



Agenda
City Council

Monday, April 2, 2018

7:00 PM

Council Chambers

MEMORANDUM TO:

The Honorable Mayor and
Members of the City Council
City of Jacksonville Beach, Florida

Council Members:

The following Agenda of Business has been prepared for consideration and action at the Regular Meeting of the City Council.

OPENING CEREMONIES: INVOCATION, FOLLOWED BY SALUTE TO THE FLAG

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

- a. 18-054 City Council Briefing Held March 19, 2018
- b. 18-055 Regular City Council Meeting Held March 19, 2018

ANNOUNCEMENTS

COURTESY OF THE FLOOR TO VISITORS

MAYOR AND CITY COUNCIL

CITY CLERK

CITY MANAGER

- a. 18-056 Approve Funding for Upgrades to the Emergency Electrical System at the Police Department Building Located at 101 S. Penman Road

- b. 18-057 Approval of Bid No. 1718-07 - Flame Resistant and Retardant Clothing
- c. 18-058 Approve a Commercial Lease Agreement with *Continental Heavy Civil Corporation* for Property Located at 20th Avenue North and 10th Street in Jacksonville Beach
- d. 18-059 Approve the Final Plat for Replat of Parts of Lots 4, 5, and All of Lot 10, Block 8, Atlantic Shores Unit No. 1 Replat, Supporting a Four-Unit Townhouse Residential Subdivision (2650, 2652, 2654, and 2656 Almonaster Street)

RESOLUTIONS

ORDINANCES

- a. 18-060 ORDINANCE NO. 2018-8107 (First Reading) (PUBLIC HEARING)

AN ORDINANCE TO AMEND AN ORDINANCE ENACTING AND ESTABLISHING A COMPREHENSIVE LAND DEVELOPMENT REGULATION AND OFFICIAL ZONING MAP FOR THE INCORPORATED AREA OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AS AUTHORIZED BY CHAPTER 163.3202, FLORIDA STATUTES, BY AMENDING ARTICLE VIII, DIVISION 5, SECTION 34-467. *FLOOD HAZARD AREAS* TO REVISE CROSS REFERENCES WITHIN SECTION 34-467, TO UPDATE REFERENCES TO THE FLORIDA BUILDING CODE, AND PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE. **(This ordinance revises cross references in the code. It does not change the content.)**

- b. 18-061 ORDINANCE NO. 2018-8106 (First Reading)

AN ORDINANCE AMENDING CHAPTER 18 "NOISE," OF THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, BY AMENDING SECTION 18-7 "LOW VOLUME OUTDOOR AMPLIFIED AND ACOUSTIC SOUND," PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES. **(This ordinance repeals the sunset date for low volume noise. It allows the City to provide low volume noise permits to qualifying businesses.)**

ADJOURNMENT

NOTICE

In accordance with Section 286.0105, Florida Statutes, any person desirous of appealing any decision reached at this meeting may need a record of the proceedings. Such person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The public is encouraged to speak on issues on this Agenda that concern them. Anyone who wishes to speak should submit the request to the City Clerk or to the recording secretary prior to the beginning of the meeting. These forms are available at the entrance of the City Council Chambers for your convenience.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office at (904) 247-6299, extension 10, no later than one business day before the meeting.

The Council Briefing began at 6:00 P.M.

The following City Council Members were in attendance:

Mayor: William C. Latham

Council Members: Lee Buck Keith Doherty Christine Hoffman
Bruce Thomason Phil Vogelsang Jeanell Wilson

Also present were City Manager George Forbes, Deputy City Manager Trish Roberts, Director of Planning and Development Bill Mann, Police Chief Patrick Dooley and Chief Financial Officer Karen Nelson.

Purpose of Briefing

The purpose of the briefing was to update the Council Members on projects including the following items:

City Manager

Upcoming topics

Mr. Forbes stated a representative for Beach Buggies would be attending the April 2, 2018, Council Briefing to discuss sponsorships.

Mr. Forbes stated improvements for the Police Department's generators would be discussed as an agenda item at an upcoming Council Meeting

Mr. Forbes stated Ordinance No. 2016-8082 for Low Volume Outdoor Amplified and Acoustic Sound would also be discussed as an agenda item at an upcoming Council Meeting.

Mr. Forbes stated another blower on the sequential batch reactor at the Waste Treatment Plant is no longer working. Replacement parts would be ordered. In addition, there are two major transformers still out of commission at the Sampson Sub Station. The T-2 is scheduled to be repaired by the end of April. The T-3 would take longer as a new tap changer would be built in and shipped from Germany.

Upcoming retiring employees

Police Chief Patrick Doble announced that in January 2019 he would be retiring from the Jacksonville Beach Police Department.

Mr. Forbes explained Commander Corbitt is planning to retire in February 2019. With the Council's permission, an additional Commander would be hired as an over-hire allowing for an easier transition of staff for the Police Department.

Mr. Forbes stated Mr. John David Millinor had been hired to replace Mr. Ty Edwards, current Director of Public Works, upon his upcoming retirement on September 1, 2018. Mr. Millinor would start working in his position towards the middle of May 2018 and would be working alongside Mr. Edwards to assist in the transition process within Public Works.

Waterfall Sales Office grand opening

Director of Planning and Development, Bill Mann stated the sales office for the new Waterfall development would be having a grand opening on Thursday, March 22, 2018, from 5:30 P.M. to 8:00 P.M. Mr. Mann stated the Waterfall property has vested building rights of 101 feet and 8 inches. The current building plans for Waterfall is for 43 units, 86 parking spaces, nine floors total, and the bottom floor would have a lobby and garage spaces.

Dix.Hite + Partners

Mr. Mann shared with Council Members and staff the Jacksonville Beach logo designs and a new Jacksonville Pier entry concept design created by Dix.Hite + Partners. A conversation ensued by the Council Members regarding their suggested changes to the presented designs.

Community Redevelopment Agency (CRA) parking

Mr. Mann explained that a proposal [*on file*] from Mr. Steve Diebenow (the attorney for the owner of the former Johnson Gallery property) was submitted regarding the possibility of leasing the vacant lot immediately north of the Ritz, as well as leasing a number of existing public parking spaces in the new CRA-owned public parking lot on 2nd Street North, between 3rd and 4th Avenues North, to support his redevelopment of the gallery into two highend restaurants.

Mr. Mann stated the proposal would be presented and discussed at the March 26, 2018, CRA meeting.

A conversation ensued by the Council Members regarding the proposal received by the City.

The briefing adjourned at 6:42 P.M.

Submitted by: Jodilynn Byrd
Administrative Assistant

Approved:

William C. Latham, MAYOR

Date: _____



OPENING CEREMONIES

A moment of silence was held for U.S. Air Force Master Sergeant William Posch, a Fletcher High School alumni, followed by the salute to the flag.

CALL TO ORDER

Mayor Latham called the meeting to order at 7:00 P.M.

ROLL CALL

Mayor: William C. Latham

Council Members: Lee Buck Keith Doherty Christine Hoffman
Bruce Thomason Phil Vogelsang Jeanell Wilson

Also present was City Manager George Forbes.

APPROVAL OF MINUTES

It was moved by Ms. Wilson, seconded by Ms. Hoffman, and passed unanimously, to approve the following minutes:

- City Council Briefing held March 5, 2018
- Regular City Council Meeting held March 5, 2018

ANNOUNCEMENTS

COURTESY OF THE FLOOR TO VISITORS

- Sonja Fitch, 425 9th Street South, Jacksonville Beach, provided a list of topics displayed in her 3D political art.

MAYOR AND CITY COUNCIL

Because of her twenty-five years of dedicated, impactful work at the City of Jacksonville Beach, Mayor Latham presented Deputy City Manager, Trish Roberts, with the Distinguished Service Award.

CITY CLERK

CITY MANAGER

- (a) **Item #18-047 – Accept the Monthly Financial Reports for the Month of February 2018**

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to accept the monthly financial reports for the month of February 2018, as submitted by the Chief Financial Officer.

Roll call vote: Ayes – Buck, Doherty, Hoffman, Thomason, Vogelsang, Wilson,
and Mayor Latham.
The motion passed unanimously.

- (c) **Item #18-049 – Accept a Donation in the Amount of \$25,000 from Ms. Esther L. Ash to be Utilized Solely for Crime Prevention Programs**

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to approve acceptance of a donation in the amount of \$25,000 from Ms. Esther L. Ash to be utilized solely for crime prevention programs.

Roll call vote: Ayes – Doherty, Hoffman, Thomason, Vogelsang, Wilson, Buck,
and Mayor Latham.
The motion passed unanimously.

- (d) **Item #18-050 – Approve a Draw from the Federal Equitable Sharing Fund to Upgrade Flashlights for Police Officers**

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to approve a draw of \$12,843.75 from the Federal Equitable Sharing Fund to purchase flashlights for Police Officers as described in a March 4, 2018, memorandum from Police Chief Patrick K. Dooley.

Discussion: Chief Dooley reported that the new flashlights would replace 30-year-old flashlights on which the manufacturer no longer services. He then demonstrated the latest version of the Mag-Lite and the Streamlight Stinger XT flashlights that would be purchased using Federal Equitable Sharing Funds.

Roll call vote: Ayes – Hoffman, Thomason, Vogelsang, Wilson, Buck, Doherty,
and Mayor Latham.
The motion passed unanimously.

- (e) **Item #18-051 – Award Bid No. 1718-07 for Flame Resistant and Flame Retardant Clothing to Safety Products, Inc.**

City Manager, George Forbes, stated that additional information was needed to be reviewed before going forward with this item and asked the Council to table the item.

Motion to Table: It was moved by Mr. Vogelsang, seconded by Ms. Hoffman, and passed unanimously by voice vote, to table Agenda Item Number 18-051, as recommended by staff.

RESOLUTIONS:

- (a) **Item #18-052 – RESOLUTION NO. 2007-2018**

Mayor Latham requested that the City Clerk read Resolution No. 2007-2018, by title only, whereupon Ms. Scott read the following:

“A RESOLUTION AMENDING THE OPERATING BUDGET OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2017, AND ENDING SEPTEMBER 30, 2018.”

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to adopt Resolution 2007-2018 authorizing the mid-year budget adjustment.

Summary: Mr. Forbes reviewed the proposed budget adjustments.

Roll call vote: Ayes – Thomason, Vogelsang, Wilson, Buck, Doherty, Hoffman, and Mayor Latham.

The motion passed unanimously.

ORDINANCES:

(a) Item #18-053 - ORDINANCE NO. 2018-8105 (Second Reading)

Mayor Latham requested that the City Clerk read Ordinance No. 2018-8105, by title only, whereupon Ms. Scott read the following:

“AN ORDINANCE TO AMEND PLANNED UNIT DEVELOPMENT: PUD ORDINANCE NUMBER 2013-8031, SUPPLEMENTING THE COMPREHENSIVE ZONING REGULATIONS AND ZONING ATLAS FOR THE CITY OF JACKSONVILLE BEACH, FLORIDA, AS PROVIDED UNDER CHAPTER 34 OF THE CODE OF ORDINANCES OF SAID CITY. (This Ordinance applies to the Ocean Terrace residential subdivision on South Beach Parkway. It would revise the allowable uses and structures in Tract D - Open Space, located along the western edge of the subdivision.)”

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to adopt Ordinance No. 2018-8105, as amended, amending *Planned Unit Development: PUD* Ordinance, governing the Ocean Terrace Residential Subdivision, (Ordinance No. 2013-8031) by revising the PUD Narrative as it relates to allowable uses and structures in Tract D - Open Space, located along the west edge of the subdivision. (*Ocean Terrace Home Owners Association - Applicant*)

Summary: Mr. Forbes reviewed the amendments made to Exhibit A, Page 2, Section F, Item 4, during the first reading of the ordinance.

Motion to Modify: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to amend the ordinance by adding, “Fencing with a maximum of 6’ in height is permitted in Tract D if installed and maintained by lot owners according to their limited common area as defined in the Second Amendment to the Declaration of Covenants, Section 2.6. Fencing may be vinyl, metal, wood, or a combination thereof. Masonry walls or masonry fences shall not be permitted in Tract D.”

Vote: Voice vote resulted in all Ayes by the Council Members.
The motion to modify was passed unanimously.

Discussion: Ms. Wilson stated her support of the item with the modifications.

Roll call vote: Ayes – Vogelsang, Wilson, Buck, Doherty, Hoffman, Thomason, and Mayor Latham.
(*Original Motion*)

The motion, as modified, passed unanimously.

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to approve the Findings of Fact – Ordinance No. 2018-8105, dated March 19, 2018.

Discussion: There was no discussion on the Findings of Fact.

Roll call vote: Ayes – Wilson, Buck, Doherty, Hoffman, Thomason, Vogelsang, and Mayor Latham.
The motion passed unanimously.

ADJOURNMENT:

There being no further business, the meeting adjourned at 7:40 P.M.

Submitted by: Laurie Scott
City Clerk

Approval:

William C. Latham, MAYOR

Date: _____

City of
Jacksonville Beach
City Hall
11 North Third Street
Jacksonville Beach
FL 32250
Phone: 904.247.6274

MEMORANDUM

TO: George D. Forbes, City Manager
FROM: Luis Flores, Property and Procurement Officer
DATE: March 22, 2018
SUBJECT: Emergency Generator Upgrade Funding for the Police
Department Building

ACTION REQUESTED

Approve funding for upgrades to the emergency electrical system at the Police Department building located at 101 S. Penman Road.

BACKGROUND

During Hurricane Irma, staff discovered that the 150kW Olympian emergency generator located at the Police Department was not meeting all existing electrical building loads. A post-storm review resulted in a comprehensive in-house assessment of facility electrical needs. Beaches Energy Services engineering staff, Vanguard Electrical Contractors and Ring Power representatives concluded that the existing 150 kW gas generator has the capacity to power the entire facility, including HVAC systems. However, upgrades to the electrical system are required for the generator to reach its capacity. Vanguard Electrical Contractors, under a continuing services contract, provided pricing to:

- Configure existing 150kW Olympian emergency generator to power existing building configuration and equipment
- Remove existing automatic transfer switches, and install a new automatic transfer switch capable of serving the entire facility
- Obtain electrical permit
- Furnish and install all new programming and control boards needed to operate the existing HVAC equipment. The new boards will monitor the equipment consistently for heavy loads and stagger existing loads during the initial startup of the generator.



