

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA, CONCERNING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS (LDRs); PROVIDING FOR AMENDMENTS TO CHAPTER 913, SUBDIVISIONS AND PLATS; BY AMENDING SECTION 913.07(5)(A) AND SECTION 913.07(6)(B) AND SECTION 913.07(6)(D) AND SECTION 913.07(6)(F)3 AND SECTION 913.07(6)(F)7 AND SECTION 913.07(6)(G) SPECIFICALLY; AND SECTION 913.10 SPECIFICALLY; AND BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRs) CHAPTER 913, SUBDIVISIONS AND PLATS, BE AMENDED AS FOLLOWS:

SECTION #1:

Amend LDR Section 913.07(5)(A); as follows:

(5) *Land development permit.* The land development permit is the instrument authorizing the developer to proceed with land improvements as specified in the approved plans and specifications set forth in the application and shown on the approved preliminary plat.

(A) *Procedure.* After TRC approval of the preliminary plat (at the time the preliminary plat is scheduled for planning and zoning commission consideration and approval), an applicant may apply for a land development permit. No construction may commence until the applicant obtains a land development permit or land development permit waiver. The public works director is hereby authorized to waive, in writing, the requirement for a land development permit, where no improvements delineated in section 913.09 are required or where a required improvement(s) can be provided via another application and review process. No land development permit waiver may be issued unless an initial concurrency certificate has been issued, or concurrency acknowledgement form recorded, for the project portion to be covered by the waiver. After issuance of a land development permit or land development permit waiver, an applicant shall choose one (1) of the following options for obtaining final plat approval.

1. ~~*Residential Subdivisions.*~~

~~a-~~ **Option 1:**

Prior to final plat approval, the applicant: ~~constructs all required improvements and obtains a certificate of completion; or~~

- **Completes Utility Service's Bill of Sale checklist to the satisfaction of the Utility Services Director; and**
- **Obtains a determination from the Public Works Director in coordination with the Utility Services Director that a certificate of completion and bill of sale for water and/or sewer utility improvements are ready to issue upon Board of County Commissioners approval of the final plat; and**

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- **Enters into a warranty maintenance and bill of sale agreement in accordance with Subdivision Ordinance section 913.10.**

b.2. Option 2:

Prior to final plat approval, the applicant:

- Constructs at least seventy-five (75) percent of all required improvements, based upon the cost of improvements; and
- Enters into a contract with the county for the applicant to construct the remaining required improvements, in accordance with Subdivision Ordinance section 913.10(4); and
- Posts security to guarantee the contract, in accordance with Subdivision Ordinance section 913.10(2); and
- ~~Obtains a certificate of completion for the constructed required improvements.~~

Note: after completion of the required subdivision improvements, the applicant shall complete Utility Service's Bill of Sale checklist, enter into a warranty maintenance and bill of sale agreement and post security to guarantee those items in accordance with subdivision ordinance section 913.10.

~~2. Non-residential Subdivisions.~~

- ~~a. Prior to final plat approval, the applicant constructs all required improvements and obtains a certificate of completion; or~~
- ~~b. Prior to final plat approval, the applicant:~~
 - ~~• Enters into a contract with the county for the applicant to construct all of the required improvements or the remaining required improvements, in accordance with Subdivision Ordinance section 913.10(1); and~~
 - ~~• Posts security to guarantee the contract, in accordance with Subdivision Ordinance section 913.10(2).~~

~~Note: These "Section 1" changes shall apply to complete final plat applications received after June 15, 2005 and to all plat projects for which no land development permit application was filed by March 15, 2005. All final plats approved after September 20, 2005 shall comply with these "Section 1" changes, regardless of the date a complete final plat application was filed.~~

SECTION #2:

Amend LDR Section 913.07 (6)(B); as follows:

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(6) *Final plat.*

(B) *Procedure.* No final plat application shall be submitted for approval prior to the issuance of land development permit or land development permit waiver. The final plat application shall be submitted on a form furnished by the planning division and shall be accompanied by:

