



# Wellington Code of Ordinances

***Adopted:***

***September 6, 2022***



## **CHAPTER 1 - GENERAL PROVISIONS**

### **Sec. 1-1: Designation and Citation of Code**

The ordinances embraced in the following chapters and sections shall constitute and be designated as the Code of Ordinances, Wellington, Florida and may be so cited.

### **Sec. 1-2: Definitions and Rules of Construction**

The following words, terms and phrases, when used in this Code, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. If a definition is not provided in this Code, the term shall have the meaning provided in Article 3 of the Wellington Land Development Regulations (LDR). If a definition is not provided in either this Code or the LDR, the term shall be understood as having its ordinary, everyday meaning unless the context indicates they bear a technical sense.

**Building Inspector:** The words "building inspector" shall mean the Building Official or their duly appointed designee.

**Charter:** The word "Charter" shall mean the Wellington Charter as it now exists or as it be amended in the future.

**Code:** Whenever the term "Code" or "this Code" is referred to without further qualification, it shall mean the Code of Ordinances, Wellington, Florida, as designated in section 1-1.

**Computation of Time:** In computing any period of time prescribed or allowed by this Code, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day that is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

**F.S.:** The abbreviation "F.S." shall mean the latest edition or supplement of the Florida Statutes.

**Keeper and Proprietor:** The words "keeper" and "proprietor" shall mean and include persons, firms, associations, corporations, clubs and co-partnerships, whether acting by themselves or through a servant, agent, or employee.

**Oath:** The word "oath" shall be construed to include an affirmation, and the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

**Personal Property:** The words "personal property" include every species of property except real property.

**Preceding and Following:** The words "preceding" and "following" mean next before and next after, respectively.

**Real Property:** The term "real property" shall include lands, tenements, and hereditaments.

**Sidewalk:** The word "sidewalk" shall mean that portion of a street between the curblin or the lateral line of a roadway and the adjacent property lines, intended for use by pedestrians.

**Signature or Subscription:** The word "signature" or "subscription" includes a mark when the person cannot write.

**State:** The words "the state" or "this state" shall be construed to mean the State of Florida.

**Tenant or Occupant:** The word "tenant" or "occupant," applied to a building or land, shall include any person holding a written or oral lease of or who occupies the whole or part of such building or land, either alone or with others.

**Village/Wellington Officer or Agencies:** Whenever reference is made to an officer, employee, department, board, committee, commission, agency, etc., it shall mean the same as if it is followed by the words "Wellington, Florida".

### **Sec. 1-3: Section Headings and Other Headings**

The headings of the sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be the titles of such sections, nor as any part of the sections, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the headings, are amended or reenacted. No provision of this Code shall be held invalid by reason of deficiency in any heading or title to any chapter, article or division.

### **Sec. 1-4: History Notes**

The history notes appearing in parentheses after sections in this Code are not intended to have any legal effect but are merely intended to indicate the source of the matter contained in the sections.

### **Sec. 1-5: Editor's Notes and References**

The editor's notes, Charter references, cross references and state law references in this Code are not intended to have any legal effect but are merely intended to assist the user of this Code.

### **Sec. 1-6: Effect of Offenses, Acts, Penalties, or Forfeitures Prior to Effective Date**

Nothing in this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before January 27, 1998.

### **Sec. 1-7: Effect of Repeal of Ordinances**

- A. The repeal of an ordinance shall not revive any ordinances in force before, or at the time, the repealed ordinance took effect.
- B. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense or violation committed under the ordinance repealed.

### **Sec. 1-8: Certain Ordinances and Actions Not Affected by the Code**

- A. Nothing in this Code shall be construed to repeal or otherwise affect the validity of any ordinance, resolution or other official action, when not inconsistent with this Code.

- B. All such ordinances, resolutions and actions are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this section and are on file in the Wellington Clerk's Office.

### **Sec. 1-9: Amendments to Code; Effect of New Ordinances; Amendatory Language**

- A. All ordinances passed subsequent to this Code that amend, repeal, or in any way affect this Code, may be numbered in accordance with the numbering system of this Code and printed for inclusion in this Code. In the case of repealed chapters, sections, or subsections, or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby. Any and all additions and amendments to this Code, when passed in such form as to indicate the intention of the council to make the same a part hereof, shall be deemed to be incorporated in this section, so that reference to the Code shall be understood and intended to include such additions and amendments.
- B. Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code in the following language: "That section \_\_\_\_\_ of the Code of Ordinances, Wellington, Florida, is hereby amended to read as follows:...." The new provisions shall then be set out in full.
- C. If a new section not heretofore existing in the Code is to be added, the following language shall be used: "That the Code of Ordinances, Wellington, Florida, is hereby amended by adding a section (or article or chapter) to be numbered \_\_\_\_\_, which section (or article or chapter) reads as follows:...." The new provisions shall then be set out in full.
- D. All sections, articles, chapters, or provisions desired to be repealed must be specifically repealed by section, article, or chapter number, as the case may be.

### **Sec. 1-10: Severability of Parts of the Code**

It is hereby declared to be the intention of Wellington's Council that the sections, paragraphs, sentences, clauses, and phrases of this Code are severable; and if any phrase, clause, sentence, paragraph or section of this Code or its application to any persons or circumstances shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Code or their application.

### **Sec. 1-11: General Penalty**

- A. Whenever in this Code or in a Wellington ordinance any act is prohibited or is made or declared to be unlawful or an offense, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision of this Code or of a Wellington ordinance shall be punished by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment in the discretion of the judge. Each day any violation of any provision of this Code or of a Wellington ordinance shall continue, shall constitute a separate offense.
- B. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this Code or of a Wellington ordinance shall be deemed a public nuisance and may be abated by Wellington, as provided by law, and each day that such



condition continues shall be regarded a new and separate offense. Costs associated with Wellington abatements of safety, health and/or nuisance violations shall be invoiced to the property owner. Such invoices not paid within 30 days shall be forwarded to the Special Magistrate to be levied as a Code Enforcement Abatement Lien. Unpaid abatement liens associated with non-homesteaded properties are subject to foreclosure.

## **Sec. 1-12: Civil Rights**

- A. Purpose: The Wellington Council desires to secure for its citizens freedom from discrimination because of race, color, religion, sex, national origin, age, disability, familial status, pregnancy, marital status, genetic information, sexual orientation or gender identity or expression, and thereby to protect their interest in personal dignity; to make available to Wellington their full productive capacities; to secure Wellington against domestic strife and unrest; to preserve the public safety, health, and general welfare; and to promote the interests, rights, and privileges of individuals within Wellington. Wellington's Council also desires to adopt an ordinance that is consistent with federal, state, and local laws and affords its citizens access to remedies in the case of alleged discrimination, to wit: the Equal Employment Opportunity Commission, the Florida Commission on Human Relations and the Palm Beach County Office of Equal Opportunity.
- B. Adoption of the Village of Wellington Civil Rights Act: The Florida Civil Rights Act of 1992, Chapter 760, Section 760.01 through 760.11 and Section 509.092; Florida's Fair Housing Act, Chapter 760, Section 760.20 through 760.37; the Palm Beach County Equal Employment Ordinance, Chapter 2, Article VI, Division 1, Sections 2-261 through 2-313; and the Palm Beach County Ordinance for Equal Opportunity to Housing and Places of Public Accommodation, Chapter 15, Article III, Sections 15-36 through 15-67 are collectively adopted by reference as Wellington Civil Rights Ordinance Act, subject to and including by reference such amendments, corrections and additions as shall occur therein or as may appear in this chapter.

## **CHAPTER 2 - ADMINISTRATION**

### **ARTICLE I - IN GENERAL**

#### **Sec. 2-1: Wellington Seal**

- A. The following emblem, shown in any color, or any part thereof, with or without the legend "A Great Hometown, Let us Show You", or any combination of any of the components of the emblem, is hereby designated as the official seal of Wellington:



- B. The Village Manager is hereby authorized to adopt administrative standards and rules for the unofficial use of the Wellington seal and may impose fees for such use upon a finding that the collection of such fees serves a public purpose.

#### **Sec. 2-2: Usage/Occupancy Standards for Wellington Property and Buildings**

- A. The Village Manager is hereby authorized to establish the usage of Wellington buildings and to adopt rules reasonably necessary to protect the health, safety, and welfare of the public with respect to public health issues on Wellington property, including but not limited to:
1. Requiring the wearing of facial coverings or masks in all Wellington buildings;
  2. Establishing social distancing requirements for Wellington buildings;
  3. Requiring Wellington employees to be vaccinated, if available, against epidemics, pandemics, and other highly contagious viruses; and
  4. Prohibiting those with known infection of highly contagious viruses from entering Wellington buildings without presenting proof of a negative test for such virus.
- B. The Village Manager, or his designee, shall have the authority to order those who fail or refuse to comply with such rules to leave all Wellington buildings or be subject to arrest for trespass.
- C. Wellington employees who fail or refuse to comply after warning with rules adopted pursuant to this section are subject to discipline, including suspension and/or termination, in accordance with Wellington's employment policies.

### **ARTICLE II - COUNCIL**

#### **Sec. 2-3: Regular Meetings**

The regular meetings of Wellington's Council shall be established by resolution as required by the Charter.

#### **Sec. 2-4: Workshop Meetings**

Wellington's Council may schedule as many workshop meetings as it may determine are necessary.

### **Sec. 2-5: Notice of Meetings**

Wellington's Clerk shall post written notice of all special meetings and workshops of the Wellington Council in the Village Hall and, as a courtesy, on Wellington's website as soon as practicable upon scheduling of such meetings by Wellington's Council. Regular meetings of Wellington's Council shall begin at or about 7:00 p.m., unless changed by resolution of Wellington's Council.

### **Sec. 2-6: Adjournment of Regular Meetings**

Regular meetings of Wellington's Council shall be adjourned no later than, or about, 11:00 p.m. on the date when a meeting is convened, unless changed by vote of Council. If there is pending business on the floor at 11:00 p.m. during any such meeting, then such business may be continued to the next regular Wellington Council meeting and shall be the first item on the agenda, unless re-ordered or changed, by vote of Council. The required adjournment time of 11:00 p.m. shall be strictly enforced.

### **Sec. 2-7: Chairperson to Conduct Meetings**

The Mayor, as chairperson of the Council, shall take the chair at the hour appointed for any Wellington Council meeting, and shall immediately call all members to order, and with the appearance of a quorum, shall proceed to conduct the meeting.

### **Sec. 2-8: Addressing the Chairperson; Recognition**

No member, while the Council is in session, shall offer any motion or make any remarks, or speak on any subject under discussion, without addressing and being recognized by the chairperson. When more than one (1) member shall seek recognition by the chairperson at, or near the same time, the chairperson shall decide in favor of the member who shall first attract the chairperson's attention, and no member shall interrupt another while speaking except to call such member to order.

### **Sec. 2-9: Questions of Order; Appeal**

The chairperson shall decide all questions of order, but any member dissatisfied with any decision by the chairperson shall have the right of appeal to the Council. The decision of the Council shall be final and binding.

### **Sec. 2-10: Motions to Reconsider**

A motion to reconsider any of the proceedings of Wellington Council will not be entertained unless it is made by a member who previously voted in the majority; nor shall it be entertained at any meeting other than the one (1) at which the proceedings were had, or the meeting immediately succeeding.

### **Sec. 2-11: Address of Council by the Public**

- A. No person, other than a member, shall be allowed to address the Council unless permitted by the chairperson.
- B. All members of the public addressing Wellington's Council shall do so at the lectern provided.

### **Sec. 2-12: Rules of Procedure**

The Wellington Council may adopt rules of procedure for the conduct of Council meetings, by resolution, which may replace, modify, or supplement Robert's Rules of Order, Newly Revised, as amended from

time to time. The Wellington Council's adopted rules of procedure shall apply to all Wellington boards and committees and shall govern in the case of a conflict with Robert's Rules of Order.

### **Sec. 2-13: Parliamentary Rules; Enforcement; Suspension**

- A. The chairperson, when Wellington's Council is in session, shall enforce parliamentary rules for its government in accordance with Robert's Rules of Order, Newly Revised, as amended from time to time, or the Rules of Procedure adopted by the Wellington Council.
- B. Any of the parliamentary rules may be suspended by the vote of four (4) members of Wellington's Council for the meeting then in session.

### **Sec. 2-14: Voting; Recordkeeping**

All votes shall be cast by ayes (affirmative or negative) of the Wellington Council, and the Wellington Clerk shall record the vote of each member. In the event of a tie, the motion fails.

### **Sec. 2-15: Record of Ordinances, Resolutions, Rules and Policies**

The clerk shall keep a permanent separate book in which shall be entered all permanent ordinances, resolutions, rules and policies adopted by the village council.

### **Sec. 2-16: Salary Additive of Council Members Effective April 1, 2004**

In addition of the compensation of \$300.00 provided to the Mayor and Wellington's Council members pursuant to Section 5(e) of the Wellington Charter, the Mayor and Wellington's Council members shall, effective April 1, 2004, be entitled to the payment of a monthly salary additive ("additive"). The additive shall be \$542.00 per month for the Mayor and \$500.00 per month for each council member. The intent of this additive is compensation for work performed and to provide a partial offset to the numerous expenses that are incurred by the Mayor and Council members in their official duties. When engaged in travel and training on behalf of the village, the mayor and council members shall be entitled to reimbursement for their expenses above and beyond the \$542.00 per month for the mayor and \$500.00 per month for council members additive in accordance with Chapter 2, Administration "reimbursement for travel and training", of the Wellington Code of Ordinances.

## **ARTICLE III: OFFICERS AND EMPLOYEES**

### **Sec. 2-17: Code of Ethics Generally**

Wellington officials and employees shall be governed by ethical restrictions of State Statutes and the Palm Beach County Code of Ethics, as may be supplemented by this Code.

### **Sec. 2-18: Lobbying by Former Wellington Officers and Employees**

- A. Wellington officials and employees are prohibited from representing another person or entity for compensation before Wellington for three (3) years following vacation of office or termination of employment with Wellington. Former Wellington officers or employees shall not be held in violation of this section if the officer or employee maintains a relationship with an entity that is a tax-exempt organization, under Section 501(c) of the Internal Revenue Code, and where the officer or employee receives no compensation.
- B. The Wellington Council shall have the primary responsibility of enforcement of the Code of Ethics. The Wellington Council shall have the power to investigate any complaint, to initiate any

suit, and to prosecute any criminal or civil action on behalf of Wellington for violations of this section.

#### **Sec. 2-19: Reimbursement for Travel and Training; Purpose**

The purpose of sections 2-19 through 2-24 is to set forth the policy for travel advances and expense reconciliation for Wellington's Council and Wellington staff.

#### **Sec. 2-20: Expense Guidelines**

General guidelines for travel and training expenses are as follows:

- A. Travel and training expenses shall reflect correct and complete expenditures (registration fees, lodging, transportation, etc.) that were incurred by the requesting party and shall be reported to Wellington's Department of Financial Services within a reasonable amount of time in order to avoid taxation per the Department of the Treasury Internal Revenue Service (IRS) regulations.
- B. No reimbursement shall be allowed where those costs are incurred and accounted by another person (i.e., two (2) persons traveling in one (1) vehicle cannot claim duplicate mileage/travel costs).
- C. Subsistence may be reduced for any meals or lodging included in the conference, seminar, or meeting registration.
- D. No reimbursement shall be allowed for the spouse (or any other traveling companion) of a Council member or Wellington staff.
- E. No reimbursement shall be allowed for costs not actually incurred.

#### **Sec. 2-21: Travel Advances**

Wellington does provide travel advances for travelers who provide the appropriate documentation to Wellington's Department of Financial Services within a reasonable amount of time, as outlined by IRS guidelines.

#### **Sec. 2-22: Sales Tax Exemption; Reasonable Expenses for Lodging, Meals, Transportation and Services**

Per Diem reimbursements for meals shall be in accordance with the Department of Treasury Internal Revenue Service (IRS) as currently applicable and as periodically amended; meaning when the rates change Wellington's rate will automatically change accordingly.

- A. No receipts are required for per diem rates. Meals that exceed these limits due to location or type of function will be reimbursed if receipts are provided, and the Village Manager, or designee, shall approve the exception. Conference or seminar banquets and lunches in excess of the per meal allowance are allowable exceptions; however, these must be noted on the program or agenda.
- B. Traveler may opt out of meals that are included in the conference, seminar or meeting registration, only if documented to serve a business/public purpose. If the traveler opts out, any meal that is part of the registration cost shall not be separately reimbursed.



- C. Payments for group meals while traveling require a written explanation attached to the receipt. The village reserves the right to withhold any meal reimbursement not having sufficient proof of actual expenditures and a valid reason of public purpose.
- D. Tips will be reimbursed on a reasonable and customary basis, and include but are not limited to meals, baggage handling, transportation, valet and porter.

#### **Sec. 2-23: Non-allowable Travel Expenditures**

- A. No entertainment or alcoholic beverage expenses shall be reimbursed;
- B. Airline clubs;
- C. Airline upgrades;
- D. Business or first-class airfares;
- E. Books, magazines, newspapers;
- F. Child-care, babysitting, house-sitting, pet-sitting/kennel charges;
- G. Commuting between home and work;
- H. Charge card delinquency assessments;
- I. Costs incurred by traveler's failure to cancel transportation or hotel reservations in a timely fashion;
- J. Evening wear rentals;
- K. Formal wear expenses;
- L. Flowers;
- M. Gifts; or
- N. Haircuts and personal grooming.

#### **Sec. 2-24: Transportation**

All travel must be by a usually traveled route. In case a person travels by an indirect route for the traveler's own convenience, any extra costs shall be borne by the traveler and reimbursement for expenses shall be based only on such charges as would have been incurred by a usually traveled route. The department head, or their designee, shall designate the most economical method of travel for each trip, keeping in mind the following conditions:

- A. The nature of the business.
- B. The most efficient and economical means of travel (considering time of the traveler, impact on the productivity of the traveler, cost of transportation and per diem or subsistence required). When it is more efficient and economical to either the traveler or Wellington, jet service offered by any airline may be used when the cost is within an approved threshold determined by the department head or designee.

- C. The number of persons making the trip and the amount of equipment or material to be transported.
- D. Airfare: Take advantage of special rates, when available.
- E. Mileage: The rate of reimbursement for the use of a personal car will be in accordance with the most current standard mileage rate of Department of Treasury IRS Publication 463 "Travel, Entertainment, Gifts and Car Expense". Reimbursement shall generally not exceed the reasonable cost of commercial airfare, including transportation to and from the airport.
- F. Wellington Vehicle: Receipts for gasoline purchases for Wellington vehicles must be provided.
- G. Rental Car: A copy of the lease agreement for a rental car must be provided.
- H. Taxi/Limousine Service: Receipts must be provided for a taxi/limousine service.
- I. Tolls, Parking Facilities: Receipts must be provided for all tolls and parking charges.

### **Sec. 2-25: Civil Liability of Officers and Employees; Exceptions**

To the extent permitted by law, Wellington is hereby authorized to expend, from Wellington funds, the amount of money necessary, as payment, on behalf of any officer or employee of the municipality; that amount of money such officer or employee becomes obligated to pay by reason of any civil liability imposed by law upon such officer or employee, individually, except as set forth herein, for claims or causes of action arising out of the acts or conduct of such officer or employee performed in good faith within the scope of the duties or employment of such officer or employee; which claims or causes of action were not the result of any willful, wanton, or malicious act of such officer or employee in the discharge of said duties or employment; provided, however, Wellington shall not be liable to any officer or employee under any circumstances for claims or causes of action where said officer or employee acted in bad faith, with malicious purpose, or in a manner exhibiting wanton or willful disregard of human rights, safety of property, or committed acts involving moral turpitude. In no event shall the cost to Wellington exceed the insurance policy coverage for such claims or causes, nor shall Wellington expend any funds awarded as exemplary or punitive damages.

### **Sec. 2-26: Civil Claims, Cause of Action or Litigation**

To the extent allowed by law, Wellington shall defend any civil claim, cause of action, or litigation that comes within the terms of this section, either by its legal counsel or by other counsel designated and retained by the village for said purpose, when such defense is not afforded by any policy of insurance carried by the village. In the event the claim, cause of action, or litigation is covered by a policy of insurance of the village, whether said policy covers litigation or suits of defense, it shall be discretionary with the village as to whether its legal counsel or other attorneys retained by it assist in said defense. The assumption of the defense of any said litigation shall not preclude the defense being conducted under a reservation of rights, indemnification, or any other legal rights of the village.

### **Sec. 2-27: Payment of Reasonable Attorney's Fees Arising from Suits under § F.S. 286.011 upon Exoneration**

Wellington's Council is authorized to expend Wellington funds for the payment of reasonable attorney's fees incurred by any past or present member of Wellington's Council or any person appointed by Wellington's council to any Wellington agency, authority, board, or commission when said person is charged with a violation, or violations, of any of the provisions of F.S. § 286.011, when said person is subsequently acquitted or the charge, or charges, against said person are dismissed, or by any person

previously appointed but no longer a member of any Wellington's agency, authority, board, or commission when said person is charged with a violation, or violations, of any of the provisions of such section when said person is subsequently acquitted or the charge, or charges, against said person are dismissed.

**Sec. 2-28: Reimbursement of attorney's fees and costs expended in successfully defending ethics complaint.**

Wellington's Council may reimburse present and former Wellington public officials, employees, agents, and appointees of advisory boards and committees for costs and attorney's fees incurred in successfully defending or prevailing in an action concerning the Florida Code of Ethics and the Palm Beach County Code of Ethics. Such reimbursement shall be subject to the policy adopted by Resolution 2015-73, as may be amended from time to time.

**Sec. 2-29: Sovereign Immunity of Wellington**

Nothing in sections 2-25 through 2-28 shall be construed to affect in any way Wellington's rights, privileges, and immunities as set forth in F.S. § 768.28, and shall in no manner constitute a waiver of Wellington's sovereign immunity.

**ARTICLE IV: CODE COMPLIANCE**

**Sec. 2-30: Intent of Article**

It is the intent of this article to promote, protect, and improve the health, safety, welfare, property values, and quality of life of the citizens of Wellington by providing an equitable, expeditious, effective, and inexpensive method of enforcing the codes of Wellington.

**Sec. 2-31: 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:

**Code Compliance Clerk:** any employee of Wellington so designated to act as the Clerk to the Special Magistrate.

**Code Compliance Officer:** those authorized agents or employees of Wellington whose duty it is to assure code compliance.

**Fine:** a monetary amount assessed against a property owner, by the Special Magistrate, for code violations in accordance with this chapter.

**Lien:** a claim against the land upon which a violation or unpaid fine exists and upon any other real or personal property owned by the violator that arises upon the recording of a certified copy of an order imposing a fine in the public records in accordance with this chapter.

**Repeat Violation:** a violation of a provision of a code or ordinance by a person who has been previously found by a special magistrate or any other quasi-judicial or judicial process to have violated or has admitted violating the same provision on the same property within five (5) years prior to the violation, notwithstanding, the violations occur at different locations.

**Special Magistrate:** a person who is appointed by Wellington's Council in accordance with this Code and is authorized to hear and decide cases involving code violations.

**Wellington (aka Village) Attorney:** the legal counselor for Wellington.

### **Sec. 2-32: Ex-parte Communications**

No ex-parte communication relative to the merits of any pending action, threat, or offer of reward shall be made to the Special Magistrate by any employee of Wellington, or any party to the proceeding, or any person who directly or indirectly would have a material interest in such an action pending before the Special Magistrate, or the authorized representative or counsel of any such party.

### **Sec. 2-33: Wellington Attorney as Prosecutor for Wellington**

The Wellington Attorney may act as prosecutor for Wellington in cases brought before the Special Magistrate.

### **Sec. 2-34: Waiver of Right to Hearing; Consent to Fine**

The alleged violator may, if they so elect, waive their right to a hearing and consent to the imposition of a fine after a stated period within which to comply. The waiver shall be in writing on a form provided by Wellington, signed by all violators named in the notice of violation and witnessed.

### **Sec. 2-35: Compliance Duties and Procedures**

- A. *Enforcement Proceedings and Initiation:* It shall be the duty of the Code Compliance Officer to initiate enforcement proceedings of the various codes. No Special Magistrate shall have the power to initiate such enforcement proceedings.
- B. *Notice of Violation and Time for Correction:* If a violation of a code is found, the Code Compliance Officer shall notify the violator, unless subsection C or D of this section applies, and give the violator a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the Code Compliance Officer shall notify the Special Magistrate and request a hearing pursuant to the procedure set forth in this section. Notice shall be served to the violator as provided in this article. If the violation is corrected and then recurs, or if the violation is not corrected by the time specified for the correction by the Code Compliance Officer, the case may be presented to the Special Magistrate even if the violation has been corrected prior to the hearing, and the notice shall so state.
- C. *Repeat Violators:* If a repeat violation is found, the Code Compliance Officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The Code Compliance Officer, upon notifying the violator of a repeat violation, shall notify the Special Magistrate and request a hearing. The Special Magistrate, through the Code Compliance Clerk, shall schedule a hearing and shall provide notice as set forth in this article. The case may be presented to the Special Magistrate even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state. If the repeat violation has been corrected, the Special Magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his rights to this hearing and pay such costs as determined by the Special Magistrate.
- D. *Action on Violations Posing Threat to Public Health, Safety, Welfare or that are Irreparable by Nature:* If the Code Compliance Officer has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, or welfare, or if the violation is

irreparable or irreversible in nature, the Code Compliance Officer shall make a reasonable effort to notify the violator and may immediately notify the Special Magistrate and request a hearing. In addition, the Code Compliance Officer may take action to cause the abatement of the violation in accordance with the provisions of section 162.06(4), Florida Statutes.

- E. *Transfer of Ownership:* If the owner of property subject to an enforcement proceeding before the Special Magistrate or court, transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall comply with the provisions of F.S. 162.06, as amended from time to time.

## **Sec. 2-36: Subpoena of Evidence**

The Code Compliance Officer, the Special Magistrate, or the alleged violator may request that witnesses, records (including surveys, plats, and other materials) and other evidence be subpoenaed to any violation hearing. Subpoenas shall be served in the manner required by law. These subpoenas shall be available through the Code Compliance Clerk. An administrative fee may be charged for the preparation and service of the subpoenas.

## **Sec. 2- 37: Hearings**

- A. *Conduct:* Formal rules for the conduct of hearings shall not apply, but fundamental due process shall be observed and shall govern all hearings.
- B. *Minutes and Provision of Clerical and Administrative Personnel:* Minutes shall be kept of all hearings, and all hearings shall be open to the public. The Code Compliance Clerk shall provide clerical and administrative support as may be reasonably required by the Special Magistrate for the proper performance of its duties.
- C. *Presentation of Case and Recovery of Costs:* Each case before the Special Magistrate shall be presented by the Wellington Attorney, or their designee, the Code Compliance Officer, or by a member of the Wellington staff. If Wellington prevails in prosecuting a case before the Special Magistrate, it shall be entitled to recover all costs incurred in prosecuting the case before the Special Magistrate, and such costs may be included in a lien authorized by this article and applicable laws.
- D. *Testimony:* The Special Magistrate shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The Special Magistrate shall take testimony from the Code Compliance Officer and the alleged violator. Either party may present witnesses.
- E. *Documentary Evidence:* All exhibits, photographs, memoranda, or other documents intended to be introduced at the hearing by the parties shall be provided to the Code Compliance Clerk at least three (3) business days prior to the hearing. The Special Magistrate may allow additional evidence to be introduced at the hearing for good cause shown, and where such evidence does not result in prejudice to either party. Impeachment and rebuttal evidence need not be submitted in advance of the hearing.
- F. *Rights of Parties:* Each party shall have the right to:
1. Call and examine witnesses.
  2. Introduce exhibits.



3. Cross-examine opposing witnesses.
  4. Impeach witnesses.
  5. Rebut evidence.
- G. Representation of Alleged Violator: The alleged violator has the right to be represented by an attorney at all hearings before the Special Magistrate.
- H. Admissibility of Evidence: All relevant evidence shall be admitted if, in the opinion of the Special Magistrate, it is the type of evidence upon which reasonable and responsible persons would normally rely on the conduct of business affairs, regardless of the existence of any common law or statutory rule that might make such evidence inadmissible over objections in civil actions. The Special Magistrate may exclude irrelevant or unduly repetitious evidence. Hearsay evidence may be accepted for the purpose of supplementing or explaining any direct evidence, but such hearsay evidence shall not in and of itself be considered sufficient to support a finding or decision unless the evidence would be admissible over objections in a civil action.
- I. Findings of Fact and Issuance of Orders: At the conclusion of the hearing, the Special Magistrate shall issue findings of fact based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted in this article. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in F.S. § 162.09(1), the cost of repairs may be included along with the fine if the order is not complied with by such date.
- J. Motions for Rehearing or Reconsideration of Orders: Motions for rehearing, motions for reconsideration, or any other motion that seeks to have the Special Magistrate overturn a previously issued order are not permitted and shall not be considered by a Special Magistrate. Nothing herein shall prohibit a motion challenging the jurisdiction of the Special Magistrate, which may be raised at any time.

## **Sec. 2-38: Fines; Imposition of Liens**

- A. The Special Magistrate, upon notification by the code compliance officer that an order of the Special Magistrate has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in in this chapter for each day that the violation continues past the date set by the Special Magistrate for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the Code Compliance Officer. In addition, if the violation is a violation described in this chapter or F.S. § 162.06(4), as amended from time to time, the Special Magistrate shall notify Wellington's Council, which may make all repairs that are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of Wellington's Council to make further repairs or to maintain the property and does not create any liability against the Council for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided herein, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, the Special Magistrate finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified below:
1. A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and in addition, may include all

costs of repairs. However, if the Special Magistrate finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000.00 per violation.

2. In determining the amount of the fine, if any, the Special Magistrate shall consider the following factors:
  - a. The gravity of the violation;
  - b. Any actions taken by the violator to correct the violation; and
  - c. Any previous violations of the same code section committed by the violator on the same property.
- B. Once a violator comes into compliance and prior to the recording of the order imposing a fine, the violator may request a reduction of the fine from the Special Magistrate. In making the determination on whether to reduce a fine, following compliance, the Special Magistrate may take into consideration the gravity of the violation, any actions taken by the violator to correct the violation, any previous or subsequent violations committed by the violator, whether there were intervening matters that prevented or obstructed the violator from timely complying with the order to correct the violation, or the financial ability of the violator to pay the full amount of the fine. The ability of a violator to request a fine reduction ceases upon conversion of the fine to a lien by recording the order-imposing fine in the public records pursuant to subsection C.
- C. A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed a court judgment except for enforcement purposes. A fine imposed pursuant to this section shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to F.S. § 162.09, whichever occurs first.
- D. A lien arising from a fine imposed pursuant to this article runs in favor of Wellington's Council, and the Council may execute a satisfaction or release of lien entered pursuant to this section. After three (3) months from the recording of any such lien that remains unpaid, the Special Magistrate may authorize the Wellington Attorney to foreclose on the lien, or to sue to recover a money judgment for the amount of the lien, plus accrued interest. No lien created pursuant to the provisions of this section may be foreclosed on real property that is a homestead under Section 4, Article X of the State Constitution.
- E. Except as delegated by policy by Wellington's Council, only the Council is authorized to compromise a lien, or to execute a satisfaction or release of an outstanding lien, once the property owner has come into compliance.

## **Sec. 2-39: Duration of Lien; Action to Foreclose; Costs Collection; Continuance of Lien**

The duration of the lien, and action to foreclose upon a lien, shall be as governed by F.S. § 162.10.

## **Sec. 2-40: Service of Notice**

Service of notice shall comply with F.S. § 162.12.

## **Sec. 2-41: Appeals of Administrative Orders**

Appeals shall be governed by F.S. § 162.11.

**Sec. 2-42: Special Magistrate**

- A. One (1) or more persons may be appointed as Special Magistrate by Wellington's Council in accordance with the selection process enumerated in this chapter. A Special Magistrate shall serve a two (2)-year term and may be reappointed for an additional two (2)-year term every two (2) years thereafter, unless the Special Magistrate elects not to continue to serve or is removed by Wellington's Council. The compensation for Special Magistrate services may be authorized as specified in the appointing resolution. A Special Magistrate may be suspended or removed at any time with or without cause by the Council.
- B. Approximately 120 days prior to the expiration of a Special Magistrate's two (2)-year term, Wellington staff shall contact the Special Magistrate to ascertain if the Special Magistrate wishes to continue to serve and then notify the Council of the Special Magistrate's response. The Council will decide whether to continue the Special Magistrate's service or remove the Special Magistrate.
  - 1. If the Special Magistrate wishes to continue to serve and is not removed by Wellington's Council, the Special Magistrate shall commence a new two (2)-year term upon the expiration of the prior term.
  - 2. If the Special Magistrate elects not to continue to serve or is removed by the Council, a request for Letters of Interest (LOI) shall be advertised for the position.
    - a. The request for LOI shall give prospective applicants 30 days from the initial date of publication to submit their LOI to the village.
    - b. The request for LOI must include the following criteria:
      - i. The candidate has been admitted to the Florida Bar for a minimum period of five (5) years and is a member in good standing;
      - ii. The candidate is willing to serve on a specific rotational schedule; and
      - iii. The candidate is willing to accept a specific level of compensation.
    - c. The request for LOI may include one (1) or more of the following criteria:
      - i. The candidate has experience as a municipal attorney; or
      - ii. The candidate has experience interpreting and applying municipal codes.
    - d. Upon the conclusion of the 30 days set forth in this chapter, a selection committee shall be formed to review the candidate submissions and rank the applications consistent with the policies outlined in the Purchasing and Procurement Manual. The selection committee shall submit the five (5) highest ranked candidates to Wellington's Council for final selection. Neither the Village Manager, Wellington's Attorney, the Code Compliance Manager, nor the Code Compliance staff may serve on a selection committee.

- C. To the extent possible, Special Magistrates shall serve staggered terms. Accordingly, Wellington's Council shall appoint one (1) Special Magistrate to serve an initial three (3)-year term beginning June 1, 2020 and ending May 31, 2023 and at least one (1) Special Magistrate to serve a two (2)-year term beginning June 1, 2020 and ending May 31, 2022. Any additional terms shall be limited to two (2) years as described herein.
- D. Wellington's Council shall make every effort to promptly and expeditiously fill any Special Magistrate vacancy. To the extent a vacancy cannot be filled prior to the expiration of a Special Magistrate's term, such term shall be extended until the position is filled in accordance with this section.

#### **Sec. 2-43: Authority**

The Supplemental Code Compliance Procedures set forth in this Code are authorized and adopted pursuant to F.S., Ch. 162, Part II. The provisions of these sections are an additional and supplemental means of enforcing Wellington codes and ordinances and may be used for the enforcement of any or all codes or ordinances except as set forth herein. Nothing contained in this chapter shall prohibit Wellington from enforcing its codes or ordinances by any other means.

#### **Sec. 2-44: Authority of Code Compliance Officers**

A Code Compliance Officer is authorized to issue a citation to a person when, based on personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted Wellington code or ordinance and this citation will be heard by the county court.

#### **Sec. 2-45: Notice**

Prior to issuing a citation, a Code Compliance Officer shall provide written notice to the person who has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no fewer than five (5) days and no more than 30 days. If, upon personal investigation, a Code Compliance Officer finds that the person has not corrected the violation within the time period allowed, the Code Compliance Officer may issue a citation to the person who has committed the violation. A Code Compliance Officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if a repeat violation is found or if the Code Compliance Officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

#### **Sec. 2-46: Form of Citation**

The citation issued by the Code Enforcement Officer shall be in a form prescribed by Wellington and shall contain the following:

- A. The date and time of issuance;
- B. The name and address of the person to whom the citation is issued;
- C. The date and time the civil infraction was committed;
- D. The facts constituting reasonable cause;
- E. The number or section of the code or ordinance violated;

- F. The name and authority of the Code Enforcement Officer;
- G. The procedure for the person to follow in order to pay the civil penalty or contest the citation;
- H. The applicable civil penalty if the person elects to contest the citation;
- I. The applicable civil penalty if the person elects not to contest the citation; and
- J. A conspicuous statement if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, the person shall be deemed to have waived their right to contest the citation and, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

## **Sec. 2-47: Violations and Penalties**

All violations of the code shall be considered civil infractions with a maximum civil penalty not to exceed the amounts identified in this chapter when processed through the Special Magistrate. Certain ordinances lend themselves to be enforced by means of a citation method and, as such, Wellington has determined that the following sections of the code may be enforced through the citation method and has provided a schedule of violations and penalties to be assessed with a maximum civil penalty not to exceed \$500 as follows:

<b><u>Class I</u></b> <b><u>\$50.00 Penalty</u></b>	<b><u>Class II</u></b> <b><u>\$75.00 Penalty</u></b>	<b><u>Class III</u></b> <b><u>\$125.00 Penalty</u></b>	<b><u>Class IV</u></b> <b><u>\$250.00</u></b> <b><u>Penalty</u></b>	<b><u>Class V</u></b> <b><u>\$500.00 Penalty</u></b>
<u>Prohibited Signs</u> <u>LDR Section</u> <u>7.14</u>	<u>Water Restrictions</u> <u>Code of Ordinances</u> <u>Section 9-28(a)—(e)</u> <u>unless due to drought</u> <u>conditions more stringent</u> <u>penalties are applicable</u>	<u>Failure to obtain</u> <u>Building Permit prior to</u> <u>commencement of</u> <u>construction</u> <u>Building Codes</u> <u>Enforcement</u> <u>Administrative Code</u> <u>Section 5-2-105.1</u>	<u>Livestock Waste</u> <u>BMP's*</u> <u>Section 9-35</u>	<u>Repeat</u> <u>Violations of</u> <u>items listed</u> <u>under Class I, II,</u> <u>III and IV</u>
<u>Noise</u> <u>Code of</u> <u>Ordinances</u> <u>Sections 13-5</u> <u>and</u> <u>13-6</u>	<u>Solid Waste</u> <u>All violations of Code of</u> <u>Ordinances Chapter 17</u>	<u>Failure to obtain Local</u> <u>Business Tax Receipt</u> <u>Code of Ordinances</u> <u>Chapter 21, Article III</u>	<u>Vegetation</u> <u>Removal w/o</u> <u>permit</u> <u>LDR** Section</u> <u>7.7.5</u>	
<u>Property</u> <u>Maintenance</u> <u>Code of</u> <u>Ordinances</u> <u>Section 13-2</u>		<u>Failure to Obtain</u> <u>Special Use Permit</u> <u>LDR Article 5,Section</u> <u>5.3.9</u>	<u>Transient</u> <u>(Mobile) Sales</u> <u>LDR Section</u> <u>6.2.2.D.2 and</u> <u>Table 6.2-1</u>	
		<u>Failure to Comply with</u> <u>Article 6 of the LDR</u> <u>(Zoning Districts)</u>	<u>Palm Beach</u> <u>County</u> <u>Emergency</u> <u>Orders***</u>	
			<u>Utilities</u> <u>All violations of</u>	



			<u>Code of Ordinances Chapter 23</u>	
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\* BMP = Best Management Practices for Livestock Waste

\*\* LDR = Land Development Regulations

\*\*\* Fine amounts or penalties established by County Emergency Order may be greater than Wellington penalties.

Wellington's Council may identify, by ordinance, additional violations enforced through the citation method, which shall be subject to the penalties set forth in the applicable ordinance.

### **Sec. 2-48: Citations Not Applicable to Certain Portions of Building Codes**

The provisions of this section shall not apply to the enforcement pursuant to sections 553.79 and 553.80 of the Building Codes adopted pursuant to F.S. § 553.73, as they apply to construction, provided that a Building Permit is either not required or has been issued by Wellington.

### **Sec. 2-49: Processing Citations; County Court**

- A. Disposition by County Court: After issuing a citation to an alleged violator, a Code Compliance Officer shall deposit the original citation and one (1) copy of the citation with the County Court for further disposition.
- B. Upon receipt of a citation, the person alleged to have violated Wellington's code may request a court appearance. The County Court Judge may assess a maximum civil penalty not to exceed \$500.00, if contested. If the citation is not contested, the amount of the fine is the face value of the citation plus costs.
- C. Should any person receiving a citation desire to contest same, such person shall have the right to appear in County Court in order to present their case and have the matter determined by the court.
- D. Failure to Accept Citation; Misdemeanor: Any person who willfully refuses to sign and accept a citation issued by a Code Compliance Officer shall be guilty of a misdemeanor of the second degree, punishable as provided in F.S. §§ 755.082 or 775.083.

## **ARTICLE V: FINANCE**

### **Sec. 2-50: Adoption of Budget**

Wellington's Council shall adopt a budget in accordance with applicable law, including, but not limited to, F.S. § 200.065 and applicable State Department of Revenue Rules, as amended.

### **Sec. 2-51: Purchasing, Procurement, and Disposal**

Wellington's purchases and acquisitions of personal property and services, management of contracts and property management, and disposal of property shall be in accordance with the procedures and policies set forth in the purchasing and procurement manual adopted by resolution, which as needed may be amended from time to time. Unsuccessful bidders may file protests to awards, where appropriate and applicable, in accordance with the procedure set forth in the manual.

### **Sec. 2-52: Purchase and Disposition of Real Property**

- A. Wellington may purchase real property utilizing the procedure set forth in F.S. § 166.045, as same may be amended from time to time, when it wishes to temporarily except certain records from the disclosure requirements of the public records law or it may utilize the provisions set forth in this section.
- B. For each proposed purchase of real property in an amount of \$100,000 or less, no written appraisal or comparable must be obtained or reviewed as part of Wellington's negotiation process. For each purchase greater than \$100,000 and less than or equal to \$500,000, Wellington shall receive comparable information and may receive one (1) written appraisal by a State Certified Real Estate Appraiser to consider as part of the purchase process. For each purchase between \$500,000 and less than or equal to \$5,000,000, Wellington shall obtain at least one (1) written appraisal by a State-Certified Real Estate Appraiser to consider as part of the negotiation process. For each purchase of real property in an amount in excess of \$5,000,000, Wellington shall obtain at least two (2) written appraisals, by appraisers independent of each other, who are State-Certified Real Estate Appraisers. The Village Manager or their designee shall be responsible for negotiating the essential terms of the purchase and such terms shall be presented to Wellington's Council for approval. The Village Manager, or designee, need not obtain the comparable or appraisal information provided in this section until immediately prior to the time the "contract to purchase" is presented to Wellington's Council. A failure to obtain such appraisal or comparable shall not be cause to set aside a closed real estate transaction or affect Wellington's title derived by the deed delivered at closing.
- C. Wellington may contract to purchase real property pursuant to any terms it finds acceptable. All proposed purchases shall be reviewed by the Village Manager and Wellington's Attorney, or designees, prior to being presented to Wellington's Council for approval. A Wellington resolution approving the closing of the contract shall be required as a condition to Wellington's obligation to purchase any property.
- D. No particular form of advertising shall be required prior to Wellington considering and approving such purchase; however, the matter shall be placed on an agenda for a Wellington Council meeting.
- E. Wellington may dispose of surplus real property in any manner Wellington's Council deems appropriate, so long as there is a public purpose in the sale, transfer, gift, or other disposition of surplus property. Wellington's Council does not have to sell property through a bidding process, but may choose to negotiate a price for the property or offer the property for sale through any means the Council determines to be commercially viable. In appropriate circumstances, the Council may decide to limit the potential buyers and sell or transfer the property for less than the full market value in order to put the property back on the tax rolls or ensure that appropriate use of the property will be made.

## **ARTICLE VI: BOARDS AND COMMITTEES**

### **Sec. 2-53: Creation of Boards and Committees**

- A. **Boards:** In accordance with Chapter 163 and the Florida Building Code, Wellington hereby creates the Planning, Zoning and Adjustment Board to function as the Local Planning Agency and Zoning Board of Adjustment, and further creates the Construction Board of Adjustments and Appeals, which shall also act as the Local Construction Regulation Board. Wellington's Council may, by resolution, establish other boards as it deems appropriate to advise the Council on specific areas of interest or needs. The powers and duties of the various boards, and the number, qualifications, and terms of office of the members thereof, shall be established by resolution.

- B. Committees: Wellington's Council may, by resolution, create a committee whose purpose is to advise the Council on an item of a special nature and whose creation is for a stated period of time, at the end of which time the committee will no longer exist. The resolution creating such committee shall specify its powers and duties, the time for which it shall exist, and the number, qualifications, and terms of office of the members thereof.

#### **Sec. 2-54: Scope**

The provisions of this article shall apply to all boards and committees of Wellington and shall govern all members thereof. Neither "board" nor "committee" shall be construed to include Wellington's Council.

#### **Sec. 2-55: List of Volunteers**

Wellington's Clerk shall prepare and maintain a list of volunteers who have indicated an intention and willingness to serve as members of the Wellington boards and committees if appointed by Wellington's Council for such purpose. Any preference of the volunteers to serve on a particular board or committee shall be so stated. The list shall be kept current and be available to the members of Wellington's Council as requested.

#### **Sec. 2-56: Announcement of Vacancies**

All vacancies in the membership of any appointive Wellington board or committee shall be announced, by Wellington's Clerk, by posting a notice of the same at a public place in Village Hall, and by posting on Wellington's website.

#### **Sec. 2-57: Procedure for Appointment and Filling Vacancies**

- A. Except as otherwise provided in this code, appointments to boards and committees shall be made at a regular Wellington Council meeting within 60 days of the certification of results of a regular election of the Wellington Council.
- B. Members: Unless otherwise provided by law, ordinance, or resolution, all Wellington boards and committees shall consist of seven (7) regular members and the attendance of four (4) members shall constitute a quorum. There shall be no alternate members appointed to boards or committees.
- C. Council Appointment: For boards and committees consisting of seven (7) members, each council member shall appoint one (1) member, and council members shall nominate two (2) members who shall be appointed by majority vote of the Council.

#### **Sec. 2-58: Attendance Records**

The Wellington Clerk shall maintain an attendance record of the members of all boards and committees, which shall be furnished by each board or committee.

#### **Sec. 2-59: Compensation of Members**

Board members shall serve without compensation except as may be provided by ordinance or resolution of Wellington's Council.

#### **Sec. 2-60: General Provisions; Qualifications**

All members of boards and committees shall:

- A. Serve at the pleasure of Wellington's Council.
- B. Be a resident of Wellington, maintain residency in Wellington during the term of appointment, and meet such other eligibility requirements as may be established by ordinance or resolution. Resident, for purposes of this chapter, shall include persons who reside in Wellington for only a portion of the year.
- C. To be eligible to serve, a member or prospective member shall not have been convicted of a felony by the State of Florida, the United States, or its other states and territories within 10 years prior to the date of their appointment, or any time during their appointment.
- D. Any member who fails to meet the requirements for appointment to a board or committee shall immediately cease to be a member of the board or committee, and that position shall be deemed vacant.
- E. All boards and committees shall be part of Wellington's government and shall utilize, insofar as practicable, the services of the regular departments in Wellington.
- F. No board or committee member shall hold any elected office in the government or be a full-time employee of Wellington.
- G. If any member of a board or committee shall find that their private or personal interests are involved in the matter coming before the board, the member shall recuse them self from all participation in that matter. No member of a board or committee shall appear before that board or committee or Wellington's Council as agent or attorney for any person. The foregoing provision does not preclude a board or committee member from representing Wellington in any pending or anticipated litigation matter, provided however that no such representation shall result in a violation of chapter 112, F.S. or the Palm Beach County Code of Ethics.
- H. No board or committee member shall have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between the member's private interests and the performance of the member's public duties or that would impede the full and faithful discharge of those public duties.
- I. Board or committee members may not serve on more than one (1) board or committee, provided, however, that board or committee members may serve on special task force committees formed by Wellington's Council for a specific purpose and for a limited duration. Board or committee members may only serve on such special task force committees for six (6) months or less, unless Council specifically extends their term.

**Sec. 2-61: Terms of Members**

- A. Terms of members shall be established in the ordinance or resolution creating the board or committee and unless otherwise specified shall begin effective June 1 of even years and end on May 31 of subsequent even years.
- B. Board members whose terms have expired shall continue to serve until their successors are appointed.
- C. Vacancies in the board or committee membership shall be filled by appointment by Wellington's Council for the unexpired term of the member affected.

- D. Board and committee members may be reappointed to successive terms.

#### **Sec. 2-62: Officers**

All boards and committees established by Wellington's Council shall, at a meeting during the month of June, or the next regularly scheduled meeting held thereafter, elect one (1) of their members as chairperson and elect other such officers as may be necessary.

#### **Sec. 2-63: Meetings**

- A. Unless otherwise provided, meetings shall be held quarterly, or at such times as Wellington's Council may provide by resolution, or as otherwise provided by law. Special meetings shall not be held unless requested by the Village Manager, or designee, and at least 72-hour notice is given to each member, the public, and the Council. However, in order to facilitate timely and efficient review of privately submitted development applications, boards and committees assigned responsibility for review of such matters shall meet on a monthly basis when needed.
- B. Members shall notify the board or committee liaison if they are unable to attend a meeting. If a quorum will not be present, Wellington's Clerk shall notify the members that the scheduled meeting will be canceled.
- C. An audiotape or videotape recording, or both when available, shall be made of all meetings. Additionally, minutes shall be kept of the proceedings and shall record the official actions taken by the board or committee. Audiotapes or videotapes, or both when available, and minutes shall be forwarded to Wellington's Clerk.
- D. All meetings and public hearings of boards and committees shall be open to the public. All meetings shall be governed by the procedures adopted by Wellington's Council, as supplemented by Robert's Rules of Order, Newly Revised, as amended from time to time, and are subject to the requirements of Florida's Public Meetings Law pursuant to F.S. § 286.011.
- E. Members of Wellington's boards and committees are subject to the jurisdiction of the Palm Beach County Commission on Ethics and are responsible for understanding and abiding by the Palm Beach County Code of Ethics in the conduct of their duties as board members. Prior to being seated, all members must complete the mandatory ethics training provided by the Palm Beach County Commission on Ethics. Failure to complete the training will make the member ineligible to take their seat, until the member has complied.

#### **Sec. 2-64: Removal of Board and Committee Members**

- A. *Removal Based on Absenteeism:* Active participation by members of the boards and committees is essential to the effectiveness of the board or committee operations. It is therefore necessary for members to attend the meetings as frequently as possible. As important as participation and attendance is, Wellington's Council understands that a member's activities and other obligations of a personal, or professional, nature will on occasion take precedence over their participation in board or committee activities. If a member recognizes they will not be able to fully, and regularly, participate in the board or committee meetings, they should resign from the board or committee and allow the Council to fill the vacancy created by their resignation. In order to maintain a standard of commitment from the members, they shall be subject to removal from their position as a member of a board or committee under the following circumstances:



1. Any member of a board or committee, during the course of their two (2)-year term, who has two (2) consecutive unexcused absences or four (4) absences out of the last six (6) meetings, whether excused or unexcused, shall be automatically removed as a member of the respective board or committee. For purposes of this section, the term "excused absence" shall mean:
  - a. Illness of a board or committee member or other person for whom the member is a caregiver;
  - b. Death of a board or committee member's relative;
  - c. Observance of religious holidays;
  - d. Compliance with a subpoena or other legal process; and
  - e. Absence resulting from events reasonably beyond the control of the board or committee member. The member removed for absenteeism shall be ineligible for reappointment to a board or committee for a period of two (2) years following the effective date of their removal.
- B. Removal for Reasons Other Than Absenteeism and Failure to Maintain the Requirements for Being a Board Member: All board and committee members shall serve at the pleasure of Wellington's Council. The council member who appointed the board or committee member unless otherwise provided by the Charter or Florida Statutes may remove board and committee members appointed by individual Council members without cause. No vote by the Council shall be required for such removal. At large board and committee members may be removed without cause by a majority vote of the council, unless otherwise provided by the Charter or Florida Statutes.
- C. Effective Date of Removal: The effective date of removal of a member shall be the date of automatic removal under paragraph A or, in the case of removal by Wellington's Council or individual council member, the date on which the Council or council member provides.

## **Sec. 2-65: Resignation of Members**

Members of boards or committees may resign at any time. A member who resigns will not be eligible for appointment to the same board or committee for a period of time equal to a full term of that board or committee.

## **ARTICLE VII: EMERGENCY MANAGEMENT**

### **Sec. 2-66: Legislative Findings and Intent**

- A. Wellington's Council finds that it and its residents are vulnerable to the occurrence of natural, technological, and manmade disasters, including but not limited to hurricanes, floods, tornados, civil unrest, sabotage, hostile actions, hazardous accidents, epidemics, pandemics and other emergency events that threaten the health, safety, welfare, and property of its citizens.
- B. It is the intent of Wellington's Council to reduce such vulnerability of the people and property of Wellington and to prepare for and implement policies for responding to and recovering from such disasters and emergency events while simultaneously minimizing the negative impacts to the rights and liberties of individuals and businesses within Wellington.

