbed by proposed activities shall be physically located on-site and shown on the site plan submitted as part of the tree removal request in the land clearing permit application.
- C. Drip line preservation. During development, construction activity, and utility construction, all areas surrounding the trunk of a protected tree within a the drip line shall be protected from activities that may disturb or injure the tree, (such as cut and fill activities, building pad placements, road bed construction, construction material storage, driving or parking of equipment, or trenching, etc.), except where specific arboricultural analysis is provided by the applicant to demonstrate that there is no likelihood of adverse impact to the tree.
- D. Proper tree care: Canopy and root pruning.

(1) When activities affect the protected tree within the drip line, or when pruning must be performed on the crown of a protected tree, the following arboricultural techniques are required.

(a) When more than twenty-five percent (25%) of the area within the drip line will be disturbed, the affected roots must be severed by clean pruning cuts where the activity impacts the roots. Roots may be pruned by utilizing trenching equipment that is specifically designed for this purpose or by hand digging a trench and pruning roots with a chain saw, pruning saw or other equipment designed for tree pruning. Roots within the drip line must be pruned to a depth of twelve (12) inches below existing grade or to the depth of the disturbance if less than twelve (12) inches from the existing grade. When underground utilities are to be installed through the drip line, root pruning requirements may be waived if the lines are installed via tunneling or directional boring as opposed to trenching.

(b) All pruning of protected trees shall conform to the current ISA standards. There shall be no flush cuts, stub cuts, or lions tailing of the tree's crown.

(c) It shall be a violation of this article to perform the techniques of topping or other pruning techniques that remove the vertical leader stems or other pruning which results in an unnecessary reduction of shade of protected trees in the permit area. Topping shall be considered as cutting a major branch or stem to a stub or lateral branch not sufficiently large enough to assume the terminal role.

E. Tree protection barrier requirements and CPZ protection. During development activities or any other potential disturbance that will impact the area within the drip line of any protected tree, protective barriers shall be placed around each protected tree to prevent the destruction or damaging of roots, stems, or crowns of such trees. Barriers shall remain in place and intact until the work is completed, however barriers may be removed temporarily to accommodate construction needs, as long as work is overseen by a certified arborist, provided that the manner and purpose for such temporary removal will not harm the tree and is approved by the City Manager or designee. The following are the minimum requirements for protective barriers and CPZ protection.

(1)

Protective posts shall be placed so as to protect all areas within the drip line for each protected tree, except in right-of-way or utility placement areas where posts shall be placed so as to protect, the area within the drip line where approved by the City Manager or designee.

- (2) Posts shall be a minimum of two (2) inches by four (4) inches or larger wooden post, two (2) inches outer diameter or larger or other post material of equivalent size; shall be connected with a minimum of at least a one (1) inch by four (4) inch wooden board; and shall be clearly flagged. The maximum distance allowed between upright posts is eight (8) feet. Other similar methods, such as, construction fencing, may be permitted if approved in writing by the Administrator in advance of installation.
- (3) Posts shall be implanted deep enough into the ground to be stable and extend a minimum height of four (4) feet above the ground.
- (4) Where development activity is permitted within the drip line of a protected tree (as measured by the longest radius from trunk to drip line), the City may require additional tree protection provisions to be incorporated in the activity permit.
- (5) No storage or movement of equipment, store material, debris, or fill soil is allowed within the drip line of any protected tree, (as measured by the longest radius from trunk to drip line).
- (6) No equipment shall be cleaned, or waste materials such as paints, oils, solvents, asphalt, concrete, mortar, or any other material shall be stored within the drip line on any protected tree, as measured by the longest radius from trunk to drip line.
- (7) No damaging wires, signs or permits shall be fastened to any protected tree.
- (8) Silt barriers, hay bales, or similar effective erosion silt control barriers shall be required in any area where erosion or siltation may cause damage to protected trees.
- (9) Where elevation changes are proposed within fifty percent (50%) of the area within the drip line of any protected tree (as measured by the longest radius from trunk to drip line), the applicant shall be required to install retaining walls or drain tiles. The applicant shall have the choice of the type or design. These root protection measures shall be in place prior to the deposition of fill, or excavation of soil from the drip line.

F. The City shall conduct periodic inspections of the site during the permitted activity in

order to ensure compliance with this article.

Sec. 45-25. - Prohibitions.

It shall constitute a violation of this article of the ULDC for any person to remove, relocate, cut down, poison, or in any other manner destroy, or cause to be destroyed, a protected tree located within a Canopy Road Zone. Removing a tree shall include topping, damaging, or any other action that causes irreparable injury, or causing a tree or trees to be removed, or to prune a tree in Canopy Road Zones, except in accordance with a land clearing permit issued by the City pursuant to this article.

Sec. 45-26. - Exemptions.

A. This article shall not apply to:

- (1) Tree located on a road or road segment not designated as a canopy road by the City.
- (2) Governmental personnel or agencies in the performance of their official duties during an emergency declared by the City Commission as provided herein.
- (3) Tree removal necessary for the construction of public roads, utilities, landfills, stormwater facilities, or other government uses only where no reasonable alternative exists to preserve the protected tree.
- (4) The demolition of structures where the demolition does not require the destruction or have an impact within the drip line of any protected tree.
- (5) Pruning required to restore electric service during severe weather events or other electrical emergency situations.
- (6) Persons engaged in routine arboricultural maintenance or clear zone pruning for vehicles, pedestrians, signs, or other roadside appurtenances provided that such maintenance and pruning conforms to current ISA standards.

B. The exemptions in Sec. 45-6 do not apply to Article I.

Sec. 45-27. - Territorial applicability.

This article shall be effective throughout the corporate boundaries of the City of North Port, Florida.

Sec. 45-28. - Emergency tree removal.

When it is necessary to expedite the removal of damaged or destroyed protected trees in the interest of the public safety, health, and general welfare following high winds, storms, hurricanes, tornadoes, floods, or other man-made or natural disasters, the City Commission may, by resolution, suspend the requirements of this article.

Sec. 45-29. - Fees and remedies.

