

ORDINANCE NO. 2022-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA AMENDING SECTION 312.11 (PERFORMANCE SECURITY) OF CHAPTER 312 (RIGHTS-OF-WAY) OF THE CODE OF INDIAN RIVER COUNTY, TO MODIFY THE TYPES OF ALLOWABLE PERFORMANCE SECURITY; PROVIDING FOR CODIFICATION, CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Indian River County Board of County Commissioners adopted Chapter 312 of the Code of Ordinances of Indian River County on October 15, 1991, establishing the Indian River County Rights-Of-Way; and

WHEREAS, as part of the requirements for work to be completed in the County Rights-Of-Way, performance security is needed; and

WHEREAS, Chapter Section 312.11 allows for cash or security bond to be used as security for work in the County's rights-of-way; and

WHEREAS, including Letters of Credit as a secondary form of security would be beneficial, as it is a much easier form of security for the County to handle should the need arise,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT:

Section 1. Enactment Authority.

Article VIII, Section 1 of the Florida Constitution and chapter 125, Florida Statutes vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the county. The Indian River County Board of County Commissioners specifically determines that the enactment of this ordinance is necessary to protect the health, safety and welfare of the residents of Indian River County.

Section 2. Amendment of Section 312.11 (Performance Security) of Chapter 312 (Rights-Of-Way) of the Code of Indian River County, Florida.

New language indicated by underline, and deleted language indicated by strikethrough.

Section 312.11 (Performance Security) of Chapter 312 (Rights-Of-Way) of the Code of Indian River County, Florida is hereby amended to read as follows:

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CHAPTER 312. – RIGHTS-OF-WAY

* * *

Section. 312.11. – Performance Security.

- (A) Security bond shall be posted to secure completion of all construction or installation commenced, pursuant to a permit under this chapter, except for construction of driveways not requiring a roadway modification, for utility placement by utility companies having a valid franchise to operate in Indian River County, for drainage structures serving single family residences located in ditches parallel to the roadway, and pedestrian bike path facilities. Security bond shall be posted in the amount of one hundred fifteen (115) percent of the estimated costs of the proposed improvements in the right-of-way. The estimate shall be prepared by an engineer registered in the State of Florida to practice professional engineering. Upon completion and approval by the public works director of all required improvements, ninety (90) percent of the posted security will be released by the public works director. A ten (10) percent warranty security will be held for an additional twelve (12) months, following which time, if all improvements are free of defects due to faulty field engineering, workmanship, or materials, this ten (10) percent security will be released by the public works director.
- (B) In lieu of the above security, the permittee may provide a letter of credit, in a form deemed legally sufficient by the county attorney's office, or cash posted in an escrow account in the amount of one hundred fifteen (115) percent of the estimated cost of the improvements in the right-of-way. Partial release may be authorized (up to ninety (90) percent of the posted security) as work is approved. The remaining ten (10) percent will be held for an additional twelve (12) months, following such time, if all improvements are free of defects due to faulty field engineering, workmanship or materials, this ten (10) percent of the security will be released by the county public works director.

* * *

Section 3. Codification. It is the intention of the Board of County Commissioners that the provision of this ordinance shall become and be made part of the Indian River County Code, and that the sections of this ordinance may be renumbered or re-lettered and the word ordinance may be changed to section, article or such other appropriate word or phrase in order to accomplish such intention.

Section 4. Severability. If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

Section 5. Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

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Section 6. Effective Date. This ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State.

This ordinance was advertised in the Indian River Press Journal on the 1st day of April, 2022, for a public hearing to be held on the 12th day of April 2022, at which time it was moved for adoption by Commissioner _____, seconded by Commissioner _____, and adopted by the following vote:

Chairman Peter D. O'Bryan	_____
Vice-Chairman Joseph Earman	_____
Commissioner Joseph E. Flescher	_____
Commissioner Susan Adams	_____
Commissioner Laura Moss	_____

The Chairman thereupon declared the ordinance duly passed and adopted this ___day of April, 2022.

**BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY, FLORIDA**

By: _____
Peter D. O'Bryan, Chairman

**ATTEST: Jeffrey R. Smith, Clerk
and Comptroller**

By: _____
Deputy Clerk

EFFECTIVE DATE: This Ordinance was filed with the Department of State on the _____ day of _____, 2022.