1. The appropriate filing fee;
2. A certified cost estimate, when required in conjunction with a construction contract or maintenance agreement. The certified cost estimate shall be prepared by the developer's engineer and shall include the cost of surveying, engineering and construction of all required improvements **except that surveying and engineering costs shall be excluded from a certified cost estimate prepared for a maintenance agreement. A cost estimate, when required, shall be prepared** in substantially the following form:

CERTIFICATE OF COST ESTIMATE

I, _____, A Florida registered engineer, License No. _____, do hereby certify to Indian River County that a cost estimate has been prepared under my responsible direction for those improvements itemized in this exhibit and that the total cost estimate for said improvements is \$ _____. This estimate has been prepared, in part, to induce approval by the county of a final plat for the _____ Subdivision, and for the purpose of establishing proper surety amounts associated therewith.

_____ (Signature)

(Name, Florida Registered Engineer

License No. _____)

(AFFIX SEAL)

or the actual contract price(s) may be substituted for the engineer's cost estimate. For residential subdivisions, contracts for construction of required improvements shall be limited to twenty-five (25) percent of all required improvements, based upon the cost of improvements. ~~[Note: the provision in the preceding sentence shall apply to all complete final plat applications received after June 15, 2005 and to all plat projects for which no land development permit application was filed by March 15, 2005. All final plats approved after September 20, 2005 shall comply with these "Section 1" changes, regardless of the date a complete final plat application was filed.]~~

3. **A draft contract for construction of remaining required improvements in a form acceptable to the County Attorney and proposal for appropriate** ~~Appropriate security for required improvements as specified in section 913.10 of this chapter unless a certificate of completion has been issued by the community~~

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~~development division~~ **if platting is proposed to occur prior to completion of required improvements;**

4. Ten (10) copies of the final plat drawing showing required information and certifications;
5. **A draft warranty and maintenance and bill of sale agreement in a form acceptable to the County Attorney and proposal for appropriate security** ~~Security~~ for maintenance of **and bill of sale for** improvements meeting the requirements of section 913.10 of this chapter ~~when a certificate of completion has been issued; and improvements are dedicated to the county~~ **if platting is proposed to occur after completion of required improvements;**
6. A copy of the property owners' association documents which accept the responsibility for maintenance of all private streets, rights-of-way, easements, recreation areas, stormwater management facilities or other improvements;
7. A copy of the final protective covenants and deed restrictions, where such covenants and restrictions are required or established by the applicant; ~~and~~
8. All applicable informational requirements of subsection 913.07(6)(D) and (E) of this chapter; **and**
9. **Written confirmation from the developer's surveyor, submitted on a form provided by the Public Works Director, that the final plat submittal conforms with all code requirements outlined on the "Final Plat Checklist" provided by the County Surveyor.**

The community development director or his designee shall determine whether or not a final plat application is complete and can be routed for interdepartmental review. No incomplete application shall be routed for review. The final plat application shall be valid for a period of two (2) years from the date it is filed with the planning division. The community development director or his designee may grant a one-year extension of the application.

SECTION #3:

Amend LDR Section 913.07 (6)(D); as follows:

- (D) *Information required, (all information as required in Chapter 177.091, F.S.).* The final plat shall contain:
1. A title block;
 2. The name of the proposed subdivision which shall not duplicate nor closely approximate the name of any other existing subdivision in the county. If the plat is an addition to an existing subdivision, it shall bear the same name as the existing subdivision. For planned developments, plats shall contain "PD" within the title;
 3. The name of the county and state;

