

ORDINANCE NO. 2009-03

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, RELATING TO LAND DEVELOPMENT BY REVISING THE LAND DEVELOPMENT CODE, APPENDIX A, MELBOURNE BEACH CODE OF ORDINANCES; MAKING FINDINGS; AMENDING SECTION 7A-36, BY DELETING LANDSCAPING REGULATIONS; REVISING SECTION 7A-37 RELATING TO SERVICE STATION REGULATIONS; AMENDING SECTION 7A-38 BY REVISING THE LIST OF PROHIBITED USES AND DELETING LANDSCAPING REGULATIONS; AMENDING SECTION 7A-52 REVISING PROHIBITED SIGN AND FREESTANDING SIGN REGULATION; AMENDING SECTION 9A-7 REVISING BUFFER AND TREE PLANTING REGULATIONS; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR THE REPEAL OF INCONSISTENT RESOLUTIONS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Community Character Goal of the Town's Comprehensive Plan provides: "To retain and further promote a residential community with basic public services provided locally.";

WHEREAS, the Town's Planning and Zoning Board, sitting as the Local Planning Agency, finds that continued analysis and revision of the Land Development Code is necessary to meet this goal;

WHEREAS, as new uses and development patterns evolve a failure to react by planning and revising the Land Development Regulations could result in adverse consequences to the community and to circumstances not contemplated when the Land Development Regulations were originally formulated;

WHEREAS, the Future Land Use Element Goal of the Town's Comprehensive Plan provides: "Retain the residential character of the Town";

WHEREAS, Objective 2 and Policy 2.2 of the Future Land Use Element of the Town's Comprehensive Plan provide:

Objective 2.0 Insure [sic] that any new development maintain the scale and balance of adjoining properties

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Policy 2.2 "Review criteria within development regulations which provide for a review of development proposals with consideration to the size, bulk and architecture of adjoining properties. Adopt ordinance amendments if existing provisions do not adequately protect surrounding properties, by October 1990;

WHEREAS, the Town's Planning and Zoning Board, sitting as the Local Planning Agency, finds that this Ordinance will assist in keeping commercial development in proper scale and balance with the predominately residential character of the Town;

WHEREAS, this review and amendment to the criteria is a response to trends in other communities that may adversely impact Melbourne Beach;

WHEREAS, Objective 6 and Policy 6.1 of the Future Land Use Element of the Town's Comprehensive Plan provide:

Objective 6.0 Improve existing land development regulations.

Policy 6.1 Periodically review existing development regulations to insure [sic] that

they are consistent with changes within the community and that they reflect, to the extent possible, improvements in methods and practices in the regulation of land-uses.

WHEREAS, the Town's Planning and Zoning Board, sitting as the Local Planning Agency, finds that the review of the Land Development Code and subsequent amendment proposals will result from implementation of this objective and policy;

WHEREAS, without the amendments the potential for development that is inconsistent with the community is much greater than it would be with the proposed amendments;

WHEREAS, the Town of Melbourne Beach Planning and Zoning Board, sitting as both the Planning and Zoning Board and the Local Planning Agency, has found and determined that this Ordinance is in the best interest of the public health, safety, aesthetics, and welfare, and is consistent with the applicable provisions of the Town's adopted Comprehensive Plan, and in particular Future Land Use Element Objective 2.0 and 6.0 and Policies 2.2 and 6.1, the Community Character Goal, and the Future Land Use Goal; and

WHEREAS, the Town Commission adopts the findings of the Local Planning Agency as its own,

**BE IT ENACTED BY THE TOWN OF MELBOURNE BEACH, FLORIDA:**

SECTION 1. That Section 7A-36, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

**§ 7A-36. 6-B DOWNTOWN BUSINESS DISTRICT.**

(a) Intent. The provisions of this district are intended to apply on centrally located areas adjacent to major arterial streets and convenient to major residential areas. The typess of uses permitted are intended to provide limited business activities serving the needs of residential neighborhoods. Uses should reflect an atmosphere of providing basic consumer needs of the residential community.