- A. Any person applying for a permit to remove or disturb protected canopy road trees, shall file a written application and pay such a fee as established by the City Commission pursuant to the City Wide Fee Schedule, as may be amended.
- B. The City of North Port may have recourse to such remedies in law and equity as may be necessary to ensure compliance with the provisions of this article. The City may use one (1) or more of these remedies.
 - (1) A violation of any provision of this article may be enforced as provided in North Port City Code, Chapter 2, Article IX, Code Enforcement.
 - (2) The City may require a violator to mitigate any protected tree removed or irreparably injured without authorization by paying a mitigation fee equal to two hundred dollars (\$200.00) per diameter inch (DBH). Such fee shall be used only for the purposes of acquiring, planting, and protecting trees within the City.
 - (3) The City may also enforce this article by seeking an injunction and/or damages together with all enforcement costs and expenses, including attorneys' fees.

ARTICLE II. - ADMINISTRATION

[Added 1-30-2012 by Ord. No. 2011-32]

Sec. 45-30. - Interpretation. [Amended 1-30-2012 by Ord. No. 2011-32]

The provisions of this chapter shall be interpreted by the City Manager or designee. It shall be liberally construed in order to effectively carry out its purpose. Where any provision of this chapter refers to or incorporates another provision, ordinance, statute, rule, regulation, policy, official publication, or other authority, it refers to the most current version, incorporating any amendments thereto or re-designation thereof.

Sec. 45-31. - Conflict. [Amended 1-30-2012 by Ord. No. 2011-32]

Whenever the requirements of these regulations of this chapter differ from those imposed by City, Federal or State regulation, law or statute, the most restrictive or imposing the higher standards shall apply. [Amended 1-30-2012 by Ord. No. 2011-32]

Sec. 45-32. - Appeals. [Amended 1-30-2012 by Ord. No. 2011-32]

A. Any person aggrieved by the City Manager or designee's interpretation may appeal to the Zoning Board of Appeals. The criteria for granting an appeal shall be based upon substantial competent evidence proving that the interpretation is inconsistent with provisions of this chapter. The granting of any appeal shall not be in conflict with State Statutes. The Zoning Board of Appeals' decision may be appealed to the Circuit Court of Sarasota County within thirty (30) days of such decision.

(1) Applications for an appeal shall be filed pursuant to Sec. 1-10. [Amended 1-30-2012 by Ord. No. 2011-32]

(2) Any action under appeal shall not stay any enforcement proceedings. [Added 1-30-2012 by Ord. No. 2011-32]

Sec. 45-33. - Severability. [Amended 1-30-2012 by Ord. No. 2011-32]

If any provision of this chapter is for any reason finally held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions.

Chapter 49 - WETLANDS PROTECTION REGULATIONS

[HISTORY: Adopted by the City Commission of the City of North Port 9-17-1990 by Ord. No. 90-28 (Section 11). Amendments noted where applicable.]

Sec. 49-1. - Title.

This chapter shall be known and may be cited as the "Wetlands Protection Regulations" of the City of North Port, Florida.

Sec. 49-2. - Findings.

- A. Wetlands serve important biological functions, including food chain production, general habitat, nesting, spawning, rearing and resting sites for aquatic or land species.
- B. Wetlands, improve water quality by filtering sediment, nutrients, and pollutants.
- C. Wetlands recharge ground and surface water supplies.
- D. Wetlands serve as valuable storage areas for stormwater runoff and floodwaters.
- E. The destruction or alteration of wetlands could adversely affect natural drainage characteristics, sedimentation patterns and other environmental characteristics.
- F. Wetlands and wetland plants are significant in protecting surrounding areas from erosion and storm damage.
- G. Wetlands provide opportunities for recreation, education, and research.
- H. The public health, safety and welfare of the citizens and inhabitants of North Port are served by protection of the wetlands and adjacent areas of Sarasota County, Florida. The City of North Port shall strive to minimize adverse impacts to wetlands within its jurisdiction.

Sec. 49-3. - Intent.

It is the intent of these regulations to preserve, protect and improve the public health, safety and comfort, good order, appearance and general welfare and to conserve and to protect environmentally sensitive wetlands within the City of North Port.

Sec. 49-4. - Relationship to Comprehensive Plan.

The wetland protection regulations contained herein implement Objective 1 of the Conservation and Coastal Zone Management Element of the Comprehensive Plan which states that "The City shall continue to require infrastructure necessary to meet its future land use demand for coastal infrastructure consistent with public safety, to maintain Levels of Service as described in the various elements of this Comprehensive Plan, while limiting impacts to natural and historic resources," as well Objective 2 which states:

"The City shall continue to utilize, and amend when necessary, land development regulations which establish standards for types, sizes, densities, and intensities of all land use categories, minimize development within the established 'Coastal High Hazard Area,' aid in the provision of emergency shelters for current and future residents, and enhance the City and regional hurricane evacuation network, consistent with the County and Regional Hurricane Evacuation Plans."

Sec. 49-5. - Relationship to State and Federal regulations.

In order to properly identify and delineate wetlands prior to development, the City of North Port shall rely on the delineation of wetlands and surface waters by the FDEP and/or SWFWMD. This delineation shall be reproduced on construction plans which are submitted for review by the City.

Before the issuance of a land clearing or building permit in any wetland area as defined herein, all required Florida Department of Environmental Protection (FDEP) and/or Southwest Florida Water Management District (SWFWMD) permits shall be obtained, when necessary, and presented to the City. In the case where a State or Federal permit is not necessary, a copy of an exemption letter shall be presented to the City prior to the issuance of a land clearing or building permit.

Sec. 49-6. - Applicability.

These regulations shall apply to all wetland areas, as defined pursuant to Chapter 62-340, F.A.C.; however, single family platted lots that are not in a residential subdivision, shall be regulated by Florida Department of Environmental Protection (FDEP).

Sec. 49-7. - Permitted activities and performance guidelines.

The City shall prioritize wetland protective activities in the following manner: avoidance of impacts as first priority, minimization of impacts as second priority, and mitigation for impacts as third priority.

The following lists permitted development activities and the constraints or performance criteria governing such development, necessary to mitigate potential adverse impacts on physical and biological functions of importance within wetland areas of the City:

A. Scenic, historic, wildlife and scientific preserves.

- (1) The use of wetland communities for preserves can be part of a stormwater management system but shall result in no adverse effects on such wetlands.
- (2) Performance criteria.
 - (a) All proposed improvements within wetlands, including access roads, parking lots, docks, catwalks, area of structure, yards, cleared areas, fill, etc., shall be reviewed on a case by case basis. Wetland mitigation may be required in accordance with Southwest Florida Water Management District (SWFWMD) rules.
 - (b) If the wetland is included in lands designated as Conservation/Restricted, all conditions, provisions and restrictions of the Conservation/Restricted Overlay Zone shall apply in addition to the performance criteria contained herein, and the conditions, provisions and restrictions of the Conservation/Restricted Overlay Zone shall take precedence.
 - (c) If the wetland is included within the Myakka River Protection Zone (MRPZ), provisions of Chapter 57 of this Unified Land Development Code shall apply.
 - (d) The use of heavy equipment during construction in wetlands shall be prohibited, unless specifically authorized.
 - (e) Access roads and other improved areas shall be designed and located so as to not impede, obstruct or impound predevelopment surface water flows.
 - (f)

Roads through wetlands shall be of natural pervious material to the maximum extent practicable. The use of asphalt, concrete or other similar impervious material, shall be minimized.