Memo to George D. Forbes
Police Emergency Generator
March 22, 2018

2

The goal of this enhancement project is to provide a self-sustaining power source during emergency conditions at the Police Building facility. The needed repairs will take approximately 6-8 weeks to complete. We anticipate having all work completed before the start of the 2018 Atlantic Hurricane season. Material delivery, work schedules and sequencing will be determined after the issuance of the purchase order.

The total cost for the attached Scope of Work is \$39,497. Funding is available in the General Fund and will be included in the year-end budget modification.

RECOMMENDATION:

Approve funding for upgrades to the emergency electrical system at the Police Department building as described in the memorandum from the Property and Procurement Officer dated March 22, 2018.



VANGUARD ELECTRICAL CONTRACTORS, INC.

**ELECTRICAL CONTRACTORS EC13003864
3653 REGENT BLVD. SUITE #302* JACKSONVILLE, FL 32224
(904) 232-4018 * FAX (904) 232-4016**

March 8, 2018

Beaches Energy
Jacksonville Beach, Florida

Attn: Luis

Reference: Police building Generator/ATS.

Vanguard Electric is pleased to submit this scope of work for the Division 16000 electrical construction of the above referenced project. This proposal is based on the drawings and scope clarifications outlined herein.

1. Cost of the electrical permit is included if required.
2. Temporary power is included within the building to provide ground-fault-protected receptacles for 120-volt small construction tools to be accessible with a 100' extension cord. All consumption fees are excluded. No provisions are made for early hookup of HVAC or elevators prior to availability of permanent power. No utility fees are included in this proposal.
3. Clean up is included on a daily basis and consists of placing our identifiable debris in dumpsters whom are to be furnished and maintained by others. No costs are included for a composite clean-up crew or dumping fees.
4. No access panels are included in this proposal.
5. Architectural or finish painting is excluded. However, touch-up of factory finishes for equipment furnished by Vanguard is included.
6. Branch wiring for power is included using ½" minimum trade size conduit with minimum #12 AWG wire size. All EMT fittings are steel.
7. All necessary taxes and insurance is included in this proposal.
8. No allowances are included in this proposal.

MEETING ALL OF YOUR ELECTRICAL NEEDS

9. Fire stopping work included in this proposal is limited to the installation of metal sleeves and standard fire caulking where required for the electrical scope of work.
10. Furnish and install new ATS as required and provide removal of the existing two ATS's.
11. Furnish and install all conduit and wire to reroute all existing feeds for both main service and Generator to new locations discussed in the field.
12. Furnish and install all new programming and control boards needed to control existing A/C equipment. This will also require the decision from COJB to determine which units can be turned off during higher loads monitored by generator. Also staggering of existing A/C loads will be provided during the initial startup of the generator.
13. Existing 150KW generator will stay in place and existing feeder will be rerouted to feed new ATS and existing 600amp MDP. However existing generator will still only be rated at the original rating of 250amps and will require management of loads to keep from overloading generator.
14. Provide all demo of old equipment once all new installation is completed.
15. A fire alarm system is excluded.
16. This proposal is contingent on an acceptable project schedule being part of the contract. If a schedule is not available, then the proposal is based on a 40-hour week during normal business hours. Please keep in mind that the building will need to be completely powered down for the final swap over of the final system. This may take from 4- 8 hours to complete.
17. This price is valid for 30 days and is subject to copper and steel increases thereafter.
18. Quote is based on combined information gathered by City of Jax Beach, Vanguard and Ring power based on all information provided by City of Jax Beach. Vanguard will not provide any engineering or any way be responsible for any design drawings.

Material	\$ 26,923.80
Labor	\$ 12,573.20
Budget Total	\$ 39,497.00

We appreciate the opportunity to provide this pricing, and look forward to working with you on this and future projects. If further clarification is required, please do not hesitate to call.

Sincerely,

Brian Kern

Brian Kern

Executive Vice President

Email: bkernvanguardelectric@windstream.net

VANGUARD ELECTRICAL CONTRACTORS



BEACHES ENERGY
SERVICES

TO: George D. Forbes
City Manager

FROM: Allen Putnam
Director of Beaches Energy Services

DATE: March 22, 2018

SUBJECT: Flame Resistant and Retardant Clothing

ACTION REQUESTED:

Approval of Bid No. 1718-07 – Flame Resistant and Retardant Clothing

BACKGROUND:

The City of Jacksonville Beach solicited bids from two (2) vendors. On February 13, 2018, two (2) bids were received for Bid No. 1718-07. The bid submitted by American Solutions was deemed non-compliant as their pricing was not provided in the required format to allow for comparative pricing. This bid covers seven (7) different items of fire resistant and fire retardant clothing utilized by Beaches Energy Services and the Meter Department.

These employees are required to wear this specific clothing in order to safely conduct their day to day work of maintaining the overhead and underground electric system. Based upon past experience, we expect to order:

- Two-hundred (200) each of items 1;
- Two-hundred sixty-seven (267) each of items 2;
- Thirty-six (36) each of item 4;
- Two-hundred sixty-seven (267) each of a combination of items 5, 6, and 7; and
- The total cost is approximately \$39,490.21 annually.

The bid met specifications and pricing is as follows:

Item	Description	Vendor	Unit Cost
1	T-Shirts with Pockets	Safety Products, Inc.	\$38.91
2	Woven Shirts with Pockets	Safety Products, Inc.	\$62.24
3	Duck Quilt-Lined Active Jacket	Safety Products, Inc.	\$176.92
4	Flame-Resistant Full Zip-Front Hooded Sweatshirt	Safety Products, Inc.	\$113.07
5	Flame-Resistant Cotton Jean Pants	Safety Products, Inc.	\$45.00
6	Flame-Resistant Cargo Pants	Safety Products, Inc.	\$41.50
7	Flame-Resistant Uniform Pants	Safety Products, Inc.	\$46.06

Funds are budgeted annually in Beaches Energy Services' Operating Supplies.

RECOMMENDATION:

Award Bid No. 1718-07 for Flame Resistant and Flame Retardant Clothing to Safety Products Inc. for a period of two years.



BEACHES ENERGY
SERVICES

TO: George D. Forbes
City Manager

FROM: Allen Putnam
Director of Beaches Energy Services

DATE: March 23, 2018

SUBJECT: City of Jacksonville Beach Property Lease

ACTION REQUESTED:

Approve a Commercial Lease Agreement with *Continental Heavy Civil Corporation* for property located at 20th Avenue North and 10th Street in Jacksonville Beach.

BACKGROUND:

The City owns property at 20th Avenue North 10th Street.

Continental Heavy Civil Corporation (proposed Tenant) is a heavy civil and marine contractor with offices in Miami, FL and Savannah, GA. The Tenant would like to lease this property (12,010 square feet) as a laydown area while they complete work related to the Florida Department of Transportation State Road A1A Drainage Project. Their scope of work includes the full replacement of Kings Road Bridge as well as dredging activities west of Penman Rd. and channel improvements along with bridge replacements east of Penman Rd. to 15th Ave. (4 bridges total). The project duration is estimated to be 700 calendar days.

The total monthly rent will be \$1,080.90.

Key provisions of this lease are as follows:

- The lease is for a period of one (1) year, with options to renew for one-year increments at the sole discretion of the City Manager.
- Use of the land is solely for storage of inventory and equipment.
- The land may not be used as a junk yard, and the Tenant may not do repairs to equipment on the Leased Premises.

- The initial lease rate will be \$1.08 per square foot for 12,010 square feet of land per annum. Total lease rate is \$12,970.80 per annum or \$1,080.90 per month.
- The lease rate will increase by 4% each year. The Tenant is also responsible for ad valorem and property taxes.
- The Tenant shall be responsible to maintain and keep the property in good condition and repair throughout the term of the lease.
- The Tenant shall maintain liability insurance and co-insure the City of Jacksonville Beach.
- The Tenant may not assign the lease or sublease the property without written consent of the City.

RECOMMENDATION:

Authorize the City Manager and Mayor to execute a lease with *Continental Heavy Civil Corporation* for property at the 20th Avenue North and 10th St. substation, as described in the memorandum from the Director of Beaches Energy Services dated March 23, 2018.



COMMERCIAL LEASE AGREEMENT

City of
Jacksonville Beach
1460A Shetter Avenue
Jacksonville Beach
FL 32250
Phone: 904.247.6226

www.jacksonvillebeach.org

This Lease is executed on this 2nd day of April, 2018, A.D. by and between the CITY OF JACKSONVILLE BEACH, a municipal corporation organized and existing under the laws of the State of Florida, whose mailing address is 11 North Third Street, Jacksonville Beach, Florida 32250 ("CITY"); and Continental Heavy Civil Corp, a Florida Corporation whose mailing address is 13131 SW 132nd Street, Suite #102, Miami, FL 33186 ("TENANT").

In consideration of the mutual covenants contained herein, CITY and TENANT agree as follows:

1. LEASED PROPERTY.

CITY hereby demises and leases to TENANT, and TENANT hereby hires, rents, and leases from CITY, real property located at the vacant Beaches Energy Services (BES) substation property, located at 0 N 20TH AVE 1, Jacksonville Beach, Florida 32250, Duval County. The leased property consists of 12,010 square feet land and is more particularly described in Attachment A to this Lease.

2. TERM.

(a) Initial Term: The initial term of this Lease shall be one (1) year, commencing on April 2, 2018 and terminating on April 1, 2019. The lease is renewable for additional one-year terms upon the sole discretion of the City Manager.



3. RENT; RENT ADJUSTMENT.

Subject to the adjustment, escalation, and other provisions of this Lease and Attachment B of this Lease, TENANT shall pay to CITY, in lawful money of the United States, a total rent, during the first year of this Lease, of \$12,970.80 per year plus all applicable federal, state and local taxes, fees, and assessments accruing during the term of this Lease. The initial monthly rent shall start at \$1,080.90 plus any such taxes, fees, or assessments billed for that month. This rental rate is based on 12,010 square feet of land at a beginning rate of \$1.08 per square foot per year. Rent shall be due on the first day of each month. Failure to pay the monthly rent in full by the tenth day of each month shall result in the assessment of a late charge of five percent (5%) of the amount then owing or \$50.00, whichever is greater.

4. STANDARD PROVISIONS.

The standard lease provisions for BES Substation Property Tenants set forth in Attachment B to this Lease and entitled "Standard Lease Provisions," are incorporated into and made a part of this Lease.

5. SPECIAL PROVISIONS.

To the extent that any of the following Special Provisions is in conflict with any other provision of this Lease, the Special Provision shall govern.

(a) Ad valorem and non-ad valorem taxes shall be paid to the City of Jacksonville Beach on an annual basis pursuant to paragraph 17(b) of the Standard Lease Provisions for BES Substation Property Park Tenants set forth in Attachment B to this Lease.

(b) The leased property can only be used for the purposes(s) described in Attachment B and for no other use without the written consent of the CITY.

6. INTEGRATION; AMENDMENTS.

(a) This written Lease Agreement and Attachments A and B contain the entire Agreement of the undertakings by and between the parties hereto relative to the leasing of the premises. No prior or present agreements, representations, statements, or promises, whether oral or written, made by any party or agent of any party hereto which is not contained herein shall be binding or valid.

(b) No provision of this written Lease or Attachments A and B may be amended, extended or modified except by written instrument executed by all

parties to this Lease.

IN WITNESS WHEREOF, we the CITY and TENANT have hereunto affixed our hands and seals.

CITY – CITY OF JACKSONVILLE BEACH

ATTEST:

CITY:

Sign: _____ Sign: _____

Print: _____ Print: _____

Title: City Clerk

Title: Mayor

Sign: _____

Print: _____

Title: City Manager

STATE OF FLORIDA
COUNTY OF DUVAL

TENANT – CONTINENTAL HEAVY CIVIL CORP

ATTEST:

TENANT:

Sign:  _____ Sign:  _____

Print: MARC ZANDORI

Print: David Trullo

Title: VP

Title: President

Acknowledgement: It is known that the site of this land being leased is adjacent to a Municipal Golf Course and Pollution Control Plant. The TENANT agrees to hold the

CITY harmless for any damages arising from stray golf balls and Pollution Control Plant odors which occur on the leased premises.

CONTINENTAL HEAVY CIVIL CORP



[AFFIX CORPORATE SEAL HERE]

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this day of MARCH 23, 2018, by DAVID JUELLE, as and as, PRESIDENT on behalf of the corporation. They are personally known to me or produced _____ as identification and did/did not take an oath.



Colleen Bello
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF987923
Expires 6/1/2020

NOTARY PUBLIC:

Sign: CBello
Print: COLLEEN BELLO
State of Florida at Large [SEAL]
My Commission Expires: 06/01/2020



Home (default.aspx)

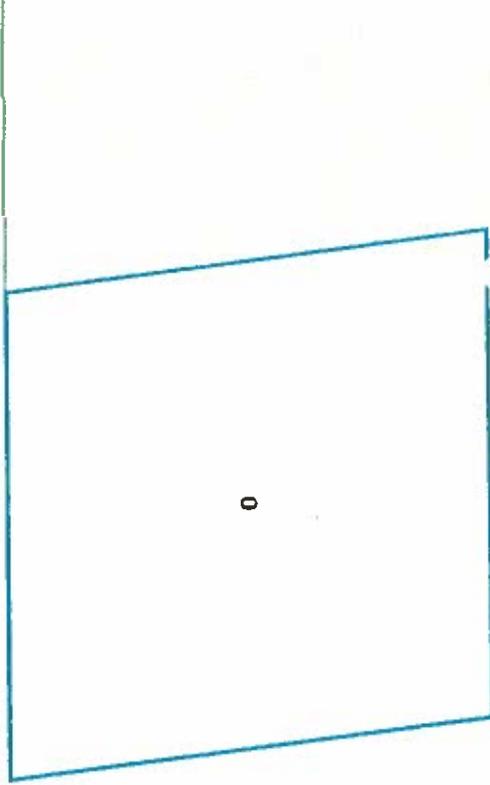
Layers Tools Basemaps

20TH AVE N

JACKSONVILLE



20TH ST N



Parcels

Real 174779 0900
 Estate ([#: RE=1747790900](https://paopropertysearch.coj.net/Bz))
 Owner: CITY OF JACKSONVILLE BEACH
 Address: 0 20TH AVE N
 City: JACKSONVILLE BEACH
 Zip 32250
 Code:
 Acres: 0.28

View more Parcel Details



Zoom to



City of

Jacksonville Beach

1460A Shetter Avenue

Jacksonville Beach

FL 32250

Phone: 904.247.6226

www.jacksonvillebeach.org

ATTACHMENT B

STANDARD LEASE PROVISIONS FOR BES SUBSTATION PROPERTY TENANTS



ATTACHMENT B

STANDARD LEASE PROVISIONS FOR BES SUBSTATION PROPERTY TENANTS

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ATTACHMENT B

STANDARD LEASE PROVISIONS FOR BES SUBSTATION PROPERTY TENANTS

1. **RENTAL ADJUSTMENT:**

(a) Annual rental adjustment: Beginning on April 2nd 2018, and annually on each April 2nd thereafter, including any option for renewal exercised under the Lease, the rent shall be increased by 4%.