- C. Wellington's Council therefore determines and declares that the provisions of this Article fulfill a compelling Wellington interest.

#### **Sec. 2-67: Municipal Emergency Management Program**

- A. There is, hereby created, within Wellington a Municipal Emergency Management Program pursuant to s. 252.38, F. S., for the purpose of preparing for, responding to and recovering from all natural, technical, manmade, and civil emergencies, as defined in chapters 252 and 381, F.S. The program shall be under the control of the Village Manager. The Village Manager, together with the Deputy Village Manager and Assistant Village Manager, shall serve as the executive policy group, shall maintain executive decision-making authority throughout all stages of a disaster and shall ensure implementation of Wellington's Emergency Management Plan.
- B. Wellington's Council is responsible for policy-making and legislation on Wellington matters relating to an emergency.
- C. The emergency management function, including the incident commander, is under the auspices of the Public Safety Department and reports directly to the Village Manager.

#### **Sec. 2-68: Definitions**

Disaster as referenced in F.S. § 252.34 means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a Declaration of a State of Emergency by Wellington, Palm Beach County, the Governor, or the President of the United States. Disasters shall be identified by the severity of resulting damage, as follows:

- A. **Catastrophic Disaster:** a disaster that will require massive state and federal assistance, including immediate military involvement.
- B. **Major Disaster:** a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance.
- C. **Minor Disaster:** a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance.
- D. **Disaster-Generated Debris:** any material, including vegetation, personal property, and construction material on public or private property that is directly deposited by the disaster.
- E. **Emergency Management:** the preparation for, the mitigation of, the response to, and the recovery from emergencies and disasters.
- F. **Imminent:** clear and present danger to life or property rights as a result of an emergency or disaster.
- G. **State Declared Emergency:** As used in this chapter, a "state declared emergency" or a "state of emergency" shall mean a declaration by the Governor of an actual or impending emergency or disaster of natural or human origin, or pandemic emergency, or impending or actual enemy attack, or a public health emergency, within or affecting Florida or against the United States. A declaration of emergency by the Governor may enact some or all of the emergency powers, local or otherwise, addressed in this chapter.
- H. **State Of Local Emergency:** As used in this chapter, a "state of local emergency" shall mean a declaration by the Mayor of Wellington, or designee, enacting some or all of the local emergency powers addressed in this chapter.

## **Sec. 2-69: Declaration of State of Emergency**

- A. Natural, Technological, Manmade and Civil Emergencies: In the event of a natural, technological, or manmade emergency, including public health emergencies, as defined in F.S. § 252.34, or an act of violence, riot, or general public disorder, as set forth in F.S. § 870.043, the Mayor, or designee, shall have the power, duty, and responsibility to declare a state of local emergency within the boundaries of Wellington and to direct the Village Manager to implement and exercise the emergency management powers conferred in F.S., Ch. 252, including the issuance of emergency orders. Except as otherwise provided herein, a state of local emergency shall continue until the Mayor, or designee, issues a termination of the state of emergency.
- B. During a declared state of local emergency, Wellington Council meetings may be called upon a two (2)-hour notice. Wellington's Council may adopt emergency ordinances pursuant to s. 166.041(3)(b), F. S., upon the affirmative vote of four (4) council members, provided however that no emergency ordinance may be adopted that establishes or amends the actual zoning map designation of a parcel or parcels of land or that change the actual list of permitted, conditional, or prohibited uses within a zoning category.
- C. When a state of local emergency is declared, the Mayor, or designee, shall, as promptly as practicable, file the written declaration of emergency in the office of Wellington's Clerk. In the event of an act of violence, riot, or general public disorder, the declaration of emergency shall be delivered to appropriate news media for publication and radio and television broadcast thereof, and, if practicable, published by other means such as by posting and loudspeakers.

## **Sec. 2-70: Effect of Emergency Declaration**

A declaration of state of local emergency by the Mayor, or designee, shall automatically activate all applicable Wellington Emergency Management Plans and shall be the authority for deployment of personnel and use of any forces to which the plans apply and for use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled or arranged to be made available pursuant F.S., Ch. 252, Emergency Management or any other laws applicable to emergencies or disasters.

## **Sec. 2-71: Emergency Management Powers**

Upon declaration of a state of local emergency and during the existence of a declared state of local emergency, the Village Manager, or designee, in addition to any other powers conferred by F.S., Ch. 252, F.S., Ch. 381, F.S., Ch. 870, F.S., Ch. 166, or other law, has the power and authority to issue emergency orders that:

- A. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within Wellington if the Manager, or designee, deems this action necessary for the preservation of life or other emergency mitigation, response, or recovery.
- B. Waive the procedures and formalities otherwise required of Wellington by law or ordinance pertaining to:
  - 1. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
  - 2. Entering into contracts;
  - 3. Incurring obligations;
  - 4. Employment of permanent and temporary workers;

5. Utilization of volunteer workers;
  6. Rental of equipment;
  7. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
  8. Appropriation and expenditure of public funds.
- C. Prohibit or regulate travel upon any public street, highway, or upon any other public property. Persons in search of medical assistance, food, or other commodity/service necessary to sustain the well-being of themselves or their families or some member thereof may be exempted from such prohibition or regulation.
  - D. Impose a curfew upon any or all portions of Wellington thereby prohibiting persons from being on public streets, highways, parks, or other public places during the hours that the curfew is in effect except as necessary to travel to and from their place of employment. The duration and application of the curfew shall be tailored to meet the specific emergency.
  - E. Prohibit any person, firm, or corporation from using the fresh water supplied by Wellington for any purpose other than cooking, drinking or bathing.
  - F. Prohibit the sale or distribution of any alcoholic beverage, with or without the payment or a consideration therefor.
  - G. Prohibit or regulate the participation in or carrying on of any business activity, and prohibit or regulate the keeping open of places of business, places of entertainment and any other place of public assembly.
  - H. Prohibit or regulate any demonstration, parade, march, vigil or participation therein from taking place on any of the public rights-of-way or upon any public property.
  - I. Authorize the right of access to Wellington staff and Wellington contracted agents to enter private roads/gated communities that have executed a right of entry and emergency agreement and disaster ingress/egress easement, as amended from time to time, and private water bodies to remove post-disaster debris as necessary to eliminate any immediate threat to public health and safety, to reduce the threat of additional damage to improved property, and to promote economic recovery of the community at large.
  - J. The restrictions referenced in subsections C through I above may be exempt, from part or all of such restrictions, physicians, nurses and ambulance operators performing medical services, on-duty employees of hospitals and other medical facilities, on-duty military personnel, bona fide members of the news media, personnel of public utilities maintaining essential public services, city authorized or requested fireman, law enforcement officers and emergency management personnel and such other classes of persons as may be essential to the preservation of public order and immediately necessary to preserve safety, health, and welfare needs of the people within Wellington.

Emergency orders issued as provided herein shall have the force and effect of law when filed in the office of Wellington Clerk. Failure to file such order with Wellington Clerk within three (3) days after issuance voids the emergency order. Emergency declarations, ordinances, and orders adopted pursuant to the authority of section 252.31-252.90, F.S. must be available on a dedicated web page accessible through a conspicuous link on Wellington's homepage and must identify the emergency ordinances, declarations,

and orders currently in effect. Such link must also be provided to the Florida Division of Emergency Management.

**Sec. 2-720: Preservation of Rights and Liberties of Individuals and Businesses**

If an emergency order is issued, or adopted, in response to a non-weather-related emergency pursuant to Chapters 252 or 381, Florida Statutes, which order limits the rights and liberties of individuals or businesses, the following provisions shall apply:

- A. The order must be narrowly tailored to serve a compelling public health or safety purpose.
- B. The order must be limited in application, scope, and duration to reduce the negative impact such order may have on the rights and liberties of individuals and businesses.
- C. The order shall expire after seven (7) days unless extended by a vote of Wellington's Council.
- D. The order may be extended in seven (7) day increments for a maximum of 42 days.
- E. Upon the expiration of the order and any extension thereof, Wellington may not issue a substantially similar order.
- F. The order is subject to invalidation by the Governor of the State of Florida.

## **CHAPTER 3 - ALCOHOLIC BEVERAGES**

### **Sec. 3-1: Definitions**

The following terms and phrases as used in this chapter shall have the meanings set forth in this section, unless the context clearly indicates otherwise:

**Alcoholic Beverage:** any beverage containing one-half of 1% or more of alcohol by volume, as determined in accordance with F.S. § 561.01(4)(b).

**Beverage Law:** F.S. Chapters 561, 562, 563, 564, 565, 567, and 568.

**Business Establishment:** means, but is not limited to, any place of business of any club, organization, person, firm, corporation, or partnership, such as a golf club; country club; veteran's, fraternal or benevolent organization; grocery store; drugstore; nightclub; bottle club; bar; tavern; restaurant; grill; filling station; convenience store; or other building, structure or location or portion thereof, wherein one (1) person directly, or indirectly, pays another for the purchase or dispensing of an alcoholic beverage.

**Business Establishment Parking Lot:** any private or public area appurtenant to commercial establishments used by the public for parking for, and pedestrian access to, commercial establishments, including drives, parking areas and sidewalks and walkways appurtenant thereto.

**Container:** any can, bottle, carton, or other vessel of alcoholic beverage.

**Dispense:** the storing, handling, apportionment, preparation, gift, distribution or serving, directly or indirectly, of any amount of an alcoholic beverage to or for any person by any officer, owner, operator, lessee, or employee of a business establishment. For purposes of this definition, permitting or allowing any person to carry alcoholic beverages on the premises of any business establishment, to be consumed thereon, shall constitute the "dispensing" of such beverages.

**Sale:** any transfer of an alcoholic beverage for a consideration, or any gift of an alcoholic beverage, in connection with or as a part of a transfer of any property or product not an alcoholic beverage for a consideration.

**Vendor of Alcoholic Beverages:** any person who owns or operates a business establishment that sells or dispenses any alcoholic beverages for consumption on or off the premises.

### **Sec. 3-2: Hours of Sale**

No alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place in Wellington holding a license under the Florida Division of Alcoholic Beverages and Tobacco between the hours of 3:00 a.m. and 7:00 a.m. Violation of the provisions of this section shall be grounds for revocation of the beverage license issued by the Division. Any person found guilty of violating the provisions of this section shall be punished by a fine not exceeding \$500.00, or by imprisonment in the county jail for not more than 60 day; or by both such fine and imprisonment.

### **Sec. 3-3: Public Possession or Consumption**

- A. **Findings of Fact:** The uncontrolled consumption of alcoholic beverages in and around business establishment parking lots contributes to lewd behavior, verbal harassment, intoxicated disorderly conduct, destruction of property, excessive noise, and litter. Such uncontrolled consumption of alcoholic beverages has led to an increase in the number of violent crimes committed on and near those business establishment parking lots. Individuals consuming alcoholic beverages in and

around business establishment parking lots deter the public's use and enjoyment of these areas. No effective means exists to deter the violent, disorderly, destructive or offensive conduct associated with the consumption of alcoholic beverages in and around uncontrolled business establishment parking lots other than to prohibit the consumption of alcohol in those areas.

- B. Consumption Prohibited in Parking Lots; Exceptions: It shall be unlawful for any person to drink or consume any alcoholic beverage in or within 500 feet of a business establishment parking lot in Wellington, except in those areas in which such consumption is permitted pursuant to the Beverage Law, special or general act of the State Legislature, the Florida Administrative Code, or Wellington ordinance, resolution, or administrative approval. Nothing in this subsection shall prohibit consumption on private property within 500 feet of a business establishment parking lot; provided, however, that the owner or person in control of the private property has explicitly consented to such consumption.
- C. Possession in Parking Lots Prohibited; Exception: It shall be unlawful for any person to possess any alcoholic beverage in or within 500 feet of a business establishment parking lot in Wellington except in those areas in which such possession is permitted pursuant to the Beverage Law, special or general act of the State Legislature, the Florida Administrative Code, or Wellington ordinance, resolution or administrative approval, unless such alcoholic beverage is in the original container with the seal unbroken.
- D. Exemptions: This section shall not apply to:
  - 1. Any person engaged in picking up empty beverage containers for the purpose of collecting the deposit or value of the bottle or can itself, nor to any person taking part in a litter control campaign; or
  - 2. The possession of any open container by any licensed distributor or licensed vendor of alcoholic beverages, provided that such alcoholic beverage is being transported solely for commercial purposes.
- E. Enforcement of Section: It shall be the duty and responsibility of all appropriate law enforcement officers to enforce the provisions of this section.

### **Sec. 3-4: Posted Public Health Messages**

- A. Posting of Public Health Messages: All persons who own or operate a business establishment which sells or dispenses alcoholic beverages for consumption on or off the premises shall post, in a conspicuous place within the business establishment where alcoholic beverages are displayed, purchased or consumed, one (1) or more signs or notices, not less than 12 inches wide and 18 inches high, which contain the following statement, clearly discernible by persons to whom alcoholic beverages may be sold or dispensed:
  - 1. Health Warning
  - 2. Alcohol in Beer, Wine, and Liquor Can Cause
  - 3. Intoxication
  - 4. Addiction
  - 5. Birth Defects

6. Do Not Drink Before Driving or Operating Machinery
  7. Do Not Mix Alcohol With Other Drugs (It Can Be Fatal)
  8. Do Not Drink During Pregnancy
- B. Posting of Requirements of Law: Required notice shall consist of one (1) or more signs or notices, each of which is not less than 93 square inches (8½ inches x 11 inches), with at least a 14-point type, which contains the following information, clearly discernable by persons to whom alcoholic beverages may be sold or dispensed:
1. It is unlawful to purchase alcohol if you are under 21 years of age.
  2. It is unlawful to sell or dispense alcohol to persons under 21 years of age, unless exempt pursuant to F.S. §§ 562.11 or 562.13.
  3. The penalties associated with the sale or dispensing of alcoholic beverages to persons under 21 years of age include imprisonment in county jail for a period of up to 60 days, a fine up to five hundred dollars (\$500.00), or both.
  4. A telephone number to report those who are in violation of the law. Such telephone numbers may include but are not limited to:
    - 561-753-8547 - Palm Beach County Sheriff, Wellington office.
    - 561-650-6840 - Division of Alcoholic Beverages and Tobacco.
- C. Posting Requirements Prior to Sale or Dispensing: No person shall sell or dispense alcoholic beverages at a business establishment unless and until the sign or notice required by this section of this section has been posted in accordance with this section.
- D. Penalty for Violation of this Section: Any person, firm, corporation, association, or agent thereof who shall violate the provisions of this section shall be subject, upon conviction, to penalties as provided in section 1-11 of this Code.

### **Sec. 3-5. - Alcoholic Beverages in Parks**

- A. Prohibited Generally: The sale, purchase, consumption and possession of alcoholic beverages as defined in F.S. § 561.01(4) is hereby prohibited in all Wellington parks except as specifically provided in accordance with the provisions set forth in this section.
- B. Possession in Sealed, Original Packages Excepted: Notwithstanding the prohibition set forth in this section, the possession of alcoholic beverages in sealed original packages in any vehicle, vessel or conveyance for purposes of storing or transporting such and not for purposes of selling or consuming such in a Village Park shall not be a violation of this article.
- C. Designation of Specific Areas for Possession or Consumption: The Parks and Recreation Director may designate specific areas in which alcoholic beverages may be possessed and/or consumed. Such areas may include, but are not exclusive to, family picnic areas, areas reserved for large group picnics, and facilities for food service. In determining whether an area should be designated for the consumption of alcoholic beverages, or whether a designation should remain, the director may consider, among other factors, the general use of the area under consideration and nearby



areas, the hours during which the park is open, the conduct of persons utilizing the area so designated or under consideration for designation and nearby areas, and the anticipated conduct of persons who are anticipated to use, or are using, the areas so designated or under consideration for designation. Wellington's Council may reverse or amend the decision of the director as it deems appropriate. Kegs of beer or other alcoholic malt beverages shall be allowed only in reserved picnic areas and only with a permit issued by the Parks and Recreation Department.

- D. *Special Events:* The Parks and Recreation Director may permit, in writing, the sale, possession, or consumption of alcoholic beverages incidental to a special event. Such permission may not exceed four (4) consecutive days. In determining whether the sale, possession, or consumption of alcoholic beverages should be permitted, the Parks and Recreation Director may consider, among other factors; the nature of the event; the anticipated number, age, or conduct of persons attending the event; the days or times of the event; uses of areas near the special event; and the anticipated impact the sale, possession, or consumption of alcoholic beverages would have on the park, its uses and the special event. Wellington's Council may reverse or amend the decision of the Parks and Recreation Director as it deems appropriate.
- E. *Permitted Sales:* Wellington's Council may permit the sale of alcoholic beverages by private entrepreneurs who develop or operate facilities upon premises leased from Wellington within a Wellington park for food service, performing arts, golf courses, and other facilities, as Wellington's Council deems appropriate. Such requests shall be directed to Wellington's Council for consideration on an individual, case-by-case basis; and approval may be granted, if at all, only by formal council action. The council action shall set forth the type of alcoholic beverages that may be sold, the area in which the sale may occur, the area in which the alcoholic beverage may be possessed and consumed, and the hours and days during which the sale, possession, or consumption is permitted. The council action may set forth other terms and conditions as deemed appropriate. Wellington's Council may, at its discretion, revoke or condition such approval, either temporarily, or permanently.
- F. *State Licensing; Lessee Requirements:* Wellington may, at its option, obtain in its name the necessary state licensing for the sale of alcoholic beverages. The lessee for whose benefit the license is held shall be responsible for all costs associated with obtaining and renewing such license. Wellington may, at its option, have such license transferred to the lessee's name; however, such licensing shall immediately revert to Wellington upon termination, for any reason, of the lessee's lease with Wellington. The license holder shall take all action and execute all documents necessary to effect transfer to Wellington.
- G. *Permit Conditions:* The permission granted under this section shall be subject to all ordinances, laws, rules and regulations applicable in Wellington; and any grantee shall be responsible for compliance thereto. The permission granted may also be subject to and granted with specified conditions, and the grantee shall be responsible for ensuring compliance thereto. Such conditions may include, but are not limited to, restrictions as to the type of alcoholic beverages sold, possessed or consumed; the type or size of containers; crowd size; other activities; areas for sale, possession or consumption; times and/or days; and conduct of individuals bringing alcoholic beverages to the area.
- H. *Intoxicated persons:* No intoxicated person shall enter, be or remain in any park; and any such person so found in a park in a drunken condition may be ejected therefrom.

## **CHAPTER 21 - TAXATION**

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### **ARTICLE I - PUBLIC SERVICE TAX**

#### **Sec. 21-1: Definitions**

Terms used herein and not otherwise defined herein have the meanings ascribed thereto in F.S. §§ 166.231, 166.232, 166.233 and 166.234.

#### **Sec. 21-2: Communications Services Tax**

There is hereby levied, on each and every purchase within the incorporated area of Wellington of communication services, as defined by F.S. § 202.11, which originates and terminates in this state, a local communications services tax in the amount set forth in F.S. 202.20, as amended from time to time. The rate of levy and collection of said tax shall be governed by Chapters 202 and 203, Florida Statutes.

#### **Sec. 21-3: Other Public Service Taxes**

- A. There is hereby levied by Wellington on each and every purchase within the incorporated area of Wellington of electricity, a tax at a rate of ten percent of the first \$4,000.00 purchased by a purchaser during a monthly period, a rate of two percent of the next \$2,000.00 purchased by a purchaser during a monthly period, and a rate of one percent of any amount in excess of \$6,000.00 purchased by a purchaser during a monthly period.
- B. There is hereby levied by Wellington on each and every purchase within the incorporated area of Wellington of metered or bottled gas (natural liquefied petroleum gas or manufactured), a tax at a rate of ten percent of the first \$4,000.00 purchased by a purchaser during a monthly period, a rate of two percent of the next \$2,000.00 purchased by a purchaser during a monthly period, and a rate of one percent of any amount in excess of \$6,000.00 purchased by a purchaser during a monthly period.
- C. The monthly period referenced above is the monthly billing cycle of a seller. If a seller bills in any manner other than on a monthly basis, the tax rate for all sales shall be ten percent unless changed by amendment to this article. The tax shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The term "fuel adjustment charge" means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility.

#### **Sec. 21-4: Collection**

- A. The tax levied hereby shall be collected by the seller of the taxable item from the purchaser at the time of payment for such service.
- B. The seller shall remit the taxes collected to Wellington monthly on or before the 20th day of each month.
- C. It shall be unlawful for any seller to collect the price of any purchase of electricity, or metered or bottled gas (natural, liquefied petroleum gas or manufactured), sold within the incorporated area of Wellington, without at the same time collecting such tax hereby levied in respect to such purchase or purchases, unless such seller shall elect to assume and pay such tax without

collecting the same from the purchaser or consumer, provided, however, that the seller shall not be liable for the payment of such tax upon uncollected bills.

- D. Any seller failing to collect such tax at the time of collecting the price of any purchase and sale, as aforesaid, where the seller has not elected to assume and pay such tax shall be liable to Wellington for the amount of such tax in like manner as if the same had actually been paid to the seller, and Wellington shall bring and cause to be brought all such suits and actions and take such proceedings as may be necessary for the recovery of such tax.

#### **Sec. 21-5: Recordkeeping; Inspection of Records**

- A. Each and every seller of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the incorporated area of Wellington, with respect to sales and purchases, on which the tax is hereby levied, shall keep full and complete records showing all purchases and sales of such electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the incorporated area of Wellington, which records shall show the price charged upon each sale and purchase, the date and period of time covered thereby, and the date of payment thereof.
- B. The records referred above shall, upon 60 days written notice, be open for inspection by duly authorized agents of Wellington during regular business hours of the seller at a place designated by the seller at the sole expense of Wellington. The agents of Wellington shall have the right, power, and authority to make such transcripts or copies thereof as they may desire. Records not prepared by the seller in the ordinary course of business may be provided at Wellington's expense and as Wellington and the seller may agree in writing. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to Wellington, shall be reported to the seller. Wellington's right to examine the records of the seller in accordance with this section shall not be conducted by any third party employed by Wellington whose fee for conducting such audit is contingent upon findings of the audit.

#### **Sec. 21-6: Sellers of Services to be Collection Medium and Agency; Certification of Accuracy Required**

- A. The sellers of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the incorporated area of Wellington, shall act as the collection medium and collecting agency for the collection from the purchaser of the herein levied tax for the use of Wellington. Wellington may bring such legal action as in its discretion may appear advisable under the terms of this article.
- B. The sellers of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the incorporated area of Wellington, shall furnish to Wellington a certification duly executed by one of the officials of the company certifying as to the accuracy and correctness of billings and collections required under the terms of this article, which certification shall accompany the remittance of such tax collected or paid for the preceding month.

#### **Sec. 21-7: Failure to Pay Tax; Interest and Penalties**

There are hereby assessed interest and penalties as provided below for failure to pay any tax when due or to file any required return, except that no penalty shall be assessed absent willful neglect, willful negligence, or fraud. Interest shall be assessed at the rate of one percent per month of the delinquent tax from the date the tax was due until paid. A penalty is assessed for the failure to file any return

required to be filed in connection with the tax imposed hereby or for the failure to pay any tax required to be paid, but not both, at the rate of five percent per month of the delinquent tax, not to exceed a total penalty of 25 percent except that the minimum penalty for a failure to file a required return shall be \$15.00. The interest and penalty imposed hereby shall be in addition to any other penalties provided for by law.

#### **Sec. 21-8: Additional Exemptions**

In addition to exemptions otherwise provided by law, the following purchases of otherwise taxable items are hereby exempted from the tax imposed:

- A. The first 200 kilowatt hours of electricity purchased per month for residential use. This exemption shall apply to each separate residential unit, regardless of whether such unit is on a separate meter or a central meter, and shall be passed on to each individual tenant.
- B. The purchase of taxable items by any public body, as defined in F.S. § 1.01.
- C. The purchase of any taxable item by any recognized church in the State of Florida for exclusively church purposes.

#### **Sec. 21-9: Computation of Tax for Monthly Periods**

In all cases where the seller of the taxable commodity or service collects the price thereof in monthly periods, the tax hereby levied shall be computed on the aggregate amount of sales during each monthly period; provided that the amount of tax to be collected shall be the nearest whole cent to the amount computed. When a seller renders a bill to a purchaser to cover purchases made during the particular period of time to which a bill is applicable, the amount of the public service tax shall be stated separately from other governmental charges and taxes and shall not be levied on such taxes and charges.

### **ARTICLE II - LOCAL BUSINESS TAX RECEIPT**

#### **Sec. 21-10: Tax Imposed**

A local business tax is hereby imposed by Wellington upon:

- A. Any person who maintains a permanent business location or branch office within Wellington for the privilege of engaging in or managing any business within Wellington's jurisdiction.
- B. Any person who maintains a permanent business location or branch office within Wellington, for the privilege of engaging in or managing any profession or occupation within its jurisdiction.
- C. Any person who does not qualify under the above, and who transacts any business or engages in any occupation or profession in interstate commerce, if the business tax is not prohibited by Section 8, Article 1 of the United States Constitution.

#### **Sec. 21-11: Applicability of Exemptions**

The exemptions from municipal local business taxes provided by law shall be applicable in Wellington.

#### **Sec. 21-12: Places of Business; Vehicles**

Vehicles used by any person licensed under this article for the sale and delivery of tangible personal property, at either wholesale or retail, from their place of business on which a tax is paid, shall not be construed to be separate places of business.

### **Sec. 21-13: Additional/Separate Fees**

A local business tax shall grant the privilege of engaging in or managing all businesses, professions, or occupations within Wellington's jurisdiction. It shall not excuse or be in lieu of any fee charged for a license, permit, registration, examination, or inspection that is hereby deemed to be regulatory and in addition to and not in lieu of the local business tax imposed under the provisions of this article.

### **Sec. 21-14: Filing of Application**

It shall be the responsibility of any business operator to file an application for a local business tax receipt with Wellington on the form provided before engaging in or managing any business, profession, or occupation within Wellington's jurisdiction.

### **Sec. 21-15: When Taxes Due; Expiration; Penalty for Delinquency**

All local business tax receipts shall be sold beginning August 1 of each year, shall be due and payable before September 30 of each year, and shall expire on September 30 of the succeeding year. If September 30 falls on a weekend or holiday, the tax is due and payable on or before the first working day following September 30. Those receipts not renewed by October 1 shall be considered delinquent and subject to a delinquency penalty of ten percent for the month of October, plus an additional five percent penalty for each month of delinquency thereafter until paid, provided that the total delinquency penalty shall not exceed 25% of the local business tax for the delinquent establishment.

### **Sec. 21-16: Engaging in Business, Occupation, or Profession without Tax Receipt; Penalties**

Any person engaging in or managing any business, occupation, or profession without obtaining a local business tax receipt required under this article shall be subject to a penalty of 25 percent of the tax determined to be due. Any person who engages in any business, occupation, or profession covered by this article, who does not pay the required local business tax within 150 days after the initial notice of tax due, and who does not obtain the required local business tax receipt, is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to \$250.00. Any person engaging in any trade, business, profession, or occupation under a local business tax receipt issued upon false statements made by such person or on their behalf, shall, upon conviction thereof, be punished as provided by law.

### **Sec. 21-17: Issuance of Receipt**

Upon payment of the taxes required by this article, Wellington shall issue to the person paying the same a receipt, which receipt shall expire at the end of the period for which such receipt is issued as specified in this article.

### **Sec. 21-18: Period of Local Business Tax Receipt; Issuance**

Unless otherwise provided, the amount of the local business tax specified by this article shall be on the basis of one year covering the period from October 1 to September 30 next succeeding, but receipts shall be issued in accordance with the following:

- A. Receipts issued between September 30 and March 30 shall pay the full amount.

- B. Receipts issued between April 1 and September 30 shall pay one-half of the full amount.

**Sec. 21-19: Expiration Date**

No receipt shall be issued for more than one year, and all receipts shall expire on September 30 of each year unless otherwise provided.

**Sec. 21-20: Transfer to New Ownership; Fee**

- A. Change of Owner: All local business tax receipts may be transferred to a new owner when there is a bona fide sale of the business upon payment of a transfer fee of 10% of the annual local business tax, but not less than \$3.00 and not more than \$25.00, and presentation of evidence of the sale, and the original receipt.
- B. Change of Location: Upon written request and presentation of the original receipt, any receipt may be transferred from one location to another location within Wellington upon payment of a transfer fee of ten percent of the annual local business tax, but not less than \$3.00 and not more than \$25.00.

**Sec. 21-21: Issuance of Local Business Tax Receipt to Licensed Professionals**

No local business tax receipt shall be issued to a licensed professional or business office unless the professional possesses a certificate from the state or applicable industry licensing board. Any licensed professional, employed by a local business or an independent contractor, shall provide satisfactory evidence that the certificate or license referred to in this section is in full force and effect.

**Sec. 21-22: Issuance of Local Business Tax Receipt to Contractor**

No local business tax receipt shall be issued to a contractor unless the contractor possesses a certificate from the state construction industry licensing board or a license from the Construction Industry Management Council of Palm Beach County. Before the issuance by Wellington, the applicant must produce satisfactory evidence that the certificate or license referred to in this section is still in force and effect.

**Sec. 21-23: Local Business Tax Receipt Required for Additional Trades, Business, etc.**

Any person engaged in two or more trades, vocations, businesses, or professions for which a local business tax receipt is required shall be required to pay a local business tax for each separate line of trade, business, vocation, or profession.

**Sec. 21-24: Exemptions for Local Business Tax Receipts**

Any individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt. For the purposes of this section, an individual licensed and operating as a broker associate or sales associate is considered an employee. A principal or employer who is required to obtain a local business tax receipt may be required to provide licensing information for individuals exempt under this section in order to obtain a local business tax receipt. An individual acting in the capacity of an independent contractor is not an employee and is required to obtain a local business tax receipt as provided in this article.

### **Sec. 21-25: Display of Local Business Tax Receipt**

Each person holding a local business tax receipt under this article shall keep the receipt posted in a conspicuous place, and the receipt shall be shown to any officer of Wellington requiring to inspect it.

### **Sec. 21-26: Classification and Rate Schedule**

A local business tax classification and rate schedule is hereby adopted by reference and is attached as Exhibit A to Ordinance No. 2012-014.

## **ARTICLE III - ADDITIONAL HOMESTEAD EXEMPTION**

### **Sec. 21-27: Additional Homestead Exemption for Persons 65 Years and Older**

A. *Purpose and Intent:* The purpose of this article is to provide an additional homestead exemption for persons 65 years of age and older in accordance with F.S. § 196.075, as amended from time to time.

B. *Definitions:*

**Household:** a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding or renting a portion of a dwelling.

**Household Income:** the adjusted gross income, as defined in Section 62 of the United States Internal Revenue Code, of all members of the household.

C. *General:*

1. *Wellington taxes only:* Pursuant to and in accordance with F.S. § 196.075, the additional homestead exemption set forth in this section shall apply only to taxes levied by Wellington, including, if any, dependent special districts and municipal service taxing units.

2. *Amount of additional homestead exemption:* Any person(s) who meets the requirements set forth in the subsection below, shall be eligible for an additional \$50,000.00 homestead exemption.

D. *Requirements to obtain additional homestead exemption:* Any person(s) who on January 1 has attained the age of 65 years will be entitled to an additional homestead exemption if all of the following requirements are met:

1. The person has legal or beneficial title in equity to real estate;
2. The person maintains thereon and in good faith makes the same their permanent residence or the permanent residence of another or others legally or naturally dependent upon such person;
3. The person's household income does not exceed \$20,000.00 as adjusted herein below;
4. The taxpayer claiming the exemption submits annually to the Palm Beach County Property Appraiser, not later than March 1, a sworn statement of household income on a form prescribed by the Florida Department of Revenue;

5. In accordance with rules of the Florida Department of Revenue, a statement is filed which is supported by copies of any federal income tax returns for the prior year, any wage and earnings statements (W-2 forms), and any other documents which the Florida Department of Revenue deems necessary, for each member of the household. Such documentation must be submitted by June 1 and the statement shall attest to the accuracy of such copies; and
  6. The property appraiser approves the exemption after provided with all required documentation.
- E. Household Income: For purposes of the subsection above, the \$20,000.00 household income limitation shall be calculated in accordance with F.S. § 196.075(3) and shall have been adjusted annually, since January 2001, and continue to be adjusted annually, on January 1, by the percentage change in the average cost-of-living index within the period January 1 through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is the average of the monthly consumer-price-index figures for the state 12-month period, relative to the United States as a whole, issued by the United States Department of Labor.
- F. If title is held jointly with the right of survivorship, the person residing on the property and otherwise qualifying may receive the entire amount of the additional homestead exemption.



## **CHAPTER 5 - BUILDINGS AND BUILDING REGULATIONS**

### **ARTICLE I - TECHNICAL CODES**

#### **Sec. 5-1: Wellington's Building Codes**

- A. Authority: This chapter is promulgated pursuant to Chapter 553, Florida Statutes.
- B. Codes Adopted by Reference: The building official shall enforce the following, which are adopted by reference and as may be amended by this article.
  - 1. The group of codes known as the Florida Building Code 7<sup>th</sup> Edition (2020), including but not limited to, the following:
    - a. Building
    - b. Accessibility
    - c. Residential
    - d. Existing buildings
    - e. Plumbing
    - f. Fuel Gas
    - g. Mechanical
    - h. Energy Conservation
  - 2. 2017 National Electrical Code.
  - 3. Florida Fire Prevention Code.
  - 4. International Property Maintenance Code, 2021 Edition as published by the International Code Council, Inc.

#### **Sec. 5-2: Wellington Building Code Administrative Code**

The purpose of the Wellington Building Code Administrative Code is to provide for a means of properly enforcing the codes adopted by reference in section 5-1.

### **CHAPTER 1 - ADMINISTRATION** **SECTION 101 – GENERAL**

**101.1 Title.** These regulations shall be known as the Florida Building Code hereinafter referred to as "this code."

**101.2 Scope.** The provisions of this code shall apply to the construction, alteration, relocation, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures as herein amended by Wellington.

Exceptions:

1. Detached one (1) and two (2) family dwellings and multiple single-family dwellings (townhouses) not more than three (3) stories above grade plane in height with a separate means of egress and their accessory structures not more than three (3) stories above grade plane in height, shall comply with the Florida Building Code, Residential.
2. Code Requirements that address snow loads and earthquake protection are pervasive; they are left in place but shall not be utilized or enforced because Florida has no snow load or earthquake threat.

**101.2.1 Appendices.** Provisions in the appendices shall not apply unless specifically adopted.

**101.2.2 Florida Building Code, Residential.** Construction standards or practices which are not covered by the Florida Building Code, Residential Volume, shall be in accordance with the provisions of the Florida Building Code, Building.

**101.3 Intent.** The purpose of this code is to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters, code officials, and emergency responders during emergency operations.

**101.3.1 Quality Control.** Quality control of materials and workmanship is not within the purview of this code except as it relates to the purposes stated herein.

**101.3.2 Warranty and Liability.** The permitting plan review or inspection of any building, system, or plan by Wellington, under the requirements of this code, shall not be construed in any court as a warranty of the physical condition of such building, system, or plan, or their adequacy. Wellington shall not be liable in tort for damages or hazardous or illegal condition or inadequacy in such building, system, or plan, nor for any failure of any component of such, which may occur subsequent to such inspection or permitting. Further, no building department employee shall be liable in tort for damage from such conditions, in accordance with F.S. § 768.28, as may be amended or replaced.

**101.4 Referenced Codes.** The other codes listed in Sections 101.4.1 through 101.4.11 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

**101.4.1 Gas.** The provisions of the Florida Building Code, Fuel Gas Volume shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.

**101.4.2 Mechanical.** The provisions of the Florida Building Code, Mechanical Volume shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

**101.4.3 Plumbing.** The provisions of the Florida Building Code, Plumbing Volume shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system.

**101.4.4 Property Maintenance.** The provisions contained within the 2021 International Property Maintenance Code as published by the International Code Council shall establish the minimum standards for maintenance of; interior and exterior structure, required light and ventilation, required space and maximum number of occupants, minimum plumbing requirements, minimum heating requirements, minimum electrical system requirements, and other requirements applicable to all structures currently in existence within Wellington.

**101.4.5 Fire Prevention.** For provisions related to fire prevention, refer to the Florida Fire Prevention Code. The Florida Fire Prevention Code shall apply to matters affecting or relating to structures, processes and premises from the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression, automatic sprinkler systems and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.

**101.4.6 Energy.** The provisions of Florida Building Code, Energy Conservation shall apply to all matters governing the design and construction of buildings for energy efficiency.

**101.4.7 Accessibility.** For provisions related to accessibility, refer to the Florida Building Code, Accessibility.

**101.4.8 Manufactured Buildings.** For additional administrative and special code requirements, see section 458, Florida Building Code, Building, and Rule 61-41 Florida Administrative Code.

**101.4.9 Electrical.** The provisions of Chapter 27 of the Florida Building Code, Building Volume and Part VIII - Electrical, of the Florida Building Code Residential Volume, 7th Edition (2020) shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

**101.4.10 Existing Buildings.** The provisions of the Florida Existing Building Code shall apply to matters governing the repair, alteration, change of occupancy, addition to and relocation of existing buildings.

**101.4.11 Article III - Flood Damage Prevention of Wellington Code of Ordinances** shall be considered part of the requirements of this code relative to flood control. Conflicting requirements between the Florida Building Code and Article III of Wellington Code of Ordinances shall be resolved in favor of the requirement that offers the greatest degree of flood damage prevention or alternatives that would provide an equivalent degree of flood damage prevention and an equivalent method of construction.

## **SECTION 102** **APPLICABILITY**

**102.1 General.** Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern.

**102.1.1 The Florida Building Code does not apply to,** and no code enforcement action shall be brought with respect to, zoning requirements, land use requirements and owner specifications or programmatic requirements which do not pertain to and govern the design, construction, erection, alteration, modification, repair or demolition of public or private buildings, structures or facilities or to programmatic requirements that do not pertain to enforcement of the Florida Building Code.

Additionally, a local code enforcement agency may not administer or enforce the Florida Building Code, Building Volume to prevent the siting of any publicly owned facility, including, but not limited to, correctional facilities, juvenile justice facilities, or state universities, community colleges, or public education facilities, as provided by law.

**102.2 Building.** The provisions of the Florida Building Code shall apply to the construction, erection, alteration, modification, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every public and private building, structure or facility or floating residential structure, or any appurtenances connected or attached to such buildings, structures or facilities. Additions, alterations, repairs and changes of use or occupancy group in all buildings and structures shall comply with the provisions provided in the Florida Building Code, Existing Building. The following buildings, structures and facilities, except for those located in a Special Flood Hazard Area, are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the legislature and provided by law:

- (a) Building and structures specifically regulated and preempted by the federal government.
- (b) Railroads and ancillary facilities associated with the railroad.
- (c) Nonresidential farm buildings on farms.
- (d) Temporary buildings or sheds used exclusively for construction purposes.
- (e) Mobile or modular structures used as temporary offices, except that the provisions of Part II (Section 553.501—553.513, Florida Statutes) relating to accessibility by persons with disabilities shall apply to such mobile or modular structures. Permits shall be required for structural support and tie down, electric supply and all other such utility connections to such mobile or modular structures as required by this jurisdiction.
- (f) Those structures or facilities of electric utilities, as defined in F.S. § 366.02 which are directly involved in the generation, transmission or distribution of electricity.
- (g) Temporary sets assemblies or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.
- (h) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing or other non-wood features.
- (i) Family mausoleums not exceeding 250 square feet (23 m2) in area that are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- (j) Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.
- (k) A building or structure having less than 1,000 square feet (93 m2) which is constructed and owned by a natural person for hunting and which is repaired or reconstructed to the same dimension and condition as existed on January 1, 2011, if the building or structure:
  - 1. Is not rented or leased or used as a principal residence;

2. Is not located within the 100-year floodplain according to the Federal Emergency Management Agency's current Flood Insurance Rate Map; and
  3. Is not connected to an off-site electric power or water supply.
- (l) Service providers of water, sewer, storm, gas, cable, telephone, or other similar utility systems are exempt to the point of service connection for the building or structure. Additional telecommunication exemptions may be found in Section 489.503(14), Florida Statutes.

However, these structures may be subject to local zoning and/or land development regulations.

**102.2.1 In addition to the requirements of F.S. §§ 553.79 and 553.80, Florida Statutes, facilities subject to the provisions of Chapter 395, Florida Statutes, and Part II of Chapter 400, Florida Statutes, shall have facility plans reviewed and construction surveyed by the state agency authorized to do so under the requirements of Chapter 395, Florida Statutes, and Part II of Chapter 400, Florida Statutes, and the certification requirements of the federal government.**

**102.2.2 Residential buildings or structures** moved into or within a municipality shall not be required to be brought into compliance with the state minimum building code in force at the time the building or structure is moved, provided:

1. The building or structure is structurally sound and in occupiable condition for its intended use;
2. The occupancy use classification for the building or structure is not changed as a result of the move;
3. The building is not substantially remodeled;
4. Current fire code requirements for ingress and egress are met;
5. Electrical, gas and plumbing systems meet the codes in force at the time of original construction and are operational and safe for reconnection; and
6. Foundation plans are sealed by a professional engineer or architect licensed to practice in this state, if required by the Florida Building Code, Building for all buildings or structures of the same residential occupancy class.
7. The requirements of Florida Building Code, Existing Building Volume, are also satisfied.

**102.2.3 The building official shall apply the same standard** to a moved residential building or structure as that applied to the remodeling of any comparable residential building or structure to determine whether the moved structure is substantially remodeled. The cost of the foundation on which the moved building or structure is placed shall not be included in the cost of remodeling for purposes of determining whether a moved building or structure has been substantially remodeled.

**102.2.4 This section does not apply to** the jurisdiction and authority of the Department of Agriculture and Consumer Services to inspect amusement rides or the Department of Financial Services to inspect state-owned buildings and boilers.

**102.2.5 Each enforcement district** shall be governed by a board, the composition of which shall be determined by the affected localities.

1. At its own option, each enforcement district or local enforcement agency may adopt rules granting to the owner of a single-family residence one (1) or more exemptions from the Florida Building Code relating to:
  - a) Addition, alteration, or repairs performed by the property owner upon his or her own property, provided any addition or alteration shall not exceed 1,000 square feet (93 m2) or the square footage of the primary structure, whichever is less.
  - b) Addition, alteration, or repairs by a non-owner within a specific cost limitation set by rule, provided the total cost shall not exceed \$5,000 within any 12-month period.
  - c) Building and inspection fees.
2. However, the exemptions under subparagraph 1 do not apply to single-family residences that are located in mapped flood hazard areas, as defined in the code, unless the enforcement district or local enforcement agency has determined that the work, which is otherwise exempt, does not constitute a substantial improvement, including the repair of substantial damage, of such single-family residences.
3. Each code exemption, as defined in sub-subparagraphs 1a, 1b, and 1c shall be certified to the local board 10 days prior to implementation and shall only be effective in the territorial jurisdiction of the enforcement district or local enforcement agency implementing it.
4. Each enforcement district or local enforcement agency may establish an alternative permitting program for replacing nonstructural components of building systems in a residential dwelling unit. A licensed contractor performing such work for the resident shall also be exempt from individual permits and inspections if either the owner or the licensed contractor obtains a valid Annual Permit per Section 105.1.1 of this code and all such work is reported as required in Section 105.1.2 of this code for compliance evaluation. No added capacity, system expansion or new building work of any type shall be excluded from individual permit and inspection by this provision.

**102.2.6 This section does not apply to** traditional swings and other standard playground equipment accessory to a one (1) or two (2) family dwelling, as determined by the building official. Exempt structures covered under this section may still be subject to zoning permits.

Exception: Electrical service to such playground equipment shall be in accordance with Chapter 27 of this code or Part VIII, Electrical, of the Florida Building Code Residential Volume, 7th Edition (2020), as applicable.

**102.3 Application of references.** References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

**102.4 Referenced codes and standards.** The codes and standards referenced in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference as further regulated in Sections 102.4.1 and 102.4.2 of this code.

**102.4.1 Conflicts.** Where conflicts occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.

**102.4.2 Provisions in referenced codes and standards.** Where the extent of the reference to a referenced code or standard includes subject matter that is within the scope of this code or the Florida Codes listed in Section 101.4, the provisions of this code or the Florida Codes listed in

Section 101.4, as applicable, shall take precedence over the provisions in the referenced code or standard.

**102.5 Partial invalidity** In the event that any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions of this code.

**102.6 Existing structures.** The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this section, or the Florida Fire Prevention Code, or 2021 Property Maintenance Code as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

**102.6.1 Buildings not previously occupied.** A building or portion of a building that has not been previously occupied or used for its intended purpose in accordance with the laws in existence at the time of its completion shall comply with the provisions of the Florida Building Code or Florida Residential Code, as applicable for new construction or with any current permit for such occupancy.

**102.6.2 Buildings previously occupied.** The legal occupancy of any building existing on the date of adoption of this code shall be permitted to continue without change except as otherwise specifically provided in this code, the Florida Building Code, Existing Building Volume; Florida Fire Prevention Code; the adopted International Property Maintenance Code; the codes referenced in Section 101.4 of this code; or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

### **102.7 Relocation of manufactured buildings.**

1. Relocation of an existing manufactured building does not constitute an alteration.
2. A relocated building shall comply with wind speed requirements of the new location, using the appropriate wind speed map. If the existing building was manufactured in compliance with the Standard Building Code (prior to March 1, 2002), the wind speed map of the Standard Building Code shall be applicable. If the existing building was manufactured in compliance with the Florida Building Code (after March 1, 2002), the wind speed map of the Florida Building Code shall be applicable.
3. A relocated building shall comply with the flood hazard area requirements of the new location, if applicable.

**102.8 Existing mechanical equipment.** An agency or local government may not require that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code except during reroofing when the equipment is being replaced or moved during reroofing and is not in compliance with the provisions of the Florida Building Code relating to roof-mounted mechanical units.

## **PART 2—ADMINISTRATION AND ENFORCEMENT**

### **SECTION 103 - BUILDING DEPARTMENT**

**103.1 Creation of enforcement agency.** The Building Department is hereby created and the official in charge shall be known as the building official. All code officials employed by the department shall be certified in accordance with Chapter 468, Part XII, Florida Statutes.

**103.2 Appointment.** The building official shall be appointed by the appointing authority of the jurisdiction.

**103.3 Deputies** In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the building official shall have the authority to appoint a deputy building official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official.

**103.4 Restrictions on employees.** An employee connected with the department, shall not be financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of a building, structure, service, system, or in the making of plans or of specifications thereof, unless he/she is the owner of such. This employee shall not engage in any other work which is inconsistent with his/her duties or conflict with the interests of the department, or which violates Florida Statutes Section 112.313(7)(a).

## **SECTION 104**

### **DUTIES AND POWERS OF THE BUILDING OFFICIAL**

**104.1 General.** The building official is hereby authorized and directed to enforce the provisions of this code. The building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

**104.2 Applications and permits.** The building official shall receive applications, review construction documents and issue permits for the erection, and alteration, demolition and moving of buildings, structures, and service systems, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

**104.2.1 Determination of substantially improved or substantially damaged existing buildings and structures in flood hazard areas.** For applications for reconstruction, rehabilitation, repair, alteration, addition or other improvement of existing buildings or structures located in flood hazard areas, the building official shall determine if the proposed work constitutes substantial improvement or repair of substantial damage. Where the building official determines that the proposed work constitutes substantial improvement or repair of substantial damage, and where required by this code, the building official shall require the building to meet the requirements of Section 1612 or R322 of this code, and Article III, - Flood Damage Prevention of Wellington Code of Ordinances.

**104.3 Notices and orders.** The building official shall issue all necessary notices or orders to ensure compliance with this code.

**104.4 Inspections.** The building official shall make all of the required inspections, or the building official shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The building official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

**104.5 Identification.** The building official shall carry proper identification, as issued by the jurisdiction, when inspecting structures or premises in the performance of duties under this code.

#### **104.6 Right of entry.**

**104.6.1** Where it is necessary to make an inspection to enforce any of the provisions of this code, or where the building official has reasonable cause to believe that there exists in any structure or upon any premises a condition which is contrary to or in violation of this code which makes such structure or premises unsafe, dangerous or hazardous, the building official is authorized to enter



the structure or premises at reasonable times to inspect or to perform any duty imposed by this code, provided that If such structure or premises are occupied, that credentials be presented to the occupant and entry requested. If such structure, or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other persons having charge or control of the structure, or premises, and request entry. If entry is refused, the building official shall have recourse to every remedies provided by law to secure entry.

**104.6.2** When the building official obtains a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of the structure, or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the building official for the purpose of inspection and examination pursuant to this code.

**104.7 Department records.** The building official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records per F.S. [Ch.] 119.

**104.8 Liability.** The building official, member of the board of appeals or employee charged with the enforcement of this code while acting for the jurisdiction in good faith and without malice in the discharge of the duties, required by this code or other pertinent law or ordinance, shall not thereby be civilly or criminally rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer, employee or board member because of an act performed by that officer or employee or board member in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

**104.8.1 Legal defense.** Any suit or criminal complaint instituted against an officer or employee or board member because of an act performed by that officer or employee or board member in the lawful discharge of duties and under the provisions of this code shall be defended by legal representatives of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

**104.9 Approved materials and equipment.** Materials, equipment and devices approved by the building official shall be constructed and installed in accordance with such approval.

**104.9.1 Used materials and equipment.** The use of used, materials which meet the requirements of this code for new materials is permitted. Used equipment and devices shall not be reused unless approved by the building official.

**104.10 Modifications.** Wherever there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or owner's representative, provided the building official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department.

**104.10.1 Flood hazard areas.** Modifications in flood hazard areas may only be granted in accordance with Article III, - Flood Damage Prevention of Wellington Code of Ordinances.

**104.11 Alternative materials, design and methods of construction and equipment.** The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability, level of sanitation, and safety. The building official shall require that sufficient evidence or proof be submitted to substantiate any claim made regarding the alternative. Where the alternative material, design or method of construction is not approved, the building official shall respond in writing, stating the reasons why the alternative was not approved.

**104.11.1 Research reports.** Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

**104.11.2 Tests.** Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the building official shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

**104.12 Requirements not covered by this code.** Any requirements necessary for the strength, stability or proper operation of an existing or proposed building, structure, electrical, gas, mechanical or plumbing system, or for the public safety, health and general welfare, not specifically covered by this or the other technical codes, shall be determined by the building official.

## **SECTION 105**

### **PERMITS**

**105.1 Required.** Any contractor, owner, or agent authorized in accordance with Florida Statute 489 who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building tenancy or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical, fire protection or plumbing system, or accessible or flood resistant site element, the installation of which is regulated by this code, or Article III, - Flood Damage Prevention of Wellington Code of Ordinances to cause any such work to be done, shall first make application to the building official and obtain the required permit.

**105.1.1 Annual facility permit.** In lieu of an individual permit for each alteration to an existing electrical, gas, mechanical, plumbing or interior nonstructural office system(s), the building official is authorized to issue an annual permit for any occupancy to facilitate routine or emergency service, repair, refurbishing, minor renovations of service systems or manufacturing equipment installations/relocations. The building official shall be notified of major changes and shall retain the right to make inspections at the facility sites as deemed necessary. An annual facility permit shall be assessed with an annual fee and shall be valid for one (1) year from date of issuance. A separate permit shall be obtained for each facility and for each construction trade, as applicable. The permit application shall contain a general description of the parameters of work intended to be performed during the year.

**105.1.2 Annual facility permit records.** The person to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The building official shall have

access to such records at all times or such records shall be filed with the building official as designated. The building official is authorized to revoke such permit and deny future permits, if code violations are found to exist.

**105.1.3 Food permit.** In accordance with F.S. § 500.12 a food permit from the Department of Agriculture and Consumer Services is required of any person who operates a food establishment or retail store.

**105.1.4 Public swimming pool.** The local enforcing agency may not issue a building permit to construct, develop, or modify a public swimming pool without proof of application, whether complete or incomplete, for an operating permit pursuant to Section 514.031, Florida Statutes. A certificate of completion or occupancy may not be issued until such operating permit is issued. The local enforcing agency shall conduct their review of the building permit application upon filing and in accordance with Chapter 553, Florida Statutes. The local enforcing agency may confer with the Department of Health, if necessary, but may not delay the building permit application review while awaiting comment from the Department of Health.