- (g) Water quality treatment and attenuation for access roadways shall be provided pursuant to Chapter 18, Stormwater Regulations.
 - (h) Fill placed in wetlands will be limited to clean fill only and not garbage brush, refuse or toxic materials. Filling of wetlands may require mitigation in accordance with Southwest Florida Water Management District (SWFWMD) or Florida Department of Environmental Protection (FDEP).
 - (i) Buffers to jurisdictional wetlands shall be a minimum width of fifteen (15) feet and an average width of twenty-five (25) feet, and shall consist of natural undisturbed or restored vegetation. Encroachment that demonstrates no adverse impact within the twenty-five (25) foot upland buffer shall be reviewed on a case by case basis but shall not exceed SWFWMD or Florida Department of Environmental Protection (FDEP) required limits. Buffers shall not be developed, cleared, mowed, or landscaped in any manner that would decrease their effectiveness as a protective buffer to the wetland.
 - (j) Turbidity screens shall be used to minimize impacts to wetlands.
- B. Maintenance or emergency repair to existing structures or improved areas.
- (1) Minor repairs and/or emergency repairs are activities where use of structures does not change and/or there is no addition to the structure or improved area. Such activities will have little impact on a wetland beyond those impacts already experienced due to the presence of the structure. Wildlife use may be moderately affected if repairs require construction equipment, since the noise levels associated with construction activity may result in wildlife leaving the area.
 - (2) Performance criteria.
 - (a) The use of heavy equipment in a wetland during construction will be prohibited, unless specifically authorized and the impacts mitigated.

- (b) Turbidity screens shall be used to minimize impacts to wetlands.
- C. Cleared walking trails having no structural components.
 - (1) Cleared walking trails have a minimal impact on all parameters of wetland communities, since the area of cleared vegetation is minor when compared to the total area of the wetland community.
 - (2) Performance criteria.
 - (a) All materials that are cleared from the wetland shall be removed from the site and not piled or windrowed within the wetland or wetland buffer.
 - (b) Buffers to jurisdictional wetlands shall be a minimum width of fifteen (15) feet and an average width of twenty-five (25) feet, and shall consist of natural undisturbed or restored vegetation.
 - (c) Turbidity screens shall be used to minimize impacts to wetlands.
- D. Boardwalks less than or equal to eight (8) feet in width.
 - (1) Most of the impact associated with boardwalks is a result of construction activities disrupting wetland structure and function. The trampling of vegetation and the disruption of normal wildlife activities are the most serious impacts during construction. Once construction is complete, small boardwalks have only nominal impact on overall structure and function. Moderate impacts may be experienced by biological parameters, since construction activities may cause wildlife to leave, alter life forms present and reduce gross primary production through trampling and shading, boardwalks may be permitted as follows:
 - (a) Boardwalk decking and railings shall not be impregnated with arsenic.
 - (b) Use of plastic composites or fiberglass materials is encouraged.
 - (c) Boardwalk pilings that are pressure treated with chemicals shall be wrapped with high density polyethylene pile wrap product that is at least thirty-one thousandth inch (0.030") thick to minimize leaching of chemicals into the wetland.
 - (d) Alternative materials will require City Manager or designee approval.

(2) Performance criteria.

- (a) The structure and foundation system of the boardwalk shall be designed so as to not impede, interrupt or impound surface water flows.
- (b) The use of heavy equipment shall be prohibited, unless specifically authorized and the impact mitigated as required pursuant to State criteria. Any clearing of vegetation shall be confined to the immediate right-of-way of the boardwalk and shall not exceed a width equal to the width of the boardwalk plus five (5) feet to either side.
- (c) All pilings shall be driven to desired depth and shall not be jetted into the soil.
- (d) Pilings impregnated with arsenic should be avoided to the maximum extent possible, and if used should be wrapped with polyethylene pile wrap.
 - (i) The top of pile wrap must be at least six (6) inches above the high seasonal high water line elevation.
 - (ii) Use of concrete pilings or reinforced high density polyethylene (HDPE) pilings are encouraged.

E. Stormwater management facilities as part of an approved Master Plan. Development may incorporate isolated wetlands into stormwater management systems, provided that the stormwater runoff is pre-treated prior to entering the wetland, so that the wetland is used for nutrient reduction and volume attenuation. The City of North Port shall encourage designs which maintain the existing natural wetlands community, except where FDEP and/or SWFWMD agree that the imposition of conditions which favor a different plant community are more desirable for the purpose of providing habitat, improving water quality, or enhancing other wetland values and pursuant to Chapter 18, Stormwater Regulations.

F. Installation of utilities.

- (1) Utilities used in this context means electrical transmission lines, sewage lines, stormwater lines, potable water lines and associated access roads necessary for maintenance.

(2) Performance standards.

- (a) The installation of utilities shall conform to all performance standards given for specific activities that are associated with said installation.
- (b) Where it is determined that dredging, filling and/or bulkheading is determined to be incompatible, utility systems and roads shall be constructed above ground on supports, piers or bridging.
- (c) Every care should be taken to minimize disruption of the surrounding wetland and surface water bodies. During construction, turbidity screens and any other means necessary to minimize siltation, sedimentation and/or erosion shall be used at all times.

G. All activities within the Myakka River Protection Zone (MRPZ) shall be regulated by Chapter 57.

Sec. 49-8. - Prohibited activities.

A. The following uses and activities shall be expressly forbidden within wetland areas unless exempted by State or Federal regulations:

- (1) Solid waste disposal.
- (2) Storage of hazardous materials.
- (3) Installation of septic tanks.
- (4) Discharge of domestic, agricultural or industrial waste.
- (5) Bulkheading as to include seawalls and other similar structures intended to obstruct the natural flow of water except as used in conjunction with the above permitted uses.
- (6) Agricultural operations, including but not limited to forestry.
- (7) Filling, except when done in conjunction with the above-referenced permitted uses.
- (8) Structures of any type, unless specifically referenced as a permitted use in these regulations.