2. **ASSIGNMENT:**

TENANT shall not, either directly or indirectly by any means, assign, sublease or transfer the Lease or any interest therein, or any portion of the Leased Premises, including any improvements thereon, without the express written consent of the CITY. In no event shall the granting of consent to one or more assignments, subleases or transfers constitute a waiver of CITY's right to refuse consent as to subsequent assignments, subleases or transfers. Stock transfers or asset transfers which change the management or policy making individuals of the corporation shall be considered an "indirect transfer" of the Lease, requiring the express written consent of the CITY.

3. **ALTERATIONS:**

TENANT shall not make any alterations, changes, additions or improvements to the Leased Premises without the express written consent of the CITY. If, because of any act or omission of the TENANT, his successors or assigns, any mechanics, material men, laborers or other liens or other order for payment of money shall be filed against the Leased Premises, or any part thereof, or against the CITY, then the TENANT shall, at TENANT's own cost and expense, cause the same to be canceled and discharged of record, and further shall indemnify and hold harmless the CITY from and against any and all costs, expenses, claims, losses or damages, including reasonable attorney's fees, resulting therefrom or by reason thereof.

4. **CITY'S LIABILITY LIMITATION:**

(a) TENANT represents that TENANT has inspected the Leased Premises, any improvements located thereon, and the roadways and any other means of ingress and egress from the Leased Premises. TENANT accepts the condition of the Leased Premises and fully assumes all risks incidental to the use of the roadways, and the Leased Premises. CITY shall not be liable to TENANT's agents, employees, visitors, guests or invites from any cause or condition whatsoever. CITY makes no warranty of the suitability of the Leased Premises for the use contemplated herein.

(b) CITY shall not be liable to TENANT for any claim for compensation or any losses, damages or injuries sustained by TENANT resulting from failure of any water supply, heat or electrical current, whether on the surface or underground, including stability, moving, shifting, settlement or displacement of materials by fire, water, windstorm, tornado, act or state of war, civilian commotion or riot, or any other cause beyond the control of the CITY.

5. INDEMNIFICATION:

TENANT agrees to indemnify and hold harmless CITY of and from, any and all actions, claims, losses, and litigation including all costs and attorney's fees, arising out of or connected with TENANT's occupancy or use of the Leased Premises, except with respect to any conditions which are in CITY's sole control, or which are caused by CITY's negligent or willful acts. TENANT further agrees to hold CITY harmless for the loss of, or damage or destruction to, any property stored within the Leased Premises. Unless explicitly provided herein, no provision of this Attachment B or any other Lease provision shall abridge, restrict or otherwise modify TENANT's obligation to indemnify and hold harmless CITY as provided herein.

6. INSURANCE:

(a) The TENANT shall procure, maintain and pay for a Commercial General Liability insurance policy providing coverage which protects the CITY and TENANT, from claims arising from bodily injury, property damage, operations, premises and fire legal liability. This insurance policy shall have a combined single limit of not less than \$1,000,000.00. CITY shall be named as an "additional insured" under said policy. TENANT shall insure that the CITY is provided a minimum of thirty (30) days' notice of any policy change or amendment, including cancellation. TENANT's insurance, including that applicable to the CITY as an additional insured, shall apply on a primary basis and any other insurance maintained by the CITY shall be in excess of and shall not contribute with TENANT's insurance.

(b) TENANT shall provide, maintain and pay for a property insurance policy providing coverage for the demised premises of which any buildings are a part, including any improvements and betterments which may be insurable as part of the realty. Said property insurance shall cover the improvements and betterments from loss due to fire, windstorm, and any other peril included in the broadest available standard form of extended coverage. Coverage shall be in an amount sufficient to meet the co-insurance requirements of the policies, but not less than the full insurable value thereof. Deductibles for all perils shall not be greater than \$1,000.00. The policy shall be endorsed to make any loss payments payable jointly to the CITY and TENANT for losses covered under such policies. TENANT shall have the right to use the proceeds of any such policy in the event of loss to repair or replace the damaged or destroyed buildings, improvements, betterments and equipment; otherwise, the entire proceeds of such policy shall become payable to the CITY.

(c) TENANT shall provide the CITY with certificates of insurance stating that the required coverages are in force within ten (10) days after execution of the Lease, and annually thereafter. TENANT shall supply proof of insurance subject to all requirements of this Section to the CITY for any CITY-approved subleases at the inception of the sublease and annually thereafter as long as the sublease remains in effect.

(d) Recognizing the extended term of this contract, TENANT agrees that the CITY shall have the right to periodically review the adequacy of the required insurance and amend the insurance requirements of this section. Factors which may be considered include but are not limited to changes in generally accepted insurance industry standards and practices, changes in TENANT's use of the premises, measurable changes in local and national economic indicators and changes in City policies and procedures.

7. USE OF LEASED PREMISES; RESTRICTIONS ON USE:

(a) TENANT agrees to observe and obey all laws, ordinances, rules and regulations promulgated and enforced by the CITY and by any other proper authority having jurisdiction over the conduct of operations on the premises. Further, TENANT agrees that TENANT shall not occupy or use or permit or suffer the Leased Premises or any part thereof, to be occupied or used for any unlawful or illegal business or purpose, nor in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any laws, rules, requirements, orders, ordinances, regulations of the United States of America, or of the State, County, or City government, or their administrative boards or agencies.

(b) TENANT may use the Leased Premises for uses permitted in the zoning district in which the property is located, and in conformance with a site plan and uses approved by the CITY and subject to applicable laws and ordinances.

(c) TENANT may ONLY use the Leased Premises for storage of construction project materials and equipment – 'Lay-down' area.

(d) TENANT may not use the Leased Premises to do repairs to equipment or inventory.

8. RESPONSIBILITY FOR AND MAINTENANCE OF LEASED PREMISES:

(a) TENANT covenants that the CITY shall have no responsibility for the maintenance of the Leased Premises, including any improvements thereon, and that TENANT shall, at TENANT's own expense, keep in good order and repair, inside and out:

(b) TENANT shall keep the Leased Premises clean, shall dispose of all debris and other waste matter which may accumulate, and shall provide metal containers, with proper covers, for waste within the building or buildings to be erected on said premises.

(c) TENANT shall maintain the ground, landscaping and parking areas in good condition.

9. REMEDIES

The CITY's remedies contained in this Lease are in addition to the rights of the CITY under Florida statutes governing nonresidential landlord-tenant relationships and to all other remedies available at law or in equity to the CITY.

(a) Remedies for Nonpayment of Rent or Additional Payments. The CITY has the same remedies for the TENANT's failure to pay rent as for the TENANT's failure to make any other payments required herein.

(b) Abandonment of Premises or Delinquency in Rent. If the TENANT abandons or vacates the Leased Premises before the end of the Lease term, or if the TENANT is in arrears in rent payments, the CITY may cancel this Lease. On cancellation, the CITY is entitled to enter the Leased Premises as the TENANT's agent, whether by force or other means, to re-lease the Leased Premises. The CITY will incur no liability for the entry. As the TENANT's agent, the CITY may re-lease the Leased

Premises with or without any furniture or personal property that may be in it, and the re-leasing may be made at such price, on such terms, and for such duration as the CITY determines and for which the CITY receives rent.

(c) **Dispossession on Default.** If the TENANT defaults in the performance of any covenant or condition of this Lease, including the TENANT's responsibility for maintenance more fully set forth under Paragraph 9, the CITY may give the TENANT written notice of that default. If the TENANT fails to cure a default in the payment of rent or additional rent within ten (10) days or fails to cure any other default within ten (10) days after written notice is given, the CITY may terminate this Lease. Termination of this Lease may occur only after the CITY gives not less than ten (10) days advance written notice to the TENANT. On the date specified in the notice, the term of this Lease will end, and the TENANT will quit the Leased Premises and surrender the Leased Premises to the CITY, except that the TENANT will remain liable as provided under this Lease. On termination of the Lease, the CITY may reenter the Leased Premises without notice and by force or otherwise to dispossess the TENANT, any legal representative of the TENANT, or any other occupant of the Leased Premises. The CITY may retake possession through summary proceedings or otherwise, and the CITY will then hold the Leased Premises as if this Lease had not been made. The TENANT waives TENANT's right to receive notice of the CITY's intention to reenter and/or institute legal proceedings for repossession of the Leased Premises.

(d) **Damages on Default.** If the CITY retakes possession the CITY has the following rights:

(1) The CITY is entitled to the rent and any additional amounts that are due and unpaid, and those payments will become due immediately, and will be paid up to the time of the reentry, dispossession, or expiration, plus any expenses that the CITY incurs for legal expenses, attorneys' fees, brokerage costs, returning the Leased Premises to good order, and preparing the Leased Premises for re-rental, plus interest on rent and additional rent then due at the maximum interest rate permitted by law.

(2) The CITY is entitled to re-lease all or any part of the Leased Premises in the CITY's name or otherwise, for any duration, on any terms, including but not limited to any provisions for concessions or free rent, or for any amount of rent that is higher than that in the subject Lease.

(e) **Bankruptcy or Insolvency.** If the TENANT becomes insolvent or if bankruptcy proceedings are begun by or against the TENANT before the end of the Lease term, the CITY may immediately cancel this Lease as if the TENANT had defaulted. Without affecting the CITY's rights under this Lease, the CITY may accept rent from a receiver, trustee, or other judicial officer who holds the property in a fiduciary capacity. No receiver, trustee, or other judicial officer is entitled to receive any right, title, or interest in or to the Leased Premises under this paragraph. For purposes herein, TENANT shall be considered "insolvent" if:

(1) TENANT shall file in any court, or there shall be filed by or against TENANT in any court pursuant to any statute, either of the United States or any state, an adjudication in bankruptcy or insolvency or for reorganization, or for the appointment of a Receiver of TENANT's property, or if TENANT shall dissolve or commence any action or proceeding for dissolution or liquidation;

(2) TENANT's property shall be taken by any governmental officer or agent pursuant to statutory authority for the dissolution or liquidation of TENANT;

(3) TENANT shall make an assignment for the benefit of creditors;
or

(4) TENANT shall be adjudicated bankrupt or a receiver or trustee shall be appointed for the liquidation or reorganization of TENANT.

10. TERMINATION:

At the expiration of this Lease or earlier termination hereof, TENANT shall peaceably and quietly leave, surrender and deliver to CITY the Leased Premises broom-clean, together with any building and improvements, including all alterations, changes, or additions which may have been made upon the Leased Premises, except any unfixed personal property put in at the expense of TENANT, in thorough repair and good order and safe condition. TENANT shall remove all of TENANT's unfixed personal property from the Leased Premises upon termination. If TENANT fails to remove TENANT's unfixed personal property within fifteen (15) days after the CITY's written notice to TENANT, such property shall be deemed to have been abandoned. The CITY may appropriate, sell, store, destroy or otherwise dispose of any abandoned property without notice to TENANT and without obligation to account therefor.

11. HOLDOVER TENANCY:

If the TENANT remains in possession of the Leased Premises after the Lease expires or terminates for any reason:

(a) TENANT will be deemed to be occupying the Leased Premises as a TENANT from month-to-month at the sufferance of the CITY. The TENANT will be subject to all of the provisions of this Lease, except that, at the CITY's discretion, the base rent will be at a monthly rate equal to twice the amount of a single monthly installment of fixed rent at the rate in effect for the last month of the term of this Lease;

(b) TENANT shall reimburse the CITY for any additional damages which the CITY suffers by reason of TENANT's continued occupancy; and

(c) TENANT shall indemnify the CITY from and against all claims made by any succeeding tenant insofar as such delay is occasioned by TENANT's failure to surrender the Leased Premises.

12. ENVIRONMENTAL PROVISIONS:

(a) The TENANT shall be solely responsible for all such costs and expenses which arise out of environmental contamination for which the CITY may be held liable caused by the TENANT, the TENANT's agents, employees, contractors, or invites during any prior or current tenancy or occupancy of the Leased Premises or any portion thereof.

(b) The parties' responsibilities, obligations, and liabilities pursuant to this Lease shall survive the expiration or early termination of this Lease.

(c) Nothing in this Lease shall be deemed to be a waiver of the CITY's right to take action against responsible parties for remediation of or payment for environmental contamination on the Leased Premises, nor be deemed to be an assumption by the CITY of the responsibility for such remediation or payment, except as may be imposed on the

CITY as a matter of law.

(d) The TENANT acknowledges that remediation steps taken to correct any environmental contamination may extend over a number of years and may cause inconvenience and business interruption to the TENANT. The CITY shall not be liable to the TENANT in any manner for such inconvenience and disruption.

(e) Except as properly permitted under federal, state and local laws and rules and regulations, TENANT shall not conduct nor permit or authorize to any other person, the generation, storage, treatment, or disposal of any hazardous materials (as defined under federal, state, and local environmental laws), on or in any location that might adversely affect or contaminate the Leased Premises. This paragraph shall not apply to properly permitted storage, if any, allowed under the terms of this Lease.

(f) The TENANT shall store, utilize and dispose of all industrial, domestic, hazardous, and solid wastes permitted under the terms of this Lease in accordance with applicable federal, state, and local laws, rules, and regulations.

(g) TENANT shall promptly provide the CITY written notice of any spill or release of hazardous materials at or from the Leased Premises

(h) TENANT shall not install or utilize any irrigation wells on the Leased Premises without the written permission of the CITY.

(i) In the event that any environmental condition or any hazardous materials prohibited by or actionable under applicable law should now or hereafter arise from, contaminate, or be located on the Leased Premises (regardless of the source of such condition or materials), TENANT hereby agrees, at its expense, to forthwith (1) remove said materials from the Leased Premises; (2) comply with any and all orders or directives of any federal, state, city or local agency or department relative thereof; and (3) return the Leased Premises to proper condition without any diminution in the value thereof.

(j) Failure of TENANT to comply with the obligations of this section shall constitute a default under the Lease.

