TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE - SUBJECT TO REVISION

ORDINANCES, RULES AND STANDARDS COMMITTEE MEETING

AGENDA

TOWN HALL
COUNCIL CHAMBERS - SECOND FLOOR
360 SOUTH COUNTY ROAD

Thursday, February 7, 2019
9:30 a.m.

I. CALL TO ORDER AND ROLL CALL
Julie Araskog, Committee Chair
Lew Crampton, Committee Member

II. PLEDGE OF ALLEGIANCE

III. APPROVAL OF AGENDA

IV. COMMUNICATIONS FROM CITIZENS

V. REGULAR AGENDA

A. Old Business

1. Update on Efforts to Affect Changes to Florida Fish and Wildlife Commission Regulations, Relative to Shark Fishing.
Jay Boodheshwar, Deputy Town Manager

2. Further Discussion and Review of Potential Modifications to Code of Ordinances at Chapter 66, Article IV, Relative to Regulation of Native Vegetation, Ficus Benjamina, Mulching, Hatracking, and Fertilization.
Josh Martin, Director of Planning, Zoning and Building

Post Office Box 2029 * 360 South County Road * Palm Beach, Florida 33480
Telephone (561) 838-5410 * Facsimile (561) 838-5411 * townmanager@townofpalmbeach.com

B New Business

1. Discussion Regarding Concerns about Lake Trail Regulations
Nick Caristo, Acting Police Chief

VI. ANY OTHER MATTERS

VII. ADJOURNMENT

PLEASE TAKE NOTE:

The progress of this meeting may be monitored by visiting the Town's website (www.townofpalmbeach.com) and clicking on "Meeting Audio" in the left column. If you have questions regarding that feature, please contact the Office of Information Technology (561) 227-6315. The audio recording of the meeting will appear within 24 hours after the conclusion of the meeting.

Disabled persons who need an accommodation in order to participate in the meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.

TOWN OF PALM BEACH

Information for ORS Committee Meeting on: February 7, 2019

To: Ordinances, Rules and Standards Committee

From: Jay Boodheshwar, Deputy Town Manager

Re: Update on Efforts to Affect Changes to Florida Fish and Wildlife Commission Regulations, Relative to Shark Fishing.

Date: February 2, 2019

STAFF RECOMMENDATION

Staff recommends that the ORS Committee review the informational report below.

GENERAL INFORMATION

As reported at the December 2018, ORS Committee meeting, Coastal Program Manager, Rob Weber, would attend the December 12, 2018, FWC meeting to reiterate in person the Town's request for modifications to proposed shore-based shark fishing regulations prior to their final approval.

After several years of advocacy, it appears our efforts have paid off. The updated draft regulations have addressed our concerns pertaining to chumming for shark from the beaches, piers and jetties, and other shore-based structure, as well as from vessels in the water. Below is an excerpt from the attached regulations, which is on the agenda for approval at the February 20, 2019, FWC meeting.

(4) "Shore-based shark fishing" means targeting or harvesting any species of shark when fishing from shore, or any structure attached to shore, including but not limited to bridges, piers, docks, and jetties. Fishing from shore or any structure attached to shore by or with any of the following gear or methods shall constitute shore-based shark fishing regardless of the species targeted or harvested.

(a) Fishing with a metal leader greater than 4 feet in length.

(b) Using a fighting belt, fighting harness, or similar device used in conjunction with a fishing rod to give the angler a mechanical advantage when reeling in a fish.

(c) Deploying bait by any means other than casting from shore, including but not limited to transporting or dropping the bait by or from a vessel, surf board, drone, or by swimming.

cc: Kirk W. Blouin, Director of Public Safety
Paul Brazil, Director of Public Works
Rob Weber, Coastal Program Manager
Nick Caristo, Acting Police Chief
Ben Alma, Code/Parking Enforcement Manager

Sharks

PROPOSED RULE LANGUAGE

Draft Rule Hearing
Agenda Item 5A

December 12, 2018

CHAPTER 68B-2
GENERAL

68B-2.001	General Definitions
68B-2.002	Return of Marine Organisms to Water; Permissible Temporary Possession
68B-2.003	License Required for Harvest or Possession of a Marine Organism
68B-2.004	Recreational and Commercial Harvest on the Same Trip
68B-2.006	Restricted Species Endorsement
68B-2.007	Prohibition of Possession, Transport, Purchase, or Sale of Illegally-Caught Marine Organisms
68B-2.008	Trap Placement
68B-2.009	Designation of License-Free Saltwater Fishing Days
68B-2.010	Tournament Permits
68B-2.011	Chumming

68B-2.011 Chumming.

(1) It is unlawful for any person to place chum in the water for the purposes of fishing from a beach or wade fishing in waters immediately adjacent to a beach. This shall not be construed to prohibit the use of a baited hook when fishing with hook and line gear, placing bait in a trap authorized pursuant to 68B-4.020 in order to target marine organisms by enticing them to enter the trap, or the use of a baited trotline for the harvest of blue crab.

(2) For the purposes of this rule, "chum" means fish, fish parts, other animal products, or synthetic products created or intended to chemically or otherwise resemble animal products placed in the water for the purpose of attracting a marine organism.

(3) For the purposes of this rule, "beach" shall be defined as any area of shoreline along a body of marine or brackish water that is covered predominantly in sand, with sufficient sand above the mean high-water line to support sunbathing.

CHAPTER 68B-44
SHARKS AND RAYS

Note: *Proposed changes to the Sharks and Rays chapter include substantive changes intended to address shore-based shark fishing and handling of prohibited shark species (shown in green) and non-substantive and/or clarifying changes (shown in black) proposed as part of the Marine Fisheries Rule Cleanup process. Many of these clarifying changes will be implemented via substantial rewording of existing rules that do not change the application or provisions of the rule and are therefore not shown here in strike-add format. All cases of substantial rewording are indicated in blue above the rule number. Any new provisions added to these substantially reworded rules are indicated by underlining.*

68B-44.002	Definitions
68B-44.003	Size Limit; Landing in Whole Condition Requirement ~~Bag Limit Applicable to State Waters, Gear Restriction~~
68B-44.004	Bag and Vessel Limits Applicable to Florida Waters; Prohibited Species; Transit Through Florida Waters ~~Landing in Whole Condition; Transit Through State Waters~~
68B-44.005	Commercial Closures ~~Commercial Harvest of Sharks: Federal Permit Required~~
68B-44.006	Allowed Gear; Prohibited Gear and Methods of Harvest ~~Commercial Season; Season Closure; Prohibition of Sale~~
68B-44.007	Sale and Purchase Requirements ~~Size Limit Applicable to State Waters~~
68B-44.008	Open and Closed Areas ~~Prohibited Species; Prohibition of Harvest, Landing, and Sale~~

68B-44.009 Licensing Requirements

68B-44.002 Definitions.

As used in this rule chapter:

(1) "Finned" means one or more fins, including the caudal fin (tail), are no longer naturally attached to the body of the shark. A shark with fins naturally attached, either wholly or partially, is not considered finned.

(2) ~~"Fork Length" means the length of a fish as measured from the most forward point of the head to the rear center edge of the tail.~~

~~(3) "Harvest" means the catching or taking of a marine organism by any means whatsoever, followed by a reduction of such organism to possession. Marine organisms that are caught but immediately returned to the water free, alive, and unharmed are not harvested.~~

~~(4) "Harvest for commercial purposes" means the taking or harvesting of a marine organism for purposes of sale, barter, trade or exchage or with intent to sell, barter, trade or exchange.~~

~~(5) "Land," when used in connection with the harvest of marine organisms, means the physical act of bringing the harvested organism ashore.~~

~~(6) "Ray" means any species of the Order Rajiformes, or any part thereof.~~

~~(7)~~ "Shark" means any species of the orders Carcharhiniformes, Lamniformes, Hexanchiformes, Orectolobiformes, Pristiophoriformes, Squaliformes, Squatiniformes, including but not limited to any of the following species or any part thereof:

(a) Large coastal species:

1. Blacktip shark ~~—~~(*Carcharhinus limbatus*).
2. Bull shark ~~—~~(*Carcharhinus leucas*).
3. Nurse shark ~~—~~(*Ginglymostoma cirratum*).
4. Spinner shark ~~—~~(*Carcharhinus brevipinna*).

(b) Small coastal species:

1. Atlantic sharpnose shark ~~—~~(*Rhizoprionodon terraenovae*).
2. Blacknose shark ~~—~~(*Carcharhinus acronotus*).
3. Bonnethead ~~—~~(*Sphyrna tiburo*).
4. Finetooth shark ~~—~~(*Carcharhinus isodon*).

(c) Pelagic species:

1. Blue shark ~~—~~(*Prionace glauca*).
2. Oceanic whitetip shark – (*Carcharhinus longimanus*).

2.~~3.~~ Porbeagle shark ~~—~~(*Lamna nasus*).

3.~~4.~~ Shortfin mako ~~—~~(*Isurus oxyrinchus*).

4.~~5.~~ Thresher shark ~~—~~(*Alopias vulpinus*).

(d) Smoothhound sharks:

1. Smooth d~~D~~ogfish ~~—~~(*Mustelus canis*) ~~any species of the Genus *Mustelus*~~.
2. Florida smoothhound (*Mustelus norrisi*).
3. Gulf smoothhound (*Mustelus sinusmexicanus*).

(e) Atlantic angel shark (*Squatina dumeril*).

(f) Basking shark (*Cetorhinus maximus*).

(g) Bigeye sand tiger (*Odontaspis noronhai*).

(h) Bigeye sixgill shark (*Hexanchus nakamurai*).

(i) Bigeye thresher (*Alopias superciliosus*).

(j) Bignose shark (*Carcharhinus altimus*).

(k) Bluntnose sixgill shark (*Hexanchus griseus*).

(l) Caribbean reef shark (*Carcharhinus perezii*).

(m) Caribbean sharpnose shark (*Rhizoprionodon porosus*).

(n) Dusky shark (*Carcharhinus obscurus*).

(o) Galapagos shark (*Carcharhinus galapagensis*).

(p) Great hammerhead (*Sphyrna mokarran*).

(q) Lemon shark *(Negaprion brevirostris).*

(r) Longfin mako (*Isurus paucus*).
(s) Narrowtooth shark (*Carcharhinus brachyurus*).
(t) Night shark (*Carcharhinus signatus*).
(u) Sandbar shark (*Carcharhinus plumbeus*).
(v) Sand tiger (*Carcharias taurus*).
(w) Scalloped hammerhead (*Sphryna lewini*).
(x) Sharpnose sevengill shark (*Heptranchias perlo*).
(y) Silky shark (*Carcharhinus falciformis*).
(z) Smalltail shark (*Carcharhinus porosus*).
(aa) Smooth hammerhead (*Sphyrna zygaena*).
(bb) Spiny dogfish (*Squalus acanthias*).
(cc) Tiger shark (*Galeocerdo cuvier*).
(dd) Whale shark (*Rhincodon typus*).
(ee) White shark (*Carcharodon carcharias*).
(3) "Shark fin" means any fin of a shark, including the caudal fin (tail), or any portion thereof.
(4) "Shore-based shark fishing" means targeting or harvesting any species of shark when fishing from shore, or any structure attached to shore, including but not limited to bridges, piers, docks, and jetties. Fishing from shore or any structure attached to shore by or with any of the following gear or methods shall constitute shore-based shark fishing regardless of the species targeted or harvested.
(a) Fishing with a metal leader greater than 4 feet in length.
(b) Using a fighting belt, fighting harness, or similar device used in conjunction with a fishing rod to give the angler a mechanical advantage when reeling in a fish.
(c) Deploying bait by any means other than casting from shore, including but not limited to transporting or dropping the bait by or from a vessel, surf board, drone, or by swimming.
(5) "Separated," with respect to a shark fin, means not naturally attached to the corresponding shark body through some portion of uncut skin or tissue.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 4-8-92, Amended 1-1-98, Formerly 46-44.002, Amended 1-19-10, 3-21-10, 1-1-12,_____.

(Substantial rewording of 68B-44.003 follows. See Florida Administrative Code for present text.)

68B-44.003 Size Limit; Landing in Whole Condition Requirement ~~Bag Limit Applicable to State Waters, Gear Restriction~~.

(1) A person may not harvest or land from Florida Waters, or possess in or on Florida Waters, a shark that is less than 54 inches fork length, with the exception of the following species, for which there shall be no minimum size limit:
(a) Atlantic sharpnose shark.
(b) Blacknose shark.
(c) Blacktip shark.
(d) Bonnethead.
(e) Finetooth shark.
(f) Smoothhound sharks.
(2) Landed in Whole Condition Requirement – A person harvesting a shark shall land each shark in whole condition. A person may not possess in or on Florida Waters, on any public or private fishing pier, or on a bridge or catwalk attached to a bridge from which fishing is allowed, a shark that has been beheaded, sliced, divided, filleted, ground, skinned, finned, or had the caudal fin (tail) removed. This provision will not be construed to prohibit the evisceration (gutting) of a shark or slicing the base of the caudal fin to bleed the carcass as long as the caudal fin remains attached.
(3) Possession of Separated Shark Fins –
(a) A person may not possess in or on Florida Waters a shark fin that has been separated from a shark.
(b) A person may not land a shark fin that has been separated from a shark.

(4) The size limits and landing in whole condition requirement of this rule will not apply to sharks lawfully harvested commercially in federal waters when such sharks are transported directly through state waters with gear appropriately stowed. Transit shall be direct, continuous and expeditious from the place where lawful harvest occurred to the place where the vessel is regularly docked, moored, or otherwise stored or to the place of the licensed wholesale dealer where the catch is to be sold. For the purpose of this section appropriately stowed means a longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck. A rod and reel must be stowed securely. Terminal gear (i.e., hooks, leaders, sinkers, flashers, or baits) must be disconnected and stowed separately from the fishing apparatus. Sinkers must be disconnected from the down rigger and stowed separately. Gillnets must be rolled, folded, or otherwise properly and securely stowed in sealed containers or compartments so as to make their immediate use as fishing implements impracticable.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 4-8-92, Amended 1-1-98, Formerly 46-44.003, Amended 1-19-10,_____.

(Substantial rewording of 68B-44.004 follows. See Florida Administrative Code for present text.)

68B-44.004 Bag and Vessel Limits Applicable to Florida Waters; Restrictions on Possession of Prohibited Species ~~Prohibited Species; Landing in Whole Condition~~; Transit Through Florida ~~State~~ Waters.

(1) Recreational Bag and Vessel Limit –

(a) A recreational harvester may not harvest or land from Florida Waters more than one shark per day. A recreational harvester may not possess in or on Florida Waters more than one shark.

(b) Two or more recreational harvesters aboard a vessel in or on Florida Waters may not collectively possess or land more than two sharks, regardless of the number of persons aboard. This provision will not be construed to authorize harvest or possession of sharks in excess of the bag limit.

(2) Commercial Bag and Vessel Limit –

(a) A commercial harvester may not harvest or land from Florida Waters more than one shark per day. A commercial harvester may not possess in or on Florida Waters more than one shark.

(b) Two or more commercial harvesters aboard a vessel in or on Florida Waters may not collectively possess or land more than two sharks, regardless of the number of persons aboard. This provision will not be construed to authorize harvest or possession of sharks in excess of the bag limit.

(3) Prohibited Species –

(a) For the purposes of this rule, "prohibited species" shall include:

1. Atlantic angel shark.
2. Basking shark.
3. Bigeye sand tiger.
4. Bigeye sixgill shark.
5. Bigeye thresher.
6. Bignose shark.
7. Bluntnose sixgill shark.
8. Caribbean reef shark.
9. Caribbean sharpnose shark.
10. Dusky shark.
11. Galapagos shark.
12. Great hammerhead.
13. Lemon shark.
14. Longfin mako.
15. Narrowtooth shark.
16. Night shark.
17. Sandbar shark.
18. Sand tiger.
19. Scalloped hammerhead.

20. Sharpnose sevengill shark.
21. Silky shark.
22. Smalltail shark.
23. Smooth hammerhead.
24. Spiny dogfish.
25. Tiger shark.
26. Whale shark.
27. White shark.
28. Largetooth sawfish (*Pristis pristis*).
29. Smalltooth sawfish (*Pristis pectinata*).
30. Manta ray (species of the genera *Manta* and *Mobula*).
31. Spotted eagle ray (*Aetobatus narinari*).

(b) A person may not harvest or possess on or from Florida Waters or land in Florida any prohibited species or any part thereof.

(c) A person may not unnecessarily harm or destroy any prohibited species from Florida Waters.

(d) A person who catches a prohibited species while fishing from shore must release such prohibited species immediately at the site of capture, without unnecessary harm. Delaying the release of a prohibited species for any period of time longer than necessary to remove the hook or other fishing tackle is prohibited. The permissible temporary possession provisions provided for by 68B-2.002(2), F.A.C., do not apply to prohibited species.

(e) A person may not remove a prohibited species from Florida Waters. The gills of a prohibited species must remain submerged and the entire length of the organism must remain in the water. This subparagraph shall not be construed to prohibit temporarily lifting the head of a prohibited species from the water in order to speed removal of a hook or other fishing tackle or to require unsafe practices while fishing from shore.

(4) The bag, possession, landing, and prohibited species requirements of this rule do not apply to sharks lawfully harvested in federal waters when such sharks are transported directly through Florida Waters with gear appropriately stowed. Transit shall be direct, continuous and expeditious from the place where lawful harvest occurred to the place where the vessel is regularly docked, moored, or otherwise stored or to the place of the licensed wholesale dealer where the catch is to be sold. For the purpose of this section appropriately stowed means a longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck. A rod and reel must be stowed securely. Terminal gear (i.e., hooks, leaders, sinkers, flashers, or baits) must be disconnected and stowed separately from the fishing apparatus. Sinkers must be disconnected from the down rigger and stowed separately. Gillnets must be rolled, folded, or otherwise properly and securely stowed in sealed containers or compartments so as to make their immediate use as fishing implements impracticable.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 4-8-92, Amended 2-14-94, 1-1-98, Formerly 46-44.004, Amended 10-15-07, 1-19-10,_____.

(Substantial rewording of Rule 68B-44.005 follows. See Florida Administrative Code for present text.)

68B-44.005 Commercial Closures ~~Harvest of Sharks: Federal Permit Required~~.

(1) If at any time the harvest of any species of shark for commercial purposes in adjacent federal waters is closed, adjacent Florida Waters will be closed to commercial harvest of the species affected by the federal closure, from the date of such closure until federal waters are reopened to the commercial harvest of such species.

(2) If at any time the harvest of any species of shark is closed in state waters of the Atlantic Ocean for commercial purposes by the Atlantic States Marine Fisheries Commission, Florida Waters of the Atlantic Ocean from the Florida-Georgia border to the border between Miami-Dade and Monroe counties will be closed from the date of such closure until the Atlantic States Marine Fisheries Commission reopens the fishery to the commercial harvest. For purposes of this section the border between Miami-Dade and Monroe counties is defined as a line beginning on the east coast of Florida at the mainland at 25°20.400' North Latitude, proceeding due east.

(3) During any period when Florida Waters are closed pursuant to subsections (1) or (2), a commercial harvester may not harvest, possess in or on Florida Waters, or land, within the closure area, any species to which the closure applies, regardless of where harvested.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 4-8-92, Amended 2-14-94, Formerly 46-44.005, Amended 10-15-07, 1-19-10, _____.

(Substantial rewording of Rule 68B-44.006 follows. See Florida Administrative Code for present text.)