B.

Any proposed use not specifically mentioned above will be presumed to be prohibited unless competent evidence is presented to the City indicating that the proposed development activity will not impact the applicable wetland area.

Sec. 49-9. - Requirements for authorization.

- A. Authorization will be required from the City Manager or designee for all permitted activities listed herein. For all uses requiring a building permit, the developer shall comply with the requirements for a building permit as defined in Chapter 33, Site and Development Plan Regulations, of this Unified Land Development Code, in addition to the requirements for uses not requiring a building permit. For all uses not requiring a building permit, the Department responsible for land development services shall, upon a finding that the proposed use is in compliance with applicable performance standards and upon approval and/or exemption of the proposed use by applicable State and/or Federal environmental agencies, issue authorization to proceed with the proposed use.
- B. The City Manager or designee may require that the applicant provide a wetlands assessment if, upon review of various wetland indicators pursuant to Chapter 62-340, F.A.C., it appears that wetlands may exist on the property. This assessment shall be performed by a qualified biologist, ecologist, environmental scientist and presented to the City Manager or designee for approval prior to issuance of a land clearing or building permit.
- C. Encroachment within the twenty-five (25) foot buffer may require an environmental assessment including the identification of any endangered or threatened species or species of special concern as listed by the Florida Fish and Wildlife Conservation Commission or the United States Fish and Wildlife Service. If listed species are found to be present on the site, appropriate permits and a mitigation plan must be submitted and accepted prior to issuance of a land clearing or building permit.
- D. In wetland areas permitted by Southwest Florida Water Management District (SWFWMD) for development, the applicant shall provide all copies of applicable State and Federal wetland permits that are required, prior to commencement of any construction activity.
- E.

It shall be unlawful for any person to construct, erect or alter a building or structure within a wetland or to develop, change or modify wetlands for which a wetlands development permit is required except in accordance with a Southwest Florida Water Management District (SWFWMD) or Florida Department of Environmental Protection (FDEP) issued and approved Environmental Resource Permit.

Sec. 49-10. - Interpretation.

Interpretation of this chapter shall be made by the City Manager or designee.

Sec. 49-11. - Conflict with public and private provisions.

- A. Provisions of these regulations are not intended to interfere with, abrogate or annul any other City rule or regulation, statute or other provision of law. Where any provisions of these regulations or any other City, County, State or Federal rule, regulation or other provision of law are in conflict, whichever provisions are most restrictive or impose highest standards shall control.
- B. The revisions of these regulations are not intended to abrogate any easements, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant or private agreement or restriction, the provisions of these regulations shall govern.

Sec. 49-12. - Appeals.

- A. Any person aggrieved by the City Manager or designee interpretation may appeal to the Zoning Board of Appeals. The criteria for granting an appeal shall be based upon substantial competent evidence proving that the interpretation renders the property unbuildable. The granting of any appeal shall not be in conflict with State Statutes and City Codes. The Zoning Board of Appeals' decision, based may be appealed to the Circuit Court of Sarasota County within thirty (30) days of such decision.

(1) Applications for an appeal shall be filed pursuant to Sec. 1-10.

Sec. 49-13. - Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Chapter 57 - MYAKKA RIVER PROTECTION ZONE REGULATIONS

[HISTORY: Adopted by the City Commission of the city of North Port 10-14-2008 by Ord. No. 2008-36]

Sec. 57-1. - Title.

This chapter shall be known and may be cited as the "Myakka River Protection Zone Regulations" of the City of North Port, Florida.

Sec. 57-2. - Findings.

The City Commissioners of the City of North Port, Florida, hereinafter referred to as the "Commission," makes the following findings:

- A. In 1985, the Legislature of the State of Florida and the Governor enacted the Myakka River Wild and Scenic Designation and Preservation Act (the "Act") Chapter 258, Part III, Florida Statutes.
- B. The Act designates a corridor between River Mile seven and one-half (7.5) and River Mile forty-one and one-half (41.5) of the Myakka River as a Florida Wild and Scenic River. This portion of the Myakka River is more commonly referred to as that stretch between State Road 780 in Sarasota County as it flows southward to the Sarasota-Charlotte County line. The Act describes the "Wild and Scenic Protection Zone" as the area which extends two hundred twenty (220) feet landward from the Myakka River Area.
- C. The Act provides for the permanent preservation of the Myakka River through a plan for permanent administration by State and local agencies.
- D. The Act requires the State of Florida, Department of Environmental Protection (the "Department") and a Coordinating Council created by the Department, to jointly develop a management plan for the Myakka River.
- E. In May 1990, the Governor and Cabinet approved the Myakka Wild and Scenic River Management Plan in accordance with the Act.
- F.

In 1991, Florida Administrative Code Chapter 62D-15, entitled "Myakka River Wild and Scenic River Rule," was established for the purposes of implementing the Myakka Wild and Scenic River Management Plan.

- G. The Act directed the Department of Environmental Protection, the Department of Community Affairs, and the City of North Port to create a State-local agreement specifying guidelines and performance standards for activities within the Myakka River Protection Zone.
- H. On November 13, 2007, the Commission adopted a State-local agreement (the "Agreement") establishing interagency coordination for administering rules and regulations pertaining to the Myakka River Wild and Scenic Protection Zone in accordance with the Act. Local adoption of the Act requires adoption or amendment of any necessary ordinances, land development regulations, and Comprehensive Plan goals, objectives and policies within one (1) year after adoption of the Agreement.
- I. It is necessary to enact this chapter to assist in the implementation of the City of North Port Comprehensive Plan. The City of North Port Comprehensive Plan contains a number of goals, objectives and policies for protecting the Myakka River consistent with the requirements of the Act; thus, the Comprehensive Plan shall not require any additional amendments thereto.
- J. The Commission held public hearings on the regulations described herein in accordance with the requirements of City of North Port Unified Land Development Code, and has considered the information received at the public hearings.
- K. The Commission has reviewed the ordinance codified in this chapter and has found that the ordinance is consistent with the City of North Port Comprehensive Plan, as amended.

Sec. 57-3. - Purpose.

The Commission finds and determines that these provisions will serve the following goals:

- A. Maintain the outstanding remarkable ecological, fish and wildlife, and recreational values that are unique in the State of Florida;
- B. Permanently preserve and enhance the Myakka River and its resource values for the citizens of the State of Florida, both present and future;
- C.