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4. The legal description;
5. The date of preparation of the final plat and of any revisions;
6. A prominent "north arrow" on each sheet showing any portion of the subdivided lands; also, the reference bearing or azimuth in the notes or legend;
7. The scale stated and graphically illustrated on each sheet;
8. An index sheet on page one showing the entire subdivision and indexing the area shown on succeeding sheets. Each sheet must show the particular number of the sheet and the total number of sheets as well as clearly labeled match lines;
9. The point of beginning shown together with the letters P.O.B. in bold letters when a point of beginning is used in the legal description;
10.
 - a. The initial point in the description shall be accurately tied to the nearest government corner, and a second point shall be tied to a second government corner. A certified corner record must be submitted to the county surveyor and to the department of environmental protection for each such corner, in accordance with Florida Statutes Section 177, Part III;
 - b. Ties to at least two (2) Indian River County Horizontal Control Network (IRCHCN) monuments shall be provided if any portion of the site to be platted is within one (1) mile of one (1) such monument. This requirement shall not apply to areas covered by a valid, preliminary plat approved prior to June 1, 1995. Where such ties are required, state plane coordinates shall be shown on the certified corner records. This requirement to tie into the IRCHCN may be waived by the county surveyor for subunits or replats of plats that have already been tied into the IRCHCN.
 - c. Ties to government corners and to IRCHCN monuments shall conform to FGCC Third Order Class I standards and shall be so certified on the face of the plat under the certificate of surveyor.
11. A location sketch showing the existing zoning and land use classification of the subject site and of the adjacent property;
12. All adjacent property identified by the subdivision name, plat book and page number; if not platted, so state;
13. Boundary lines of the subdivided tract shown as a heavy line;
14. County and city limit lines within or abutting the tract;
15. Permanent reference monuments and permanent control point locations as prescribed in Chapter 177, Florida Statutes, and installed prior to submission of final plat;
16. Survey data including all pertinent dimensions;
17. Lot and block identification. Each lot and each block shall be identified;
18. Street names;

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19. The location and width of all existing or recorded streets intersecting or contiguous to the boundary of the plat by bearing and distances;
20. "Not included" parcels to be labelled "not a part of this plat";
21. The intended use of all reserved areas shall be shown on the plat;
22. All areas within the plat boundaries labelled as either lots, rights-of-way, or tracts. The use and maintenance responsibilities of all tracts shall be noted on the plat;
23. All easements including limited access easements shall be graphically depicted and dimensioned;
24. The following statements shall be noted on the plat in a prominent place:

"Notice: No construction, trees or shrubs will be placed in easements without county approval,"

"Notice: There may be additional restrictions that are not recorded on this plat that may be found in the public records of this county";

"Notice: Routine maintenance (e.g. mowing, etc.) of easements shall be the responsibility of the lot/property owner(s) and not Indian River County," and

"Notice: Property owners are prohibited from planting any Caribbean fruit fly and Asian Citrus psyllid (citrus greening) host plants as specified herein and are required to remove the same if any exists: Cattley Guava, Common Guava, Loquat, Rose Apple, Surinam Cherry, Orange Jasmine, and Chinese Box Orange."

25. ~~An three inch by five inch~~ **eight inch long by two and one-half inch tall** space **with a minimum four inch long line for the Clerk's file number (CFN) shall be provided** in the upper righthand corner of each sheet to be used by the clerk of the circuit court for recording information. The following shall be depicted within said space:

PLAT BOOK: _____

PAGE: _____

~~DOCKET NUMBER~~ **CLERK'S FILE NUMBER (CFN):** _____

26. No strip or parcel of land reserved by the owner unless it is of sufficient size to be of some particular use or service or is environmentally sensitive; and
27. The boundary of the final plat having a mathematical error of closure not greater than .01 foot. Any plat undertaking to establish a local tidal datum and determine the location of the mean high water line or mean low water line shall comply with the notification requirements of Florida Statutes Section 177.37;
28. All subdivisions abutting the Atlantic Ocean shall provide a note on the final plat which states that individual or shared private beach accesses, must comply with all standards of Chapter 932.

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29. Information required by applicable Chapter 971 regulations for either "subdivisions with special sideyards" projects or "small lot single-family subdivision" projects.