68B-44.006 Allowed Gear; Prohibited Gear and Methods of Harvest; Required Gear ~~Commercial Season; Season Closure; Prohibition of Sale~~.

(1) A person may harvest or attempt to harvest a shark from Florida Waters only by or with the use of hook-and-line gear.

(2) The harvest of any shark from Florida Waters by or with the use of any multiple hook in conjunction with live or dead natural bait is prohibited. Snagging (snatch hooking) of a shark in or from Florida Waters is prohibited.

(3) Required gear –

(a) Non-stainless-steel circle hooks. A person targeting or harvesting sharks from Florida Waters must use non-stainless-steel circle hooks when fishing with live or dead natural bait. "Circle hook" means a fishing hook designed and manufactured so that the point is not offset and is turned perpendicularly back to the shank to form a general circular or oval shape.

(b) Cutting devices. A person targeting or harvesting sharks from Florida Waters must have in his or her possession at least one device capable of quickly cutting either the leader or the hook used. A person catching but not retaining a shark must quickly remove the hook or use such cutting device to quickly remove as much tackle and fishing gear as possible in order to release the shark immediately without unnecessary harm.

(4) A person may not harvest or attempt to harvest any shark from Florida Waters with gear not expressly permitted in subsection (1).

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 4-8-92, Amended 2-14-94, 1-1-98, Formerly 46-44.006, Amended 7-1-03, 1-19-10, _____.

(Substantial rewording of Rule 68B-44.007 follows. See Florida Administrative Code for present text.)

68B-44.007 Sale and Purchase Requirements ~~Size Limit Applicable to State Waters~~.

(1) A commercial harvester may only sell a shark, or any part thereof, to a holder of a valid federal Atlantic shark dealer permit issued pursuant to 50 C.F.R. § 635.4, as of XXX XX, 2019.

(2) No wholesale dealer, as defined in Section 379.362(1), F.S., may purchase a shark, or any part thereof, unless such dealer is in possession of a valid federal Atlantic shark dealer permit. No wholesale dealer may purchase a shark, or any part thereof, without confirming that the seller possesses a valid Florida saltwater products license and any applicable federal permit or authorization required in 68B-44.009(1). This subsection applies only when a shark, or any part thereof is sold, exchanged, bartered, distributed, or landed for the first time.

(3) During any period when Florida Waters are closed pursuant to 68B-44.005, the purchase or sale of any shark to which the closure applies is prohibited. These prohibitions shall not apply to sale of sharks that were harvested, landed, and purchased or sold prior to the closure, or sale of sharks that were harvested outside of the closure area during the closure period. The burden shall be upon any person possessing such sharks to establish the chain of possession from the initial transaction after harvest by appropriate receipt(s), bill(s) of sale, or bill(s) of lading. Failure to maintain such documentation or failure to promptly produce such documentation at the request of any duly authorized law enforcement officer shall constitute a violation of this rule.

(4) No person may purchase or sell a prohibited species specified in 68B-44.004(3), or an part thereof, unless possession and landing is authorized pursuant to 68B-44.004(4).

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 1-19-10, Amended _____.

(Substantial rewording of Rule 68B-44.008 follows. See Florida Administrative Code for present text.)

68B-44.008 Open and Closed Areas ~~Prohibited Species; Prohibition of Harvest, Landing, and Sale~~.
This rule is held for future open and closed areas.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 4-8-92, Amended 1-1-98, Formerly 46-44.008, Amended 7-1-03, 3-9-06, 1-19-10, 3-21-10, 1-1-12,_____.

(New rule – **Note:** The provisions related to existing licensing requirements found in the proposed new rule below are currently housed in 68B-44.005, FAC, Commercial Harvest of Sharks: Federal Permit Required, and are being moved to this new rule in order to provide for consistency with the organization of other marine fisheries rule chapters.)

68B-44.009 Licensing Requirements.

(1) A person may not harvest from Florida Waters, possess, or land a shark, for commercial purposes, or sell a shark, unless such person possesses both a valid saltwater products license, and any applicable federal permit for sharks required by 50 C.F.R. § 635.4 (as of XXX XX, 2019) or written authorization from the National Marine Fisheries Service pursuant to 50 C.F.R. § 635.32 (as of XXX XX, 2019).

(2) No wholesale dealer, as defined in Section 379.362(1), F.S., may purchase a shark, or any part thereof, unless such dealer is in possession of a valid federal Atlantic shark dealer permit. No wholesale dealer may purchase a shark, or any part thereof, without confirming that the seller possesses a valid Florida saltwater products license and any applicable federal permit or authorization required in subsection (1). This subsection applies only when a shark, or any part thereof, is sold for the first time.

(3) Shore-based shark fishing permit.

(a) A person may not participate in shore-based shark fishing unless such person has been issued and is in possession of a valid Commission-issued shore-based shark fishing permit. A person who is exempt from license or permit requirements by Section 379.353(2), F.S., is also exempt from the shore-based shark fishing permit requirement.

(b) Shore-based shark fishing permits shall only be issued upon completion of a Commission-approved shore-based shark fishing education course available at: [http://www.myfwc.com/…….] and shall be valid for 12 months from the date of issue.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New _____.

DRAFT

TOWN OF PALM BEACH

Information for ORS Committee Meeting on: February 7, 2019

To: Ordinances, Rules & Standards Committee

Via: Jay Boodheshwar, Deputy Town Manager

From: Josh Martin, Director of Planning, Zoning, and Building

Re: Further Discussion and Review of Proposed Changes to Chapter 66 of the Town Code

Date: February 2, 2019

STAFF RECOMMENDATION

Staff requests direction from the Ordinance, Rules, and Standards (ORS) Committee regarding revisions to Chapter 66 of the Town Code.

GENERAL INFORMATION

At the November 13, 2018, Town Council meeting, the ORS Committee recommended the following amendments to Town Council for consideration:

- The first amendment at Article II, relates to the incorporation of revised definitions related to Natural Resource Protection in general;
- The second amendment at Section 66-212 proposes revisions to the existing Purpose and Intent section of the article thus providing relationship to the revised standards of the article;
- The third amendment at Section 66-285 (currently a revised section in the ordinance) proposes general design requirements and specifically speaks to the minimum native vegetation requirement (subsection (3));
- The fourth amendment at Article IV, subsection (5) relates to mulching and is aimed at environmental protection; and
- The final amendment which is deemed necessary and important, especially because of the continued invasion of white fly in the Town and elsewhere, is at Section 66-311 and includes a new subsection (d) which provides that the planting of ficus benjamina shall be prohibited, except in instances where it is being planted to fill in hedge material.

The Town Council did not take action on the aforementioned amendments and asked Staff to review the proposed amendments once more and provide a revised, recommended list of amendments to the ORS committee at its December 2018 meeting, which were as follows:

- The first amendment at Article II, related to the incorporation of revised definitions related to Natural Resource Protection in general that pertain to the other amendments in the attached document;

- The second amendment at Section 66-212 proposed revisions to the existing Purpose and Intent section of the article thus providing relationship to the revised standards of the article;
- The third amendment at Section 66-285 (currently a revised section in the ordinance) proposed general design requirements and specifically speaks to the minimum native vegetation requirement (subsection (3)) of 25% as a result of Town Council direction during its November 13, 2018 meeting. This amendment also included the prohibition of hat racking of trees following Staff review of the subject matter. Staff has reviewed how other local municipalities handle the hat racking of trees and recommends that the practice of hat racking be prohibited. This practice is harmful to the tree and is aesthetically unpleasing. The practice also leaves the tree more vulnerable to storms due to its decrease in overall health;
- The fourth amendment at Article IV, subsection (5) related to mulching and was aimed at environmental protection. This amendment specifically prohibited the use of Cypress mulch and dyed mulches; and
- The final amendment, which was deemed necessary and important, especially because of the continued invasion of white fly in the Town and elsewhere, was at Section 66-311 and included a new subsection (d), which prohibits the planting of ficus benjamina.

Moreover, Staff conducted a review of the topic of shade trees and has researched how other upscale south Florida municipalities address shade trees in their development code. For the communities that do require shade trees, the intent is to bolster a community's tree canopy and to limit the number of palm trees per property. Staff believes that the Town has a very healthy canopy condition, well in excess of the requirements of the studied municipalities, and that the limiting of a property's palm trees in not in the interest of the community. As a result, Staff recommends against any regulations concerning shade trees be included in the amendments to Chapter 66.

At its December 6, 2018 meeting, the ORS voted to recommend only the amendment related to ficus benjamina to Town Council for consideration. Additionally, the ORS requested input from The Garden Club of Palm Beach, Palm Beach Civic Association Town Beautification Committee, and local Landscape Architects (landscape design professionals) to review during the February 7, 2019 meeting. On Friday, January 11, 2019, Staff circulated the proposed amendments and received input from each of the aforementioned groups, as well as The Preservation Foundation of Palm Beach (input attached for your review). An annotated version of the Ordinance that was circulated for review is included for your review, which contains all of the comments received correlated to the pertaining section of the ordinance. Finally, Staff has prepared a revised version of ordinance that reflects these recommendations from The Garden Club of Palm Beach, Palm Beach Civic Association Town Beautification Committee, and local Landscape Architects (landscape design professionals), and The Preservation Foundation of Palm Beach and is included for your review. Staff is seeking a recommendation that the proposed changes to Chapter 66 be drafted into an ordinance and heard by Town Council.

CC: Kirk Blouin, Town Manager
John C. Randolph, Town Attorney

From:	Joshua Martin
To:	John Lindgren; Adam Mills; Donald Skowron; Dustin Mizell; Fernando Wong; Timothy C. Johnson; Molly Schumacher; Mario Nievera; Keith Williams; Matt Jackman; Andres Paradelo; Chuck Yannette; "Parker-Yannette Design Group"; Steve West; Jorge Sanchez; Brian Vertesch; Claudia Visconti; LDG@Langdesigngroup.com; Alan Stopek; nedbarnes@palmbeachcivic.org; John David Corey; Beth Dowdle; Elizabeth Thebaut
Cc:	Jay Boodheshwar; Julie Araskog; Julie Araskog; Lew Crampton; Joshua Martin
Subject:	Town of Palm Beach Chapter 66 Amendments
Date:	Friday, January 11, 2019 5:39:31 PM
Attachments:	Chapter 66 Exisitng.doc Chapter66Proposed11January2019.docx
Importance:	High

The Garden Club of Palm Beach, Palm Beach Civic Association Town Beautification Committee, and local Landscape Architects:

Good evening. I hope this email finds you well.

As you may know, the Town's Ordinance, Rules, and Standards (ORS) Committee has been considering amendments to Chapter 66, Natural Resource Protection (existing ordinance attached for your reference), of the Town Code. These amendments include the following topics:

1. Revisions to the Definitions section;
2. Revisions to the Purposes and Intent Section;
3. Standards related to minimum requirements for native vegetation;
4. Mulching requirements;
5. Hat racking standards; and
6. Prohibition of Ficus Benjamina.

Attached, please find the most recent draft of the proposed amendments related to the aforementioned topics. Per the direction of the ORS Committee, please review and provide any feedback on the proposed amendments to me by Friday, 25 January 2019. Please note that any and all comments would be appreciated including proposed ordinance language for these topics.

Please note the next ORS meeting will be on Thursday, 7 February 2019, at 930am in Town Council Chambers at Town Hall, during which these amendments will be discussed. We invite you to participate in this meeting as well. If you have any questions regarding this matter, please let me know. Have a wonderful weekend.

Respectfully,
Josh

Josh Martin, AICP, CNU-A
Director

Town of Palm Beach

Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6401
Mobile: 843-247-2057
www.townofpalmbeach.com

Chapter 66 - NATURAL RESOURCE PROTECTION[1]

Footnotes:

--- (**1**) ---

Cross reference— Buildings and building regulations, ch. 18; coastal construction code, § 18-276 et seq.; consistency and concurrency management system, ch. 30; environment, ch. 42; floods, ch. 50; historical preservation, ch. 54; marine structures, ch. 62; parks and recreation, ch. 74; planning, ch. 86; solid waste, ch. 102; streets, sidewalks and other public places, ch. 106; subdivisions, ch. 110; utilities, ch. 122; vegetation, ch. 126; zoning, ch. 134; C conservation district, § 134-1351 et seq.

ARTICLE I. - IN GENERAL

Sec. 66-1. - Generally.

(a) *Purpose and intent.*

(1) It is the intent of this chapter to ensure that proposed development is consistent with the town's comprehensive plan.

(2) The purpose of this chapter is to establish those resources or areas of a development site that must be protected from harmful effects of development.

(b) *Relationship to other requirements.* In addition to meeting the requirements of this chapter and other applicable town regulations, development plans shall comply with all applicable federal, state, county, and water management district regulations relating to natural resource protection.

(c) *Compliance with subdividing land.* Each lot of a proposed subdivision must include a site suitable for constructing a structure in conformity with the standards of these requirements.

(Code 1982, § 11.5-1)

Sec. 66-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alter or *alteration of stormwater systems* means work done on a stormwater management system other than that necessary to maintain the system's original design and function.

Alter or *alteration of vegetation* means to cut, trim, remove, defoliate, or otherwise destroy or disturb by any means, leaves, limbs, stems, roots, or other plant parts, dead or alive.

Antitranspirant means a protective coating, generally applied to plant materials prior to or immediately after transplanting, that reduces water loss through the leaf surface.

Cultivated landscape area means planted areas that are frequently maintained by mowing, irrigating, pruning, fertilizing, etc.

Detention means the collection and storage of surface water for subsequent gradual discharge.

Dune means a hill or ridge of windblown sand and marine deposits formed by action of the wind and water, often stabilized by vegetation indigenous to this formation.

Erosion and sediment control plan means a plan for the control of soil erosion, sedimentation of waters and sediment related pollutants, and stormwater runoff resulting from land disturbing activity. The town may require the party responsible for carrying out the plan to submit monitoring reports, as deemed necessary, to determine whether the measures required by the approved plan are being properly performed.

Evapotranspiration-based controller means an irrigation controller that calculates soil moisture from known weather and related inputs, as follows:

(1) Receives and monitors weather data or on-site environmental conditions;

(2) Calculates the amount of moisture input to and moisture lost from the soil and plants;

(3) Automatically creates or adjusts the irrigation schedule to apply only the amount of water necessary to maintain adequate soil moisture.

Ground cover means plants, other than turf grass, normally reaching an average maximum height of not more than 24 inches at maturity.

Impervious surface means a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. It includes but is not limited to semi-impervious surfaces such as compacted clay, as well as most conventionally surfaced streets, roofs, sidewalks, parking lots, and other similar structures.

Irrigation system means a permanent, artificial watering system designed to transport and distribute water to plants.

Land disturbing activity means any land change that may result in soil erosion from water or wind and the movement of sediments and sediment related pollutants in waters, including but not limited to clearing, grading, excavating, transporting and filling of land.

Mangroves means any specimen of Avicenna germinans (black mangrove), Laguncularia racemosa (white mangrove), Rhizaphora mangle (red mangrove), and Conocarpus erectus (buttonwood mangrove), dead or alive, regardless of size.

Moderate drought tolerant means vegetation that requires supplemental irrigation during extreme dry periods to maintain attractive appearance.

Mulch means nonliving organic and synthetic materials customarily used in landscape design to retard erosion and retain moisture.

Native habitat means habitat that predominantly consists of or is used by those communities of plants, animals, and other flora and fauna which occur indigenously on the land, in the soil, or in the water.

Native shoreline vegetation means vegetation that occurs indigenously on the land, in the soil, or in the water.

Pestilent exotic/invasive species means species as identified by the Florida Exotic Pest Plant Council's Invasive Plant List.

Pestilent exotic species means any specimen of Melaleuca (Melaleuca quinquenerva), Australian Pine (Causarina spp.), or Brazilian Pepper (Schinus terebinthifolius), regardless of size.

Planting means the placing on or setting into the ground of live plant material.

Prop roots means the structures originating below the lowest limbs of red mangroves, and which are also known as stilt roots.

Rate means volume per unit of time.

Removal means to relocate, cut down, remove, or in any other manner destroy or cause vegetation to be destroyed.

Retention means the collection and storage of runoff without subsequent discharge to surface waters.

Runoff coefficient means ratio of the amount of rain that runs off a surface to that which falls on it; a factor from which runoff can be calculated.

Sediment means the mineral or organic particulate material that is in suspension or has settled in surface waters or groundwaters.

Sediment related pollutants means substances such as nutrients, pesticides, pathogens, and organic materials that are transmitted with, or in association with, sediment.

Substantial improvement means any combination of repairs, reconstruction, alteration, or improvements to a building, taking place during a one-year period in which the cumulative cost equals or exceeds 50 percent of the market value of the structure prior to the improvement. The market value of the building should be:

(1) The appraised value of the structure prior to the start of the initial repair or improvement, or

(2) In the case of damage, the value of the structure prior to the damage occurring.

This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have been pre-identified by the code enforcement official and which are solely necessary to assure safe living conditions.

Surface water means water above the surface of the ground whether or not flowing through definite channels.

Temporary irrigation system is one which is not to be supplied by buried polyvinyl chloride (PVC), polyethylene (PE), copper tubing or any other direct buried piping.

Trim or *trimming of vegetation* means to cut branches, twigs, limbs, and foliage, but does not mean to remove, defoliate, or destroy. Trimming does not include the cutting of prop/aerial roots.

Turf means continuous plant coverage consisting of grass species suited to growth in the county.

Untrimmed mangrove means a mangrove that has not been trimmed over two successive growing seasons.

Very drought tolerant means vegetation that can survive without supplemental irrigation after establishment.

Wetlands means hydrologically sensitive areas that are identified by being inundated or saturated by surface water or groundwater with a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands shall also be defined as those areas within the regulatory jurisdiction of the department of environmental regulation pursuant to F.S. ch. 403 and F.A.C. rules 17-3, 17-4, and 17-12. Wetlands generally include swamps, marshes, bogs and similar areas.

Window means a visual corridor through vegetation between upland properties and the waterfront.

(Code 1982, § 11.5-2; Ord. No. 13-2013, § 1, 8-13-13; Ord. No. 17-2017 , § 1, 7-12-17)

Cross reference— Definitions generally, § 1-2.

Sec. 66-3. - Enforcement and penalties.

(a) *Generally.* Unless otherwise provided, violations of this chapter are punishable as follows:

(1) Any person who violates any provision of this chapter shall be punished as provided in section 1-14.

(2) Each individual mangrove unlawfully altered under the provisions of this chapter shall constitute a separate offense.

(3) Violators may also be prosecuted under the provisions of chapter 2, article V of this Code, relating to town code enforcement.

(4) In addition to other penalties provided by law, appropriate reforestation, as approved in a shoreline management plan, shall be required for violation of this chapter.

(5) No development approvals shall be issued to any violators of this chapter until the violation has been determined to be resolved by the planning, building and zoning department.

(6) No alteration shall be permitted for five years on mangroves that have been planted to abate a violation of this chapter.

(7) The selection of any of the above penalties shall not preclude the town from seeking relief in the circuit court of the county, by way of injunction or other relief.

(b) *Payment of costs.* Violators of this section shall pay for all costs to the town for the review of any reforestation or other mitigation plan implementation conducted by the town.

(Code 1982, § 11.5-24(f), (g))

Secs. 66-4—66-35. - Reserved.

ARTICLE II. - SHORELINE MANAGEMENT PLAN

Sec. 66-36. - Findings.