Promote the beneficial and appropriate development of all land contained within the Myakka River Protection Zone, ("MRPZ") and the most consistent use of land in accordance with the City of North Port Comprehensive Plan;

- D. Protect the character and the established pattern of compatible development in the Myakka River Protection Zone;
- E. Minimize potential adverse physical and visual impacts on resource values in the Myakka River Area;
- F. Minimize adverse impacts on private landowners' use of land for residential purposes;
- G. Prevent or minimize land use incompatibilities and conflicts among different land uses;
- H. Maintain property values by stabilizing expectations and ensuring predictability in development; and
- I. Establish a process that effectively and fairly applies the regulations and standards of these regulations and respects the rights of property owners and the interests of citizens of the City.

Sec. 57-4. - Applicability and interpretation.

A. Applicability.

- (1) The provisions of this chapter, as adopted by the Commission shall be applicable and enforceable within the Myakka River Protection Zone, throughout the City of North Port, in Sarasota County, Florida. The provisions of this chapter are not applicable to upland cut man-made canals or tributaries.
- (2) The Commission may provide for the enforcement of this chapter within this municipality through an interlocal agreement.
- (3) This chapter shall apply to all applicants and to all properties located within the Myakka River Protection Zone, as adopted by the Commission.
- (4) Earthmoving authorized under a valid permit, agricultural exemption, written non-agricultural exemption, issued by the city prior to the effective date of this chapter, or the continuation of uninterrupted bona fide agricultural earthmoving operations and maintenance in existence prior to the effective date of this chapter may continue to completion of the earthmoving project, until expiration of said authorization, or until cessation of the agricultural operation, provided no expansion or intensification of such authorized earthmoving occurs.

- B. Interpretation. The provisions of these regulations shall be interpreted in the following manner:
- (1) In the interpretation of these regulations, all provisions shall be considered minimal requirements and construed liberally to effectuate the purposes of these regulations.
 - (2) These regulations are not intended to repeal, abrogate, or impair any existing statutes, laws, ordinances, easements, covenants, or deed restrictions which impose more stringent restrictions on the development proposal.
 - (3) Where these regulations conflict with or overlap another ordinance or statute, whichever imposes the more stringent restrictions on construction and excavation shall apply.
 - (4) Each separate provision of these regulations is deemed independent of all other provisions herein so that if any provision or provisions of these regulations is declared invalid or unconstitutional by any court of competent jurisdiction, all other provisions shall remain valid and enforceable.
- C. Listed Species. In cases where impacts to Listed Species may occur, applicants shall be required to consult with the appropriate Federal and State wildlife agencies, to use recognized sampling techniques as defined by accepted methodology of the agency to identify Listed Species, and to provide documentation of such coordination and compliance prior to City approval to conduct any activities that could disturb Listed Species or their habitat.

Sec. 57-5. - Review authority and process.

- A. The City Manager or designee shall review and provide a written determination as to whether any project or application for development or activity proposed within the Myakka River Protection Zone is consistent with the provisions of this chapter.
- B. The City Manager or designee shall impose conditions for any development permit or activity within the Myakka River Protection Zone in order to ensure consistency with the provisions of this chapter and the City of North Port Comprehensive Plan.
- C. All applications within the Myakka River Protection Zone will proceed through the review process as stipulated in the City of North Port Unified Land Development Code.

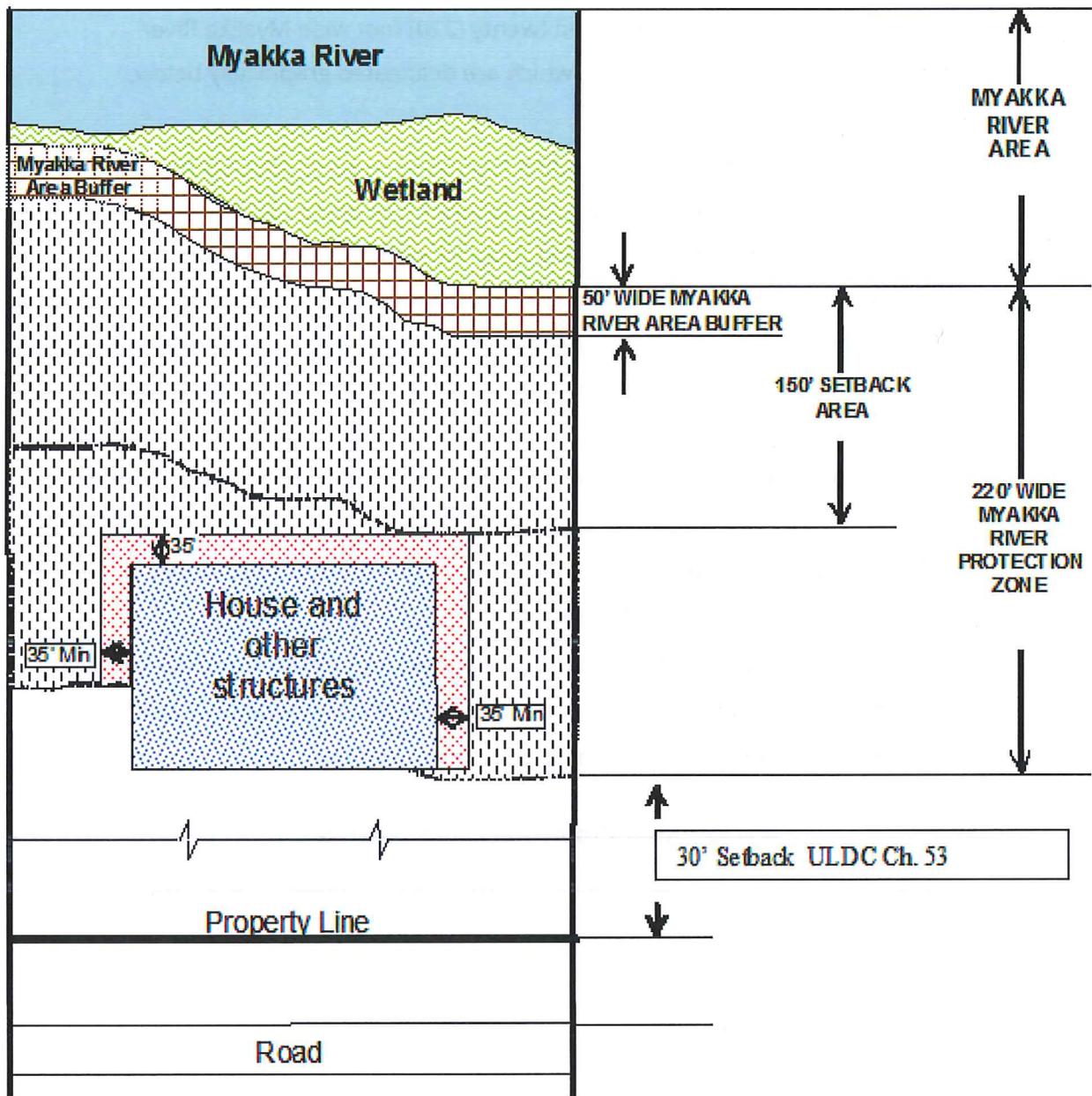
Sec. 57-6. - Myakka River Protection Zone.