(b) Principal uses and structures. The following uses and structures are permitted for any use or group of uses that are developed, either separately or as a unit with certain site improvements shared in common:

(1) Retail stores, sales and display rooms, including places where goods are produced and sold at retail on the premises.

(2) Personal service establishments such as barber and beauty shops, laundry, and dry-cleaning pickup stations, and tailor shops.

(3) Professional offices, studios, medical offices, general offices, and business schools.

(4) Banks and financial institutions.

(5) Educational and cultural institutions.

(6) Public and private parking lots.

(7) Governmental and municipal buildings and public recreation areas.

(c) Accessory uses and structures: Customary accessory uses of one or more of the principal uses clearly incidental and subordinate to the principal use and in keeping with the low-density commercial character of the District.

(d) Special exceptions:

(1) Eating and drinking establishments.

(2) House of worship.

a. A house of worship shall have a maximum of 150 seats in the main assembly area. The main assembly area shall include side rooms and areas that can convert into part of main assembly room.

(3) Bed and breakfast inns. To be permitted, a bed and breakfast inn must meet the provisions of § 7A-152(c)(2) and (3), Appendix A, Town Code, and the following requirements:

a. If the facility proposed to be a bed and breakfast inn is an existing structure(s), the architectural features must be preserved. A rendering of the elevation must be submitted by the applicant and shall be attached to the special

exception approval to assure future preservation of the architectural features; and

b. Provide a six-foot non-solid masonry wall or substantially similar type of fence, not less than 25% of its total area shall allow the free-flowing air passage while still serving as a visual barrier adjacent to any single-family residences existing or permitted by zoning that abut the bed and breakfast inn site.

(e) Prohibited uses:

(1) Drive-in, drive-up, drive through, or any other similar feature that provides for receipt of goods, services, food, money or information by a consumer while seated in a motor vehicle.

(2) All other uses not specifically or provisionally permitted herein.

(f) Lot and principal structures, sizes, and setbacks:

(1) Minimum lot area, 9,000 square feet.

(2) Minimum lot width, 60 feet (at front building line).

(3) Minimum lot depth, 150 feet.

(4) Maximum lot coverage, 50%.

(5) Minimum floor area, 300 square feet.

(6) Maximum height, 35 feet.

(7) Minimum yard requirements:

a. Front setback, 25 feet from lot line.

b. Side interior lot setback, none; provided a public access is available to the rear of the lot for trash removal and fire protection. Otherwise, a minimum side setback of 15 feet on one side of the structure is required.

c. Side corner lot setback, 20 feet from lot line.

d. Rear setback, 20 feet from lot line, except 25 feet when abutting a residential area, and 15 feet when abutting an alley.

e. Ocean setback. No building or structure shall be constructed on oceanfront property within the town boundaries seaward of the coastal setback line established pursuant to Chapter 5A. In addition to the structures permitted in Chapter 5A, beach access shall be permitted by an elevated boardwalk supported on pilings with appropriate steps.

~~(g) Landscaping regulations: Front and side yard setbacks (excluding parking areas and driveways) shall be landscaped with ground cover, trees, and shrubs; other decorative arrangements such as rock gardens, walkways, dwarf trees, cobble, brick and like arrangements may be acceptable. Uncovered parking areas shall be landscaped with trees and shrubs. Except for~~

~~driveways, the areas abutting the street rights-of-way from the curb to the property line shall be landscaped. The rights of way from the curb to the property line shall be landscaped and maintained by the owner. However, in no case shall the area landscaped be less than 20% of the total lot area, not including rights of way.~~

(g) ~~(h)~~ Sidewalk and parking lots: Sidewalks and parking lots shall be constructed and maintained by the owner along the public streets or highways abutting any developments in this District.

(h) ~~(i)~~ Supplementary regulations: As provided in § 7A-50 through 7A-69.

SECTION 2. That Section 7A-37, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

**§ 7A-37. 7-C GENERAL COMMERCIAL DISTRICT.**

(a) Intent. The provisions of this district are intended to apply on centrally-located areas adjacent to major arterial streets and convenient to major residential areas. The type of uses permitted are intended to provide business activities serving the needs of residential neighborhoods and the motorist. Uses should reflect an atmosphere of providing basic consumer needs of the residential community.