SECTION #4:

Amend LDR Section 913.07 (6)(F)3; as follows:

(F) *Certifications.*

3. *Certificate of title.* A title certification shall appear on the face or first page of each plat and shall state:
- The lands as described and shown on the plat are in the name of, and apparent record title is held by, the person, persons, or organizations executing the dedication;
 - That all taxes have been paid on said property as required by Section 197.192, Florida Statutes, as amended; and
 - The official record book and page number of all mortgages, liens, or other encumbrances against the land, and the names of all persons holding an interest in such mortgage, lien or encumbrance.

The title certification shall be an opinion of a Florida attorney-at-law ~~or the certification of an abstract or title insurance company licensed to do business in Florida~~. The county reserves the right to require that the title certification be brought current at the time of final plat approval.

SECTION #5:

Amend LDR Section 913.07 (6)(F)7, as follows:

7. *Clerk's certification.*

State of Florida

County of Indian River

~~I, clerk of circuit court of Indian River County, Florida, do hereby certify that I have examined this plat of _____ subdivision and that it complies with all the requirements of Chapter 177 of the Laws of Florida. This plat filed for record this _____ day of _____, 19 _____, and recorded on Page _____ of Plat Book _____ in the office of the clerk of circuit court of Indian River County, Florida~~

By: _____

Deputy Clerk
of Circuit Court
Indian River County, Florida

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I, [Clerk's name], Clerk of Circuit Court and Comptroller of Indian River County, Florida, do hereby certify that I have examined this plat of [subdivision name] and that it complies with all the requirements of Chapter 177 of the Laws of Florida, as amended. This plat filed for record this _____ day of _____, _____ and recorded in Plat Book _____ Page _____, Clerk's File Number (CFN) _____, in the office of the Clerk of the Circuit Court and Comptroller of Indian River County, Florida.

[Clerk's name], Clerk of Circuit Court and Comptroller of Indian River County, Florida

By: _____
Deputy Clerk

SECTION #6:

Amend LDR Section 913.07 (6)(G), as follows:

(G) *Review of final plat documents.* The community development director or his designee shall schedule all applications for review by the TRC, in the same manner as stated in section 913.07(4)(F). ~~The clerk of court and county surveyor must review mylars prior to scheduling for final plat to board of county commissioners.~~

- 1. During review of a final plat submittal, if the County Attorney's Office reviewer and/or the County Surveyor determine after a partial review that the submittal is grossly deficient in meeting code requirements, then the County Attorney's Office reviewer and/or the County Surveyor, in coordination with the reviewing county planner, may issue a "stop review" determination and require the applicant to prepare a new submittal for a second Technical Review Committee review and meeting agenda.**
- 2. Prior to scheduling a final plat for action by the Board of County Commissioners, the Clerk of Court and County Surveyor must review the final plat mylar for compliance with applicable codes and statutes.**

SECTION #7:

Amend LDR Section 913.10, Security for construction and for maintenance of required improvements, as follows:

(1) *Construction security.*

(A) When construction of required improvements is to be completed following final plat approval, the developer shall, at or prior to final plat approval, execute a contract for

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construction of the required improvements and post security in an amount equal to one hundred twenty-five (125) percent of the estimated total cost of required improvements remaining to be constructed. ~~For residential subdivisions, contracts for construction of required improvements shall be limited to twenty five (25) percent of all required improvements, based upon the estimated cost of improvements.~~