**105.2 Work exempt from permit.** Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction, to include work in any special flood hazard area. Exemptions granted under this section do not relieve the owner or contractor from their duty to comply with applicable provisions of the Florida Building Code and requirements of Article III, - Flood Damage Prevention of Wellington Code of Ordinances. As determined by the building official, permits shall not be required for the following:

**Building:**

1. Cabinets and countertops with no reconfiguration for 1 & 2 Family Dwellings, papering, tiling, carpeting, and similar finish work, with no electrical or plumbing work.
2. Temporary motion picture, television and theater sets and scenery.
3. Traditional swings and other standard playground equipment accessory to detached one (1) and two (2) family dwellings, as determined by the building official, but they may be subject to Zoning permits.
4. Retractable awnings supported by an exterior wall and do not require additional support or electric in Groups R-3 and U occupancies, but they may be subject to Zoning permits.
5. Non-fixed and movable fixtures, cases, racks, and counters not over 5 feet 9 inches (1753 mm) in height.

**Gas:**

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

**Mechanical:**

1. Portable heating appliance.
2. Portable ventilation equipment.

3. Portable cooling unit.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any part that does not alter its approval or make it unsafe.
6. Portable evaporative cooler.
7. Portable self-contained refrigeration system containing 10 pounds (4.54 kg) or less of refrigerant and actuated by motors of one (1) horsepower (746 W) or less.
8. The installation, replacement, removal or metering of any electrical load management control device where installed by a utility service provider.

**Plumbing:**

1. The stopping of leaks in drains, water, soil, waste or vent pipe provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.
3. The replacement of common household plumbing fixtures to existing supply lines and outlets in 1 & 2 Family Dwellings. This does not include water heaters bathtubs, and showers.

**Electrical:**

1. Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles, or repair and replacement of like for like common household electrical fixtures, switches, and outlets on the load side of the electrical source.
2. Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas, except as exempted by Florida Statute Chapter 489.503(14).
3. Temporary testing systems: A permit shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.
4. In accordance with F.S. § 553.793, as used in this section, the term:
  - (a) "Contractor" means a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the Florida Department of Business and Professional Regulation under part II of Chapter 489, Florida Statutes or by the Palm Beach County Construction Industry Licensing Board under Chapter 67-1876, Laws of Florida.

(b) "Low-voltage alarm system project" related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, as defined in Section 489.505, Florida Statutes, operating at low voltage, as defined in the National Electrical Code Standard 70, and ancillary components or equipment attached to such a system, including, but not limited to, home-automation equipment, thermostats, and video cameras. This section does not apply to the installation or replacement of a fire alarm if plan review is required.

(c) "Low-voltage electric fence" means an alarm system, as defined in § 489.505, that consists of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure.

A low-voltage electric fence must meet all of the following requirements to be exempt as a low-voltage alarm system project:

- The electric charge produced by the fence upon contact must not exceed energizer characteristics set forth in paragraph 22.108 and depicted in Figure 102 of International Electrotechnical Commission Standard No. 60335-2-76, Current Edition.
- A nonelectric fence or wall must completely enclose the low-voltage electric fence. The low-voltage electric fence may be up to 2 feet higher than the perimeter nonelectric fence or wall.
- The low-voltage electric fence must be identified using warning signs attached to the fence at intervals of not more than 60 feet.
- The low-voltage electric fence shall not be installed in an area zoned exclusively for single-family or multi-family residential use.
- The low-voltage electric fence shall not enclose the portions of a property which are used for residential purposes.

(d) "Wireless alarm system" means a burglar alarm system or smoke detector that is not hardwired.

(e) This section does not apply to the installation or replacement of a fire alarm, or access control system affecting required means of egress as required by Florida Building Code Chapter 10, if a plan review is required.

**105.2.1 Emergency repairs.** Where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official. Prior notification shall be given to the building official including the work address, nature of emergency and scope of work immediately in person or via email or voice mail.

**105.2.2 Minor repairs.** Ordinary minor repairs may be made with the prior approval of the building official without a permit, provided the repairs do not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements; ordinary minor repairs shall not include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring systems or mechanical equipment or other work affecting public health or general safety, and such repairs shall not violate any of the provisions of the technical codes.

**105.2.3 Public service agencies.** A permit shall not be required for the installation, alteration or repair of generation, transmission, distribution or metering or other related equipment that is under the ownership and control of public service agencies by established right.

**105.3 Application for permit.** To obtain a permit, the applicant shall first file an application therefore in writing or electronically on a form furnished by the building department for that purpose.

Permit application forms shall be in the format prescribed by a local administrative board, if applicable, and must comply with the requirements of F.S. § 713.135(5) and (6).

Each application shall be inscribed with the date of application, and the code in effect as of that date. For a building permit for which an application is submitted prior to the effective date of the Florida Building Code, the state minimum building code in effect in the permitting jurisdiction on the date of the application governs the permitted work for the life of the permit and any extension granted to the permit.

Effective October 1, 2017, a local enforcement agency shall post each type of building permit application on its website. Completed applications must be able to be submitted electronically to the appropriate building department. Accepted methods of electronic submission include, but are not limited to, e-mail submission of applications in portable document format or submission of applications through an electronic fill-in form available on the building department's website or through a third-party submission management software. Payments, attachments, or drawings required as part of the permit application may be submitted in person in a non-electronic format, at the discretion of the building official.

**105.3.1 Action on application.** Except for applications filed without the prerequisite fees, the building official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the building official shall reject such application in writing, stating the reasons therefore. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the building official shall issue a permit therefore as soon as practicable. When authorized through contractual agreement with a school board, in acting on applications for permits, the building official shall give first priority to any applications for the construction of, or addition or renovation to, any school or educational facility.

**105.3.1.1 If a state university, Florida college or public school district** elects to use a local government's code enforcement offices, fees charged by counties and municipalities for enforcement of the Florida Building Code on buildings, structures, and facilities of state universities, state colleges and public school districts shall not be more than the actual labor and administrative costs incurred for plans review and inspections to ensure compliance with the code.

**105.3.1.2 No permit may be issued** for any building construction, erection, alteration, modification, repair or addition unless the applicant for such permit provides to the enforcing agency which issues the permit any of the following documents which apply to the construction for which the permit is to be issued and which shall be prepared by or under the direction of an engineer registered under Chapter 471, Florida Statutes:

1. Plumbing documents for any new building or addition which requires a plumbing system with more than 250 fixture units or which costs more than \$125,000.
2. Fire sprinkler documents for any new building or addition which includes a fire sprinkler system which contains 50 or more sprinkler heads. Personnel as authorized by chapter

633 Florida Statutes, may design a fire sprinkler system of 49 or fewer heads and may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition or deletion of not more than 49 heads, notwithstanding the size of the existing fire sprinkler system.

3. Heating, ventilation, and air-conditioning documents for any new building or addition which requires more than a 15-ton-per-system capacity which is designed to accommodate 100 or more persons or for which the system costs more than \$125,000. This paragraph does not include any document for the replacement or repair of an existing system in which the work does not require altering a structural part of the building or for work on a residential one (1), two (2), three (3), or four (4) family structure. An air-conditioning system may be designed by an installing air-conditioning contractor certified under Chapter 489, Florida Statutes, to serve any building or addition which is designed to accommodate fewer than 100 persons and requires an air-conditioning system with a value of \$125,000 or less; and when a 15-ton-per system or less is designed for a singular space of a building and each 15-ton system or less has an independent duct system. Systems not complying with the above require design documents that are to be sealed by a professional engineer.

Example 1: When a space has two (2) 10-ton systems with each having an independent duct system, the contractor may design these two (2) systems since each unit (system) is less than 15 tons.

Example 2: Consider a small single-story office building which consists of six (6) individual offices where each office has a single three (3)-ton package air conditioning heat pump. The six (6) heat pumps are connected to a single water-cooling tower. The cost of the entire heating, ventilation and air-conditioning work is \$47,000 and the office building accommodates fewer than 100 persons. Because the six (6) mechanical units are connected to a common water tower this is considered to be an 18-ton system.

NOTE: It was further clarified by the Commission that the limiting criteria of 100 persons and \$125,000 apply to the building occupancy load and the cost for the total air-conditioning system of the building.

4. Any specialized mechanical, electrical, or plumbing document for any new building or addition which includes a medical gas, oxygen, steam, vacuum, toxic air filtration, halon, or fire detection and alarm system which costs more than \$5,000.
5. Electrical documents. See Florida Statutes, Section 471.003(2)(h). Any electrical or plumbing or air-conditioning and refrigeration system meeting the following thresholds are required to be designed by a Florida Registered Engineer. Any system which:
  - a. Requires an electrical or plumbing or air-conditioning and refrigeration system with a value greater than \$125,000; and
  - b. Requires an aggregate service capacity of greater than 600 amperes (240 volts) on a residential electrical system or greater than 800 amperes (240 volts) on a commercial or industrial electrical system;
  - c. Requires a plumbing system with more than 250 fixture units; or
  - d. Requires a heating, ventilation, and air-conditioning system which exceeds a 15-ton-per-system capacity, or if the project is designed to accommodate more than 100 persons.

Documents requiring an engineer seal by this part shall not be valid unless a professional engineer who possesses a valid certificate of registration has signed, dated, and stamped such document as provided in Section 471.025, Florida Statutes.

6. All public swimming pools and public bathing places defined by and regulated under Chapter 514, Florida Statutes.

**105.3.2 Time limitation of application.** An application for a permit for any proposed work shall be deemed to have been abandoned and becoming null and void after six (6) months of no activity, abandonment or failure to respond to requested corrections occurs during the application process after the date of filing unless such application has been pursued in good faith or permit has been issued; except that the building official is authorized to grant one (1) or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing prior to the abandonment date, with justifiable cause demonstrated. Abandoned applications shall be subject to destruction in accordance with state law. The fee for extension of a permit application shall be set forth by the administrative authority. There may be fees or requirements from other government agencies for permit application extensions.

**105.3.3 An enforcing authority may not issue a building permit** for any building construction, erection, alteration, modification, repair or addition unless the permit either includes on its face or there is attached to the permit the following statement: "NOTICE: In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county such as the requirement for Home or Property Owners Association approval and there may be additional permits required from other governmental entities such as water management districts, state agencies or federal agencies."

**105.3.4 A building permit for a single-family residential dwelling** must be issued within 30 working days of application therefore unless unusual circumstances require a longer time for processing the application or unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

**105.3.5 Identification of minimum premium policy.** Except as otherwise provided in Chapter 440, Florida Statutes, Workers' compensation, every employer shall, as a condition to receiving a building permit, show proof that it has secured compensation for its employees as provided in F.S. § 440.10 and 440.38.

**105.3.6 Asbestos removal contractor exemption.** Refer to Section 105.9 for additional requirements. A licensed asbestos removal contractor is not required when moving, removal or disposal of asbestos-containing materials on a residential building where the owner occupies the building, the building is not for sale or lease, and the work is performed according to the owner-builder limitations provided in this paragraph and Florida Statutes Chapter 489.103(7). To qualify for exemption under this paragraph, an owner must personally appear and sign the building permit application. The permitting agency shall provide the person with a disclosure statement in substantially the following form:

**Disclosure Statement:** State law requires asbestos abatement to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own asbestos abatement contractor even though you do not have a license. You must supervise the construction yourself. You may move, remove or dispose of asbestos-containing materials on a residential building where you occupy the building and the building is not for sale or lease, or the building is a farm out building on your property. If you sell or lease such building within 1 year after the asbestos abatement is complete, the law will presume that you intended to sell or lease the property at the time the work was done, which is a violation of



this exemption. You may not hire an unlicensed person as your contractor. Your work must be done according to all local, state and federal laws and regulations which apply to asbestos abatement projects. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances.

**105.3.7 Applicable Code for Manufactured Buildings.** Manufacturers should be permitted to complete all buildings designed and approved prior to the effective date of a new code edition, provided a clear signed contract is in place. The contract shall provide specific data mirroring that required by an application for permit, specifically, without limitation, date of execution, building owner or dealer, and anticipated date of completion. However, the construction activity must commence within 6 months of the contract's execution. The contract is subject to verification by the Department of Business and Professional Regulation.

**105.3.8 Public right-of-way.** A permit shall not be issued by the building official for the construction, alteration, or relocation of any building, structure, or system impacting any street, alley or public lane, unless the applicant has received a right-of-way permit from the authority having jurisdiction over the right of way.

**105.4 Conditions of the permit.** The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other federal, state and local laws ordinance, codes and regulations. Permits presuming to give authority to violate or cancel the provisions of this code or of any other federal, state and local laws ordinances codes and regulations shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data, requiring corrections to work already performed, and/or revocation of the permit. No deviations from the permit may be made without prior written authorization. The building official is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other federal, state and local laws, ordinances, codes and regulations.

**105.4.1 Permit intent.** A permit issued shall be construed to be a license to proceed with the work and not as authority to violate, cancel, alter or set aside any of the provisions of the technical codes, nor shall issuance of a permit prevent the building official from thereafter requiring a correction of errors in plans, construction or violations of this code. Every permit issued shall become invalid unless the work authorized by such permit is commenced within 6 months after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 6 months after the time the work is commenced.

**105.4.1.1** If work has commenced and the permit is revoked, becomes null and void or expires because of lack of progress or abandonment, a new permit, or revalidation of the original permit, covering the proposed construction shall be obtained before proceeding with the work.

**105.4.1.2** If a new permit, or revalidation (renewal) of the original permit, is not obtained within six (6) months from the date the initial permit became null and void, the building official is authorized to require that any work which has been commenced or completed be removed from the building site. Alternatively, a new permit may be issued on application, providing the work in place and required to complete the structure meets all applicable regulations in effect at the time the initial permit became null and void and any regulations which may have become effective between the date of expiration and the date of issuance of the new permit.

**105.4.1.3** Work shall be considered to be in active progress when the permit has received an approved inspection within six (6) months. This provision shall not be applicable in case of civil commotion or strike or when the building work is halted due directly to judicial injunction, order or similar process, or due to action by an environmental or archeological

agency having jurisdiction. The building official is authorized to grant, in writing, one (1) or more extensions of time, for periods not more than three (3) months each. The extension shall be requested in writing and justifiable cause demonstrated, prior to expiration.

**105.4.1.4** The fee for renewal, reissuance and extension of a permit shall be set forth by the administrative authority. There may be fees or requirements from other government agencies for permit extensions and renewals.

**105.5 Expiration.** Every permit issued shall become inactive or expired pursuant to Section 105.4.1 of this code, and shall be renewed pursuant to Section 105.4.1.1 of this code before the work may resume. Permits that remain inactive or expired for more than six (6) months shall lose all rights vested in the permit pursuant to Section 105.4.1.2 of this code. In order to complete the work authorized under a permit which has lost all vested rights, the permit holder and property owner shall be responsible to either remove the work from the site or obtain a new permit to complete all work in accordance with the current code requirements and approved permitted plans. Inspections performed and accepted prior to expiration may be accepted subject to the discretion of the building official.

**105.5.1 Additional options for closing a permit.** Pursuant to Section 553.79(15), Florida Statutes, a property owner, regardless of whether the property owner is the one (1) listed on the application for the building permit, may close a building permit by complying with the following requirements:

1. The property owner may retain the original contractor listed on the permit or hire a different contractor appropriately licensed in this state to perform the work necessary to satisfy the conditions of the permit and to obtain any necessary inspection in order to close the permit. If a contractor other than the original contractor listed on the permit is hired by the property owner to close the permit, such contractor is not liable for any defects in the work performed by the original contractor and is only liable for the work that he or she performs.
2. The property owner may assume the role of an owner-builder, in accordance with Sections 489.103(7) and 489.503(6), Florida Statutes.
3. If a building permit is inactive or expired and its requirements have been substantially completed and no life safety issues exist, as determined by the local enforcement agency, the permit may be closed without having to obtain a new building permit, and the work required to close the permit may be done pursuant to the building code in effect at the time the local enforcement agency received the application for the permit, unless the contractor has sought and received approval from the local enforcement agency for an alternative material, design or method of construction.
4. A local enforcement agency may close a building permit 6 years after the issuance of the permit, even in the absence of a final inspection, if the local enforcement agency determines that no apparent safety hazard exists.
5. For purposes of this section, the term "close" means that the requirements of the permit have been satisfied.
6. For purposes of this section, an open permit shall mean a permit that has not satisfied all requirements for completion as listed in Section 110.

**105.5.2** Closing out or resolving open or expired permits shall be the responsibility of the permit applicant and the property owner. Failure to close out or resolve open permits may result in a referral of the matter to the County Construction Industry Licensing Board (CILB) or Wellington Construction Board of Adjustments and Appeals (CBAA), as applicable, and Wellington Code Enforcement Department.

**105.6 Denial or Revocation of permits.** Whenever a permit required under this section is denied or revoked because the plan, or the construction, erection, alteration, modification, repair, or demolition of a building, is found by the local enforcing agency to be not in compliance with the Florida Building Code, the local enforcing agency shall identify the specific plan or project features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permit applicant. If the local building code administrator or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency shall provide this information to the permit applicant.

**105.6.1 Arms Length Purchaser** Pursuant to Section 553.79(16), Florida Statutes, a local enforcement agency may not deny issuance of a building permit to; issue a notice of violation to; or fine, penalize sanction or assess fees against an arm's-length purchaser of a property for value solely because a building permit applied for by a previous owner of the property was not closed. The local enforcement agency shall maintain all rights and remedies against the property owner and contractor listed on the permit.

**105.6.2 Discipline** Pursuant to Section 553.79(16), Florida Statutes, a local enforcement agency may not deny issuance of a building permit to a contractor solely because the contractor is listed on other building permits that were not closed. However, the local enforcement agency shall maintain all other rights and remedies against the contractor listed on the permit(s), including, but not limited to, potential referral to the appropriate licensing authority for potential discipline.

**105.6.3 Misrepresentation of application.** The building official may revoke a permit or approval, issued under the provisions of this code, in case there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.

**105.6.4 Violation of code provisions.** The building official may require correction or revoke a permit upon determination by the building official that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the building, structure, electrical, gas, mechanical or plumbing systems for which the permit was issued is in violation of, or not in conformity with, the provisions of this code.

**105.7 Placement of permit.** The building permit or copy shall be kept on the site of the work until the completion of the project.

**105.8 Notice of commencement.** In accordance with F.S. § 713.135 when any person applies for a building permit, the authority issuing such permit shall print on the face of each permit card in no less than 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT."

**105.9 Asbestos.** The enforcing agency shall require each building permit for the demolition or renovation of an existing structure to contain an asbestos notification statement which indicates the owner's or operator's responsibility to comply with the provisions of F.S. § 469.003 and to notify the Department of Environmental Protection of his or her intentions to remove asbestos, when applicable.

in accordance with state and federal law. Refer to Section 105.3.6 "Asbestos Removal Contractor Exemption" of this code for additional requirements.

**105.10 Certificate of protective treatment for prevention of termites.** A weather-resistant job-site posting board shall be provided to receive duplicate treatment certificates as each required protective treatment is completed, supplying one (1) copy for the person the permit is issued to and another copy for the building permit files. The treatment certificate shall provide the product used, identity of the applicator, time and date of the treatment, site location, area treated, chemical used, percent concentration and number of gallons used, to establish a verifiable record of protective treatment. If the soil chemical barrier method for termite prevention is used, final exterior treatment shall be completed prior to final building approval. For a bait system, see Section 1816.1.7 of the Florida Building Code for contract document requirements.

**105.11 Notice of termite protection.** A permanent sign which identifies the termite treatment provider and need for re-inspection and treatment contract renewal shall be provided. The sign shall be posted near the water heater or electric panel.

**105.12 Work starting before permit issuance.** Upon written request and written approval of the building official, the scope of work delineated in the building permit application and plan may be started prior to the final approval and issuance of the permit, provided any work completed is entirely at risk of the permit applicant and the work does not proceed past the first required inspection. This provision only applies to Florida Building Code, all other Agency approvals necessary for construction must be secured prior to this provision being applied.

**105.13 Phased permit approval.** After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's and owner's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes. This provision only applies to the Florida Building Code, all other agency approvals necessary for construction must be secured prior to this provision being applied.

**105.14 Permit issued on basis of an affidavit.** The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes. Nothing aforesaid shall preclude plan review or inspections by the building official (See also Section 107.6).

**Exception:** Permits issued on the basis of an affidavit shall not extend to the flood load and flood resistance requirements of the Florida Building Code.

**105.15 Opening protection.** When any activity requiring a building permit, not including roof covering replacement or repair work associated with the prevention of degradation of the residence, that is applied for on or after July 1, 2008, and for which the estimated cost is \$50,000 or more for a site built single-family detached residential structures that is located in the wind borne debris region as defined in this Code and that has an insured value of \$750,000 or more, or, if the site built single-family detached residential structures is uninsured or for which documentation of insured value is not presented, has a just valuation for the structure for purposes of ad valorem taxation of \$750,000 or more; opening protections as required within this Code or Florida Building Code, Residential for new construction shall be provided.

Exception: Single family residential structures permitted subject to the Florida Building Code are not required to comply with this section.

**105.16 Inspection of existing residential building not impacted by construction.**

- (a) A local enforcing agency, and any local building code administrator, inspector, or other official or entity, may not require as a condition of issuance of a one (1) or two (2) family residential building permit the inspection of any portion of a building, structure, or real property that is not directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought.
- (b) This subsection does not apply to a building permit sought for:
  - 1. A substantial improvement as defined in Section 161.54, Florida Statutes or as defined in the Florida Building Code.
  - 2. A change of occupancy as defined in the Florida Building Code.
  - 3. A conversion from residential to nonresidential or mixed use pursuant to Section 553.507(2)(a), Florida Statutes or as defined in the Florida Building Code.
  - 4. A historic building as defined in the Florida Building Code.
- (c) This subsection does not prohibit a local enforcing agency, or any local building code administrator, inspector, or other official or entity, from:
  - 1. Citing any violation inadvertently observed in plain view during the ordinary course of an inspection conducted in accordance with the prohibition in paragraph (a).
  - 2. Inspecting a physically nonadjacent portion of a building, structure, or real property that is directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought in accordance with the prohibition in paragraph (a).
  - 3. Inspecting any portion of a building, structure, or real property for which the owner or other person having control of the building, structure, or real property has voluntarily consented to the inspection of that portion of the building, structure, or real property in accordance with the prohibition in paragraph (a).
  - 4. Inspecting any portion of a building, structure, or real property pursuant to an inspection warrant issued in accordance with Sections 933.20 through 933.30, Florida Statutes.

## **SECTION 106**

### **FLOOR AND ROOF DESIGN LOADS**

**106.1 Live loads posted.** Where the live loads for which each floor or portion thereof of a commercial or industrial building is or has been designed to exceed 50 psf (2.40 kN/m<sup>2</sup>), such design live loads shall be conspicuously posted by the owner in that part of each story in which they apply, using durable signs. It shall be unlawful to remove or deface such notices. For residential construction where roof trusses have been designed for 30 psf for light attic storage, a permanent sign shall be posted in the attic area at final building inspection.

**106.2 Issuance of certificate of occupancy.** A certificate of occupancy required by Section 111 shall not be issued until the floor load signs, required by Section 106.1, have been installed.

**106.3 Restrictions on loading.** It shall be unlawful to place, or cause or permit to be placed, on any floor or roof of a building, structure or portion thereof, a load greater than is permitted by this code.

## **SECTION 107**

### **SUBMITTAL DOCUMENTS**

**107.1 General.** Submittal documents consisting of construction documents, statement of special inspections, geotechnical report and other data shall be submitted in approved format with each permit application. The construction documents shall be prepared by a registered design professional where required by the Chapter 471, Florida Statutes or Chapter 481, Florida Statutes & 61G15 Florida Administrative Code or Chapter 481, Florida Statutes & 61G1 Florida Administrative Code. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional. Electronic media documents shall be submitted in the approved format as required by the building official.

**Exception:** The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code.

If the design professional is an architect, interior designer, or engineer legally registered under the laws of this state regulating the practice of architecture or interior design as provided for in Chapter 481, Florida Statutes, Part I, or landscape architecture as provided for in Chapter 481, Florida Statutes, Part II, or engineering as provided for in Chapter 471, Florida Statutes, then he or she shall affix his or her official seal to said drawings, specifications and accompanying data, as required by Florida Statute.

**107.2 Construction documents.** Construction documents shall be in accordance with Sections 107.2.1 through 107.2.6.

**107.2.1 Information on construction documents.** Construction documents shall be dimensioned and prepared as electronic media documents and submitted in the format approved by the building official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the building official. Such drawings and specifications shall contain information, in the form of notes or otherwise, as to the quality of materials, where quality is essential to conformity with the technical codes. Such information shall be specific, and the technical codes shall not be cited as a whole or in part, nor shall the term "legal" or its equivalent be used as a substitute for specific information. All information, drawings, specifications and accompanying data shall bear the name and signature of the person responsible for the design. (see also Section 107.1).

**107.2.1.1 For roof assemblies required by the code.** the construction documents shall illustrate, describe and delineate the type of roofing system, materials, fastening requirements, flashing requirements and wind resistance rating that are required to be installed. Product evaluation and installation shall indicate compliance with the wind criteria required for the specific site or a statement by an architect or engineer certifying suitability for the specific site must be submitted with the construction documents.

**107.2.1.2 Additional data.** The building official may require details, computations, stress diagrams, and other data necessary to describe the construction or installation and the basis of calculations. All drawings, specifications and accompanying data required by the building official to be prepared by an architect or engineer shall be affixed with their official seal, signature and date as state law requires.

**107.2.1.3 Quality of building plans.** Building plans shall be drawn to a minimum 1/8-inch scale. The building official may establish through departmental policy, standards for plans and specifications, including electronic format in order to provide conformity to its electronic permit review and record retention program. This policy may include such things as minimum and maximum sizes, shape, contrast, clarity, electronic format, or other items related to records management. Electronic media must be compatible with the archive requirements of Florida Statutes.

**107.2.2 Fire protection system shop drawings.** Shop drawings for the fire protection system(s) shall be submitted to indicate conformance to this code and the construction documents and shall be approved prior to the start of system installation. Shop drawings shall contain all information as required by the referenced installation standards in Chapter 9.

**107.2.3 Means of egress.** The construction documents shall show in sufficient detail the location, construction, size and character of all portions of the means of egress including the exit, the exit access, and the path of the exit discharge to the public way in compliance with the provisions of this code. In other than occupancies in Groups R-2, R-3, and I-1, the construction documents shall designate the number of occupants to be accommodated on every floor, and in all rooms and spaces.

**107.2.4 Exterior wall envelope.** Construction documents for all buildings shall describe the exterior wall envelope in sufficient detail to determine compliance with this code. The construction documents shall provide details of the exterior wall envelope as required, including flashing, intersections with dissimilar materials, corners, end details, control joints, intersections at roof, eaves or parapets, means of drainage, water-resistive membrane and details around openings. The construction documents shall include manufacturer's installation instructions that provide supporting documentation that the proposed penetration and opening details described in the construction documents maintain the weather resistance of the exterior wall envelope. The supporting documentation shall fully describe the exterior wall system which was tested, where applicable, as well as the test procedure used.

**107.2.5 Exterior balcony and elevated walking surfaces.** Where balcony or other elevated walking surfaces are exposed to water from direct or blowing rain, snow or irrigation, and the structural framing is protected by an impervious moisture barrier the construction documents shall include details for all element of the impervious moisture barrier system. The construction documents shall include manufacturer's installation instructions.

**107.2.6 Site plan.** The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from lot lines and between buildings, the established street grades and the proposed finished grades and, as applicable, flood hazard areas, floodways, and design

flood elevations; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site or plot. The site plan shall include accessible parking and accessible routes as required by the FBC Accessibility when applicable. The building official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair or when otherwise warranted.

**107.2.6.1 Design flood elevations.** Where design flood elevations are not specified, they shall be established in accordance with Section 1612.3 1. Design flood elevations shall be uniformly specified utilizing the currently effective NAVD 88.

**107.2.6.2 For the purpose of inspection and record retention,** site plans for a building shall be maintained at the worksite in a form acceptable to the building official. These plans must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code.

**107.2.7 Structural information.** The construction documents shall provide the information specified in Section 1603 of this code and include shoring details, where applicable, for new construction and alterations. Where construction includes excavation, shoring details shall demonstrate protection of the angle of repose for foundation systems of existing adjacent structures.

**107.3 Examination of documents.** The building official shall examine or cause to be examined the accompanying submittal documents and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this code and other pertinent laws or ordinances.

**Exceptions:**

1. Building plans approved pursuant to F.S. § 553.77(5) and state-approved manufactured buildings are exempt from local codes enforcing agency plan reviews except for provisions of the code relating to erection, assembly or construction at the site. Erection, assembly (including utility crossover connections) and construction at the site are subject to local permitting and inspections. Photocopies of plans approved according to FAC 9B-1.009, F.A.C., shall be sufficient for local permit application documents of record for the modular building portion of the permitted project.
2. Industrial construction on sites where design, construction and fire safety are supervised by appropriately licensed design and inspection professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to approval by the building official, from review of plans and inspections, providing the appropriate licensed design and inspection professionals certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and fire-safety inspectors.

**107.3.1 Approval of construction documents.** When the building official issues a permit, the construction documents shall be noted, in writing or by stamp, as "Reviewed for Code Compliance." One (1) set of construction documents so reviewed shall be retained by the building official. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or a duly authorized representative.

**107.3.2 Previous approvals.** This code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 6 months after the effective date of this code and has not been abandoned.



**107.3.3 Phased approval.** The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. This provision only applies to the Florida Building Code; all other agency approvals necessary for construction must be secured prior to this provision being applied.

**107.3.4 Design professional in responsible charge.** When it is required that documents be prepared by a registered design professional, the building official shall be authorized to require the owner or the owner's authorized agent to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge. If the circumstances require, the owner or the owner's authorized agent shall designate a substitute registered design professional in responsible charge who shall perform the duties required of the original registered design professional in responsible charge. The building official shall be notified in writing by the owner or the owner's authorized agent if the registered design professional in responsible charge is changed or is unable to continue to perform the duties. The registered design professional in responsible charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building. Those products which are regulated by FAC Rule 61G20 shall be reviewed and approved in writing by the designer of record prior to submittal for jurisdictional approval.

**107.3.4.1 Deferred submittals.** For the purposes of this section, deferred submittals are defined as those portions of the design that are not submitted at the time of the application and that are to be submitted to the building official within a specified period. Deferral of any submittal items shall have the prior approval of the building official. The registered design professional in responsible charge shall list the deferred submittals on the construction documents for review by the building official.

**Documents for deferred submittal** items shall be submitted to the registered design professional in responsible charge who shall review them and forward them to the building official with a notation indicating that the deferred submittal documents have been reviewed and found to be in general conformance to the design of the building. The deferred submittal items shall not be installed until the deferred submittal documents have been approved by the building official.

**107.3.4.2 Certifications by contractors authorized under the provisions** of F.S. § 489.115(4)(b) shall be considered equivalent to sealed plans and specifications by a person licensed under Chapter 471, Florida Statutes, or Chapter 481 Florida Statutes, by local enforcement agencies for plans review for permitting purposes relating to compliance with the wind-resistance provisions of the code or alternate methodologies approved by the Florida Building Commission for one (1) and two (2) family dwellings. Local enforcement agencies may rely upon such certification by contractors that the plans and specifications submitted conform to the requirements of the code for wind resistance. Upon good cause shown, local government code enforcement agencies may accept or reject plans sealed by persons licensed under Chapters 471, 481 or 489, Florida Statutes.

**107.3.5 Minimum plan review criteria for buildings.** The examination of the documents by the building official shall include the following minimum criteria and documents: a floor plan; site plan; foundation plan; floor/roof framing plan or truss layout; all fenestration penetrations; flashing; and rough opening dimensions and all exterior elevations:

**Commercial Buildings:**

**107.3.5.1.1 Building:**

1. Site requirements:
  - Parking
  - Fire access
  - Vehicle loading
  - Driving/turning radius
  - Fire hydrant/water supply/post indicator valve (PIV)
  - Set back/separation (assumed property lines)
  - Location of specific tanks, water lines and sewer lines
  - Flood hazard areas, flood zones, and design flood elevations
2. Occupancy group and special occupancy requirements shall be determined.
3. Minimum type of construction shall be determined (see Table 503).
4. Fire-resistant construction requirements shall include the following components:
  - Fire-resistant separations
  - Fire-resistant protection for type of construction
  - Protection of openings and penetrations of rated walls
  - Fire blocking and draftstopping and calculated fire resistance
5. Fire suppression systems shall include:
  - Early warning smoke evacuation systems
  - Schematic fire sprinklers
  - Standpipes
  - Pre-engineered systems
  - Riser diagram
6. Life safety systems shall be determined and shall include the following requirements:
  - Occupant load and egress capacities
  - Early warning
  - Smoke control
  - Stair pressurization
  - Systems schematic
  - Safeguards during construction, as applicable
7. System schematic
8. Occupancy load/egress requirements shall include:
  - Gross Net
  - Means of egress
  - Exit access
  - Exit
  - Exit discharge
  - Stairs construction/geometry and protection
  - Doors
  - Emergency lighting and exit signs
  - Specific occupancy requirements
  - Construction requirements

Horizontal exits/exit passageways

9. Structural requirements shall include:
  - Soil conditions/analysis
  - Termite protection
  - Design loads
  - Wind requirements
  - Building envelope (including Section 107.2.4)
  - Impact resistant coverings or systems
  - Structural calculations (if required)
  - Foundation
  - Flood requirements in accordance with Section 1612, including lowest floor elevations, enclosures, flood damage-resistant materials
  - Wall systems
  - Floor systems
  - Roof systems
  - Threshold inspection plan
  - Stair systems
10. Materials shall be reviewed and shall at a minimum include the following:
  - Wood
  - Steel
  - Aluminum
  - Concrete
  - Plastic
  - Glass
  - Masonry
  - Gypsum board and plaster
  - Insulating (mechanical)
  - Roofing
  - Deck coatings
  - Insulation
  - Building envelope portions of the Energy Code (including calculation and mandatory requirements)
11. Accessibility requirements shall include the following:
  - Site requirements
  - Accessible route
  - Vertical accessibility
  - Toilet and bathing facilities
  - Drinking fountains
  - Equipment
  - Special occupancy requirements
  - Fair housing requirements
12. Interior requirements shall include the following:
  - Interior finishes (flame spread/smoke development)
  - Light and ventilation
  - Sanitation
13. Special systems:
  - Elevators
  - Escalators
  - Lifts

14. Commercial Energy Code submittal
15. Swimming pools:
  - Barrier requirements
  - Spas
  - Wading pools
16. Location and installation details. The specific location and installation details of each fire door, fire damper, ceiling damper and smoke damper shall be shown and properly identified on the building plans by the designer.

**107.3.5.1.2 Electrical:**

1. Electrical:
  - Wiring
  - Services
  - Feeders and branch circuits
  - Overcurrent protection
  - Grounding
  - Wiring methods and materials
  - GFCIs
  - Electrical requirements of the Energy Code
2. Equipment
3. Special occupancies
4. Emergency systems
5. Communication systems
6. Low voltage
7. Load calculations
8. Design flood elevation

**107.3.5.1.3 Plumbing:**

1. Minimum plumbing facilities
2. Fixture requirements
3. Water supply piping
4. Sanitary drainage
5. Water heaters
6. Vents
7. Roof drainage
8. Back flow prevention
9. Irrigation

10. Location of water supply line
11. Grease traps
12. Environmental requirements
13. Plumbing riser
14. Design flood elevation
15. Water/plumbing requirements of the Energy Code (including calculation and mandatory requirements)

**107.3.5.1.4 Mechanical:**

1. Energy Calculations
2. Exhaust systems:  
Clothes dryer exhaust  
Kitchen equipment exhaust  
Specialty exhaust systems
3. Equipment
4. Equipment location
5. Make-up air
6. Roof-mounted equipment
7. Duct systems
8. Ventilation
9. Combustion air
10. Chimneys, fireplaces and vents
11. Appliances
12. Boilers
13. Refrigeration
14. Bathroom ventilation
15. Laboratory
16. Design flood elevation

**107.3.5.1.5 Gas**

1. Gas piping
2. Venting

3. Combustion air
4. Chimneys and vents
5. Appliances
6. Type of gas
7. Fireplaces
8. LP tank location
9. Riser diagram/shutoffs
10. Design flood elevation
11. Gas portions of the Energy Code (including calculation and mandatory requirements)

#### **107.3.5.2 Demolition**

1. Asbestos removal

#### **107.3.5.3 Residential (One (1) and Two (2) Family)**

1. Site requirements  
Set back/separation (assumed property lines)  
Location of septic tanks
2. Fire-resistant construction and fire protection systems (if required)
3. Smoke detector locations
4. Egress  
Egress window size and location stairs construction requirements
5. Structural requirements shall include:  
Wall section from foundation through roof, including assembly and materials  
connector tables wind requirements, and structural calculations (if required)  
Flood hazard areas, flood zones, design flood elevations, lowest floor elevations,  
enclosures, equipment, and flood damage-resistant materials  
Termite protection  
Design loads  
Wind requirements  
Building envelope  
Structural calculations (if required)  
Foundation  
Wall systems  
Floor systems  
Roof systems
6. Accessibility requirements: show/identify accessible bath

7. Impact resistant coverings or systems
8. Flood hazard areas, flood zones, design flood elevations, lowest floor elevations, enclosures, equipment, and flood damage-resistant materials
9. Electrical:  
Electric service riser with wire sizes, conduit detail and grounding detail. Complete load calculations, Panel schedules
10. Mechanical:  
Equipment and location, Duct systems
11. Plumbing:  
Plumbing riser
12. Gas:  
Gas piping  
Venting  
Combustion air  
Chimneys and vents  
Appliances  
Type of gas  
Fireplaces  
LP tank location  
Riser diagram/shutoffs
13. Residential Energy Code submittal (including calculations and mandatory requirements)
14. Swimming Pools:  
Barrier requirements  
Spas  
Wading pools

Manufactured buildings/housing –

1. Site requirements:  
Setback/separation (assumed property lines)  
Location of septic tanks (if applicable)
2. Structural:  
Wind zone  
Anchoring  
Blocking
3. Plumbing:  
List potable water source and meter size (if applicable)
4. Mechanical:  
Exhaust systems  
Clothes dryer exhaust  
Kitchen equipment exhaust
5. Electrical exterior disconnect location

**107.3.5.4 Exemptions:** Plans examination by the building official shall not be required for the following work:

1. Replacing existing equipment such as mechanical units, water heaters, etc. (as determined by the building official).
2. Minor electrical, plumbing, and mechanical repairs.
3. Annual maintenance permits.
4. Prototype plans: except for local site adaption, siding, foundations and/or modifications Except for structures that require waiver.
5. Manufactured buildings plan except for foundations and modifications of buildings on site and as listed below in manufactured buildings/housing.

**107.4 Amended construction documents.** Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for review as an amended set of construction documents

**107.5 Retention of construction documents.** One (1) set of approved construction documents shall be retained by the building official as required by state or local laws.

**107.6 Affidavits.** The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes. Nothing aforesaid shall preclude plan review or inspections by the building official (See also Section 105.14). On applications in which private provider services are utilized, all time frames shall adhere to time frames as indicated in Florida Statutes 553.791 7(a).

**107.6.1 Building permits issued on the basis of an affidavit in special flood hazard areas.** Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood resistance construction requirements of the Florida Building Code.

## **SECTION 108** **TEMPORARY STRUCTURES AND USES**



**108.1 General.** The building official is authorized to require a permit for temporary structures and temporary uses. Such permits shall be limited as to time of service, but shall not be permitted for more than six (6) months. The building official is authorized to grant extensions for demonstrated cause.

**108.2 Conformance.** Temporary structures and uses shall comply with the requirements in Section 3103.

**108.3 Temporary power.** The building official is authorized to give permission to temporarily supply and use power in part of an electric installation before such installation has been fully completed and the final certificate of completion has been issued. The part covered by the temporary certificate shall comply with the requirements specified for temporary lighting, heat or power in NFPA 70. (National Electrical Code [NEC])

**108.4 Termination of approval.** The building official is authorized to terminate such permit for a temporary structure or use and to order the temporary structure to be removed or use to be discontinued.

## **SECTION 109** **FEES**

**109.1 Payment of fees.** An application shall not be valid and shall not be reviewed until the applicable fees prescribed by law have been paid. A permit shall not be valid until the fees prescribed by law have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

**109.2 Schedule of permit fees.** On buildings, structures, electrical, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

**109.3 Building permit valuations.** The applicant for a permit shall provide an estimated permit value at time of application. For permitting purposes, permit valuations shall include total replacement value of work, including materials and labor, for which the permit is being issued, such as structural, electrical, gas, mechanical, plumbing equipment, interior finish, related site work, architectural and design fees, marketing costs, overhead, and profit, excluding only land value. Valuation references may include the latest published data of national construction cost analysis services, such as Marshall-Swift, Means, etc., or as published by the International Code Council. If, in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed quantity estimates, or bona fide signed contracts, acceptable to the building official. Final building permit valuation shall be set by the building official.

**109.4 Work commencing before permit issuance.** Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits or without prior approval from the building official as permitted in Section 105.2.2 or 105.12 shall be subject to a penalty fee in addition to the required permit fees, as set in the approved schedule of fees or as provided by local ordinance. This provision shall not apply to emergency work when delay would clearly have placed life or property in imminent danger. But in all such cases, the required permit(s) must be applied for within three (3) business days and any unreasonable delay in obtaining those permit(s) shall result in the charge of a penalty fee. The payment of a penalty fee shall not preclude or be deemed a substitute for prosecution for commencing work without first obtaining a permit. The building official may grant extensions of time or adjust penalties when justifiable cause has been demonstrated in writing.

**109.5 Related fees.** The payment of the fee for the construction, alteration, removal or demolition for work done in connection to or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

**109.6 Refunds.** The building official is authorized to establish and publish a refund policy through local ordinance.

## **SECTION 110** **INSPECTIONS**

**110.1 General.** Construction or work for which a permit is required shall be subject to inspection by the building official and such construction or work shall remain exposed and provided with access for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid. It shall be the duty of the owner or the owner's authorized agent to cause the work to remain exposed and provided with access for inspection purposes. The building official shall be permitted to require a boundary line survey prepared by a qualified surveyor whenever the boundary lines cannot be readily determined in the field. Neither the building official nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

**110.1.1 Manufacturers and fabricators.** When deemed necessary by the building official, he/she shall make, or cause to be made, an inspection of materials or assemblies at the point of manufacture or fabrication. A record shall be made of every such examination and inspection and of all violations of the technical codes.

**110.1.2 Other inspections services.** The building official may make, or cause to be made the inspections required by Section 110 of this code. He/she may accept reports of department inspectors, independent inspectors or recognized inspection services, provided that after investigation he/she is satisfied as to their qualifications and reliability. A certificate required by any provision of this code shall not be based on such reports unless the same are certified by the building code inspector or the architect or engineer performing building code inspections in a manner specified by the building official. The building official shall ensure that all persons making such inspections shall be certified in accordance to Chapter 468 Florida Statutes.

The building official may require the owner to employ an inspection service in the following instances:

1. For buildings or additions of Type I construction
2. For all major structural alterations
3. Where the concrete design is based on compressive strength in excess of 3000 pounds per square inch
4. For pile driving
5. For buildings with area greater than 20,000 square feet
6. For buildings more than two (2) stories in height; or
7. For buildings and structures of unusual design or methods of construction

Such inspectors shall be present when work is underway on the structural elements of the building to adequately attest to its compliance. Such inspectors shall be a registered architect, or engineer. An employee of the architect or engineer licensed under Chapter 468, Part XII, Florida Statutes may perform the inspections, under the direction of and with final certification from the architect or engineer. Such inspectors shall submit weekly progress reports including the daily inspections to the building official, and including a code compliance opinion of the Resident Inspector.

At the completion of the construction work or project, the architect or engineer shall submit a certificate of compliance to the building official, stating that the work was done in compliance with this code and in accordance with the permitted drawing. Final inspection shall be made by the building official before a Certificate of Occupancy or Certificate of Completion is issued; and confirmation inspections may be made at any time to monitor activities and resident inspectors.

**110.1.3 Affidavit for inspection.** With specific prior approval of, and in a format acceptable to the building official, an affidavit for certification of inspection may be accepted from the permit qualifier; when accompanied by extensive photographic evidence of sufficient detail to demonstrate code compliance. The photographic evidence shall be comprehensive in the display of the installation and/or construction and job location identifiers. The affidavit and accompanying photographs shall be provided to the inspector prior to or at the next scheduled inspection. If the photographs are found to be insufficient by the building official to demonstrate compliance with this code and/or the permitted document, or clearly display location identifiers, or are missing, the contractor may be required to obtain the services of a Registered Florida Design Professional to inspect and certify the installation and/or construction. Inspection by Registered Florida Design Professional shall be in person and certification by Registered Florida Design Professional shall be accompanied by new extensive photographic evidence of sufficient detail to demonstrate code compliance.

**110.1.3.1 Exception:** Affidavits may not be accepted for inspection of elements of construction which require inspection by the local jurisdiction under the requirements of Title 44, Code of Federal Regulations, Parts 59 and 60, and the local flood damage prevention ordinance.

**110.2 Preliminary inspection.** Subject to the limitations of F.S. Chapter 553.79(20), before issuing a permit, the building official is authorized to examine or cause to be examined buildings, structures and sites for which an application has been filed.

**110.2.1 Existing building inspections.** Before issuing a permit, the building official may examine or cause to be examined any building, electrical, gas, mechanical, or plumbing systems for which an application has been received for a permit to enlarge, alter, repair, move, demolish, install, or change the occupancy. The building official may inspect the buildings, structures, electrical, gas, mechanical and plumbing systems, from time to time, before, during and upon completion of the work for which a permit was issued. The building official shall make a record of every such examination and inspection and of all observed violations of the technical codes. Additional regulations in Florida Building Code, Existing Building Volume, may apply.

**110.3 Required inspections.** The building official upon notification from the permit holder or his or her agent, shall make the following inspections, and such other inspections as deemed necessary, and shall either release that portion of the construction or shall notify the permit holder or his or her agent of any violations which must be corrected in order to comply with the technical codes. The building official shall determine the timing and sequencing of when inspections occur and what elements are inspected at each inspection. A complete survey, or special purpose survey may be required before an inspection is approved.

A. **Building:**

1. Foundation inspection. To be made after trenches are excavated, any required reinforcing steel is in place, forms erected and shall at a minimum include the following building components:
  - Stem-wall
  - Monolithic slab-on-grade
  - Piling/pile caps
  - Footers/grade beams
- 1.1. Slab/Floor Inspection: Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel or framing members installed and all building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

A foundation/Form board survey prepared and certified by a registered surveyor may be required, prior to approval of the slab inspection. The survey shall certify placement of the building on the site, illustrate all surrounding setback dimensions and shall be available at the job site for review by the building inspector. In lieu of providing a survey, the contractor may elect to uncover all property line markers and string-up all property lines in preparation for inspection.
- 1.2. In flood hazard areas, upon placement of the lowest floor, including basement, and prior to further vertical construction, the elevation certification as required in Section 1612.5, shall be submitted to the building official.
2. Shell Inspections:
  - 2.1. Lintel/tie beams/columns/masonry units. To be made after masonry units, forms, reinforcing steel, shoring, conduit, piping accessories, and other ancillary equipment items are in place, but before any concrete is placed.
  - 2.2. Sheathing inspection. To be made either as part of a dry-in inspection or done separately at the request of the contractor after all roof and wall sheathing and fasteners are complete and shall at a minimum include the following building components:
    - Roof sheathing
    - Wall sheathing
    - Floor sheathing
    - Continuous air barrier
    - Sheathing fasteners
    - Roof/wall dry-in
    - Gypsum board, as required
    - Sheathing/cladding inspection
- 2.3. Roofing inspection. Shall at a minimum include the following building components:

NOTE: Sheathing fasteners installed and found to be missing the structural member (shiners) shall be corrected prior to installation of the dry-in material.

- Dry-in
- Insulation (according to submitted energy calculations)
- Roof coverings (including in-progress)
- Flashing

Re-Roof Sheathing Inspection is required prior to application of the roof covering.

2.4. Framing inspection. To be made after the roof deck or sheathing, all framing, fire-blocking and bracing is in place, all concealed wiring, all pipes, chimneys, ducts and vents are complete and the rough electrical, plumbing, heating wires, pipes and ducts are approved, and shall at a minimum include the following building components:

- Window/door framing and installation. Verify rough opening dimensions are within tolerances, buck and attachments
- Window U-factor/SHGC as indicated on approved calculations
- Window/door buck attachment
- Vertical cells/columns complete, if applicable
- Lintel/tie beams complete, if applicable
- Framing/trusses/bracing/connectors (including truss layout and engineered drawings)
- Draft stopping/fire blocking
- Curtain wall framing
- Fire resistant assemblies joints and penetrations, as required
- Lath, as required
- Accessibility

2.5. Insulation Inspection: To be made after the framing inspection is approved and the insulation is in place, according to approved energy calculation submittal. Includes wall and ceiling insulation, thermal and ignition barriers.

2.6. Lath/Drywall, as required Lath and gypsum board inspections shall be made after lathing and gypsum board, interior and exterior, is in place, but before any plastering is applied or gypsum board joints and fasteners are taped and finished.

Exception: Gypsum board that is not part of a fire-resistance- rated assembly or a shear assembly in a single-family dwelling, unless otherwise determined by the building official.

2.7. Exterior wall coverings. Shall at a minimum include the following building components in progress inspections:

- Exterior wall coverings and veneers
- Soffit coverings

3. Final inspection. To be made after the building is completed, all sub-trade inspections have passed and the structure is ready for occupancy.

- 3.1. In flood hazard areas, as part of the final inspection, a final certification of the lowest floor elevation shall be submitted to the authority having jurisdiction.

Swimming pool inspection:

- First inspection to be made after excavation and installation of reinforcing steel, bonding and main drain and prior to placing of concrete.
- Perimeter piping inspection/pressure test to be made prior to backfill and preparation of the pool deck (if any).
- Light niche/wet niche inspection. To inspect the bonding of underwater light fixtures prior to filling the pool with water.
- Pool deck inspection to be made prior to placing concrete in the pool deck with all required bonding connections completed.
- Final inspection to be made when the swimming pool is complete and all required enclosure requirements are in place.
- In order to pass final inspection and receive a certificate of completion, a residential swimming pool must meet the requirements relating to pool safety features as described in Section 424.2.17 of this code.
- Final electric inspection to be made prior to filling the swimming pool with water.
- Final permanent barrier inspection to be made prior to filling the swimming pool with water.

Demolition inspections:

- First inspection (pre-demolition) to be made after all utility connections have been disconnected and secured in such manner that no unsafe or unsanitary conditions shall exist during or after demolition operations.
- Final inspection to be made after all demolition work is completed.

Manufactured building inspections: The building department shall inspect construction of foundations; connecting buildings to foundations; installation of parts identified on plans as site installed items, joining the modules, including utility crossovers; utility connections from the building to utility lines on site; and any other work done on site which requires compliance with the Florida Building Code. (See also Section 107.3.5 Manufactured/Modular Buildings) Additional inspections may be required for public educational facilities (see Section 423.27.20).

Impact-resistant coverings: Where impact resistant coverings or impact resistant systems are installed the building official shall perform inspections at the request of the applicant, on all impact-resistant coverings or impact resistant systems to determine the following:

- The system indicated on the plans was installed.
- The system is installed in accordance with the manufacturer's installation instructions and the product approval.

B. Electrical:

1. Underground inspection. To be made after trenches or ditches are excavated, conduit or cable is installed, and before any backfill is put in place.
2. Rough-in inspection. To be made after the building is dried-in, framing, fire blocking and bracing is in place and prior to the installation of wall or ceiling membranes.
3. Low Voltage. To be made for security, alarm, elevator, and special uses prior to being covered from view.
4. Power release inspection. To be made after building electrical system is substantially complete, or completed in phases, with all circuitry installed and electrical fixtures and devices in place, or properly tagged and safed-off.
5. Final inspection. To be made after the building electrical system is complete, all required electrical fixtures are in place and properly connected, tested and the structure is ready for occupancy.
6. Existing Swimming Pools. To be made after all repairs or alterations are complete, all required electrical equipment, GFCI protection, and equipotential bonding are in place on said alterations or repairs.

C. Plumbing:

1. Underground inspection. To be made after trenches or ditches are excavated, piping is installed, and before any backfill is put in place.
2. Rough-in inspection. To be made after the roof, framing, fire blocking and bracing is in place and all soil, waste, vent, water, and other piping is complete, and prior to this installation of wall or ceiling membranes.
3. Final inspection. To be made after the building plumbing system is complete, all plumbing fixtures are in place and properly connected, and the structure is ready for occupancy.
  - a. Note: See Section 312 of the Florida Building Code, Plumbing for required tests.