(b) Principal uses and structures. The following uses and structures are permitted for any use or group of uses that are developed, either separately or as a unit with certain site improvements shared in common:

(1) Retail stores, sales and display rooms, including places where goods are produced and sold at retail on the premises.

(2) Personal service establishments such as barber and beauty shops, laundry, and dry cleaning pickup stations, and tailor shops.

(3) Professional offices, studios, medical offices, general offices, and business schools.

(4) Banks and financial institutions.

(5) Educational and cultural institutions.

(6) Public and private parking lots.

(7) Governmental and municipal buildings and public recreation areas.

(8) Service stations. ~~requirements~~ subject to the following conditions:

a. Any combustible material receptacle that has a capacity of over one hundred and ten (110) gallons shall be underground.

b. The following activities are prohibited:

i. Storage or display of rental trucks and trailers;

ii. Storing vehicles;

iii. Excessive lighting including lighting that is not restricted to the site without glare or direct illumination onto adjacent properties; and

iv. Outdoor speaker systems.

(c) Accessory uses and structures: Customary accessory uses of one or more of the principal uses clearly incidental and subordinate to the principal use and in keeping with the low-density commercial character of the District.

(d) Special exceptions:

(1) Eating and drinking establishments

(2) House of worship. ~~a-~~ A house of worship shall have a maximum of 150 seats in the main assembly area. The main assembly area shall include side rooms and areas that can convert into part of main assembly room.

(e) Prohibited uses:

(1) Drive-in, drive-up, drive through, or any other similar feature that provides for receipt of goods, services, food, money, or information by a consumer in a motor vehicle.

(2) All other uses not specifically or provisionally permitted herein.

- (f) Lot and principal structures, sizes and setbacks:
- (1) Minimum lot area, 9,000 square feet.
  - (2) Minimum lot width, 60 feet (at front building line).
  - (3) Minimum lot depth, 150 feet.
  - (4) Maximum lot coverage, 50%.
  - (5) Minimum floor area, 300 square feet.
  - (6) Maximum height, 35 feet.
  - (7) Minimum yard requirements:
    - a. Front setback, 25 feet from lot line.
    - b. Side interior lot setback, none; provided a public access is available to the rear of the lot for trash removal and fire protection. Otherwise, a minimum side setback of 15 feet on one side of the structure is required.
    - c. Side corner lot setback, 20 feet from lot line.
    - d. Rear setback, 20 feet from lot line, except 25 feet when abutting a residential area, and 15 feet when abutting an alley.
  - (8) Service station requirements:
    - a. Building setbacks shall be a minimum of 70 feet from road rights-of-way with canopies and pumps at a minimum of 30 feet; on streets where no pumps are located,

setbacks shall be at least 55 feet.

b. Two curb cuts for ingress and egress are required for each street side. All curb cuts which adjoin state-controlled rights-of-way must also be approved by the State Department of Transportation.

SECTION 3. That Section 7A-38, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

**§ 7A-38. 8-B RESIDENTIAL-BUSINESS ZONE.**

(a) Intent. The provisions of this district are intended to apply to the historical area of the town along Ocean Avenue. Lot sizes and other restrictions are intended to promote and protect medium-density residential and business development while preserving adequate open space and the historical nature of the area and ensuring compatibility with other areas of the community.

(b) Principal uses and structures:

(1) Multi-family residences.

(2) Single-family residences (provided such residences meet 3-RS requirements).

(3) Duplexes.

(c) Accessory uses and structures: Customary accessory uses of one or more of the principal uses clearly incidental and

subordinate to the principal use and in keeping with the intent and purpose of the District.

(d) Special exceptions:

(1) Personal service establishments including barber and beauty shops and tailor shops.

(2) Professional offices, clinics, and general offices.

(3) Educational and cultural institutions.

(4) Governmental and municipal buildings.

(5) Bed and breakfast inns.

(e) Prohibited uses:

~~(1) Residential rental units rented for periods of less than one month.~~

(1) ~~(2)~~ Drive-in, drive-up, drive through, or any other similar feature that provides for receipt of goods, services, food, money or information by a consumer while seated in a motor vehicle.