13. NOTICES:

(a) The CITY hereby designates the City Manager or his/her designee as its official representative with the full power to represent the CITY in all dealings with TENANT in connection with the Leased Premises. CITY may designate by notice in writing, addressed to TENANT, other representatives from time to time and such notice shall have the same effect as if included in the terms of the Lease.

(b) Notice to the CITY as herein provided shall be sufficient if sent by registered mail, postage paid, to the Property and Procurement Division, City of Jacksonville Beach, 1460A Shetter Avenue, Jacksonville Beach, Florida 32250, and notice to TENANT in the same manner shall likewise be sufficient if addressed to TENANT at the address of the Leased Premises or such other addresses as may be designated by the CITY or TENANT in writing from time to time.

14. REAL ESTATE COMMISSION:

The CITY and TENANT each covenant and warrant to the other that they have not authorized any person, firm, or corporation as a real estate agent or broker to deal on

behalf of such party with respect to the Lease. TENANT agrees to indemnify and hold harmless CITY from any claim for remuneration, commissions or broker's fees arising out of this transaction and Lease.

15. ENTRY OF LANDLORD:

The CITY may enter the Leased Premises for the following purposes:

- (a) To inspect or protect the Leased Premises;
- (b) To determine whether TENANT is complying with the applicable laws, orders or regulations of any lawful authority having jurisdiction over the Leased Premises or any business conducted therein; or
- (c) To exhibit the Leased Premises to any prospective tenant when TENANT is in default of the Lease or has notified the CITY of intention to terminate the Lease or during the last six (6) months of the term of the Lease. No authorized entry by CITY shall constitute an eviction of TENANT or deprivation of TENANT's rights under the Lease; nor shall such entry alter CITY'S obligations hereunder or create any right in CITY adverse to TENANT's interest hereunder.

16. CONSTRUCTION:

The Lease shall be governed by and construed in accordance with the laws of, or applicable to, the State of Florida.

17. MISCELLANEOUS PROVISIONS:

(a) TENANT agrees that no signs or advertising matter may be erected on the Leased Premises without the consent of the City Manager or his/her designee and the issuance of a sign permit by the City of Jacksonville Beach Planning & Development Department.

(b) TENANT shall pay all legal taxes of any nature, including but not limited to, ad valorem and non-ad valorem taxes, impact fees, and assessments against the Leased Premises and the buildings placed on the premises by the TENANT accruing during the term of this Agreement or any renewal thereof. All ad valorem and non-ad valorem taxes shall be paid to the City of Jacksonville Beach on an annual basis.

(c) TENANT expressly agrees for TENANT and TENANT's successors and assigns, that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; that the TENANT and TENANT's successors and assigns shall use the premises in compliance with all other requirements imposed by City, State or Federal laws; That in the event of breach of any of the above mentioned nondiscrimination laws, the CITY shall have the right to terminate the Lease and to reenter and as if said Lease had never been made or issued.

(d) TENANT shall be responsible for furnishing and paying for all utility services used by TENANT. TENANT agrees that all utility services or other energy management services shall be purchased from the City of Jacksonville Beach.

City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6231

Fax: 904.247.6107

Planning@jaxbchfl.net

www.jacksonvillebeach.org

MEMORANDUM

To: George D. Forbes, City Manager

From: Heather Ireland, Senior Planner 

Re: *Almonaster*, Replat of Parts of Lots 4, 5, and all of Lot 10, Block 8, Atlantic Shores Unit No. 1 Replat, – Final Plat Approval. (2650, 2652, 2654, and 2656 *Almonaster Street*)

Date: March 22, 2018

ACTION REQUESTED:

Approve the attached Final Plat for Replat of Parts of Lots 4, 5, and all of Lot 10, Block 8, Atlantic Shores Unit No. 1 Replat, supporting a four-unit townhouse residential subdivision (*2650, 2652, 2654, and 2656 Almonaster Street*)

BACKGROUND:

The applicant has applied to subdivide property that he is currently developing as four fee-simple townhouses on the west side of *Almonaster Street*, north of *St. Augustine Boulevard*. He was advised by staff that he would need to get a final subdivision plat approved by City Council and recorded with the Clerk of County Courts, prior to selling the individual units.

The subject property is located in a *Residential, multiple-family: RM-1* zoning district located, on the west side of *Almonaster Street*, north of *St. Augustine Boulevard*. Each of the four townhouse lots shown on the attached plat exceeds the minimum lot size requirements for *RM-1* townhouses. The project received Concept Plat approval from the Planning Commission in 2017. The applicant received variances for the minimum lot widths at the street and for the provision of a common driveway from the street, due to the bottleneck shape of the property. The property lies immediately south of the *Osceola Professional Center*, and backs up to another four unit townhouse project on *Isabella Boulevard* that the developer also built.

The attached Final Plat document has been approved by all reviewing City Departments, and is consistent with relevant Land Development Code and Comprehensive Plan regulations.



RECOMMENDATION:

Approve the Final Plat for the *Almonaster* subdivision, a Replat of Parts of Lots 4, 5, and all of Lot 10, Block 8, Atlantic Shores Unit No. 1.

City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6231

Fax: 904.247.6107

MEMORANDUM

To: George D. Forbes, City Manager

From: Heather Ireland, Senior Planner 

Re: **Ordinance No. 2018-8107**, amending Section 34-467 - *Flood Hazard Area* of the City's Land Development Code, to revise cross references within Section 34-467 – *Flood Hazard Area*, and to update references therein to the Florida Building Code.

Date: March 22, 2018

ACTION REQUESTED:

Adopt Ordinance No. 2018-8107, amending Section 34-467 - *Flood Hazard Area* of the City's Land Development Code, to revise cross references within Section 34-467 – *Flood Hazard Area*, and to update references therein to the Florida Building Code.

BACKGROUND:

In 2013, the City of Jacksonville Beach adopted the current Flood Hazard Area section of the Land Development Code (LDC), repealing and replacing the previous Section 34-467 – *Flood Hazard Area* with new regulations that were consistent with the 2010 Florida Building Code. The 2013 update incorporated the State's "model" language into the Land Development Code and included a cross reference table. The update also referenced the city's 2013 Flood Insurance Rate Maps (FIRM) that were also updated at that time.

The current Flood Hazard Area section of the Land Development Code contains several internal cross references to sub-sections within Section 34-467-*Flood Hazard Areas*. These cross references used the State's model ordinance numbering system as opposed to the City's numbering system. A cross reference table was provided as part of Ordinance No. 2013-8025. The State has now requested that the City provide internal cross references and eliminate the accompanying cross reference table to avoid confusion. As provided with the application, changes are shown in the underline addition / ~~strike-through~~ deletion format.



These updates do not change the content of Section 34-467 - *Flood Hazard Area*. The new 2016 Flood Insurance Rate Maps (FIRM) will be adopted this year, and Section 34-367 has previously been worded to automatically adopt any map changes after 2013.

RECOMMENDATION:

Adopt Ordinance No. 2018-8107, amending Section 34-467, *Flood Hazard Area* of the City's Land Development Code, to revise cross references with Section 34-467 – *Flood Hazard Area*, and to update references therein to the Florida Building Code.

Introduced by: _____
1st Reading: _____
2nd Reading: _____

ORDINANCE NO. 2018-8107

AN ORDINANCE TO AMEND AN ORDINANCE ENACTING AND ESTABLISHING A COMPREHENSIVE LAND DEVELOPMENT REGULATION AND OFFICIAL ZONING MAP FOR THE INCORPORATED AREA OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AS AUTHORIZED BY CHAPTER 163.3202, FLORIDA STATUTES, BY AMENDING ARTICLE VIII, DIVISION 5, SECTION 34-467. FLOOD HAZARD AREAS TO REVISE CROSS REFERENCES WITHIN SECTION 34-467, TO UPDATE REFERENCES TO THE FLORIDA BUILDING CODE, AND PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the City of Jacksonville Beach has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida; Chapters 163 & 166, Florida Statutes; and Section 381.986, Florida Statutes; and

WHEREAS, the City of Jacksonville Beach has adopted a Flood Hazard Ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions; and

WHEREAS, the City of Jacksonville Beach adopted its current Flood Hazard Ordinance to reflect 2013 Florida Building Code changes, via Ordinance No. 2013-8025; and

WHEREAS, the City of Jacksonville Beach desires to continue to participate in the National Flood Insurance Program and meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, the State of Florida has recommended that the City of Jacksonville Beach revise cross reference within its Section 34-467- *Flood hazard area* of the Land Development Code; and

WHEREAS, the Jacksonville Beach Planning Commission, after notice and public hearing, has considered the ordinance and has presented its recommendation to the City Council;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF JACKSONVILLE BEACH, FLORIDA:

SECTION 1. That Article VIII, Division 5, Section 34-467 *Flood hazard area* of the Land Development Code is hereby repealed in its entirety and replaced with a new Section 34-467 which shall read as follows¹:

**ARTICLE VIII SITE DEVELOPMENT STANDARDS
DIVISION 5. ENVIRONMENTAL STANDARDS**

Sec. 34-467. - Flood hazard area.

(a) Administration.

(1) *General.*

- a. *Title.* These regulations shall be known as the Floodplain Management Ordinance of the City of Jacksonville Beach, Florida, hereinafter referred to as "this ordinance."
- b. *Scope.* The provisions of this ordinance shall apply to all development that is wholly within or partially within any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the Florida Building Code; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.
- c. *Intent.* The purposes of this ordinance and the flood load and flood resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:
 1. Minimize unnecessary disruption of commerce, access and public service during times of flooding;
 2. Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
 3. Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
 4. Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
 5. Minimize damage to public and private facilities and utilities;
 6. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;

¹ (~~strikethrough~~ text indicates deletions, underline text indicates additions).

7. Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
 8. Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.
- d. *Coordination with the Florida Building Code.* This ordinance is intended to be administered and enforced in conjunction with the Florida Building Code. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.
 - e. *Warning.* The degree of flood protection required by this ordinance and the Florida Building Code, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this ordinance.
 - f. *Disclaimer of liability.* This ordinance shall not create liability on the part of the City Council of the City of Jacksonville Beach or by any officer or employee thereof for any flood damage that results from reliance on this ordinance or any administrative decision lawfully made thereunder.
- (2) *Applicability.*
- a. *General.* Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.
 - b. *Areas to which this ordinance applies.* This ordinance shall apply to all flood hazard areas within the City of Jacksonville Beach, as established in Section ~~102.3~~ **34-467(a)(2)c** of this ordinance.
 - c. *Basis for establishing flood hazard areas.* The Flood Insurance Study for Duval County, Florida and Incorporated Areas dated June 3, 2013, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at City Hall in the Planning and Development Department, 11 N. 3rd Street.
 - d. *Submission of additional data to establish flood hazard areas.* To establish flood hazard areas and base flood elevations, pursuant to Section ~~105~~ **34-467(a)(5)** of this

ordinance the floodplain administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:

1. Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of this ordinance and, as applicable, the requirements of the Florida Building Code.
 2. Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.
- e. *Other laws.* The provisions of this ordinance shall not be deemed to nullify any provisions of local, state or federal law.
- f. *Abrogation and greater restrictions.* This ordinance supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including but not limited to land development regulations, zoning ordinances, stormwater management regulations, or the Florida Building Code. In the event of a conflict between this ordinance and any other ordinance, the more restrictive shall govern. This ordinance shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this ordinance.
- g. *Interpretation.* In the interpretation and application of this section, all provisions shall be:
1. Considered as minimum requirements;
 2. Liberally construed in favor of the governing body; and
 3. Deemed neither to limit nor repeal any other powers granted under state statutes.
- (3) *Duties and powers of the flood plain administrator.*
- a. *Designation.* The planning and development director is designated as the floodplain administrator. The floodplain administrator may delegate performance of certain duties to other employees.
- b. *General.* The floodplain administrator is authorized and directed to administer and enforce the provisions of this ordinance. The floodplain administrator shall have the authority to render interpretations of this ordinance consistent with the intent and purpose of this ordinance and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this ordinance without the granting of a variance pursuant to Section 107 34-467(a)(7) of this ordinance.
- c. *Applications and permits.* The floodplain administrator, in coordination with other pertinent offices of the community, shall:

1. Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
 2. Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this ordinance;
 3. Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;
 4. Provide available flood elevation and flood hazard information;
 5. Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;
 6. Review applications to determine whether proposed development will be reasonably safe from flooding;
 7. Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code, when compliance with this ordinance is demonstrated, or disapprove the same in the event of noncompliance; and
 8. Coordinate with and provide comments to the building official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this ordinance.
- d. *Substantial improvement and substantial damage determinations.* For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the floodplain administrator, in coordination with the building official, shall:
1. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
 2. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
 3. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
 4. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the Florida Building Code and this ordinance is required.

- e. *Modifications of the strict application of the requirements of the Florida Building Code.* The floodplain administrator shall review requests submitted to the building official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the Florida Building Code to determine whether such requests require the granting of a variance pursuant to Section ~~107~~ **34-467(a)(7)** of this ordinance.
- f. *Notices and orders.* The floodplain administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this ordinance.
- g. *Inspections.* The floodplain administrator shall make the required inspections as specified in Section ~~106~~ **34-367(a)(6)** of this ordinance for development that is not subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. The floodplain administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.
- h. *Other duties of the floodplain administrator.* The floodplain administrator shall have other duties, including but not limited to:
 1. Establish, in coordination with the building official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section ~~103.4~~ **34-367(a)(3)d** of this ordinance;
 2. Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);
 3. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within six (6) months of such data becoming available;
 4. Review required design certifications and documentation of elevations specified by this ordinance and the Florida Building Code and this ordinance to determine that such certifications and documentations are complete;
 5. Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Jacksonville Beach are modified; and
 6. Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this

limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."

- i. *Floodplain management records.* Regardless of any limitation on the period required for retention of public records, the floodplain administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this ordinance and the flood resistant construction requirements of the Florida Building Code, including Flood Insurance Rate Maps; Letters of Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the Florida Building Code and this ordinance; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance and the flood resistant construction requirements of the Florida Building Code. These records shall be available for public inspection at the offices of the Planning and Development Department, 11 North 3rd Street.