- A.

For the purposes of this article, the two hundred twenty (220) foot wide Myakka River Protection Zone consists of four (4) sub-zones, which are delineated graphically below, and are described as follows:

- (1) Zone 1. The MRPZ fire protection clear zone. A zone, which is thirty-five (35) feet deep along the waterward facing exterior wall of the primary structure and a minimum of thirty-five (35) feet deep from the remaining exterior walls of the primary structure. This clear zone constitutes the required vegetative removal and turfgrass installation area necessary to allow for fire protection purposes and to serve as a fire protection defensible space as determined by the City of North Port Fire Rescue District. The MRPZ fire protection clear zone shall not encroach within the one hundred fifty (150) foot setback of the Myakka River Area.
- (2) Zone 2. The house and other structures, on a lot or parcel, as well as the area between the house and the street.
- (3) Zone 3. The area between the landward extent of Zone 4 and the landward extent of the Myakka River Protection Zone, excluding Zones 1 and 2.
- (4) Zone 4. The fifty (50) foot Myakka River Area Buffer.

Myakka River Protection Zones Diagram



Zone 1 (MRPZ Fire Protection Clear Zone)	
Zone 2 (House, other structures, and street yard)	
Zone 3 (Conservation Area)	
Zone 4 (Myakka River Area Buffer)	

Note: This diagram is not to scale.

Sec. 57-7. - Regulated activities within the Myakka River Protection Zone.

- A. Prohibition: The following activities are prohibited within the Myakka River Protection Zone, unless otherwise authorized herein:
- (1) Construction and development. Construction and development within the fifty (50) foot Myakka River Area buffer and wetlands is prohibited unless otherwise authorized herein.
 - (2) Earthmoving. Persons may not conduct earthmoving within the Myakka River Protection Zone for any purpose except earthmoving meeting exemption criteria pursuant to any of sections within this chapter and filling within the MRPZ fire protection clear zone as defined in Sec. 57-4(A)(1). The Environmental Services Division, or other City department may request information from the applicant, including evidence of prior approval by the appropriate agency(ies), for any of the above-referenced exemption sections to confirm that the earthmoving meets the exemption criteria.
 - (3) On-site sewage disposal systems. Persons may not construct on-site sewage disposal systems, or replacement systems, unless the system is located in the landward area of the primary structure and subject to all other applicable regulations. An alternative waste system shall be required for all new systems and replacement of existing systems, as defined in Chapter 9 of this Unified Land Development Code.
 - (4) Vegetation removal. Persons may not remove Native Vegetation or install turfgrass within the Myakka River Protection Zone with the exception of continuation of yard maintenance activities such as mowing, trimming, or pruning of vegetation that had been conducted within the Myakka River Protection Zone prior to the adoption date of this chapter.
 - (5) Tree removal. Persons may not remove a tree without a tree permit. Tree removal shall be subject to the regulations contained in Chapter 45 of this Unified Land Development Code.
 - (6) Wetlands not contiguous to the Myakka River Area. A minimum thirty (30) foot wide upland buffer of native vegetation shall be provided around preserved wetlands where the wetland is not contiguous to the Myakka River Area and located within the Myakka River Protection Zone. Where the upland vegetation surrounding any wetland contains mesic hammock habitat, the minimum upland buffer width shall be fifty (50) feet.
- B. Exceptions to the prohibited activities within the Myakka River Protection Zone:
- (1)

Removal of invasive exotic plant species or poison ivy, nettles and sandspurs. Persons may remove invasive exotic plant species, as described in the most current Florida Exotic Pest Plant Council (FLEPPC) Invasive Plant Lists as amended, provided such removal does not damage native vegetation. The limited removal of poison ivy (*Toxicodendron radicans*), nettles (*Urtica* spp.), and sandspur (*Cenchrus* spp.) for public health reasons is exempt, provided that no impacts to existing native vegetation occur.

- (2) Zone 1 and 2 exceptions. Native vegetation removal may be allowed in association with City-approved permits for construction of primary structures or to create or maintain a MRPZ fire protection clear zone around the primary structure.
- (3) Zone 3 exceptions. Native vegetation removal may be allowed in Zone 3 only after review and written approval by the City's Environmental Services Division only for the following purposes:
 - (a) To create or maintain private nature trails with a maximum width not to exceed four (4) feet.
 - (b) To create or maintain a single access to a permitted dock or pier.
 - (c) Reasonable selective pruning of side branches to enhance a view from a primary structure within or outside the Myakka River Protection Zone. Such selective pruning shall not occur within the Myakka River Area and the view "window" through the Myakka River Protection Zone shall be co-aligned with other approved vegetative removal (e.g., paths or access to a dock or pier).
 - (d) Native vegetation removal associated with, and limited to exempt earthmoving activities listed in Chapter 14 of the City of North Port Unified Land Development Code.
- (4) Zone 4 exceptions. Native vegetation removal may be allowed in Zone 4 only after review and written approval by the City's Environmental Services Division and only for the following purposes:
 - (a) To create or maintain private nature trails.
 - (b) To create or maintain a single access to a permitted dock or pier.
 - (c) Reasonable selective pruning of side branches to enhance a view from a principal building within or outside the Myakka River Protection Zone. Such selective pruning shall not occur within the Myakka River Area and the view

"window" through the Myakka River Protection Zone shall be co-aligned with other approved vegetative removal (e.g. paths or access to a dock or pier).