(2) ~~(3)~~ All other uses not specifically or provisionally permitted herein.

(f) Lot and principal structures, sizes, and setbacks:

(1) Minimum lot area, 9,000 square feet.

(2) Minimum lot width, 60 feet (at building setback line).

(3) Minimum lot depth, 150 feet.

(4) Maximum lot coverage, 40%.

(5) Minimum floor area.

a. Single-family structures, 1,400 square feet including one-half of the garage area not to exceed 200 square feet, excluding porches.

b. Multifamily structures:

1. One-bedroom apartment, 800 square feet minimum.

2. Two-bedroom apartment, 1,000 square feet minimum. Additional bedrooms require an increase of 150 square feet for each additional bedroom.

3. Duplex, 2,000 square feet (1,000 square feet for each dwelling unit).

4. Businesses, 300 square feet minimum.

(6) Maximum density, 15 dwelling units per acre.

(7) Maximum height, 28 feet.

(8) Minimum yard requirements:

a. Front setback, 25 feet from lot line.

b. Side interior lot setback, none; provided a public access is available to the rear of the lot for trash removal and fire protection. Otherwise, a minimum side setback of 15 feet on one side of the structure is required.

c. Side corner lot setback, 20 feet from lot line.

d. Rear setback, 20 feet from lot line; except 25 feet when abutting a residential area, and 15 feet when abutting an alley.

(9) Minimum distance between structures on the same lot, 15 feet.

~~(g) Landscaping regulations: Front and side yard setbacks (excluding parking areas and driveways) shall be landscaped with ground cover, trees and shrubs; other decorative arrangements such as rock gardens, walkways, dwarf trees, cobble, brick and like arrangements may be acceptable. Uncovered parking areas shall be landscaped with trees and shrubs. Except for driveways, the areas abutting the street rights of way from the curb to the property line shall be landscaped. The rights of way from the curb to the property line shall be landscaped and maintained by the owner. However, in no case shall the area landscaped be less than 20% of the total lot area, not including rights of way.~~

(g) ~~(h)~~ Sidewalk and parking lots. Sidewalks and parking lots shall be constructed and maintained by the owner along the public streets or highways abutting any developments in this district.

(h) ~~(i)~~ Supplementary regulations: As provided in §§ 7A-50 through 7A-69.

SECTION 4. That Section 7A-52, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

**§ 7A-52. SIGNS.**

(a) Single-family districts:

(1) Permitted signs and regulations.

a. Sign exceptions (enumerated in § 7A-52(g)).

b. Prohibited signs (enumerated in § 7A-52(h)).

(b) Multi-family districts (4-RM, 5-RMO). Single-family dwellings in this district will follow sign criteria for single-family districts.

(1) Permitted signs and size regulations: One attached sign or one freestanding sign shall be permitted per apartment complex. Attached signs shall not exceed 25% of the total surface area of the wall to which the sign is attached. In no case shall any attached sign exceed nine square feet in total surface area. Freestanding signs shall not exceed nine square feet in total area nor ten feet in height.

(2) Sign regulations:

a. Sign setbacks and additional information (enumerated in § 7A-52(e)).

b. Nonconforming signs (enumerated in § 7A-52(i)).

c. Sign exceptions (enumerated in § 7A-52(g)).

d. Prohibited signs (enumerated in § 7A-52(h)).

(c) Business districts (6-B, 7-C).

(1) Permitted signs and size regulations:

a. One attached sign (See § 7A-3) per business establishment excluding signs installed, affixed, or painted on windows or doors. Attached signs shall not exceed 10% of the total surface area of the front of the building to which the sign is attached or exceed 24 square feet in total surface area except that buildings with over 30 linear feet of frontage may add an additional six square feet of sign for each ten linear feet of frontage over the 30 feet. Measurement of fronts of buildings will include false fronts and mansard roof. Attached signs for special exception uses shall be limited to a maximum of 24 square feet.