(4) *Permits.*

- a. *Permits required.* Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this ordinance, including buildings, structures and facilities exempt from the Florida Building Code, which is wholly within or partially within any flood hazard area shall first make application to the floodplain administrator, and the building official if applicable, and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until compliance with the requirements of this ordinance and all other applicable codes and regulations has been satisfied.
- b. *Floodplain development permits or approvals.* Floodplain development permits or approvals shall be issued pursuant to this ordinance for any development activities not subject to the requirements of the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. Depending on the nature and extent of proposed development that includes a building or structure, the floodplain administrator may determine that a floodplain development permit or approval is required in addition to a building permit.
- c. *Buildings, structures, and facilities exempt from the Florida Building Code.* Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals shall be required for the following buildings, structures and facilities that are exempt from the Florida Building Code and any further exemptions provided by law, which are subject to the requirements of this ordinance:
 1. Railroads and ancillary facilities associated with the railroad.
 2. Nonresidential farm buildings on farms, as provided in section 604.50, F.S.
 3. Temporary buildings or sheds used exclusively for construction purposes.

4. Mobile or modular structures used as temporary offices.
 5. Those structures or facilities of electric utilities, as defined in section 366.02, F.S., which are directly involved in the generation, transmission, or distribution of electricity.
 6. Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
 7. Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
 8. Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.
 9. Structures identified in section 553.73(10)(k), F.S., are not exempt from the Florida Building Code if such structures are located in flood hazard areas established on Flood Insurance Rate Maps.
- d. *Application for a permit or approval.* To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the community. The information provided shall:
1. Identify and describe the development to be covered by the permit or approval.
 2. Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
 3. Indicate the use and occupancy for which the proposed development is intended.
 4. Be accompanied by a site plan or construction documents as specified in Section ~~105~~ 34-467(a)(5) of this ordinance.
 5. State the valuation of the proposed work.
 6. Be signed by the applicant or the applicant's authorized agent.
 7. Give such other data and information as required by the floodplain administrator.
- e. *Validity of permit or approval.* The issuance of a floodplain development permit or approval pursuant to this ordinance shall not be construed to be a permit for, or approval of, any violation of this ordinance, the Florida Building Codes, or any other ordinance of this community. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the floodplain administrator from requiring the correction of errors and omissions.
- f. *Expiration.* A floodplain development permit or approval shall become invalid unless the work authorized by such permit is commenced within one hundred eighty (180)

days after its issuance, or if the work authorized is suspended or abandoned for a period of one hundred eighty (180) days after the work commences. Extensions for periods of not more than one hundred eighty (180) days each shall be requested in writing and justifiable cause shall be demonstrated.

- g. *Suspension or revocation.* The floodplain administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this ordinance or any other ordinance, regulation or requirement of this community.
- h. *Other permits required.* Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:
 - 1. The St. Johns River Water Management District; section 373.036, F.S.
 - 2. Florida Department of Health for onsite sewage treatment and disposal systems; section 381.0065, F.S. and Chapter 64E-6, F.A.C.
 - 3. Florida Department of Environmental Protection for construction, reconstruction, changes, or physical activities for shore protection or other activities seaward of the coastal construction control line; section 161.141, F.S.
 - 4. Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; section 161.055, F.S.
 - 5. Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
 - 6. Federal permits and approvals.

(5) *Site plans and construction documents.*

- a. *Information for development in flood hazard areas.* The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:
 - 1. Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.
 - 2. Where base flood elevations, or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with Section ~~105.2~~ 34-467(a)(5)b.2 or 34.467(a)(5)b.3 of this ordinance.
 - 3. Where the parcel on which the proposed development will take place will have more than fifty (50) lots or is larger than five (5) acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with Section ~~105.2(2)~~ 34-467(a)(5)b.1 of this ordinance.

4. Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide.
5. Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
6. Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
7. Delineation of the Coastal Construction Control Line or notation that the site is seaward of the coastal construction control line, if applicable.
8. Extent of any proposed alteration of sand dunes or mangrove stands provided such alteration is approved by the Florida Department of Environmental Protection.
9. Existing and proposed alignment of any proposed alteration of a watercourse.

The floodplain administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this ordinance but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this ordinance.

- b. *Information in flood hazard areas without base flood elevations (approximate Zone A).* Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the floodplain administrator shall:
 1. Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices.
 2. Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.
 3. Where base flood elevation data and floodway data are not available from another source, where the available data are deemed by the floodplain administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:
 - (a) Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices; or
 - (b) Specify that the base flood elevation is **two-three (23)** feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than **two-three (23)** feet.

4. Where the base flood elevation data are to be used to support a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a Florida licensed engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.
- c. *Additional analyses and certifications.* As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:
1. For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in Section 105.4 34-467(a)(5)d of this ordinance and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.
 2. For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
 3. For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in Section 105.4 34-467(a)(5)d of this ordinance.
 4. For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V), an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage.
- d. *Submission of additional data.* When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

(6) *Inspections.*

- a. *General.* Development for which a floodplain development permit or approval is required shall be subject to inspection.
- b. *Development other than buildings and structures.* The floodplain administrator shall inspect all development to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.
- c. *Buildings, structures, and facilities exempt from the Florida Building Code.* The floodplain administrator shall inspect buildings, structures and facilities exempt from the Florida Building Code to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.
- d. *Building, structures, and facilities exempt from the Florida Building Code, lowest floor inspection.* Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the Florida Building Code. or the owner's authorized agent, shall submit to the floodplain administrator:
 1. If a design flood elevation was used to determine the required elevation of the lowest floor, the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor; or
 2. If the elevation used to determine the required elevation of the lowest floor was determined in accordance with Section ~~105.2(3)(b)~~ 34-467(a)(5)b.3.(b) of this ordinance, the documentation of height of the lowest floor above highest adjacent grade, prepared by the owner or the owner's authorized agent.
- e. *Buildings, structures, and facilities exempt from the Florida Building Code, final inspection.* As part of the final inspection, the owner or owner's authorized agent shall submit to the floodplain administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations shall be prepared as specified in Section ~~106.1.2.1~~ 34-467(a)(6)d of this ordinance.
- f. *Manufactured homes.* The building official shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this ordinance and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted to the Building Inspection Division.

(7) *Variances and appeals.*

- a. *General.* The Jacksonville Beach Board of Adjustment shall hear and decide on requests for appeals and requests for variances from the strict application of this ordinance. Pursuant to section 553.73(5), F.S., the Jacksonville Beach Board of Adjustment shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code. This section does not apply to Section 3109 of the Florida Building Code, Building.

- b. *Appeals.* The Jacksonville Beach Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision of the Jacksonville Beach Board of Adjustment may appeal such decision to the Circuit Court of Duval County, as provided by Florida Statutes.
- c. *Limitations on authority to grant variances.* The Jacksonville Beach Board of Adjustment shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 107.6 34-467(a)(7)g of this ordinance, the conditions of issuance set forth in Section 107.7 34-467(a)(7)h of this ordinance, and the comments and recommendations of the floodplain administrator and the building official. The Jacksonville Beach Board of Adjustment has the right to attach such conditions as it deems necessary to further the purposes and objectives of this ordinance.
- d. *Restrictions in floodways.* A variance shall not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in Section 105.3 34-367(a)(5)c of this ordinance.
- e. *Historic buildings.* A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter 11 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.
- f. *Functionally dependent uses.* A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this ordinance, provided the variance meets the requirements of Section 107.3.1, 34-467(a)(7)d is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.
- g. *Considerations for issuance of variances.* In reviewing requests for variances, the Jacksonville Beach Board of Adjustment shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this ordinance, and the following:
1. The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
 2. The danger to life and property due to flooding or erosion damage;

3. The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
 4. The importance of the services provided by the proposed development to the community;
 5. The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
 6. The compatibility of the proposed development with existing and anticipated development;
 7. The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
 8. The safety of access to the property in times of flooding for ordinary and emergency vehicles;
 9. The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 10. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.
- h. *Conditions for issuance of variances.* Variances shall be issued only upon:
1. Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this ordinance or the required elevation standards;
 2. Determination by the Jacksonville Beach Board of Adjustment that:
 - (a) Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
 - (b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
 - (c) The variance is the minimum necessary, considering the flood hazard, to afford relief;
 3. Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the office of the clerk of the court in such a manner that it appears in the chain of title of the affected parcel of land; and
 4. If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the floodplain administrator to the

applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

(8) *Violations.*

- a. *Violations.* Any development that is not within the scope of the Florida Building Code but that is regulated by this ordinance that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this ordinance, shall be deemed a violation of this ordinance. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this ordinance or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.
- b. *Authority.* For development that is not within the scope of the Florida Building Code but that is regulated by this ordinance and that is determined to be a violation, the floodplain administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.
- c. *Unlawful continuance.* Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law.

(9) *Definitions.*

- a. *General.*
 1. *Scope.* Unless otherwise expressly stated, the following words and terms shall, for the purposes of this section, have the meanings shown in this section.
 2. *Terms defined in the Florida Building Code.* Where terms are not defined in this ordinance and are defined in the Florida Building Code, such terms shall have the meanings ascribed to them in that code.
 3. *Terms not defined.* Where terms are not defined in this ordinance or the Florida Building Code, such terms shall have ordinarily accepted meanings such as the context implies.

b. *Definitions.*

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the floodplain administrator's interpretation of any provision of this ordinance or a request for a variance.

ASCE 24. A standard titled Flood Resistant Design and Construction that is referenced by the Florida Building Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a 1-percent chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 1612.2.] The base flood is commonly referred to as the "100-year flood" or the "1-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section 1612.2.]

Basement. The portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in FBC, B, Section 1612.2.]

Coastal construction control line. The line established by the State of Florida pursuant to section 161.053, F.S., and recorded in the official records of the community, which defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves or other predictable weather conditions.

Coastal high hazard area. A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal high hazard areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone VI-V30, VE, or V. [Note: The FBC, B defines and uses the term "flood hazard areas subject to high velocity wave action" and the FBC, R uses the term "coastal high hazard areas."]

Design flood. The flood associated with the greater of the following two areas: [Also defined in FBC, B, Section 1612.2.]

1. Area with a floodplain subject to a 1-percent or greater chance of flooding in any year; or
2. Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Design flood elevation. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO

where the depth number is not specified on the map, the depth number shall be taken as being equal to two (2) feet. [Also defined in FBC, B, Section 1612.2.]

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

Encroachment. The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

Existing building and existing structure. Any buildings and structures for which the "start of construction" commenced before March 15, 1977. [Also defined in FBC, B, Section 1612.2.]

Existing manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before March 15, 1977.

Expansion to an existing manufactured home park or subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land from: [Also defined in FBC, B, Section 1612.2.]

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood damage-resistant materials. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 1612.2.]

Flood hazard area. The greater of the following two areas: [Also defined in FBC, B, Section 1612.2.]

1. The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.

2. The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Flood Insurance Rate Map (FIRM). The official map of the community on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 1612.2.]

Flood Insurance Study (FIS). The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and Floodway Map (if applicable), the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 1612.2.]

Floodplain administrator. The office or position designated and charged with the administration and enforcement of this ordinance (may be referred to as the Floodplain Manager).

Floodplain development permit or approval. An official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and that are determined to be compliant with this ordinance.

Floodway. The channel of a river or other riverine watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot. [Also defined in FBC, B, Section 1612.2.]

Floodway encroachment analysis. An engineering analysis of the impact that a proposed encroachment into a floodway is expected to have on the floodway boundaries and base flood elevations; the evaluation shall be prepared by a qualified Florida licensed engineer using standard engineering methods and models.

Florida Building Code. The family of codes adopted by the Florida Building Commission, including: Florida Building Code, Building; Florida Building Code, Residential; Florida Building Code, Existing Building; Florida Building Code, Mechanical; Florida Building Code, Plumbing; Florida Building Code, Fuel Gas.

Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building, Chapter 11 Historic Buildings.

Letter of Map Change (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA). An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR). A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

Letter of Map Revision Based on Fill (LOMR-F). A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR). A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at eight thousand five hundred (8,500) pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of six thousand (6,000) pounds or less and which has a basic vehicle frontal area of forty-five (45) square feet or less, which is:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
2. Designed primarily for transportation of persons and has a capacity of more than twelve (12) persons; or
3. Available with special features enabling off-street or off-highway operation and use.

Lowest floor. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the Florida Building Code or ASCE 24. [Also defined in FBC, B, Section 1612.2.]

Manufactured home. A structure, transportable in one or more sections, which is eight (8) feet or more in width and greater than four hundred (400) square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value. The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this ordinance, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, Actual Cash Value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser.

New construction. For the purposes of administration of this ordinance and the flood resistant construction requirements of the Florida Building Code, structures for which the "start of construction" commenced on or after March 15, 1977 and includes any subsequent improvements to such structures.

New manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after March 15, 1977.

Park trailer. A transportable unit which has a body width not exceeding fourteen (14) feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in Section 320.01, F.S.]

Recreational vehicle. A vehicle, including a park trailer, which is: [See section 320.01, F.S.)

1. Built on a single chassis;
2. Four hundred (400) square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Sand dunes. Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Special flood hazard area. An area in the floodplain subject to a one (1) percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, AI—A30, AE, A99, AH, VI—V30, VE or V. [Also defined in FBC, B Section 1612.2.]

Start of construction. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within one hundred eighty (180) days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 1612.2.]

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the building or structure before the damage occurred. [Also defined in FBC, B Section 1612.2.]

Substantial improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds fifty (50) percent of the market value of the building or structure before the improvement or repair is started. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 1612.2.]

1. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Section 107 34-467(a)(7) of this ordinance.

Variance. A grant of relief from the requirements of this ordinance, or the flood resistant construction requirements of the Florida Building Code, which permits construction in a manner that would not otherwise be permitted by this ordinance or the Florida Building Code.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

(10) *Flood resistant development.*

a. *Buildings and structures.*

1. *Design and construction of buildings, structures and facilities. Buildings, structures, and facilities located in flood hazard areas shall be constructed in accordance with Florida Building Code.*

~~2.~~ *Design and construction of buildings, structures, and facilities exempt from the Florida Building Code.* Pursuant to Section ~~104.2.1~~ 34-467(a)(4)c of this ordinance, buildings, structures, and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings shall comply with the requirements of Section ~~307~~ 34-467(a)(10)g of this ordinance.

~~2.~~ *Buildings and structures seaward of the coastal construction control line.* If extending, in whole or in part, seaward of the coastal construction control line and also located, in whole or in part, in a flood hazard area:

(a) Buildings and structures shall be designed and constructed to comply with the more restrictive applicable requirements of the Florida Building Code. Building Section 3109 and Section 1612 or Florida Building Code. Residential Section R322.