D. Mechanical:

1. Underground inspection. To be made after trenches or ditches are excavated, underground duct and fuel piping is installed, and before any backfill is put in place.
2. Rough-in inspection. To be made after the building is dried-in, framing, fire blocking and bracing are in place and all ducting, and other concealed components are complete, and prior to the installation of wall or ceiling membranes.
3. Final inspection. To be made after the building mechanical system is complete, the mechanical system is in place and properly connected, and the structure is ready for occupancy.

E. Gas:

1. Underground piping and tanks. To be made after trenches or ditches are excavated, underground gas piping is installed, and before backfill is put in place.

2. Rough piping inspection. To be made after all new piping authorized by the permit has been installed, and before any such piping has been covered or concealed or any fixtures or gas appliances have been connected.
3. Final piping inspection. To be made after all piping authorized by the permit has been installed and after all portions which are to be concealed by plastering or otherwise have been so concealed, and before any fixtures or gas appliances have been connected. This inspection shall include a pressure test.
4. Final inspection. To be made on all new gas work authorized by the permit and such portions of existing systems as may be affected by new work or any changes, to ensure compliance with all the requirements of this code and to assure that the installation and construction of the gas system is in accordance with reviewed plans.

#### F. Site Debris

1. The contractor and/or owner of any active or inactive construction project shall be responsible for the clean-up and removal of all construction debris or any other miscellaneous discarded articles during the course of the construction project and prior to receiving final inspection approval Construction job sites must be kept clean and in a safe condition at all times. (See also Section 110.9)
2. All debris shall be kept in such a manner as to prevent it from being spread by any means.

**110.3.1 Footing and foundation inspection.** Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. Materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with ASTM C 94, the concrete need not be on the job. (See also Section 110.3 Building)

**110.3.2 Concrete slab and under-floor inspection.** Reserved. (See Section 110.3 Building 1.1).

**110.3.3 Lowest Floor elevation.** (Reserved). (See Section 110.3 Building 1.2).

**110.3.4 Frame Inspection.** (Reserved). (See Section 110.3 Shell 2.4).

**110.3.5 Lath and Gypsum Board Inspection.** (Reserved). (See Section 110.3 Shell 2.6).

**110.3.6 Weather-exposed balcony and walking surface waterproofing.** Where balcony or other elevated walking surfaces are exposed to water from direct or blowing rain, snow or irrigation, and the structural framing is protected by an impervious moisture barrier, all elements of the impervious-moisture-barrier system shall not be concealed until inspected and approved.

**110.3.7 Fire- and smoke-resistant penetrations.** Protection of joints and penetrations in fire-resistance-rated assemblies, smoke barriers and smoke partitions shall not be concealed from view until inspected and approved by the building official.

**110.3.8 Energy efficiency inspections.** Inspections shall be made to determine compliance with FBC, Energy Conservation and confirm with the approved energy code submittal (by appropriate trade) and corresponding mandatory requirements and shall include, but not be limited to, inspections for: corresponding envelope insulation R- and U-values, fenestration U-value and Solar Heat Gain Coefficient, duct system R-value, and HVAC lighting, electrical and water-heating equipment efficiency.



**110.3.9 Other Inspections.** In addition to the inspections specified in Sections 110.3 through 110.3.7, the building official is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this code and other laws that are enforced by the Building Division.

**110.3.10 Special Inspections.** (Reserved).

**110.3.11 Final Inspections prior to issuance of Certificate of Occupancy or Completion.** The building official shall inspect or cause to be inspected, at various intervals, all construction or work for which a permit is required, and a final inspection shall be made of every building, structure, electrical, gas, mechanical or plumbing system upon completion, prior to the issuance of the Certificate of Occupancy or Certificate of Completion. In performing inspections, the building official shall give first priority to inspections of the construction, addition, or renovation to, any facilities owned or controlled by a state university, state community college or public school district.

**110.3.11.1 Flood hazard documentation.** For properties located in a flood hazard area, all required documentation shall be submitted to the building official at the time of the final inspection.

**110.3.11.2 Energy Code documentation.** As required by Section C408.2.4.1 of the Energy Conservation Volume, confirmation that the preliminary commissioning report has been received by building owner shall be provided at the time of final mechanical inspection.

**110.3.12 Termites.** Building components and building surroundings required to be protected from termite damage in accordance with Section 1503.7 of this code, Section 2304.13 of this code or Section 2304.11.6 of this code, specifically required to be inspected for termites in accordance with Section 2114 of this code, or required to have chemical soil treatment in accordance with Section 1816 of this code shall not be covered or concealed until the release from the building official has been received. (Also refer to Sections 105.10 and 105 11 of this code)

**110.3.13 Impact Resistant coverings or systems.** Where impact resistant coverings or systems are installed to meet requirements of this code, the building official shall schedule adequate inspections of impact resistant coverings or systems to determine the following:

- 1. The system indicated on the plans was installed.**
- 2. The system is installed in accordance with the manufacturer's installation instructions and the product approval.**

**110.3.14 Reinforcing steel and structural frames.** Reinforcing steel or structural frame work of any part of any building or structure shall not be covered or concealed without first obtaining a release from the building official. Certification that field welding and structural bolted connections meet design requirements shall be submitted to the building official, upon request.

**110.4 Inspection agencies.** The building official is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

**110.5 Inspection requests.** It shall be the duty of the holder of the building permit or their duly authorized agent to notify the building official when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this code.

**110.6 Approval required.** Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building official. The building official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or notify the permit holder or his or her agent wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official.

**110.7 Shoring.** For threshold buildings, shoring and associated formwork or falsework shall be designed and inspected by a Florida licensed professional engineer, prior to any required mandatory inspections by the threshold building inspector.

**110.7.1 Other shoring.** The Building Official may require engineered shoring drawings and procedures for reshoring for temporary support of vertical and horizontal loads and stabilization of foundation soils when applicable. Inspections are required to ensure the shoring is installed in accordance with the approved engineered shoring drawings. The Building Official may require the inspections to be made by qualified third parties when deemed necessary. (See also Section 110.1.2 Inspection Services).

### **110.8 Threshold building.**

**110.8.1** During new construction or during repair or restoration projects in which the structural system or structural loading of a building is being modified, the enforcing agency shall require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record. The structural inspection plan must be submitted to the enforcing agency prior to the issuance of a building permit for the construction of a threshold building. The purpose of the structural inspection plans is to provide specific inspection procedures and schedules so that the building can be adequately inspected for compliance with the permitted documents. The special inspector may not serve as a surrogate in carrying out the responsibilities of the building official, the architect, or the engineer of record. The contractor's contractual or statutory obligations are not relieved by any action of the special inspector.

**110.8.2** The special inspector shall determine that a professional engineer who specializes in shoring design has inspected the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency. A fee simple title owner of a building, which does not meet the minimum size, height, occupancy, occupancy classification or number-of-stories criteria which would result in classification as a threshold building under Florida Statute 553.71(7), may designate such building as a threshold building, subject to more than the minimum number of inspections required by the Florida Building Code.

**110.8.3** The fee owner of a threshold building shall select and pay all costs of employing a special inspector, but the special inspector shall be responsible to the enforcement agency. The inspector shall be a person certified, licensed or registered under Chapter 471, Florida Statutes, as an engineer or under Chapter 481, Florida Statutes, as an architect.

**110.8.4** Each enforcement agency shall require that, on every threshold building:

**110.8.4.1** The special inspector, upon completion of the building and prior to the issuance of a certificate of occupancy, file a signed and sealed statement with the enforcement agency in substantially the following form: "To the best of my knowledge and belief, the above described construction of all structural load-bearing components complies with the permitted documents, and the shoring and reshoring conforms to the shoring and reshoring plans submitted to the enforcement agency."

**110.8.4.2** Any proposal to install an alternate structural product or system to which building codes apply shall be submitted to the enforcement agency for review for compliance with the codes and made part of the enforcement agency's recorded set of permit documents.

**110.8.4.3** All shoring and reshoring procedures, plans and details shall be submitted to the enforcement agency for recordkeeping. Each shoring and reshoring installation shall be supervised, inspected and certified to be in compliance with the shoring documents by the contractor.

**110.8.4.4** All plans for the building which are required to be signed and sealed by the architect or engineer of record contain a statement that, to the best of the architect's or engineer's knowledge, the plans and specifications comply with the applicable minimum building codes and the applicable fire safety standards as determined by the local authority in accordance with this section and Chapter 633, Florida Statutes.

**110.8.5** No enforcing agency may issue a building permit for construction of any threshold building except to a licensed general contractor, as defined in Section 489.105(3)(a), Florida Statutes, or to a licensed building contractor, as defined in Section 489.105(3)(b), Florida Statutes, within the scope of her or his license. The named contractor to whom the building permit is issued shall have the responsibility for supervision, direction, management and control of the construction activities on the project for which the building permit was issued.

**110.8.6** The building division may allow a special inspector to conduct the minimum structural inspection of threshold buildings required by this code, Section 553.73, Florida Statutes, without duplicative inspection by the Building Department. The building official is responsible for ensuring that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes, or certified as a special inspector under Chapter 471 or 481, Florida Statutes. Inspections of threshold buildings required by Section 553.79(5), Florida Statutes, are in addition to the minimum inspections required by this code.

**110.9 Impact of construction.** All construction activity regulated by this code shall be performed in a manner so as not to adversely impact the condition of adjacent property, unless such activity is permitted to affect said property pursuant to a consent granted by the applicable property owner, under terms or conditions agreeable to the applicable property owner. This includes, but is not limited to, the control of dust, noise, water or drainage runoffs, debris, and the storage of construction materials. New construction activity shall not adversely impact legal historic surface water drainage flows serving adjacent properties, and may require special drainage design complying with engineering standards to preserve the positive drainage patterns of the affected sites. Accordingly, developers, contractors and owners of all new residential development, including additions, pools, patios, driveways, decks or similar items, on existing properties resulting in a significant decrease of permeable land area on any parcel or has altered the drainage flow on the developed property shall, as a permit condition, provide a professionally prepared drainage plan clearly indicating compliance with this paragraph. Upon completion of the improvement, a certification from a licensed professional, as appropriate under Florida law, shall be submitted to the inspector in order to receive approval of the final inspection.

## **SECTION 111**

### **CERTIFICATES OF OCCUPANCY AND COMPLETION**

**111.1 Use and Occupancy.** No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a Certificate of Occupancy therefore as provided herein. Issuance of a Certificate of Occupancy shall not be construed as an approval of a violation of the provisions of this code or other federal, state and local laws and ordinances of the jurisdiction. Said certificate shall not be issued until all required electrical, gas, mechanical, plumbing, and fire protection systems have been

inspected for compliance with the technical codes and other applicable laws and ordinances and released by the building official.

**Exception:** Certificates of occupancy are not required for work exempt from permits under Section 105.2.

**111.2 Certificate issued.** After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of building safety, or other agency whose approval is inherent in the building permitting process, the building official shall issue a Certificate of Occupancy that contains the following:

1. The building permit number.
2. The address of the structure.
3. The name and address of the owner or the owner's authorized agent.
4. A description of that portion of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
6. For buildings and structures in flood hazard areas, a statement that documentation of the as-built lowest floor elevation has been provided and is retained in the records of the building department.
7. The name of the building official.
8. The edition of the code under which the permit was issued.
9. The use and occupancy, in accordance with the provisions of Chapter 3 of this code.
10. The type of construction as defined in Chapter 6 of this code.
11. The design occupant load
12. If an automatic sprinkler system is provided, whether the sprinkler system is required.
13. Any special stipulations and conditions of the building permit.

**111.3 Temporary/partial occupancy.** A temporary/partial Certificate of Occupancy or Certificate of Completion may be issued for a portion or portions of a building that may safely be occupied prior to final completion of the building. The building official may require, once all life safety issues have been complied with, an applicant to provide adequate cash surety for unfinished work or revision of plans until a permanent Certificate of Occupancy or Certificate of Completion is granted. The purpose of the cash surety is to insure completion of work under this permit. Such cash surety shall be equal to 110% of the estimated value of the remaining work, including labor and material, as determined by the design professional. The design professional shall submit a signed and sealed document attesting to the amount required to cover the cash surety. If work has not been completed and all finals requested within 90 days of issuance of the initial Temporary/Partial Certificate of Occupancy or Certificate of Completion, the jurisdiction retains the right to have the applicant surrender the cash surety. The jurisdiction then may use the surety to finish the remaining work. The surety shall be in the form of cash money, certified check, or cashier's check. Surety shall be returned upon approval of all final

inspections and upon written request that has been approved by the building official. This provision is only for the Florida Building Code, all other Agency approvals necessary for construction must be secured prior to this provision being applied.

**111.4 Revocation.** The building official is authorized to, in writing, suspend or revoke a Certificate of Occupancy or Completion issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

**111.5 Certificate of Completion.** Upon satisfactory completion of a building, structure, electrical, gas, mechanical or plumbing system, a Certificate of Completion may be issued. This certificate is proof that a structure or system is complete and for certain types of permits is released for use and may be connected to a utility system. This certificate does not grant authority to occupy or connect a building, such as a shell building, prior to the issuance of a Certificate of Occupancy.

**111.6 Fixturing and Stocking.** The Building Official is authorized to issue approval for fixturing, stocking, training, or decorating, when appropriate, to allow the builder to prepare the structure for permanent occupancy. The building may not open to the general public or be used for the transaction of any commerce. Such approval must be conditioned upon the approval of the Fire Marshal, when applicable.

#### **111.7 Digital Submittal Requirements for New Construction.**

**111.7.1 Building Footprints.** The Building Official is authorized to require the submittal of digital shape (CAD) files, in a specific format, depicting a geo-referenced footprint with elevation for all new structures as a condition of the issuance of a Certificate of Occupancy.

**111.7.2 Subdivision Topography.** The Building Official is authorized to require the submittal of electronic topographical data and re-delineated 100-year floodplain boundaries for all new subdivisions or lots of record for the purposes of updating and maintaining the community's flood maps.

## **SECTION 112** **SERVICE UTILITIES**

**112.1 Connection of service utilities.** No person shall make connections from a utility, source of energy, fuel or power to any building or system that is regulated by this code for which a permit is required, until released by the building official and a Certificate of Occupancy or Completion is issued. The servicing utility company shall not connect the power supply until notified by the building official.

**112.2 Temporary connection.** The building official shall have the authority to authorize the temporary connection of the building or system to the utility source of energy, fuel or power for the purpose of testing building service systems or for use under a Temporary Certificate of Occupancy.

**112.3 Authority to disconnect service utilities.** The building official shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by the, this code and the referenced codes and standards set forth in Section 101.4 in case of emergency where necessary to eliminate an immediate hazard to life, property, or unsafe condition, or when such utility connection has been made without the approval required by Section 112.1 or 112.2 The building official shall notify the serving utility, and whenever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to

disconnecting, the owner or occupant of the building, structure, or service system shall be notified in writing, as soon as practical thereafter.

### **SECTION 113** **CONSTRUCTION BOARD OF** **ADJUSTMENTS AND APPEALS**

**113.1 Establishment.** The establishment, powers, membership, terms, quorum, and voting of the Construction Board of Adjustment and Appeals are set forth in Chapter 2 of Wellington Code of Ordinances. Additionally, the following shall apply:

**113.2 Secretary of board.** The building official or his/her authorized representative shall act as secretary of the board and shall make a detailed record of all of its proceedings, which shall set forth the reasons for its decision, the vote of each member, the absence of a member, and any failure of a member to vote.

**113.3 Powers.** The Construction Board of Adjustments and Appeals shall have the power, as further defined in 113.4, to hear appeals of decisions and interpretations of the building official and consider variances of the technical codes.

**113.4 Local Construction Regulation Board.** The Construction Board of Adjustments and Appeals (CBAA) shall also constitute and act as the Local Construction Regulation Board ("LCRB"), as provided in F.S. § 489.113. As the LCRB, the CBAA may deny, suspend, revoke or limit the authority of a certified contractor to obtain a building permit or permits with specific conditions, if the board has found such contractor, through the public hearing process, to be guilty of fraud or a willful building code violation within Wellington. For purposes of this section, a "willful building code violation" means an act that is voluntarily and intentionally performed with the intent to violate or disregard the requirements of the law. The board may also, deny, suspend, revoke or limit the authority of a certified contractor to obtain a building permit or permit with specific conditions, if it has proof through the public hearing process, that a contractor has been found guilty in another county or municipality within the past 12 months, of fraud or a willful building code violation and after providing notice and an opportunity to be heard to the contractor, finds that such fraud or willful violation would have been fraud or a violation if committed in the county or municipality that the local construction board represents. Notification of and information concerning such permit denial shall be submitted to the department within 15 days after the LCRB decides to deny the permit.

#### **113.5 Appeals.**

**113.5.1 Decision of the building official.** The owner of a building, structure or service system, or duly authorized agent, may appeal a decision of the building official to the Construction Board of Adjustment and Appeals whenever any one (1) of the following conditions are claimed to exist:

1. The building official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.
2. The provisions of this code do not apply to the specific case.
3. That an equally good or more desirable form of installation can be employed in any specific case, which the building official has rejected or refused.
4. The true intent and meaning of this code or any of the regulations hereunder have been misconstrued or incorrectly interpreted.

**113.5.2 Variances.** The Construction Board of Adjustments and Appeals, when so appealed to and after a hearing, may vary the application of any provision of this code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this or the technical codes or public interest, and also finds all of the following:

1. That special conditions and circumstances exist that are peculiar to the building, structure or service system involved and that are not applicable to others;
2. That the special conditions and circumstances do not result from the action or inaction of the applicant;
3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this code to other buildings, structures or service system;
4. That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system; and
5. That the grant of the variance will be in harmony with the general intent and purpose of this code and will not be detrimental to the public health, safety and general welfare.

**113.5.2.1 Conditions of the variance.** In granting the variance, the board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed, or both. In addition, the board may prescribe appropriate conditions and safeguards in conformity with this code. Violation of the conditions of a variance shall be deemed a violation of this code.

**113.5.3 Notice of appeal.** Notice of appeal shall be in writing and filed within 30 calendar days after the building official renders the decision. Appeals shall be in a form acceptable to the building official.

**113.5.4 Unsafe or dangerous buildings or service systems.** In the case of a building, structure or service system, which in the opinion of the building official, is unsafe, unsanitary or dangerous, the building official may, in the order, limit the time for such appeals to a shorter period.

### **113.6 Procedures of the board.**

**113.6.1 Meetings.** The board shall meet upon call of the chair. The board shall meet within 30 calendar days after notice of appeal has been received.

**113.6.2 Rules and regulations.** The board shall comply with the procedures set forth in Wellington's Council Resolution No. R2011-75.

**113.6.3 Decisions.** The Construction Board of Adjustment and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay. Each decision of the board shall also include the reasons for the decision. If a decision of the board reverses or modifies a refusal, order, or disallowance of the building official, or varies the application of any provision of this code, the building official shall immediately take action in accordance with such decision. Every decision shall be promptly filed in writing in the office of the building official and shall be open to public inspection. A certified copy of the decision shall be provided to the appellant and a copy shall be kept publicly posted in the office of the building official for two (2) weeks after filing. Every decision of the board shall be final; subject however to such remedy as any aggrieved party might have at law or in equity.

## **SECTION 114** **VIOLATIONS**

Any person, including an individual, firm, partnership, corporation, or any of their agents, who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, or who shall erect, construct, alter, install, demolish or move any structure, electrical, gas, mechanical or plumbing system, or has erected, constructed, altered, repaired, moved or demolished a building, structure, electrical, gas, mechanical, or plumbing system, without full compliance with applicable codes, laws, ordinances, rules, and regulations, shall be guilty of a misdemeanor. Each such person shall be guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of applicable codes, laws, ordinances, rules, and regulations is committed or continued, and upon conviction of any such violation such person shall be punished within the limits and as provided by state law. Nothing in this section shall prevent the authority having jurisdiction from imposing fines, liens, or seeking injunction relief, or exercising other enforcement powers as permitted by law. Code enforcement and penalties of 162 Florida Statutes Part I shall be authorized if building work begins without payment of all required fees, and for the purposes of enforcing this code, code officials licensed under Florida Statute 468 Part XII are deemed "Code Inspectors," as defined in Florida Statute 162.04.

## **SECTION 115** **STOP WORK ORDER**

**115.1 Authority.** Whenever the building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the building official is authorized to issue a stop work order.

**115.2 Issuance.** The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume. Where an emergency exists, the building official shall not be required to give a written notice prior to stopping the work.

**115.3 Unlawful continuance.** Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

## **SECTION 116** **UNSAFE STRUCTURES AND EQUIPMENT**

**116.1 Unsafe buildings or systems.** All buildings, structures, electrical, gas, mechanical, and plumbing systems that are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures or service systems are hereby declared illegal and shall be abated by repair and rehabilitation or by demolition in accordance with this code. The extent of repairs shall be determined by the building official

When the building official determines that an unsafe building, structure, or service system cannot be reasonably repaired in accordance with this or the technical codes, it shall be demolished in accordance with this section.

**116.1.1** When the building official determines a building, structure, electrical, gas, mechanical, or plumbing system, or any portion thereof, is unsafe, as set forth in this code, he/she shall, in accordance with established procedure for legal notices, give the owner, agent or person in control



of such building, structure, electrical, gas, mechanical, or plumbing system written notice stating the defects thereof. The notice shall require the owner within a stated time to either complete specified repairs or improvements, or to demolish and remove the building, structure, electrical, gas, mechanical, or plumbing system, or portion thereof.

**116.1.2** If necessary to protect the life, health and safety of occupants, such notice shall also require the building, structure, electrical, gas, mechanical, plumbing systems, or portion thereof, to be vacated forthwith and not to be reoccupied until the specified repairs and improvements are completed, inspected, and approved by the building official. The building official shall cause to be posted at each entrance to such building a notice stating: THIS BUILDING IS UNSAFE AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE BUILDING OFFICIAL. Such notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, firm, partnership, corporation or any of its officers, agents, or other servants, to remove such notice without written permission from the building official, or for any person to enter the building, or use such systems, except for the purpose of making the required repairs or of demolishing same.

**116.1.3** The owner, agent or person in control shall have the right to appeal from the decision of the building official, as provided hereinafter, and to appear before the Construction Board of Adjustments and Appeals at a specified time and place to show cause why he should not comply with said notice.

**116.1.4** In case the owner, agent, or person in control cannot be found within the stated time limit, or, if such owner, agent, or person in control shall fail, neglect, or refuse to comply with notice to repair, rehabilitate, or to demolish, and remove said building, structure, electrical, gas, mechanical, or plumbing system, or portion thereof, the building official, after having ascertained the cost, shall cause such building, structure, electrical, gas, mechanical, or plumbing system, or portion thereof, to be demolished, secured, or required to remain vacant or unused.

**116.1.5** The decision of the building official shall be final in cases of emergency, which, in the opinion of the building official, involve imminent danger to human life, health, safety, or the property of others. The building official shall promptly cause such building, structure, electrical, gas, mechanical, or plumbing system, or portion thereof, to be made safe or cause its removal. For this purpose, the building official may at once enter such structure or land on which it stands, or abutting land or structures, with such assistance and at such cost as he may deem necessary. The building official may order the vacating of adjacent structures and may require the protection of the public by appropriate fence or such other means as may be necessary, and for this purpose may close a public or private way.

**116.1.6** Costs incurred under 116.1.4 and 116.1.5 shall be charged to the owner of the premises involved. Notice of such charges shall be provided to the owner by certified mail. If the charges are not paid within 10 days following notification, the owner of the premises will be charged in the following manner:

1. The building official shall assess the entire cost of such vacation, demolition, or removal against the real property upon which such cost was incurred, which assessment shall include but not be limited to all administrative costs, postal expenses, newspaper publication, and shall constitute a lien upon such property superior to all others except taxes.
2. The Clerk shall record such lien in the County's Official Record Book showing the nature of such lien, the amount thereof and an accurate legal description of the property, including the street address, which lien shall be effective from the date of recording and shall recite the names of all persons notified and interested persons. After three (3) months from the recording of any such lien, which remains unpaid, the governing body may authorize

foreclose of the lien in the same manner as mortgage liens are foreclosed. Such lien shall bear interest from date such costs were incurred at the rate of 10% per annum and shall be enforceable if unsatisfied as other liens may be enforced by the governing agency.

## **SECTION 117**

### **VARIANCES IN FLOOD HAZARD AREAS**

**117.1 Flood hazard areas.** Pursuant to Section 553.73(5), Florida Statutes, the variance procedures adopted in the Article III - Flood Damage Prevention of Wellington Code of Ordinances shall apply to requests submitted to the Building Official for variances to the provisions of Section 1612.4 of the Florida Building Code, Building Volume or, as applicable, the provisions of R322 of the Florida Building Code, Residential Volume. This section shall not apply to Section 3109 of the Florida Building Code, Building Volume.

## **SECTION 118**

### **SEVERABILITY**

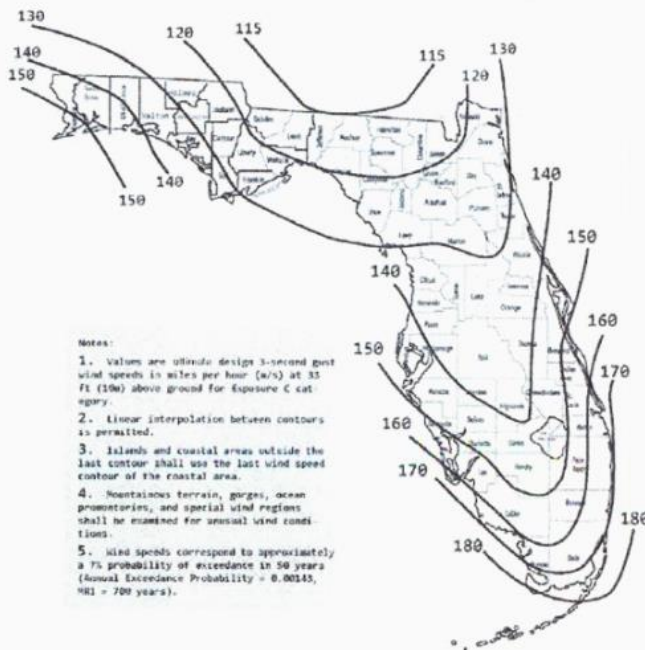
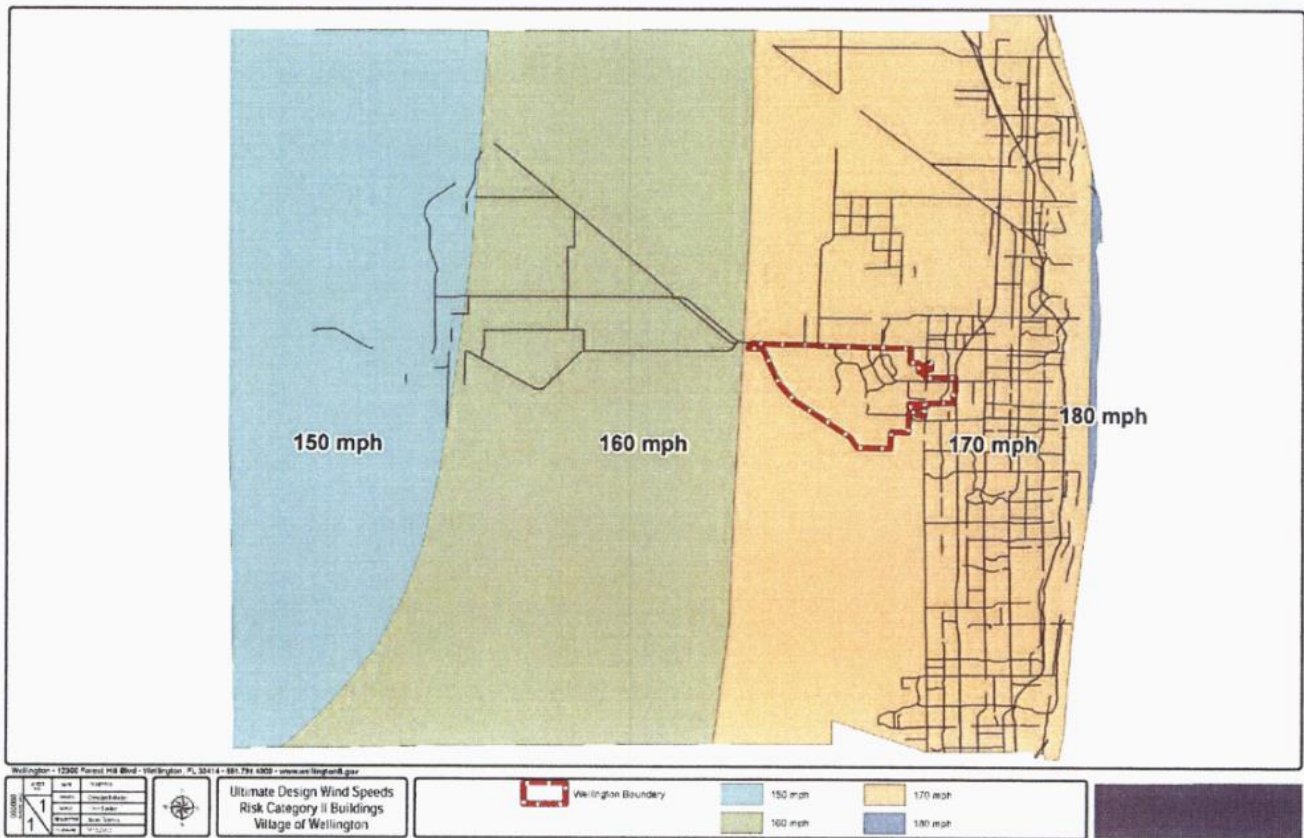
If any section, subsection, sentence, clause or phrase of this code is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

### **Sec. 5-3: Amendments to the Florida Building Code**

Section 1609.3 of the Florida Building Code-Building, Chapter 16 Structural Loads is amended to read:

1609.3 Basic wind speed. The ultimate design wind speed in miles per hour, for the development of wind loads, shall be determined by Figures 1609.3(1), 1609.3(2), and 1609.3(3) as depicted on map Figure 1609 and is hereby added to this code.

**Wellington—Figure 1609.3(1)**  
**Ultimate Design Wind Speed — Risk Category II Buildings**

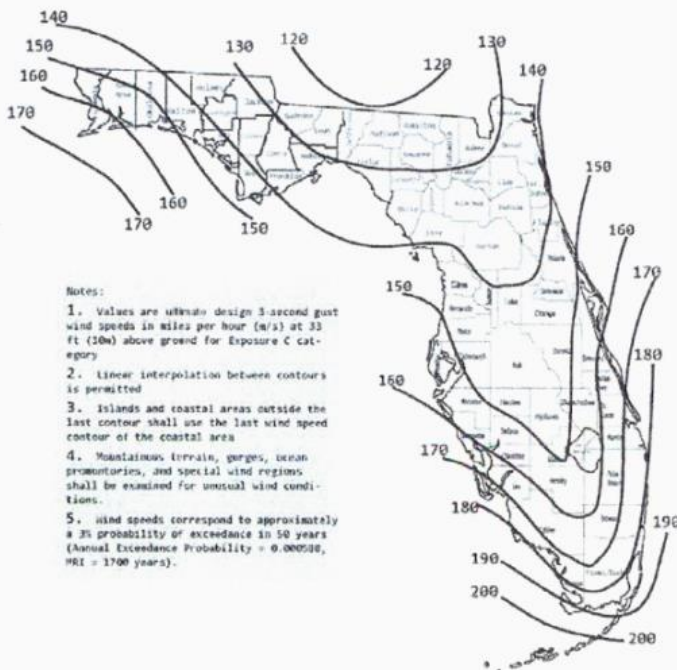
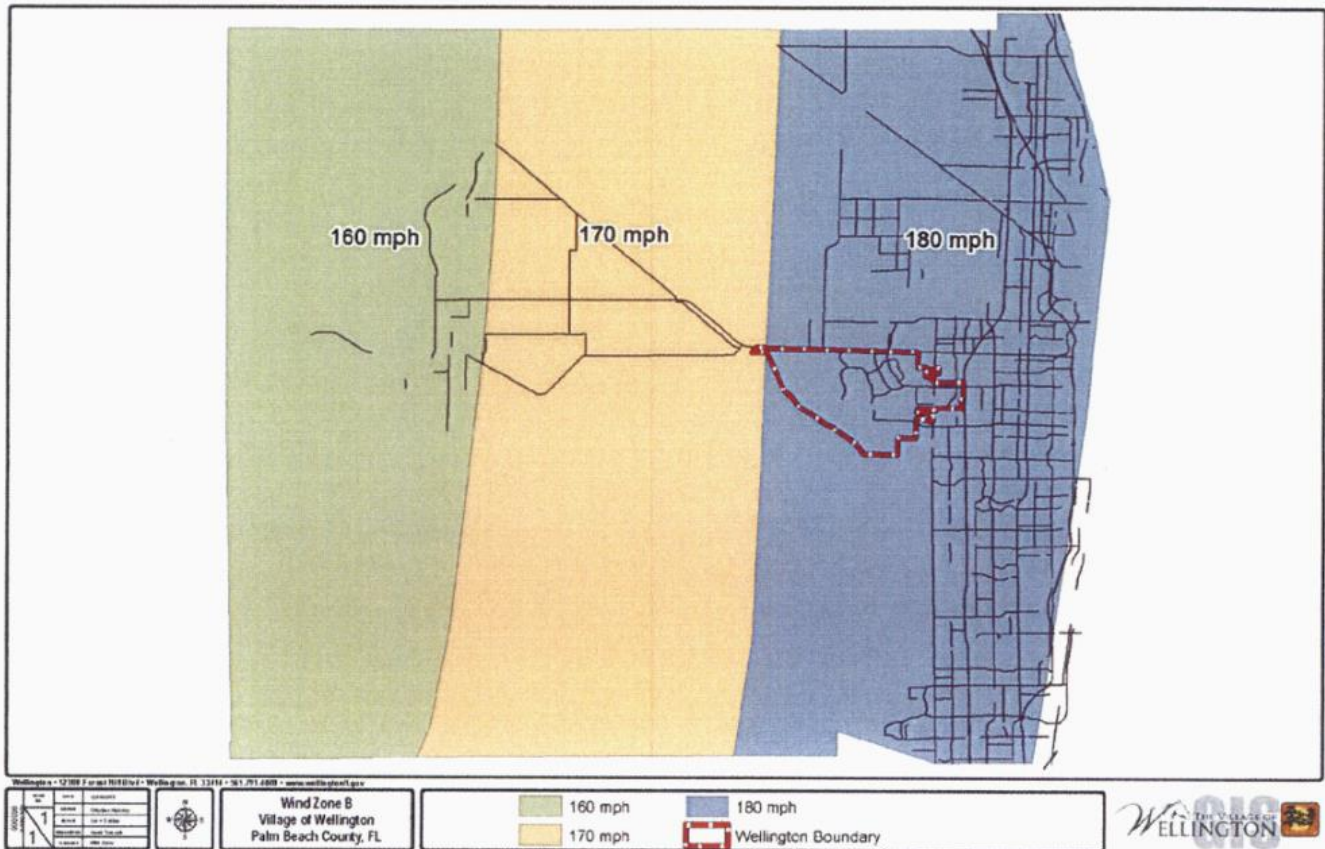


**BASIC WIND SPEED.** The basic wind speed,  $V$ , used in determination of design wind loads on buildings and other structures shall be determined from Figures 1609.3 (1), (2) & (3). The exact location of wind speed lines shall be established by local ordinance using recognized physical landmarks such as roads, canals, rivers and lake shores whenever possible. Because of the many wind speed lines of the multiple Risk Categories, there are not appropriate physical landmarks to provide an accurate and orderly reflection of these boundaries. To determine the applicable wind speed of a particular parcel, Village of Wellington has developed separate Geographic Information Systems (GIS) tools for each of the Risk Categories available on the Building Division website at: <http://www.wellingtonfl.gov/government/departments/planning-zoning-building-code-enforcement-strategic-planning/building>

For Risk Category II buildings and structures and occupancy category III buildings and structures, except health care facilities, the windborne debris region shall be based on Figure 1609.3(1). For occupancy category IV buildings and structures and occupancy III health care facilities, the windborne debris region shall be based on Figure 1609.3(2).



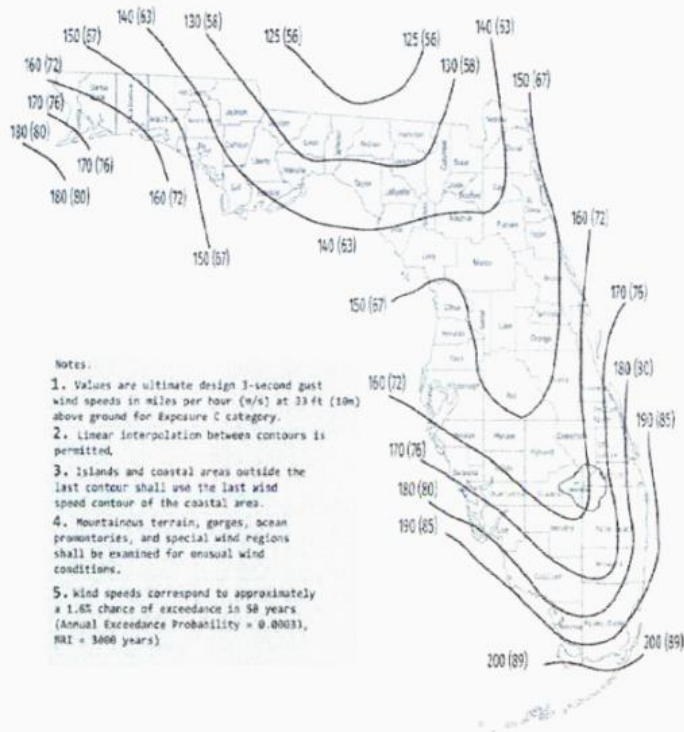
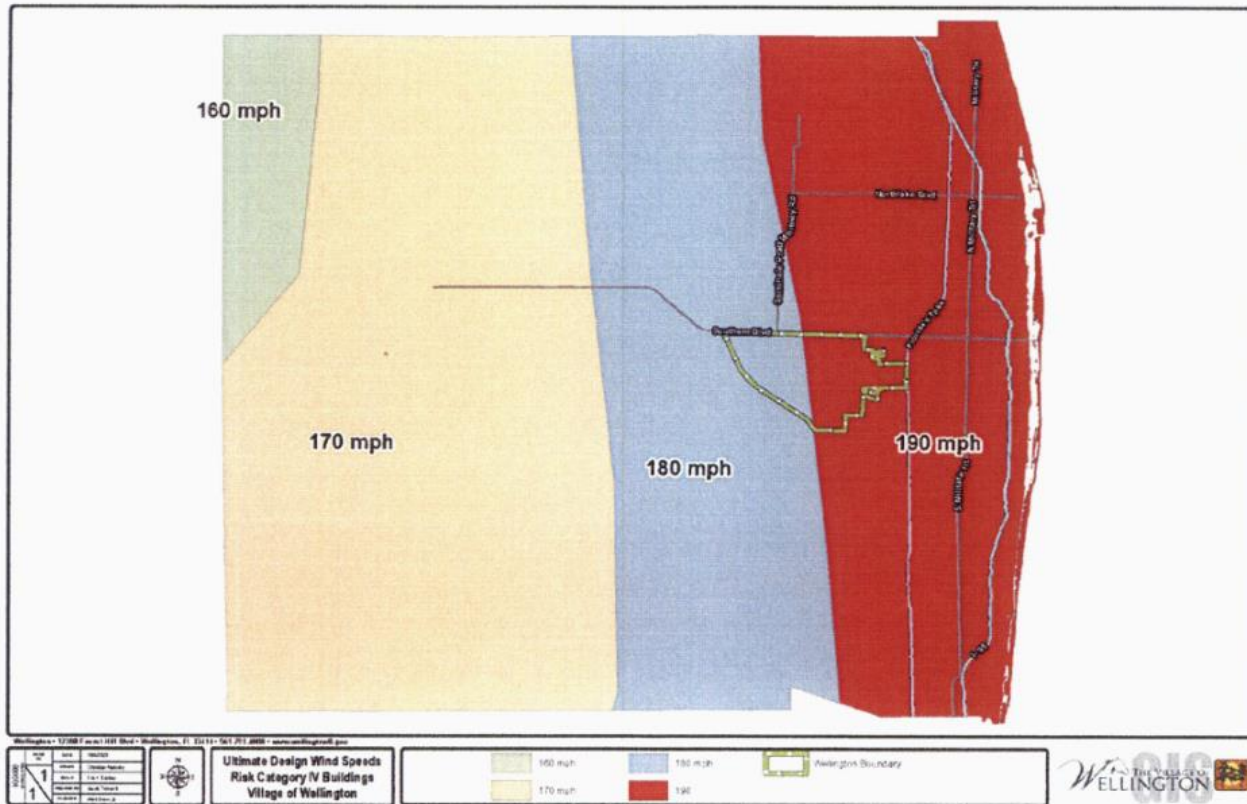
**Wellington—Figure 1609.3(2)**  
**Ultimate Design Wind Speed — Risk Category III Buildings**



**BASIC WIND SPEED.** The basic wind speed,  $V$ , used in determination of design wind loads on buildings and other structures shall be determined from Figures 1609.3 (1), (2) & (3). The exact location of wind speed lines shall be established by local ordinance using recognized physical landmarks such as roads, canals, rivers and lake shores whenever possible. Because of the many wind speed lines of the multiple Risk Categories, there are not appropriate physical landmarks to provide an accurate and orderly reflection of these boundaries. To determine the applicable wind speed of a particular parcel, Village of Wellington has developed separate Geographic Information Systems (GIS) tools for each of the Risk Categories available on the Building Division website at: <http://www.wellingtonfl.gov/government/departments/planning-zoning-building-code-enforcement-strategic-planning/building>

For Risk Category II buildings and structures and occupancy category III buildings and structures, except health care facilities, the windborne debris region shall be based on Figure 1609.3(1). For occupancy category IV buildings and structures and occupancy III health care facilities, the windborne debris region shall be based on Figure 1609.3(2).

**Wellington—Figure 1609.3(2)**  
**Ultimate Design Wind Speed — Risk Category IV Buildings**

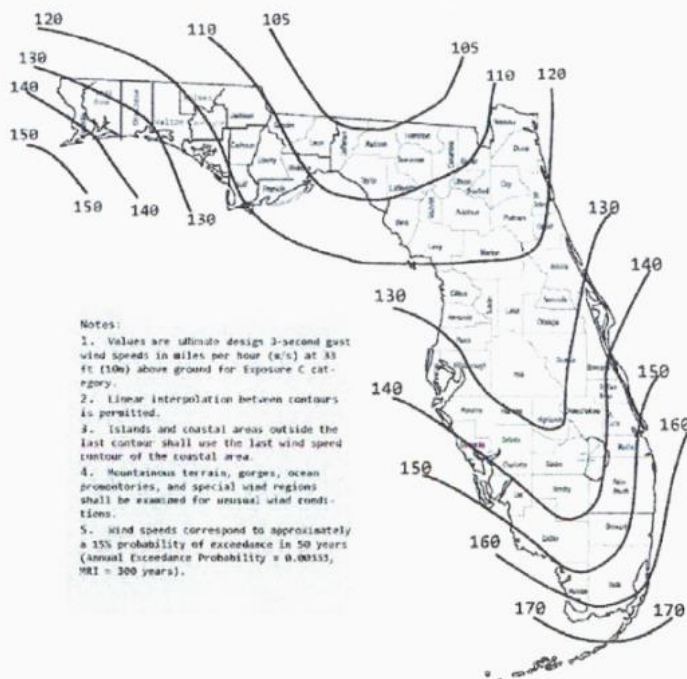
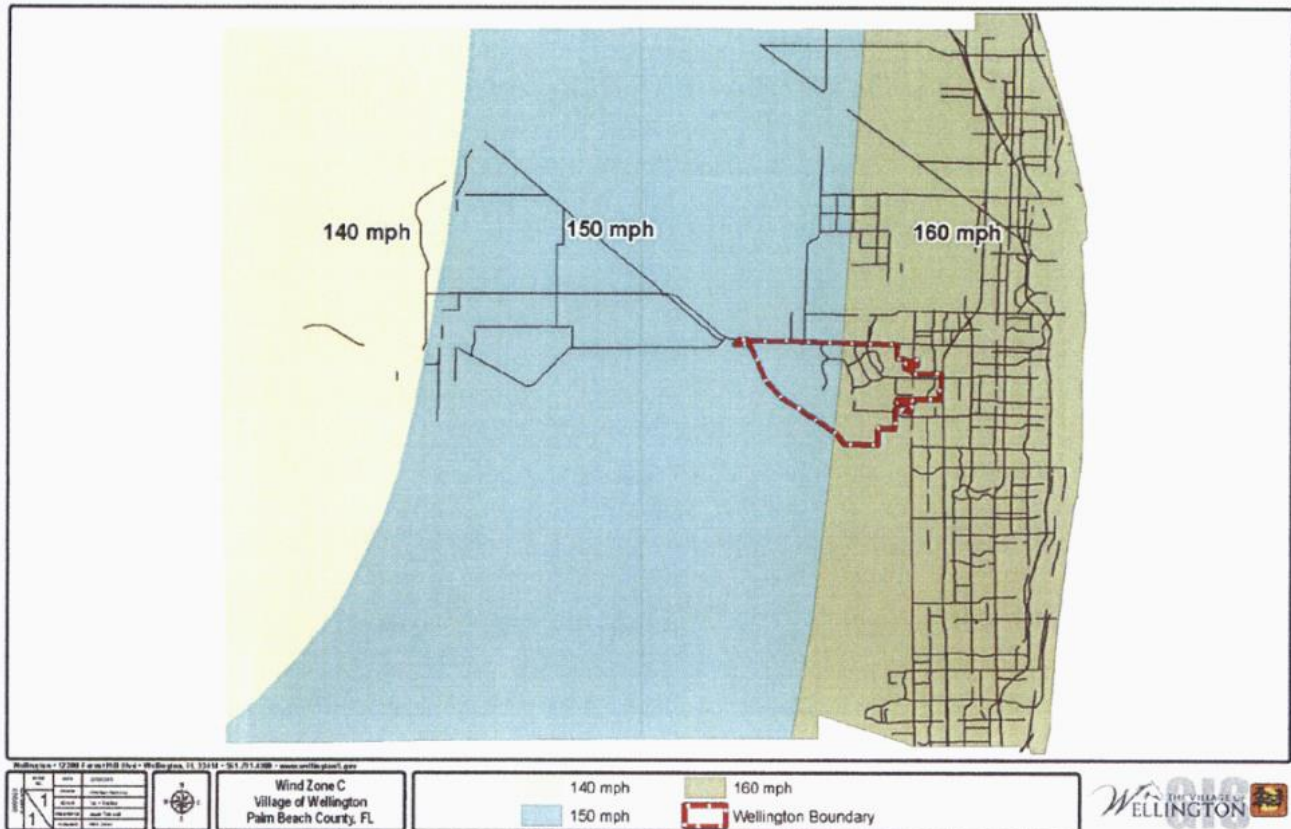


**BASIC WIND SPEED.** The basic wind speed,  $V$ , used in determination of design wind loads on buildings and other structures shall be determined from Figures 1609.3 (1), (2) & (3). The exact location of wind speed lines shall be established by local ordinance using recognized physical landmarks such as roads, canals, rivers and lake shores whenever possible. Because of the many wind speed lines of the multiple Risk Categories, there are not appropriate physical landmarks to provide an accurate and orderly reflection of these boundaries. To determine the applicable wind speed of a particular parcel, Village of Wellington has developed separate Geographic Information Systems (GIS) tools for each of the Risk Categories available on the Building Division website at: <http://www.wellingtonfl.gov/government/departments/planning-zoning-building-code-enforcement-strategic-planning/building>

For Risk Category II buildings and structures and occupancy category III buildings and structures, except health care facilities, the windborne debris region shall be based on Figure 1609.3(1). For occupancy category IV buildings and structures and occupancy III health care facilities, the windborne debris region shall be based on Figure 1609.3(2).



**Wellington—Figure 1609.3(3)**  
**Ultimate Design Wind Speed — Risk Category I Buildings**



**BASIC WIND SPEED.** The basic wind speed,  $V$ , used in determination of design wind loads on buildings and other structures shall be determined from Figures 1609.3 (1), (2) & (3). The exact location of wind speed lines shall be established by local ordinance using recognized physical landmarks such as roads, canals, rivers and lake shores whenever possible. Because of the many wind speed lines of the multiple Risk Categories, there are not appropriate physical landmarks to provide an accurate and orderly reflection of these boundaries. To determine the applicable wind speed of a particular parcel, Village of Wellington has developed separate Geographic Information Systems (GIS) tools for each of the Risk Categories available on the Building Division website at:  
<http://www.wellingtonfl.gov/government/departments/planning-zoning-building-code-enforcement-strategic-planning/building>

For Risk Category II buildings and structures and occupancy category III buildings and structures, except health care facilities, the windborne debris region shall be based on Figure 1609.3(1). For occupancy category IV buildings and structures and occupancy III health care facilities, the windborne debris region shall be based on Figure 1609.3(2).

**ARTICLE II - FLOOD DAMAGE PREVENTION**

#### **Sec. 5-4: Title**

These regulations shall be known as the Floodplain Management Ordinance of Wellington, hereinafter referred to as "this article."

#### **Sec. 5-5: Scope**

The provisions of this article shall apply to all development that is wholly within, or partially within, any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the Florida Building Code; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.

#### **Sec. 5-6: Purpose and Intent**

The purpose and intent of this article and the flood load and flood resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

- A. Minimize unnecessary disruption of commerce, access and public service during times of flooding;
- B. Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
- C. Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
- D. Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
- E. Minimize damage to public and private facilities and utilities;
- F. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
- G. Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
- H. Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

#### **Sec. 5-7: Coordination with the Florida Building Code**

This article is intended to be administered and enforced in conjunction with the Florida Building Code. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.

#### **Sec. 5-8: Warning**

The degree of flood protection required by this article and the Florida Building Code, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This article does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the flood insurance study and shown on flood insurance rate maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this article.

#### **Sec. 5-9: Disclaimer of Liability**

This article shall not create liability on the part of the Wellington Council of Wellington or by any officer or employee thereof for any flood damage that results from reliance on this article or any administrative decision lawfully made thereunder.

#### **Sec. 5-10: General (Conflict between Requirements)**

Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

#### **Sec. 5-11: Areas to which this Article Applies**

This article shall apply to all flood hazard areas within Wellington, as established in section 5-12 of this article.

#### **Sec. 5-12: Basis for Establishing Flood Hazard Areas**

The Flood Insurance Study for Palm Beach County, Florida and Incorporated Areas dated October 5, 2017 and all subsequent amendments and revisions, and the accompanying flood insurance rate maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this article and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Wellington's Planning, Zoning and Building Department, located at 12300 Forest Hill Boulevard, Wellington, Florida 33414.

#### **Sec. 5-13: Submission of Additional Data to Establish Flood Hazard Areas**

To establish flood hazard areas and base flood elevations, pursuant to sections 5-33 through 5-36 of this article the floodplain administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:

- A. Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of this article and, as applicable, the requirements of the Florida Building Code.
- B. Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the special flood hazard area.



#### **Sec. 5-14: Other Laws**

The provisions of this article shall not be deemed to nullify any provisions of local, state or federal law.

#### **Sec. 5-15: Abrogation and Greater Restrictions**

This article supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including but not limited to land development regulations, zoning ordinances, stormwater management regulations, or the Florida Building Code. In the event of a conflict between this article and any other ordinance, the more restrictive shall govern. This article shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this article.

#### **Sec. 5-16: Interpretation**

In the interpretation and application of this article, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

#### **Sec. 5-17: Designation**

The Building Official is designated as the floodplain administrator. The Building Official may delegate performance of certain duties to other employees.

#### **Sec. 5-18: General (Floodplain Administrator)**

The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this article. The Floodplain Administrator shall have the authority to render interpretations of this article consistent with the intent and purpose of this article and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this article without the granting of a variance pursuant to this article.

#### **Sec. 5-19: Applications and Permits**

The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:

- A. Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
- B. Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this article;
- C. Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;
- D. Provide available flood elevation and flood hazard information;

- E. Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;
- F. Review applications to determine whether proposed development will be reasonably safe from flooding;
- G. Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code, when compliance with this article is demonstrated, or disapprove the same in the event of noncompliance; and
- H. Coordinate with and provide comments to the building official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this article.

#### **Sec. 5-20: Substantial Improvement and Substantial Damage Determinations**

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- A. Estimate the market value of the building or structure per the valuation data contained in the records of the Office of the Property Appraiser of Palm Beach County, Florida, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made; all valuation data and/or appraisals must be dated within six (6) months of permit application date.
- B. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- C. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- D. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the Florida Building Code and this article is required.