- (B) The contract shall be on a form provided by the county and shall obligate the developer to complete all "bondable" required improvements and all other improvements shown on the land development permit (unless the improvement is shown on the land development permit as not required and optional) in accordance with the land development permit, the approved plans and specifications, and county development regulations and standards, within a period of one (1) year from the date of final plat approval. Sidewalks may be bonded-out for multiple years in accordance with subdivision ordinance section 913.09(5).
- (C) The estimated total cost of improvements remaining to be constructed shall include survey, engineering and construction costs and shall be approved by the ~~county engineer~~ **Public Works Director** after review of an itemized cost estimate prepared and certified by the developer's engineer, or an actual contract price or portion thereof for the work remaining, if available.
- (D) The security posted to guarantee performance of the contract shall expire, if at all, no less than ninety (90) days beyond the last date for performance established by the contract, or any extension thereof. The security shall run in favor of the board of county commissioners, must be in a form acceptable to the county attorney, and may be either:
 - 1. Cash and a cash deposit and escrow agreement governing control and use thereof; or
 - 2. An irrevocable letter of credit (issued by a financial institution authorized to conduct business within the state).
- (E) For good cause shown, the board of county commissioners may in its discretion grant one (1) or more extensions of time for performance of any contract for required improvements, provided the security supporting such contract remains valid for the required ninety-day period following the newly extended time for performance.
- (F) No certificate of occupancy for residential occupancy for any structure within a subdivision shall be issued until a certificate of completion has been issued for all required improvements, including required buffers, of the subdivision serving the residence, with the exception of sidewalks fronting lots rather than common areas, and any final lift of asphalt in excess of the amount required by county development regulations as of the date of issuance of the land development permit for the subdivision. Prior to issuance of a certificate of completion, the required code minimum layer of asphalt must be in place or the developer shall provide to the county either an irrevocable letter of credit or cash escrow in the amount of one hundred twenty-five (125) percent of the estimated cost of the final lift including striping and resetting survey PCPs, as certified by the developer's engineer and approved by the ~~county engineer~~ **Public Works Director**. Security for a final lift of asphalt shall be by contract for construction of final lift of asphalt and either an irrevocable letter of credit or cash deposit and escrow agreement. The final lift of

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asphalt must be installed prior to two (2) years from project's certificate of completion; prior to issuance of a certificate of occupancy for the last residence within the subdivision (or a separately platted phase of a subdivision); or sixty (60) days prior to turnover to a homeowners' association, whichever occurs first.

(G) As a voluntary option for posting security, a developer may post a letter of credit that initially secures a contract for construction of remaining required improvements and later, at the time a certificate of completion is issued, is simultaneously released as construction security and re-designated as security for warranty and maintenance obligations. At the time of re-designation the amount of security may be reduced if approved by the Public Works Director in coordination with the Utility Services Director. Warranty and maintenance and Bill of Sale obligations secured under this option shall include water and sewer improvements as approved by the Utility Services Director. This security option shall be executed on forms and agreements acceptable to the County Attorney and shall be subject to the construction security and maintenance security regulations of section 913.10.

~~(G)~~ **H** The board of county commissioners may charge fees to process requests to extend, modify, or substitute security and contracts for construction. Said fees shall be established by a formal resolution of the board of county commissioners.

(2) *Maintenance security.*

(A) Prior to issuance of a certificate of completion for required subdivision improvements, the developer shall execute either a warranty and maintenance agreement as provided in subsection (B) below or an agreement to defer the warranty and maintenance agreement and posting of maintenance security as provided in subsection (C) below. In conjunction with the execution of a warranty and maintenance agreement, the developer and/or its contractor shall provide security guaranteeing the required road and drainage improvements against all defects in workmanship or materials for the period of one (1) year from the date of issuance of the certificate of completion. The one-year maintenance period commences at the time the certificate of completion is issued and not when the final lift of asphalt is applied in the event a final lift of asphalt is secured by either ~~an~~ **a separate** irrevocable letter of credit or cash escrow rather than installed.

(B) The warranty and maintenance agreement shall be on a form provided by the county attorney's office and shall be secured by an amount equal to twenty-five (25) percent of the total actual cost of the improvements covered **as approved by the Public Works Director and, if covering water and/or sewer improvements for a Bill of Sale, as approved by the Utility Services Director.** Three (3) months prior to the end of the maintenance period, the project engineer shall accompany the public works department on an inspection of the required project road and drainage improvements. Based on the inspection, the public works department shall determine if the required road and drainage improvements are properly functioning and in good repair or if deficiencies exist that require correction. If deficiencies are found and are not corrected by the end of the

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guarantee period, the Board of County Commissioners may call upon the maintenance security as provided below in subsection 913.10(3).