(b) Minor structures and non-habitable major structures as defined in section 161.54, F.S., shall be designed and constructed to comply with the intent and applicable provisions of this ordinance and ASCE 24.

b. *Subdivisions.*

1. *Minimum requirements.* Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

(a) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;

(b) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and

(c) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

2. *Subdivision plats.* Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

- (a) Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats and final plats;
- (b) Where the subdivision has more than fifty (50) lots or is larger than five (5) acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section ~~105.2(1)~~ 34-467(a)(5)b.1 of this ordinance; and
- (c) Compliance with the site improvement and utilities requirements of Section ~~303~~ 34-467(a)(10)c of this ordinance.

c. *Site improvements, utilities, and limitations.*

- 1. *Minimum requirements.* All proposed new development shall be reviewed to determine that:
 - (a) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
 - (b) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
 - (c) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.
 - (d) Sanitary sewage facilities. All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.
 - (e) Water supply facilities. All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.
 - (f) Limitations on sites in regulatory floodways. No development, including but not limited to site improvements, and land disturbing activity involving fill or regrading, shall be authorized in the regulatory floodway unless the floodway encroachment analysis required in Section ~~105.3(1)~~ 34-467(a)(5)c.1 of this ordinance demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.
 - (g) Limitations on placement of fill. Subject to the limitations of this ordinance, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and

protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the Florida Building Code.

- (h) Limitations on sites in coastal high hazard areas (Zone V). In coastal high hazard areas, alteration of sand dunes and mangrove stands shall be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by Section ~~105.3(4)~~ 34-367(a)(5)c.4 of this ordinance demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with Section ~~307.8(3)~~ 34-467(a)(10)g.8.

d. *Manufactured homes.*

1. *General.* All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to section 320.8249, F.S., and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this ordinance. If located seaward of the coastal construction control line, all manufactured homes shall comply with the more restrictive of the applicable requirements.
2. *Foundations.* All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that:
 - (a) In flood hazard areas (Zone A) other than coastal high hazard areas, are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.2 and this ordinance.
 - (b) In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.3 and this ordinance.
3. *Anchoring.* All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.
4. *Elevation.* Manufactured homes that are placed, replaced, or substantially improved shall comply with Section ~~304.4.1~~ 34-467(a)(10)d.5 or ~~304.4.2~~ 34-467(a)(10)d.6 of this ordinance, as applicable.
5. *General elevation requirement.* Unless subject to the requirements of Section ~~304.4.2~~ 34-467(a)(10)d.6 of this ordinance, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or

subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V).

6. *Elevation requirement for certain existing manufactured home parks and subdivisions.* Manufactured homes that are not subject to Section ~~304.4.1~~ **34-467(a)(10)d.5** of this ordinance, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

(a) Bottom of the frame of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V); or

(b) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than thirty-six (36) inches in height above grade.

7. *Enclosures.* Enclosed areas below elevated manufactured homes shall comply with the requirements of the Florida Building Code, Residential Section R322 for such enclosed areas, as applicable to the flood hazard area.

8. *Utility equipment.* Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the Florida Building Code, Residential Section R322, as applicable to the flood hazard area.

e. *Recreational vehicles and park trailers.*

1. *Temporary placement.* Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:

(a) Be on the site for fewer than one hundred eighty (180) consecutive days; or

(b) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

2. *Permanent placement.* Recreational vehicles and park trailers that do not meet the limitations in Section ~~305.1~~ **34-467(a)(10)e.1** of this ordinance for temporary placement shall meet the requirements of Section ~~304~~ **34-467(a)(10)d** of this ordinance for manufactured homes.

f. *Tanks.*

1. *Underground tanks.* Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

2. *Above-ground tanks, not elevated.* Above-ground tanks that do not meet the elevation requirements of Section ~~306.3~~ **34-467(a)(10)f.3** of this ordinance shall:
 - (a) Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.
 - (b) Not be permitted in coastal high hazard areas (Zone V).
 3. *Above-ground tanks, elevated.* Above-ground tanks in flood hazard areas shall be attached to, and elevated to or above the design flood elevation on, a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.
 4. *Tank inlets and vents.* Tank inlets, fill openings, outlets and vents shall be:
 - (a) At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
 - (b) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- g. *Other development.*
1. *General requirements for other development.* All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this ordinance or the Florida Building Code, shall:
 - (a) Be located and constructed to minimize flood damage;
 - (b) Meet the limitations of Section ~~303.4~~ **34-467(a)(10)c.1(f)** of this ordinance if located in a regulated floodway;
 - (c) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
 - (d) Be constructed of flood damage-resistant materials; and
 - (e) Have mechanical, plumbing, and electrical systems above the design flood elevation, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.
 2. *Fences in regulated floodways.* Fences in regulated floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire

mesh fences, shall meet the limitations of Section ~~303.4~~ **34-467(a)(10)c.1(f)** of this ordinance.

3. *Retaining walls, sidewalks, and driveways in regulated floodways.* Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Section ~~303.4~~ **34-467(a)(10)c.1(f)** of this ordinance.
4. *Roads and watercourse crossings in regulated floodways.* Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section ~~303.4~~ **34-467(a)(10)c.1(f)** of this ordinance. Alteration of a watercourse that is part of a road or watercourse crossing shall meet the requirements of Section ~~105.3(3)~~ **34-467(a)(5)c.3** of this ordinance.
5. *Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios, and similar nonstructural uses in coastal high hazard areas (Zone V).* In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:
 - (a) Structurally independent of the foundation system of the building or structure;
 - (b) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and
 - (c) Have a maximum slab thickness of not more than four (4) inches.
6. *Decks and patios in coastal high hazard areas (Zone V).* In addition to the requirements of the Florida Building Code, in coastal high hazard areas decks and patios shall be located, designed, and constructed in compliance with the following:
 - (a) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck.
 - (b) A deck or patio that is located below the design flood elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.
 - (c) A deck or patio that has a vertical thickness of more than twelve (12) inches or that is constructed with more than the minimum amount of fill necessary

for site drainage shall not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave run-up and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.

- (d) A deck or patio that has a vertical thickness of twelve (12) inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave run-up and wave reflection.
7. *Other development in coastal high hazard areas (Zone V).* In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave run-up and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:
- (a) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
 - (b) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and
 - (c) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.
8. *Nonstructural fill in coastal high hazard areas (Zone V).* In coastal high hazard areas:
- (a) Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.
 - (b) Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave run up and wave reflection that would increase damage to adjacent buildings and structures.
 - (c) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave run up and wave reflection if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

SECTION 2. That this ordinance shall take effect upon its adoption by the City Council.

SECTION 3. That if any section, subsection, clause or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. All ordinances, resolutions, official determinations or parts thereof previously adopted or entered into by the City or any of its officials that are in conflict with this ordinance, are repealed to the extent inconsistent herewith.

AUTHENTICATED THIS _____ DAY OF _____, A.D., 2018.

William C. Latham, Mayor

Laurie Scott, City Clerk

City of
Jacksonville Beach
Police Department
101 Penman Road, South
Jacksonville Beach
FL 32250
Phone: 904.247.6343
Fax: 904.247.6342

www.jacksonvillebeach.org

To: George D. Forbes, City Manager
From: Patrick K. Dooley, Chief of Police
Subject: Proposed revisions to Chapter 18 "Noise" of the Code of Ordinances of the City of Jacksonville Beach, Florida, by amending section 18-7 "Low Volume Outdoor Amplified and Acoustic Sound."
Date: March 18, 2018

ACTION REQUESTED

Adopt Ordinance 2018-8106, amending section 18-7, "Low Volume Outdoor Amplified and Acoustic Sound" of Chapter 18 "Noise" of the Code of Ordinances of the City of Jacksonville Beach, Florida.

BACKGROUND

Last year, at its June 5, 2017 meeting, the City Council adopted, as a pilot project, Ordinance 2016-8082, which replaced Chapter 18 of the Code of Ordinances and added section 18-7. The ordinance specified the conditions for a licensed establishment to obtain a low-volume outdoor amplified and acoustic sound permit. The ordinance, intended to allow establishments meeting the criteria, to play music at low volume in order to enhance the outdoor dining experience, resulted from suggestions made in the Downtown Action Plan. Permits are valid for one year. There have been no enforcement issues related to low volume outdoor music in the past year.

Ordinance 2018-8106 (attached) proposes two changes to Section 18-7:

- Subsection (8), changes the annual permit renewal date from December 31 to September 30;
- Subsection (9), repeals the expiration ("sunset") date of June 5, 2018 by repealing subsection (9).

The only changes are on page 16 of the ordinance. A copy of page 16 is attached to this memo for your ease of reference.



RECOMMENDATION

Adopt Ordinance **2018-8106** amending Chapter 18, Section 18-7, "Low Volume Outdoor Amplified and Acoustic Sound."

- vi. A sketch plan of the proposed location and orientation of the equipment to be used, the proposed orientation of outdoor seating and tables, and including a certification signed by the applicant that the equipment will be monitored to ensure that it is operated within the sound levels permitted; and
- vii. The name and street address where notices related to this section are to be mailed.

The city clerk shall review the application and, if the application is complete, and the licensed establishment is in compliance with the Code of Ordinances, a permit shall be issued allowing low volume outdoor amplified and acoustic sound. A Low Volume Outdoor Amplified and Acoustic Sound Permit is issued by the city clerk. The permit shall contain conditions and limitations as listed in this ordinance including, but not limited to, hours of operation.

- (7) *Permit not transferrable.* Any change in the ownership of a licensed establishment after the issuance of the permit shall cause the permit to be immediately invalid and cause the new owner to reapply for the permit. The city shall be notified immediately, and the licensed establishment shall apply for a new permit if a transfer of ownership of the licensed establishment has occurred. Until such time as the new owner of the licensed establishment makes application for a new permit and is approved for the permit, the privilege of low volume amplified and acoustic sound shall be suspended.
- (8) *Renewal.* Such permit shall be renewed by the city annually on or before the ~~31th~~ 30th day of ~~December~~ September, provided that none of the following has occurred:
 - a. The permit has been suspended by the special magistrate and the conditions of the suspension have not been met;
 - b. A transfer of ownership of the licensed establishment has occurred, and this information was not provided to the city; or
 - c. A change in location of the licensed establishment has occurred, and this information was not provided to the city.

~~(9) Expiration ("Sunset") date. Section 18-7(6), Low Volume Outdoor Amplified and Acoustic Sound Permit, shall expire on June 5, 2018, unless the city council of the City of Jacksonville Beach amends this section by extending the expiration or repealing this paragraph in its entirety.~~

Introduced By: _____
1st Reading: _____
2nd Reading: _____

ORDINANCE NO. 2018-8106

AN ORDINANCE AMENDING CHAPTER 18 "NOISE", OF THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, BY AMENDING SECTION 18-7 "LOW VOLUME OUTDOOR AMPLIFIED AND ACOUSTIC SOUND", PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, there exists the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten the residents and guests of the city, and

WHEREAS, the city understands that outdoor dining adds to the ambiance of an establishment, and with that, music played at a low volume can further increase that ambiance, and

WHEREAS, Chapter 166, Florida Statutes, authorizes the City Council, acting for the City of Jacksonville Beach, Florida, to adopt Ordinances and Resolutions necessary for the exercise of its powers and to prescribe fines and penalties for the violation of Ordinances in accordance with law, and

WHEREAS, through citizen input, the City Council has determined a need to more effectively control and abate noise disturbances in the City, and

WHEREAS, the city seeks to protect, preserve and promote the health, safety, welfare, and quality of life of its residents and guests by the reduction, control, and prevention of noise, and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JACKSONVILLE BEACH, FLORIDA:

SECTION 1. That Chapter 18. Noise of the Code of Ordinances of the City of Jacksonville Beach, Florida is hereby repealed in its entirety, and a new Chapter 18. Noise is hereby adopted and shall read as follows:

Sec. 18-1. Legislative findings; declaration of necessity.

It is found and declared that:

- (1) The making and creation of excessive, unnecessary or unusually loud noises within the limits of the city is a condition which has existed for some time and the amount and intensity of such noises is increasing;
- (2) The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.

Sec. 18-2. - Noncompliance with chapter declared unlawful; exception.

It shall be unlawful, except as expressly permitted herein, to make, cause or allow the making of any noise or sound which exceeds the limits set forth in this chapter.

Sec. 18-3. - Noise limitations.

(a) Definitions. For the purpose of this section, certain words and phrases used herein are defined as follows:

A-band level is the total sound level of all noise as measured with a sound level meter using the A weighing network. The unit of measurement is the dB(A).

Daytime is defined as 7:00 a.m. to 10:00 p.m. and *nighttime* is defined as 10:00 p.m. to 7:00 a.m. in residential use occupancies.

Decibel is a unit (dba) of sound equal to ten (10) times the logarithm (base 10) of the ratio of any two (2) quantities proportional to power.

Emergency work is the work made necessary to protect persons or property from exposure to danger.

Noise level is the sound pressure level as measured in dB(A) by a sound level meter.

Outdoor restaurant or bar means any restaurant or bar, or portion thereof, which exists outside of the permanent exterior walls of the principal building(s) on a lot. This definition includes any deck or other area constructed and/or utilized on the roof of a structure.

Person is any person, person's firm, association, copartnership, joint venture, corporation or any entity public or private in nature.

Sound-level meter is an instrument including a microphone, an amplifier, an outlet meter, and frequency weighing networks for the measurement of noise and sound levels in a specified manner.

Sound pressure level, in decibels, of sound is twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of this sound to the reference pressure, which reference pressure must be explicitly stated.

Plainly Audible shall mean any sound that can be heard clearly by a person using his or her unaided hearing faculties. When music is involved, the detection of rhythmic bass tones shall be sufficient to be considered plainly audible sound.

All time referred to in this chapter shall be the then current legal time in the City of Jacksonville Beach.

All technical definitions are in accordance with American Standard S1.1-1960 entitled, "Acoustical Terminology."

(b) Classification of use occupancies; projection of noise from one use to another.

- (1) *Classification.* For purposes of defining the "use occupancy", all premises containing habitually occupied sleeping quarters shall be considered in residential use.

All premises containing businesses where sales, professional or other commercial use is legally permitted shall be considered commercial use.

All premises where manufacturing is legally permitted shall be considered manufacturing use.

In cases of multiple uses, the more restrictive use category shall prevail. Hospitals, schools, and church areas are considered residential. Any area not otherwise classified shall conform to commercial standards.

- (2) *Projection of noise.* Sound or noise projecting from one use occupancy to another use occupancy with a different noise level shall exceed neither the limits of the use occupancy into which the noise is projected nor the noise limits of the use occupancy from which the noise originates.

(c) Measurement of noise.