#### **Sec. 5-21: Notices and Orders**

The Floodplain Administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this article.

#### **Sec. 5-22: Inspections**

The Floodplain Administrator shall make the required inspections as specified in this article for development that is not subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. The Floodplain Administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

### **Sec. 5-23: Other Duties of the Floodplain Administrator**

The Floodplain Administrator shall have other duties, including but not limited to:

- A. Establish, in coordination with the building official procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to this article;
- B. Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);
- C. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the flood insurance rate maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within six (6) months of such data becoming available;
- D. Review required design certifications and documentation of elevations specified by this article and the Florida Building Code to determine that such certifications and documentations are complete; and
- E. Notify the Federal Emergency Management Agency when the corporate boundaries of Wellington are modified.

### **Sec. 5-24: Floodplain Management Records**

Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this article and the flood resistant construction requirements of the Florida Building Code, including flood insurance rate maps; letters of map change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the Florida Building Code and this article; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this article and the flood resistant construction requirements of the Florida Building Code. These records shall be available for public inspection at Wellington's Planning, Zoning and Building Department, located at 12300 Forest Hill Boulevard, Wellington, Florida 33414.

### **Sec. 5-25: Permits Required**

Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this article, including buildings, structures and facilities exempt from the Florida Building Code, which is wholly within or partially within any flood hazard area shall first make application to the Floodplain Administrator, and the Building Official, if applicable, and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until compliance with the requirements of this article and all other applicable codes and regulations has been satisfied.

### **Sec. 5-26: Floodplain Development Permits or Approvals**

Floodplain development permits or approvals shall be issued pursuant to this article for any development activities not subject to the requirements of the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. Depending on the nature and extent of proposed development that includes a building or structure, the floodplain administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

#### **Sec. 5-27: Buildings, Structures and Facilities Exempt from the Florida Building Code**

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals shall be required for the following buildings, structures, and facilities that are exempt from the Florida Building Code and any further exemptions provided by law, which are subject to the requirements of this article:

- A. Railroads and ancillary facilities associated with the railroad.
- B. Nonresidential farm buildings on farms, as provided in F.S. § 604.50.
- C. Temporary buildings or sheds used exclusively for construction purposes.
- D. Mobile or modular structures used as temporary offices.
- E. Those structures or facilities of electric utilities, as defined in F.S. § 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
- F. Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
- G. Family mausoleums not exceeding 250 square feet in area that are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- H. Temporary housing provided by the department of corrections to any prisoner in the state correctional system.
- I. Structures identified in F.S. § 553.73(10)(k), are not exempt from the Florida Building Code if such structures are located in flood hazard areas established on flood insurance rate maps.

#### **Sec. 5-28: Application for a Permit or Approval**

To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the community. The information provided shall:

- A. Identify and describe the development to be covered by the permit or approval.
- B. Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- C. Indicate the use and occupancy for which the proposed development is intended.

- D. Be accompanied by a site plan or construction documents as specified in sections 5-33 through 5-36 of this article.
- E. State the valuation of the proposed work.
- F. Be signed by the applicant or the applicant's authorized agent.
- G. Give such other data and information as required by the floodplain administrator.

#### **Sec. 5-29: Validity of Permit or Approval**

The issuance of a floodplain development permit or approval pursuant to this article shall not be construed to be a permit for, or approval of, any violation of this article, the Florida Building Codes, or any other ordinance of this community. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the floodplain administrator from requiring the correction of errors and omissions.

#### **Sec. 5-30: Expiration**

A floodplain development permit or approval shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing and justifiable cause shall be demonstrated.

#### **Sec. 5-31: Suspension or Revocation**

The Floodplain Administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this article or any other ordinance, regulation or requirement of this community.

#### **Sec. 5-32: Other Permits Required**

Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:

- A. The South Florida Water Management District; F.S. § 373.036.
- B. Florida Department of Health for onsite sewage treatment and disposal systems; F.S. § 381.0065 and Chapter 64E-6, F.A.C.
- C. Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; F.S. § 161.055.
- D. Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
- E. Federal permits and approvals.

### **Sec. 5-33: Information for Development in Flood Hazard Areas**

The site plan or construction documents for any development subject to the requirements of this article shall be drawn to scale and shall include, as applicable to the proposed development:

- A. Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.
- B. Where base flood elevations or floodway data are not included on the FIRM or in the flood insurance study, they shall be established in accordance with section 5-34(B) or (C) of this article.
- C. Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than five (5) acres and the base flood elevations are not included on the FIRM or in the flood insurance study, such elevations shall be established in accordance with section 5-34(A) of this article.
- D. Location of the proposed activity and proposed structures, and locations of existing buildings and structures.
- E. Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
- F. Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
- G. Existing and proposed alignment of any proposed alteration of a watercourse.

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

### **Sec. 5-34: Information in Flood Hazard Areas without Base Flood Elevations (Approximate Zone A)**

Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the floodplain administrator shall:

- A. Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices.
- B. Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.
- C. Where base flood elevation and floodway data are not available from another source, where the available data are deemed by the floodplain administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:
  - 1. Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices; or

2. Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.
- D. Where the base flood elevation data are to be used to support a letter of map change from FEMA, advise the applicant that the analyses shall be prepared by a Florida licensed engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

#### **Sec. 5-35: Additional Analyses and Certifications**

As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

- A. For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in section 5-36 of this article and shall submit the conditional letter of map revision, if issued by FEMA, with the site plan and construction documents.
- B. For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the flood insurance study or on the FIRM and floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
- C. For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in section 5-36 of this article.

#### **Sec. 5-36: Submission of Additional Data**

When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a letter of map change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

#### **Sec. 5-37: General (Development)**

Development for which a floodplain development permit or approval is required shall be subject to inspection.

### **Sec. 5-38: Development other than Buildings and Structures**

The floodplain administrator shall inspect all development to determine compliance with the requirements of this article and the conditions of issued floodplain development permits or approvals.

### **Sec. 5-39: Buildings, Structures and Facilities Exempt from the Florida Building Code**

The floodplain administrator shall inspect buildings, structures and facilities exempt from the Florida Building Code to determine compliance with the requirements of this article and the conditions of issued floodplain development permits or approvals.

### **Sec. 5-40: Buildings, Structures and Facilities Exempt from the Florida Building Code, Lowest Floor Inspection**

Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the Florida Building Code, or the owner's authorized agent, shall submit to the floodplain administrator:

- (1) If a design flood elevation was used to determine the required elevation of the lowest floor, the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor; or
- (2) If the elevation used to determine the required elevation of the lowest floor was determined in accordance with section 5-34(C)(2) of this article, the documentation of height of the lowest floor above highest adjacent grade, prepared by the owner or the owner's authorized agent.

### **Sec. 5-41: Buildings, Structures and Facilities Exempt from the Florida Building Code, Final Inspection**

As part of the final inspection, the owner or owner's authorized agent shall submit to the floodplain administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations shall be prepared as specified in section 5-40 of this article.

### **Sec. 5-42: Manufactured Homes**

The floodplain administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this article and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted to the floodplain administrator.

### **Sec. 5-43: General (Construction Board of Adjustment and Appeals)**

The construction board of adjustment and appeals shall hear and decide on requests for appeals and requests for variances from the strict application of this article. Pursuant to F.S. § 553.73(5), the construction board of adjustment and appeals shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code.



#### **Sec.5-44: Appeals**

The construction board of adjustment and appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this article. Any person aggrieved by the decision may appeal such decision to the circuit court, as provided by Florida Statutes.

#### **Sec. 5-45: Limitations on Authority to Grant Variances**

The construction board of adjustment and appeals shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in section 5-49 of this article, the conditions of issuance set forth in section 5-50 of this article, and the comments and recommendations of the floodplain administrator and the building official. The construction board of adjustment and appeals has the right to attach such conditions as it deems necessary to further the purposes and objectives of this article.

#### **Sec. 5-46: Restrictions in Floodways**

A variance shall not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in this article.

#### **Sec. 5-47: Historic Buildings**

A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building Volume, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.

#### **Sec. 5-48: Functionally Dependent Uses**

A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this article, provided the variance meets the requirements of section 5-46, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

#### **Sec. 5-49: Considerations for Issuance of Variances**

In reviewing requests for variances, the construction board of adjustment and appeals shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this article, and the following:

- A. The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- B. The danger to life and property due to flooding or erosion damage;

- C. The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- D. The importance of the services provided by the proposed development to the community;
- E. The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- F. The compatibility of the proposed development with existing and anticipated development;
- G. The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- H. The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- I. The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- J. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

#### **Sec. 5-50: Conditions for Issuance of Variances**

Variances shall be issued only upon:

- A. Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this article or the required elevation standards;
- B. Determination by the construction board of adjustment and appeals that:
  - 1. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
  - 2. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
  - 3. The variance is the minimum necessary, considering the flood hazard, to afford relief;
  - 4. Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the office of the clerk of the court in such a manner that it appears in the chain of title of the affected parcel of land; and
  - 5. If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the floodplain administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25.00 for \$100.00

of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

#### **Sec. 5-51: Violations**

Any development that is not within the scope of the Florida Building Code but that is regulated by this article that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this article, shall be deemed a violation of this article. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this article or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.

#### **Sec. 5-52: Authority**

For development that is not within the scope of the Florida Building Code but that is regulated by this article and that is determined to be a violation, the floodplain administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.

#### **Sec. 5-53: Unlawful Continuance**

Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law per section 108.4.

#### **Sec. 5-54: Penalties for Violation of Chapter**

A failure to comply with the provisions of this chapter or any of its requirements, including conditions and safeguards established in connection with grants of variances, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon a finding of such violation, be fined not more than \$500.00 and shall pay all costs and expenses in the case. Each day a violation continues shall be considered a separate offense. Nothing contained in this section shall prevent Wellington from taking such other lawful action as is necessary to prevent or remedy any violation.

#### **Sec. 5-55: Scope**

Unless otherwise expressly stated, the following words and terms shall, for the purposes of this article, have the meanings shown in this section.

#### **Sec. 5-56: Terms Defined in the Florida Building Code**

Where terms are not defined in this article and are defined in the Florida Building Code, such terms shall have the meanings ascribed to them in that code.

#### **Sec. 5-57: Terms Not Defined**

Where terms are not defined in this article or the Florida Building Code, such terms shall have ordinarily accepted meanings such as the context implies.

#### **Sec. 5-58: Definitions**

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

**Appeal:** A request for a review of the floodplain administrator's interpretation of any provision of this article.

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

**Base Flood:** A flood having a 1% chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 202.] The base flood is commonly referred to as the "100-year flood" or the "1% annual chance flood."

**Base Flood Elevation:** The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the flood insurance rate map (FIRM).

**Basement:** The portion of a building having its floor subgrade (below ground level) on all sides. [See Florida Building Code, Building Volume, Section 202, "Basement (for flood loads)".]

**Design Flood:** The flood associated with the greater of the following two (2) areas:

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

**Design Flood Elevation:** The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to two (2) feet.

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

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

**Existing Building and Existing Structure:** Any buildings and structures for which the "start of construction" commenced before October 1, 1999.

**Existing Manufactured Home Park or Subdivision:** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before October 1, 1999.

**Expansion to an Existing Manufactured Home Park or Subdivision:** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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

**Flood or Flooding:** A general and temporary condition of partial or complete inundation of normally dry land from:

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

**Flood Damage-resistant Materials:** Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair.

**Flood Hazard Area:** The greater of the following two (2) areas:

- (1) The area within a floodplain subject to a 1% or greater chance of flooding in any year.
- (2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

**Flood Insurance Rate Map (FIRM):** The official map of the community on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study (FIS):** The official report provided by the Federal Emergency Management Agency that contains the flood insurance rate map, the flood boundary and floodway map (if applicable), the water surface elevations of the base flood, and supporting technical data.

**Floodplain Administrator:** The office or position designated and charged with the administration and enforcement of this article (may be referred to as the floodplain manager).

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

**Floodway:** The channel of a river or other riverine watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

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

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

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

**Highest Adjacent Grade:** The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

**Historic Structure:** Any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building Volume.

**Letter of Map Change (LOMC):** An official determination issued by FEMA that amends or revises an effective flood insurance rate map or flood insurance study. Letters of map change include:

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

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

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

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

**Light-Duty Truck:** As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds gross vehicular weight rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

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

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

**Manufactured Home:** A structure, transportable in one (1) or more sections, which is eight (8) feet or more in width and greater than 400 square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer."

**Manufactured Home Park or Subdivision:** A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

**Market Value:** The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this article, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established per the valuation data contained in the records of the Office of the Property Appraiser of Palm Beach County, Florida, or by a qualified independent appraiser, actual cash value (replacement cost depreciated for age and quality of construction), or tax assessment value.

**New Construction:** For the purposes of administration of this article and the flood resistant construction requirements of the Florida Building Code, structures for which the "start of construction" commenced on or after October 1, 1999 and includes any subsequent improvements to such structures.

**New Manufactured Home Park or Subdivision:** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after October 1, 1999.

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

**Recreational Vehicle:** A vehicle, including a park trailer, which is: [see in F.S. § 320.01)

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

**Special Flood Hazard Area:** An area in the floodplain subject to a 1% or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1—A30, AE, A99, AH, V1—V30, VE or V.

**Start of Construction:** The date of issuance of permits for new construction and substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns. Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part

of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Substantial Damage:** Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50% of the market value of the building or structure before the damage occurred.

**Substantial Improvement:** Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50% of the market value of the building or structure before the improvement or repair is started. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

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

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

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

## **Sec. 5-59: Design and Construction of Buildings, Structures and Facilities Exempt From the Florida Building Code**

Pursuant to this article, buildings, structures, and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings shall comply with the requirements of this article.

## **Sec. 5-60: Minimum Requirements**

Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

- A. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- B. All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- C. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.



### **Sec. 5-61: Subdivision Plats**

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

- A. Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats;
- B. Where the subdivision has more than 50 lots or is larger than five (5) acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with this article; and
- C. Compliance with the site improvement and utilities requirements of this article.

### **Sec. 5-62: Minimum Requirements**

All proposed new development shall be reviewed to determine that:

- A. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- B. All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- C. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

### **Sec. 5-63: Sanitary Sewage Facilities**

All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

### **Sec. 5-64: Water Supply Facilities**

All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

### **Sec. 5-65: Limitations on Sites in Regulatory Floodways**

No development, including but not limited to site improvements, and land disturbing activity involving fill or regrading, shall be authorized in the regulatory floodway unless the floodway encroachment analysis required in this article demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.

#### **Sec. 5-66: Limitations on Placement of Fill**

In Zone A, fill shall not be placed on land parcels of less than 10 acres in area. Subject to the limitations of this article and where permitted, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the Florida Building Code and ASTM D-698, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort.

#### **Sec. 5-67: General (Manufactured Homes)**

Manufactured homes shall not be placed in floodways. Where permitted, all manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to F.S. § 320.8249, and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this article.

#### **Sec. 5-68: Foundations**

All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that are designed in accordance with the foundation requirements of the Florida Building Code Residential Section R322.2 and this article. Foundations for manufactured homes subject to section 5-72 of this article are permitted to be reinforced piers or other foundation elements of at least equivalent strength.

#### **Sec. 5-69: Anchoring**

All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

#### **Sec.5-70: Elevation**

Manufactured homes that are placed, replaced, or substantially improved shall comply with section 5-71 or 5-72 of this article, as applicable.

#### **Sec. 5-71: General Elevation Requirement**

Unless subject to the requirements of this article, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A).

#### **Sec. 5-72: Elevation Requirements for Certain Existing Manufactured Home Parks and Subdivisions**

Manufactured homes that are not subject to section 5-71 of this article, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

- A. Bottom of the frame of the manufactured home is at or above the elevation required in the Florida Building Code, Residential Section R322.2 (Zone A); or
- B. Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 48 inches in height above grade.

### **Sec. 5-73: Enclosures**

Enclosed areas below elevated manufactured homes shall comply with the requirements of the Florida Building Code, Residential Section R322.2 for such enclosed areas.

### **Sec.5-74: Utility Equipment**

Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the Florida Building Code, Residential Section R322.

### **Sec. 5-75: Temporary Placement**

Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:

- A. Be on the site for fewer than 180 consecutive days; or
- B. Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

### **Sec. 5-76: Permanent Placement**

Recreational vehicles and park trailers that do not meet the limitations in this article for temporary placement shall meet the requirements of this article for manufactured homes.

### **Sec. 5-77: Underground Tanks**

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

### **Sec. 5-78: Above-ground Tanks, Not Elevated**

Above-ground tanks that do not meet the elevation requirements of this article shall be permitted in flood hazard areas provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

### **Sec.5-79: Above-ground Tanks, Elevated**

Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.

### **Sec. 5-80: Tank Inlets and Vents**

Tank inlets, fill openings, outlets and vents shall be:

- A. At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
- B. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

### **Sec. 5-81: General Requirements for Other Development**

All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this article or the Florida Building Code, shall:

- A. Be located and constructed to minimize flood damage;
- B. Meet the limitations of this article if located in a regulated floodway;
- C. Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
- D. Be constructed offload damage-resistant materials; and
- E. Have mechanical, plumbing, and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of the building code for wet locations.

### **Sec. 5-82: Fences in Regulated Floodways**

Fences in regulated floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of this article.

### **Sec. 5-83: Retaining Walls, Sidewalks and Driveways in Regulated Floodways**

Retaining walls, sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of this article.

### **Sec. 5-84: Roads and Watercourse Crossings in Regulated Floodways**

Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one (1) side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of section 5-65 of this article. Alteration of a watercourse that is part of a road or watercourse crossing shall meet the requirements of this article.

### **Sec. 5-85: Technical Amendments to the Florida Building Codes**

**Florida Building Code, Residential:** The following amendments to the Florida Building Code, Residential are hereby adopted:

**R322.2.1 Elevation requirements:**

1. Buildings and structures in flood hazard areas not designated as Coastal A Zones shall have the lowest floors elevated to or above the base flood elevation plus 1 foot or the design flood elevation, whichever is higher.
2. Reserved.
3. In areas of shallow flooding (AO Zones), buildings and structures shall have the lowest floor (including basement) elevated at least as high above the highest adjacent grade as the depth number specified in feet on the FIRM plus 1 foot, or at least 3 feet if a depth number is not specified.
4. Basement floors that are below grade on all sides shall be elevated to or above the base flood elevation plus 1 foot or the design flood elevation, whichever is higher.

Exception: Enclosed areas below the design flood elevation, including basements whose floors are not below grade on all sides, shall meet the requirements of Section R322.2.2.

**R408.7 Flood Resistance:** For buildings located in flood hazard areas as established in Table R301.2(1):

1. Walls enclosing the under-floor space shall be provided with flood openings in accordance with Section R322.2.2.
2. The finished ground level of the under-floor space shall be equal to or higher than the outside finished ground level on at least one (1) side.

**Florida Building Code, Building:** The following amendments to the Florida Building Code, Building are hereby adopted:

**1805.1.2.1 Flood Hazard Areas:** For buildings and structures in flood hazard areas as established in Section 1612.3, the finished ground level of an under-floor space such as a crawl space shall be equal to or higher than the outside finished ground level on at least one (1) side.

## **CHAPTER 6 - CABLE COMMUNICATION**

### **ARTICLE I - CABLE TELEVISION**

#### **Sec. 6-1: Short Title**

This chapter shall be known, and may be cited, as the Wellington Cable Television Ordinance.

#### **Sec. 6-2: Definitions**

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined herein or in any franchise agreement that might be granted hereunder shall be given the meaning set forth in the Communications Act of 1934, as amended, 47 U.S.C. § 521 et seq., and as hereinafter amended (collectively the "Communications Act"), and, if not defined therein, their common and ordinary meaning.

**Access Channel:** Any channel on a cable system set aside without charge by the franchisee for public, educational and/or local governmental use.

**Affiliate:** Any person who owns or controls, is owned or controlled by, or is under common ownership or control with a franchisee.

**Applicant:** Any person submitting an application as defined herein.

**Application:** Any proposal, submission or request to:

1. Construct and operate a cable system within Wellington;
2. Sell, assign or otherwise transfer a franchise or transfer control of the franchisee;
3. Renew a franchise;
4. Modify a franchise; or
5. Seek any other relief from Wellington pursuant to this chapter, a franchise agreement, the Cable Communications Act, or other applicable law. An application includes an applicant's initial proposal, submission or request, as well as any/all subsequent written amendments or supplements to the proposal and relevant correspondence.

**Basic Cable Service or Basic Service:** Any service tier that includes the retransmission of local television broadcast signals, and public, educational, or governmental access channels.

**Communications Act:** The Communications Act of 1934, and amendments including, but not limited to Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq., and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, and the Telecommunications Act of 1996, as may be amended.

#### **Cable Service:**

1. The one-way transmission to subscribers of:

- a. Video programming service; or
  - b. Other programming service; and
2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, or as otherwise permitted under applicable federal and state law.

**Cable System, Cable Television System, or System:** Any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service that includes video programming and which is provided to multiple subscribers within Wellington. Such term does NOT include:

1. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
2. A facility that serves subscribers without using any public rights-of-way;
3. A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility will be considered a cable system to the extent it is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on demand service;
4. An open video system that complies with Section 653 of the Telecommunications Act of 1996; and
5. Any facilities of any electric utility used solely for operating as an electric utility system. The foregoing definition of "cable system" shall not be deemed to circumscribe the valid authority of Wellington to regulate the activities of any other communications system or provider of communications services or facilities as permitted by applicable federal or state law.

**Control of a Franchisee or Applicant:** Possession of the ability to direct, or cause the direction of the, management or policies of a franchisee or applicant, or the operation of a franchisee's cable system, either directly or indirectly, whether through ownership of voting securities, by contract or understanding, or in any other manner.

**Fair Market Value:** The price that a willing buyer would pay to a willing seller for a going concern but with no value allocated to the franchise itself.

**FCC:** The Federal Communications Commission or any successor governmental entity thereto.

**Franchise:** The nonexclusive right granted by Wellington to a franchisee in a franchise agreement to construct, maintain and operate a cable system to provide cable services under, on, and over streets, roads and any other public ways, rights-of-way, or easements within all, or specified, areas of Wellington. The term does not include any license or permit that may be required by this chapter or other laws, ordinances or regulations of Wellington for the privilege of transacting and carrying on a business within Wellington or for disturbing or carrying out any work on any street.

**Franchise Agreement:** A contract entered into in accordance with the provisions of this chapter between Wellington and a franchisee that sets forth the terms and conditions under which the franchise will be exercised.

**Franchise Area:** The entire area within the legal boundaries of Wellington, and other areas that may hereinafter be annexed or incorporated by Wellington, or alternatively, that area designated in a franchise agreement.

**Franchisee:** Any person granted a franchise pursuant to this chapter who has entered into a franchise agreement with Wellington.

**Gross Revenues:** As of the effective date of this chapter, the provisions of this definition are preempted pursuant to the Communications Service Tax Ch. 202, Florida Statutes and will remain preempted until such time as applicable law changes. Should applicable law change to allow Wellington to calculate franchise fees as a percentage of gross revenues, gross revenues shall mean, unless prohibited by applicable federal or state law, or as otherwise provided in a franchise agreement, all revenues recognized according to generally accepted accounting principles (GAAP) generated by the franchisee from the operation of the cable system to provide cable services in Wellington. Notwithstanding anything to the contrary contained in this subsection, gross revenues include, but are not limited to, fees charged subscribers for basic service; fees charged subscribers for any optional, premium, per-channel, or per-program service; fees charged subscribers for any tier of service other than basic service; installation, disconnection, reconnection, and change-in-service fees; late fees; leased access fees; and shall include the following services to the extent such services are considered Title VI services according to applicable law: revenue from cable service converters, cable service remotes, or any other cable service equipment rentals; revenues from cable guides; revenues from leases of the cable system; advertising revenues allocable to Wellington, based on a percentage of subscribers in Wellington divided by the subscribers in the cable system (such percentage shall then be multiplied by the total advertising revenue of the cable system to determine the allocable gross revenue stemming from advertising); and revenues from home shopping channels or other sources allocable to Wellington, provided that where certain home shopping channel or other such revenue is allocable to more than one (1) franchise area due to common zip codes, the franchisee shall allocate the percentage of revenue to Wellington that is equivalent to the percentage of the subscribers of Wellington divided by the total subscribers for the allocable franchises within the zip code. Unless prohibited by applicable law, gross revenues shall be the basis for computing the franchise fee imposed pursuant to section 6-17 hereof. Gross revenues shall not include revenues received from programmers and used by franchisee to market, promote, or advertise a programming service; any revenue received by franchisee for payment in connection with PEG access or facilities as required by section 22-46 hereof; any taxes or fees on services furnished by the franchisee that are imposed upon any subscriber or user by the state, Palm Beach County, Wellington, or other governmental unit and collected by the franchisee on behalf of such governmental unit and that the franchisee passes on in full to the applicable authority. However, it is hereby expressly provided that franchise fees shall be included in the calculation of gross revenues. Further, franchise fees shall not be paid on subscriber deposits unless and until such deposits are applied to a customer account for services rendered.

**Institutional Network:** A communications system constructed, or operated by the franchisee for Wellington, the transmissions on which are generally available only to, and intended to be sent and received by, persons other than residential cable subscribers generally.

**Interconnection:** The electronic connection of two (2) or more cable systems for the purpose of sharing access channel programming.

**Law:** All duly enacted and applicable federal, state, county and Wellington laws, ordinances, codes, rules, regulations and orders.

**Leased Access Channel:** A channel designated in accordance with Section 612 of the Communications Act, 47 U.S.C., § 532, for commercial use by persons unaffiliated with the franchisee.



**Overbuild:** A cable system constructed to serve subscribers in an area of Wellington actually served by an existing franchised cable system.

**Person:** Any individual, corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof, but shall not mean Wellington unless required by applicable federal or state law.

**Service Tier:** A category of cable service provided by a franchisee and for which a separate charge is made by the franchisee.

**State of the Art:** Level of technical performance, equipment, components and cable services (without reference to the content of the cable service) that has been developed and demonstrated to be generally accepted and used in the cable industry, excluding "tests" involving new products offered for one (1) year or less. Nothing herein shall be construed to require a franchisee to employ any specific transmission technology or to carry any particular programming services.

**Street or Streets:** The surface, the air space above the surface, and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which Wellington holds any kind of property interest, or over which Wellington exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily necessary and pertinent to construct and operate a cable system.

**Subscriber:** Any person who lawfully receives cable service delivered over the cable system. Any person who lawfully receives cable service but is not billed on an individual basis shall not be considered a subscriber for the purpose of rate notification.

**Subscriber Base:** The total number of residential and commercial subscribers within Wellington. For purposes of calculating subscribers under bulk contracts, the franchisee shall count each individual unit served as one (1) subscriber. Franchisee may use any lawful and reasonable equivalency measures provided it uses such measures uniformly for all franchise areas served by the cable system, or as provided for in a franchise agreement.

**System Malfunction:** Any cable system equipment, facility, or signal failure/malfunction that results in the loss of satisfactory service on one (1) or more channels to one (1) or more subscribers. A malfunction is major if it affects 200 or more subscribers.

**Transfer of a Franchise:** Any transaction in which:

1. Any ownership, or other interest, in a franchisee or its cable system is transferred from one (1) person or group of people to another person or group of people so that control of a franchisee or control of franchisee's cable system is transferred; or
2. The rights and/or obligations held by a franchisee under a franchise agreement are transferred or assigned to another person, group of people, or entity. A transfer shall be considered "pro forma" only when it involves a transfer to a person, group of people, or business entity that is a wholly owned or controlled affiliate or subsidiary of the franchisee or franchisee's parent entity and shall not result in a change in the ultimate parental control or ownership of the franchisee.

**Two-way Capability:** The incorporation into a cable system of all appropriate design and engineering characteristics and features so that two-way transmission, including, but not limited to, addressability, over the cable system can be implemented and activated.

**Video Channel or Channel:** A portion of the electromagnetic frequency spectrum that is used in a cable system and that is capable of delivering a television channel, including the associated audio signal, as television channel is defined by the FCC by regulation or otherwise.

**Village:** Wellington, Florida, a municipal corporation of the State of Florida, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

### **Sec. 6-3: Purpose and Intent**

- A. It is the purpose and intent of Wellington, and the purpose of this chapter, is to promote the public health, safety, and general welfare by providing for the grant of one (1) or more franchises for the construction and operation of a cable system within Wellington; to provide for the regulation, to the extent provided for by law, of each cable system within Wellington in the public interest; to provide for the payment of fees and other valuable consideration by a franchisee to Wellington for the use of streets by its cable system; to promote the widespread availability of quality cable service to Wellington residents and businesses, Wellington, and other public institutions; to encourage the development of cable and other communications technology and cable systems as a means of communication between and among members of the public, Wellington businesses, Wellington, and other public institutions; to promote competitive cable rates and cable services; to promote the safe and efficient use of Wellington streets; to enhance and maximize the communicative potential of streets used by cable systems; and to encourage the provision of a diversity of information sources to Wellington residents, businesses, the community, Wellington, and other public institutions by cable technology.
- B. Recognizing the continuing development of communications technology and uses, it is the policy of Wellington to encourage experimentation and innovation in the development of cable system uses, services, programming and techniques that will be of general benefit to the community to the extent all such experiments and innovations are consistent with applicable laws.

### **Sec.6-4: Grant of Authority, Franchise Required**

- A. Wellington may grant one (1) or more franchises in accordance with this chapter.
- B. No person may construct or operate a cable system over, on, or under public streets in Wellington without a franchise granted by Wellington, and no person may be granted a cable television franchise without having entered into a franchise agreement with Wellington pursuant to this chapter.
- C. Unless otherwise authorized by applicable law, any franchise granted pursuant to this chapter is solely for the provision of cable service. Nothing herein shall:
  - 1. Have the effect of authorizing, prohibiting or conditioning a franchisee's provision of other services as may be permitted by applicable federal or state law; or
  - 2. Waive any right of Wellington, if any, to require a franchisee to obtain other authorizations, licenses, permits or registrations as Wellington may require under applicable federal or state law.

## **Sec. 6-5: Franchise Characteristics**

- A. A franchise authorizes use of Wellington streets for installing cables, wires, lines, optical fiber, underground conduit, ducts, conductors, amplifiers, vaults, and other facilities as necessary and pertinent to operate a cable television system within a specified area of Wellington, but does not expressly or implicitly authorize the franchisee to provide service to, or install cables, wires, lines, underground conduit, or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Communications Act, 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.
- B. A franchise is nonexclusive and will not expressly or implicitly preclude the issuance of other franchises to operate cable systems within Wellington, or affect Wellington's right to authorize use of Wellington streets to other persons to operate cable systems or for other purposes as it determines appropriate.
- C. All privileges prescribed by a franchise shall be subordinate to any prior lawful occupancy of the streets, and Wellington reserves the right to reasonably designate where a franchisee's facilities are to be placed within the streets. Such designation may include, but not be limited to, consideration of the availability of space in the rights-of-way.
- D. No transfer, whether by sale, assignment or change of control of a franchise shall occur without the prior consent of Wellington and unless application is made by the franchisee, and Wellington approval obtained, pursuant to section 6-24 hereof and the franchise agreement.
- E. A franchise granted to an applicant pursuant to this chapter to construct, operate, and maintain a cable system within Wellington, shall be deemed to constitute both a right and an obligation on the part of the franchisee to provide the services and facilities of a cable system as required by the provisions of this chapter and the franchise agreement. The franchise agreement shall constitute all of the terms and conditions of the franchise that are finally negotiated and agreed upon by Wellington and franchisee.
- F. Notwithstanding anything to the contrary, in the event that franchisee, its parent, affiliate or subsidiary elects to offer to subscribers video programming services through any means or method not included within the definition of a cable system, including, but not limited to, all "open video systems", franchisee shall remain subject to all terms and conditions of the cable television franchise granted pursuant to this chapter.

## **Sec. 6-6: Franchisee Subject to other Laws; Police Power; No Waiver**

- A. A franchisee, shall at all times, be subject to and shall comply with all applicable federal, state and Wellington laws. A franchisee shall at all times be subject to all lawful exercise of the police power of Wellington, the eminent domain power of Wellington and any other powers granted Wellington by the Constitution of the State of Florida.
- B. Subject to applicable law, except as may be specifically provided in this chapter or under the terms of a franchise agreement, the failure of Wellington, upon one (1) or more occasions, to exercise a right or to require compliance or performance under this chapter or a franchise agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance.

## **Sec.6-7: Interpretation of Franchise Terms**

- A. The provisions of this chapter shall apply to all cable franchises.

- B. The provisions of this chapter shall, throughout the term of a franchise, apply to a franchise agreement as if fully set forth in the franchise agreement, and the express terms of this chapter shall prevail over conflicting or inconsistent provisions in a franchise agreement unless such franchise agreement expressly provides otherwise.
- C. Except as to matters that are governed by federal law or regulation, a franchise agreement will be governed by and construed in accordance with the laws of the State of Florida.

#### **Sec. 6-8: Applications for Grant, Renewal, Modification or Transfer of Franchises**

- A. A written application shall be filed with Wellington for:
  - 1. Grant of an initial franchise;
  - 2. Renewal of a franchise in accordance with Section 626 (a-g) of the Communications Act, 47 U.S.C., § 546;
  - 3. Modification of a franchise agreement;
  - 4. Transfer of a franchise; or
  - 5. Any other relief from Wellington pursuant to this chapter or a franchise agreement.
- B. Unless prohibited by applicable law, to be acceptable for filing, a signed original of the application shall be submitted together with five (5) copies, and shall be accompanied by the required application filing fee as set forth in this subsection, conform to any applicable request for proposals, and contain all reasonably required information. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application. Wellington manager may waive submission of certain information required herein upon request of the applicant for good cause shown.
- C. All applications accepted for filing shall be made available by Wellington for public inspection. Where said application contains information designated in writing by the applicant as proprietary, Wellington shall not make such information available to the public to the extent it is permitted to keep the information confidential pursuant to applicable law.
- D. An application for the grant of a new franchise may be filed pursuant to a request for proposals issued by Wellington on an unsolicited basis. Wellington, upon receipt of an unsolicited application, may issue a request for proposals. If Wellington elects to issue a request for proposals upon receipt of an unsolicited application, the applicant may submit an amended application in response to the request for proposals, or may inform Wellington that its unsolicited application should be considered in response to the request for proposals, or may withdraw its unsolicited application. An application that does not conform to the requirements of a request for proposals may be considered nonresponsive and denied on that basis.
- E. An application for the grant of an initial franchise, a transfer or change of control or a renewal shall contain, at minimum, the following information unless expressly waived in part by Wellington or as otherwise provided in a franchise agreement:
  - 1. Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of all persons with 10% or more ownership interest in the applicant, including the names and addresses of parents or subsidiaries holding such ownership interests directly or indirectly; the persons who control the applicant; the names

and addresses of all officers and directors of the applicant; and any other cable system ownership interest in excess of 10% of each named person (other than the officers and directors of the applicant); provided that for an application for a renewal of a franchise, the information regarding cable system ownership shall be provided upon written request of Wellington.

2. An indication of whether the applicant, or any person controlling the applicant, or any officer, director, or person with 5% or more ownership interest in the applicant, has been adjudged bankrupt, had a cable or telecommunications franchise or license revoked, or been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances;
3. A demonstration of the applicant's technical, legal, and financial ability to construct and/or operate the proposed cable system, including identification of key personnel to the extent known;
4. For an application for an initial franchise, or when requested in the case of a transfer or a renewal, a statement prepared by an independent certified public accountant regarding the applicant's financial ability to complete the construction and operation of the cable system proposed;
5. A description of the applicant's prior experience in cable system ownership, construction and operation, and identification of communities in Florida (or if applicant does not own any systems in Florida, identification of the 20 largest franchise areas served by applicant or its affiliates) which the applicant or any person controlling the applicant or having more than a 5% ownership interest in applicant has, or has had, a cable franchise or license or any interest therein;
6. Identification of the area of Wellington to be served by the proposed cable system, including a description of the service area's boundaries;
7. A description of the services and physical facilities proposed, or in the case of a transfer or renewal, any changes to the current physical facilities, including channel capacity, performance characteristics, headend, and access facilities; upon request, the applicant shall make information on technical design available for inspection;
8. Where applicable, a description of the construction of the proposed cable system, including an estimate of plant mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;
9. If applicant is currently operating a cable system within Wellington, a description of the existing cable system and capacity and the operator's plans to upgrade the cable system, if any;
10. If applicant or applicant's parent, or any subsidiary or affiliate of applicant is currently operating a SMATV system within Wellington, a list of all such locations;
11. For an initial grant or in the case of a renewal or transfer and upon written request of Wellington for informational purposes, the proposed rate structure, including projected charges for each service tier, installation, converters, and other equipment or services, and the applicant's ownership interest in any proposed cable services to be delivered over the cable system;

12. An application for a renewal shall also include a demonstration of how the applicant's proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for Wellington;
  13. Upon written request of Wellington, and for information purposes only, a description of any non-cable telecommunications services offered or proposed to be offered by the applicant or its parent, affiliate or subsidiary in Palm Beach County.
  14. Pro forma financial projections for the first five (5) years of the franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules. In the case of a transfer, such pro forma financial plan shall be provided if the transferee or its parent is not a publicly traded company;
  15. If an applicant for an initial franchise proposes to provide cable service to an area already served by an existing cable franchisee, the identification of the area where the overbuild would occur, the potential subscriber density in the area which would encompass the overbuild, and the ability of the streets to accommodate an additional system;
  16. Upon written request of Wellington, any other information as may be reasonably necessary to demonstrate compliance with the requirements of this chapter and information that Wellington may reasonably request of the applicant in a timely manner that is relevant to Wellington's consideration of the application; and
  17. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the proposal meets all federal and state law requirements.
- F. An application for modification of a franchise agreement shall include, at minimum, the following information:
1. The specific modification requested;
  2. The justification for the requested modification, including the financial impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved;
  3. A statement whether the modification is sought pursuant to Section 625 of the Communications Act, 47 U.S.C., § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;
  4. Any other information necessary for Wellington to make an informed determination on the application for modification; and
  5. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.
- G. An application for renewal of a franchise shall comply with the requirements of section 22-53 hereof.
- H. An application for approval of a transfer of a franchise shall comply with the requirements of section 22-54 hereof.

- I. Unless prohibited by applicable law, to be acceptable for filing, an application shall be accompanied by a filing fee in the following amount, as appropriate:

1. For a new or initial franchise:	\$25,000.00
2. For renewal of a franchise:	\$20,000.00
3. For a transfer of a franchise (other than a pro forma transfer):	\$5,000.00
4. For a pro forma transfer of a franchise:	\$1,000.00
5. For modification of a franchise agreement pursuant to 47 U.S.C. § 545:	\$1,000.00
6. For any other relief:	\$500.00

The purpose of the filing fee is to defray a portion of Wellington's cost in processing an application. The filing fee is intended to be a charge incidental to the awarding, or enforcing, of a franchise within the meaning of Section 622(g)(2)(D) of the Communications Act, 47 U.S.C. § 542(g)(2)(D) and may not be deducted from the franchise fee imposed in a franchise agreement or credited against any tax, including, but not limited to, the Florida Communications Service Tax (Ch. 202, F.S.) or any substitute tax/fee, unless required by applicable law.

#### **Sec.6-9: Grant of Franchises**

- A. Wellington may grant a cable franchise for a period not to exceed 15 years plus such extensions as may be approved by Wellington to serve Wellington.
- B. In evaluating an application for a franchise, Wellington may, if applicable, and if required by applicable federal or state law, shall consider, among other things, the following factors: the applicant's technical, financial, and legal qualifications to construct and operate the proposed system; the adequacy of the proposed construction arrangements, facilities, equipment, and services based on the public convenience, safety and welfare; the applicant's experience in constructing and operating cable systems and providing cable service in other communities. In the case of an initial grant, Wellington shall also consider the economic impact upon private property within the franchise area; the public need for such franchise, if any; the capacity of public rights-of-way to accommodate the cable system; the present and future use of the public rights-of-way to be used by the cable system; the potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public; the financial ability of the franchise applicant to perform; and whether the proposal will meet reasonably anticipated community needs and serve the public interest. Evaluation by Wellington shall not be based on the content of the programming the applicant proposes to provide.
- C. Wellington shall hold a public hearing to consider an application or applications; the applicant(s) shall be given at least ten days' prior notice of the hearing and shall be given an opportunity to be heard. Based upon the application(s), the testimony presented at the public hearing, any recommendations of Village Manager or staff, and any other information relevant to the application(s), Wellington's Council shall decide by resolution whether to grant or deny a franchise application.
- D. As a condition precedent to the grant of a franchise, the applicant shall file an acceptance of the franchise accompanied by any/all bonds, certificates of insurance, or other obligations as required in a franchise agreement no later than the date of Wellington's Council consideration of the grant or denial of the application. This period may be extended for good cause by Wellington. If the acceptance is not filed with Wellington by the above-referenced date, or if the period is not extended by Wellington, the Council may delay consideration of the application or deny the application. Wellington may, at their discretion, grant the applicant a short-term extension(s). The grant of such a short-term extension(s) will not confer on the applicant the right to an automatic

acceptance, transfer, modification, or renewal. In the case of a transfer, Wellington shall grant an extension to this requirement as long as the franchisee keeps such insurance, bonds, or other surety in place until 30 days after the transaction related to the transfer closes and the transferee has provided its insurance, bonds or other surety in place within 30 days following such closing.

- E. Unless prohibited by applicable law, applications for the grant of an initial franchise, a franchise renewal, a franchise agreement modification, or a franchise transfer may be subject to a processing fee in addition to the filing fee in an amount not to exceed the reasonable and justifiable out-of-pocket costs to the extent that the filing fee does not cover the costs incurred by Wellington in considering the application, including consulting and legal costs. Prior to the date of the resolution approving or denying the franchise agreement or modification or transfer thereof by Wellington Council, Wellington shall notify the franchisee of the estimated amount of any processing fee and its method of calculation. This processing fee is therefore intended to be a charge incidental to the awarding or enforcing of a franchise within the meaning of Section 622(g)(2)(D) of the Communications Act, 47 U.S.C. § 542(g)(2)(D), and may not be deducted from the franchise fee imposed in a franchise agreement or any federal or state tax and shall not be passed through to subscribers as a separate line item unless required by applicable law.

### **Sec. 6-10: Commencement of Service**

Any franchisee commencing initial construction of a cable television system after the effective date of this chapter shall commence construction within one (1) year of the effective date of the franchise agreement and shall complete construction so as to offer service to all dwellings within the franchise area in compliance with the requirements of a franchise agreement, but in no event later than two (2) years from the effective date of the franchise agreement unless an extension is granted by Wellington for good cause shown.

### **Sec. 6-11: Insurance; Surety; Indemnification**

- A. A franchisee shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain, throughout the entire term of the franchise including any renewals thereof, the following liability insurance coverage insuring Wellington to the extent applicable and the franchisee: worker's compensation and employer liability insurance to meet all requirements of Florida law and commercial general liability insurance with contractual coverage with respect to the construction, operation and maintenance of the cable system, and the conduct of franchisee's business in Wellington, in the minimum amounts of \$1,000,000.00 per occurrence, for bodily injury or death, broad form property damage liability, and insurance to cover infringement of copyrights.
- B. All insurance policies shall be with insurance companies authorized to do business in the State of Florida and such companies shall have a minimum Best's Rating of A-1, or an equivalent rating. Wellington may require coverage and amounts in excess of the above minimums, where necessary, to reflect changing liability exposure and limits or where required by law.
- C. A franchisee shall keep on file, with Wellington, certificates of insurance evidencing the above insurance coverage and evidencing that Wellington, its officers, boards, Council, agents and employees are listed as additional insureds on the general liability policy. If a claim is filed, such that Wellington claims insurance coverage, franchisee shall immediately respond to all reasonable requests by Wellington for information with respect to the scope of the insurance coverage.
- D. All general liability insurance policies shall provide that any cancellation or reduction in coverage shall not be effective unless 30 days' prior written notice thereof has been given to Wellington. A franchisee shall not cancel any required insurance policy without submission of proof that the franchisee has obtained alternative insurance satisfactory to Wellington that complies with this chapter.



- E. A franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend Wellington, its officials, boards, Council, agents, and employees, against any/all claims, suits, causes of action, proceedings, judgments for damages, or equitable relief and costs and expenses arising out of the willful or negligent acts or omissions of the franchisee or its officers, agents, employees or contractors relating to construction, maintenance or operation of its cable system and the conduct of franchisee's business in Wellington; provided, however, that franchisee's obligation hereunder shall not extend to any claims caused by the willful misconduct or negligence of Wellington, its officials, boards, Council, agents, or employees, or to claims arising from franchisee's provision of access channels for public, educational and/or governmental use pursuant to a franchise granted hereunder, to the extent such claims relate to programming and content on such channels, over which franchisee has no editorial control nor exercises administrative control. This provision includes, but is not limited to, Wellington's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceedings, and claims arising out of copyright infringement or a failure by the franchisee to secure consents from the owners, authorized distributors, or providers of programs to be delivered by the cable system, claims arising out of Section 638 of the Communications Act, 47 U.S.C. 558, and claims against the franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any person, firm or corporation. If any such claim arises, the franchisee shall have the obligation and duty to defend Wellington and any other indemnified party hereunder; provided, however, franchisee may not agree to any settlement of claims affecting Wellington without Wellington attorney's approval. If Wellington attorney finds that separate representation to fully protect the interests of Wellington is necessary, franchisee shall consult with Wellington attorney on counsel that is acceptable to Wellington attorney. If franchisee is unwilling or unable to select counsel acceptable to Wellington attorney, whose acceptance shall only be withheld for good cause shown, franchisee shall pay all actual and reasonable expenses incurred by Wellington in defending itself with regard to any action, suit or proceeding subject to this indemnification. Wellington's expenses shall include all out of pocket expenses, attorney's fees and costs of Wellington attorney or assistants, or any Wellington employees, outside attorneys or other agents. Notwithstanding the foregoing, franchisee shall not be required to indemnify Wellington pursuant to this chapter or a franchise agreement for actions relating to public, government and education access programming decisions outside of franchisee's control or for Wellington's use of the cable system or the use of public, government and education access channels, facilities or funding.

#### **Sec. 6-12: Security Fund**

- A. The franchisee, at its sole expense, shall post, and keep posted, with Wellington a cash security deposit or non-revocable letter of credit or surety bond in a form and in an amount approved by Wellington to be used to ensure the franchisee's faithful performance of and compliance with all terms and provisions of this chapter, the franchise agreement and other applicable law, compliance with all orders, permits, and directions of Wellington, the payment by the franchisee of any claims, liens, fees, or taxes due Wellington that arise by reason of the construction, operation, or maintenance of the system. The security fund shall remain in effect for the full term of the franchise plus, at minimum, an additional six (6) months thereafter. The exact form and amount of the security fund as set forth in a franchise agreement shall be an amount necessary to protect the public, to provide adequate incentive to the franchisee to comply with this chapter and the franchise agreement, and to enable Wellington to effectively enforce compliance therewith. The franchise agreement shall provide for the procedures to be followed with respect to the security fund.
- B. The franchisee and its surety shall be jointly and severally liable.
- C. The form and conditions of the bonds and/or surety shall be acceptable and satisfactory to Wellington and the surety shall be a nationally recognized surety company acceptable to

Wellington, listed on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" as published in circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All bonds shall be placed with sureties with a Best Rating of no less than A-VII. Bonds shall be executed and issued by a resident agent, licensed and having an office in Palm Beach, Dade, Broward, or Martin Counties, Florida, representing such corporate sureties. If the franchisee is a partnership, each individual partner shall sign the bond; if a corporation, the bond should be signed in the correct corporate name by duly authorized officer, agent or attorney-in-fact. There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts in the franchise.

- D. If the surety on any bond furnished by franchisee is declared bankrupt, becomes insolvent, or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of this section, franchisee shall within 10 days thereafter substitute another bond, surety or cash deposit which must be in conformance with section.
- E. The security fund shall be maintained at the amount specified in a franchise agreement, even if amounts have to be withdrawn and replenished pursuant to this section.
- F. Following a determination by Wellington pursuant to section 6-25 that the franchisee has failed to comply with any provision of the franchise agreement which Wellington reasonably determines can be remedied by demand on the security fund, Wellington may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, Wellington shall notify the franchisee of the amount and the date thereof.
- G. Within 30 days after notice to it that any amount has been withdrawn from the security fund deposited pursuant to this section, the franchisee shall pay to, or deposit with, Wellington a sum sufficient to restore such security fund to the amounts specified in this section, whatever the case may be. Failure to replenish the security fund shall subject the franchisee to penalties. However, replenishment is without prejudice to the franchisee's right under section 6-25 to contest the validity of Wellington's withdrawal of money from the security fund.
- H. The rights reserved to Wellington with respect to the security fund posted pursuant to this section are in addition to all other rights and remedies Wellington may have under this chapter, the franchise agreement, or at law or equity, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right or remedy of Wellington.
- I. The portion of the security fund deposited pursuant to this section necessary to compensate Wellington for damages and costs sustained shall become the property of Wellington in the event that the franchise is canceled or terminated due to the default of the franchisee. The franchisee, however, shall be entitled to the return of such security fund, or portion thereof less any amount in dispute, without interest, as remains on deposit with Wellington six (6) months after the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the franchisee.

### **Sec. 6-13: Construction Bond**

- A. A franchise agreement shall provide that, prior to any cable system construction, upgrade, rebuild or other significant work in the public rights-of-way, a franchisee shall establish in Wellington's favor a construction bond in an amount specified in the franchise agreement or other authorization as determined by Wellington to ensure the franchisee's faithful performance of construction of the cable system, upgrade, rebuild or other work in the public rights-of-way.

- B. The form and conditions of the bonds and the surety shall be acceptable and satisfactory to Wellington and surety shall be a nationally recognized surety company acceptable to Wellington, listed on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" as published in circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, all bonds shall be placed with sureties with a Best Rating of no less than A-VII. Bonds shall be executed and issued by a resident agent, licensed and having an office in Palm Beach, Dade, Broward, or Martin Counties, Florida, representing such corporate sureties. If the franchisee is a partnership, each individual partner shall sign the bond; if a corporation, the bond should be signed in the correct corporate name by duly authorized officer, agent or attorney-in-fact. There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts in the franchise.
- C. If the surety on any bond furnished by franchisee is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida, or it ceases to meet the requirements of this section, franchisee shall within 10 days thereafter substitute another bond, surety, or cash deposit, which must be in conformance with this section.
- D. In the event a franchisee subject to such a construction bond fails to complete the cable system construction, upgrade, rebuild, or other work in the public rights-of-way in a safe, timely, and competent manner in accordance with the provisions of the franchise agreement, then there shall be recoverable jointly and severally from the principal or surety of the bond, any damages or loss suffered by Wellington as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the franchisee, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. Wellington may also recover against the bond any amount recoverable against the security fund pursuant to section 6-13 where such amount exceeds that available under the security fund.
- E. The franchise agreement may specify that 60 days after completion of the cable system construction, upgrade, rebuild, or other work in the public rights-of-way and payment of all construction obligations of the cable system, the franchisee may eliminate the bond or reduce its amount, unless Wellington has made a demand against the deposit or notified franchisee of a potential claim and requested maintenance of the security. However, Wellington may subsequently require the reestablishment of, or an increase in, the bond amount for any subsequent construction, upgrade, rebuild, or other work in the public rights-of-way.
- F. The construction bond shall be subject to the approval of Wellington engineer and Wellington attorney, and shall provide that:
- "This bond may not be canceled, or allowed to lapse, until ninety (90) days after receipt by Wellington, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."*
- G. The rights reserved by Wellington with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies Wellington may have under this chapter, the franchise agreement, or at law or equity, and no action, proceeding or exercise of a right with respect to such bond shall effect any other right or remedy of Wellington.

## **Sec. 6-14: Minimum Facilities and Services**

The following minimum requirements for facilities and services apply to all franchises granted by Wellington. Wellington may require in a franchise agreement that a franchisee exceed these minimum requirements where it determines, under circumstances existing at the time of the application, that the additional

requirements are necessary to meet Wellington's future cable-related needs and interests or to serve the public interest.