The town recognizes the following environmental values of native shoreline habitat along Lake Worth:

(1) Native wetland shoreline vegetation:

a. Helps to protect the shoreline against erosion.

b. Provides habitat for a diverse community of plants and animals, including species listed by the state as endangered, threatened, and of special concern.

c. Plays a fundamental role in estuarine nutrition by producing concentrations of organic matter that is utilized by marine organisms within the estuarine food web.

d. Provides a nesting and resting ground for species of migratory birds.

e. Is aesthetically appealing and can be reasonably incorporated as an asset into the landscaping of waterfront residences.

(2) Certain pestilent exotic vegetative species have spread rapidly in the town, displacing and degrading native vegetation and creating ecologically undesirable monocultures.

(3) Upland areas directly adjacent to shorelines can degrade natural shoreline communities when they contain pestilent exotic species with invasive qualities.

(4) When placed along existing bulkheaded shores, riprap provides valuable habitat where there was none before by acting as a rocky substrate for shoreline vegetation and other shoreline organisms.

(Code 1982, § 11.5-36)

Sec. 66-37. - Purpose and intent.

(a) It is the purpose and intent of this article to prevent degradation or loss of native Lake Worth shoreline habitat, and to encourage restoration and improvement of degraded habitat through programs of exotic removal and planting of beneficial native vegetative species.

(b) This article should be used in conjunction with the vegetative provisions of this chapter, article IV.

(Code 1982, § 11.5-37)

Sec. 66-38. - Priorities for shoreline land use.

When reviewing applications for rezoning or amendments to the town's comprehensive plan, shoreline land use shall have the following priorities:

(1) Water-dependent uses such as production or protection of fish, shellfish and wildlife; protection or conservation of coastal and natural resources; recreation, public access, navigation and water-dependent utilities; provided they have no significant adverse impact upon the land, waters or adjacent land uses.

(2) Water-related or water-enhanced uses such as recreation and water-related utilities.

(3) Scenic waterfront communities.

(4) Uses that are not water-dependent or water-related that do not result in a diminution of coastal resources, and that are compatible with existing or committed uses in the town.

(Code 1982, § 11.5-81)

Sec. 66-39. - Requirements.

A shoreline management plan is required whenever:

(1) Alteration or removal of mangroves is requested; or

(2) Mangroves have been altered or removed in violation of this chapter.

(Code 1982, § 11.5-38)

Sec. 66-40. - Shoreline management plan.

The shoreline management plan shall include:

(1) A survey of the shoreline area showing the location and identification, by common and species names, of all vegetation. The mapped area shall include the intertidal area as well as the area 15 feet upland of the mean high tide line.

(2) A map showing proposed alterations.

(3) A map showing proposed mitigation.

(4) A written description of the proposed alteration and the proposed compensation and/or mitigation.

(5) A time schedule for requested activity, including commencement date of alteration and completion date of alteration.

(Code 1982, § 11.5-39)

Sec. 66-41. - Standards.

No alteration of native shoreline communities along Lake Worth shall occur without provision of some compensatory benefit to the shoreline habitat on the property as set forth in section 66-42.

(Code 1982, § 11.5-40)

Sec. 66-42. - Compensatory benefits.

(a) *Inclusion.* Compensatory benefits shall include one or more of the following:

(1) Replacement of pestilent exotic species in the shoreline area with native shoreline vegetation;

(2) Planting native shoreline vegetation in unvegetated areas; or

(3) Placement of riprap along bulkheaded shorelines and vegetating the riprap with mangroves.

(b) *Exemptions.* Applicants with shorelines more than 85 percent vegetated with mangroves or other native wetland shoreline vegetation, and are not degraded by the presence of exotic species, shall be permitted to trim presence of exotic species, shall be permitted to trim windows without compensatory measures, but must meet the other requirements of this chapter.

(Code 1982, § 11.5-41)

Sec. 66-43. - Mangrove trimming.

Trimming of mangrove windows for visual access is permitted under the following conditions:

(1) No more than 20 percent of naturally vegetated shoreline area may be trimmed as windows.

(2) Window areas must be established in the management plan. Once established, window areas may be maintained as part of an approved shoreline management plan.

(3) Established window areas may not be moved without the authorization of the town building official or his designee.

(4) An area twice the area of the window shall be restored by one or more of the methods described in section 66-42.

(5) Nonwindow areas shall be left untrimmed.

(Code 1982, § 11.5-42)

Sec. 66-44. - Mangrove removal.

Mangrove removal must meet the following requirements:

(1) Mangrove removal must meet all the conditions of this chapter.

(2) When total removal is requested, the applicant must provide a mitigation strategy. This strategy must include, at a minimum:

a. Replanting of not less than three times the total land area proposed for alteration at the following mitigation rates: 4:1 for forested wetlands; 2:1 for herbaceous wetlands.

b. Description of species and spacing.

c. The location of the reforestation, its elevation, and all surrounding vegetation.

d. A performance bond guaranteeing the success of the reforestation.

(3) Mangroves used for reforestation purposes shall be grown in pots no smaller than three gallons, have no fewer than two lateral branches, and be a minimum of four feet in height at the time of planting.

(4) No alteration shall be permitted for five years for mangroves that have been planted to abate a violation of this chapter. Otherwise, planted mangroves may be altered after they reach a height of six feet or higher.

(5) Salt marsh vegetation may be used in high energy areas in front of mangrove plantings, as part of required mitigation.

(Code 1982, § 11.5-43)

Sec. 66-45. - Phasing.

Phasing is encouraged for shorelines with extensive exotic invasion. Time periods and precise activities shall be specified.

(Code 1982, § 11.5-44)

Sec. 66-46. - Removal of pestilent exotics.

(a) Removal must be arranged so as to prevent damage to adjacent native ecosystems whenever possible.

(b) An herbicide approved by the town planning, building and zoning department may be used for Brazilian pepper when it is applied by a qualified professional.

(Code 1982, § 11.5-45)

Sec. 66-47. - Maintenance.

Property owners are responsible for maintenance of vegetation as specified in the management plan.

(Code 1982, § 11.5-46)

Secs. 66-48—66-80. - Reserved.

ARTICLE III. - SAND AND DUNE REMOVAL OR ALTERATION

DIVISION 1. - GENERALLY

Sec. 66-81. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alteration means any removal, addition, or moving of sand, and/or any removal or addition of vegetation of any kind, either by way of planting or transplanting such vegetation, destruction of such vegetation, or the pruning or cutting of vegetation.

Crest of the existing dune line means the highest point in elevation of the primary natural dune.

Dune means a natural hill or ridge of windblown sand and marine deposits formed by action of the wind and water, often stabilized by vegetation indigenous to this formation, including but not limited to sea oats, herbs, woody vegetation, and other growth common to the beach area adjacent to the coastline. (See *Primary natural dune.*)

Excavation means removal of soil, sand or vegetation by the process of digging, scooping or hollowing out.

Materially altered means any construction, excavation or building that has an adverse effect upon the ecological integrity of the dune seaward of an existing seawall, the control of beach erosion, hurricane protection, coastal flood control, the shoreline, and/or offshore deposits of sand.

Motor vehicle means any self-propelled wheeled conveyance.

Primary natural dune means the hill or ridge of wind-blown sand located furthest east (seaward). (See *Dune.*)

Structure means anything constructed or erected, except for fences, the use of which requires any type of permanent location on the ground or attached to something having a permanent location on the ground, and shall include but not be limited to signs, walkways or types of construction with interior surfaces not normally accessible for human use.

(Code 1982, § 6-36(b))

Cross reference— Definitions generally, § 1-2.

Sec. 66-82. - Motor vehicles.

No person shall drive any motor vehicle on, over or across any sand dune, except when authorized in advance by the town's building official to traverse a specific portion of dune in the performance of town-approved activities.

(Code 1982, § 6-36(k))

Cross reference— Traffic and vehicles, ch. 118.

Sec. 66-83. - Beaches; removing sand or earth.

It shall be unlawful for any person to take or remove from the ocean beach within the limits of the town any sand or earth.

(Code 1982, § 13-11)

Sec. 66-84. - Public nuisances.

Any activity subject to the requirement to obtain a class I, II or III permit as set forth in section 66-123 conducted in violation of the provisions of this article is declared to be a public nuisance. Any such violation is subject to the penalty provisions set forth in this article. In addition, the town may require site restoration and/or mitigation of the violation's impact in a manner determined by the town to be appropriate for the site, type and magnitude of violation. If such restoration and/or mitigation is not accomplished within a reasonable time as directed, the town may enter the property and accomplish the restoration and/or mitigation at its own expense, and the costs shall become a lien upon the property of the upland owner upon which the violation occurred.

(Code 1982, § 6-36(l))

Sec. 66-85. - Existing structures and previously developed properties.

The provisions of this article shall not apply to property located in the beach zoning district and structures existing or under construction prior to the effective date of the ordinance from which this section was derived in all group R, residential zoning districts; however, such existing structures and

those structures under construction, once complete, shall not be materially altered as defined in section 66-81.

(Code 1982, § 6-36(m))

Sec. 66-86. - Appeal.

(a) Appeals to the town council may be taken by any person aggrieved or by any officer, board or bureau of the town affected by any decision of an administrative official under any provision of this article. Any person appealing any decision of an administrative official shall make such appeal within 30 days after rendition of the order, requirement, decision or determination from which such appeal is taken, or the right to appeal shall be barred. Such appeal shall be in writing to the town council with ten copies thereof filed with supporting facts and data with the building official. Appeals shall be accompanied by proper exhibits, which shall be timely filed, and shall include plans, documents and other materials to adequately depict and support the appeal. Upon receipt of the appeal:

(1) The building official shall forthwith examine such appeal and endorse his recommendation thereon together with all documents, plans, papers or other materials constituting the record upon which the action appealed from was taken.

(2) All appeals will be heard at regular meetings of the town council unless otherwise ordered by the town council.

(3) Postponement requests for deferred action on any appeal will be granted for one month only (or the next succeeding regular town council meeting, if that should occur on a different date) except for good cause shown.

(4) When an appeal is deferred or postponed because the town council determines that additional professional advice is necessary, the expense of obtaining such additional professional advice shall be borne by the appellant. The person to render or give such additional professional advice shall be selected by mutual agreement of the town and the appellant.

(b) An appeal to the town council stays all work on the premises that is in furtherance of the action appealed from unless the official from whom the appeal was taken shall certify to the town council that, by reason of facts stated in the certificate, a stay would cause imminent peril to life and property, in which case, proceedings or work shall not be stayed except by a restraining order, which may be granted by the town council or by a court of competent jurisdiction on application, on notice to the officer from whom the appeal is taken, and on due cause shown of imminent peril to life and property.

(Code 1982, § 6-36(n))

Sec. 66-87. - Penalty.

Any person violating this article, upon conviction, may be punished as provided in section 1-14. Such person may be deemed guilty of a separate offense for each day during any portion of which any violation of this article is committed or continued. Violators also may be prosecuted under the code enforcement provisions of chapter 2, article V, of this Code. In addition to remedies available under chapter 2, article V, of this Code, the code enforcement board may require site restoration. The selection of any of the penalties in this section shall not preclude the town from seeking relief in the circuit court of the county, by way of injunction or other relief.

(Code 1982, §§ 6-36, 13-10)

Secs. 66-88—66-120. - Reserved.

DIVISION 2. - PERMIT

Sec. 66-121. - Required.

(a) It is unlawful for any person to remove, alter, destroy or damage any existing dune or the vegetation thereon in the town, except after approval of a permit application submitted to the town, in accordance with the provisions of section 66-123.

(b) No person shall alter, damage or cause to be damaged any sand dune or any vegetation (excluding lawns) growing seaward of a line 25 feet landward of the crest of the primary natural dune, without first having obtained from the town a class I, II, or III permit, as set forth in this division, in all zoning districts unless specifically exempted.

(Code 1982, §§ 6-36(a), 13-10(a); Ord. No. 15-97, § II, 12-9-97)

Sec. 66-122. - Classification of permits.

There shall be three classifications of permits that will be issued in accordance with the terms of this division:

(1) Class I permits shall be applicable to all activities that are subject to the requirement to obtain a permit under this division that are not included in the definition of class II and III permits.

(2) Class II permits shall be applicable to routine dune maintenance activities such as trimming, pruning, minor additions of vegetation and/or sand, and other activities as specified in the town's guidelines for routine dune maintenance. These guidelines shall be formally approved by the town council and shall be amended or readopted at least annually. The guidelines shall include but not be limited to a list of approved vegetation for planting in the dune, which list may be amended by the town's building official on the advice of the town's dune consultant. The guidelines also shall include specified trimming techniques and activities approved by the town council for administration permit approval. Any activity regulated by this section and not included in the town's guidelines shall be subject to the class I permit application process. Under no circumstances shall a class I permit allow existing vegetation to be lowered to a height less than 3.5 feet.

(3) Class III permits shall be applicable to emergency dune repairs and shall be issued administratively in accordance with the application requirements specified in this division, including the approval of such emergency activities by the appropriate state, county and/or federal authorities as may be required.

(Code 1982, § 6-36(c))

Sec. 66-123. - Application requirements.

(a) *Class I permit.* Applications for class I permits under this section shall be accompanied by a nonrefundable application fee of $3,500.00 for major projects (involving town staff and town consultant's preinspection, recommendation, and follow-up inspection) and $1,400.00 for minor projects (involving town staff and town consultant's review and recommendation only). Such applications shall also be subject to a permit fee consistent with the building permit fee schedule published by the town's building department, payable at the time of permit issuance. Applications for class I permits shall describe the property upon which the work is to be performed, and shall show the existing and proposed elevations of such property. Detailed construction plans shall be submitted with such applications, shall be of a scale not smaller than one inch equals 40 feet, and shall specify the nature and extent of the proposed work to be performed and remedial measures proposed to assure protection against inundation and erosion and to assure the maximum ecological integrity of the dune system. Such applications must be signed by the owner of the property upon which the

work is to be performed (in the case of a condominium, by the president of the condominium association). Documentation of state, county and/or federal approvals of the proposed work in the form of permits for the work as may be required must be provided to the town prior to the issuance of a town permit. When an application is filed, the town shall give notice to all property owners owning oceanfront land within 1,000 feet of the land described in the application at the last known address of the owners of record, pursuant to the records of the county property appraiser. If such neighboring property owner is a condominium, the town shall give notice to the condominium association. The notice shall be given at least 15 days prior to a public hearing to be held by the town council in regard to the application; the town's building official also shall cause notice of the public hearing to be published in a newspaper of general circulation in the county at least once a week for two weeks prior to the public hearing.

(b) *Class II permit.* Applications for class II permits under this section shall be accompanied by a nonrefundable application fee of $700.00 for beach/dune trimming applications and $140.00 for all other class II applications. Such applications shall also be subject to a permit fee consistent with the building permit fee schedule as published by the town's building and zoning department, payable at the time of permit issuance. Applications for class II permits shall describe the property upon which the work is to be performed, and shall specify the proposed work to be performed and remedial measures proposed to assure protection against inundation and erosion, and to assure the maximum ecological integrity of the dune system, in accordance with the town's approved guidelines for routine dune maintenance. Such applications must be signed by the owner of the property upon which the work is to be performed (in the case of a condominium, by the president of the board of directors of the condominium association) and must include documentation of state, county, and/or federal approvals of the proposed work in the form of permits for said work as may be required.

(c) *Class III permit.* Applications for class III permits under this section shall describe the property upon which the work is to be performed, shall specify the nature and extent of the proposed work to be performed, shall be signed by the owner of the property upon which the work is to be performed (or the owner's duly authorized representative), shall include documentation from the state department of natural resources identifying that an emergency condition exists at the site in question, and shall include documentation of state, county and/or federal approvals of the proposed work in the form of permits for the work as may be required. There shall be no application fee for a permit for a class III activity.

(Code 1982, § 6-36(d); Ord. No. 25-95, § 1, 11-14-95; Ord. No. 17-07, § 1, 10-4-07)

Sec. 66-124. - Issuance restricted.

No permit shall be issued where it appears that the proposed excavation, filling or removal of sand and/or the destruction, damaging, pruning or cutting of natural vegetation will result in the probable erosion or inundation of surrounding beaches, banks, dunes, and adjacent lands, or endanger the public safety, or adversely affect the stability of the existing dune structure, or adversely affect the ecological integrity of the dune system.

(Code 1982, § 6-36(e))

Sec. 66-125. - Bond.

Prior to the issuance of a class I, II or III permit under this section, the town may require the applicant to obtain and deposit with the town a good and sufficient performance bond in an amount of 135 percent of the estimated total project cost, as approved by the town, and in a form to be approved by the town attorney, such bond to be conditioned upon the applicant faithfully completing all work that may be required for the protection of the ocean dunes, banks and beaches against inundation and erosion.

(Code 1982, § 6-36(f))

Sec. 66-126. - Work to be performed by certain persons.

Any work permitted under this article, pursuant to the approval of an application by the town council, and relating to the vegetation within or on the dunes shall be accomplished by a town registered landscape maintenance company, and supervised by a state licensed coastal engineer, state licensed landscape architect, or other consultant with expertise in dune systems management approved by the town's building official.

(Code 1982, § 6-36(g))

Secs. 66-127—66-150. - Reserved.

DIVISION 3. - WAIVERS AND VARIANCES

Sec. 66-151. - Procedures.

(a) All applications for a waiver or variance from the setback line in section 66-177 or from the jurisdictional limitations identified under section 66-123, in accordance with the provisions set out below, shall be made in writing to the building official, together with an application fee of $375.00. Such applications, in order to be considered, must set out in detail the grounds upon which the waiver or variance is sought and contain sufficient engineering and environmental data to substantiate the applicant's claim. Applications for waivers or variances, in order to be considered, shall contain the names and last known addresses of the owners of record (pursuant to the records of the county property appraiser of all oceanfront property within 1,000 feet of the land described in the application. If such neighboring property owner is a condominium, the applicant shall provide the name and last known address of the condominium association.

(b) The building official shall examine all applications for waivers or variances properly made and, after consultation with other members of the town staff and/or the town's consultant, shall make a recommendation for or against such application to the town council. The town manager shall then cause the application for waiver or variance to be placed before the town council at a public hearing not less than 30 days after the town's receipt of the application for waiver or variance. The public hearing shall be for the purposes of consideration by the town council of the application for waiver or variance, the recommendation of the building official, and the statements and recommendations of all interested parties and the general public, upon which consideration the town council shall decide to either grant or deny the application for waiver or variance.

(c) The building official shall give notice in writing to the applicant and to all owners of record (pursuant to the records of the county property appraiser) of all oceanfront property within 1,000 feet of the property for which a waiver or variance is sought at least 15 days prior to the public hearing; where such neighboring property owner is a condominium, the building official shall give notice to the condominium association. If such neighboring property owner is a condominium, the applicant shall provide the name and last known address of the condominium association. The building official shall cause notice of the public hearing to be published in a newspaper of general circulation in the county at least once a week for two weeks prior to the public hearing.

(Code 1982, § 6-36(j)(1))

Sec. 66-152. - Conditions.

(a) The town council shall authorize the excavation or erection of a structure at any coastal riparian location where, through the presentation of adequate engineering data, it can be demonstrated that such excavation or erection would have no adverse effect upon the ecological integrity of the dune,

the control of beach erosion, hurricane protection, coastal flood control, the shoreline, and/or offshore deposits of sand.