- (5) Zone 4 use exception. Family recreation, including, but not limited to, the placement of swing sets, barbeque grills, benches, and children's swimming pools may be allowed provided that it occurs within existing cleared areas, requires no native vegetation removal, and does not conflict with the purposes of this chapter.
- (6) Native vegetation removal associated with and limited to exempt earthmoving activities listed in Chapter 14 of the City of North Port Unified Land Development Code.
- (7) A lot or portion thereof that is classified by the County Property Appraiser prior to any tree removal as bona fide agricultural land under the agricultural assessment provisions of the Florida Right to Farm Act, Section 193.461, Florida Statutes, and where tree removal is undertaken solely for agricultural or silvicultural purposes. This exemption shall not apply to any tree removal in preparation for, or in anticipation of, any development or any construction of non-agricultural improvements. For the purposes of this chapter, evidence of such preparation or anticipation includes submittal of an application for a building permit for non-agricultural use, a variance, or other development approval. Other than for properties that are sold to settle an estate, submittal of plans listed in this section within six (6) years of the date of tree removal would invalidate this exemption and require an after-the-fact permit and/or mitigation in accordance with the provisions of this article.
- (8) Nothing herein shall be construed to affect the right of any person engaged in the commercial enterprise of agriculture or silviculture. Any stand of timber that is harvested in the Myakka River Protection Zone shall be regenerated either by replanting, natural regeneration or by leaving a sufficient number of young trees to replace the stand of timber. This exemption does not apply within a wetland or watercourse buffer required by the City.
- (9) Earthmoving authorized under a City authorized earthmoving permit, agricultural exemption, written non-agricultural exemption, issued by the City prior to adoption of this chapter, or the continuation of uninterrupted bona fide agricultural earthmoving operations and maintenance in existence prior to adoption of this chapter, may continue to completion of the earthmoving

project, until expiration of the authorization, or until cessation of the agricultural operation, provided no expansion or intensification of such authorized earthmoving occurs, or for a period no greater than two (2) years.

- (10) For the purposes of flood protection, elevation of an existing structure on a new foundation, within the existing building footprint and located no closer to the Myakka River Area.
- (11) Maintenance or repair of any existing structure or construction and related infrastructure and facilities provided that the maintenance or repair is undertaken within the limits of the existing foundation shall require new permits issued by the City of North Port Building Department.

Sec. 57-8. - Standards for development.

- A. Applications. Any application for development located within the MRPZ must disclose such, and is therefore subject to the provisions of this chapter.
- B. Land uses within the Myakka River Protection Zone. All land uses for parcels located within the Myakka River Protection Zone shall be consistent with the City of North Port Unified Land Development Code.
- C. All applications for development permits shall be consistent with the provisions of this chapter and the City of North Port Comprehensive Plan.
- D. The City Manager or designee shall review and provide a written determination on whether the application for a development permit is consistent with this chapter.
- E. All applications for construction, development, and earthmoving within the Myakka River Protection Zone must undergo review by the City's Building Department and Environmental Services Division.
- F. For all development, the applicant shall obtain all of the applicable development permits prior to commencing construction, development, or earthmoving activities.
- G. For all residential lots.
 - (1) All new construction, development, and earthmoving shall be located landward of the one hundred fifty (150) foot setback of the Myakka River Area, except as provided below:
 - (a) Elevated patios, decks, and walkways;
 - (b) Caged or non-caged swimming pools;
 - (c) Gazebos up to four hundred (400) square feet in floor area;
 - (d) Water dependent structures such as boat docks and piers.

- (e) Public utility and drainage projects as authorized by the City.
- (2) All Myakka River Protection Zone accessory structures not referenced in Sec. 57-8(G)(1) above, shall be located no closer than two hundred twenty (220) feet measured landward from the Myakka River Area.
- (3) For properties with an existing primary structure, development and construction shall be approved by the City of North Port Building Department and Environmental Services Division if the following criteria are met:
 - (a) The proposed development and construction is designed to minimize impacts to the Myakka River Area to the maximum extent practicable.
 - (b) Sufficient buffering (e.g. Native vegetation and structure design considerations) shall be provided to minimize visual impacts to the Myakka River and the purposes of this chapter and as determined by the City's Environmental Services Division. If nuisance/invasive species exist within the fifty (50) foot Myakka River Area Buffer, they shall be removed with no impact to native vegetation and be replaced with appropriate native species to provide visual buffering.
 - (c) Driveways, tennis courts, and other impervious surfaces shall be located no closer to the Myakka River Area than the primary structure.
 - (d) Elevated patios, gazebos up to four hundred (400) square feet in floor area, decks, and walkways, and caged or non-caged swimming pools are permitted as per Sec. 57-8(G)(1) above.
- (4) Native vegetation shall not be removed from Zone 3 or Zone 4 except as necessary and as authorized by the City for the following purposes:
 - (a) City maintenance and access;
 - (b) Road and utility crossings;
 - (c) Nature trails;
 - (d) Access to water dependent uses such as docks or piers;
 - (e) Public utility and drainage projects as authorized by the City.

In (4)(a)—(e) above, the principles of avoidance first, and then minimization, shall be used in the design of all proposed projects located within the fifty (50) foot Myakka River Area Buffer.

Sec. 57-9. - Prohibited uses.

- A. Any use or structure not specifically permitted by the underlying zoning district or the

Myakka River Protection Zone is prohibited.

- (1) The following uses shall be prohibited:
 - (a) Commercial uses. Only those commercial uses legally existing prior to October 14, 2008 shall be allowed to continue.
 - (b) Membership club or lodge.
 - (c) Townhouse and multifamily residential development. Only those legally existing prior to October 14, 2008 shall be allowed to continue.
 - (d) Manufactured home/subdivision. Only those legally existing prior to October 14, 2008 shall be allowed to continue.
 - (e) Monastery or convent.
 - (f) Landfill.
 - (g) Recycling center.
 - (h) Any waste treatment facilities containing raw wastewater.
 - (i) Jails, detention facilities, or work-camps.
 - (j) All light industrial services/facilities.
 - (k) All heavy industrial uses.
 - (l) All sales oriented uses.
 - (m) Outdoor storage yard.
 - (n) Educational facilities.
 - (o) Circus grounds.
 - (p) Winter quarters or training quarters.
 - (q) Library.
 - (r) City, County, State, or Federal government office.
 - (s) Aircraft landing strip or helicopter landing facility.
 - (t) Excavation of sand, gravel, or minerals, borrow pit.
 - (u) Livestock auction.
 - (v) Packing house for fruits and vegetables.
 - (w) Processing of food or related products.
 - (x) Retail or wholesale sales of agriculturally related supplies and equipment.
 - (y) Animal hospital or veterinarian.
 - (z) Animal boarding facility.
 - (aa) Wild animal sanctuary.