- A. Any cable system constructed, upgraded, reconstructed, or rebuilt after the effective date of this chapter shall have a minimum capacity of 750 MHz or the equivalent thereof available for immediate or potential use. A franchise agreement may provide for a larger minimum capacity requirement.
- B. Wellington shall require in a franchise agreement that a franchisee provide access channels, facilities and other support for public, educational and/or governmental use, which may include, but not be limited to, provision of an institutional network.
- C. Wellington may require any cable system operating pursuant to a franchise to cablecast Wellington's Council meetings live to all subscribers.
- D. A cable system shall provide leased access channels as required by federal law.
- E. Unless otherwise provided in a franchise agreement, a franchisee shall provide no less than one (1) cable service outlet per location to all Wellington buildings (regardless of whether such facilities are owned or leased by Wellington) and all public schools within its franchise area not already served by another franchised cable operator at no cost to Wellington or school involved, and shall charge not more than its time and material costs for any additional service outlets or equipment provided to such facilities.
- F. Franchisee shall, at minimum, meet all FCC requirements for emergency alert systems.
- G. A franchisee shall transmit all imbedded signals, including closed circuit captioning information for the hearing impaired and audio signals for the visually impaired.
- H. Standard installation shall consist of a drop, not exceeding 125 feet from the cable plant to the nearest entry point of a subscriber's residence. Residential drops in excess of 125 feet may be charged according to the franchisee's rate schedule.
  - 1. Notwithstanding anything to the contrary, a franchisee may not be required by Wellington to provide cable service to any area already served by a franchised cable operator.
  - 2. In the event a franchisee lawfully operating in a franchise area that is less than the entire Wellington desires to provide service to an area of Wellington already being served by a franchised cable operator, then the franchisee wishing to expand service shall agree to construct and operate its cable system on terms no more favorable and no less burdensome than those pursuant to which the existing operator is subject.
  - 3. A franchisee shall interconnect its PEG access channels with the PEG access channels of any adjacent cable systems owned by or affiliated with franchisee if such interconnection is technically and economically feasible. Upon the written request of Wellington and as required in a franchise agreement, franchisee shall interconnect its PEG access channels to any or all other cable systems operating within Wellington for the purpose of transmitting PEG programming if:
    - a. Such interconnection is technically feasible;
    - b. The costs of such interconnection shall be shared among franchisees on an equitable basis; and
    - c. Such other operator(s) provide funding for PEG access equivalent to the amount provided by franchisee.

4. A franchisee shall locate each government access channel on the same channel number throughout Wellington.
5. In an initial or renewal franchise granted pursuant to this chapter, a franchisee shall agree to maintain that level of technology to its cable system to satisfy the state-of-the-art requirement, as defined in section 6-2 herein subject to qualifications, conditions, and terms that may be expressly identified in a franchise agreement.
6. Pursuant to the procedures set forth in section 6-25, failure to comply with subsection 22-44(a)(1) shall result in the imposition of liquidated damages in the amount of \$500.00 per day per violation, and failure to comply with any other part of this section 6-14 may result in the imposition of liquidated damages in the amount of \$250.00 per day per violation or as otherwise provided in a franchise agreement.

#### **Sec. 6-15: Technical Standards**

- A. Any cable system within Wellington shall meet or exceed the technical standards of the FCC or other applicable federal or state technical standards, including any such standards as hereinafter may be amended or adopted. Antennas, supporting structures, and outside plant used in the cable system shall be designed to comply with all generally accepted industry practices and standards and with all federal, state, county, Wellington and/or utility laws, ordinances, rules and regulations.
- B. All construction, installation and maintenance shall comply with the National Electrical Safety Code, the National Electric Code, and all local codes, laws and accepted industry practices, and as hereinafter may be amended or changed.
- C. At the times required by FCC rules, the franchisee shall perform at its expense proof of performance tests designed to demonstrate compliance with the requirements of this chapter, the franchise agreement, and FCC requirements. Upon request, the franchisee shall provide the proof of performance test results promptly to Wellington. Wellington shall have the right to inspect the cable system facilities during and after their construction to ensure compliance with the requirements of the franchise agreement, this chapter, and FCC standards. A franchisee has the right to be present at all such inspections.
- D. Wellington may require an annual proof of performance test, or other tests as specified in a franchise agreement or applicable law or regulation, to be performed promptly upon request and at the expense of the franchisee. The franchisee shall provide the test results to Wellington within 30 days of completion.
- E. A franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the cable system of another franchisee, or individual or master antennas used for receiving television or other broadcast signals.

#### **Sec. 6-16: Access Channels and Facilities**

- A. It is the purpose and intent of Wellington to require that all franchisees provide access channels, facilities, equipment and support sufficient to meet the needs and interests of the community in light of the costs thereof with respect to public, education and government activities as set forth in this section 6-16.
- B. A franchisee granted a franchise pursuant to this chapter shall provide to Wellington, a grant for PEG capital support, as set forth in a franchise agreement.

- C. A franchisee shall provide a minimum of one (1) access channel and facilities dedicated to the exclusive use of Wellington and such other capital support for public, educational and/or governmental use as required in a franchise agreement. A franchisee shall provide at minimum one (1) return line for each access channel then used by Wellington to the headend, as technically necessary for the operation of access channels referred to herein or as otherwise required by a franchise agreement. Wellington may increase the number of PEG access channels to a number not to exceed three (3), so long as a threshold use requirement is met for each channel beyond the first Wellington then utilizes. In order to request a second PEG access channel, the existing PEG access channel must be programmed at least six (6) hours per day with non-repetitive, locally produced programming, Monday through Friday, for a minimum of six (6) consecutive weeks. Character-generated programming shall not be included for purposes of calculating the programming requirement. Once the threshold is met and a second access channel given, the first access channel must maintain the threshold requirement. After attaining the threshold requirement, if the first access channel fails to meet the threshold for four (4) consecutive months, the second access channel may be reclaimed by franchisee upon 60 days' written notice. Under no circumstances shall be Wellington lose the right to its first access channel.
- D. During the franchise term, the franchisee shall provide, as specified in a franchise agreement or otherwise agreed to, such equipment, facilities, technical, and capital support as Wellington's Council may determine is useful for the production and cable casting of programming on the public, education, and government channels.
- E. As may be required in a franchise agreement or otherwise agreed to, a franchisee shall tape or cablecast live events held in Wellington as may be designated by Wellington.
- F. An application for an initial grant, renewal or transfer of a franchise may, or at Wellington's request shall, include proposals for the provision of an institutional network interconnecting Wellington, educational institutions and/or other public facilities as designated by Wellington.
- G. An application for an initial grant, renewal, or transfer of a franchise may, or at Wellington's request shall, be subject to subsection 6-14, include a proposal for the interconnection of franchisee to any or all other cable systems operating within Palm Beach County for purposes of providing or sharing PEG access channels. Where applicable, an applicant shall include in the application a statement outlining the status of the interconnection of its cable system to any/all cable systems operating within Palm Beach County.
- H. A franchise agreement may provide for additional capital grants in lieu of or in addition to some or all of the facilities, equipment, and services referenced in this section.
- I. The facilities, equipment, monetary grant and all other support to be provided by a franchisee and as set forth in a franchise agreement constitute capital costs that are required by the franchise to be incurred by franchisee for public, educational or government access facilities within the meaning of Section 622(g)(2)(C) of the Communications Act, 47 U.S.C. § 542(g)(2)(C), and such grant does not constitute a franchise fee or tax within the meaning of the Communications Act, state law, Wellington code or a franchise agreement. Wellington shall use the facilities, equipment, monetary grant and all other support to be provided by franchisee hereunder in a manner consistent with Section 622(g)(2)(C) of the Communications Act.

## **Sec. 6-17: Franchise Fee**

- A. As of the effective date hereof, the State of Florida Communications Service Tax, (F.S., Ch. 202), prohibits the obligations imposed on a Franchisee in this section and this section 6-17 is severable from this chapter and has no effect on the remaining valid portions of this chapter. However, if state

or federal law allows Wellington to impose the requirements of this section, Wellington expressly reserves the right to do so.

- B. If permitted by applicable law, a franchisee, as compensation for the privilege granted under a franchise pursuant to this chapter for the use of Wellington's streets to construct and operate a cable system, shall pay to Wellington a franchise fee in an amount up to a maximum of either:
1. 5% of the franchisee's gross revenues derived from the operation of its cable system within Wellington during the term of its franchise; or
  2. In the event the Communications Act, or other applicable law, is amended to permit Wellington to assess a franchise fee of a greater amount than 5%, the franchisee agrees to pay to Wellington the new amount after a public hearing in that the public and franchisee are given an opportunity to comment on the impact of the higher fee. In no event shall a franchisee pay a franchise fee greater than the maximum permitted by applicable law.
- C. A franchisee shall pay the franchise fee due to Wellington on a quarterly basis. Payment for each month shall be made to Wellington not later than 45 calendar days after the end of each calendar month.
- D. A franchisee shall file with Wellington within 60 days after the expiration of each calendar year or portion thereof during which its franchise is in force, a financial statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceding year or portion thereof and a detailed explanation of the method of computation. The statement shall be certified by a duly authorized corporate officer. The franchisee will bear the cost of the preparation of such financial statements.
- E. Subject to applicable law, any acceptance by Wellington of any franchise fee payment shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Wellington may have for additional sums payable.
- F. The franchise fee payment is not a payment in lieu of any other tax, fee or assessment, subject to applicable law.
- G. If permitted by applicable law, Wellington, or its representative, may from time to time but not more than once in any 12-month period, and upon reasonable notice, inspect, audit any and all books and records of the franchisee relevant to the determination of gross revenues and the computation of franchise fees due, and may re-compute any amounts determined to be payable under the franchise. In the case of any franchise granted, renewed, modified or transferred on or after the effective date hereof the cost of the audit will be borne by the franchisee if, as a result of the audit, Wellington determines that the franchisee has underpaid the franchise fees owed in an amount equal to or exceeding 2% of the franchise fees actually paid. A franchisee shall make all books and records necessary to satisfactorily perform the audit readily available to the auditors in Palm Beach County for inspection and copying.
- H. In the event that a franchise fee payment is not received by Wellington on or before the due date set forth in this section, any franchisee granted an initial franchise, renewal, modification or transfer on or after the date hereof shall pay a late charge of 18% per annum of the amount of the unpaid franchise fee payment; provided, however, that such rate does not exceed the maximum amount allowed under Florida law. Any interest and/or late charges paid by franchisee is intended to be a charge incidental to the enforcing of a franchise within the meaning of Section 622 (g)(2)(D) of the Communications Act, 47 U.S.C. § 542(g)(2)(D), and may not be deducted from the franchise fee imposed by this chapter or any franchise agreement.

- I. Unless prohibited by law, when a franchise terminates for whatever reason, the franchisee shall file, with Wellington, within 90 calendar days of the date it ceases operations in Wellington, a financial statement, audited by an independent certified public accountant and certified by the franchisee's chief or other duly authorized financial officer, showing the gross revenues received by the franchisee since the end of the previous fiscal year. Adjustments will be made at that time for franchise fees due to the date that the franchisee's operations ceased.

#### **Sec. 6-18: Reports and Records**

- A. The franchisee shall submit reports to Wellington quarterly according to the following schedule, or as otherwise provided in a franchise agreement:
  1. January through March are due on or before April 25;
  2. April through June are due on or before July 25;
  3. July through September are due on or before October 25; and
  4. October through December are due on or before January 25 of each year.
- B. The quarterly report shall include, but not be limited to:
  1. Number of homes passed, number of cable plant miles, number of new installs, number of disconnects and net result of new installs and disconnects.
  2. Telephone reports, broken down by quarter, indicating the number of calls received, number of calls abandoned, number of calls receiving a busy signal and percentage of total calls for which a busy signal was received.
  3. A summary by quarter for the number of standard installations performed within seven (7) days, number of unplanned service interruptions, the hours in which planned service interruptions have occurred, number of unplanned service interruptions by duration, number of service interruptions responded to within 24 hours, number of other service problems responded to within 36 hours, preventative measures to reduce or eliminate service interruptions and any other information that may be reasonably required to monitor the franchisee's compliance with this chapter. A franchisee may comply with the requirements of this subsection by providing to Wellington a copy of the actual written complaint and/or service interruption logs maintained by franchisee.
  4. Unless prohibited by applicable law, revenue information, including, but not limited to number of subscribers for each type of cable service offered, and the gross revenue from all sources attributable to the operations of the cable system by the franchisee in Wellington, stating separately by category each source and the amount of revenue attributable thereto. As of the date of this chapter, the obligations imposed on franchisee in this section to provide an annual financial statement are prohibited by the State of Florida Simplified Communications Service Tax, F.S., Ch. 202, and this obligation is severable from this chapter and has no effect on the remaining valid provisions hereof. However, if state or federal law allows Wellington to impose the requirements of this section, Wellington expressly reserves the right to do so.
- C. Within six (6) months of the close of its fiscal year, the franchisee shall provide an annual report to Wellington that includes the following information:
  1. A summary of the activities of the previous year in development of the cable system, including as pertains to cable services, initiated or discontinued, policy changes enacted during the previous year, number of cable subscribers for each tier or type of cable service or cable product



(including gains and losses), homes passed and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including cable system upgrades, during the year with any projections previously provided to Wellington, as well as rate and charge increases and/or decreases for the previous fiscal year.

2. The web-site addresses to the franchisee's ultimate parent annual report and 10-K as filed with the SEC, and all filings made with the State of Florida under the Communications Services Tax Simplification Law. Unless prohibited by applicable law, to verify franchise fee payments, franchisee shall provide, upon written request, an annual financial report to include a statement of sources of revenues for the franchise area. The statement shall be audited if franchisee has audited statements prepared in its normal course of business. If not, the statements shall be certified by the chief financial officer of the franchisee. The financial report shall include notes to the financial statements that specify all significant accounting policies and practices upon which it is based. As of the date of this chapter, the obligations imposed on franchisee in this section to provide an annual financial statement are prohibited by the State of Florida Simplified Communications Service Tax, F.S., Ch. 202, and this obligation is severable from this chapter and has no effect on the remaining valid provisions hereof. However, if state or federal law allows Wellington to impose the requirements of this section, Wellington expressly reserves the right to do so.
3. Where applicable, a copy of updated maps depicting the location of all trunk lines, feeder lines, and associated devices in Wellington to the extent such locations have changed. Upon request of Wellington, such maps shall be provided in digitized form at the expense of the franchisee.
4. A summary of written subscriber or resident complaints, identifying the number and nature of complaints and their disposition. Where complaints involve recurrent cable system problems, the nature of each problem and the corrective measures taken shall be identified. More detailed information concerning complaints shall be submitted upon written request of Wellington, subject to franchisee's obligation to maintain subscriber privacy in accordance with federal law.
5. Upon written request, and if not otherwise provided, a summary of the number of unplanned service interruptions, the hours in which planned service interruptions have occurred, and the number of unplanned service interruptions by duration, including preventative measures to eliminate reoccurrence.
6. Upon written request, if the franchisee is a corporation, a list of officers and members of the board of directors; the officers and members of the board of directors of any parent corporation; and if the franchisee or parent corporation stock or ownership interests are publicly traded, a copy of its most recent annual report.
7. Upon written request, if the franchisee is a partnership, a list of the partners, including any limited partners, and addresses; and if the general partner is a corporation, a list of officers and members of the board of directors or the corporate general partner and the officers and directors of any parent corporation; and where the general partner or parent corporation ownership interests are publicly traded, a copy of its most recent annual report.
8. Upon written request, a list of all people holding 5% or more ownership or otherwise cognizable interest in the franchisee pursuant to the Communications Act and 47 C.F.R. 76.501.
9. A copy of the rules and regulations of the franchisee applicable to subscribers of the cable system.
10. A report on the number of senior citizens, economically disadvantaged, or disabled subscribers receiving any rate discounts and the amount of any such discounts for specific cable services if franchisee offers separate rates or discounts for those categories of subscribers.

11. A report on the number of multiple dwelling buildings and units therein receiving cable service under bulk agreements.
  12. A full schedule and description of services, service hours and location of the customer service office of the franchisee or offices available to subscribers, and a schedule of all rates, fees and charges for all cable services provided over the cable system.
  13. Upon written request, a report on the number of total subscribers served by the franchisee in the cable system, with a breakdown by the types of cable services received by subscribers.
  14. Upon written request, a copy of any filing made to the FCC pursuant to Equal Employment Opportunity Council requirements.
- D. Upon each written request by Wellington made not more than once annually, a franchisee shall within 45 days of receipt of the request, provide the following documents to Wellington, without regard to whether the documents are filed by the franchisee or an affiliate:
1. If not otherwise available, annual financial report of the franchisee or its parent or any affiliate of franchisee that controls franchisee and issues an annual financial report.
  2. Copyright filings reflecting the operation of the cable system.
  3. Any pleadings, petitions, applications, communications, reports and documents (collectively referred to as "filings") submitted within the previous 12 months by or on behalf of the franchisee to the FCC, SEC, or any state or federal agency, court or regulatory council that may directly and adversely impact the operation of the franchisee's cable system in Wellington or that may adversely impact the rights or obligations of Wellington under this chapter or the franchise agreement and any and all responses, if any, to such filings.
  4. Any and all notices of deficiency, forfeiture or documents instituting any investigation, civil or criminal proceeding issued by any state or federal agency regarding the cable system, franchisee or any affiliate of franchisee, provided, however, that any such notice or documents relating to an affiliate of the franchisee need be provided only to the extent the same may directly and adversely affect or bear on operations of the franchisee in Wellington. For example, a notice that an affiliate that has a management contract for the cable system located in Wellington was not in compliance with the FCC's EEO requirements would be deemed to affect or bear on operations in Wellington.
- E. The franchisee shall, upon written request, furnish to Wellington such additional reports as a franchisee may prepare as a customary business practice with respect to its operations of the cable system, which in Wellington's discretion are reasonable and necessary for the administration and/or enforcement of this chapter.
- F. A franchisee shall provide Wellington, within 30 days of filing or receipt of any petition or filings with any federal, state, or local agencies or courts, which may, in the reasonable judgment of the franchisee, adversely impact the construction, operation or maintenance of franchisee's cable system, affect Wellington and/or subscribers regarding this chapter or a franchise agreement, including, but not limited to, any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy. In any administrative or legal proceeding in which franchisee is a party, which in the reasonable judgment of franchisee adversely impacts the construction or operation of its cable system in Wellington, franchisee shall provide a copy of any filed document that is available for public dissemination, upon written request of Wellington, within five (5) days. To the extent Wellington desires and may properly participate in the proceeding, franchisee agrees that

it will not oppose any necessary extension or tolling of time that may allow Wellington's participation in such matter. However, the franchisee may oppose or object to any extension of time that exceeds the period of time used by franchisee to provide a copy of the requested filing to Wellington.

- G. A franchisee shall make a complete set of books and records available for inspection and audit by Wellington in Palm Beach County, for purposes of ascertaining compliance with this chapter and the franchise agreement, subject to subsection (g) below. Such inspection and audit shall be upon reasonable notice and during normal business hours.
- H. Any materials requested by Wellington which are deemed proprietary and confidential by franchisee shall be made available for review and inspection by Wellington at a location in Palm Beach County (but not copying or removal, unless otherwise required by federal or state law, including but not limited to the public records law of the State of Florida). Wellington shall accord all books and records that it inspects under this section the degree of confidentiality such books and records are entitled to under federal and state law. A franchisee's books and records shall not constitute public records, except to the extent required by federal and state law. To the extent a franchisee considers any books or records that it is required to produce to be confidential or otherwise protected from public disclosure, franchisee shall designate which documents it views as protected and provide a written explanation to Wellington of the legal basis for franchisee's claim of protection.

## **Sec. 6-19: Customer Service Requirements**

- A. A franchisee shall maintain all parts of its cable system in good condition and in accordance with standards generally observed by the cable television industry. Sufficient employees shall be retained to provide safe, adequate, and prompt service for all of its subscribers and facilities.
- B. Cable System Office: Unless this requirement is expressly waived or modified by a franchise agreement, a franchisee shall maintain a subscriber service center located within Wellington, which shall include a place where subscribers may pay their bills, pick up and return converters or other equipment, and initiate installations or other action with respect to cable service. This service office shall be open during normal business hours, as defined below, which as of the effective date of this chapter, are from 8:00 a.m. to 5:30 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m. on Saturday.
- C. Telephone Availability: Franchisee shall maintain a publicly-listed local, toll-free telephone number and employ a sufficient number of telephone lines, knowledgeable personnel and answering equipment to allow reasonable access by subscribers and members of the public to contact the franchisee on a full-time basis, 24 hours per day, seven (7) days per week including holidays. Knowledgeable, qualified franchisee representatives will be available to respond to subscriber telephone inquiries. Franchisee shall comply with the telephone answer-time standards set forth in this section.
- D. Franchisee shall answer all subscriber service and repair telephone calls made under normal operating conditions, as defined below, within 30 seconds, including wait time and within an additional 30 seconds to transfer the call. Under normal operating conditions, subscribers shall receive a busy signal less than 3% of the time. These standards shall be met no less than 90% of the time under normal operating conditions, measured on a quarterly basis.
- E. Franchisee must meet each of the following standards no less than 95% of the time under normal operating conditions as measured on a quarterly basis:
  - 1. Standard installation work shall be performed within seven (7) business days after an order has been placed except in those instances where a subscriber specifically requests an installation date beyond the seven (7) business day period. "Standard" installations are up to 125 feet from

the existing distribution system. If scheduled installation is neither started nor completed as scheduled, the subscriber will be telephoned by an employee of the franchise the same day. If the call to the subscriber is not answered, an employee of the franchisee shall telephone the subscriber the next day;

2. Excluding conditions beyond the control of the franchisee, the franchisee will respond to service interruptions promptly and in no event later than 24 hours after the interruption becomes known. Other service problems will be responded to promptly and in no event later than 48 hours after the problem becomes known. All service interruptions and service problems within the control of franchisee will be corrected within 72 hours after receipt of a complaint;
  3. The appointment window alternatives made available for installations, service calls, repairs, and other installation activities will be either a specific time, a four-hour time block during normal business hours, or at the election and discretion of the subscriber, "all day;"
  4. Franchisee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment; and
  5. If, at any time, an installer or technician is running more than 30 minutes late for a scheduled appointment, an attempt to contact the subscriber will be made and the appointment rescheduled as necessary at a time that is convenient for the subscriber.
- F. For purposes of this section 6-19, the term "Normal Business Hours" shall mean those hours during which most similar businesses in the community are open to serve subscribers, which as of the effective date of this chapter, are from 8:00 a.m. to 5:30 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m. on Saturday, or as otherwise defined by the FCC. In all cases, normal business hours shall include either some evening hours at least one (1) night per week or some weekend hours. The term "normal operating conditions" means those service conditions that are within the control of the franchisee, or as otherwise defined by the FCC. Those conditions that are not within the control of the franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions that are ordinarily within the control of the franchisee shall include, but are not limited to, special promotions, pay-per-view events, rate increase, regular peak or seasonal demand periods, and routine maintenance or upgrade of the cable system.
- G. Disconnection:
1. Voluntary Disconnection:
    - a. A Subscriber may terminate service at any time.
    - b. A franchisee shall promptly disconnect any subscriber who so requests from the franchisee's cable system. No period of notice prior to voluntary termination of service may be required of subscribers by any franchisee. So long as the subscriber returns equipment to franchisee's service center located in Wellington or makes available to franchisee to pick up within three (3) business days of the disconnection, no charge may be imposed by any franchisee for such voluntary disconnection or for any cable services delivered after the date of disconnection request.
    - c. A subscriber may be asked, but not required, to disconnect the franchisee's equipment.
    - d. Any security deposit and/or other funds due the subscriber shall be refunded on disconnected accounts after the converter has been recovered by the franchisee. The

refund process shall take a maximum of 45 days from the date disconnection was requested to the date the subscriber receives the refund.

2. Involuntary Disconnection: If a subscriber fails to pay a monthly subscriber or other fee or charge, the franchisee may disconnect the subscriber's service outlet; however, such disconnection shall not be effected until 45 days after the date on which the applicable monthly bill was sent to the subscriber and advance written notice of intent to disconnect to the subscriber in question. The notice of delinquency and impending termination may be part of a billing statement provided that the message is in bold or large type or other similar manner designed to bring the information to the subscriber's attention. If the subscriber pays within 45 days after the date on which the applicable monthly bill was sent and after notice of disconnection has been given, the franchisee shall not disconnect. After disconnection, upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the franchisee shall promptly reinstate cable service. Franchisee reserves the right to deny cable service to any subscriber who has been repeatedly disconnected for nonpayment of such services to the extent such rights are consistent with applicable state and federal law.
3. With respect to any disconnection, whether requested or involuntary, a franchisee shall comply with the rules and regulations of the FCC and applicable law regarding ownership, sale, removal and abandonment of home wiring.
- H. Franchisee shall intentionally interrupt service only for good cause and for the shortest time possible. Franchisee shall use its best efforts to insure that such interruptions shall occur only during the hours of 1:00 a.m. to 6:00 a.m. Franchisee shall maintain a written log for all intentional service interruptions.
- I. Franchisee shall notify the Village Manager or designee immediately if a service interruption affects 200 or more subscribers for a time period greater than four (4) hours.
- J. Franchisee shall cause all its field employees to wear a picture identification badge indicating their employment by franchisee. This badge shall be clearly visible to the public.
- K. A franchisee shall develop written procedures for the investigation and resolution of all subscriber or Wellington resident complaints that are received by Wellington. Such procedures shall be submitted to the Village Manager or designee. A subscriber or Wellington resident who has not been satisfied by following the franchisee's procedures may file a written complaint with the Village Manager or designee who will investigate the matter and in consultation with the franchisee, as appropriate, attempt to resolve the matter. A franchisee's performance in resolving subscriber and resident complaints in a fair and equitable manner will be considered in connection with the franchisee's renewal application. Franchisee shall maintain a complete list of all complaints received during the previous 12 months from subscribers that required a service call and were not resolved within seven (7) days of receipt and the measures taken to resolve them. This list shall be compiled on a quarterly basis and, if such unresolved complaints exist, submitted to Wellington upon request. In providing such information, franchisee shall be obligated to protect subscriber privacy in accordance with federal law.
- L. Franchisee shall permit the Village Manager or designee to inspect and test the cable system's technical equipment and facilities upon reasonable notice that shall be not less than 72 hours except in the case of an emergency, as determined by the Village Manager or designee.
- M. Franchisee shall abide by the following requirements governing communications with subscribers, bills and refunds:

1. Each franchisee shall provide to subscribers written information in each of the following areas at the time of installation, or at least once annually, and at any future time upon request by the subscriber:
    - a. How to use the cable service;
    - b. Installation and service maintenance policies;
    - c. The products and services offered;
    - d. Prices and service options;
    - e. Channel positions of programming carried on the cable system;
    - f. The franchisee's procedures for the receipt and resolution of subscriber complaints and the franchisee's address and telephone number to which complaints may be reported if not otherwise provided;
    - g. The telephone number and address of Wellington's office designated to handle cable television complaints and inquiries;
    - h. The availability of a "lock-out" device; and
    - i. The franchise's information collection and disclosure policies for the protection of a subscriber's privacy.
  2. In addition, each franchisee shall provide written notice in its monthly billing, at the request of the Village Manager, of any Wellington meeting regarding requests or applications by the franchisee for renewal, transfer or modification of its license. The Village Manager shall make such a request in writing, with reasonable notice prior to the mailing of any billing by franchisee, such that franchisee's regular billing cycle shall not be interrupted. To the extent that any notice requested by Wellington would exceed the messaging limitations of the franchisee's billing system and would thus cause the franchisee to print and insert a separate document into the bill, Wellington may be requested to pay printing costs and incremental postage expenses for such notice.
  3. Franchisee's bills will be clear, concise and understandable.
  4. Refund checks will be issued promptly, but no later than the earlier of 45 days or the subscriber's next billing cycle following the resolution of a refund request, or the return of the equipment supplied by the franchisee if cable service is terminated.
  5. Credits for service will be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.
  6. A franchisee shall provide subscribers, the Village Manager, and Wellington's Council with at least 30 days' advance written notice of any changes in rates, charges, channel lineup, or initiations or discontinuations or changes of cable services offered over the cable system if such change is within the control of the franchisee, and in accordance with FCC regulations.
- N. A franchisee shall, upon an affected subscriber's request, provide a pro-rated 24-hour credit to the subscriber's account for any period of four (4) hours or more within a 24-hour period during which a subscriber experienced an outage of service or substantial impairment of service, whether due to a cable system malfunction or other cause.

O. Billing:

1. The franchisee's first billing statement after a new installation or service change shall be pro-rated as appropriate and shall reflect any security deposit.
2. The franchisee's billing statement must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
3. The franchisee's billing statement must show a specific payment due date. Any balance not received by the due date may be assessed a late charge consistent with applicable law. The late charge will appear on the following month's billing statement.
  - a. Franchisee shall provide reasonable notice to Wellington and subscribers of the amount of any processing fees for late payments and the manner of imposing such fees. Any late fee that may be imposed shall be in an amount and manner consistent with applicable state and federal law. Late charges on unpaid bills shall not exceed \$5.00. Such fee shall be deemed to represent the franchisee's reasonable administrative costs, and in no event shall exceed 18% per annum on the unpaid balance or the maximum amount of interest allowed by law. If a subscriber disputes a bill on or before the due date, the franchisee shall waive a late fee during the period until a final resolution of the dispute is agreed upon between the franchisee and the subscriber.
  - b. Subscribers shall not be charged a late fee or otherwise penalized for any failure by the franchisee, its employees, or contractors, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made.
4. The franchisee must notify the subscriber that he or she can remit payment in person at the franchisee's office in Wellington and inform the subscriber of the address of that office.

P. Alteration of Service: Except as incident to an upgrade or rebuild of the cable system, a franchisee may not substantially alter the cable service being provided to a subscriber (including by re-tiering, restructuring a tier or otherwise) without the express affirmative permission of such subscriber, unless it complies with this subsection.

1. If a franchisee wishes to alter the cable service being provided to a subscriber (including by re-tiering, restructuring a tier or otherwise) in such a way that the subscriber will no longer be able to obtain the same package of cable services then the franchisee must provide the subscriber with 30 days' notice of such alteration, explain the substance and the full effect of the alteration, and provide the subscriber the right within the 30-day period following notice, to opt to receive any combination of cable services offered by the franchisee.
2. Except as provided herein or under applicable federal, state or local law, no charge may be made for any cable service or product that the subscriber has not affirmatively indicated, in a manner separate and apart from payment of the regular monthly bill that the subscriber wishes to receive.

Q. Franchisee shall certify in writing to Wellington as of January 1 and July 1 of each year, based upon internal due diligence by the franchisee, that to the best of franchisee's knowledge it is in substantial compliance with the standards set forth in this section 6-19, said certification to be made as of a date within 30 days of January 1 and July 1. At the request of Wellington, for reasonable cause including but not limited to discrepancies between the reports provided to Wellington and the certification required herein, the franchisee shall submit such documentation, as may be required, to demonstrate franchisee's compliance with this section 6-19. This documentation shall be submitted within 30 days of the franchisee's receipt of Wellington's request.

- R. Notwithstanding anything to the contrary, franchisee shall not incorporate within any bulk residential subscriber contract the term of the franchise granted by Wellington as the length of the term of a bulk contract(s) franchisee shall make available to all residential bulk subscribers the same level of service provided to franchisee's residential subscribers in Wellington, including, but not limited to, the requirements of section 6-19 herein, unless the parties to the bulk contract have expressly agreed otherwise in writing.
- S. Responsibility for the administration of this chapter and any franchise granted pursuant to this chapter, and for the resolution of all complaints against the franchisee regarding the quality of service, equipment malfunctions, and related matters, is hereby delegated to Wellington manager or his designee, who is empowered, among other things, to settle, or compromise any controversy arising from operations of the cable system by franchisee, either on behalf of Wellington or any subscriber, in accordance with the best interests of the public. In cases where requests for service have been ignored or in cases where the service provided is alleged to be in noncompliance with this chapter or a franchise agreement, Wellington manager or his designee shall have the power to require the franchisee to provide service consistent with the terms of the franchise, if in the opinion of Wellington manager or his designee such request for service is reasonable. Any person aggrieved by a decision of the Village Manager, including the franchisee, may appeal the matter to Wellington's Council for hearing and determination. Wellington's Council may accept, reject or modify the decision of the Village Manager. No adjustment, settlement, or compromise, whether instituted by the Village Manager or by Wellington's Council, shall be contrary to the provisions of this chapter or any franchise issued pursuant to this chapter and neither the Village Manager nor Wellington's Council, in the adjustment, settlement, or compromise of any controversy shall have the right or authority to add to, modify or delete any provision of the ordinance or of the franchise agreement, or to interfere with any rights of subscribers or any franchisee under applicable federal, or state law or private contract.
- T. The Village Manager or designee shall have the authority to assess fines for violations of this section 6-19 in accordance with the schedule set out below or as otherwise provided in a franchise agreement. The fines listed are to be assessed on a per violation basis with each day of a continuing violation constituting a separate violation, except for those customer service standards set forth in subsections (d) and (e) above which are measured on a quarterly basis. With respect to such standards that are measured on a quarterly basis, the fines for such violations shall be assessed on a quarterly basis as follows; \$10,000.00 per quarter if the franchisee falls below such standards by 20% or more. Prior to assessing any fines set forth in the schedule below, the Village Manager or designee shall following the procedures set forth in section 6-25 of this chapter.

#### **Schedule of Fines**

<b><u>Single Violation of:</u></b>	<b><u>Maximum Fines</u></b>
<u>(a) Section 6-19 (a), hereof</u>	<u>\$250.00</u>
<u>(b) Section 6-19 (b), hereof</u>	<u>250.00</u>
<u>(c) Section 6-19 (c), hereof</u>	<u>\$ as detailed above</u>
<u>(d) Section 6-19 (d), hereof</u>	<u>\$ as detailed above</u>
<u>(e) Section 6-19 (e)(1-5), hereof</u>	<u>\$ as detailed above</u>
<u>(f) Section 6-19 (g)(1-3), hereof</u>	<u>100.00</u>
<u>(g) Section 6-19 (h), hereof</u>	<u>175.00</u>
<u>(h) Section 6-19 (i), hereof</u>	<u>175.00</u>



<b><u>Single Violation of:</u></b>	<b><u>Maximum Fines</u></b>
<u>(i) Section 6-19 (j), hereof</u>	<u>175.00</u>
<u>(j) Section 6-19 (k), hereof</u>	<u>250.00</u>
<u>(k) Section 6-19 (m)(1-5), hereof</u>	<u>100.00</u>
<u>(l) Section 6-19 (m)(6), hereof</u>	<u>250.00</u>
<u>(m) Section 6-19 (n), hereof</u>	<u>100.00</u>
<u>(n) Section 6-19 (o), hereof</u>	<u>100.00</u>
<u>(o) Section 6-19 (p), hereof</u>	<u>100.00</u>
<u>(p) Section 6-19 (q), hereof</u>	<u>100.00</u>
<u>(q) Section 6-19 (s), hereof</u>	<u>100.00</u>

1. Prior to assessing a fine, the Village Manager or designee shall consider any justification or mitigating factor advanced in franchisee's written response, including, but not limited to rebates or credits to the subscriber, a cure or commencement of a cure of the violation, and the payment of any penalty to Palm Beach County for the same violation. The Village Manager or designee may, after consideration of the response of the franchisee, waive or reduce any proposed fine.
  2. Subsequent to the notice of proposed fine to franchisee and consideration of the franchisee's response, if any, and after following the procedures set forth in section 6-25 hereof, Wellington may issue an assessment of fine. Any fine will commence as of the date of the written notice specifying the violation at issue. The fine shall be paid within 30 days of written notice of assessment to the franchisee. Wellington may enforce payment of the refund or fine in any court having jurisdiction or if franchisee challenges the assessment in a court of competent jurisdiction, within 30 days of a final non-appealable decision that the assessment is valid. This fine shall constitute liquidated damages to Wellington for the violation and Wellington may enforce payment of the fine in any court having jurisdiction. It is the intent of Wellington to determine fines as a reasonable estimate of the damages suffered by Wellington and/or its subscribers, whether actual or potential, and may include without limitation, increased costs of administration, enforcement and other damages difficult to measure.
  3. Any person who intentionally files a false complaint against a franchisee shall be subject to a fine, payable to Wellington, in the amount of \$50.00 for the first violation and \$100.00 for each subsequent violation.
  4. Intentional misrepresentation by a franchisee in any response to a notice of proposed refund and/or fine shall be grounds for revocation of the franchise.
  5. In addition to complying with the customer service standards set forth in this chapter or in any franchise issued pursuant to this chapter, a franchisee shall comply with all customer service standards applicable to cable systems of the FCC and any other applicable law governing the operations of the cable system within Wellington. If during the term of any franchise granted pursuant to this chapter, the FCC modifies the customer service standards applicable to franchisee, Wellington may modify this chapter to reflect any such new customer service standards.
- U. Wellington expressly reserves the right to consider violations of the customer service requirements in evaluating any renewal, modification or transfers of any franchise agreement.

- V. Wellington and franchisee recognize that the customer service standards set forth in this section 6-19 reflect the current operating procedures of franchisee. If franchisee's current operating procedures change during the term of any franchise granted pursuant to this chapter, Wellington agrees to meet with franchisee to discuss appropriate modifications to such standards and to consider such reasonable modifications to the standards set forth herein as requested by a franchisee to reflect any such new operating procedures. Upon request of the franchisee, Wellington shall also discuss with franchisee the need to continue such regulation in light of the competition that franchisee may face in the provision of cable services to subscribers and to consider such reasonable modifications to the customer service standards set forth herein light of the competitive environment. Notwithstanding anything to the contrary, franchisee shall be obligated to comply with this section 6-19 unless modifications are agreed upon by Wellington and franchisee in writing.

#### **Sec. 6-20: Subscriber Privacy**

- A. A franchisee shall at all times protect the privacy of all subscribers to the full extent required by Section 631 of the Communications Act, 47 U.S.C. § 551 and state law.
- B. Unless otherwise permitted by federal or state law, neither the franchisee nor its agents or employees shall, without the prior and specific written authorization of the subscriber involved, sell, or otherwise make available for commercial purposes the names, addresses or telephone numbers of any subscriber or subscribers, or any information which identifies the individual viewing habits of any subscriber or subscribers.

#### **Sec. 6-21: Discrimination Prohibited**

- A. No franchisee in its rates or charges, or in the availability of the services or facilities of its cable system, or in any other respect, may unlawfully discriminate against any subscriber, potential subscriber, or group of subscribers or potential subscribers; provided, however, that a franchisee may offer promotional or discount rates to certain, but not all, subscribers for a limited time without violating the provisions of this section 6-21. A franchisee shall not deny, delay, or otherwise burden service or discriminate against subscribers or users on the basis of age, race, creed, religion, color, sex, handicap, national origin, marital status, or political affiliation, except for discounts for senior citizens, the economically disadvantaged or handicapped that are applied in a uniform and consistent manner. A franchisee may also offer bulk discounts to multiple dwelling buildings to the extent such discounts are otherwise permissible by law.
- B. A franchisee shall not deny cable service to any potential subscriber because of the income of the residents of the area in which the subscriber resides.
- C. The franchisee shall comply with federal, state and local laws and regulations governing equal employment opportunities, as the same may be amended from time to time.

#### **Sec. 6-22: Use of Streets**

- A. Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a franchisee shall be done under the direction of Wellington under permits issued for work by the environmental and engineering services department of Wellington, and shall be done in such manner as to give the least inconvenience to the inhabitants of Wellington. A franchisee shall, at its own cost and expense, and in a manner approved by Wellington, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also make and keep full and complete plats, maps and records showing the exact locations of its facilities located within the public streets, ways, and easements of Wellington.

- B. Except to the extent required by law, a franchisee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove, any of its property when required by Wellington by reason of traffic conditions, public safety, street construction, street resurfacing or widening, change of street grade, installation of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal or public utility improvements; provided, however, that the franchisee shall, in all such cases, have the privilege of abandoning any property in place.
- C. A franchisee shall, on the request of any person holding a building moving permit issued by Wellington, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is Wellington, in which case no such payment shall be required. The franchisee shall be given not less than five (5) calendar days' advance notice to arrange for such temporary wire changes.
- D. A franchisee shall have the authority to trim the trees or other natural growth upon and overhanging the streets so as to prevent the branches of such trees from coming in contact with the wires, cables and other equipment of the franchisee, except that, at the option of Wellington, such trimming may be done by it or under its supervision and direction at the expense of the franchisee.
- E. A franchisee shall use, with the owner's permission, existing underground conduits or overhead utility facilities whenever feasible. Copies of agreements for use of conduits or other facilities shall be filed with Wellington as required by the franchise agreement or upon Wellington request.
- F. All wires, cable lines, and other transmission lines, equipment and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners. Wellington may issue such rules and regulations concerning the installation and maintenance of a cable system installed in, on, or over the streets, as may be consistent with this chapter and the franchise agreement.
- G. All safety practices required by law shall be used during construction, maintenance and repair of a cable system. A franchisee shall not place facilities, equipment or fixtures where they will interfere with any gas, electric, telephone, water, sewer or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of Wellington of their use of any street or any other public rights-of-way.
- H. A franchisee shall, at all times:
  - 1. Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of Wellington's building code and electrical safety ordinances and any other applicable building or electrical safety code, and in such manner that they will not interfere with any installations of Wellington.
  - 2. Keep and maintain in a safe, suitable, substantial condition, and in good order and repair, all structures, lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of Wellington, wherever situated or located.
    - a. On streets where both electrical and telephone utility wiring are located underground, either at the time of initial construction of a cable system or at any time thereafter, a franchisee's cable shall also be located underground at the franchisee's expense. Between a street and a subscriber's residence, a franchisee's cable must be located underground if both electrical

and telephone utility wiring are located underground. If either electric or telephone utility wiring is aerial, a franchisee may install aerial cable except where a property owner or resident requests underground installation and agrees to bear the additional cost of such installation over and above the cost of aerial installation.

- b. In the event the use of any part of a cable system is discontinued for any reason so as to result in franchisee's failure to provide service to any portion of its franchise area for a continuous period of 12 months, or in the event such system or property has been installed in any street without complying with the requirements of this chapter or a franchise agreement, or the franchise has been terminated, canceled or expired, the franchisee, within 30 days after written notice by Wellington, shall commence removal from the streets of all such property as Wellington may require.
- I. Wellington may extend the time for the removal of franchisee's equipment and facilities for a period not to exceed 180 days, and, thereafter, such equipment and facilities may be deemed abandoned.
- J. In the event of such removal or abandonment, the franchisee shall restore the area to as good a condition as prior to such removal or abandonment.

#### **Sec. 6-23: Renewal of Franchise**

Renewal shall be conducted in a manner consistent with Section 626 of the Communications Act, 47 U.S.C., § 546. The following additional requirements, unless in conflict with applicable law, shall apply:

- A. Upon completion of the review and evaluation process set forth in Section 626(a)(1)(2) of the Communications Act, 47 U.S.C. § 546, should that process be invoked, Wellington shall notify the franchisee by certified or registered mail that it may file a formal renewal application in the form of a renewal proposal. The notice shall specify the information to be included in the renewal application and the deadline for filing the application, which shall be no earlier than 30 calendar days following the date of the notice.
  - 1. The application shall comply with the requirements of section 6-8 hereof, to the extent applicable to franchise renewals and provide the specific information requested in the notice or such other information as is reasonably designated by Wellington in the notice requesting a formal renewal proposal. If the franchisee does not submit a formal renewal application by the date specified in Wellington's notice to the franchisee given pursuant to this subsection, which shall in no event be less than 120 days, Wellington may take such action as appropriate under law.
  - 2. Upon receipt of the formal renewal application, Wellington shall publish notice of its receipt and make copies available to the public. Wellington, following prior public notice of no less than ten (10) days, may hold one (1) or more public hearings on the renewal application.
    - a. After the public hearing(s) on the renewal application is held, Wellington's Council may either award a franchise pursuant to a request for proposal, and thereby renew the franchise; or only after a public hearing, properly noticed, pass a resolution that makes a preliminary assessment that sets forth the grounds that the franchise should not be renewed.
    - b. If a preliminary assessment is made that a franchise should not be renewed, at the request of the franchisee or on its own initiative, Wellington will commence a proceeding in accordance with Section 626(c) of the Communications Act, 47 U.S.C., § 546(c) to address the issues set forth in Section 626(c)(1)(A)-(D) of the Communications Act, 47 U.S.C., §

546(c)(1)(A)-(D). Any denial of a proposal for renewal that has been submitted in compliance with 47 U.S.C. § 546(b) shall be based on one (1) or more adverse findings made with respect to the factors described in 47 U.S.C. § 546(c)(1)(A)-(D), pursuant to the record of proceedings under 47 U.S.C. § 546(c). Wellington shall not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under Section 546(c)(1)(A) or on events considered under Section 546(c)(1)(B) unless Wellington has provided the franchisee with notice and opportunity to cure, or in any case in which it is documented that Wellington has waived its right to object, or the franchisee gives written notice of a failure or inability to cure and Wellington fails to object within a reasonable time after receipt of such notice.

- c. Any request to initiate a renewal process or proposal for renewal not submitted within the time period set forth in Section 626(a) of the Communications Act, 47 U.S.C., § 546(a), or submitted within such time frame and the parties agree that the informal process shall be first initiated, shall be deemed an informal proposal for renewal and shall be governed in accordance with Section 626(h) of the Communications Act, 47 U.S.C., § 546(h). Wellington may hold one (1) or more public hearings or implement other procedures under which comments from the public on an informal proposal for renewal may be received. Following such public hearings or other procedures, Wellington's Council shall determine whether the franchise should be renewed and the terms and conditions of any renewal. If Wellington's Council grants a renewal application, Wellington and the franchisee shall agree on the terms of a franchise agreement, pursuant to the procedures specified herein, before such renewal becomes effective.
- d. If renewal of a franchise is lawfully denied, Wellington may acquire ownership of the cable system or effect a transfer of ownership of the cable system to another person upon approval of Wellington's Council pursuant to Section 547 of the Communications Act. Wellington may not acquire ownership of the system or effect a transfer of ownership of the cable system while an appeal of a denial for renewal is pending in any court pursuant to the Communications Act, 47 U.S.C. § 546(e).
- e. If renewal of a franchise is lawfully denied and Wellington does not purchase the cable system, or approve or effect a transfer of the cable system to another person, and no appeal to a court is pending, Wellington may require the former franchisee to remove its facilities and equipment at the former franchisee's expense. If the former franchisee fails to do so within a reasonable period of time, Wellington may have the removal done at the former franchisee's and/or surety's expense.

#### **Sec. 6-24: Transfers**

- A. No transfer, sale or assignment of any interest in a franchise shall occur without prior Wellington approval, which shall not be unreasonably withheld.
- B. An application for a transfer, sale or assignment of any interest of a franchise shall meet the requirements of section 6-8 hereof, and provide complete information on the proposed transaction, including, but not limited to, details on the legal, financial, technical and other material and lawful qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. Except in the case of a pro forma transfer as defined herein, the application shall provide, at a minimum, the information required in section 6-8 or such other information as is specified in a franchise agreement in lieu of the information required in section 6-8. Upon written request, the applicant shall provide to Wellington as additional information any and all written information, other

than the information required to be provided by this chapter and the franchise agreement, that has been provided to Palm Beach County in connection with the transfer if such information is relevant to Wellington. Wellington hereby reserves the right to request such additional information as it may reasonably require to consider the application; however, such requests shall not have the effect of tolling the 120-day automatic approval period provided by federal law. However, nothing herein shall be deemed a waiver of Wellington's right to deny approval of a transfer within the 120-day period.

- C. The application process shall not include any pro forma transfers, as defined herein, which are related solely to any restructuring, recapitalization or refinancing which does not change the effective control of the franchisee or to any mortgages and pledges of franchisee's securities, but shall require proper notice to Wellington pursuant to the terms of the ordinance or the franchise agreement.
- D. In making a determination on whether to grant an application for a transfer of a franchise, Wellington council shall consider the legal, financial, technical and other lawful and material qualifications of the transferee to operate the cable system; whether the incumbent cable operator is in substantial compliance with the material terms of its franchise agreement and this chapter and, if not, the proposed commitment of the transferee to cure such noncompliance; and whether operation by the transferee would adversely affect cable services to subscribers. Wellington's Council shall not unreasonably withhold approval to any such transfer. However, nothing herein shall be deemed a waiver of Wellington's right to deny approval of a transfer within the 120-day period.
- E. No franchise transfer application shall be granted unless the transferee, if the franchise holder, agrees in writing to abide by and accept all terms of this chapter and a franchise agreement, and to assume all obligations and liabilities of the previous franchisee, whether known or unknown. If such transferee will not be the holder of the franchise, such transferee will sign an acknowledgement ensuring compliance by the franchisee with the franchise agreement and this chapter. Wellington shall certify to franchisee, upon request, all issues of franchisee's performance that are known and pending.
- F. Subject to applicable law, approval by Wellington of a transfer of a franchise does not constitute a waiver or release of any of the rights of Wellington under this chapter or the franchise agreement, whether arising before or after the date of the transfer.
- G. Pursuant to the procedures set forth in section 6-25, failure to obtain the consent of Wellington with respect to this section 6-24 may result in the imposition of liquidated damages in the amount of \$1,500.00 per day for failure to receive such consent of Wellington for a transfer or change of control; provided, however, that no such liquidated damages shall be owed if Wellington's denial of consent is unlawful or unreasonable.

## **Sec. 6-25: Franchise Violations**

- A. In addition to any other remedies available at law or equity, Wellington may apply any one (1) or combination of the following remedies in the event a franchisee violates a provision of this chapter or a franchise agreement after following the procedures set forth in this section below.
  - 1. Impose liquidated damages in an amount of not less than \$250.00 per day or part thereof per individual violation, or as otherwise expressly provided in this chapter or in a franchise agreement. Payment of liquidated damages by the franchisee will not relieve the franchisee of its obligation to comply with the franchise agreement and the requirements of this chapter, provided, however, that cure of the alleged violation and payment of liquidated damages

pursuant to this section shall be considered full and final resolution of the alleged violation and may not be considered as an event of noncompliance for such period.

2. Revoke the franchise pursuant to the procedures specified in section 6-26 hereof.
  3. In addition to or instead of any other remedy provided herein, Wellington may seek equitable relief from any court of competent jurisdiction.
- B. In determining which remedy or remedies are appropriate, Wellington shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations and such other matters as Wellington determines are appropriate to the public interest.
- C. Failure of Wellington to enforce any requirements of a franchise agreement or this chapter shall not constitute a waiver of Wellington's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.
- D. If Wellington (or the Village Manager or designee with respect to section 6-19 of this chapter) believes that franchisee has failed to perform any obligation under this chapter or a franchise agreement or has failed to perform in a timely manner, Wellington shall notify franchisee in writing, stating with reasonable specific Wellington the nature of the alleged default. Franchisee shall have 30 days from the receipt of such notice to:
1. Respond to Wellington, contesting Wellington's assertion that a default has occurred, and requesting a meeting in accordance with subsection E, below; or
  2. Cure the default (except franchisee shall have 90 days with respect to customer service standards measured on a quarterly basis); or
  3. Notify Wellington that franchisee cannot cure the default within the 30 days (or 90 days where applicable), because of the nature of the default. In the event the default cannot be cured within the applicable time frame, franchisee shall promptly take all reasonable steps to cure the default and notify Wellington in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, Wellington shall set a meeting in accordance with subsection E below to determine whether additional time beyond the time specified above is indeed needed, and whether franchisee's proposed completion schedule and steps are reasonable.
- E. If franchisee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection D.3, or denies the default and requests a meeting in accordance with subsection D.1, or Wellington orders a meeting in accordance with subsection D.3, Wellington shall set a meeting to investigate said issues or the existence of the alleged default. Wellington shall notify franchisee of the meeting in writing and such meeting shall take place no less than 30 days after franchisee's receipt of notice of the meeting. At the meeting, franchisee shall be provided an opportunity to be heard and to present evidence in its defense.
- F. If, after the meeting, Wellington determines that the franchisee has corrected the violation or promptly commenced correction of such violation after notice thereof from Wellington and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

- G. If, after the meeting, Wellington determine that a violation exists and that franchisee has not corrected the same in a satisfactory manner or did not promptly commence and diligently process to correct the violation, Wellington may:
1. Impose penalties and/or liquidated damages in accordance with subsection (a) above and withdraw such amount from the security fund required in this chapter or a franchise agreement as monetary damages;
  2. Recommend the revocation of this franchise pursuant to the procedures in section 6-26 below;  
or
  3. Recommend any other legal or equitable remedy available under this franchise or any applicable law.
- H. If Wellington (or the Village Manager or designee in the case of fines assessed in accordance with section 6-19 of this chapter) elects to assess liquidated damages in accordance with this section 6-26, then such election shall bar Wellington from instituting revocation proceedings for a period of 120 days. Thereafter, if the franchisee remains in noncompliance with the requirements of this chapter or a franchise agreement, Wellington may institute revocation proceedings against the franchisee in accordance with the provisions of section 6-26 below.
1. Notwithstanding anything to the contrary, any fines/liquidated damages imposed herein shall be calculated as accruing from the date of written notice to the franchisee of the violation.
  2. The determination as to whether a violation of this franchise has occurred shall be within the discretion of Wellington's Council, provided that any final determination may be subject to appeal to a court of competent jurisdiction under applicable law.