(b) If in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the designated setback line, and if the placement of those existing structures has not had an adverse impact upon rare, threatened or endangered vegetation; contributed to beach erosion; interfered with hurricane protection; obstructed coastal flood control; nor adversely affected the shoreline and/or offshore deposits of sand, the town council may grant a waiver or variance. The applicant shall sustain the burden of demonstrating the continuity and uniformity of a construction line different from the designated setback line and the absence of adverse effects as described in this section.

(Code 1982, § 6-36(j)(2))

Secs. 66-153—66-175. - Reserved.

DIVISION 4. - REGULATIONS AND REQUIREMENTS

Sec. 66-176. - Grading and leveling site after removal.

Any person granted a permit pursuant to division 2 of this article, and who removes or excavates sand for any reason from the ocean beach or the adjacent dunes within the setback area described in section 66-177, shall place such sand on the Atlantic Ocean beach in the area in front of which it is being removed and shall contour such sand in a manner so as to be compatible with the surrounding beach area. A waiver to this requirement may be granted at the discretion of the town's building official.

(Code 1982, § 6-36(h))

Sec. 66-177. - Setback lines.

(a) In all zoning districts except the beach area zoning district and properties with seawalls at elevation 14.34 feet National Geodetic Vertical Datum (NGVD), no person shall construct any primary structure seward of a line 25 feet landward of the crest of the primary natural dune, nor construct any structure whatsoever (with the exception of state approved dune walkovers or fences) seaward of a line 15 feet landward of the crest of the primary natural dune as defined in this section, nor make any excavation, remove any beach material, or otherwise alter existing ground elevations in a manner not applicable to a class II or III permit as described herein seaward of a line 15 feet landward of the crest of the primary natural dune. When the dune occurring west of the crest of the primary natural dune is less than elevation plus 14.34 feet National Geodetic Vertical Datum, then a bulkhead must be constructed in conjunction with development of the property landward of such dune, across the width of the subject property at a location approved by the town.

(b) Properties located in the beach area district shall comply with setbacks as prescribed by sections 134-1471 and 134-1701.

(c) In all zoning districts, properties which have an existing seawall at an elevation less than 14.34 feet National Geodetic Vertical Datum shall have such seawall raised to a minimum elevation of 14.34 National Geodetic Vertical Datum in conjunction with any development of the property. Setbacks for such properties shall be measured from the town's bulkhead line as defined in this article.

(Code 1982, § 6-36(i); Ord. No. 15-97, § II, 12-9-97)

Secs. 66-178—66-210. - Reserved.

ARTICLE IV. - VEGETATION[2]

Footnotes:

--- (**2**) ---

Cross reference— Vegetation generally, ch. 126.

DIVISION 1. - GENERALLY

Sec. 66-211. - Findings.

It is found and determined that:

(1) Landscaping promotes the health, safety and welfare of the community by absorbing carbon dioxide and returning oxygen to the air; precipitating dust and other articles in the air; providing wildlife habitat; providing soil stabilization; making the built environment more attractive; and helping to abate noise.

(2) Proper landscaping and irrigation techniques can result in significant water conservation.

(3) Landscaping provides a positive aesthetic value to the town.

(4) Native shoreline ecosystems provide valuable shoreline stabilization and protection, wildlife habitat, and maintenance of environmental quality.

(5) Pestilent exotic species constitute a nuisance in the town because:

a. They have spread rapidly to many areas of the town, displacing the diverse native Florida vegetation and associated wildlife habitat, and creating ecologically undesirable vegetative monocultures.

b. They can have adverse effects upon human health and pose safety hazards during high wind conditions.

c. The health, safety and welfare of the present and future residents of the town are benefited by minimizing degradation of the native ecological systems of the town.

(6) Various plant species having aesthetic, ecological, educational, historical, recreational, economic or scientific value have been classified as endangered, threatened or species of special concern and should be protected.

(Code 1982, § 11.5-6)

Sec. 66-212. - Purpose and intent.

It is the intent of the town to promote the health, safety and welfare of existing and future residents of the town by establishing minimum standards for the protection of natural plant communities, and the installation and continued maintenance of landscaping within the town, in order to:

(1) Promote water conservation.

(2) Maintain and improve the aesthetic appearance of the town.

(3) Improve the environmental quality of the town.

(4) Eradicate or control certain exotic plant species.

(5) Protect and encourage native shoreline and wetland ecosystems.

(6) Offer special guidelines for the removal and control of those pestilent exotic species that are particularly deleterious to native shoreline environments.

(7) Protect listed plant species that inhabit the town.

(Code 1982, § 11.5-7)

Sec. 66-213. - Applicability.

This article shall apply to any new development or redevelopment. Provisions relating to tree removal or wetland protection apply to existing development, as noted.

(Code 1982, § 11.5-8)

Secs. 66-214—66-235. - Reserved.

DIVISION 2. - PERMITS

Sec. 66-236. - Application procedure for vegetation removal permit.

(a) *Removal permits.* Vegetation removal permits, not sought in conjunction with building permits, shall be obtained by making application prior to removal, relocation or replacement to the building official or his designee, at least ten working days prior to the proposed date of removal.

(b) *Circumstances justifying issuance.* Vegetation removal permits shall be issued in the following circumstances:

(1) Where a tree, due to natural circumstances, is no longer viable, is in danger of falling, is too close to existing structures so as to endanger such structures, interferes with utility services, creates unsafe vision clearance, or constitutes a health hazard;

(2) Where the affected vegetation will be relocated, replaced with a suitable substitute tree, or otherwise preserved, with the exception of mangroves, which are regulated elsewhere in this chapter; or

(3) Where tree removal is part of a plan to restore or encourage native shoreline species, either on the coastal strand, as described in section 66-81 et seq., resolution number 37-89, or along Lake Worth, as described in article III of this chapter.

(c) *Permit issuance and time limitations.* Upon approval of an application, the building official or his designee shall issue a permit. Permits shall expire and become null and void if work is not commenced within 90 days from the date of permit issuance.

(Code 1982, § 11.5-21)

Secs. 66-237—66-260. - Reserved.

DIVISION 3. - PLANS

Sec. 66-261. - Plans required.

All site plans for new development and redevelopment shall be required to submit a landscape plan and irrigation plan to the architectural commission, or landmarks commission, as applicable. All plans shall be signed and sealed by a registered landscape architect, who shall guarantee that the plans meet all specifications of this chapter. The plans shall include a drainage statement by a professional engineer registered in the state that the landscape plan is not in conflict with the stormwater management plan.

(Code 1982, § 11.5-9; Ord. No. 21-02, § 6, 11-12-02)

Sec. 66-262. - Landscaping plan.

Landscaping plans should identify:

(1) Any historic or specimen trees located on the property.

(2) Any threatened or endangered vegetative species contained on the Florida Natural Areas Inventory's "Special Plants List," the Florida Game and Fresh Water Fish Commission's "Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida," or a comparable list approved by the town planning, building and zoning department.

(3) The location, size, botanical name, and common name of all existing vegetation four inches or larger in diameter on the property.

(4) The location, species name, and common name of all proposed vegetation on the property.

(5) The location and type of trees to be relocated or removed, and place of relocation if applicable.

(6) All elements of an approved stormwater management plan applicable to the project, and a drainage statement by a professional engineer registered in the state that the landscape plan is not in conflict with the stormwater management plan.

(Code 1982, § 11.5-9(a); Ord. No. 15-01, § 6, 9-11-01; Ord. No. 21-02, § 7, 11-12-02)

Sec. 66-263. - Irrigation plans.

Irrigation plans shall include:

(1) Layout of irrigation system and identification of components.

(2) Explanation of relationship between plant groupings and type of irrigation used.

(Code 1982, § 11.5-9(b))

Secs. 66-264—66-285. - Reserved.

DIVISION 4. - DESIGN REQUIREMENTS

Sec. 66-286. - Water conserving landscape design.

The following section shall be applicable to all new construction and substantial improvements.

(1) *Required.* Landscapes shall be designed in accordance with water conserving landscape design elements set forth in subsections (2)—(5).

(2) *Minimum landscaped open space.* Minimum landscaped open space shall be required as stipulated by the lot, yard and bulk regulations in the zoning code, chapter 134.

(3) *Required vegetation.* The following vegetation is required. The nine principles of Florida friendly landscaping shall be utilized.

a. *Lawns.*

1. If very drought tolerant grass is used, not more than 70 percent of the required landscaped open space shall be planted in lawn grass.

2. If moderate drought tolerant grass is used, not more than 60 percent of the required landscaped open space shall be planted in lawn grass.

(Information on Florida friendly drought tolerant grass can be found at: http://fyn.ifas.ufl.edu/ifaspubs.htm.)

b. *Nonturfed areas.*

1. Nonturf areas shall be planted in mixes of trees, shrubs and ground covers.

2. Plants shall be grouped according to their water needs, and irrigated accordingly. At least 33 percent of the groupings shall be characterized by highly or moderately drought tolerant vegetation.

(Information for Florida friendly landscaping drought tolerant plants can be found at: http://www.floridayards.org/index.php)

(4) *Irrigation standards.*

a. Irrigation systems, either manual or automatic, may be used for the cultivated landscape areas.

b. Irrigation shall be designed in zones that reflect necessary water regimes for specific groupings of vegetation.

c. Sprinkler heads irrigating lawns or other high water requirement landscape areas shall be circuited so that they are on a separate zone from those irrigating trees, shrubbery or other reduced water requirement areas.

d. Zones containing existing native plant communities and ecosystems maintained in a natural state do not require, and shall not have any additional irrigation water added in any form.

e. In order to prevent overthrow, low trajectory heads or low volume water distributing devices shall be used when irrigating confined areas.

f. No more than ten percent of spray radius shall be allowed onto impervious areas.

g. Newly installed native plant areas may require irrigation during the establishment period. Water during this period shall be applied from a temporary irrigation system, a water truck, or by hand watering from a standard bib source.

h. A temporary irrigation system shall be removed no later than 60 days after completion of the planting.

(5) *Use of organic mulches.* When appropriate, a minimum of two inches of arsenic-free organic mulch shall be installed around each tree planting for a minimum of 18 inches beyond its trunk in all directions, including palms, and throughout all hedge, shrub, and groundcover plantings. Mulch shall be pulled a minimum of two inches away from trees and palms.

(6) *Antitranspirants.* In order to reduce water loss through leaves during installation, antitranspirants shall be used and applied on all permitted landscape installation projects for a minimum period of 90-days from the date of installation.

(7) *Irrigation plans.* Detailed irrigation plans shall be submitted as part of a building permit, and shall include:

a. Layout of irrigation system and identification of components.

b. Explanation of relationship between plant groupings and type of irrigation used.

c. Irrigation plans must provide 100 percent coverage of landscape areas.

(8) *Control systems.*

a. The irrigation system shall be equipped with rainfall or moisture sensing devices to avoid operation during periods of sufficient moisture.

b. Automatically controlled irrigation systems shall be operated by an irrigation controller that is capable of watering high water requirement areas on a different schedule from low water requirement areas.

(9) *Advanced irrigation systems.* This section shall be applicable to all new construction, substantial improvement and existing properties applying for a variance from the day-of-week watering restrictions imposed by the South Florida Water Management District (SFWMD), the City of West Palm Beach (WPB) or the Town of Palm Beach (town). Variances from the day-of-week watering restrictions does not relieve a property owner from complying with irrigation restrictions contained in a water shortage order or water emergency declaration issued by the SFWMD, WPB or the town.

a. Any person who purchases or installs an automatic landscape irrigation system on their property must properly install, maintain, and operate the system in accordance with manufacturer specifications, technology that inhibits or interrupts operation of the system during periods of sufficient moisture, and otherwise comply with the provisions of this section.

b. Evapotranspiration-based (ET) or moisture sensing-based controllers are required on any new automatic landscape irrigation system or controller installed subsequent to the date of adoption of this ordinance. In addition said systems are required on automatic irrigation systems when any principal structure on a property in the town is substantially altered.

c. Owners who have a properly operating evapotranspiration-based (ET) or moisture sensing controlled irrigation system shall be eligible for a variance from the day-of-the-week landscape irrigation restrictions set forth in section 122-78(b)(3) and (4) if the following requirements are met:

1. The ET controller is approved by the Town of Palm Beach building official as meeting the Environmental Protection Agency (EPA) WaterSense® specification for weather-based controllers, the requirements of the Irrigation Association (IA) for climate-based controllers or moisture sensor-based controllers, or some comparable and applicable standard.

2. The owner submits an application for variance to the Town of Palm Beach building official or his/her designee in accordance with section 122-81 along with an application fee in an amount adopted by the town council by resolution.

3. The owner posts a sign in a conspicuous location on the property to inform the public of the approved variance. The sign shall be provided by the town, the cost of which shall be payable to the town in an amount to be determined by the town council by resolution, upon approval of the variance.

4. No irrigation occurs between the daily restricted hours as may be set forth by the South Florida Water Management District and/or the City of West Palm Beach, which is subject to change at any time.

d. The town shall maintain a database of all properties which have installed and maintained advanced irrigation systems in accordance with the requirements of this subsection, and which are exempt from the day-of-the-week irrigation restrictions set forth in section 122-78(b)(3) or (4).

e. A variance granted from section 122-78(b)(3) or (4) based on the installation and operation of an advanced irrigation system does not relieve a property owner from complying with irrigation restrictions contained in a water shortage order or water emergency declaration issued by the South Florida water Management District, the City of West Palm Beach or the Town of Palm Beach.

f. *Applicability.* This section shall apply to all licensed contractors within the jurisdiction of the town who install or perform work on automatic irrigation systems and to any person or

entity which purchases or installs an automatic landscape irrigation system on their property.

1. A licensed contractor or owner who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on the system. If such devices are not installed, or are not functioning properly, the contractor must install new devices or repair the existing ones and insure that each is operating properly before completing other work on the system.
2. A licensed contractor or owner performing work on an automatic landscape irrigation system shall report systems that are not in compliance with this section, to code enforcement personnel in the police department. Failure of a contractor or owner to report non-compliant systems within five business days is punishable by fines as specified in the violations and penalties section of this section. A system that is repaired by the contractor and brought into compliance need not be reported.
3. Regular maintenance and replacement of worn or broken moisture sensing equipment, such as soil moisture or rain sensors, is not a violation of this section, if such repairs are made within 30 days from the time non-compliance is noted.
4. All contractors performing work on irrigation systems within the town shall be licensed or registered under F.S. ch. 489, or the Construction Industry Licensing Board of Palm Beach County and shall hold a municipally-issued license or business tax certificate that permits work on irrigation systems.
5. A licensed contractor shall perform annually a maintenance review of the ET-controlled system and certify to the town on an annual basis that the ET-controlled system is properly operating and in compliance with this section. Owners failing to provide such annual recertification that the system is properly operating shall result in revocation of the variance from section 122-78(b)(3) or (4).

g. *Violations and penalties.*

1. Failure of any person who purchases or installs an automatic landscape irrigation system on their property, or property managed by them, to properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture is a violation of this section, and such person shall be subject to a fine in accordance with section 2-439 of this Code. A person in violation of this section may be cited for each day the system fails to be in compliance with this section.
2. Failure of an owner to report to town code enforcement officials automatic landscape irrigation systems that are not in compliance with this section, which require properly operating devices to inhibit or interrupt the operation of the irrigation system during periods of sufficient moisture, shall be a violation of this section, and such owner shall be subject to a fine in accordance with section 2-439 of this Code.

(Code 1982, § 11.5-10; Ord. No. 25-02, § 1, 11-12-02; Ord. No. 22-10, § 1, 7-13-10; Ord. No. 13-2013, § 2, 8-13-13)

Cross reference— Water generally, § 122-31 et seq.

Secs. 66-287—66-310. - Reserved.

DIVISION 5. - REGULATIONS

Subdivision I. - In General

Sec. 66-311. - Prohibited plants.

(a) *Prohibited species.* The following plants have been shown to be pestilent exotic species and shall not be installed as landscape material, and shall be removed from property as part of development and redevelopment activity and prior to the issuance of a permit for said development and redevelopment activity or pursuant to the schedule and terms specified in subsection (c) of this section:

(1) Australian pine (Casuarina spp.).

(2) Brazilian pepper (Schinus terebinthefolius).

(3) Punk or paper tree (Meleleuca quinquenervia).

(4) Old-world climbing fern (Lygodium microphyllum).

(5) Air potato vine (Dioscorea bulbifera).

(6) Carrotwood (Cupaniopsis anacardiodies).

(7) Earleaf acacia (Acacia auriculiformis).

(8) Schefflera (Schefflera actinophylla).

(9) Kudzu (Pueraria montana var. lobata).

(b) *Exemptions.* An exemption or partial exemption from the prohibition of and removal requirements of Australian pines may be granted by the architectural commission or landmarks commission, as applicable, if the following conditions apply:

(1) The Australian pine is used and maintained as a hedge. Failure to maintain the hedge will result in a code violation and removal of the hedge will be required.

(2) The hedge or screen is located in an area where salt tolerant vegetation is required and where a viable aesthetic or organic option is not practical.

(3) The Australian pine is not of the "sucker" type variety (Casuarina glauca).

(4) The Australian pine is not directly adjacent to shoreline areas.

(5) The Australian pine is maintained as part of the character of a landmarked district or vista such as the areas known as "Pine Walk" and "Wells Road."

———

(c) *Future removal requirements.* In addition to the removal requirements set forth in subsection (a) above, a property owner shall remove or cause to be removed or eradicated the prohibited invasive non-native vegetation listed in subsection (a) above by January 1 of the year specified in the following table:

COMMON NAME	SCIENTIFIC NAME	YEAR
Old-World Climbing Fern	Lygodium microphyllum	2004
Air Potato Vine	Dioscorea bulbifera	
Melaleuca, Punk Tree	Melaleuca quinquenervia	2006
Brazilian Pepper	Schinus terebinthifolius	2008

Carrotwood	Cupaniopsis anacardiodies	
Earleaf Acacia	Acacia auriculiformis	2010
Schefflera	Schefflera actinophylla	2006
Australian Pine*	Casuarina spp.	2012*
Kudzu	Pueraria montana var. lobata	2008

* The 2012 date relating to the removal of the Australian Pine, Casuarina spp. shall only be applicable to Australian Pines which are within 500 feet of a county designated natural area described in subsection (d) below, i.e., the Palm Beach Island Sanctuaries.

Upon removal of the prohibited and invasive non-native vegetation specified under this section, the property owner shall maintain the property free of such prohibited invasive non-native vegetation.

(d) *Protection of natural area and incentives.* The county has recognized the Palm Beach Island Sanctuaries (R43 T43 S34; R43 T44 S03/10/15) located within the town as a natural area containing high quality ecosystems that are worthy of protection. The town hereby adopts for purposes of the protection of said natural area and for purposes of the regulation of the buffer area around said natural area those sections of the County Code known as the "Palm Beach County Countywide Prohibited Invasive Non-Native Vegetation Removal Ordinance" relating to the protection and regulation of these areas. Additionally, the town adopts the incentive program offered by the county as incorporated within the "Palm Beach County Countywide Prohibited Invasive Non-Native Vegetation Removal Ordinance."

(e) *Enforcement.* Violations of this section shall be:

(1) Failure of a property owner to remove or eradicate prohibited invasive non-native vegetation in accordance with subsections (a) and (c) of this section.

(2) Failure of a property owner to maintain nonexempt properties free of prohibited invasive non-native vegetation in accordance with subsection (c) of this section.

The following are procedures which are to be followed for compliance and enforcement of this section.

(1) Inspection of a parcel to determine the possible location of prohibited invasive non-native vegetation.