- (bb) Housing for farm or ranch labor, including mobile homes.
- (cc) Hospice, nursing, or convalescence home.
- (dd) Hospitals, including temporary housing for relative of patients.
- (ee) Residential assisted living facility without individual units.
- (ff) Orphanage.
- (gg) Alternative or post-incarceration facility, exclusive care and treatment for psychiatric, alcohol, or drug problems, where patients are residents.
- (hh) Group home for the physically disabled, mentally retarded, or emotionally disturbed with fourteen (14) or more residents.
 - (ii) Group home for drug and alcohol treatment, treatment center.
- (jj) Golf course/country club.
- (kk) Miniature golf facility.
 - (ll) Golf driving range.
- (mm) Aquaculture.
- (nn) Cemetery.

Sec. 57-10. - Variances.

- A. The Zoning Board of Appeals may grant a variance from the Myakka River Protection Zone regulations, when such variance will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship. Such variance shall not be granted if it has the effect of nullifying the intent and purpose of this chapter. The granting of a variance requires a majority vote by the Zoning Board of Appeals.
 - (1) Considerations. In reaching this decision, the Zoning Board of Appeals shall consider the following criteria, recommendations, and testimony:
 - (a) Exceptional or extraordinary conditions or circumstances exist which are inherent in the land, structure, or building involved, and such exceptional or extraordinary conditions or circumstances create an undue hardship on the property owner and are not generally applicable to other lands, structures, or buildings;
 - (b) Without the variance, the provisions of this chapter would deprive the applicant of all reasonable use of his property;
 - (c) The special conditions and circumstances do not result from the actions of

the applicant;

- (d) The granting of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or required improvements under similar conditions. No pre-existing conditions on neighboring lands which are contrary to this chapter shall be considered grounds for the issuance of a variance;
- (e) The variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building, or structure;
- (f) The variance, if granted, will not be injurious to the neighborhood or otherwise detrimental to the public welfare;
- (g) Staff recommendations;
- (h) Testimony from the applicant; and
- (i) Testimony from the public.

(2) Findings.

- (a) Before granting a variance, the Zoning Board of Appeals shall find that all of the following exist:
 - (i) That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district.
 - (ii) That the exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of this chapter. (Any action taken by an applicant pursuant to lawfully adopted regulations preceding this chapter will not be considered self-created.)
 - (iii) That such variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
 - (iv) That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - (v) That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent in nature as to make it more reasonable and practical to amend these regulations.

B.

In the granting of a variance, the City may require the removal of invasive exotic plant species and sufficient buffering (e.g. Native vegetation and structure design considerations) to minimize visual impacts to the Myakka River.

- C. A variance shall not be granted for development and construction located closer than one hundred (100) feet from the Myakka River Area.

Sec. 57-11. - Compliance and enforcement.

The City of North Port has the authority to enforce any development permit or condition as well as, any provisions of the City of North Port Unified Land Development Code and any provisions of the Florida Statutes Chapter 162. Each day of any such violation shall constitute a separate and distinct offense.

- A. Civil and administrative.

- (1) The Building Department or the City's Environmental Services Division may withhold issuance of a development permit or deny an application or other authorization if there is an existing unresolved violation of the City of North Port Unified Land Development Code on the subject property.
- (2) The Building Department will issue a stop work order when it has been determined that work at the site:
 - (a) Is proceeding in violation of this chapter, a development permit or other authorization issued hereunder or proceeding without any required authorization; or
 - (b) Poses an imminent and significant hazard to the public health, safety, or welfare, or to the environment.

- B. Enforcement and penalties.

- (1) Any person who fails to comply with the requirements of this chapter shall be required to restore the affected or impacted portion of the Myakka River Protection Zone, as determined by the Environmental Services Division. The person shall be required to monitor and maintain the restored vegetation for a minimum of one (1) year, or until success criteria are met, as determined by the Environmental Services Division.
- (2)

Notwithstanding any other provisions of this chapter for enforcement or penalties, the Commission may also enforce this chapter by actions at law or in equity seeking damages and injunctive relief in the appropriate court. In the event the Commission prevails in any such action, the Commission shall be entitled to an award of its costs and attorney's fees.

- (3) Enforcement of Code by other means. A violation of any of the provisions of this chapter or of any regulations adopted or permit conditions approved pursuant to this chapter shall be punishable in the same manner as a misdemeanor as provided by law.

Sec. 57-12. - Fees.

The Commission is authorized to set reasonable fees and charges for the implementation of this chapter. Such fees may be set by resolution. Fees charged will substantially finance the expenditures of reviewing projects pursuant to this chapter.

- A. The applicant shall be responsible for all costs associated with the requested variance, including processing and advertising.
- B. An applicant's failure to pay the requisite filing fees and costs may result in removal of the application from consideration by the Building Department for approval.
- C. For any proposal or appeal requiring a hearing before the North Port Zoning Board of Appeals, all required fees shall be paid no later than seven (7) days before the scheduled hearing date.

Sec. 57-13. - Conflicts.

Whenever the requirements of these regulations differ from those imposed by the City, Federal, or State regulation, law or statute, the most restrictive or imposing the higher standards shall govern.

Sec. 57-14. - Appeals.

Any person aggrieved by the Zoning Board of Appeals decision regarding any variance, may file a petition for a writ of certiorari in the Circuit Court of Sarasota County within thirty (30) days of such decision.

Sec. 57-15. - Appeals of interpretations.

Any person aggrieved by a City Environmental Services Division interpretation may appeal to the City Manager. The criteria for granting an appeal shall be based upon substantial competent evidence proving that the interpretation is inconsistent with the provisions of this chapter. The granting of any appeal shall not be in conflict with Florida State Statutes. The City Manager's decision may be appealed to the City Commission. The City Commission's decision, based upon evidence submitted to the City Manager and the City Manager's finding(s), may be appealed to the Circuit Court of Sarasota County within thirty (30) days of such decision.

Sec. 57-16. - Severability.

Each separate provision of this chapter is deemed independent of all provisions herein so that if any provision or provisions of this chapter are declared invalid or unconstitutional by any court of competent jurisdiction, all other provisions shall remain valid and enforceable.