#### **Sec.6-26: Revocation**

- A. Wellington may revoke and rescind all rights and privileges associated with a franchise in the following circumstances, each of which represents a material breach of this franchise:
1. If franchisee fails to perform any material obligation under this chapter or in a franchise agreement between under Wellington and franchisee;
  2. If franchisee willfully fails for more than 48 hours to provide continuous and uninterrupted cable service;
  3. If franchisee practices any fraud or deceit upon Wellington or subscribers; or
  4. If franchisee willfully makes a material misrepresentation of fact in the application for or negotiation of a franchise, a renewal or a transfer.
- B. Prior to forfeiture or termination of the franchise, Wellington shall give written notice by certified mail to the franchisee of its intent to revoke the franchise. The notice shall set forth the exact nature of the noncompliance. If within 30 days following receipt of such written notice from Wellington to the franchisee, the franchisee has not cured such violation or breach, or has not entered into a written agreement with Wellington on a program to cure the violation, or has not demonstrated that the violation is incurable, or has filed a written response to Wellington demonstrating that no violation



has occurred, Wellington may then seek a termination of the franchise by Wellington council in accordance with this subsection.

- C. Any proceeding under the subsection above shall be conducted by Wellington's Council and open to the public. Franchisee shall be afforded at least 30 days' prior written notice of such proceeding.
1. At such proceeding, franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. Wellington's Council shall hear any persons interested in the revocation, and shall allow franchisee an opportunity to state its position on the matter.
  2. Within 90 days after the hearing, Wellington's Council shall determine whether to revoke the franchise and declare that the franchise is revoked and the security fund forfeited; or if the breach at issue is capable of being cured by franchisee, direct franchisee to take appropriate remedial action within the time and in the manner and on the terms and conditions that Wellington's Council determines are reasonable under the circumstances. If Wellington determines that the franchise is to be revoked, Wellington shall set forth the reasons for such a decision and shall transmit a copy of the decision to the franchisee. Franchisee shall be bound by Wellington's decision to revoke the franchise unless it appeals the decision to a court of competent jurisdiction within 120 days of the date of the decision.
  3. Franchisee shall be entitled to such relief as the court may deem appropriate.
  4. Wellington's Council may, at its sole discretion, take any lawful action that it deems appropriate to enforce Wellington's rights under the franchise in lieu of revocation of the franchise.
- D. If Wellington revokes a franchise, or if, for any other reason, a franchisee abandons the cable system, terminates or fails to operate or maintain service to its subscribers for a period of 30 days, the following procedures and rights are effective:
1. Wellington may require the former franchisee to remove its facilities and equipment at the former franchisee's expense. If the former franchisee fails to do so within a reasonable period of time, Wellington may have the removal done at the former franchisee's and/or surety's expense.
  2. Wellington, by resolution of Wellington's Council, may acquire ownership, or effect a transfer of the cable system, in accordance with Section 627 of the Communications Act.
  3. If a cable system is abandoned by a franchisee, Wellington may sell, assign or transfer all or part of the assets of the system.
- E. Where Wellington has issued a franchise specifically conditioned in the franchise agreement upon the completion of construction, system upgrade or other specific obligation by a specified date, failure of the franchisee to complete such construction or upgrade, or to comply with such other specific obligations as required may result in revocation of the franchise, unless Wellington, at its discretion and for good cause demonstrated by the franchisee, grants an extension of time.
- F. No adverse action against a franchisee may be taken by Wellington pursuant to this section except as consistent with the procedures set forth in this section or as otherwise provided by applicable law, including a noticed public hearing at which the franchisee is given an opportunity to participate.

### **Sec. 6-27: Continuity of Service Mandatory**

- A. It is the right of all subscribers to receive all available services from the franchisee as long as their financial and other obligations to the franchisee are satisfied.
- B. In the event of a termination or transfer of a franchise for whatever reason, the franchisee shall ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. The franchisee shall cooperate with Wellington to operate the system for a temporary period following termination or transfer as necessary to maintain continuity of service to all subscribers. The temporary period will not exceed six (6) months without the franchisee's written consent. During such period, the cable system shall be operated under such terms and conditions as Wellington and the franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to subscribers and that will provide reasonable compensation to the cable operator.
- C. In the event a franchisee fails to operate the system for seven (7) consecutive days without prior approval of Wellington or without just cause, Wellington may, at its option, operate the system or designate an operator, until such time, as the franchisee restores service under conditions acceptable to Wellington or until a permanent operator is selected. If Wellington is required to fulfill this obligation for the franchisee, the franchisee shall reimburse Wellington for all costs or damages resulting from the franchisee's failure to perform. Additionally, the franchisee will cooperate with Wellington to allow Wellington employees and/or Wellington agents access to the franchisee's facilities and premises for purposes of continuing system operation.

### **Sec. 6-28: Rates**

- A. At such time that federal law permits rate regulation, Wellington reserves all rights to implement and impose such regulation, and may do so by amendment to this chapter, by separate ordinance, by amendment to a franchise agreement, or in any other lawful manner.
- B. Nothing in this chapter shall prohibit Wellington from regulating rates for cable services to the full extent permitted by law.
- C. Should a franchisee desire to change any rate or charge, it shall comply with all laws with respect thereto.
- D. Notwithstanding anything to the contrary, a franchisee shall provide to the Village Manager notice of any/all changes to all subscriber rates no less than 30 days prior to the effective date of such change.

### **Sec. 6-29: Performance Evaluation**

Wellington may conduct periodic, but not more than once during any 12-month period unless for specific cause, performance evaluations of a franchisee as Wellington determines is necessary. A franchisee shall cooperate with these evaluations reasonably and in good faith. If Wellington implements a survey of cable subscribers in connection with a performance evaluation, Wellington may require a franchisee to distribute Wellington's questionnaire to its subscribers at Wellington's expense, provided the franchisee shall have the right to review the questionnaire prior to its distribution by franchisee. Upon request and upon reimbursement of Wellington's copying costs, the franchisee may inspect or receive copies of all responses.

### **Sec. 6-30: Administration**

- A. The Village Manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this chapter and franchise agreements. The Village Manager or designee shall be empowered to take all administrative actions on behalf of Wellington, except for those actions specified in this chapter that are reserved to Wellington's Council. The Village Manager or designee may recommend that the council take certain actions with respect to the franchise. The Village Manager, or designee, shall keep Wellington's Council apprised of developments in cable and provide Wellington's Council with assistance, advice and recommendations as appropriate.
- B. To the extent permitted by federal and state law, Wellington's Council shall have the sole authority to regulate rates for cable services, grant franchises, authorize the entering into of franchise agreements, modify franchise agreements, renew or deny renewal of franchises, revoke franchises, and authorize the transfer of a franchise.

### **Sec. 6-31: Force Majeure**

In the event a franchisee's performance of, or compliance with, any of the provisions of this chapter, or the franchisee's franchise agreement is prevented by a cause or event not within the franchisee's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof; provided, however, that franchisee uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this chapter, and any franchise agreement granted or renewed hereunder, causes or events not within a franchisee's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes, loss of utility service not as a result of any action or inaction by franchisee and restraints imposed by order of a governmental agency or court (unless such order is procured at franchisee's behest). Causes or events within franchisee's control, and thus not falling within this section, shall include, without limitation, franchisee's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of franchisee's directors, officers, employees, contractors or agents.

### **Sec. 6-32: Applicability**

This chapter shall be applicable to all cable franchises granted, renewed, modified or transferred on or after the effective date hereof, and shall apply to all cable franchises granted prior to the effective date of this chapter, to the full extent permitted by state and federal law.

### **Sec. 6-33: Municipal Cable System Ownership Authorized**

- A. Wellington may acquire, construct, own and/or operate a cable system, to the full extent permitted by law.
- B. Nothing in this chapter shall be construed to limit or expand in any way the ability or authority of Wellington to acquire, construct, own and/or operate a cable system to the full extent permitted by law.

### **Sec. 6-34: Reservation of Rights**

- A. Wellington reserves the right to amend this chapter as it shall find necessary in the lawful exercise of its police powers.

- B. Wellington reserves the right to the extent permitted by applicable law to exercise the power of eminent domain to acquire the property of the franchisee's cable system. Nothing herein is intended to restrict or expand such rights as granted by the Constitution and laws of the State of Florida.
- C. Wellington shall at all times have the right, upon reasonable notice and during normal business hours, to examine and copy a franchisee's records and to inspect a franchisee's facilities to the extent needed to monitor a franchisee's compliance with and performance under this chapter and the franchisee's franchise agreement. However, Wellington shall not copy any records that have been identified as confidential and proprietary pursuant to Ch. 119 F.S.

#### **Sec. 6-35: Notices**

All written correspondence between Wellington and franchisee shall be delivered via hand delivery, certified mail or such other means to provide a return receipt. Notice to the franchisee shall be deemed effective upon written receipt. Notice to Wellington shall be effective upon written receipt by the Village Manager.

## **CHAPTER 7 - COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY**

### **Sec. 7-1: Title; Authority**

This chapter shall be known, and may be cited as, the Wellington Communications Facilities in the Public Rights-of-Way Ordinance. Wellington derives the authority for this chapter from F.S. Ch. 166 and § 337.401. This chapter, and any rules, regulations, specifications and agreements adopted pursuant to this chapter, comply with all applicable federal and state laws.

### **Sec. 7-2: Purpose**

- A. The purpose of this chapter, consistent with Wellington's obligation to promote the public health, safety, and welfare; to manage the public rights-of-way; and to ensure that the public is not inconvenienced by the use of the rights-of-way for the placement of wireline and wireless communications facilities, is to establish a process for managing, and enforcing uniform standards for acting upon requests for the placement of wireline and wireless communications facilities within Wellington rights-of-way. Wellington recognizes the importance of wireline and wireless communications facilities to provide high-quality communications service to the residents and businesses within the municipal boundary, and Wellington recognizes its obligation to comply with applicable federal and state laws regarding the placement of wireline and wireless communications facilities in its rights-of-way. This chapter shall be interpreted at all times to be consistent with those federal and Florida provisions.
- B. This chapter is not intended to and shall not be interpreted or applied to:
1. Prohibit or effectively prohibit the provision of communications services;
  2. Unreasonably discriminate among providers of functionally equivalent communications services;
  3. Regulate the installation, operation, collocation, modification or removal of communications facilities on the basis of the environmental effects of RF emissions to the extent that such emissions comply with all applicable FCC regulations;
  4. Prohibit or effectively prohibit any collocation or modification that Wellington may not deny under state or federal law; or
  5. Preempt any applicable state or federal law.

### **Sec. 7-3: 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:

**Antenna:** Any apparatus designed for the transmitting and/or receiving of electromagnetic waves, including but not limited to telephonic, radio or television communications. Types of elements include, but are not limited to omni-directional (whip) antennas, sectionalized (panel) antennas, multi or single bay (FM and TV), yagi, or parabolic (dish) antennas.

**Applicable Codes:** Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement F.S. § 337.401(7), the "Advanced Wireless Infrastructure Deployment Act," as amended. The term

includes objective design standards, including those related to historical and environmental protection standards, adopted by ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment.

**Application:** A formal request, including all required and requested documentation and information submitted by an applicant to Wellington, for a communications facility permit.

**Applicant:** A person filing an application for placement or modification of a communications facility in the rights-of-way.

**Base Station:** The electronic equipment utilized by the wireless communication provider(s) for the transmission and reception of radio signals.

**Collocation:** To install, mount, maintain, modify, operate, or replace one (1) or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole within a public right-of-way subject to F.S. § 337.401, as amended from time to time. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way. Collocation outside of a public right-of-way means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, where an eligible support structure is a tower or other structure that already has wireless communication equipment located thereon.

**Communications Facility:** A wireless communications facility or wireline communications facility.

**Communications Service Provider:** A provider engaged in the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes providers of such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.

**Concealed:** A tower, wireless support structure, or equipment cabinet that is not readily identifiable as such, and is designed to be aesthetically compatible with existing and proposed structure(s) and uses on a site. There are three (3) types of concealed facilities:

1. Antenna attachments; examples of antenna attachments include, but are not limited to the following: painted antenna and feed lines to match the color of an existing structure, or other architectural features that blend with an existing structure;
2. Freestanding; freestanding concealed towers or wireless support structures usually have a secondary, obvious function that may be, but is not limited to the following: banner pole, streetlight, traffic signal light or light standard; and
3. Equipment cabinets vinyl wrapped to blend with surroundings consistent with the requirements of this chapter.

**Eligible Facilities Request:** shall have the meaning as set forth in 47 C.F.R. Section 1.60001(b)(3).

**Equipment Cabinet:** Any structure including cabinets, shelters, pedestals, and other similar structures that are used exclusively to contain radio or other equipment necessary for the transmission or reception of wireless communication signals

**Facility:** Facilities, equipment, and installations of any kind, including but not limited to any lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, or other equipment. A reference to a facility refers both to the facility considered as a whole and the individual elements of the facility.

**FCC:** The Federal Communications Commission or its lawful successor.

**Install:** The placing of a facility in the right-of-way, whether initially or as part of the repair, modification, replacement, removal or expansion of an existing facility, and including any process by which a facility is placed within a right-of-way, including but not limited to attachment, construction, digging, excavation, placement, and pulling.

**Micro-wireless Facility:** A small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

**Neutral Host Antenna:** An antenna or an antenna array designed and utilized to provide services for more than one (1) wireless provider, or a single wireless provider utilizing more than one (1) frequency band or spectrum, for the same or similar type of services.

**Pass-through Provider:** Any person who places or maintains a communications facility in the roads or rights-of-way of a municipality or county that levies a tax pursuant to F.S. Ch. 202 and who does not remit taxes imposed by Wellington pursuant to F.S. Ch. 202.

**Permit:** A permit issued pursuant to this chapter authorizing the placement or modification of a communications facility of a design specified in the permit at a particular location within the rights-of-way; and the modification of any existing support structure to which the communications facility is proposed to be attached.

**Permittee:** any person or entity granted a permit pursuant to this chapter.

**Personal Wireless Services:** shall have the meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

**Pole:** Any street, utility, traffic signal, streetlight, banner or any other pole in the ROW designed to support facilities in addition to wireless facilities.

**Right(s)-of-Way or ROW:** The term right(s)-of-way or ROW means the surface, the airspace above the surface and the area below the surface of any public street, alley, viaduct, elevated roadway, bridge, public easement, or any other public way for which Wellington is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, including rights-of-way owned or dedicated to the Acme Improvement District, a dependent special district of Wellington (collectively with Wellington). "Public rights-of-way" shall not include any real or personal Wellington property except as described above and shall not include Wellington buildings, fixtures, or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

**Small Wireless Facility:** A wireless communications facility that meets the following conditions:

1. Each antenna associated with the facility is located inside an enclosure of no more than six (6) cubic feet in volume, or in the case of antennas that have exposed elements, each antenna and

all of its exposed elements would fit within an enclosure of no more than six (6) cubic feet in volume; and

2. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

**Underground Areas:** Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right-of-way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

**Utility Pole:** A pole or similar structure that is used, in part or in whole, to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less, unless Wellington grants a waiver for such pole.

**Wellington Pole:** A Wellington-owned or controlled structure, utility pole, object, or equipment in the right-of-way, including, but not limited to, street lights, traffic control structures, banner poles, bus shelters, or other poles, lighting fixtures, or electrollers.

**Wireless Communications Facility:** Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

1. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
2. Wireline backhaul facilities; or
3. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

**Wireless Provider:** A wireless infrastructure provider or a wireless services provider.

**Wireless Infrastructure Provider:** A person who:

1. Has received a certificate under Chapter 364 from the Florida Public Service Commission to provide telecommunications service in Florida or a certificate under Chapter 610 from the Florida Public Service Commission to provide cable or video services; and
2. Builds or installs wireless communication transmission equipment, wireless communication facilities, or wireless support structures but is not a wireless services provider.



**Wireless Services Provider:** A person or entity that provides wireless services as defined by the Federal Communications Commission.

**Wireless Support Structure:** A freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole, pedestal, or other support structure for ground-based equipment not mounted on a utility pole and less than five (5) feet in height.

#### **Sec. 7-4: Scope**

- A. General: Unless exempted, every person who desires to place a communications facility in the rights-of-way or modify an existing communications facility in the rights-of-way must obtain a permit authorizing the placement or modification in accordance with this chapter. Except for small wireless facilities, facilities qualifying as eligible facilities requests, or any other type of facility expressly allowed in the right-of-way by state or federal law, no other communications facilities shall be permitted pursuant to this chapter.
- B. Exemptions: This chapter does not apply to:
1. The placement or modification of communications facilities by Wellington or by any other agency of the state solely for public safety purposes;
  2. Routine maintenance of a wireless or wireline communications facility;
  3. Replacement of an existing wireless or wireline facilities with wireless or wireline facilities that are substantially similar or of the same or smaller size;
  4. Installation, placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a wireless services provider authorized to occupy the rights-of-way and who is remitting taxes under F.S. Ch. 202; or
  5. Any facilities located on public or private property outside the rights-of-way managed by Wellington.
- C. Other Applicable Requirements: In addition to the permit required herein, the placement of a communications facility in the rights-of-way requires the persons who will own or control those facilities to obtain all permits required by applicable law, and to comply with applicable law, including, but not limited to, applicable federal law governing radio frequency (RF) emissions, and Wellington Engineering Standards Manual or its successor, as may be amended from time to time.
- D. Public Use: Except as otherwise provided by state law, any use of the right-of-way authorized pursuant to this chapter will be subordinate to Wellington's use and use by the public.

#### **Sec. 7-5: Administration**

- A. Review by the Wellington Engineer: Wellington Engineer, or designee, shall be responsible for administering this chapter. As part of the administration of this chapter, the Wellington Engineer may:
1. Adopt regulations governing the placement and modification of communications facilities consistent with the requirements of this chapter and applicable state and federal law.

including regulations governing collocation and resolution of conflicting applications for placement of both wireline and wireless communications facilities;

2. Interpret the provisions of this chapter;
3. Develop acceptable engineering standards for wireline and wireless communications facilities in particular corridors;
4. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
5. Develop forms and procedures for submission of applications for placement or modification of wireline and wireless communications facilities, and proposed changes to any wireless support structure consistent with this chapter;
6. Determine the amount of and collect, as a condition of the completeness of any application, any fee established by this chapter that is allowed by state law;
7. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal and state laws and regulations;
8. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
9. Take such other steps as may be required to timely act upon applications for placement of personal wireless services facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

**B. Appeal:**

1. Any person adversely affected by the decision of Wellington's Engineer pursuant to this chapter may appeal the decision to the Village Manager, who may decide the issues *de novo*, and whose written decision will be the final decision of Wellington. An appeal by a wireless infrastructure provider which already has identified in its application a wireless service provider for such wireless communications facility must be taken jointly with such wireless service provider. All appeals must be filed within three (3) business days of issuance of the written decision of Wellington's Engineer.
2. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law including but not limited to F.S. § 337.401.
3. An appeal or the availability of an appeal does not bar review of an application denial in a court of competent jurisdiction.

**Sec. 7-6: Registration**

- A. A communications services provider, as defined by Florida law, who desires to place or maintain a communications facility in public rights-of-way within Wellington shall first register with Wellington in accordance with this chapter. Subject to the terms and conditions prescribed in this chapter, a registrant may place or maintain a communications facility in public rights-of-way.

- B. A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Registration under this chapter governs only the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes or regulations may apply to the placement or maintenance in the public rights-of-way of facilities that are not communications facilities. Registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on Wellington's or another person's facilities. Registration does not excuse a communications services provider from complying with applicable codes.
- C. Each communications services provider who desires to place or maintain a communications facility in public rights-of-way in Wellington shall file a single registration with Wellington, which shall include the following information:
1. Name and federal employment identification number of the applicant under which it will transact business in Wellington and, if different, in the State of Florida;
  2. Name, address, email address, and telephone number of the applicant's primary contact person in connection with the registration;
  3. The type of communications services that the applicant intends to provide within Wellington (if more than one (1), state all that apply), or, if none, state that the applicant is a pass-through provider;
  4. A copy of the applicant's current certificate of authorization or license or resale certificate to provide communications services issued by the Florida Public Service Commission, the Florida Department of Revenue, the Federal Communications Commission, or other federal or state authority, if any;
  5. Evidence of the insurance coverage required under this chapter;
  6. If the registrant is a corporation or limited liability company, proof of authority to do business in the State of Florida, which may be satisfied by an electronic certificate of good standing from the Florida Department of State or by other means; and
  7. Acknowledgment that the applicant has received and reviewed a copy of this chapter, such acknowledgment shall not be deemed an agreement.
- D. Wellington shall review the information submitted by the applicant. Such review shall be conducted by the Village Manager, or designee. If Wellington determines that the applicant submitted information in accordance with subsection C of this section, the registration shall be effective and Wellington shall notify the applicant of the effectiveness in writing. If Wellington determines that the information has not been submitted in accordance with subsection C of this section, Wellington shall notify the applicant of the non-effectiveness, and reasons for the non-effectiveness, in writing. Wellington shall so reply to an applicant within 30 days after receipt of registration information from the applicant. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration under the provisions of this section. An applicant has 30 days after receipt of a notice of non-effectiveness and/or denial of registration to appeal the decision.
- E. Cancellation of Registration: A registrant may cancel a registration upon written notice to Wellington stating that it will no longer place or maintain any communications facilities in public rights-of-way within Wellington and will no longer need to obtain permits to perform work in public

rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.

- F. *Limited Rights Conferred by Registration:* Registration does not, in and of itself, establish a right to place or maintain or priority for the placement or maintenance of a communications facility in public rights-of-way within Wellington, but shall establish for the registrant a right to apply for a permit from Wellington. Registrations are expressly subject to any future amendment to or replacement of this chapter and further subject to any additional Wellington ordinances, as well as any state or federal laws that may be enacted.
- G. *Registration Renewal and Updates:* A registrant shall renew its registration with Wellington by October 1 of every five (5) years in accordance with the registration requirements of subsection C of this section. Additionally, within 90 days of any change in the information required to be submitted pursuant to subsection C of this section, a registrant shall provide updated information to Wellington. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in Wellington restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this chapter.
- H. *Permit Required:* In accordance with applicable Wellington ordinances, codes, or regulations and except for the exemptions provided in this chapter, a permit is required for a communications services provider to place or maintain a communications facility in the public rights-of-way. An effective registration shall be a condition of obtaining such a permit. Notwithstanding an effective registration, all permitting requirements shall apply. A permit may be obtained by, or on behalf of, a registrant having an effective registration if all permitting requirements of Wellington and other provisions of this chapter are met.
- I. *Insurance:* At all times during the use or occupancy of the public rights-of-way, including any time during placement or maintenance of communications facilities, the permittee shall obtain, pay all premiums for, and maintain satisfactory to Wellington, insurance coverage insuring the permittee and naming Wellington, its officers, boards, Council, council members, agents, and employees as additional insureds: workers' compensation and employer liability insurance to meet all requirements of Florida law and commercial general liability insurance with respect to the construction, operation and maintenance of the communications facilities, and the conduct of registrant's business in Wellington, in the minimum amounts of:
1. \$1,000,000.00 in any one (1) accident for bodily injury, personal injury or death, property damage;
  2. \$500,000.00 for personal injury to any one (1) person;
  3. \$250,000.00 for property damage in any one (1) accident;
  4. Business automobile liability insurance valid in the State of Florida, which policy limit shall be in an amount not less than \$1,000,000.00 combined single limit, including bodily injury and property damage covering owned, leased, hired and non-owner vehicles;
  5. Workers' compensation valid in the State of Florida, which policy limit shall be in an amount not less than the statutory limit for workers' compensation;
  6. Employer's liability insurance valid in the State of Florida, which policy limit shall be in an amount not less than \$1,000,000.00 each accident for employer's liability;

7. All insurance providers used shall be admitted and duly authorized to do business in the State of Florida and shall have been assigned by A.M. Best Company a minimum financial strength rating of "A" and a minimum financial size category of "IX" (i.e., a size of \$250,000,000.00 to \$500,000,000.00 based on capital, surplus, and conditional reserve funds). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable. All liability policies shall name Wellington, its Council, council members, officers, boards, agents, and employees as additional insureds with respect to any covered liability arising out of the placement or maintenance of communications facilities in the public rights-of-way or other activities under this chapter. Each communications services provider shall furnish annually to Wellington certificates showing proof of all required insurance coverage. All liability coverage must be in occurrence form and in accordance with the limits specified. Claims made policies are not acceptable. No insurance policy shall be canceled, nor shall the occurrence or aggregate limits set forth herein be reduced, until Wellington has received at least 30 days' advance written notice by registered, certified or regular mail of any cancellation, intent not to renew or reduction in policy coverage. Each communications services provider shall be responsible for notifying Wellington of such cancellation, intent not to renew or a reduction in coverage. All certificate(s) of insurance, including all endorsements and riders, evidencing insurance coverage shall be submitted to Wellington within 30 days after the date of registration with Wellington in order for a communications services provider to obtain a permit required for construction in the public rights-of-way. Each communications services provider shall, in the event of any such notice described above, obtain, pay all premiums for, and file with Wellington, written evidence of the issuance of replacement policies within 30 days following receipt by Wellington or the communications services provider of such notice; and
8. Nothing contained in this chapter shall limit a communications service provider's liability to Wellington to the limits of insurance certified or carried.
- J. A communications services provider may satisfy the insurance requirements of this chapter by providing documentation of self-insurance that, in the sole discretion of the Village Manager, demonstrates incontrovertibly the adequacy to defend, and cover claims of any nature that might arise from the placement and maintenance of facilities in the public ROW. The communications services provider must be authorized as a self-insurer by the Department of Insurance under the laws of the State of Florida.

#### **Sec. 7-7: General Standards for Wireless Communications Facilities in the Rights-of-Way.**

- A. General: Consistent with F.S. § 337.401, as may be amended, only small wireless facilities and micro-wireless facilities may be considered for placement within Wellington's rights-of-way, and same shall be limited to the size parameters listed therein and any other design specifications detailed in this subdivision. Due to the unique nature of wireless signals and the specific equipment needed for transmission and reception of wireless signals, placement of wireless communications facilities in the public right-of-way shall comply with the following:
  1. Collocation or Use of Concealed Facilities: A small or non-exempt micro-wireless facility and any antennas in the public right-of-way shall, to the extent possible, be collocated on an existing power, light or other utility pole as illustrated in the examples in this chapter. When collocation of an antenna or small wireless facility or non-exempt micro-wireless facility is not possible, a freestanding new concealed facility is preferred, as illustrated in the examples in this chapter. The applicant shall submit a permit application to Wellington's Engineer for approval prior to any installation, which shall be processed in accordance with this section and F.S. § 337.401(7). Wellington prefers that small wireless

facilities and non-exempt micro-wireless facilities, located in the public rights-of-way, whether collocated or freestanding, be technically capable of servicing a minimum of four (4) wireless service providers with like technical facilities through the use of neutral host antenna.

2. When collocation occurs upon Wellington utility poles within Wellington's rights-of-way, in addition to the permit, Wellington shall require the communications service provider and/or owner, if different parties, to execute a lease agreement and remit an annual rent of \$150.00 per Wellington utility pole, as provided herein.
3. Height, Setbacks, and Related Location Requirements:
  - a. The height limitation of a small wireless or non-exempt micro-wireless facility is 10 feet above the utility pole or structure upon which the small wireless or non-exempt micro-wireless facility is to be collocated. Unless waived by Wellington, the height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, Wellington shall limit the height of the new utility pole to 50 feet.
  - b. Except as otherwise provided herein, small wireless or non-exempt micro-wireless facilities in the public rights-of-way shall conform to the standards and requirements set forth in the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.
  - c. No antenna attached to a freestanding pole in the public rights-of-way with a ground mounted equipment, other than as a collocation with an existing power, light, or other utility pole, or unless installed as a concealed facility, shall be permitted within 50 feet of any principal residential structure.
  - d. An external box or cabinet housing the equipment connected to an antenna attached to a freestanding pole in the public rights-of-way shall be vinyl wrapped in accordance with the design standards set forth in this chapter.
  - e. When collocation is not available, Wellington prefers the following locations for new small wireless facilities or non-exempt micro-wireless facilities within a right-of-way (from most preferred to least preferred):
    - i. Within existing utility easements in the public right-of-way on the same side of the street as an existing pole line;
    - ii. Within the public right-of-way behind sidewalks on the same side of the street as an existing pole line;
    - iii. Within existing utility easements in the public right-of-way;
    - iv. Behind sidewalks; or
    - v. On the same side of the street as an existing pole line.

- f. Applicants should avoid proposing new small wireless or non-exempt micro-wireless facilities in the following locations:
    - i. Within or adjacent to residential property where no pole line exists;
    - ii. In swale areas utilized for stormwater collection; or
    - iii. Closer to the travel way than permitted by Florida Department of Transportation minimum roadside offset standards.
- 4. Small wireless or non-exempt micro-wireless communications facilities shall be located in state or county arterial or collector rights-of-way, whenever possible. Placement of small wireless, or non-exempt micro-wireless, facilities in a Wellington collector street, cul-de-sac, local street, or marginal access street rights-of-way shall be discouraged, unless the applicant cannot otherwise provide service to a particular customer, or customers, without doing so, and the ability to place facilities in such rights-of-way is necessary to accomplish requirements of nondiscriminatory treatment of the applicant in relation to Wellington's treatment of other communications service providers. In such circumstances, the applicant shall include with its Wellington permit application, sufficient evidence consistent with industry standards, to justify such placement. Whenever small wireless facilities must be placed in a right-of-way with residential uses on one (1) or both sides, neither poles, equipment, antennas, or other structures shall be placed directly in front of a residential structure. If a right-of-way has residential structures on only one (1) side, the small wireless facilities shall be located on the opposite side of the right-of-way whenever possible. All small wireless facilities shall be located in such a way that they do not unreasonably interfere with views from residential structures, such as placement that is at the farthest point from the principal structure within the property line.
- B. Concealment: All new small wireless facilities within a public right-of-way shall be constructed using concealment techniques, as further described in this chapter. In all residential and non-residential districts, the concealment technique to be utilized shall be through the installation of either:
  - 1. A decorative banner pole capable of concealing all equipment and related appurtenances within the pole structure or located under the ground, or an above ground equipment cabinet adjacent to the wireless facility support structure and concealed by a vinyl wrap consistent with the requirements set forth this chapter; or
  - 2. A concealed facility designed to replicate existing standard or decorative street lights located in the applicable zoning district. In the Equestrian Overlay Zoning District, the concealment technique to be utilized may be through the installation of a decorative banner and/or pedestrian-scale poles designed to be consistent with the equestrian nature of the Equestrian Preservation Areas, and capable of concealing all equipment and related appurtenances within the pole structure. Wellington's Engineer shall determine the applicable concealment technique for each proposed facility pursuant to the parameters described in this chapter. In all instances, exterior looping of excess cable length installed on any small wireless facility or non-exempt micro-wireless facility located in the public right-of-way is prohibited and all cabling and interconnecting wires must be concealed.
- C. Design Standards: In addition to the concealment requirements set forth herein, wireless communication facilities shall meet all applicable design standards as follows:

1. All underground portions of wireless communications facilities shall be placed in conduit using material subject to review and approval by Wellington's Engineer. Wellington's Engineer may permit the use of "trenchless technology" for installation in lieu of traditional installation methods; but in all instances the underground portions of the wireless communications facility shall be contained within conduit material following installation.
2. Wellington prefers that all underground facilities, poles, and all associated equipment should be placed in utility easements, dedicated for such a purpose, wherever utility easements exist, even if this means the underground facilities and associated equipment will be placed outside of the road right-of-way, on private property.
3. All underground facilities must be buried at a minimum depth of 24-inches below existing grade.
4. Conflicts between small wireless facilities (poles, underground facilities, and above ground equipment) and existing Wellington-owned utilities including but not limited to potable water, sanitary sewer, stormwater drainage, and reclaimed water must be avoided, wherever possible. When avoiding conflicts with Wellington-owned utilities is not feasible, the following minimum separations apply:
  - a. Horizontal separation: 10-ft. preferred; 6-ft. minimum.
  - b. Vertical separation: 2-ft. minimum.
  - c. Small wireless facility underground conduit must be placed below existing Wellington-owned utilities.
  - d. The Wellington Engineer has the authority to allow lesser separations from Wellington owned utility infrastructure where deemed necessary.
5. The images below this section depict some examples of small wireless or non-exempt micro-wireless facility pole types deemed acceptable by Wellington. These depictions are not meant to be inclusive. Other similar pole types may be deemed acceptable by Wellington's Engineering Department, on a case by case basis, but must be presented to the Engineering Department for approval. The exact pole type proposed by an applicant will be chosen by Wellington's Engineering Department and shall be based on the character of the surrounding neighborhood and harmony of the proposed pole type with the surrounding neighborhood. The following small wireless or non-exempt micro-wireless facility pole criteria must be met in order to achieve permit approval:
  - a. All equipment, meters, cables, or other attachments shall be either contained within the interior or concealed upon the exterior of the pole structure.
  - b. The antenna element located on the top of the pole shall be encased in a shroud or other concealment element. Although Wellington recognizes that the antenna element may be larger in diameter than the pole itself, in no instance shall the antenna element have a diameter greater than two times that of the pole.
  - c. The pole must include a street light, pedestrian pathway light, or both, depending on the proposed location of the pole, together with design elements to permit affixation of a banner to the pole. If the pole is to be placed in close proximity to a vehicular travel way, a street light shall be included in the design of the pole. The street light shall be placed at a height similar to that of other street lights already



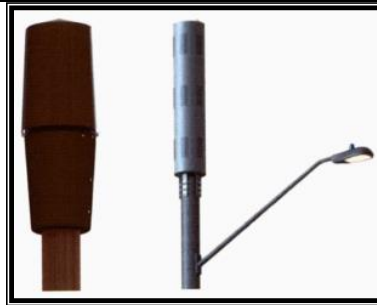
existing along the roadway. The applicant shall be responsible for the cost of electricity for the light and the maintenance of same. If the pole is to be placed in close proximity to a pedestrian pathway, a pedestrian pathway light shall be included in the design of the pole. The pedestrian pathway light shall be placed at a height similar to that of other pedestrian pathway lights already existing along the pathway. If the proposed location of the pole is between a vehicular travel way and a pedestrian pathway, where existing lighting exists along the roadway and pedestrian pathway, then both a street light and a pedestrian pathway light shall be included in the design of the pole. Where existing lights exist, the type and character of the light, whether a street light, pedestrian pathway light, or both, shall be similar to that of the existing lights.

- d. Wellington's preference is for the equipment cabinet, meter, and any other required non-antenna equipment be built into the base of the pole. Wellington recognizes that this may not always be possible due to utility company requirements or space limitations such as, but not limited to, minimum sidewalk width or minimum roadside offsets. When these utility company requirements or space limitations exist, Wellington shall permit a separate cabinet to be installed adjacent to the proposed pole. A single cabinet including all necessary equipment is preferred and multiple cabinets or boxes shall not be permitted when a single cabinet can be utilized. When a separate cabinet is necessary, the proposed cabinet shall be covered on all exposed sides by a vinyl wrap. The color and aesthetic design of the vinyl wrap shall be selected by Wellington's Engineering Department based on the subject location. The wrap design type shall be provided to the permittee prior to permit closeout. Vinyl wrapped cabinet material must meet the following material specifications or approved equal, as determined by Wellington's Engineering Department:
  - i. Multi-layered film (wrap) specifically designed for traffic cabinets;
  - ii. Certified High definition/high quality graphic base material;
  - iii. Certified TW360hd DePont Tedlar protective finish with anti-graffiti, graffiti proof, and chemical resistant film;
  - iv. UV protected and fade resistant with a minimum 5-year rated protective coating;
  - v. Acid rain and environmental toxin resistant;
  - vi. Anti-graffiti rated protection, which allows non-toxic removal of graffiti;
  - vii. Scratch resistant; and
  - viii. 1-year warranty on workmanship, 5-year warranty on fading of graphic.
- e. In each approved application for a new wireless communications facility in a right-of-way, Wellington shall be given the right by the permittee to attach and maintain a banner to the pole. The type of banner, wording, colors, and pictorial elements of the banner shall be chosen at the sole discretion of Wellington.
- f. All new proposed poles shall be painted either gray or green at the sole discretion of Wellington. The exact paint color of the proposed pole shall be selected by

Wellington's Engineering Department. The exact paint color shall be provided to the permittee in the permit approval package. Wellington reserves the right to change the preferred color(s) of any and all proposed poles, prior to permit approval, at its sole discretion.



All collocations on existing utility poles shall utilize shrouds or canisters to conceal the antenna mounted on the top of the utility poles, such as the examples below, and shall either route transmission lines and cables through the interior of the poles when possible or use color matched conduit to conceal lines and cables on the exterior of the existing poles:



6. The use of landscaping around any pole or external equipment, cabinet, box or vault may be required as a buffer to further achieve concealment. Such landscaping shall be consistent with the landscaping otherwise located in the public rights-of-way. Additional landscaping may be required if deemed necessary to buffer adjacent properties. In addition, for concealment purposes, all wireless communications facilities and accompanying equipment must blend into the surrounding environment by utilizing appropriate design wraps and/or colors as described herein. As a condition of approval, Wellington's Engineer, or designee, may require all buffering required in connection with the use of wireless communications facilities in the public rights-of-way shall be maintained by the owner of such facilities at its own cost.
7. All above ground installations associated with a wireless communications facility within Wellington rights-of-way are subject to minimum roadside offset and clear zone

requirements as specified in the latest edition of the Florida Department of Transportation standards manuals.

## **Sec. 7-8: General Standards for Wireline Communications Facilities in the Rights-of-Way**

- A. General: The purpose of this section is to protect and limit deterioration and obstruction of Wellington rights-of-way resulting from the installation of utility poles within Wellington's rights-of-way by communications service providers. Wellington herein adopts uniform regulations for the construction, placement, and maintenance of equipment and wireline communications facilities in the rights-of-way. Such rights-of-way within Wellington are a unique and physically limited resource that are critical to the travel and transport of persons and property and must be managed and controlled in the best interest of the citizens of Wellington, consistent with applicable federal and state law. When applicable, all wireline communications facilities proposed to be installed in the Wellington's rights-of-way must comply with the undergrounding regulations contained in this section.
- B. This section does not authorize an applicant to place wireline communications facilities, including cables or wires, nor construct or install wireline facilities on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned communications facility support structure, or other private property without first obtaining the consent of the property owner.
- C. As part of a building, electrical, and/or an engineering permit application for a new utility pole to support a wireline communications facility, a site development plan shall be presented for approval to Wellington's Engineer. Each application for a proposed new utility pole to support a wireline communications facility shall include all requirements for site development plan approval as required by Wellington's Land Development Regulations (LDR). The Wellington Engineer, or designee, may waive some or all of these provisions for underground wireline facilities that comply with this chapter in order to achieve the objectives of this ordinance. Each application shall contain a rendering or photograph of the wireline communications facility including, but not limited to, colors and screening devices.
- D. As part of a building, electrical, and/or an engineering permit application for a new utility pole to support a wireline communications facility, a statement shall be submitted, including technical data demonstrating that all existing utility poles (including all potentially useable HVET poles) within the proposed service area have been examined, and found unacceptable for attachment of new wireline facility. The report shall include reasons why existing utility poles are not acceptable alternatives to a new freestanding wireline utility pole. The report regarding the adequacy of alternative existing facilities or the replacement or mitigation of existing facilities to meet the applicant's need or the needs of service providers indicating that no existing utility poles could accommodate the applicant's proposed facility shall consist of any of the following:
  - 1. No existing poles located within the geographic area meet the applicant's engineering requirements to attach wireline facilities to, and why.
  - 2. Existing poles are not of sufficient height to meet the applicant's engineering requirements, and cannot be increased in height.
  - 3. Existing poles do not have sufficient structural integrity to support the applicant's proposed wireline communications facilities and related equipment, and the existing facility cannot be sufficiently improved or replaced.
  - 4. Other limiting factors that render existing poles unsuitable.

E. Wireline Communications Facilities Inside Wellington's Rights-of-Way: Because of the unique nature of communications services transmitted via wires, cables, fiber optic, or other hardline transmission equipment and the specific structures needed for construction and/or assembly of same, placement of wireline communications facilities in the public right-of-way shall comply with the following:

1. All newly proposed wireline and/or pole fixtures for wireline communications facilities, whether above or belowground, must not unreasonably interfere with the presently existing infrastructure systems and other operations within Wellington's rights-of-way. Before consideration of constructing new infrastructure for hardline or wireline communications services, the communication services provider must show that other existing conduits or poles cannot be used.
2. Any wireline communications system located within Wellington's rights-of-way shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601, as applicable, and any other applicable technical standards.
3. Any wireline communications system shall perform all tests necessary to demonstrate compliance with the technical and performance standards established by applicable law. Unless an applicable law provides otherwise, all tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of National Cable Television Association's "Recommended Practices for Measurements on Cable Television Systems," or such other manual as may be directed under FCC regulations. A written report of compliant test results shall be filed with Wellington within seven (7) days of a request by Wellington. If a location fails to meet technical or performance specifications, the owner of the wireline communications facility, without requirement of additional notice or request from Wellington, shall promptly notify Wellington of such noncompliance, take corrective action, and retest the locations.
4. Wireline communications facilities shall have the same distance separation requirements from any principal residential structure as wireless communications service facilities.
5. The use of landscaping around any pole or external equipment, cabinet, box, or vault associated with a wireline communications facility may be required as a buffer. Such landscaping shall be consistent with the landscaping otherwise located in the public rights-of-way. Additional landscaping may be required if deemed necessary to buffer adjacent properties. In addition, for concealment purposes, all wireline communications facilities and accompanying equipment must blend into the surrounding environment by utilizing appropriate design wraps and colors. All buffering required in connection with the use of wireline communications facilities in the public rights-of-way shall be maintained by the owner of such facilities at its own cost.
6. Minimum Separation from Wellington-owned Equipment: Utility poles for wireline communications facilities including appurtenances shall have a minimum horizontal separation of 10 feet from any Wellington-owned utility pole and Wellington-owned underground facility. 10 feet shall be measured from closest outer diameter (OD) or outer edge (OE) to OD or OE.
7. High Voltage and "No Trespassing" and other Warning Signs:
  - a. If high voltage is necessary for the operation of the wireline communications facility or any accessory structures, "HIGH VOLTAGE - DANGER" warning signs

shall be permanently attached to the fence or wall and shall be spaced no more than 40 feet apart.

- b. "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall and shall be spaced no more than 40 feet apart.
  - c. The letters for the "HIGH VOLTAGE - DANGER" and "NO TRESPASSING" warning signs shall be at least six (6) inches in height. The two warning signs may be combined into one (1) sign. The warning signs shall be installed at least five (5) feet above the finished grade of the fence.
  - d. The warning signs may be attached to freestanding poles if the content of the signs may be obstructed by landscaping.
  - e. Signs noting federal registration (if required) shall be attached to the wireline communications facility in compliance with federal regulation.
8. Equipment Storage: Mobile or immobile equipment not used in direct support of a wireline communications facility shall not be stored or parked on the site of the wireline communications facility, except when in use for ongoing work, and when repairs to same are being made.
9. Signs and Advertising: The use of any portion of a pole for signs or advertising purposes including company name, banners, streamers, etc., shall be strictly prohibited.
10. Accessory Buildings or Structures: All accessory buildings or structures shall meet all building design standards as listed in this Code, and in accordance with the provisions of the Florida Building Code and shall be painted or constructed using neutral colors. All accessory buildings or structures shall require a building permit issued by the Building Division.
11. Colors: Except where superseded by the requirements of other county, state, or federal regulatory agencies possessing jurisdiction over poles, poles shall be painted or constructed in neutral colors, designed to blend into the surrounding environment.
12. Inspection Report:
- a. Owners of utility poles used to support wireline communications facility owners shall submit a report to Wellington's Engineer certifying structural and electrical integrity every two years.
  - b. Inspections shall be conducted by an engineer licensed to practice in the State of Florida. The results of such inspections shall be provided to the Building Division. Based upon the results of an inspection, the Building Official may require repair or removal of a wireline communications facility.
  - c. Following the completion of construction of a wireline communications facility in Wellington, the owner shall submit a report to the Wellington engineer certifying "as-built" compliance with the permitted structural and electrical parameters. Wellington shall conduct a post-construction inspection to verify the submitted report and confirm the constructed facility does not present a public safety hazard.

13. Existing Wireline Infrastructure: Notwithstanding the above provisions of this section, wireline communications facilities in existence as of April 23, 2019, may be replaced with equal or less visually impacting facilities after approval by the Wellington Engineer, or designee, and same are processed through the permitting process outlined herein.
  14. System Maintenance: Scheduled maintenance shall be performed so as to ensure the integrity of the structures and adjoining wirelines and to minimize potentially hazardous conditions, and to minimize the existence and effect of any downed lines in the Wellington's rights-of-way.
  15. Modifications or Replacements: Modification or replacement of any utility pole supporting wireline communications facilities in Wellington shall be subject to permit approval of the Wellington Engineer consistent with the requirements of this section. Any removal or replacement of communications facilities that substantially changes the physical dimensions of a wireline system shall be subject to permit approval.
- F. Cooperative Determination: In the event an applicant demonstrates, in writing, to the satisfaction of the Wellington Engineer, or designee, that the operation of this section produces a result which is either:
1. Overly burdensome and a hardship on the applicant, and is inconsistent with the general public welfare; or
  2. Inconsistent with the intent of the particular provisions of this section, and inconsistent with the general public welfare, the applicant and Wellington's Engineer, or designee, shall cooperate to determine an appropriate location and aesthetic design for the utility pole for the proposed wireline communications facility. In any such cooperative determination there shall be a preference for collocation with existing wireline communications facilities or other utility facilities, or for use of unused space on existing wireline communications facilities.
- G. Underground Installation; Relocation: Any wireline communications facility to be located underground shall comply with the provisions of this subsection, to the extent not prohibited by federal law, state law or applicable PSC rules and regulations.
1. Every applicant who places or constructs wireline communications facilities underground shall maintain appropriate participation in the regional notification center for subsurface installations.
  2. The applicant shall not in any way displace, damage, or destroy any wireline facilities, including, but not limited to, gas, sewer, water main, pipe, cable, conduit, fiber optic, or other pathway or any other facilities belonging to the Wellington. The applicant shall be liable to Wellington for the costs of any repairs made necessary by any such displacement, damage or destruction, of facilities belonging to Wellington, and the applicant shall pay such costs upon demand. In the case of an emergency, Wellington may commence repairs without any prior notice to the applicant. The term emergency shall mean a condition that may affect the public's health, safety or welfare. In the event of an emergency, Wellington may cause the repairs to be made at the facility owner's expense, utilizing Wellington employees, agents, or contractors, charge any/all costs, and require reimbursement within 30 days after the submission of the bill by Wellington to the applicant. In all other non-emergency circumstances, the applicant shall be given prior written notice. If such repairs are not performed in a reasonable and satisfactory manner within the 30 calendar days after receiving notice, Wellington may cause the repairs to be

made at the facility owner's expense, utilizing Wellington employees, agents, or contractors, charge any/all costs, and require reimbursement within 30 days after the submission of the bill by Wellington to the applicant.

3. Subject to F.S. Ch. 337.403, whenever an order of Wellington requires such removal or change in the location of any wireline communications facility from the public rights-of-way, and the facility owner fails to remove or change the same at its own expense to conform to the directive within the time stated in the notice, Wellington may proceed to cause the communications facility to be removed. The expense thereby incurred, except as provided in F.S. Ch. 337.403 shall be paid out of any money available therefor, and such expense shall be charged against the owner of the wireline communications facility and levied, collected and paid to Wellington.
4. A final order of Wellington imposed pursuant to the Florida Statutes and applicable provisions of Wellington's Code, if any, shall constitute a lien on any property of the owner and may be enforced as provided therein.
5. Wellington retains the right and privilege to cut or remove any wireline facilities located within the public rights-of-way as the Village Manager, in his/her reasonable discretion, may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, Wellington shall attempt to notify the owner of the wireline facility, if known, prior to cutting or removing a wireline facility and shall notify the owner of the facility, if known, after cutting or removing a wireline facility.
6. An applicant shall, on the request of any person holding a permit issued by Wellington, temporarily raise or lower its wireline communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting same, and the applicant shall have the authority to require such payment in advance. The applicant shall be given not less than 30 days' advance notice to arrange for such temporary relocation.

## **Sec. 7-9: Applications and Decisions**

- A. *Submission:* All applications, including the full application, amendments, or supplements to an application, or responses to requests for information regarding an application, shall be submitted electronically through Wellington electronic submittal portal.
- B. *Pre-application Meeting:* Prior to filing an application for a communications permit, an applicant is strongly encouraged to schedule a pre-application meeting with the Wellington Engineer, or designee, to discuss the proposed facility, the requirements of this chapter, and any potential impacts of the proposed facility.
- C. *Content:* An applicant shall submit an application on the form approved by the Wellington Engineer for this purpose, which may be updated from time-to-time. Application materials shall include certification of compliance with all applicable codes, including 47 CFR § 1.1310 and § 1.1312.
- D. *Completeness Review:* A communications permit application is deemed submitted, or resubmitted, on the date a complete and sufficient application is received by Wellington's Engineering Department. The Wellington Engineer shall notify the applicant whether the application is properly completed in compliance with Wellington's requirements, in writing via electronic mail within 10 days after the date the application is initially submitted, or additional information resubmitted. If the application is not in compliance with Wellington's requirements, the

Wellington Engineer shall so notify the applicant, specifying any missing information or deficiencies that, if cured, make the application sufficient for review. An application is deemed sufficient if Wellington fails to provide notification to the applicant within 10 days. Upon resubmission of information to cure the stated deficiencies, Wellington shall notify the applicant of any remaining deficiencies that must be cured, in writing via electronic mail, no later than 10 days after the additional information is submitted. If a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, Wellington may continue to request the information until such time as the specified deficiency is cured, or may establish a reasonable time frame within which the required information to cure the application deficiency is to be provided. If the curative information is not provided within such time frame, the application will be considered withdrawn or closed for incompleteness.

- E. Consolidated Application: A permit applicant seeking to collocate small wireless facilities, or non-exempt micro-wireless facilities, within Wellington's right-of-way may file a consolidated communications facility application and receive a single permit for the collocation of up to 30 small wireless facilities. If the permit application includes multiple small wireless facilities, or non-exempt micro-wireless facilities, Wellington may separately address small wireless facility, or non-exempt micro-wireless facility, collocations for which incomplete information was received or those that are denied. A consolidated communications facility application must include all the general permit application information required by this section.
- F. Application Decisions: Unless otherwise specified herein, Wellington shall grant or deny a properly completed application for small wireless facilities, or non-exempt micro-wireless facilities, in the public rights-of-way within 60 days or, as otherwise required by federal and state law, after the date the application is received. Failure to take any action on the permit application within that time shall be deemed to be approval of such application. Unless the parties engage in alternate location negotiations as provided herein, the parties may mutually agree to extend the 60-day application review period. At the end of such extended time, Wellington shall grant or deny the permit application. A permit issued pursuant to this chapter shall remain effective for one (1) year unless extended by Wellington. If a permit is denied, pursuant to this chapter, the specific reasons for rejecting the permit application, including the specific code provisions on which the denial was based, shall be explained and set forth in writing via electronic mail to the permit applicant on the day Wellington denies the application. The permit applicant may cure the deficiencies identified by Wellington and resubmit the application within 30 days after notice of the denial is sent to the applicant. Wellington shall approve or deny the revised application within 30 days after receipt, otherwise the application is deemed approved. The subsequent review shall be limited to the deficiencies cited in the denial. Wellington may deny an application for small wireless facilities, or non-exempt micro-wireless facilities, in the public right-of-way if the proposed application:
1. Materially interferes with the safe operation of traffic control equipment;
  2. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
  3. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
  4. Materially fails to comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual;
  5. Fails to comply with applicable Codes; and/or
  6. Fails to comply with the design standards in this chapter.