(2) Preparation and provision of a notice informing the parcel owner of prohibited invasive non-native vegetation on the parcel and instructions for the removal or eradication of the vegetation and a timeframe provided for compliance. A follow up inspection is conducted.

(3) In the event there is a failure to comply by the property owner after notice as prescribed, the failure to comply will be noticed for hearing before the town's code enforcement board.

(Code 1982, § 11.5-16; Ord. No. 19-03, § 1, 12-9-03; Ord. No. 23-2011, § 1, 10-11-11)

Sec. 66-312. - Protected plants.

The following shall constitute protected plants within the town:

(1) *Historic and specimen trees.* Specimen trees are afforded special status and protection in the town, as per sections 126-56—126-58.

(2) *Endangered and threatened plants.* Plants identified as endangered or threatened, according to the Florida Natural Areas Inventory, Florida Game and Fresh Water Fish Commission "Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida," or a comparable list approved by the town's planning, zoning and building department, shall be identified on the required landscaping plan.

(3) *Protection.* Removal of designated historic and specimen trees, and vegetational species identified as endangered or threatened, shall be prohibited.

(4) *Exceptions.*

a. Permission for removal of historic or specimen trees may be obtained from the town council or from the town manager if the tree constitutes a danger to public health, safety or welfare, or otherwise requires immediate removal.

b. When relocation is unavoidable, identified endangered or threatened species may be transplanted to an undeveloped portion of the site, or to an approved off-site location where preservation can be ensured.

(5) *Management plan.* When historic or specimen trees or endangered or threatened plants are identified, a management plan shall be presented to the architectural commission, or landmarks commission, as applicable. The management plan shall include:

a. Methods to ensure preservation of the species, including buffer areas when appropriate.

b. Methods to ensure protection of species while construction activity is taking place on property.

(Code 1982, § 11.5-22)

Secs. 66-313—66-335. - Reserved.

Subdivision II. - Dunes

Sec. 66-336. - Vegetation restoration.

(a) *Findings.*

(1) Coastal dunes provide the first defense against wind and waves.

(2) Coastal dune vegetation, including salt tolerant plant species such as sea oats, railroad vine, sea rocket, and sea grapes, aid in stabilizing beach and dune systems and promoting wildlife habitat areas.

(3) Coastal dunes have been degraded by beach erosion and pestilent exotic species.

(4) Some damaged coastal dune habitat can be restored.

(b) *Purpose and intent.* It is the intent and purpose of the town to provide for restoration of native dune systems wherever such opportunities exist.

(c) *Requirements.* All new development or redevelopment adjacent to the Atlantic Ocean shall be required to restore dune habitat when feasible, as determined by the building official or his designee.

(d) *Guidelines for restoration feasibility determination.* Dune habitat shall be restored when:

(1) Native vegetation has been degraded by pestilent exotics or means other than erosion of the beach; or

(2) Significant beach and dune materials exist such that dune habitat can be restored and maintained.

(e) *Alteration of vegetation.* Dune restoration shall be in accordance with section 66-81 et seq. and resolution number 37-89, which provide for the alteration of dune vegetation.

(Code 1982, § 11.5-23)

Secs. 66-337—66-360. - Reserved.

Subdivision III. - Wetlands Protection[3]

Footnotes:

--- (**3**) ---

State Law reference— Wetlands protection, mangroves, F.S. § 403.9322 et seq.

Sec. 66-361. - Mangroves—Prohibitions.

No person shall alter, allow or cause to be altered any mangrove in the town without first obtaining approval of a shoreline management plan and receiving a permit from the planning, zoning and building department.

(Code 1982, § 11.5-24(a))

Sec. 66-362. - Same—Standards for approval or denial of application.

(a) No approval shall be granted for the removal, alteration or destruction of mangroves by mechanical, chemical or other means except as provided for in this chapter.

(b) No approval shall be granted for the alteration or removal of any mangrove that serves as a nesting site for native or migratory birds.

(c) Prior to the commencement of any alteration, permits and approvals required by other federal, state and local agencies must be obtained, and copies must be submitted to the town planning, zoning and building department.

(d) Alterations must be consistent with the provisions of section 126-59.

(Code 1982, § 11.5-24(b))

Sec. 66-363. - Same—Approvals.

An approval shall be granted for alteration or removal of mangroves when:

(1) The alteration is to provide upland property owners with reasonable access to the water subject to the following guidelines:

a. The removal or alteration of mangroves shall be restricted to one accessway running perpendicular to the shoreline.

b. The width of the mangrove area affected by the accessway shall not exceed 12 feet.

c. The applicant must demonstrate a need for the accessway if such accessway necessitates the removal and/or alteration of mangroves.

d. The accessway must be designed and located in such a manner that the least amount of damage to the mangroves is assured.

e. A shoreline management plan is submitted, through which the applicant shall provide mitigation of wetland loss.

(2) The alteration is for visual access and is part of an approved shoreline management plan, as specified by this chapter.

(3) Such removal or alteration is necessary to make reasonable use of the property subject to the demonstration by the applicant that there is insufficient upland area or nonmangrove areas to make reasonable use of the property; and, is part of an approved shoreline management plan, as specified by this chapter.

(Code 1982, § 11.5-24(c))

Sec. 66-364. - Same—Prohibited alterations.

The following alterations to mangroves are prohibited:

(1) The removal of more than 25 percent of the lateral limbs or other lateral branches of any untrimmed white, black or buttonwood mangroves.

(2) The reduction in height of any white, black or buttonwood mangrove by more than 25 percent of the foliage of any untrimmed mangrove.

(3) The reduction in height of any red mangrove.

(4) The reduction of more than 25 percent of the lower part of the canopy of red mangroves.

(5) The removal of any trunk, limbs or other branches greater than one inch in diameter.

(6) Alterations of any prop roots.

(7) Alterations by other than hand-held, nonmechanized equipment.

(8) Alterations of mangroves more than once every two years, except in connection with physical access.

(Code 1982, § 11.5-24(d)(1)—(7), (9))

Sec. 66-365. - Same—Time limitations.

Alterations of mangroves shall be permitted only in the months of October, November, December, January, February and March, except that alteration of mangroves shall be allowed year round in connection with physical access.

(Code 1982, § 11.5-24(d)(8))

Sec. 66-366. - Same—Exemptions.

No approval under this subdivision shall be required for:

(1) Alteration by a state licensed land surveyor in the performance of his duties, provided such alteration is the minimum necessary and is limited to an area three feet or less in width.

(2) Alteration by a waterfront property owner who desires to alter mangroves that were voluntarily planted as part of an approved shoreline management plan, provided that such planting was not required for remedial purposes or as part of any prior development approval, and the alteration is specified by the shoreline management plan.

(Code 1982, § 11.5-24(e))

Sec. 66-367. - Other than mangroves—Prohibitions.

No person shall alter, allow, or cause to be altered any nonmangrove wetlands without first obtaining a permit from the town planning, zoning and building department.

(Code 1982, § 11.5-25(a))

Sec. 66-368. - Same—Standards for approval or denial of application.

(a) No wetlands shall be altered without permits from appropriate federal, state and local agencies.

(b) Compensatory wetland mitigation shall require that the amount of wetlands purchased, created, enhanced or restored be large enough to assure that the amount of wetlands destroyed or degraded will be completely and successfully replaced.

(Code 1982, § 11.5-25)

Subdivision IV. - Conservation District

Sec. 66-369. - Application procedure for conservation district alteration.

Conservation district alteration permits shall be required to remove pestilent exotic or invasive species, install native species, maintain native habitat or make site improvements necessary to secure the property. Such permits shall be obtained by submitting an application prior to removal, installation, maintenance or site improvement to the planning, zoning and building department director or his or her designee. The application shall include a written statement specifying the reasons necessitating the work to be performed.

(Ord. No. 17-2017 , § 2, 7-12-2017)

Sec. 66-370. - Circumstances justifying issuance.

Permits shall be issued in the following circumstances:

(1) Presence of pestilent exotic or invasive species.

(2) Work is necessary to protect against natural habitat degradation.

(Ord. No. 17-2017 , § 2, 7-12-2017)

Sec. 66-371. - Permit conditions.

The following conditions shall be required for issuance of a permit:

(1) All native habitat must be restored in accordance with all federal, state, and local regulations.

(2) Applicant must demonstrate plans for maintaining conservation area/native plant/threatened or endangered communities in a natural, undisturbed state.

(3) Mulching or placement of removed vegetation on site is prohibited.

(4) Documentation that all mangrove trimming will be done by an authorized professional mangrove trimmer (PMT) in accordance with F.S. § 403.9329.

(5) All mechanical equipment necessary for the proposed work shall be identified and is subject to approval by the planning, zoning and building department director or designee.

(Ord. No. 17-2017 , § 2, 7-12-2017)

Sec. 66-372. - Plans required.

A landscaping plan shall include the following:

a. Property boundaries, location of any site improvements, including but not limited to walls, fences, gates, retention areas, easements, rights-of-way, drainage structures, overhead and underground utilities, poles, fire hydrants, check valves, transformers and other features to remain or to be removed.

b. Location, botanical name, and common name of all existing and proposed vegetation, including invasive or pestilent exotic species, three inches or larger in diameter at standard height (4.5') on the property, identifying all vegetation that will be added, retained, relocated, removed or disturbed.

c. Threatened or endangered vegetative species as identified by the Florida Department of Agriculture and Consumer Services in its Regulated Plant Index.

d. Planting specifications, including but not limited to staking, fertilization, top soil, mulching, and identification of any mechanical equipment to be used.

e. Method to protect trees, including historic or specimen trees, vegetation, and native plant communities during performance of work.

f. Such other information that may be required to give a complete understanding of a proposed plan.

(Ord. No. 17-2017 , § 2, 7-12-2017)

Sec. 66-373. - Fees required.

Applications shall be accompanied by a fee which shall be in accordance with the schedule of fees adopted by resolution by the town council and amended in the same manner. When professional advice and/or consultation is required, as determined by the director of the planning, zoning and building department, the expense shall be borne by the applicant.

(Ord. No. 17-2017 , § 2, 7-12-2017)

Sec. 66-374. - Permit issuance and time limitations.

Upon approval of an application, the planning, zoning and building department director or his designee shall issue a permit. Permits shall expire and become null and void if work is not commenced within 90 days from the date of permit issuance. Work must be completed and pass final inspection within six months of permit issuance. A time extension for the permit may be granted by the planning, zoning and building department director or his or her designee for good cause upon written request. A denial of a time extension request may be appealed to town council. The appeal shall be filed within five business days of notice of denial. If an appeal to the town council is made, the town council shall act upon such appeal no later than 45 days subsequent to the notice of appeal.

(Ord. No. 17-2017 , § 2, 7-12-2017)

Sec. 66-375. - Penalty for violation.

Any person who performs work outside of the scope of an issued permit shall be subject to the code enforcement provisions set forth in sections 2-401 through 2-439 of the town code of ordinances. In addition, the applicant may be required to pay to the town a civil penalty equal to the total value of work required to restore the site to the conditions approved in the permit. Restoration work may be required as restitution in lieu of money. A combination of money and restoration work may be required.

(Ord. No. 17-2017 , § 2, 7-12-2017)

Secs. 66-376—66-400. - Reserved.

ARTICLE V. - WILDLIFE PROTECTION[4]

Footnotes:

--- (**4**) ---

Cross reference— Animals generally, ch. 10.

Sec. 66-401. - Findings.

(a) Various species of animals found in the town have been classified by the state game and fresh water fish commission as endangered, threatened, or species of special concern, reflecting a depletion in population so critical that extinction is possible.

(b) These species may be of aesthetic, ecological, educational, historical, recreational, economic or scientific value.

(c) The town seeks to preserve a stable ecosystem, which is dependent upon the number and diversity of constituent species.

(d) The protection of these species requires preservation of occupied habitat, protective buffers and adequate management measures.

(Code 1982, § 11.5-51)

Sec. 66-402. - Purpose.

The purpose of this article is to protect listed species that inhabit the town by safeguarding the habitat in which they live from various impacts associated with development.

(Code 1982, § 11.5-52)

Sec. 66-403. - Applicability.

This article is applicable to:

(1) All undeveloped parcels of 15 acres or more that are entirely or partially forested by native vegetation or mixtures of native and exotic vegetation.

(2) All undeveloped parcels containing areas of wetland vegetation of two acres or more.

(3) Undeveloped parcels upon which listed species have previously been identified.

(Code 1982, § 11.5-53)

Sec. 66-404. - Identification.

Applicable parcels shall be inventoried by a biologist, ecologist or other related professional hired by the developer for species listed in the state game and fresh water fish commission's "Official Lists of Endangered and Potentially Endangered Species" as endangered, threatened or species of special concern.

(Code 1982, § 11.5-54)

Sec. 66-405. - Standards.

When species listed by the state game and fresh water fish commission's "Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida" are identified on development sites, a management plan shall be prepared by an ecologist, biologist or other related professional to ensure that species protection shall be approved by the planning, zoning and building department prior to approval of development.

(Code 1982, § 11.5-55)

Sec. 66-406. - Management plan.

The management plan shall be consistent with the requirements of the state game and freshwater fish commission.

(Code 1982, § 11.5-56)

Sec. 66-407. - Consultants.

The town may hire a qualified consultant, at the expense of the developer, to review the management plan, if necessary.

(Code 1982, § 11.5-57)

Secs. 66-408—66-440. - Reserved.

ARTICLE VI. - SOIL EROSION, SEDIMENT CONTROL AND FUGITIVE DUST[5]

Footnotes:

--- (**5**) ---

Cross reference— Floods, ch. 50; stormwater management, § 86-86 et seq.; erosion protection of Ocean Boulevard, § 106-81 et seq.; stormwater control, § 122-151 et seq.

Sec. 66-441. - Findings.

(a) Land disturbing activities can cause excessive runoff and accelerate the process of soil erosion, resulting in the damage and loss of natural resources, including the degradation of water quality.

(b) In addition, emissions of particulate matter during construction and demolition, including but not limited to incidents caused by vehicular movement, transportation of materials, construction, alteration, demolition or wrecking of buildings or structures, or the stockpiling of particulate substances may trespass on neighboring properties and degrade air quality.

(c) The town finds that:

(1) Excessive quantities of soil may erode from areas undergoing development due to land disturbing activity.

(2) Soil erosion can result in the degradation of valuable shoreline resources, such as dunes and lagoonal shoreline communities.

(3) Sediment from soil erosion can clog storm sewers and swales, and silt navigational channels.

(4) Sediment and sediment-related pollutants degrade wetland systems, including Lake Worth, resulting in the destruction of aquatic life and degradation of water quality.

(5) Airborne sediments can constitute a nuisance for adjacent property owners, and degrade the quality of the air.

(Code 1982, § 11.5-71)

Sec. 66-442. - Purpose.

The purpose of this article is to safeguard persons, protect property, prevent damage to the environment, and promote the public welfare by guiding, regulating and controlling the design, construction, use and maintenance of any development or other activity which disturbs or otherwise results in the movement on earth of land situated in the town.

(Code 1982, § 11.5-72)

Sec. 66-443. - Erosion control plan.

No person may engage in land disturbing activity until a plan has been submitted for erosion and sediment control and the plan has been approved by the town. The erosion control standards given in this article should be incorporated, as appropriate, into the erosion and sediment control plan.

(Code 1982, § 11.5-73)

Sec. 66-444. - Standards.

(a) No land disturbing activity during periods of construction or improvement to land shall be permitted in proximity to wetlands or the shoreline of Lake Worth unless a 25-foot buffer zone is provided along the margin of the watercourse.

(b) The angle for graded slopes and fills shall not be greater than the angle that can be retained by vegetative cover, or other adequate erosion-control, devices or structures (generally 4:1 or less). Slopes left exposed will, within ten working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices or structures sufficient to restrain erosion.

(c) Groundcover sufficient to restrain erosion must be planted or otherwise provided on portions of cleared land upon which further construction activity is not being undertaken within 15 days of clearing.

(d) Vegetative cover or other erosion control devices or structures used to meet these requirements shall be properly maintained during and after construction.

(e) Use temporary seeding or sodding, adequate covering, or chemical application, on exposed soils, including stockpiles of topsoil, sand or other construction fill, where delays in construction of more than one day are anticipated.

(Code 1982, § 11.5-74; Ord. No. 21-02, § 8, 11-12-02)

Sec. 66-445. - Exemptions.

Minor land disturbing activities, such as home gardens and individual home landscaping, repairs, maintenance work, and other related activities, provided such activities do not contribute to any on-site generated erosion, or degradation of lands or water beyond the boundaries of the property of the residence involved.

(Code 1982, § 11.5-75)

Sec. 66-446. - Violations.

In addition to other remedies for violation of this chapter, violation of this article shall constitute grounds for the issuance of a stop work order by the building official in accordance with the provisions of the building code.

(Code 1982, § 11.5-76)

Sec. 66-1. - Generally.

(a) *Purpose and intent.*

(1) It is the intent of this chapter to ensure that proposed development is consistent with the town's comprehensive plan.

(2) The purpose of this chapter is to establish those resources or areas of a development site that must be protected from harmful effects of development.

(b) *Relationship to other requirements.* In addition to meeting the requirements of this chapter and other applicable town regulations, development plans shall comply with all applicable federal, state, county, and water management district regulations relating to natural resource protection.

(c) *Compliance with subdividing land.* Each lot of a proposed subdivision must include a site suitable for constructing a structure in conformity with the standards of these requirements.

(Code 1982, § 11.5-1)

Sec. 66-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alter or *alteration of stormwater systems* means work done on a stormwater management system other than that necessary to maintain the system's original design and function.

Alter or *alteration of vegetation* means to cut, trim, remove, defoliate, or otherwise destroy or disturb by any means, leaves, limbs, stems, roots, or other plant parts, dead or alive.

Antitranspirant means a protective coating, generally applied to plant materials prior to or immediately after transplanting, that reduces water loss through the leaf surface.

Cultivated landscape area means planted areas that are frequently maintained by mowing, irrigating, pruning, fertilizing, etc.

Detention means the collection and storage of surface water for subsequent gradual discharge.

Dune means a hill or ridge of windblown sand and marine deposits formed by action of the wind and water, often stabilized by vegetation indigenous to this formation.

Erosion and sediment control plan means a plan for the control of soil erosion, sedimentation of waters and sediment related pollutants, and stormwater runoff resulting from land disturbing activity. The town may require the party responsible for carrying out the plan to submit monitoring reports, as deemed necessary, to determine whether the measures required by the approved plan are being properly performed.

Evapotranspiration-based controller means an irrigation controller that calculates soil moisture from known weather and related inputs, as follows:

(1) Receives and monitors weather data or on-site environmental conditions;

(2) Calculates the amount of moisture input to and moisture lost from the soil and plants;

(3) Automatically creates or adjusts the irrigation schedule to apply only the amount of water necessary to maintain adequate soil moisture.

Ground cover means plants, other than turf grass, normally reaching an average maximum height of not more than 24 inches at maturity.

Impervious surface means a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. It includes but is not limited to semi-impervious surfaces such as compacted clay, as well as most conventionally surfaced streets, roofs, sidewalks, parking lots, and other similar structures.

Irrigation system means a permanent, artificial watering system designed to transport and distribute water to plants.

Land disturbing activity means any land change that may result in soil erosion from water or wind and the movement of sediments and sediment related pollutants in waters, including but not limited to clearing, grading, excavating, transporting and filling of land.

Mangroves means any specimen of Avicenna germinans (black mangrove), Laguncularia racemosa (white mangrove), Rhizaphora mangle (red mangrove), and Conocarpus erectus (buttonwood mangrove), dead or alive, regardless of size.