b. ~~1-~~ One freestanding sign (§ 7A-3) per building structure. Where there is more than one business in the same building structure, each business may advertise on the same sign but the total sign area may not exceed 45 square feet ~~or 20 feet in height~~. However, a freestanding sign for each business is permitted provided these signs can be placed 50 feet from the

freestanding or shingle sign of a neighboring business but must not exceed 32 square feet ~~or 20 feet in height.~~

~~2. Freestanding signs positioned less than 20 feet forward of the front building line may not exceed 12 square feet in surface area and ten feet in height. Signs positioned 20 feet or more forward of the front building line may not exceed 22 square feet in surface area and 15 feet in height. For each additional ten feet behind the front building line over 20 feet, an additional two square feet may be added to the surface area of the freestanding sign to a maximum of 32 square feet and one additional foot in height may be added to a maximum of 20 feet. These signs may be set on the property line.~~

c. One shingle sign not to exceed 12 square feet per business establishment is permitted in lieu of the freestanding sign in front.

d. All business establishments are permitted one shingle sign at the rear of each establishment, provided said sign does not exceed 12 square feet.

e. Freestanding signs in the 6-B, 7-C and 8-B zoning districts shall be monument style signs. The sign shall be constructed of materials that are architecturally compatible with the primary building on the site. The sign shall not have internal lighting. Spot lights illuminating the sign shall be

shielded so that the source of light is not visible to vehicular traffic or pedestrians. Shingle signs are not permitted for special exceptions. To the extent of any inconsistency in this section 7A-52 with other sections, with regard to special exceptions this sub-paragraph supersedes other provisions in this section 7A-52.

(2) Sign regulations.

a. Sign setbacks and additional information (See division (e)).

b. Nonconforming signs (See division (f)).

c. Sign exceptions (See division (g)).

d. Prohibited signs (See division (h)).

(d) Residential-business districts (8-B).

(1) Permitted signs and size regulations:

a. One attached sign or one freestanding sign shall be permitted per apartment complex.

b. One attached sign per business establishment. Attached signs shall not exceed 10% of the total surface area of the wall to which the sign is attached or exceed 16 square feet in total surface area except that buildings with over 30 feet of frontage may add an additional four square feet of sign for each ten linear feet of frontage over 30 feet. Attached signs for

special exception uses shall be limited to a maximum of 16 square feet.

c. One freestanding sign per commercial structure shall be permitted.

d. The total surface area of all freestanding signs shall not exceed 25 square feet or 15 feet in height. Such signs must be a minimum of 20 feet from the front building line. Signs less than 20 feet are allowed but may not exceed ten feet in height and nine square feet in surface area.

e. Freestanding signs for special exception uses shall be monument style signs. The maximum size shall be 20 square feet. The maximum height shall be 8 feet. The minimum setback is 5 feet. Only one freestanding sign is allowed per special exception site. The sign shall be constructed of materials that are architecturally compatible with the primary building on the site. The sign shall not have internal lighting. Spot lights illuminating the sign shall be shielded so that the source of light is not visible to vehicular traffic or pedestrians. To the extent of any inconsistency in this Section 7A-52 with other sections, with regard to special exceptions this sub-paragraph supersedes other provisions in this Section 7A-52.

(2) Sign regulations.

- a. Sign setbacks information (See division (e)).
- b. Nonconforming signs (See division (i)).
- c. Sign exceptions (See division (g)).
- d. Prohibited signs (See division (h)).

(e) Sign setbacks and additional regulations.

(1) Signs may be placed on the property line. In no case may a freestanding or shingle sign be placed within 20 feet of an intersection unless the bottom of said sign is ten feet or more from the ground.

(2) Attached signs affixed to a building shall be placed only on the front facade or roof and shall not protrude above the roof line or beyond the side corners of the front facade, project out more than two feet from the wall or extend more than one-half the distance above the base of the roof to the roof peak.

(3) Signs of any type may not be placed on the roof of any structure.

(4) It shall be unlawful for any owner or permittee to fail to remove any sign after ten days which advertises business, real estate or products no longer conducted, available or for sale on the premises. After notice to any owner, permittee, or real estate agency, the town may remove any sign which is in violation of this provision and charge the agency,

permittee, or owner a \$10 fee for the removal of the sign which is in violation of this provision.