- (1) The measurement of sound or noise shall be made with a sound level meter meeting the standards prescribed by the American National Standards Institute, S1.4 American National Standard Specifications for sound level meters. The instruments shall be maintained in calibration and good working order. A calibration check shall be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used at all times.
- (2) The slow meter response of the sound level meter shall be used in order to best determine the average amplitude.

- (3) The measurement shall be made at any point outside of the property line from where the noise is being transmitted.
- (4) In case of multiple occupancy of a property, the measurement may be made at any point inside the premises to which any complainant has right of legal private occupancy; provided, that the measurement shall not be made within three (3) feet of any ground, wall, floor, ceiling, roof or other plane surface.
- (5) All noise measurements provided for in this chapter will be made by officials of the city who are qualified to operate the apparatus used to make the measurements as provided for in this chapter.

(d) Tables of noise level limits.

- (1) *Table I.* Table I specifies noise levels which represent limits which if exceeded interfere with the peace, quiet and general welfare of the city and its inhabitants. No noise shall be permitted within the city which exceeds the noise level limits of Table I except as expressly authorized by this chapter.

TABLE I

**Maximum Allowable Noise Level Limits
in dB(A) for Residential,
Commercial, and Manufacturing Occupancies**

These levels may not be exceeded more than three (3) times in any continuous sixty-minute period.

District	Day (7:00 a.m. to 10:00 p.m.)	Night (10:00 p.m. to 7:00 a.m.)
Residential	70	65
	Day (7:00 a.m. to 10:00 p.m.)	Night (10:00 p.m. to 7:00 a.m.)
Commercial	75	75
Manufacturing	70	65

- (2) *Table II.* Table II specifies noise levels which if produced by moving vehicles will interfere with the peace, quiet, and general welfare of the city and its inhabitants.

**TABLE II
NOISE LEVEL LIMITS FOR
MOVING MOTOR VEHICLES***

- (1) *Trucks and buses.* Eighty-five (85) dB(A) measured fifty (50) feet from the source.
- (2) *Passenger cars, motorcycles, and other motor vehicles.* Seventy (70) dB(A) measured at fifty (50) feet from the source.

*The measurement is made as the vehicle drives past. If the reading is above that listed in (1) or (2) of Table II at any time, the vehicle is in violation of this chapter. All distances are measured from the center of vehicle or center of the driving lane in which the vehicle is being driven.

(e) Motor vehicles.

- (1) *Stationary vehicles.* It shall be unlawful to start, operate, or perform repair work on a motor vehicle which creates a noise or sound which exceeds the noise level limits in Table II.
- (2) *Moving vehicle.* It shall be unlawful to operate a motor vehicle in such a manner as to exceed the noise level limits of Table II when the vehicle is operating on public streets, highways, driveways, parking lots, and ways open to vehicle travel. Normal operation includes normal acceleration, deceleration and operation at maximum normal speeds in all gears and ranges up to the speed limits currently effective on those streets of the city over which the vehicles may be operated.

(f) Building operations. It shall be unlawful for any person to erect (including excavate), demolish, alter, or repair any building other than between the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday, or at any time on Sundays or the following observed holidays: New Years Day, Memorial Day, 4th of July, Labor Day, Thanksgiving, and Christmas, except in the case of urgent necessity in the interest of public safety and then only with a permit approved by the city manager, which permit may be renewed for a period of three (3) days or less while emergency continues.

(g) Exemptions. The following uses and activities shall be exempt from noise level regulations:

- (1) Air conditioners and lawn mowers when this equipment is functioning in accord with the manufacturers' specifications and with all manufacturers'

mufflers and noise reducing equipment in use and in proper operating condition.

- (2) Non-amplified crowd noises resulting from the activities such as those planned by student, governmental or community groups.
- (3) Reserved.
- (4) Noises of safety signals, warning devices and emergency pressure relief valves.
- (5) Noises resulting from any authorized emergency vehicle while responding to an emergency call or acting in time of emergency.
- (6) Noises resulting from emergency work as defined in section 18-3(a).
- (7) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with sections 18-3(h) (Special Event Permits). Regulation of noises emanating from operations under permit shall be according to the conditions and limits contained in sections 18-3(h).
- (8) Noises made by persons having obtained a permit to use the streets are exempt from Table I.
- (9) Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations shall be exempt from the provisions of this chapter. Any aircraft operating under the technical difficulties in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal regulations are also exempt.

(h) Special event permits. Applications for a permit for relief from the maximum allowable noise level limits designated in this chapter may be made in writing to the city manager or his/her designee. Any permit granted by the city manager hereunder must be in writing and shall contain all conditions upon which the permit shall be effective. The city manager or his/her designee may grant the relief as applied for under the following conditions:

- (1) The city manager or his/her designee may prescribe any reasonable conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound attenuating devices.
- (2) *Permits for entertainment.* Permits may be granted for the purpose of entertainment under the following conditions:
 - (a) The function must take place on public property.

- (b) The function must be staged between the hours of 8:00 a.m. and 10:00 p.m.
- (c) Functions for which the permits are issued shall be limited to a noise level not to exceed eighty-five (85) dB(A) more than three (3) times in any continuous sixty-minute period, when measured in accordance with section 18-3(c). The city manager or his/her designee may, at his/her sole discretion, establish a lower maximum noise level based on the location or other relevant circumstances relating to the specific special event or noisemaking device.

(i) Other. Special permits for non-entertainment special purposes may be issued under the following conditions:

- (a) 1. If the special purpose relates to the operation of a trade or business that the special purpose not be in the ordinary course of that trade or business; or,
2. If the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant; and,
- (b) If the special purpose be a recurring purpose, that it not recur more often than four (4) times each calendar year; and
- (c) 1. That the special purpose be absolutely necessary to the operation of the applicant's trade or business; or,
2. If the special purpose does not relate to the operation of a trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur; and,
- (d) Except in emergency situations, as determined by the city manager or his/her designee, the special permit may be issued only for hours between 7:00 a.m. and 11:00 p.m. on week days; and,
- (e) Special permits may be issued for no longer than one week, renewable by further application to the city manager or his/her designee.
- (f) No permit may be issued to permit the use of any loudspeaker or sound device on the exterior of any building which at any time exceeds the noise level limits in Table I except those used for emergency warnings.

Sec. 18-4. - Noises prohibited; unnecessary noise standard; statement of intent; sworn complaint required.

(a) Some sounds may be such that they are not measurable by the sound pressure level meter or may not exceed the limits of Table I or II, but they may be excessive, unnatural, prolonged, unusual and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.

(b) Noises prohibited by this section are unlawful notwithstanding the fact that no violation of section 18-3 is involved, and notwithstanding the fact that the activity complained about is exempted in section 18-3(g). Thus, the following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but said enumeration shall not be deemed to be exclusive:

- (1) The sounding of any horn or signaling device on any automobile or other vehicle, except as a danger warning; the creation by means of any signaling device of any unreasonably loud or harsh sound; the sounding of any signaling device for any unnecessary and unreasonable period of time; and the unreasonable use of any signaling device.
- (2) The using, operating or permitting to be placed, used or operated any radio, television, tape or record player, amplifier, musical instrument, or other machine or device used for the production, reproduction or emission of sound, any prolonged sounds made by people, and the keeping of any animal or bird which by causing frequent or long continuous noise in such manner as to disturb the public peace, quiet and comfort of the neighboring inhabitants or at any time with greater intensity than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such sound emitter is operated and who are voluntary listeners thereto.
- (3) Any person making a complaint under this section shall be required to sign a sworn complaint prior to an arrest being made, otherwise no such complaint will be honored.

Sec. 18-5. - Violations; penalties.

(a) Notice of Noise Violation

- (1) When the city manager or an official designated by the city manager determines that there is a violation of the noise level limits contained within Table I in section 18-3(d)(1), he/she shall issue an official Notice of Noise Violation to the person or persons responsible for the noise. The Notice of Noise Violation shall advise the person of the violation of the allowable noise limits, and of the possi-

ble penalty if he/she fails to reduce or eliminate the noise to such allowable limits.

- (2) After the person or persons responsible for the noise are given such notice, the person responsible for the noise shall instantly comply with the limits of Table I in section 18-3(d)(1).
- (3) For the purposes of this section, it is sufficient notice for all prohibited noises if the person or persons responsible for any succeeding noises are provided a Notice of Violation of one offending noise of the same type per twenty-four-hour period.
- (4) If a person or persons have been issued one written Notice of Noise Violation, no other notice shall be necessary within that sixty-day period following the notice for enforcement of the provisions of this chapter for any additional violations occurring within the same sixty-day period.

(b) Arrest; confiscation of noise emitter:

- (1) If the noise level is not reduced or eliminated to allowable limits within a reasonable time after the Notice of Noise Violation as prescribed in section 18-5(a), the person so provided a Notice of Violation and not complying shall be arrested for a violation of this chapter and upon conviction shall be subject to the penalties designated in section 1-11 of the Jacksonville Beach Code of Ordinances. Each day the violation continues shall be considered as a separate offense.
- (2) Any person responsible for an unlawful noise shall be subject to the loss of the noise emitter or emitters if they are convicted three (3) times under this chapter within a twelve-month period and if the convictions were for noises created by the same or same type of noise emitter.

(c) Responsibility of owner of property. The owner, tenant or lessee of property, or a manager, overseer or agent, or any person lawfully entitled to possess the property from which the offending noise is emitted and at which time the offending noise is emitted shall be responsible for compliance with this chapter, and each may be punished for violations of this chapter. It shall not be a lawful defense to assert that some other person caused the noise, but the lawful possessor of the premises shall be responsible for operating or maintaining the premises in compliance with this chapter and shall be punished whether or not the person actually causing the noise is also punished.

(d) Violation may be declared public nuisance. The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions of this chapter that endangers the comfort, repose, health and peace of residents in the area is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

Sec. 18-6. - Mobile noise.

(a) It shall be unlawful for the driver of a vehicle to operate or permit the operation of any sound amplification system which can be heard and is plainly audible outside the vehicle from fifty (50) or more feet while moving or parked on any street, highway, parking lot or other public property within the city.

(b) It shall be unlawful for any person to operate any type of portable sound amplification device so as to emit noise that is plainly audible fifty (50) feet or more from the source. Said violation can result in the confiscation of the equipment until such time as the offender can positively demonstrate to the court his/her willingness and ability to operate the device within the limits prescribed by this section.

(c) Violations of this section shall not require a warning prior to issuing the citation.

Sec. 18-7. – Low Volume Outdoor Amplified and Acoustic Sound.

(a) Definitions. For the purpose of this section, certain words and phrases used herein are defined as follows:

Acoustic sound shall mean the sound that solely or primarily uses instruments that produce sound through acoustic means, as opposed to electric or electronic means. For the purpose of this chapter, drums or drum machines are not considered to be acoustic sound.

Alcoholic beverage establishment shall mean any commercial establishment located in the city which allows for alcoholic beverages (e.g., beer, wine, or liquor, etc.) to be sold for consumption on the premises.

Amplified entertainment shall mean any type of music or other entertainment delivered through and by an electronic system, including live bands and disc jockeys.

Amplified Sound shall mean any type of sound delivered through and by electric or an electronic system.

Emergency work shall mean the work made necessary to protect persons or property from exposure to danger.

Enclosed Building shall mean a structure with a roof and enclosed walls.

Entertainment sound shall mean any sound originating from an event, performance, or act designed to entertain others.

Licensed Establishment shall mean any business, within the city of Jacksonville Beach, licensed to sell food, beverages, and/or alcoholic beverages. The provisions of this section shall apply to the following state alcoholic beverage license types: **1-COP**

(beer only consumption on premises), **2-COP** (beer and wine consumption on premises), **4-COP Quota License** (beer, wine, and liquor package sales and consumption on premises), **4-COP-S** (beer, wine, and liquor consumption on premises in connection with the operation of a hotel, motel, motor court, or condominium), **4-COP-SRX** (beer, wine, and liquor consumption on premises in connection with a restaurant), **4-COP-SBX** (beer, wine, and liquor consumption on premises in connection with a bowling alley), **11-GC** (beer, wine, and liquor consumption on premises in connection with a golf club), **11-C** (beer, wine, and liquor in connection with a bona fide club, including fraternal or benevolent association lodges or clubs, social clubs, and tennis, racquetball, cabana, or beach clubs, for consumption on premises by members and their guests only), **ODP** (beer, wine, and liquor consumption on premises for a bona fide non-profit civic organization for a period not to exceed three (3) days and no more than three (3) times per year), and any other business within the city licensed to sell/distribute food, beverages, or alcoholic beverages.

Low volume shall mean sound played at a level such that a person outside of the property line of the source of the sound, speaking in a normal tone of voice, is plainly audible and can be heard clearly and understandably by another person standing a maximum of thirty-six inches (36") away from the person speaking, without the aid of a listening device.

Momentarily shall mean a very short time equaling less than 30 seconds.

Noise shall mean any sound or vibration which may disturb or annoy reasonable persons of normal sensitivities; or causes, or tends to cause, an adverse effect on the public health and welfare; or endangers or injures people; or endangers or injures personal or real property.

Outdoor gathering area shall mean the area outside the confines of an enclosed building, and within the property line of the premises, designated for a person or persons to congregate. (e.g., patio, lanai, porch, terrace, veranda, sundeck, deck, courtyard, balcony, etc.)

Outdoor restaurant or bar shall mean any restaurant or bar, or portion thereof, which exists outside of the permanent exterior walls of the principal building(s) on a lot and has, in place, tables and chairs set up to accommodate patrons for seating, during all hours of operation. This definition includes any deck or other area constructed and/or utilized on the roof of a structure.

Person is any person, person's firm, association, copartnership, joint venture, corporation or any entity public or private in nature.

Plainly Audible shall mean any sound that can be heard clearly by a person using his or her unaided hearing faculties. When music is involved, the detection of rhythmic bass tones shall be considered to be plainly audible sound.

Previously Issued Outside Sound Amplification Permits defines businesses holding a valid Outside Sound Amplification Permit as of August 1st, 2016, and shall be permitted to be subject to the provisions of Ordinance No. 2002-7834 voted into law on June 3rd, 2002.

Property line of the premises shall mean an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

All references to time in this chapter shall be the current legal time in the City of Jacksonville Beach.

All technical definitions are in accordance with American Standard S1.1-1960 entitled, "Acoustical Terminology."

(b) Low Volume Outdoor Amplified and Acoustic Sound permits.