Moderate drought tolerant means vegetation that requires supplemental irrigation during extreme dry periods to maintain attractive appearance.

Mulch means nonliving organic and synthetic materials customarily used in landscape design to retard erosion and retain moisture.

Native habitat means habitat that predominantly consists of or is used by those communities of plants, animals, and other flora and fauna which occur indigenously on the land, in the soil, or in the water.

Native shoreline vegetation means vegetation that occurs indigenously on the land, in the soil, or in the water.

Pestilent exotic/invasive species means species as identified by the Florida Exotic Pest Plant Council's Invasive Plant List.

Pestilent exotic species means any specimen of Melaleuca (Melaleuca quinquenerva), Australian Pine (Causarina spp.), or Brazilian Pepper (Schinus terebinthifolius), regardless of size.

Planting means the placing on or setting into the ground of live plant material.

Prop roots means the structures originating below the lowest limbs of red mangroves, and which are also known as stilt roots.

Rate means volume per unit of time.

Removal means to relocate, cut down, remove, or in any other manner destroy or cause vegetation to be destroyed.

Retention means the collection and storage of runoff without subsequent discharge to surface waters.

Runoff coefficient means ratio of the amount of rain that runs off a surface to that which falls on it; a factor from which runoff can be calculated.

Sediment means the mineral or organic particulate material that is in suspension or has settled in surface waters or groundwaters.

Sediment related pollutants means substances such as nutrients, pesticides, pathogens, and organic materials that are transmitted with, or in association with, sediment.

Substantial improvement means any combination of repairs, reconstruction, alteration, or improvements to a building, taking place during a one-year period in which the cumulative cost equals or exceeds 50 percent of the market value of the structure prior to the improvement. The market value of the building should be:

(1) The appraised value of the structure prior to the start of the initial repair or improvement, or

(2) In the case of damage, the value of the structure prior to the damage occurring.

This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have been pre-identified by the code enforcement official and which are solely necessary to assure safe living conditions.

Surface water means water above the surface of the ground whether or not flowing through definite channels.

Temporary irrigation system is one which is not to be supplied by buried polyvinyl chloride (PVC), polyethylene (PE), copper tubing or any other direct buried piping.

Trim or *trimming of vegetation* means to cut branches, twigs, limbs, and foliage, but does not mean to remove, defoliate, or destroy. Trimming does not include the cutting of prop/aerial roots.

Turf means continuous plant coverage consisting of grass species suited to growth in the county.

Untrimmed mangrove means a mangrove that has not been trimmed over two successive growing seasons.

Very drought tolerant means vegetation that can survive without supplemental irrigation after establishment.

Wetlands means hydrologically sensitive areas that are identified by being inundated or saturated by surface water or groundwater with a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands shall also be defined as those areas within the regulatory jurisdiction of the department of environmental regulation pursuant to F.S. ch. 403 and F.A.C. rules 17-3, 17-4, and 17-12. Wetlands generally include swamps, marshes, bogs and similar areas.

Window means a visual corridor through vegetation between upland properties and the waterfront.

(Code 1982, § 11.5-2; Ord. No. 13-2013, § 1, 8-13-13; Ord. No. 17-2017 , § 1, 7-12-17)

Cross reference— Definitions generally, § 1-2.

Sec. 66-3. - Enforcement and penalties.

(a) *Generally.* Unless otherwise provided, violations of this chapter are punishable as follows:

(1) Any person who violates any provision of this chapter shall be punished as provided in section 1-14.

(2) Each individual mangrove unlawfully altered under the provisions of this chapter shall constitute a separate offense.

(3) Violators may also be prosecuted under the provisions of chapter 2, article V of this Code, relating to town code enforcement.

(4) In addition to other penalties provided by law, appropriate reforestation, as approved in a shoreline management plan, shall be required for violation of this chapter.

(5) No development approvals shall be issued to any violators of this chapter until the violation has been determined to be resolved by the planning, building and zoning department.

(6) No alteration shall be permitted for five years on mangroves that have been planted to abate a violation of this chapter.

(7) The selection of any of the above penalties shall not preclude the town from seeking relief in the circuit court of the county, by way of injunction or other relief.

(b) *Payment of costs.* Violators of this section shall pay for all costs to the town for the review of any reforestation or other mitigation plan implementation conducted by the town.

(Code 1982, § 11.5-24(f), (g))

Secs. 66-4—66-35. - Reserved.

Sec. 66-36. - Findings.

The town recognizes the following environmental values of native shoreline habitat along Lake Worth:

(1) Native wetland shoreline vegetation:

a. Helps to protect the shoreline against erosion.

b. Provides habitat for a diverse community of plants and animals, including species listed by the state as endangered, threatened, and of special concern.

c. Plays a fundamental role in estuarine nutrition by producing concentrations of organic matter that is utilized by marine organisms within the estuarine food web.

d. Provides a nesting and resting ground for species of migratory birds.

e. Is aesthetically appealing and can be reasonably incorporated as an asset into the landscaping of waterfront residences.

(2) Certain pestilent exotic vegetative species have spread rapidly in the town, displacing and degrading native vegetation and creating ecologically undesirable monocultures.

(3) Upland areas directly adjacent to shorelines can degrade natural shoreline communities when they contain pestilent exotic species with invasive qualities.

(4) When placed along existing bulkheaded shores, riprap provides valuable habitat where there was none before by acting as a rocky substrate for shoreline vegetation and other shoreline organisms.

(Code 1982, § 11.5-36)

Sec. 66-37. - Purpose and intent.

(a) It is the purpose and intent of this article to prevent degradation or loss of native Lake Worth shoreline habitat, and to encourage restoration and improvement of degraded habitat through programs of exotic removal and planting of beneficial native vegetative species.

(b) This article should be used in conjunction with the vegetative provisions of this chapter, article IV.

(Code 1982, § 11.5-37)

Sec. 66-38. - Priorities for shoreline land use.

When reviewing applications for rezoning or amendments to the town's comprehensive plan, shoreline land use shall have the following priorities:

(1) Water-dependent uses such as production or protection of fish, shellfish and wildlife; protection or conservation of coastal and natural resources; recreation, public access, navigation and water-dependent utilities; provided they have no significant adverse impact upon the land, waters or adjacent land uses.

(2) Water-related or water-enhanced uses such as recreation and water-related utilities.

(3) Scenic waterfront communities.

(4) Uses that are not water-dependent or water-related that do not result in a diminution of coastal resources, and that are compatible with existing or committed uses in the town.

(Code 1982, § 11.5-81)

Sec. 66-39. - Requirements.

A shoreline management plan is required whenever:

(1) Alteration or removal of mangroves is requested; or

(2) Mangroves have been altered or removed in violation of this chapter.

(Code 1982, § 11.5-38)

Sec. 66-40. - Shoreline management plan.

The shoreline management plan shall include:

(1) A survey of the shoreline area showing the location and identification, by common and species names, of all vegetation. The mapped area shall include the intertidal area as well as the area 15 feet upland of the mean high tide line.

(2) A map showing proposed alterations.

(3) A map showing proposed mitigation.

(4) A written description of the proposed alteration and the proposed compensation and/or mitigation.

(5) A time schedule for requested activity, including commencement date of alteration and completion date of alteration.

(Code 1982, § 11.5-39)

Sec. 66-41. - Standards.

No alteration of native shoreline communities along Lake Worth shall occur without provision of some compensatory benefit to the shoreline habitat on the property as set forth in section 66-42.

(Code 1982, § 11.5-40)

Sec. 66-42. - Compensatory benefits.

(a) *Inclusion.* Compensatory benefits shall include one or more of the following:

(1) Replacement of pestilent exotic species in the shoreline area with native shoreline vegetation;

(2) Planting native shoreline vegetation in unvegetated areas; or

(3) Placement of riprap along bulkheaded shorelines and vegetating the riprap with mangroves.

(b) *Exemptions.* Applicants with shorelines more than 85 percent vegetated with mangroves or other native wetland shoreline vegetation, and are not degraded by the presence of exotic species, shall be permitted to trim presence of exotic species, shall be permitted to trim windows without compensatory measures, but must meet the other requirements of this chapter.

(Code 1982, § 11.5-41)

Sec. 66-43. - Mangrove trimming.

Trimming of mangrove windows for visual access is permitted under the following conditions:

(1) No more than 20 percent of naturally vegetated shoreline area may be trimmed as windows.

(2) Window areas must be established in the management plan. Once established, window areas may be maintained as part of an approved shoreline management plan.

(3) Established window areas may not be moved without the authorization of the town building official or his designee.

(4) An area twice the area of the window shall be restored by one or more of the methods described in section 66-42.

(5) Nonwindow areas shall be left untrimmed.

(Code 1982, § 11.5-42)

Sec. 66-44. - Mangrove removal.

Mangrove removal must meet the following requirements:

(1) Mangrove removal must meet all the conditions of this chapter.

(2) When total removal is requested, the applicant must provide a mitigation strategy. This strategy must include, at a minimum:

a. Replanting of not less than three times the total land area proposed for alteration at the following mitigation rates: 4:1 for forested wetlands; 2:1 for herbaceous wetlands.

b. Description of species and spacing.

c. The location of the reforestation, its elevation, and all surrounding vegetation.

d. A performance bond guaranteeing the success of the reforestation.

(3) Mangroves used for reforestation purposes shall be grown in pots no smaller than three gallons, have no fewer than two lateral branches, and be a minimum of four feet in height at the time of planting.

(4) No alteration shall be permitted for five years for mangroves that have been planted to abate a violation of this chapter. Otherwise, planted mangroves may be altered after they reach a height of six feet or higher.

(5) Salt marsh vegetation may be used in high energy areas in front of mangrove plantings, as part of required mitigation.

(Code 1982, § 11.5-43)

Sec. 66-45. - Phasing.

Phasing is encouraged for shorelines with extensive exotic invasion. Time periods and precise activities shall be specified.

(Code 1982, § 11.5-44)

Sec. 66-46. - Removal of pestilent exotics.

(a) Removal must be arranged so as to prevent damage to adjacent native ecosystems whenever possible.

(b) An herbicide approved by the town planning, building and zoning department may be used for Brazilian pepper when it is applied by a qualified professional.

(Code 1982, § 11.5-45)

Sec. 66-47. - Maintenance.

Property owners are responsible for maintenance of vegetation as specified in the management plan.

(Code 1982, § 11.5-46)

Secs. 66-48—66-80. - Reserved.

ORDINANCE NO. 21-2018

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 66, NATURAL RESOURCE PROTECTION, AT ARTICLE 1, IN GENERAL, SECTION 66-2, DEFINITIONS; AT ARTICLE IV, VEGETATION, SECTION 66-212, PURPOSE AND INTENT; TO INCLUDE A NEW SECTION 66-285, GENERAL UNDER DIVISION 4, DESIGN REQUIREMENTS; AMENDING SECTION 66-286, WATER CONSERVING LANDSCAPE DESIGN; AND AMENDING SECTION 66-311, PROHIBITED PLANTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby ratified and confirmed.

Section 2. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article I, In General; Section 66-2, Definitions, to read as follows:

"**Sec. 66-2. - Definitions.**

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

DSH means diameter at standard height (4.5 feet or 1.37 meters) measured from the top of rootball

~~*Evapotranspiration-based controller* means an irrigation controller that calculates soil moisture from known weather and related inputs, as follows:~~

~~(1) Receives and monitors weather data or on-site environmental conditions;~~

~~(2) Calculates the amount of moisture input to and moisture lost from the soil and plants;~~

~~(3) Automatically creates or adjusts the irrigation schedule to apply only the amount of water necessary to maintain adequate soil moisture.~~

Hat-racking means the removal of main stems, tops of trees, or a significant percentage of tree canopy, generally by cross-cutting the main stem(s) or leaders, leaving stubs.

Hedge means a dense row of regularly spaced shrubs planted to form a continuous, unbroken visual screen.

Mulch means ~~nonliving~~organic, arsenic free material such as wood chips~~, pine straw or bark~~ placed on the soil to reduce evaporation, prevent soil erosion, control weeds and buffer soil

temperature. ~~and synthetic materials customarily used in landscape design to retard erosion and retain moisture.~~

Native plant community is a natural association of plants dominated by one or more prominent native plant species, or a characteristic physical attribute as indicated by the Town of Palm Beach.

Native plant species shall be the plant species indigenous to the ecological communities of South Florida, as indicated as native to South Florida by the University of Florida in the Atlas of Vascular Plants, or that can be scientifically documented to be native to South Florida.

Section 3. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation, to read as follows:

"DIVISION 1. - GENERALLY

Sec. 66-212. - Purpose and intent.

It is the intent of the town to promote the health, safety and welfare of existing and future residents of the town by establishing minimum standards for the protection of natural plant communities, and the installation and continued maintenance of landscaping within the town, in order to:

(1) ~~Promote water conservation and~~Improve air quality by promoting evapotranspiration and through the use of permeable land areas for aquifer recharge and surface water filtration.
(2) Maintain and improve the aesthetic appearance of the town through appropriate landscape design; thereby protecting and increasing property values throughout the community.
(3) Improve the environmental quality of the town.
(4) Eradicate or control ~~certain~~ invasive exotic plant species as listed on the Florida Exotic Pest Plant Council's List of Invasive Plant Species.
(5) Protect and encourage native shoreline and wetland ecosystems.
(6) Offer special guidelines for the removal and control of those pestilent exotic species that are particularly deleterious to native shoreline environments.
(7) Protect listed plant species that inhabit the town as referenced in Sec. 66-312.
(8) Reduce noise and pollution by designing landscaping to visually screen unsightly views, and reduce noise impacts from major roadways and incompatible uses, through the filtering capacity of living trees and vegetation.
(9) Provide a visual buffer between otherwise incompatible types of land uses,
(10) Strengthen important vistas and reinforce desirable site design.
(11) Promote the use of vegetation for energy conservation by encouraging cooling through the provisions of shade and channeling of breezes.
(12) Encourage the use of rain harvesting systems such as cisterns, as a means to conserve water by reducing overwatering of landscapes.

(13) Promote water conservation and lower water costs through the use of smart irrigation systems.
(14) Promote health and safety through greater use of cultural and biological controls and reduced use of chemical pesticides for the management of pests such as whitefly infestations.
(15) Promote the planting of native vegetation to encourage the presence of birds and wildlife.

Section 4. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation, to read as follows:

DIVISION 4. - DESIGN REQUIREMENTS

Sec. 66-285. – General

(1). At least 25 percent (25%) of all required landscaping, by category in the form of trees, shrubs and ground cover plants, other than grass, shall consist of native vegetation. The Xeriscape Plant Guide by the South Florida Water Management District, or if available County or regional lists as amended may be used to determine appropriate native vegetation.
(2) The hatracking of trees is prohibited.

Section 5. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation, to read as follows:

Sec. 66-286. - Water conserving landscape design.

(3) *Required vegetation.* The following vegetation is required. The nine principles of Florida Friendly landscaping shall be utilized.

c. Trees.

1. A minimum of one shade/canopy tree is required for every 5,000 square feet, or portion thereof, of a lot, for lots 10,000 square feet or more.
2. A minimum of one shade/canopy tree is required for lots less than 10,000 square feet.
3. Every effort should be utilized to reduce the risk of damage and liability by utilizing more salt tolerant and wind tolerant trees and palms due to the town's coastal proximity and the high risk of hurricanes in South Florida.
4. The selection and placement of all street trees must refer and adhere to the Town of Palm Beach Standards Applicable To Public Rights-Of-Way And Easements Within The Town Of Palm Beach.

(5) *Use of organic mulches.* When appropriate, a minimum of two inches of arsenic-free organic mulch shall be installed around each tree planting for a minimum of 18 inches beyond its trunk in all directions, including palms, and throughout all hedge, shrub, and groundcover plantings. Mulch shall be pulled a minimum of two inches away from trees and palms. Appropriate mulching material consists of by-product or alternative mulches such as ~~pinebark,~~eucalyptus, utility or other mulch as recommended by Florida Friendly Landscaping principles. The use of Cypress mulch and dyed mulches are prohibited.

Section 6. Sec. 66-311. Prohibited Plants is hereby amended to include the following provisions:

(d) *Prohibition of ficus benjamina*. Due to extreme susceptibility of the invasive white fly pest and the consequent enforcement issues to require owners to treat or remove infested ficus benjamina, no new planting of ficus benjamina shall be allowed.

(e~~d~~) Protection of natural area and incentives. The county has recognized the Palm Beach Island Sanctuaries (R43 T43 S34; R43 T44 S03/10/15) located within the town as a natural area containing high quality ecosystems that are worthy of protection. The town hereby adopts for purposes of the protection of said natural area and for purposes of the regulation of the buffer area around said natural area those sections of the County Code known as the "Palm Beach County Countywide Prohibited Invasive Non-Native Vegetation Removal Ordinance" relating to the protection and regulation of these areas. Additionally, the town adopts the incentive program offered by the county as incorporated within the "Palm Beach County Countywide Prohibited Invasive Non-Native Vegetation Removal Ordinance."

(f~~e~~) Enforcement. Violations of this section shall be:

(1) Failure of a property owner to remove or eradicate prohibited invasive non-native vegetation in accordance with subsection (a) and (c) of this section.

(2) Failure of a property owner to maintain nonexempt properties free of prohibited invasive non-native vegetation in accordance with subsection (c) of this section.

Section 7. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 8. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 9. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 10. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this _____ day of _____, 2018, and for second and final reading on this _____ day of _____, 2018.

_____
Gail L. Coniglio, Mayor

_____
Danielle H. Moore, Town Council President

_____
Margaret A. Zeidman, Council President Pro Tem

_____
Julie Araskog, Town Council Member

_____
Lewis S.W. Crampton, Town Council Member

ATTEST:

Kathleen Dominguez, Town Clerk

Bobbie Lindsay, Town Council Member

Native Species Best Practice Research

West Palm beach Sec. 94-445

Plant species . A minimum of 60 percent of plant material added shall be Florida native or drought tolerant species selected from the city list or the list of species in the most recent edition of South Florida Water Management District Waterwise South Florida Landscapes.

Jupiter Sec. 26-67

All development approvals, including subdivisions and plat approvals shall preserve a minimum of 25 percent of each native plant community located on the site. The preservation requirements for native upland vegetation and the preservation requirement for environmentally sensitive lands shall be calculated and applied separately for each parcel. Preference shall be given to preserving environmentally sensitive lands.

Manalapan Sec. 157.83

A minimum of fifty (50) percent of all trees required to be planted on the site shall belong to native species as set forth in the approved plant list on file with the Director.

Shrubs and hedges. A minimum of fifty (50) percent of all shrubs and hedges required to be planted on the site shall belong to the native species as set forth in the approved plant list on file with the Director.

Royal palm Sec. 15-143

A minimum of fifty (50) percent of all trees required to be planted on the site shall belong to native species as set forth in the approved plant list on file with the department.

Shrubs and hedges. A minimum of fifty (50) percent of all shrubs and hedges required to be planted on the site shall belong to the native or drought tolerant species as set forth in the approved plant list on file with the department.