(5) Indirect lighting sources in use shall be shaded to eliminate glare on roadways, streets or surrounding properties.

(6) Internally lit signs and signs illuminated by neon lights or bare bulbs shall not exceed two foot candles illumination at any property line. When property abuts a residential zone, illumination of signs shall not exceed two foot candles.

(f) Nonconforming signs.

(1) A sign or advertising structure existing within the town limits on the effective date of Ordinance 85-7, passed November 12, 1985, or a sign or advertising structure existing in an area annexed to the town after the effective date of this Land Development Code, which, by its height, square foot area, location, or use of structural support does not conform to the requirements of this Land Development Code shall hereafter be termed nonconforming.

(2) All nonconforming signs or advertising structures within the town limits shall be permitted to remain until such time as:

a. Reserved

b. The sign or advertising structure becomes a hazard or obstruction.

c. It becomes necessary to replace or rebuild the sign or building, at which time it shall conform to this section.

(3) No conforming sign or sign structure shall be erected on the same lot with an existing nonconforming sign until the nonconforming sign has been removed.

(4) Window signs. If a change in use occurs, no internally illuminated signs shall be allowed.

(g) Sign exceptions. The following signs are exempt from the provisions of this section:

(1) Memorial signs, tablets, plaques or names of buildings and date of erection when the same are two square feet or less in size and are cut into any masonry surface or when constructed of bronze or other noncombustible material.

(2) Property numbers and names of occupants of premises having no commercial connotations and shall not exceed one square foot of total surface area.

(3) Legal notices and identification, informational or directional signs erected or required by governmental bodies.

(4) Flags and insignia of any governmental level.

(5) Traffic and other municipal signs, legal notices, railroad crossing signs and other safety directional signs.

(6) Private directional signs when not more than two square feet in surface area.

(7) Subdivision entrance signs not exceeding 32 square feet and not having any part of the sign structure exceeding eight feet in height. No more than two signs per entrance will be allowed.

(8) Bulletin boards and signs of churches, schools and clubs not exceeding 32 square feet in area and not exceeding one per organization. If located on a corner lot, a 32-square-foot sign facing each street is allowed.

(9) A construction or home improvement sign shall not exceed 16 square feet in surface area, not to be illuminated, and shall be removed immediately after completion of construction or improvement.

(10) Any dispensing mechanism positioned outside of a business premise such as for ice cream, candy, soda, newspapers and such or for fuel pumps and the like, with a trademark or identification; also, any lighting fixture for the sole purpose of aiding in after-dark business operations or safety with a trademark or identification.

(11) One real estate sign per interior lot or one sign facing each thoroughfare per corner lot shall be allowed. Real estate signs shall not exceed six square feet in total surface area or four feet in height.

(12) Political signs shall be permitted and display of the sign shall conform to the following:

a. Maximum size of a political sign, four square feet.

b. Signs may not be placed on rights-of-way.

c. Political signs must be removed within 72 hours after the election.

(h) Prohibited signs.

(1) All other signs not specifically or provisionally permitted herein, such as, but not limited to, flashing signs, billboard signs and banner signs, ~~and signs which employ the words "stop" or "danger" so as to imply the necessity for stopping or the existence of danger, or which by other means make such an implication.~~

(2) No private sign (sign erected by a non-governmental person or entity) is permitted on rights-of-way, unless erected by a governmental body.

~~(3) Real estate "sold" signs.~~

SECTION 5. That Section 9A-7, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

**§ 9A-7. MINIMUM TREE PLANTINGS.**

(a) Trees in residential zoning districts. A minimum of three trees must exist or must be planted on each newly developed residential lot. Trees planted must be of a variety which is compatible with the existing soil and drainage-conditions and must be provided with adequate water and food materials to encourage growth. Trees shall be planted in locations so as not to cause damage to nor interference with existing structures at the time of maturity.

(b) Buffer and tree planting requirements for all non-residential and multiple family residential uses ~~special exception~~.