(1) *Permit required.* Any person or business owning or operating a licensed establishment as defined in Section 18-7(a) that is located in the City of Jacksonville Beach, and which provides for low volume outdoor acoustic or amplified sound, shall possess a Low Volume Outdoor Amplified and Acoustic Sound Permit. This permit authorizes licensed establishments to provide outdoor amplified and acoustic entertainment to originate from within the property line of a licensed business, to utilize outdoor sound amplification equipment, and to otherwise permit the generation of amplified sound in unenclosed parts of the licensed premises.

(2) *Exemptions.*

- a. Indoor emergency signaling devices alerting an emergency shall not be deemed amplified or acoustic sound.
- b. An exterior burglar alarm shall not be deemed amplified and acoustic sound.

(3) *Standards applicable to indoor entertainment sound.*

- a. Except as otherwise permitted in this section, no licensed establishment in the City of Jacksonville Beach shall convey any entertainment sound, originating from within the licensed establishment's enclosed building, to the outside confines of the enclosed building, including any outdoor gathering areas.
- b. No licensed establishment shall be in violation of the noise restrictions in Section 18-4, *Noises prohibited*.
- c. Amplified and acoustic entertainment sound originating within the enclosed building housing the licensed establishment shall not be conveyed outside the building by any means, including but not limited to open windows, open doors

except entrance doors when opened momentarily, as needed for ingress and egress of persons, or any other means which conveys or facilitates amplified music from inside the confines of the building to the outside of the building, unless such sound is low volume, as defined in section 18-7(a).

(4) *Standards applicable to outdoor entertainment sound.*

- a. Any licensed establishment providing outdoor amplified or acoustic sound, including background music, must possess a valid Outdoor Amplified and Acoustic Sound Permit.
- b. Licensed establishments holding a Low Volume Outdoor Amplified and Acoustic Sound Permit shall not generate any sound within or from their outdoor dining area that exceeds a level such that a person outside of the property line of the originating premises and speaking in a normal tone of voice is not plainly audible, and understood, over this sound by another person standing a maximum of thirty-six inches (36") away from the person speaking.
- c. Outdoor amplified and acoustic sound shall be limited to sound producing devices such as low volume amplified sound, low volume acoustic, low volume orchestral instrument, or low volume stringed instruments. Drums, drum machines, and sub-woofer bass speakers are prohibited.
- d. Outdoor disc jockeys and amplified bands are strictly prohibited, unless specifically allowed in writing as part of a permit issued pursuant to Section 4-5 *Temporary extension of licensed premises* of Chapter 4 *Alcoholic beverages*.
- e. All sound must originate within the property line of the licensed establishment which holds a Low Volume Outdoor Amplified and Acoustic Sound Permit.
- f. Any sound originating within the enclosed building of a licensed establishment shall not be conveyed to the outdoor dining area unless that music is electronically channeled through the low volume speakers, and shall not generate any sound that exceeds a level such that a person outside the property line of the originating premises and speaking in a normal tone of voice is not plainly audible, and understood over this sound by another person standing a maximum of thirty-six inches (36") away from the person speaking.
- g. Operation of any amplified and acoustic sound between the hours of 10:00 p.m. and 8:00 a.m. is prohibited.
- h. Removing and/or resituating outdoor seating and tables as permitted in this chapter (18 Noise), while generating low volume outdoor amplified and acoustic sound, is prohibited.
- i. *Previously Issued Outside Sound Amplification Permits.* Beginning on August 1, 2002, persons or businesses owning or operating an outdoor restaurant, bar,

or any other establishment utilizing outdoor sound amplification equipment; and is otherwise permitted to generate amplified sound or noise in unenclosed parts of a premise, is required to possess a valid Previously Issued Outside Sound Amplification Permit.

(5) Renewal for Previously Issued Outside Sound Amplification Permit.

- a. Renewal for a Previously Issued Outside Sound Amplification Permits shall be made to the city clerk, on forms provided for that purpose. A fee, in an amount set by resolution of the city council and payable upon issuance, shall be charged for the outside sound amplification permit.
- b. Persons or businesses possessing a previously issued Outside Sound Amplification Permit shall file with the city, a sketch plan showing the proposed location and orientation of the equipment to be used, the street address and specific location at that address for the proposed use, the hours of operation of the equipment, a valid business tax receipt for licensed establishment, verification of compliance by licensed establishment with city zoning, code regulations, certification from the applicant that the equipment will be monitored to ensure that it is operated within the decibel levels permitted, and The name and street address where notices related to this section are to be mailed.
- c. For outdoor restaurants, bars or other establishments adjacent to a public right-of-way, public easement, public property, or public or private body of water other than the Atlantic Ocean, the amplification devices shall be directed away from any adjacent public right-of-way, public easement, public property, or public or private body of water other than the Atlantic Ocean; and otherwise operated in accordance with this chapter.
- d. Any person or business owning or operating an outdoor restaurant, bar, or other establishment located within two thousand (2,000) feet of the centerline of the Atlantic Intracoastal Waterway, said centerline being the western corporate limit of the City of Jacksonville Beach; as measured in a straight and continuous line from any point on or at the property line of such restaurant, bar, or other establishment, to the nearest point of the centerline of the Atlantic Intracoastal Waterway, may make application for an outdoor sound amplification permit. If such permit is granted by the City of Jacksonville Beach, the person or business is permitted to generate amplified sound or noise in unenclosed parts of a premise up to, but not to exceed, a maximum decibel level of 40 dB(A). The maximum decibel level established in this section applies only to outdoor restaurants, bars, or other establishments located within two thousand (2,000) feet of the centerline of the Atlantic Intracoastal Waterway, as defined above. All other outdoor restaurants, bars, or other establishments throughout the City of Jacksonville Beach must meet the requirements for maximum noise levels set forth in section 18-3(d)(1); Table 1.

- e. No permit shall be valid for the operation of any outside sound amplification equipment between the hours of 10:00 p.m. and 10:00 a.m. the following day.
- f. A permit shall be effective for a one-year period beginning on October 1st of each year, and is renewable for additional one-year periods upon reapplication and payment of the annual fee.
- g. *Permit not transferrable.* Any change in the ownership, name, and/or location of a licensed establishment with a valid Previously Issued Outside Sound Amplified Permit, as described in this section, shall cause the permit to be immediately invalid, and will only be issued as new Low Volume Outdoor Amplified and Acoustic Sound Permit.

(6) *Application for a Low Volume Outdoor Amplified and Acoustic Sound Permit.*

- a. An application for a low volume outdoor amplified and acoustic sound permit shall be made to the city clerk, on forms provided for that purpose. A fee, in an amount set by resolution of the city council and payable upon issuance, shall be charged for the outside sound amplification permit. The permit shall be issued within thirty (30) days of receipt of a complete application.
- b. *Minimum information required.* Any licensed establishment wishing to produce low volume outdoor amplified and acoustic sound shall complete an application form provided by the city. An annual fee, in an amount set by resolution of the city council and payable upon issuance, shall be charged for the permit. The application form shall include, but not be limited to, the following information:
 - i. Name and street address of the owner of the licensed establishment;
 - ii. Valid business tax receipt for licensed establishment;
 - iii. The hours of operation of the licensed establishment and a listing of the hours of operation of the entertainment sound equipment proposed to be used under the Outdoor Amplified and Acoustic Sound Permit, if approved;
 - iv. Verification of compliance by licensed establishment with city zoning and code regulations;
 - v. Specific type of state alcoholic beverage license held by the licensed establishment, if applicable;

- vi. A sketch plan of the proposed location and orientation of the equipment to be used, the proposed orientation of outdoor seating and tables, and including a certification signed by the applicant that the equipment will be monitored to ensure that it is operated within the sound levels permitted; and
- vii. The name and street address where notices related to this section are to be mailed.

The city clerk shall review the application and, if the application is complete, and the licensed establishment is in compliance with the Code of Ordinances, a permit shall be issued allowing low volume outdoor amplified and acoustic sound. A Low Volume Outdoor Amplified and Acoustic Sound Permit is issued by the city clerk. The permit shall contain conditions and limitations as listed in this ordinance including, but not limited to, hours of operation.

- (7) *Permit not transferrable.* Any change in the ownership of a licensed establishment after the issuance of the permit shall cause the permit to be immediately invalid and cause the new owner to reapply for the permit. The city shall be notified immediately, and the licensed establishment shall apply for a new permit if a transfer of ownership of the licensed establishment has occurred. Until such time as the new owner of the licensed establishment makes application for a new permit and is approved for the permit, the privilege of low volume amplified and acoustic sound shall be suspended.
- (8) *Renewal.* Such permit shall be renewed by the city annually on or before the ~~31th~~ 30th day of ~~December~~ September, provided that none of the following has occurred:
 - a. The permit has been suspended by the special magistrate and the conditions of the suspension have not been met;
 - b. A transfer of ownership of the licensed establishment has occurred, and this information was not provided to the city; or
 - c. A change in location of the licensed establishment has occurred, and this information was not provided to the city.

~~(9) *Expiration ("Sunset") date.* Section 18-7(6), Low Volume Outdoor Amplified and Acoustic Sound Permit, shall expire on June 5, 2018, unless the city council of the City of Jacksonville Beach amends this section by extending the expiration or repealing this paragraph in its entirety.~~

(40 9) *Notice of violation, hearing, and penalties.*

- a. *Low Volume Outdoor amplified sound is a privilege.* The ability of a licensed establishment to generate outdoor amplified and acoustic sound, during the licensed establishment's hours of operation, on any day of the week is hereby declared to be and is a privilege subject to suspension, and no person may reasonably rely upon a continuation of that privilege. As a condition of the continuation of the privilege, licensed establishments are required to take all necessary steps to minimize the sound level originating from the licensed establishment. The following are representative, but not all-inclusive, of activities that may result in suspension of the privilege of amplified and acoustic sound:
 - i. Violations of any provisions of Chapter 18 of the City of Jacksonville Beach Code of Ordinances, relating to noise and sound limitations;
 - ii. Failure to obtain a Low Volume Outdoor Amplified and Acoustic Sound Permit or failure to renew the permit as required; or
 - iii. Failure to renew a Previously Issued Outside Sound Amplification Permit as required.
- b. *Action by city manager.* The Previously Issued Outside Sound Amplification Permit and Outdoor Amplified and Acoustic Sound Permit can be revoked at any time by the city manager or his/her designee if the operation fails to follow the terms of the permit or for a violation of any city ordinance. The city manager's or his/her designee revocation of a permit may be appealed to the special magistrate.
- c. *Notice of violations, hearings, and penalties.*
 - i. *Finding of violation.* In order to invoke the enforcement provisions of this section, a violation must be verified and documented by a police officer or code enforcement officer. A violation by a licensed establishment of any section of this ordinance shall result in a written notice of violation, issued by a police officer. The notice of violation shall be served by hand delivery or certified mail to the owner, proprietor, manager, or highest-ranking employee then on the premises of the licensed establishment. Issuance of a notice of violation of this section shall not prevent the filing of charges against the licensed establishment or any person for any other violation of the Code of Ordinances or state statutes.

- ii. *Jurisdiction of the special magistrate.* A notice of violation shall be taken before the city's special magistrate for consideration of suspension of the licensed establishment's Previously Issued Outside Sound Amplification Permit and Outdoor Amplified and Acoustic Sound Permit. The special magistrate shall exercise jurisdiction over such matters as set forth in Article VI, Section 2-170 of the Code of Ordinances of the City of Jacksonville Beach.

- iii. *Action by the special magistrate.* Upon completion of the hearing, the special magistrate shall deliver a ruling either that no action shall be taken against the licensed establishment's Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit, or that the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit shall be suspended. A suspension of the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit for a first finding by the special magistrate of a violation shall be not less than thirty (30) days nor more than ninety (90) days. A second and any subsequent finding by the special magistrate of a violation of the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit within one year (three hundred sixty-five (365) days) of the date of completion of the most recent suspension period shall result in a suspension of not less than ninety (90) days nor more than one hundred eighty (180) days. In addition to any suspension of the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit, the special magistrate may issue a fine of not more than five hundred dollars (\$500.00) per violation of this section. The special magistrate shall base his/her ruling upon substantial, competent evidence presented that supports a finding of non-compliance with this section. The special magistrate's written order of suspension of the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit shall state the effective date of the suspension and shall give the licensed establishment ten (10) calendar days of the notice of suspension.

- iv. *Failure of license holder to appear.* If a licensed establishment served with a notice of violation fails to appear at the hearing after having received proper notice, the special magistrate shall take testimony from city staff, and other relevant testimony, as available, and shall deliver a ruling either that no action shall be taken against the licensed establishment's Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit, or that the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Outdoor Acoustic Sound Permit shall be suspended for a period of time as set forth in this section. A ruling that the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit be suspended shall take ef-

fect on the tenth calendar day after the order is issued. The enforcement of such order shall be stayed if the licensed establishment files a request for a rehearing with the city clerk's office before the date the order is scheduled to take effect. In such case, the licensed establishment shall be rescheduled for a hearing before the special magistrate. At that hearing, the special magistrate shall take testimony from the licensed establishment, and other relevant testimony, as available, and shall deliver a ruling upholding the previous order suspending the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit, amending the order suspending the Previously Issued Outside Sound Amplification Permit or Low Volume Outdoor Amplified and Acoustic Sound Permit, or rescinding the order suspending the Previously Issued Outside Sound Amplification Permit or Low Volume Outdoor Amplified and Acoustic Sound Permit. If the special magistrate upholds a suspension of the Previously Issued Outside Sound Amplification Permit or Low Volume Outdoor Amplified and Acoustic Sound Permit, such suspension shall take effect ten calendar days after the ruling is issued.

- v. *Modification of ownership status to avoid suspension.* Any licensed establishment that has had a Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit suspended cannot avoid the consequences of the special magistrate's action by changing its business name or corporate status.
- vi. *Alternative enforcement procedures.* The enforcement procedures contained herein are alternative procedures, and the city reserves the right to arrest, prosecute, or take action utilizing any other enforcement procedures authorized by law.

Sec. 18-8. – Severability.

Each separate provision of chapter 18 and the ordinances herein shall be deemed to be severable. If any provision, word or section within this chapter or ordinances herein is deemed unconstitutional or otherwise invalid, such determination shall not affect the validity of any other provisions, section or word of this chapter or ordinances.

SECTION 2. That all ordinances or parts of ordinances in conflict with this ordinance are, to the extent that the same may conflict, hereby repealed.

SECTION 3. This ordinance shall take effect upon its adoption in accordance with the law.

AUTHENTICATED IN OPEN MEETING THIS __ DAY OF _____, A.D. 2018.

William C. Latham, MAYOR

Laurie Scott, CITY CLERK

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