SAMPLE OF TREE REQUIREMENTS – LOCAL LANDSCAPE CODES

West Palm Beach, FL

"Single-family dwelling units. For single-family and duplex dwelling units, at least one shade or flowering tree shall be planted for each 1,000 square feet of open space or portion thereof. At least one shrub shall be planted for each 500 square feet of open space or portion thereof. Front yards shall be landscaped to meet the requirements of section 94-482(a)." 94-442

"*Substitution of palm trees*. Palm trees may be substituted for not more than 35 percent of the *shade* or flowering trees required by this article. However, when palm trees are substituted for *shade* trees, three palm trees shall be provided for each required *shade tree*. This 3:1 substitution shall not be required for Royal Palm Trees (Roystonea spp.), Senegal Date Palm (Phoenix reclinata), Medjool Date Palm (Phoenix dactylifera), Bismarck Palm (Bismarckia nobilis), and Silver Date Palm (Phoenix sylvestris)." 94-442

Palm Beach County, FL

Urban/Suburban Tier: Minimum number: 1 tree per 1,250 sq. ft. of lot size (maximum 15). Minimum height: 12 ft., 2.5" caliper. Palms may not be used in excess of 25% of the total number of required trees. Three palms are required as replacement for one tree. Minimum number of species: 2 (greater number of trees = greater number of species). (Article 7, Chapter C – ULDR)

Boca Raton, FL

"Trees shall be planted at a density of 1 tree per 1,250 square feet of open space provided." 28-1247

Manalapan, FL

"*Single family.* Each parcel shall contain a minimum of one (1) shade tree and ten (10) shrubs per one thousand (1,000) square feet of lot area or portion thereof, which is not utilized for structures or vehicular use areas. Three (3) palm trees clustered may be substituted in lieu of a shade tree. However, in no case shall palm tree clusters be used to reduce the number of shade trees to less than fifty percent (50%) of the total number of required shade trees on any lot or portion thereof." 157.75

"F) *Tree species mix.* When ten (10) or more trees are required to be planted to meet the standards of this section, a mix of species shall be provided. The number of species to be planted shall vary according to the overall number of trees required to be planted. The minimum number of species to be planted is indicated in the table hereinbelow. Species shall be planted in proportion to the required mix. This species mix standard shall not apply to areas of vegetation required to be preserved

Required # of Trees	***Minimum # of Species***
10-15	2
16-25	3
26-35	4

36+	5

” 157.75

Naples, FL

No shade tree requirements

Wellington, FL

“Trees. One (1) tree shall be planted or preserved for every one thousand five hundred (1,500) square feet of the gross lot area, excluding areas of vegetation required to be preserved by Section 7.4 and areas left to be undisturbed. Credit for existing trees will be given in accord with Section 7.3.7. The minimum tree and shrub planting standard is exclusive of trees, shrubs or hedges required to be planted in perimeter buffers, however, trees preserved in open common spaces shall receive a credit against the landscape area requirements.” 7.3.6

Gulfstream, FL

“The landscape architectural standards have been developed to reinforce the overall character and the image of the town environment.

(C)The correct selection of plant material:

(4)Provides *shade*.”70-146

Jupiter, FL

“Promote energy conservation through the creation of shade and reduce heat gain in and on buildings or paved areas;” 23-2

“Plant materials. A minimum of one shade tree, 12 to 14 feet in height, three palm trees, eight to 12 feet of clear trunk, or three accent trees, six to ten feet in height shall be provided for every 250 square feet of foundation planting. Additional plant material such as a combination of mass plantings of shrubs, a minimum of two to three feet in height, or mass plantings of groundcover, a minimum of one-half foot up to two feet in height, and/or accent plants shall also be required to provide a foundation for the building, accent architectural features, and reduce the scale of a building.” 23-62

“No more than 50 percent of the total trees required or proposed on-site may be palms (all species). Fifty percent or more shall be native plant material as recognized by the Xeriscape Plant Material Guide I or II, published by the South Florida Water Management District.”23-86

Palm Beach Gardens, FL

“Minimum requirements for single-family and duplex residences. Single-family and duplex lots will have a minimum of one tree or two palms and six shrubs per 1,000 square feet of open space or fraction

thereof. A shade tree from the city's preferred tree list is required as a street tree, located within the road right-of-way or within 15 feet of the property line. Street trees are to be replaced if removed for any reason by the landowner." 78-314

Delray, FL

"One shade tree shall be planted for every 2,500 square feet of lot area. Shade trees for single family residences shall be a minimum of 12 feet in height with a five-foot spread at the time of installation. Existing trees preserved on the site with the same specifications as above, may be credited toward this tree requirement" 4.6.16 (H)

MUNICIPAL/COUNTY NATIVE VEGETATION REQUIREMENTS
Beth Dowdle

Brevard - 50% Native vegetation required
- Satisfaction of the landscaping standards shall be achieved through the preservation of existing native vegetation to the greatest extent feasible. When the minimum landscaping standards cannot be achieved through preservation, plantings of new vegetation shall be required to meet the standards.

Dade County - 30% Native vegetation required

Indian River County - 50% Native vegetation required
- Minimum number of species diversity required
- Wide planted buffers between commercial properties & along roadways

Islamorada - 75% Native vegetation required
- The director of planning and development services may reduce the height requirement 50 percent for rare native plant species.

Key Colony Beach - 50% Native vegetation or xeriscape vegetation required

Key West - 70% Native vegetation required
- The natural landscape of the site shall be preserved as much as possible.
- Prior to the issuance of a certificate of occupancy for a new development, the owner/applicant shall remove all nuisance and Invasive vegetation from the site for which a development order or permit is requested.
- The clearing of native vegetation sufficient to create the required landscape screening or portion thereof is prohibited without approval from the city
- Credit shall be granted for trees which are preserved on a site and which meet the tree requirements of any landscaping section of this division

Lee County - 75% Native vegetation required for tree species; 50% Native vegetation required for shrub and groundcover species

Manatee County - 30% Native vegetation required
- Residential Street Trees: Existing native trees should be used to fulfill ordinance requirements when feasible
- Preserve native plant communities is encouraged and required as appropriate
- Right plant in the right place for soil conditions
- Plantings in required landscape areas shall be with plant species that are native and/or naturalized to Florida. All required landscape areas shall retain existing native trees, shrubs, groundcover and grasses to the greatest extent possible. Native plant species typical to the vegetative communities found in non-coastal Manatee County shall be encouraged.

Marathon - 70% Native vegetation required Martin County – 50% Native vegetation required

Monroe County – 70% Native vegetation required

Miami - 30% Native vegetation required
- The right plant in the right place for dry and wet soils
- Reduce negative impact of exotic pest plant species
- Prohibit use of noxious exotic plants which invade native plant communities
- Maximum size of turfgrass lawn area
- One native plant per square foot in retention/detention areas

Ocoee – 40% Native tree required; 40% Native shrubs and groundcover required.

Pasco County – 30% Native vegetation required.

Polk County - Recommends native vegetation and includes native vegetation on the recommended plant list

St. Lucie County - 50% Native vegetation or waterwise landscape required
- Existing, native trees, vegetation and other natural features shall be preserved to the extent practicable.
- Residential: 100% of the planted trees shall consist of native species or waterwise vegetation
- Agriculture/horticulture buildings: 100% of the planted trees shall consist of native species
- Large scale residential and commercial: A minimum of 15% of any existing native upland habitat on the property must be preserved in its natural condition as part of the required 35 percent common open space. For each acre of preserved native habitat above the required minimum 15 percent that is preserved in its original state, credit shall be given at a rate of 150 percent per acre towards the remaining common open space requirement.
- Planned Unit Developments: A minimum of 50% of any existing native upland habitat on the property must be preserved in its natural condition as part of the required open space. For each acre of preserved native habitat above the required minimum 50% that is preserved in its original state, credit shall be given at a rate of 150% per acre towards the remaining open space requirement.
- The preservation of existing native vegetation shall be required where the location of said vegetation is not in conflict with the proposed building or parking areas.

ORDINANCE NO. 21-2018

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 66, NATURAL RESOURCE PROTECTION, AT ARTICLE 1, IN GENERAL, SECTION 66-2, DEFINITIONS; AT ARTICLE IV, VEGETATION, SECTION 66-212, PURPOSE AND INTENT; TO INCLUDE A NEW SECTION 66-285, GENERAL UNDER DIVISION 4, DESIGN REQUIREMENTS; AMENDING SECTION 66-286, WATER CONSERVING LANDSCAPE DESIGN; AND AMENDING SECTION 66-311, PROHIBITED PLANTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby ratified and confirmed.

Section 2. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article I, In General; Section 66-2, Definitions, to read as follows:

"**Sec. 66-2. - Definitions.**

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

DSH means diameter at standard height (4.5 feet or 1.37 meters) measured from the top of rootball

~~*Evapotranspiration-based controller* means an irrigation controller that calculates soil moisture from known weather and related inputs, as follows:~~

~~(1) Receives and monitors weather data or on-site environmental conditions;~~

~~(2) Calculates the amount of moisture input to and moisture lost from the soil and plants;~~

~~(3) Automatically creates or adjusts the irrigation schedule to apply only the amount of water necessary to maintain adequate soil moisture.~~

Hat-racking means the removal of main stems, tops of trees, or a significant percentage of tree canopy, generally by cross-cutting the main stem(s) or leaders, leaving stubs.

Hedge means a dense row of regularly spaced shrubs planted to form a continuous, unbroken visual screen.

Mulch means ~~nonliving~~organic, arsenic free material such as wood chips~~, pine straw or bark~~ placed on the soil to reduce evaporation, prevent soil erosion, control weeds and buffer soil

temperature. ~~and synthetic materials customarily used in landscape design to retard erosion and retain moisture.~~

Native plant community is a natural association of plants dominated by one or more prominent native plant species, or a characteristic physical attribute as indicated by the Town of Palm Beach.

Native plant species shall be the plant species indigenous to the ecological communities of South Florida, as indicated as native to South Florida by the University of Florida in the Atlas of Vascular Plants, or that can be scientifically documented to be native to South Florida.

COMMENTS RECEIVED:

- **Landscape Architects/Design Professionals:** No comments received on this section.
- **The Garden Club of Palm Beach:** No comments received on this section.
- **Palm Beach Civic Association Town Beautification Committee:** "We concur with the clarification of definitions in this section."
- **The Preservation Foundation of Palm Beach:** No comments received on this section.

Section 3. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation, to read as follows:

"DIVISION 1. - GENERALLY

Sec. 66-212. - Purpose and intent.

It is the intent of the town to promote the health, safety and welfare of existing and future residents of the town by establishing minimum standards for the protection of natural plant communities, and the installation and continued maintenance of landscaping within the town, in order to:

(1) ~~Promote water conservation and~~Improve air quality by promoting evapotranspiration and through the use of permeable land areas for aquifer recharge and surface water filtration.
(2) Maintain and improve the aesthetic appearance of the town through appropriate landscape design; thereby protecting and increasing property values throughout the community.
(3) Improve the environmental quality of the town.
(4) Eradicate or control ~~certain~~ invasive exotic plant species as listed on the Florida Exotic Pest Plant Council's List of Invasive Plant Species.
(5) Protect and encourage native shoreline and wetland ecosystems.
(6) Offer special guidelines for the removal and control of those pestilent exotic species that are particularly deleterious to native shoreline environments.
(7) Protect listed plant species that inhabit the town as referenced in Sec. 66-312.

(8) Reduce noise and pollution by designing landscaping to visually screen unsightly views, and reduce noise impacts from major roadways and incompatible uses, through the filtering capacity of living trees and vegetation.
(9) Provide a visual buffer between otherwise incompatible types of land uses,
(10) Strengthen important vistas and reinforce desirable site design.
(11) Promote the use of vegetation for energy conservation by encouraging cooling through the provisions of shade and channeling of breezes.
(12) Encourage the use of rain harvesting systems such as cisterns, as a means to conserve water by reducing overwatering of landscapes.
(13) Promote water conservation and lower water costs through the use of smart irrigation systems.
(14) Promote health and safety through greater use of cultural and biological controls and reduced use of chemical pesticides for the management of pests such as whitefly infestations.
(15) Promote the planting of native vegetation to encourage the presence of birds and wildlife.

COMMENTS RECEIVED:

- **Landscape Architects/Design Professionals:** No comments received on this section.
- **The Garden Club of Palm Beach:** No comments received on this section.
- **Palm Beach Civic Association Town Beautification Committee:** "We concur with these revisions."
- **The Preservation Foundation of Palm Beach:** "**4)** Regarding invasive plants. The FLEPPC list contains Category I and Category II invasive exotic plants. "Invasive exotic plants are termed **Category I** invasives when they are altering native plant communities by displacing native species, changing community structures or ecological functions, or hybridizing with natives. This definition does not rely on the economic severity or geographic range of the problem, but on the documented ecological damage caused. **Category II** invasive exotics have increased in abundance or frequency but have not yet altered Florida plant communities to the extent shown by **Category I** species. These species may become **Category I** if ecological damage is demonstrated.' https://www.fleppc.org/list/list.htm
    - Suggested wording: *Eradicate category I invasive exotic plant species and eradicate or control category II invasive exotic plant species as listed on the most current Florida Exotic Pest Plant Council's List of Invasive Plant Species.*

13) Water conservation is also achieved by using native plants in the landscape and is recommended by the Environmental Protection Agency.
https://www.epa.gov/watersense/what-plant
https://archive.epa.gov/greenacres/web/html/factsht.html
    - Suggested wording: *Promote water conservation and lower water costs through the use of smart irrigation systems and planting native plants appropriate for the location.*

15) Planting appropriate native vegetation has many benefits in addition of birds and wildlife. Again, from the EPA factsheet linked above:

Why Should I Use Native Plants?
Native plants provide a beautiful, hardy, drought resistant, low maintenance landscape while benefiting the environment. Native plants, once established, save time and money by eliminating or significantly reducing the need for fertilizers, pesticides, water and lawn maintenance equipment.
Native plants do not require fertilizers. Vast amounts of fertilizers are applied to lawns. Excess phosphorus and nitrogen (the main components of fertilizers) run off into lakes and rivers causing excess algae growth. This depletes oxygen in our waters, harms aquatic life and interferes with recreational uses.
Native plants require fewer pesticides than lawns. Nationally, over 70 million pounds of pesticides are applied to lawns each year. Pesticides run off lawns and can contaminate rivers and lakes. People and pets in contact with chemically treated lawns can be exposed to pesticides.
Native plants require less water than lawns. The modern lawn requires significant amounts of water to thrive. In urban areas, lawn irrigation uses as much as 30% of the water consumption on the East Coast and up to 60% on the West Coast. The deep root systems of many native Midwestern plants increase the soil's capacity to store water. Native plants can significantly reduce water runoff and, consequently, flooding.
Native plants help reduce air pollution. Natural landscapes do not require mowing. Lawns, however, must be mowed regularly. Gas powered garden tools emit 5% of the nation's air pollution. Forty million lawnmowers consume 200 million gallons of gasoline per year. One gas-powered lawnmower emits 11 times the air pollution of a new car for each hour of operation. Excessive carbon from the burning of fossil fuels contributes to global warming. Native plants sequester, or remove, carbon from the air.
Native plants provide shelter and food for wildlife. Native plants attract a variety of birds, butterflies, and other wildlife by providing diverse habitats and food sources. Closely mowed lawns are of little use to most wildlife.
Native plants promote biodiversity and stewardship of our natural heritage. In the U.S., approximately 20 million acres of lawn are cultivated, covering more land than any single crop. Native plants are a part of our natural heritage. Natural landscaping is an opportunity to reestablish diverse native plants, thereby inviting the birds and butterflies back home.
Native plants save money. A study by Applied Ecological Services (Brodhead, WI) of larger properties estimates that over a twenty year period, the cumulative cost of

maintaining a prairie or a wetland totals $3,000 per acre versus $20,000 per acre for non-native turf grasses.

- Suggested wording: *Promote the planting of appropriate native vegetation to encourage the presence of birds and wildlife, and to eliminate or significantly reduce the need for fertilizers, pesticides and water."*

Section 4. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation, to read as follows:

DIVISION 4. - DESIGN REQUIREMENTS

Sec. 66-285. – General

(1). At least 25 percent (25%) of all required landscaping, by category in the form of trees, shrubs and ground cover plants, other than grass, shall consist of native vegetation. The Xeriscape Plant Guide by the South Florida Water Management District, or if available County or regional lists as amended may be used to determine appropriate native vegetation.

(2) The hatracking of trees is prohibited.

COMMENTS RECEIVED:

- **Landscape Architects/Design Professionals:** Regarding (1): "I would suggest going into this realm slowly. Possibly having a 15% native vegetation requirement. Let's not forget that PB was created as a Long Islander's dream of the Tropics; not Native. Let's not try to change our history too fast. Don't forget the obvious: 25% of anything is an entire quarter of everything." Regarding (2): "Along with a definition of Hatracking there should be one for Pollarding. The latter has been used in the best examples of gardens for over a couple of thousand years. We should not outlaw it."
- **The Garden Club of Palm Beach:** "The Garden Club of Palm Beach wishes to extend its support of the 25% native plant requirement, not using Cypress mulch or dyed mulch, banning the use of Ficus Benjamina for new hedges and the proper pruning of trees."
- **Palm Beach Civic Association Town Beautification Committee:** "We concur with having a minimum of 25% of native plants included in all landscaping projects on the island is progressive and critical to improve sustainability, reduce the amount of pesticides used and attract birds/butterflies/honeybees and other pollinators. The selective use of native plants will not negatively impact the aesthetics of landscaping and garden projects on the island. Pan's and the Mounts Botanical Gardens are role model examples of how native plants can be used and selected to achieve formal and attractive landscaping preferred by some residents in Palm Beach. We concur with prohibiting hat racking. It would be beneficial to better define hat racking as the practice of removing whole tops of trees or large branches and/or trunks from the tops of trees, leaving stubs or lateral branches that are too small to assume the role of a terminal leader. We recommend instead of hat racking to use selective pruning and thinning methods in accordance with ANSI A300 Standards to ensure the health of the tree and allow for more

light penetration and air circulation. Hat racking can damage the bark of the tree and the substantial loss of leaves reduce the tree's ability to photosynthesize and produce food. When a tree is topped many new shoots or suckers begin to grow from the wound. This type of growth attracts insects and other pathogens that can directly enter the open wound and eventually kill the tree."

- **The Preservation Foundation of Palm Beach:** "An excellent resource for appropriate native plants is the Institute for Regional Conservation website, specifically "Natives for Your Neighborhood". https://www.regionalconservation.org/beta/nfyn/. I am very pleased to see the town move toward requiring a percentage of native plants, joining the numerous counties and municipalities in the state that have done the same. Some of the municipalities with native plant requirements: Brevard, Dade County, Indian River County, Islamorada, Key Colony Beach, Key West, Lee County, Manatee County, Marathon, Martin County, Monroe County, Miami, Ocoee, Palm Beach County, Pasco County, Polk County, St Lucie County, West Palm Beach. Hat racking is a damaging tree-trimming practice in any locale, even more treacherous in coastal Palm Beach with high winds. The recent Palm Beach Daily News article addressed the issues very well. https://www.palmbeachdailynews.com/lifestyles/home/why-hatracking-weakens-trees/YTh8IPtHU7lLPTuIPdUYcP/."

Section 5. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation, to read as follows:

Sec. 66-286. - Water conserving landscape design.

(3) *Required vegetation.* The following vegetation is required. The nine principles of Florida Friendly landscaping shall be utilized.

c. Trees.