(1) A landscape buffer with a minimum of 10 feet in width shall be provided between any residentially zoned property and a property utilized by for a ~~special exception use~~ non-residential or multiple family residential uses. The landscape buffer shall include a minimum of one (1) canopy tree for every 40 linear feet, or fraction thereof. In addition one ornamental tree or palm shall be planted for each 50 linear feet, or fraction thereof.

(2) A landscape buffer with a minimum of 10 feet in width shall be provided along all road frontage of a development site. The landscape buffer shall include a minimum of one canopy tree for every 25 feet of road frontage, or fraction thereof.

(3) A continuous hedge shall be planted in all perimeter landscape buffer areas.

(4) Parking areas shall be designed so that there is a minimum of 200 square feet of open space, not including perimeter landscape buffer areas, at the end of each row of parking. In addition a minimum of 200 square feet of open space shall be provided in the interior of the parking lot for each 10 parking spaces, or fraction thereof. These open spaces shall be distributed through out the parking lot in a manner that no more than 10 parking spaces in a row shall be allowed with out an intervening landscaped area.

(5) Minimum specifications for trees and hedge material, at the time of planting, shall be as follows:

a. Canopy trees at the time of planting shall have a trunk diameter of 2 3 inches measured 4.5 feet above the ground. The trees shall be a minimum of 8 10 feet in height and have a minimum spread of 5 7 feet. The trees are not required to be spaced evenly along property lines.

b. Ornamental trees at the time of planting shall have a trunk diameter of 1.5 inches measured 4.5 feet above the ground. The trees shall be a minimum of 6 feet in height and have a minimum spread of 4 feet.

c. Palms at the time of planting shall have a minimum clear trunk of 8 feet.

d. Hedge material at the time of planting shall be a minimum of 18 ~~24~~ inches in height when planted. Individual plants shall be planted a maximum of 24 inches on center.

(6) All plant material shall be Florida Number 1 in quality and shall be planted according to sound landscape installation standards.

(7) All landscaping shall be maintained to present a neat and orderly appearance. Dead landscape material shall be replaced in a timely manner.

(8) Exceptions shall be considered on an individual basis when obstacles such as overhead power lines or other conditions inhibit the ability to comply.

(9) Canopy trees shall be those that develop a crown spread of 25 ~~30~~ feet or greater at maturity. Trees with less than 30 feet of crown spread at maturity shall be considered ornamental trees.

(10) Clusters of three palms shall be an acceptable substitute for up to 50 percent of the required canopy trees and 50 percent of the require ornamental trees.

(11) Landscape material should be drought tolerant to the extent practical and feasible. A water source shall be available to ensure the plant material can be watered while it is being established and during drought occurrences. Automatic irrigation systems may be utilized.

(12) Currently developed sites that do not meet the landscape requirements will not be considered non-conforming. Landscaping consistent with the regulations shall be installed at these sites, to the extent practical, as redevelopment occurs. Unless complete reconstruction or rehabilitation that results in closure of a building or buildings for a period of over six months occurs, full compliance with this section shall not be required.

SECTION 6. Severability/Interpretation Clause.

(a) In the event that any term, provision, clause, sentence or section of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences,

or sections of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) In interpreting the provisions of this Ordinance, the following rules and symbols shall apply:

(1) Words underlined are additions to existing text.

(2) Words ~~stricken through~~ are deletions from existing text.

(3) Asterisks (\* \* \*) indicates a deletion from the Ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinance denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

SECTION 7. Ordinances and Resolutions in Conflict. All ordinances or resolutions or parts thereof that may be determined to be in conflict herewith, except portions of the Comprehensive Plan, are hereby repealed.

SECTION 8. Effective Date. This Ordinance shall become effective upon adoption.

PASSED by the Town Commission of the Town of Melbourne Beach on first reading on the 18th day of March, 2009, and ADOPTED by the Town Commission of the Town of Melbourne Beach,

Florida, on final reading on the 15th day of April, 2009.

TOWN OF MELBOURNE BEACH, FLORIDA

By: \_\_\_\_\_  
Rita A. Karpie, Mayor

ATTEST:

(TOWN SEAL)

\_\_\_\_\_  
Christina Hoffkins,  
Town Clerk