Maintenance security shall be either:

1. Cash and a cash deposit and escrow agreement governing control and use thereof; or
2. An irrevocable letter of credit issued by a financial institution authorized to conduct business within the state; or
3. A maintenance bond underwritten by a security insurer with an A.M. Best's rating of A-VI or greater and authorized to transact such business in this state.

The posted security shall expire, if at all, no earlier than ninety (90) days following the end of the guarantee period. Security for required road and drainage improvements shall run to the benefit of Indian River County.

Prior to the county maintenance inspection of required road and drainage improvements, the county shall notify subdivision residents of the inspection. Notice may be provided by sign posting, mail, flyers, or advertisement.

At the end of the guarantee period, the public works director may release the posted security under the terms of the warranty and maintenance agreement which shall require certified inspection reports under seal from the developer's engineer and a determination from the ~~county engineer~~ **Public Works Director** that required road, drainage, and sidewalk improvements meet applicable county performance standards.

(C) The developer (owners) and the county may agree to defer execution of a warranty and maintenance agreement and posting maintenance security at the time of issuance of a certificate of completion if the following criteria are met:

1. The road and drainage improvements that are the subject of the deferral are not needed to serve existing project residents.
2. The developer (owners) defines the "deferral area" and agrees to not sell any lots/units or obtain any building permit for construction within the deferral area until a warranty and maintenance agreement is executed and maintenance security is posted for road and drainage improvements within the deferral area.
3. The agreement is in a form acceptable to the county attorneys office, and is structured as a covenant that cannot be terminated or modified without county approval.
4. The agreement/covenant is recorded in the public records.

- (3) *Failure to perform.* In the event a developer and/or its contractor fails to perform the obligations for construction or maintenance required under the above referenced agreements, the board may call upon the surety provided, or any portion thereof, to be used for completion of the necessary remaining work. If the surety is exhausted prior to completion of the work necessary to complete the required improvements, the developer shall remain liable to the county for any resulting deficiency. The county is not responsible to complete any subdivision with county funds.

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(4) *Release or reduction of security.*

- (A) No construction security shall be released until a certificate of completion has been approved by the public works director, or his designee and security for maintenance has been established as required above.
- (B) Reduction in the amount of surety required, other than a final draw or reduction, may be authorized by the public works director after completion of any distinct and separate phase or portion of the required improvements. The amount of any given reduction shall not exceed eighty (80) percent of the cost of the completed work, as determined by the public works director following review of a cost estimate for said work prepared and certified by the developer's engineer. A reduction in construction security shall not be construed as acceptance of the improvement. Formal acceptance shall occur as provided elsewhere in this chapter, and only upon establishment of proper maintenance security, where required.
- (C) There shall be no reduction in the amount of security posted for residential subdivisions except for sidewalk improvements as provided in section 913.09(5)(b)2.c.

(5) *Security for municipalities.* If the applicant is required to construct a public system which will be accepted by a municipality, the applicant shall furnish the municipality such security as the municipality may require, including security for both performance and maintenance of the system. Furthermore, prior to final plat approval, the applicant shall furnish to the planning department, evidence from the municipality that its requirements have been satisfied.

SECTION #8: SEVERABILITY

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

SECTION #9: REPEAL OF CONFLICTING ORDINANCES

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION #10: INCLUSION IN THE CODE OF LAWS AND ORDINANCES

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

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SECTION #11: EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the ____ day of _____, 2018, for a public hearing to be held on the ____ day of _____, 2018, 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 Bob Solari _____

Commissioner Susan Adams _____

Commissioner Joseph E. Flescher _____

Commissioner Tim Zorc _____

**BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY**

The Chairman there upon declared the ordinance duly passed and adopted this _____ day of _____, 2018.

BY: _____
Peter D. O'Bryan, Chairman

ATTEST: Jeffrey R. Smith, Clerk of Court and Comptroller

BY: _____
Deputy Clerk

This ordinance was filed with the Department of State on the following date: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Dylan Reingold, County Attorney

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APPROVED AS TO PLANNING MATTERS

Stan Boling, AICP; Community Development Director

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