1. A minimum of one shade/canopy tree is required for every 5,000 square feet, or portion thereof, of a lot, for lots 10,000 square feet or more.
2. A minimum of one shade/canopy tree is required for lots less than 10,000 square feet.
3. Every effort should be utilized to reduce the risk of damage and liability by utilizing more salt tolerant and wind tolerant trees and palms due to the town's coastal proximity and the high risk of hurricanes in South Florida.
4. The selection and placement of all street trees must refer and adhere to the Town of Palm Beach Standards Applicable To Public Rights-Of-Way And Easements Within The Town Of Palm Beach.

(5) *Use of organic mulches.* When appropriate, a minimum of two inches of arsenic-free organic mulch shall be installed around each tree planting for a minimum of 18 inches beyond its trunk in all directions, including palms, and throughout all hedge, shrub, and groundcover plantings. Mulch shall be pulled a minimum of two inches away from trees and palms. Appropriate mulching material consists of by-product

or alternative mulches such as eucalyptus, utility or other mulch as recommended by Florida Friendly Landscaping principles. The use of Cypress mulch and dyed mulches are prohibited.

COMMENTS RECEIVED:

- **Landscape Architects/Design Professionals:** Regarding (3): "I feel this is a good intention but, again, one that crosses the line here in town. Independence in design is what makes our town's gardens the example to every other town. Forcing residents to do this is not correct. I took the time to look at the following addresses: 1139 North Ocean Blvd, 277 Pendleton Ave, 229 Barton Ave, 1490 Via Manana, 2335 South Ocean Blvd, 212 Caribbean Rd. I think I can safely say that not one of those properties meet this requirement. Much less most of our Town's properties: public beach; Royal Poinciana Way; Royal Palm Way. The list could go on. Let's make sure we know what we are going to force residents to do." Regarding (4)—suggested the following rewording: "Appropriate mulching material consists of by-product or alternative mulches such as eucalyptus, pine needles, pine finds, oak leaf, Atlas grow soil, utility or other mulch as recommended by Florida Friendly Landscaping principles. The use of Cypress mulch and dyed mulches are prohibited."
- **The Garden Club of Palm Beach:** "The Garden Club of Palm Beach wishes to extend its support of the 25% native plant requirement, not using Cypress mulch or dyed mulch, banning the use of Ficus Benjamina for new hedges and the proper pruning of trees."
- **Palm Beach Civic Association Town Beautification Committee:** "We concur with the proposed minimum standards for the inclusion of shade tree canopy trees in new landscape projects. According to University of Florida IFAS, shade trees reduce air pollution, block city noise, provide privacy, increase property values, reduce air conditioning costs, absorb carbon dioxide and produce oxygen all vital to environmental sustainability. We concur with the types of mulches allowed. When mulching, good practices should be followed especially around the trunks of trees. Refer to the University of Florida mulching recommendations and their Florida Friendly Landscapes standard."
- **The Preservation Foundation of Palm Beach:** No comments received on this section.

Section 6. Sec. 66-311. Prohibited Plants is hereby amended to include the following provisions:

(d) *Prohibition of ficus benjamina.* Due to extreme susceptibility of the invasive white fly pest and the consequent enforcement issues to require owners to treat or remove infested ficus benjamina, no new planting of ficus benjamina shall be allowed.

(e~~d~~) Protection of natural area and incentives. The county has recognized the Palm Beach Island Sanctuaries (R43 T43 S34; R43 T44 S03/10/15) located within the town as a natural area containing high quality ecosystems that are worthy of protection. The town hereby adopts for purposes of the protection of said natural area and for purposes of the regulation of the buffer area around said natural area those sections of the County Code known as the "Palm Beach

County Countywide Prohibited Invasive Non-Native Vegetation Removal Ordinance" relating to the protection and regulation of these areas. Additionally, the town adopts the incentive program offered by the county as incorporated within the "Palm Beach County Countywide Prohibited Invasive Non-Native Vegetation Removal Ordinance."

(fe) Enforcement. Violations of this section shall be:

(1) Failure of a property owner to remove or eradicate prohibited invasive non-native vegetation in accordance with subsection (a) and (c) of this section.

(2) Failure of a property owner to maintain nonexempt properties free of prohibited invasive non-native vegetation in accordance with subsection (c) of this section.

COMMENTS RECEIVED:

- **Landscape Architects/Design Professionals:** No comments received on this section.
- **The Garden Club of Palm Beach:** "The Garden Club of Palm Beach wishes to extend its support of the 25% native plant requirement, not using Cypress mulch or dyed mulch, banning the use of Ficus Benjamina for new hedges and the proper pruning of trees."
- **Palm Beach Civic Association Town Beautification Committee:** "We concur with limiting the use of Ficus Benjamina on the island. There are several other alternatives to be used as hedges that are less prone to whitefly damage and extensive use of pesticides e.g. Podocarpus, Clusia, Cocoplum, etc. Ficus Nitida as a replacement of Ficus Benjamina should also be discouraged."
- **The Preservation Foundation of Palm Beach:** See previous comments on native vegetation.

Section 7. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 8. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 9. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 10. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this _____ day of _____, 2018, and for second and final reading on this _____ day of _____, 2018.

_____
Gail L. Coniglio, Mayor

_____
Danielle H. Moore, Town Council President

_____
Margaret A. Zeidman, Council President Pro Tem

_____
Julie Araskog, Town Council Member

_____
Lewis S.W. Crampton, Town Council Member

ATTEST:

_____
Kathleen Dominguez, Town Clerk

_____
Bobbie Lindsay, Town Council Member

REVISED AS OF FEBRUARY 4, 2019

ORDINANCE NO. __-____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 66, NATURAL RESOURCE PROTECTION, AT ARTICLE 1, IN GENERAL, SECTION 66-2, DEFINITIONS; AT ARTICLE IV, VEGETATION, SECTION 66-212, PURPOSE AND INTENT; TO INCLUDE A NEW SECTION 66-285, GENERAL UNDER DIVISION 4, DESIGN REQUIREMENTS; AMENDING SECTION 66-286, WATER CONSERVING LANDSCAPE DESIGN; AND AMENDING SECTION 66-311, PROHIBITED PLANTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby ratified and confirmed.

Section 2. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article I, In General; Section 66-2, Definitions, to read as follows:

"**Sec. 66-2. - Definitions.**

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

DSH means diameter at standard height (4.5 feet or 1.37 meters) measured from the top of rootball.

~~*Evapotranspiration based controller* means an irrigation controller that calculates soil moisture from known weather and related inputs, as follows:~~

~~(1) Receives and monitors weather data or on-site environmental conditions;~~

~~(2) Calculates the amount of moisture input to and moisture lost from the soil and plants;~~

~~(3) Automatically creates or adjusts the irrigation schedule to apply only the amount of water necessary to maintain adequate soil moisture.~~

Hat racking means the removal of main stems, tops of trees, or a significant percentage of tree canopy, generally by cross-cutting the main stem(s) or leaders, leaving stubs.

Hedge means a dense row of regularly spaced shrubs planted to form a continuous, unbroken visual screen.

Mulch means ~~nonliving~~organic, arsenic free material such as wood chips~~, pine straw or bark~~ placed on the soil to reduce evaporation, prevent soil erosion, control weeds and buffer soil temperature. ~~and synthetic materials customarily used in landscape design to retard erosion and retain moisture.~~

Native plant community is a natural association of plants dominated by one or more prominent native plant species.

Native plant species shall be the plant species indigenous to the ecological communities of South Florida, as indicated as native to South Florida by the University of Florida in the Atlas of Vascular Plants, or that can be scientifically documented to be native to South Florida.

Pollarding is a pruning system involving the removal of the upper branches of a tree thus promoting a dense head of foliage and branches.

Section 3. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation, to read as follows:

"DIVISION 1. - GENERALLY

Sec. 66-212. - Purpose and intent.

It is the intent of the town to promote the health, safety and welfare of existing and future residents of the town by establishing minimum standards for the protection of natural plant communities, and the installation and continued maintenance of landscaping within the town, in order to:

(1) ~~Promote water conservation and~~Improve air quality by promoting evapotranspiration and through the use of permeable land areas for aquifer recharge and surface water filtration.
(2) Maintain and improve the aesthetic appearance of the town through appropriate landscape design; thereby protecting and increasing property values throughout the community.
(3) Improve the environmental quality of the town.
(4) Eradicate ~~or control certain~~ Category I invasive exotic plant species and eradicate or control Category II invasive exotic plant species as listed on the most current Florida Exotic Pest Plant Council's List of Invasive Plant Species.
(5) Protect and encourage native shoreline and wetland ecosystems.
(6) Offer special guidelines for the removal and control of those pestilent exotic species that are particularly deleterious to native shoreline environments.
(7) Protect listed plant species that inhabit the town as referenced in Sec. 66-312.
(8) Reduce noise and pollution by designing landscaping to visually screen unsightly views and reduce noise impacts from major roadways and incompatible uses, through the filtering capacity of living trees and vegetation.
(9) Provide a visual buffer between otherwise incompatible types of land uses.
(10) Strengthen important vistas and reinforce desirable site design.

(11) Promote energy conservation by encouraging cooling through the use of vegetation that creates shade.
(12) Encourage the use of rain harvesting systems, such as cisterns, as a means to conserve water by reducing overwatering of landscapes.
(13) Promote water conservation and lower water costs through the use of smart irrigation systems and planting native plants appropriate for the location.
(14) Promote health and safety through greater use of cultural and biological controls and reduced use of chemical pesticides for the management of pests, such as whitefly.
(15) Promote the planting of appropriate native vegetation to encourage the presence of birds and wildlife and to eliminate or significantly reduce the need for fertilizers, pesticides and water.

Section 4. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation, to read as follows:

DIVISION 4. - DESIGN REQUIREMENTS

Sec. 66-285. – General

(1). At least 25 percent (25%) of all required landscaping, in the form of trees, shrubs and ground cover plants, other than grass, shall consist of native vegetation. To determine appropriate native vegetation the Xeriscape Plant Guide by the South Florida Water Management District, or if available County or regional lists as amended may be used.
(2) The hatracking of trees is prohibited; however pollarding is permitted.

Section 5. The code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation, to read as follows:

Sec. 66-286. - Water conserving landscape design.

(5) *Use of organic mulches.* When appropriate, a minimum of two inches of arsenic-free organic mulch shall be installed around each tree planting for a minimum of 18 inches beyond its trunk in all directions, including palms, and throughout all hedge, shrub, and groundcover plantings. Mulch shall be pulled a minimum of two inches away from trees and palms. Appropriate mulching material consists of by-product or alternative mulches such as eucalyptus, pine needles, pine finds, oak leaf, Atlas grow soil, utility or other mulch as recommended by Florida Friendly Landscaping principles. The use of Cypress mulch, pine mulch, and dyed mulches is prohibited.

Section 6. Sec. 66-311. Prohibited Plants is hereby amended to include the following provisions:

(d) *Prohibition of ficus benjamina.* Due to extreme susceptibility of the invasive white fly pest and the consequent enforcement issues to require owners to treat or remove infested ficus benjamina, no new planting of ficus benjamina shall be allowed.

(e~~d~~) Protection of natural area and incentives. The county has recognized the Palm Beach Island Sanctuaries (R43 T43 S34; R43 T44 S03/10/15) located within the town as a natural area containing high quality ecosystems that are worthy of protection. The town hereby adopts for purposes of the protection of said natural area and for purposes of the regulation of the buffer area around said natural area those sections of the County Code known as the "Palm Beach County Countywide Prohibited Invasive Non-Native Vegetation Removal Ordinance" relating to the protection and regulation of these areas. Additionally, the town adopts the incentive program offered by the county as incorporated within the "Palm Beach County Countywide Prohibited Invasive Non-Native Vegetation Removal Ordinance."

(f~~e~~) Enforcement. Violations of this section shall be:

(1) Failure of a property owner to remove or eradicate prohibited invasive non-native vegetation in accordance with subsection (a) and (c) of this section.

(2) Failure of a property owner to maintain nonexempt properties free of prohibited invasive non-native vegetation in accordance with subsection (c) of this section.

Section 7. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 8. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 9. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 10. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this _____ day of _____, 2018, and for second and final reading on this _____ day of _____, 2018.

_____
Gail L. Coniglio, Mayor

_____
Danielle H. Moore, Town Council President

_____
Margaret A. Zeidman, Council President Pro Tem

_____
Julie Araskog, Town Council Member

_____
Lewis S.W. Crampton, Town Council Member

ATTEST:

_____
Kathleen Dominguez, Town Clerk

_____
Bobbie Lindsay, Town Council Member

TOWN OF PALM BEACH

Information for ORS Committee Meeting on: February 7, 2019

To: Ordinances, Rules and Standards Committee

Via: Jay Boodheshwar, Deputy Town Manager

From: Nicholas Caristo, Acting Chief of Police

Re: Public Safety Overview Regarding Lake Trail

Date: January 24, 2019

STAFF RECOMMENDATION

Staff has been asked to provide an overview of Lake Trail Regulations to the Ordinance, Rules and Standards (ORS) Committee.

GENERAL INFORMATION

The Town has been receiving ongoing complaints from citizens who are concerned for their safety while on Lake Trail. The complaints primarily pertain to speeding bicyclists and bicyclists not yielding to pedestrians.

Lake Trail is 5 1/2 miles long, running from South Lake Drive, near Peruvian Avenue North, to its terminus, just north of the Sailfish Club. It has two interruptions where walkers must navigate sidewalks and an intersection.

Lake Trail has governance under the Town's Right-of-Way Manual and is classified as a multimodal or trail, not as a sidewalk. The Right-of-Way Manual specifies, "a right-of-way permit is required when construction is to take place on or under the Lake Trail. Additionally, if the path is to be used as an access road or will be blocked to perform construction or landscaping on adjacent properties, a right-of-way permit will be required."

The use of Lake Trail is regulated under several sections of the Town Code. These sections are as follows:

Section 118-8: Non-motorized vehicles.

It shall be unlawful for any person to operate or cause to be operated on, along or over the public streets and sidewalks of the town, the bicycle trails, lake trail and any extensions thereof within the town, any non-motorized vehicle, cycle or apparatus with a width in excess of 32 inches.

Section 118-10: **Animal-drawn carriages.**

It shall be unlawful for any person to operate or cause to be operated on, along or over the public streets and sidewalks of the town, the bicycle trails, lake trail and any extensions thereof within the town any vehicle, carriage or apparatus powered or propelled by an animal independent of or in conjunction with a mechanized means of power or propulsion

Sec. 118-11. - Driving on Lake Trail prohibited.

It shall be unlawful for any person to operate or cause to be operated along and over what is commonly known and platted as the lake trail in the town, and any extensions thereof to the north or south, any motor-driven or animal-drawn vehicle. The only exceptions to this section shall be for the operation of police vehicles, public works vehicles, and vehicles operated in accordance with a valid public works permit allowing such activity on the lake trail.

Sec. 106-159. - Clearance above sidewalks, bike trails, roadways.

(a) Clearance above sidewalks, bike trails. A clearance of eight (8) feet, measured vertically from the edges and extending the full width of all sidewalks and bike trails in the town, shall be maintained at all times for the unobstructed passage of pedestrians and others using said sidewalks and bike trails.

(b) Clearance above roadways. A clearance of eighteen (18) feet, measured vertically from the edges of pavement, gutters or headers, and extending the full width of all streets and roadways shall be maintained at all times for the unobstructed passage of vehicles.

(c) Responsibilities of abutting property owners. It shall be unlawful for any person owning and/or occupying any lot or part of a lot in the town to omit to keep the abutting sidewalk, bike trail, street or roadway maintained in the manner set forth herein.

(d) Penalties. Any person owning and/or occupying a lot or part of a lot in the town on which trees or growth are allowed to grow in a manner so as to be in violation of this provision, shall be in violation of this section and shall be subject to the jurisdiction of the town's code enforcement board and/or shall be subject to the penalty provisions for violations of ordinances of the town.

Sec. 134-1698. - Structures, signs and landscape material west of Lake Trail.

No buildings or other structures of any nature, other than buildings or structures for essential services and docks, shall be constructed upon land lying west of the Lake Trail. No signs shall be permitted west of the Lake Trail except property protection signs as approved by the Architectural Commission. In addition, a Lake Trail scenic vista shall be maintained for the entire width and depth of all properties that abut the west side of Lake Trail with the exception of those properties used to provide essential services. The following standards shall apply to such properties:

(1) In no instance shall hedge or bush material be planted or maintained at a height greater than 30 inches above the grade of the trail.

(2) Except for palm trees, trees shall be planted with a minimum lineal separation perpendicular to Lake Trail of 30 feet from any other tree.

(3) The trunks of trees shall be maintained at six feet above the grade from where the tree is planted.

(4) Palm trees may be clustered with one canopy tree and two palm trees, or a maximum of three palm trees, no further apart than eight feet, and a cluster separation perpendicular to Lake Trail of not less than 25 feet.

Sec. 134-1699. - Lake Trial access.

No driveway shall be allowed to connect to any bicycle and pedestrian access to Lake Trial.

Sec. 134-1700. - Structures and signs along Lake Trail.

No signs shall be permitted within said 25-foot area easterly of said lake trail except property protection signs approved by the architectural commission. No structure over four feet high (as measured on the lake trail side of the structure from the top of the structure to the crown of the existing paving of the lake trail directly opposite of such point of measurement) shall be erected or constructed along the easterly side of the Lake Trail within 25 feet of the easterly right-of-way line of said Lake Trail, as the same is now laid out, established and used, except as provided below.

A wall or fence within 25 feet of the easterly right-of-way of the Lake Trail, shall be allowed four feet in height as measured from the highest grade directly adjacent to said wall or fence to the top of the wall or fence directly opposite such point of measurement. The natural grade along the side property line within the Lake Trail setback area may not be artificially changed to raise the height of said wall or fence.

In addition to Town Ordinances, there are also Florida State Statues that pertain to bicyclists. The most commonly enforced sections are:

Bicycle Regulations. F.S.S. 316.2065

- A bicyclist must obey all traffic controls and signals.
- No bicycle may be used to carry more persons at one time than the number for which it is designed or equipped.
- At least one hand must be kept on the handlebars while riding.
- Every bicycle must be equipped with a brake or brakes, which allows the rider to stop within 25 feet from a speed of 10 miles per hour on dry, level, clean pavement.

Sidewalk Riding, F.S.S. 316.2065

- When riding on sidewalks or in cross walks, a bicyclists has the same rights and duties as a pedestrian.
- A bicyclist riding on sidewalks or in crosswalks must yield the right of way to pedestrians and must give an audible signal before passing.

Roadway Position, F.S.S. 316.2065

- A bicyclist must ride at the right hand curb or edge of the roadway except when making a left turn, or when reasonable necessary to avoid a hazard, or when a lane is too narrow for a bicycle and a car to share it safely.

The police department proactively patrols Lake Trail by use of motorcycle and bicycle patrols. Patrol cars also respond to complaints on Lake Trail. As a reminder to bicyclists, the police department added additional speed limit signs along Lake Trail, in addition to, placing "Yield to Pedestrian" signs at various locations. Educating the community of Town Ordinances and bicycle regulations will continue through fliers, social media and enforcement.

Additionally, to increase the safety of everyone, the police department is currently in the process of adding mirrors under the Flagler Bridge. This will increase the visibility of approaching pedestrian and bicycle traffic. Cameras are also in the process of being installed under the Flagler Bridge and will be monitored by police personnel once it is completed.

Lastly, in an effort to decrease congestion and increase safety to everyone along Lake Trail, the police department recommends that the use of Lake Trail by bicyclists be regulated by implementing certain times that bicycles are permitted on Lake Trail.

cc: Kirk W. Blouin, Town Manager
Paul Brazil, Director of Public Works