- G. Alternate Location Negotiation Period for Small Wireless Facilities, or Non-exempt Micro-wireless Facilities, Proposed in Public Rights-of-Way: Within 14 days after receipt of an application to install a small wireless facilities, or non-exempt micro-wireless facility, within the public right-of-way, Wellington may request, via e-mail, the applicant move the proposed small wireless facility, or non-exempt micro-wireless facility, to another utility pole within the right-of-way or to construct a new utility pole or support structure within the right-of-way. Wellington and the applicant shall negotiate the design, location, and spacing of the alternate small wireless facility for 30 days after the date of the request. At the conclusion of the negotiation period, the applicant shall either accept the proposed modification, that will thereafter be approved by the Wellington, or reject the proposed modification, in which event Wellington shall process the original application for a decision to be made within 90 days of the original submission. Decisions issued by Wellington must be in writing and provided by electronic mail.
- H. Waivers: Requests for waivers from any requirement of this section shall be made in writing to the Wellington Engineer, or designee. Wellington's Engineer may grant or deny a request for a waiver pursuant to this chapter. Wellington's Engineer may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, Wellington will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought, or if otherwise required by law. The Wellington Engineer's decision as to any waiver request pursuant to this chapter shall be subject to appeal in accordance with appeal standards of this chapter. All waivers approved pursuant to this chapter shall be granted only on a case-by-case basis and narrowly-tailored to minimize deviation from the requirements of the Wellington Code.

#### **Sec. 7-10: Consultants**

The Wellington Engineer or Village Manager, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in communications in connection with the review of any application under this chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, structural engineering analysis, and/or verification of compliance with FCC radio frequency emissions standards.

#### **Sec. 7-11: Conditions of Approval**

- A. General: In addition to any supplemental conditions assigned by the Wellington Engineer or Village Manager, as the case may be, all permits granted pursuant to this chapter shall be subject to the following conditions, unless modified by the approving authority:
- B. Code Compliance: The permittee shall at all times maintain compliance with all applicable codes, including federal, state, and local laws, regulations and other rules, including, without limitation, those applying to use of rights-of-way.
- C. Inspections; Emergencies: Wellington may enter onto the facility area to visually inspect the communications facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its communications facility by Wellington. Wellington reserves the right to examine or direct its designee to examine the facility and support, repair, disable, or remove any elements of the facility in an emergency when the facility threatens imminent harm to persons or property. Wellington shall make every effort to contact the permittee prior to disabling or removing any facility elements, but in any case shall notify permittee within 24 hours of doing so.

- D. Contact: The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one (1) natural person.
- E. Indemnities: The permittee shall defend, indemnify, and hold harmless Wellington, its agents, officers, officials, and employees from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any/all claims, demands, lawsuits, writs of mandamus, and other actions or proceedings brought against Wellington or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul Wellington's approval of the permit, and (ii) from any/all damages, liabilities, injuries, losses, costs, and expenses, and any/all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death, or property damage, arising out of, or in connection with, the activities or performance of the permittee or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors excepting therefrom any damages, liabilities, injuries, losses, costs and expenses that are the result of the negligent, intentional, or willful and wanton acts of Wellington, its agents, officers, officials, and employees. Further, permittees shall be strictly liable for interference caused by their facilities with Wellington's communications systems. Whenever Wellington encounters radio frequency interference with its public safety communications equipment, and it believes that such interference has been, or is being, caused by one (1) or more wireless communications facilities, Wellington shall provide notification to all wireless providers operating within Wellington of possible interference with the public safety communications equipment, and upon such notifications, the wireless providers shall use their best efforts to cooperate and coordinate with Wellington and among themselves to investigate and mitigate the interference, if any, utilizing the procedures set forth in the joint wireless industry-public safety "Enhanced Best Practices Guide," released by the FCC in Appendix D of FCC 04-168 (released August 6, 2004), including the "Good Engineering Practices," as may be amended or revised by the FCC from time to time in any successor regulations. If any wireless provider fails to cooperate with Wellington in complying with the wireless provider's obligations under this chapter, or if the FCC makes a determination of radio frequency interference with Wellington's public safety communications equipment, the wireless provider who failed to cooperate and/or the owner of the equipment that caused the interference shall be responsible for reimbursing Wellington for all costs associated with ascertaining and resolving the interference, including but not limited to, any engineering studies obtained by Wellington to determine the source of the interference. For the purposes of this chapter, failure to cooperate shall include failure to initiate any response or action as described in the "Best Practices Guide" within 24 hours of Wellington's notification.
- F. Adverse Impacts on Adjacent Properties: Permittee shall undertake all reasonable efforts to avoid material adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.
- G. General Maintenance; Graffiti: The site and the facility, including, but not limited to, any landscaping, concealment elements, and related transmission equipment, must be maintained in a neat, orderly, and clean manner and in accordance with all approved plans and conditions of approval. All graffiti on facilities must be removed at the sole expense of the permittee within seven (7) days after notification from Wellington.
- H. Radio Frequency Exposure Compliance: All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. All applications must demonstrate compliance by including a certified analysis showing that the proposed facility satisfies the FCC's Radio Frequency ("RF") exposure guidelines applicable on an individual basis, and on a cumulative basis (considering all frequencies, and all emitting sources as required by FCC regulations). After transmitter and

antenna system optimization, but prior to unattended operations of the facility, permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.

- I. Testing: Testing of any back-up generators and other noise producing equipment associated with any communications facility located within Wellington rights-of-way shall take place on weekdays only and between the hours of 9:00 a.m. and 4:00 p.m. only, except that testing is prohibited on holidays that fall on weekdays. In addition, testing is prohibited on weekend days.
- J. Utilities Undergrounded: Extensions of electrical and communications land lines to serve any communications facility located in Wellington rights-of-way shall be undergrounded where the existing electrical and communications facilities are located below grade.
- K. Other Approvals: The permittee shall obtain all other applicable permits, approvals, and agreements necessary to install and operate the facility in conformance with federal, state, and local laws, rules, and regulations.
- L. Modifications: No changes shall be made to the approved plans without review and approval in accordance with this chapter subject to the exemptions provided in F.S. § 337.401(7)(e).
- M. Agreement with Wellington: Permittee shall enter into the appropriate agreement with Wellington, as determined by Wellington, prior to constructing, attaching, or operating a facility on a Wellington pole. Such agreement shall include provisions outlining the process for make-ready work as provided in F.S. § 337.401(7)(f) and 47 U.S.C. § 224 and implementing regulations, including provisions for good-faith estimates for such make-ready work necessary to support the proposed facility, or provide a replacement pole if the existing pole is incapable of hosting the facility. Alternatively, Wellington may require the permittee to provide such make-ready estimate at permittee's expense for the work necessary to support the facility, including a pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate shall include the design, fabrication, and installation of a pole that is substantially similar in color, size, and composition to the existing pole. The replacement pole shall remain the property of Wellington.
- N. Wellington Not Liable: Nothing contained in this chapter shall be construed to make or hold Wellington responsible or liable for any damage to persons or any property whatsoever, from any cause whatsoever, arising from the use, operation, or condition of the permittee's wireline or wireless communications facilities; or by reason of any inspection or re-inspection authorized herein or failure to inspect or re-inspect. Nor shall the issuance of any permit or the approval or disapproval of any placement or maintenance of the permittee's wireline or wireless communications facilities as authorized herein constitute any representation, guarantee, or warranty of any kind by, nor create any liability upon Wellington or any official, agent, or employee.
- O. Construction Bond
  - 1. Prior to performing any permitted work in Wellington's rights-of-way, Wellington shall require the permittee, and/or owner, of the communications facility to establish, in Wellington's favor, a construction bond in an amount equal to a minimum of 110% of the cost to secure restoration of the post-construction right-of-way to the preconstruction condition, and to ensure the permittee's, and/or owner's, faithful performance of the

construction, or other obligations, related to the work in the public rights-of-way, in accordance with applicable sections of Wellington Code of Ordinances.

2. In the event a permittee, and/or owner, of the communications facility fails to complete the work in accordance with the provisions of the permit and this chapter, or fails to complete all restoration work in the right-of-way as required by Wellington, including but not limited to, repair or replacement of damaged landscaping, structures, hardscape, underground utility facilities, structures or equipment, or any other item or feature disturbed by the permitted work, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or loss suffered by Wellington as a result, including the full amount of any compensation, indemnification, or cost of removal of any property of the permittee or owner, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.
  3. No less than 18 months after completion of the construction, and satisfaction of all obligations, in accordance with the bonds, the permittee and/or owner, of the communications facility may request the Wellington Engineer, or designee, to remove the requirement to continue the bonds and Wellington, if the communications facility is completed, shall release the bonds within 10 days. Notwithstanding the foregoing, Wellington shall require a new bond for any subsequent work performed in the public rights-of-way.
  4. The bonds shall be issued by a surety:
    - a. Authorized to do business in the United States;
    - b. Having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; and
    - c. Shall be subject to the approval of the Wellington Attorney and shall provide that "Unless released by Wellington, this bond may not be canceled, or allowed to lapse, until 60 days after receipt by Wellington, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
  5. The rights reserved by Wellington with respect to any bond established pursuant to this chapter are in addition to all other rights and remedies Wellington may have under this section, or at law or equity, and no action, proceeding or exercise of a right with respect to the bonds will affect any other right Wellington may have.
- P. Conflicts with Improvements: Except as may be otherwise provided by F.S. §§ 337.403 and 337.404, for all communications facilities located within rights-of-way, the permittee shall remove or relocate, at its expense and without expense to Wellington, any/all of its facilities when such removal or relocation is deemed necessary by Wellington by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way. Any removal or relocation required under this paragraph shall be completed by permittee within 90 days of receipt of notice from Wellington. In the event permittee fails to abide by this timeframe, and permittee's failure to remove or relocate its facilities impedes the progress of the project that necessitated said removal or relocation, Wellington shall have the right to cure this deficiency, and recover the costs incurred in doing so, by drawing on the required performance bond. In such a case, Wellington shall bear no liability

for any damage or disruption to permittee's facilities or operations directly, or indirectly, resulting from Wellington's reasonable efforts to cure permittee's noncompliance with this paragraph.

- Q. *Vacation:* Permittee shall notify the Wellington Engineer of the intent to vacate a facility at least 30 days prior to the vacation.
- R. *Abandonment:* If a facility is not operated for a continuous period of nine (9) months, the wireless permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the nine (9) month period; (i) the Wellington Engineer has determined that the facility has resumed operations; or (ii) Wellington has received an application to transfer the permit to another service provider. No later than 90 days from the date the facility is determined to have ceased operation or the permittee has notified the Wellington Engineer of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of Wellington's Engineer. The permittee shall provide written verification of the removal of the facilities within 30 days of the date the removal is completed. If the facility is not removed within 30 days after the permit has been discontinued pursuant to this chapter, the site shall be deemed a nuisance, and Wellington may cause the facility to be removed at permittee's expense. If there are two or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.
- S. *Encourage Co-location:* Where the facility site is capable of accommodating a co-located facility upon the same site, the owner and operator of the existing facility shall allow another carrier to co-locate its facilities and equipment thereon, provided the parties can mutually agree upon reasonable terms and conditions.
- T. *Compliance:* The permittee must at all times construct, operate, and maintain the facility in accordance with all permits, requirements, applicable codes, and approvals.
- U. *Force Majeure:* In the event Wellington's or the permittee's performance of, or compliance with, any of the provisions of this chapter is prevented by a cause or event not within Wellington's or the permittee's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided however that such permittee uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For the purposes of this section, cause, or events not within Wellington's or the permittee's control shall include, but not be limited to, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes, and restraints imposed by order of a governmental agency or court. Causes or events within a permittee's control, and thus not falling within this chapter shall include without limitation, permittee's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance, or nonfeasance by any of the permittee's directors, officers, employees, contractors, or agents.
- V. *Eligible Facilities Requests:* An application to add a second wireless communications facility to an existing wireless communications facility located within a right-of-way that meets the specifications for an "eligible facilities request" under section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, (47 USC § 1455(a)) and does not cause the existing wireless communications facility to exceed the definition of "small wireless facility" as defined herein shall be subject to the processing and approval by the Wellington Engineer, or designee, pursuant to the processes outlined in this chapter and shall be subject to the following conditions, unless modified by the approving authority:

1. General Conditions: The conditions provided in this chapter shall apply to the extent permissible by law.
2. No Permit Term Extension: Wellington's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject wireless facility. Wellington's grant or grant by operation of law of an eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
3. No Waiver of Standing: Wellington's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by Wellington to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

#### **Sec. 7-12: Breach; Termination of Permit**

- A. For Breach: A permit granted under this chapter may be revoked for failure to comply with the conditions of the permit or applicable law. Upon revocation, the communications facility must be removed; provided that removal of a utility pole owned by Wellington, a utility, or another entity authorized to maintain a utility pole in the rights-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by Wellington. All costs incurred by Wellington in connection with the revocation and removal shall be paid by entities who own or control any part of the communications facility.
- B. For Installation without a Permit: Any communications facility installed without a permit (except for those exempted by this chapter or pursuant to F.S. § 337.401) must be removed; provided that removal of a utility pole owned by Wellington, a utility, or another entity authorized to maintain a utility pole in the rights-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by Wellington. All costs incurred by Wellington in connection with the revocation and removal shall be paid by entities who own or control any part of the personal wireless services facility.
- C. Municipal Infraction: Any violation of this chapter will be subject to the same penalties as a violation of the Chapter 2 of Wellington's Code.

#### **Sec. 7-13: Infrastructure Controlled by Wellington:**

Wellington, as a matter of policy, will negotiate agreements for use of Wellington poles. The placement of small wireless facilities on Wellington poles shall be subject to the agreement. The agreement shall specify the compensation to Wellington for use of Wellington pole as provided in F.S. § 337.401.

#### **Sec. 7-14: Nondiscrimination:**

In establishing the rights, obligations, and conditions set forth in this chapter, it is the intent of Wellington to treat each applicant or public rights-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation, and legal status of each particular applicant or request for use of the public rights-of-way.

## **CHAPTER 8 - EMERGENCY SERVICES**

### **Sec. 8-1: Palm Beach County Alarm Ordinance Adopted**

The Palm Beach County Code Chapter 16, Law Enforcement, Article III, Alarms, as amended from time to time, is hereby adopted as part of the Code so that violations of the Palm Beach County Ordinance are also violations of this Code. Where any conflict may exist between this Code and the Palm Beach County Ordinance, the Palm Beach County Ordinance will prevail.

### **Sec. 8-2: Remote Access to Gated Communities**

- A. All gated communities within Wellington are required to install a remote control system for access to the gated community that complies with the December 2020 "Palm Beach County Local Amendments to the Florida Fire Prevention Code," Section 12-57 of the Palm Beach County Code, specifically paragraph 18.2.2.2.1 "Access to Existing Gated Subdivisions or Developments or paragraph 18.2.2.2.2 "Access to New Gated Subdivisions or Developments," as applicable to the community, and as may be amended from time to time.
- B. Public safety personnel (fire, fire/rescue, police, etc.) shall be authorized to gain access to any gated community within Wellington to perform the duties of such public safety personnel in accordance with the law.
- C. Maintenance of the installed remote control system(s) shall be the responsibility of the community where it/they are installed.

## **CHAPTER 10 - IMPACT FEES**

### **Sec. 10-1: Definitions**

For the purpose of this chapter, the following definitions shall apply unless otherwise stated:

**Access Modification:** Modifications designed and constructed to provide safe and adequate ingress and egress from a road, rights-of-way, or easement. These modifications include, but are not limited to, paving of adjacent or connecting roadways, turn lanes, deceleration/acceleration lanes, traffic control devices, signage/markings, drainage, and utilities, as related to the proposed access modifications.

**Alternative Parks and Recreation Impact Fee:** Any alternative parks and recreation impact fee calculated by the applicant and approved by the Impact Fee Coordinator pursuant to this chapter.

**Alternative Parks and Recreation Impact Fee Study:** A Parks and Recreation Impact Fee Study prepared by the applicant and submitted to the Impact Fee Coordinator pursuant to this chapter.

**Alternative Multi-modal Impact Fee:** Any alternative multi-modal impact fee calculated by an applicant and approved by the Impact Fee Coordinator pursuant to this chapter.

**Alternative Multi-modal Impact Fee Study:** A Multi-modal Impact Fee Study prepared by the applicant and submitted to the Impact Fee Coordinator pursuant to this chapter.

**Applicant:** The person/entity applying for a building permit.

**Designated Wellington Multi-modal Facility:** A road, sidewalk, trail, pathway, or streetscape within Wellington's multi-modal system that is (1) identified in Wellington's Comprehensive Plan and/or Land Development Regulations; (2) identified in the adopted Impact Fee Study; or (3) subsequently added pursuant to this chapter.

**Encumbered:** Monies committed by contract, or purchase order, in a manner that obligates Wellington to expend the encumbered amount for the delivery of goods, or the completion of services.

**Governmental Buildings or Facilities:** Property owned by the United States of America or any agency thereof, a sovereign state or nation, the State of Florida or any agency thereof, a county, a special district, a school district, a municipal corporation, or a charter school organized and approved as a public school under section 1002.33, Florida Statutes.

**Impact Fee Coordinator:** The person, or their designee, appointed by the Village Manager to perform such functions as provided under this chapter.

**Impact Fee Land Use Category:** Those categories of land use incorporated in the Multi-modal or Parks and Recreation Impact Fee Rate Schedules.

**Impact Fee Study/Studies:** The studies adopted by reference in support of the Multi-modal or Parks and Recreation Impact Fee Rate Schedules.

**Off-site Multi-modal Project:** Multi-modal projects located outside of the boundaries of the project that are warranted by a signed and sealed traffic statement/study and required by Wellington.

**Owner:** The person/entity holding legal title to the real property that is responsible for paying all impact fees, as applicable.



**Parks:** Areas designed for diversified recreational or passive use within Wellington. Such parks and recreation facilities provide a variety of recreational activities and serve the entire incorporated area of Wellington.

**Parks and Recreation Impact Fee:** The fee imposed by Wellington pursuant to this chapter or, if applicable, an approved Alternative Parks and Recreation Impact Fee.

**Parks and Recreation Impact Fee Rate:** An impact fee imposed for parks and recreation facilities construction under the applicable impact fee land use category established in the schedules listed in this chapter, as amended from time to time.

**Residential:** Single-family, multi-family, apartments, condominiums, or assisted living facilities, as that term is defined in section 400.402, Florida Statutes.

**Multi-modal Impact Fee:** The impact fee imposed by Wellington pursuant to this chapter, or if applicable, an approved Alternative Multi-modal Impact Fee Study.

**Multi-modal Impact Fee Rate:** A road impact fee imposed for road construction under the applicable impact fee land use category established in the schedules listed in this chapter, as amended from time to time.

**Square Footage:** The gross area measured in square feet from the exterior faces of exterior walls or other exterior boundaries of the building, excluding areas within the interior of the building that are utilized for parking.

**State Highway System:** The road system of the State of Florida as defined in section 334.03(25), Florida Statutes, as amended from time to time.

**Wellington Park System:** All parks operated by Wellington, not including those parks and recreational facilities that are operated by the county.

**Wellington Multi-modal System:** Wellington's sidewalk, bike lane, pathway, and street systems, excluding any such systems within the county road system or the state highway system.

## **Sec. 10-2: Findings**

**The Wellington Council finds and determines that:**

- A. Pursuant to Article VIII, section 2(b), Florida Constitution, and sections 166.021 and 166.041, Florida Statutes, Wellington's Council has all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, and may execute any power for municipal purposes, including the imposition of a Multi-modal Impact Fee or a Parks and Recreation Impact Fee, except where prohibited by law.
- B. The Council specifically finds that the Wellington multi-modal system and parks system benefit all residents of Wellington, and therefore, the Multi-modal Impact Fees and the Parks and Recreation Impact Fees shall be imposed in all incorporated areas of Wellington.
- C. Development contemplated in the Comprehensive Plan will require modifications and additions to the Wellington multi-modal system and the parks and recreation system to address impacts generated by such development and maintain the Level of Service (LOS) standards adopted by Wellington.

- D. Future development should contribute its fair share to the cost of providing or modifying facilities that are part of Wellington's multi-modal system and parks and recreation system that are required to address impacts generated by such development.
- E. The required modifications to the Wellington multi-modal system and parks and recreation system needed to eliminate any deficiencies between the existing Wellington multi-modal system and parks and recreation system and the LOS adopted by Wellington shall be financed by revenue sources of Wellington other than Multi-modal Impact Fees and Parks and Recreation Impact Fees.
- F. Implementation of a Multi-modal Impact Fee and a Parks and Recreation Impact Fee to require development to contribute its fair share to the cost of multi-modal transportation and park capital projects is an integral and vital element of the regulatory plan of growth management incorporated in Wellington's Comprehensive Plan.
- G. The imposition of a park impact fee and a multimodal impact fee is to provide a source of revenue to fund the construction or modification of the Wellington park system and the Wellington multi-modal system, respectively, necessitated by development as delineated in the Capital Improvement Element of the Comprehensive Plan.
- H. The Council expressly finds that the schedule of projects, as contained in the study entitled the "Multi-modal Impact Fee Technical Report," dated December 2021, provides a benefit to all properties within Wellington in excess of the Multi-modal Impact Fee.
- I. Wellington has the statutory responsibility to provide and maintain multi-modal facilities in Wellington. Development occurring within Wellington impacts the Wellington multi-modal system; therefore, development should pay its fair share of the cost of modifications to Wellington's facilities. In recognition of these findings, it is the intent of the Council that, upon approval and adoption of this chapter and the Multi-modal Impact Fee Study, Wellington shall impose a Multi-modal Impact Fee to provide the cost of modifications to designated Wellington multi-modal facilities.
- J. The projected capital projects for multi-modal facilities and the allocation of projected costs between those projects and modifications necessary to serve existing development and those projects and modifications required to accommodate development represented in the study entitled the "Multimodal Impact Fee Technical Report" dated December 2021 is hereby approved and adopted by Wellington, and such projections are hereby found to be in conformity with the Comprehensive Plan.
- K. The projected standards for parks and recreational facilities for the Wellington parks and recreation system as presented in the study entitled the "Parks and Recreation Impact Fee Study", dated October 15, 2021 is hereby approved and adopted by Wellington, and such projections are hereby found to be in conformity with the Comprehensive Plan.
- L. The Council expressly finds that the maintenance of the standards for parks and recreational facilities, as contained in the study entitled the "Parks and Recreation Impact Fee Study", dated October 15, 2021 provides a benefit to all parks and recreational facilities impact construction within Wellington in excess of the Parks and Recreation Impact Fee.
- M. Wellington has the responsibility to provide parks as part of the Wellington parks and recreation system. Development occurring within Wellington impacts the Wellington parks and recreation system; therefore, development should pay its fair share of the cost to expand Wellington's parks and recreation system. In recognition of these findings, it is the intent of the Council that, upon approval and adoption of this chapter and the Parks and Recreation Impact Fee Study, Wellington

shall impose a Parks and Recreation Impact Fee to provide the cost of development-required modifications to Wellington's parks and recreation system.

- N. Capital planning is an on-going process, and the LOS standards for Wellington's parks and recreation system constitute a projection of anticipated needs for parks and recreational facilities, based upon present knowledge and judgment. Therefore, in recognition of future development and the dynamic nature of population growth, it is the intent of the Council that the standard of service for the Wellington park system and the Parks and Recreation Impact Fee imposed be reviewed and adjusted periodically to ensure that Parks and Recreation Impact Fees are imposed equitably and lawfully, based upon actual and anticipated development at the time of their imposition.
- O. This chapter shall not be construed to permit the collection of Parks and Recreation Impact Fees from development for those parks developed and maintained by the county.
- P. The purpose of this chapter is to regulate the development of land within Wellington by requiring payment of Multi-modal Impact Fees and Parks and Recreation Impact Fees and to provide for the cost of modifications to the Wellington multi-modal system and parks and recreation system that are required to accommodate development. This chapter shall not be construed to permit the collection of Multi-modal Impact Fees or Parks and Recreation Impact Fees in excess of the amount reasonably anticipated to offset the impact on the Wellington multi-modal system or parks and recreation system generated by development.
- Q. The Council hereby acknowledges and confirms the legislative findings contained herein and expressly reaffirms such findings as applicable to the updated Multi-modal Impact Fees, the updated Parks and Recreation Impact Fees, the updated Impact Fee Studies, and the updated list of projects to be adopted in the Impact Fee Studies. Moreover, the Council expressly finds that the schedule of projects, as contained in the updated Impact Fee Studies, which are incorporated by reference, provides a benefit to all development within Wellington in excess of the updated impact fees.

### **Sec 10-3: Adoption of Impact Fee Studies**

Wellington's Council hereby adopts and incorporates by reference, the "Multimodal Impact Fee Technical Report", dated December 2021, and the "Parks and Recreation Impact Fee Study", dated October 15, 2021. The Council particularly adopts and incorporates the updated assumptions, conclusions, and findings in such updated studies as to the allocation of anticipated costs of capital projects for the Wellington multimodal system and parks and recreation system. Both Impact Fee Studies are attached as Exhibit A and B, respectively.

### **Sec. 10-4: Imposition of Multi-modal Impact Fees**

- A. All development impacting Wellington's multi-modal system shall pay the Multi-Modal Impact Fee established in this chapter and adopted by Wellington's Council.
- B. The Council hereby adopts the Multi-modal Impact Fees, which shall be imposed upon all development occurring within Wellington at a rate established in accordance with the following Multi-modal Impact Fee calculation formula:

<b>Multi-modal Impact Fee Rate</b>		
<b><u>Use Categories, Use Classifications, and Representative Uses</u></b>  (Multimodal Impact Fees in bold and italic are based on a unit of measure other than a rate per sq. ft. or per 1,000 sq. ft. The recommendation is to move to a rate per sq. ft. or applicable unit of measure. 1,000 sq. ft. for illustration purposes)	<b><u>Multi-modal Impact Fee</u></b>	
	<b><u>Per Sq. Ft.</u></b>	<b><u>Per 1,000 Sq. Ft.</u></b>
<b><u>Residential Uses per sq. ft. or applicable unit of measure</u></b>		
<u>Single Family Residential (Maximum of 10,000 sq. ft.)<sup>1</sup></u>	<u>\$0.864</u>	<u>\$864.00</u>
<u>Active Adult (55+) Residential (Maximum 5,000 sq. ft.)<sup>1</sup></u>	<u>\$0.626</u>	<u>\$626.00</u>
<u>Multi-Family Residential (Maximum 5,000 sq. ft.)<sup>1</sup></u>	<u>\$1.125</u>	<u>\$1,125.00</u>
<u>Overnight Accommodations (Bed &amp; Breakfast, Inn, Hotel, Resort) <sup>2</sup> per room</u>	<b><u>\$940.00</u></b>	<b><u>\$940.00</u></b>
<u>Accessory Residential Unit (Accessory, Care-takers, or Groom's Quarters)<sup>1</sup></u>	<u>\$0.432</u>	<u>\$443.00</u>
<b><u>Institutional Uses per sq. ft.</u></b>		
<u>Community Serving (Civic, Place of Assembly or Worship, Museum, Gallery)</u>	<u>\$0.695</u>	<u>\$695.00</u>
<u>Long Term Care (Assisted Living, Congregate Care Facility, Nursing Facility)</u>	<u>\$0.956</u>	<u>\$956.00</u>
<u>Private Education (Child Care, Day Care, Private Primary School, Pre-K)</u>	<u>\$1.422</u>	<u>\$1,422.00</u>
<b><u>Recreational Uses per sq. ft., or applicable unit of measure</u></b>		
<u>Outdoor Commercial Recreation (Equestrian, Golf, Multi-Purpose, Tennis) per acre</u>	<b><u>\$1,089.00</u></b>	<b><u>\$1,089.00</u></b>
<u>Indoor Commercial Recreation (Gym, Indoor Sports, Kids Activities, Recreation)</u>	<u>\$2.062</u>	<u>\$2,062.00</u>
<u>Barn (Private or Commercial) per stall</u>	<b><u>\$179.00</u></b>	<b><u>\$179.00</u></b>
<b><u>Industrial Uses per sq. ft.</u></b>		
<u>Industrial (Assembly, Manufacturing, Nursery, Outdoor Storage, Warehouse, Utilities)<sup>3</sup></u>	<u>\$0.550</u>	<u>\$550.00</u>
<b><u>Office Uses per sq. ft.</u></b>		
<u>Office (Bank, General, Higher Education, Professional)</u>	<u>\$1.734</u>	<u>\$1,734.00</u>
<u>Medical Office (Clinic, Dental, Emergency Care, Hospital, Medical, Veterinary)</u>	<u>\$2.759</u>	<u>\$2,759.00</u>
<b><u>Commercial &amp; Retail Uses per sq. ft.</u></b>		
<u>Local Retail (Entertainment, Restaurant, Retail, Sales, Services)<sup>4</sup></u>	<u>\$2.057</u>	<u>\$2,057.00</u>
<u>Multi-Tenant Retail (Entertainment, Restaurant, Retail, Sales, Services)<sup>5</sup></u>	<u>\$4.113</u>	<u>\$4,113.00</u>
<u>Free-Standing Retail (Entertainment, Restaurant, Retail, Sales, Services)<sup>6</sup></u>	<u>\$5.618</u>	<u>\$5,618.00</u>
<b><u>Additive Fees<sup>7</sup> for Commercial &amp; Retail Uses per applicable unit of measure</u></b>		
<u>Bank Drive-Thru Lane or Free-Standing ATM per lane or ATM<sup>8</sup></u>	<b><u>\$8,048.00</u></b>	<b><u>\$8,048.00</u></b>
<u>Motor Vehicle &amp; Boat Cleaning (Detailing, Wash, Wax) per lane or stall<sup>9</sup></u>	<b><u>\$7,392.00</u></b>	<b><u>\$7,392.00</u></b>
<u>Motor Vehicle Charging or Fueling per charging or fueling position<sup>10</sup></u>	<b><u>\$7,040.00</u></b>	<b><u>\$7,040.00</u></b>
<u>Pharmacy Drive-thru per lane<sup>11</sup></u>	<b><u>\$6,869.00</u></b>	<b><u>\$6,869.00</u></b>
<u>Quick Service Restaurant Drive-thru per lane<sup>12</sup></u>	<b><u>\$14,633.00</u></b>	<b><u>\$14,633.00</u></b>
<sup>1</sup> The square footage for residential uses includes all habitable space per the Florida Building Code and all temperature controlled (heated and cooled) enclosed spaces (enclosed by doors, windows, or walls). The maximum square footage for residential uses denotes the maximum square footage per dwelling unit that a mobility fee will be assessed. Common enclosed areas for active adult and multi-family uses are not assessed multimodal impact fees, unless that space is leased or owned to a third-party and provides drinks, food, goods, or services to the public or paid memberships available to individuals that do not reside in a dwelling unit.		
<sup>2</sup> Any space that is leased or owned by a third-party use or provides drinks, food, goods, or services to the public shall be required to pay the applicable multimodal impact fees per the individual uses identified in the multimodal impact fee schedule.		

<b>Multi-modal Impact Fee Rate</b>		
<b><u>Use Categories, Use Classifications, and Representative Uses</u></b>  (Multimodal Impact Fees in bold and italic are based on a unit of measure other than a rate per sq. ft. or per 1,000 sq. ft. The recommendation is to move to a rate per sq. ft. or applicable unit of measure. 1,000 sq. ft. for illustration purposes)	<b><u>Multi-modal Impact Fee</u></b>	
	<b><u>Per Sq. Ft.</u></b>	<b><u>Per 1,000 Sq. Ft.</u></b>
<sup>3</sup> Acreage for any unenclosed displays, landscape, material, products, supplies, vegetation, and vehicle storage, including but not limited to boats, commercial vehicles, recreational vehicles, trailers, and wholesale nursery shall be converted to square footage.		
<sup>4</sup> Local Retail means a non-chain and non-franchisee entertainment, restaurant, retail, or personal service uses under Institute of Transportation Engineers (ITE) Land Use Codes 800 and 900 that are locally owned and are not national chains or national franchisee. Local shall be defined as five (5) or fewer locations in Florida and no locations outside Florida. The Village may expand the definition of local.		
<sup>5</sup> Multi-tenant Retail means a single building, with two (2) or more separate uses under lease or ownership where no single use exceeds 75% of the total square footage of the building. Institute of Transportation Engineers (ITE) Land Use Codes under the 800 and 900 series and ITE Land Use Codes 445 (Movie Theater).		
<sup>6</sup> Free-standing Retail means a single building where any single use under a common lease or ownership exceeds 75% of the total square footage of the building. ITE Land Use Codes under the 800 and 900 series and ITE Land Use Codes 444 and 445 (Movie Theater & Multi-Plex). This category does not apply to uses otherwise listed under the commercial and retail uses with their own multimodal impact fee rate.		
<sup>7</sup> Additive multimodal impact fees are assessed per applicable unit of measure, in addition to the multimodal impact fees assessed for the square footage of the building based on the applicable use classification.		
<sup>8</sup> Each bank building shall pay the office multimodal impact fee rate for the square footage of the building. Drive-thru lanes, Free Standing ATM's and Drive-thru lanes with ATM's are assessed a separate fee per lane or per ATM and are added to any office rate fee associated with a bank building. The free-standing ATM is for an ATM only and not an ATM within or part of another non-financial building.		
<sup>9</sup> Motor Vehicle or Boat cleaning shall mean any car wash, wax, or detail where a third party or automatic system performs the cleaning service. Fees are assessed per lane, stall, or cleaning and wash station, plus a per sq. ft. retail fee rate associated with any additional buildings.		
<sup>10</sup> Rates per vehicle charging or fueling position apply to a convenience store, gas station, general store, grocery store, supermarket, superstore, variety store, wholesale club or service stations with fuel pumps. In addition, there shall be a separate multimodal impact fee for the square footage of any multi-tenant or free-standing retail building per the applicable fee rate. The number of fueling positions is based on the maximum number of vehicles that can be charged or fueled at one time.		
<sup>11</sup> Any drive-thru associated with a pharmacy will be an additive fee in addition to either the multi-tenant or free-standing retail multimodal impact fee rate per sq. ft. of the building. The number of drive-thru lanes will be based on the number of lanes present when an individual places or pick-up a prescription or item.		
<sup>12</sup> Any drive-thru associated with a quick service restaurant will be an additive fee in addition to either the multi-tenant or free-standing retail mobility fee per square foot of the building. The number of drive-thru lanes will be based on the number of lanes present when an individual places an order or picks up an order, whichever is greater.		

## **Sec. 10-5: Imposition of Parks and Recreational Impact Fee**

- A. All new development impacting Wellington's parks and recreation facilities shall pay the Parks and Recreation Impact Fee established in this chapter and adopted by Wellington's Council.
- B. Parks and Recreation Impact Fees:

<b><u>Parks and Recreation Impact Fee Rate</u></b>	
<b><u>Type of Construction</u></b>	<b><u>Cost per Dwelling Unit</u></b>
<u>Single-family Unit</u>	<u>\$4,046.00</u>
<u>Multi-family Unit</u>	<u>\$3,378.00</u>
<u>Senior Living Unit</u>	<u>\$2,312.00</u>

**Sec. 10-6: Alternative Multi-modal Impact Fee and Parks and Recreation Impact Fee Calculations**

- A. In the event an applicant believes that the impact to Wellington's multi-modal system or parks and recreation system by its development is less than the impact assumed under the applicable Impact Fee Land Use Category, the applicant may, prior to issuance of a building permit for such development, file a notice of intent to submit an Alternative Multi-modal Impact Fee Study or an Alternative Parks and Recreation Fee Study to the Impact Fee Coordinator. The Impact Fee Coordinator shall review the calculations and make a determination within 10 days of submittal as to whether such calculation complies with the requirements of this section.
- B. For purposes of any Alternative Multi-Modal Impact Fee or Alternative Parks and Recreation Impact Fee calculation, the development shall be presumed to have the maximum impact on Wellington's multi-modal system or parks and recreation system for the land use category contemplated under the Multi-modal Impact Fee Rate or the residential use type under the Parks and Recreation Impact Fee Rate.
- C. The Alternative Multi-Modal Impact Fee or Alternative Parks and Recreation Impact Fee calculation shall be based on data, information, or assumptions contained in this chapter and the Impact Fee Study or an independent source, provided that:
1. The independent source is a generally accepted standard source of engineering and/or planning information; or
  2. The independent source is a local study supported by data adequate for the conclusions contained in such study pursuant to a generally accepted methodology of engineering and/or planning.
  3. If a previously approved development project submitted a Multi-modal Impact Fee Study and/or Parks and Recreation Impact Fee Study during its approval process, such calculation shall be substantially consistent with the criteria required by this chapter, and if such studies are determined by the Impact Fee Coordinator to be current, the impacts of such previously approved development shall be presumed to be as described in the prior study. In such circumstances, an Alternative Multi-modal Impact Fee and/or Alternative Parks and Recreation Impact Fee shall be established reflecting the impact described in the prior studies. There shall be a rebuttable presumption that an impact fee study conducted more than two (2) years earlier is invalid; and
  4. It is acknowledged that the Multi-modal Impact Fee Rates are based upon the applicable rates for the land use categories corresponding to the impact fee land use categories. In recognition of such acknowledgment, the rates for the land use categories shall be considered an independent source for the purpose of an Alternative Multi-modal Impact Fee calculation without the necessity of a study as required by this chapter.
- D. If the Impact Fee Coordinator determines that the data, information, and assumptions utilized by the applicant comply with the requirements of this section and that the calculation of the Alternative

Multi-modal Impact Fee and/or Alternative Parks and Recreation Impact Fee was generated in accordance with an accepted methodology, then the alternative impact fee shall be paid in lieu of the standard fees set forth in this chapter.

- E. If the Impact Fee Coordinator determines that the data, information, and assumptions utilized by the applicant do not comply with the requirements of this chapter, or that the calculation of the Alternative Multi-modal Impact Fee and/or Alternative Parks and Recreation Impact Fee were not generated in accordance with an accepted methodology, then the Impact Fee Coordinator shall provide written notification of the rejection of the alternative impact fee to the applicant, by certified mail (return receipt requested), along with the reasons for the rejection. The applicant shall have 30 days from the date of the written notice of rejection to request a hearing pursuant to this chapter.

#### **Sec. 10-7: Use of Multi-modal Impact Fee and Parks and Recreation Impact Fee Proceeds**

- A. The Council hereby establishes separate general ledger accounts for the Multi-modal Impact Fee and the Parks and Recreation Impact Fee that shall be segregated from each other and all other Wellington accounts. All impact fees shall be deposited into said accounts, respectively, immediately upon receipt.
- B. The monies deposited into the respective impact fee accounts shall be used solely for the purpose of constructing, or modifying, Wellington's multi-modal facilities or parks and recreation facilities, including, but not limited to:
1. Design and construction plan preparation;
  2. Permitting and fees;
  3. Rights-of-Way acquisition, land acquisition, and materials acquisition, including any costs of acquisition or condemnation;
  4. Design and construction of new drainage facilities in conjunction with new or modified multi-modal or parks and recreation facilities;
  5. Construction of streetscape and/or landscape projects associated with new or modified multi-modal or parks and recreation facilities;
  6. Construction upgrades to comply with the Americans with Disability Act (ADA);
  7. Relocating utilities to accommodate new multi-modal or parks and recreation construction;
  8. Construction management and inspection;
  9. Surveying and soils and material testing;
  10. Repayment of monies transferred or borrowed from any Wellington general fund that were used to fund any development-impacted construction or modifications as defined herein; and
  11. Payment of principal and interest, necessary reserves, and costs of issuance under any bonds or other indebtedness issued by Wellington to provide funds for development-impacted capital projects for Wellington's multi-modal or parks and recreation facilities.
  12. Specifically related to multi-modal facilities;

- a. Construction of new through lanes;
  - b. Construction of new turn lanes or roundabouts;
  - c. Construction of new bridges;
  - d. Construction of new bike lanes, multi-modal paths, sidewalks, and/or trails;
  - e. Design, purchase, and installation of traffic signals; and/or
  - f. Construction of new curbs, medians, or shoulders.
13. Specifically related to parks and recreation facilities:
- a. Construction and design of recreation facilities;
  - b. Acquisition of new capital equipment for parks and recreation facilities; and/or
  - c. Providing facilities and additions to Wellington's parks and recreation system required to accommodate population growth as projected in the Impact Fee Study.
- C. Funds in the impact fee accounts shall not be used for any expenditure that would be classified as a maintenance or repair expenses.
- D. Any monies not immediately necessary for expenditure may be invested by Wellington. All income derived from such investments shall be deposited in the Multi-modal Impact Fee trust account and used as provided herein.

### **Sec. 10-8: Exemptions**

- A. The following shall be exempted from payment of the Multi-modal Impact Fee:
- 1. Alterations, expansion, or replacement of an existing dwelling unit that does not increase the number of families for which such dwelling unit is arranged, designed, or intended to accommodate for the purpose of providing living quarters.
  - 2. The alteration or expansion of a building if the buildings use upon completion does not generate greater impacts under the applicable Multi-modal Impact Fee Rate.
  - 3. The replacement of a building, or the construction of an accessory building or structure, if the replacement building, accessory building, or structure does not result in a land use generating greater impacts under the applicable Multi-modal Impact Fee Rate.
  - 4. The construction of governmental buildings or facilities.
- B. The following shall be exempted from payment of the Parks and Recreation Impact Fee:
- 1. Any development that results in no new impact on a capital facility for which the Parks and Recreation Impact Fee is assessed by Wellington.



2. The construction of an accessory building, or structure, where the use is not changed, additional impact does not result from the construction, and where no additional dwelling units are, or square footage is, added.
3. The construction of governmental buildings or facilities.

#### **Sec. 10-9: Payment**

- A. Except as otherwise provided in this chapter, prior to the issuance of a building permit for a development, as applicable, an applicant shall pay the Multi-modal Impact Fees and the Parks and Recreation Impact Fees as set forth in this chapter, directly to Wellington.
- B. In the event a building permit issued for a development expires prior to completion of the development, the applicant may, within 90 days of the expiration of the building permit, apply for a refund of the Multi-modal Impact Fees and the Parks and Recreation Impact Fees, as applicable. Failure to apply within the 90-day period for a refund of the Multi-modal Impact Fees and the Parks and Recreation Impact Fees, as applicable, shall waive any rights to a refund.
- C. The application for refund shall be filed with the Impact Fee Coordinator and contain the following:
  1. The name and address of the applicant;
  2. The location of the property that was the subject of the building permit;
  3. The date the Multi-modal Impact Fees and the Parks and Recreation Impact Fees were paid, as applicable;
  4. A copy of the receipt of payment for the Multi-modal Impact Fees and the Parks and Recreation Impact Fees, as applicable; and
  5. The date the building permit was issued and the date of expiration.
- D. After verifying that the building permit has expired, and that the development was not completed, the Impact Fee Coordinator shall refund the Multi-modal Impact Fees and the Parks and Recreation Impact Fees paid for such development, as applicable. Wellington shall retain 2% of the Multi-modal Impact Fees and the Parks and Recreation Impact Fees, as applicable, to offset the costs of administering the refund.
- E. A building permit that is subsequently issued for a development on the same property that was the subject of a refund shall pay the Multi-modal Impact Fees and the Parks and Recreation Impact Fees as required by this chapter.
- F. The payment of the Multi-modal Impact Fees and the Parks and Recreation Impact Fees, as applicable, shall be in addition to any other fees, charges, or assessments imposed by Wellington for the issuance of a building permit.

#### **Sec. 10-10: Alternative Collection Method**

In the event the Multi-modal Impact Fees and the Parks and Recreation Impact Fees, as applicable, are not paid prior to the issuance of a building permit for the affected development, Wellington may elect to collect the Multi-modal Impact Fees and the Parks and Recreation Impact Fees by any other method authorized by law.

## **Sec. 10-11: Developer Contribution Credit**

- A. A credit shall be granted against the Multi-modal Impact Fee imposed pursuant to this chapter for the contribution of land or for the construction of any off-site projects required pursuant to a development order by Wellington or voluntarily made in connection with the development. Such land contribution and construction shall be subject to the approval of the Village Manager based upon the recommendation of the Impact Fee Coordinator and the following standards:
1. The contributed land shall be an integral part, and a necessary accommodation, of the contemplated off-site modifications to Wellington's multi-modal system.
  2. The contribution shall exclude necessary access modifications.
- B. The following credits shall be granted against the Parks and Recreation Impact Fee imposed pursuant to this chapter. Such land contribution and construction shall be subject to the approval of the Village Manager based on the recommendation of the Impact Fee Coordinator:
1. The contribution of land, for the construction of any parks or recreational facilities, or additions made to the Wellington parks and recreation system required pursuant to a development order of Wellington or made voluntarily. Such land contribution and construction shall be subject to the approval of the Impact Fee Coordinator and shall be an integral part of, and a necessary accommodation to, an existing or contemplated park in the Wellington park system.
  2. Any dedications of land for parks and recreational facilities or any fee paid in lieu of a land dedication made under any Wellington ordinance, which provides for a mandatory land dedication for parks and recreational facilities.
- C. The amount of developer contribution credit to be applied to the Multi-modal Impact Fee and the Parks and Recreation Impact Fee, as applicable, shall be determined according to the following standards of valuation:
1. The value of donated land shall be based upon a written appraisal of fair market value as of the date of the development order by a qualified and professional appraiser and based upon comparable sales of similar property between unrelated parties in a bargaining transaction, if available.
  2. The cost of anticipated construction of off-site modifications to designated Wellington multi-modal facilities or parks and recreational facilities, as applicable, shall be based upon cost estimates certified by a professional architect or engineer.
  3. The land and construction contributions shall only provide additions or modifications to a designated Wellington multi-modal facility or Wellington parks and recreation system, as applicable, required to accommodate development and/or populations as projected in the Impact Fee Study.
- D. Prior to issuance of a development order, the applicant shall submit a proposed plan for the construction or contribution of off-site modifications to a designated Wellington multi-modal facility or a plan for contributions to Wellington's parks and recreation system. The proposed plan shall include:
1. A designation of the development for which the plan is being submitted;

2. A list of the contemplated off-site modifications to a Wellington multi-modal facility and/or parks and recreation facility, if applicable;
  3. A legal description of any land proposed to be contributed and a written appraisal prepared in conformity with this chapter;
  4. An estimate of proposed construction costs certified by a professional engineer; and
  5. A proposed time schedule for completion of the proposed plan.
- E. Upon receipt of the proposed plan, Wellington shall determine:
1. If such proposed plan of construction or contribution is in conformity with the contemplated off-site modifications to a designated Wellington multimodal facility or parks and recreation facilities, respectfully, if applicable;
  2. If the proposed contribution is consistent with the public interest;
  3. If the proposed construction and contribution time schedule is consistent with Wellington's Capital Improvement Program; and
  4. The amount of the developer contribution credit based upon the above standards of valuation, if any.
- F. The decision of the Village Manager, with the recommendation of the Impact Fee Coordinator, as to whether to accept or reject the proposed plan of contribution or construction and the amount of the developer contribution credit, if any, shall be in writing and issued within 30 days of the review. The written decision shall include an implementation schedule and bonding requirements as provided herein. A copy shall be provided to the applicant and owner. If the Village Manager rejects the proposed plan of contribution or construction, or if the applicant disputes the amount of developer contribution credit granted, the applicant shall have 30 days from the receipt of written notification to request a hearing pursuant to this chapter.
- G. All construction cost estimates shall be based upon, and all construction plans and specifications shall conform to, Wellington construction standards. All plans and specifications shall be approved by Wellington's Engineer prior to commencement of construction.
- H. In the event the amount of developer contribution credit determined to be applicable by the Impact Fee Coordinator pursuant to an approved plan of construction or contribution exceeds the total amount of the Multi-modal Impact Fee or the Parks and Recreation Impact Fee due by the applicant for the identified development as applicable, Wellington shall execute an agreement with the applicant for future reimbursement of the excess of such contribution credit from future receipts by Wellington of the Multi-modal Impact Fee or the Parks and Recreation Impact Fee, respectively. The term of such agreement for reimbursement shall not exceed five (5) years from the date of completion of the approved plan of construction and shall provide for a forfeiture of any remaining reimbursement balance at the end of such five (5)-year period.
- I. Any claim for credit, as established in this chapter, must be made no later than the time of development order approval. Any claim not so made shall be deemed waived.
- J. Any applicant whose proposed plan of contribution or construction has been rejected by the Village Manager, or who disputes the amount of the developer contribution credit, and who desires the immediate issuance of a building permit, shall pay the applicable Multi-modal Impact Fee and Parks

and Recreation Impact Fee prior to or at the time the request for hearing is made. Said payment shall be deemed paid "under protest" and shall not be construed as a waiver of any review rights. Any difference shall be refunded to the applicant or owner.

- K. The land contribution and developer contribution credit set forth in this Chapter is in addition to the contribution of land that is required as rights-of-way and nothing contained herein shall reduce or eliminate such developer obligation. .
- L. No impact fee credits shall be granted until the land is conveyed to Wellington, or facilities have been constructed and accepted, or alternatively, until a bond has been posted to ensure the conveyance or construction.

#### **Sec. 10-12: Review Hearings**

- A. An applicant or owner who is required to pay a Multi-modal Impact Fee and/or a Parks and Recreation Impact Fee pursuant to this chapter, as applicable, shall have the right to request a review hearing.
- B. Such hearing shall be limited to the review of the following:
  - 1. The application or calculation of the Multi-modal Impact Fee and the Parks and Recreation Impact Fee pursuant to this chapter;
  - 2. The rejection of the Alternative Multi-modal Impact Fee calculation or the Alternative Parks and Recreation Impact Fee calculation pursuant to this chapter; or
  - 3. The rejection of a proposed plan of construction or contribution submitted for purposes of determining a developer contribution credit pursuant to this chapter or the amount of such credit.
- C. Such hearing shall be requested by the applicant or owner within 30 days of the date of first receipt of the following:
  - 1. Notice that the Multi-modal Impact Fee and the Parks and Recreation Impact Fee, as applicable, are due.
  - 2. Determination on a proposed Alternative Multi-modal Impact Fee and proposed Alternative Parks and Recreation Impact Fee, as applicable.
  - 3. Determination on a proposed plan of construction or contribution submitted for purposes of determining a developer contribution credit pursuant to this chapter or the amount of such credit.
- D. The request for hearing shall be filed with the Impact Fee Coordinator and shall contain the following:
  - 1. The name and address of the applicant or owner;
  - 2. The legal description of the property in question;
  - 3. If issued, the date the building permit was issued;

4. A brief description of the nature of the construction being undertaken pursuant to the building permit;
  5. If paid, the date the Multimodal Impact Fee and/or the Parks and Recreation Impact Fee was paid; and
  6. A statement of the reasons why the applicant or owner is requesting the hearing.
- E. Upon receipt of such request, a hearing before the Planning, Zoning and Adjustment Board shall be scheduled and the applicant and owner shall be provided written notice of the time and place of the hearing. Such hearing shall be held within 45 days of the date the request for hearing was filed, unless a continuance is requested by the applicant.
- F. Such hearing shall be before the Planning, Zoning and Adjustment Board and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.
- G. An applicant or owner may request a hearing under this chapter without paying the applicable Multimodal Impact Fee and/or Parks and Recreation Impact Fee, as applicable, but no building permit shall be issued until such Multimodal Impact Fee and/or Parks and Recreation Impact Fee are paid in the amount initially calculated, or the amount approved upon completion of the review provided in this chapter.

#### **Sec. 10-13: Declaration of Exclusion from Administrative Procedures Act**

Nothing contained in this chapter shall be construed or interpreted to include Wellington in the definition of agency as contained in section 120.52, Florida Statutes, or to otherwise subject Wellington to the application of the Administrative Procedure Act, Chapter 120, Florida Statutes. This declaration of intent and exclusion shall apply to all proceedings taken as a result of or pursuant to this chapter, including specifically, but not limited to, the determination of alternative fee calculations and review hearings of this chapter.

#### **Sec. 10-14: Impact Fee Land Use Category Determination**

In the event a development involves a land use not contemplated under The Impact Fee Land Use Categories set forth this chapter, the Impact Fee Coordinator shall determine the most similar Impact Fee Land Use Category or Categories to be applied.

## **CHAPTER 11- DEFAULTED MORTGAGED REAL PROPERTY REGISTRATION**

### **Sec. 11-1: Purpose and Intent**

It is the purpose and intent of this chapter to establish a process to mitigate the number of deteriorating properties located within Wellington for which a public notice of default or lis pendens has been filed, that are in foreclosure, or for which ownership has been transferred to a lender or mortgagee by any legal method. It is further intended to establish a registration program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance of properties subject to mortgages that are in default.

### **Sec. 11-2: Applicability**

This chapter relates to property subject to a mortgage that has been determined by the mortgagee to be in default. This chapter shall be considered cumulative and is not superseding or subject to any other law or provision for same, but shall be an additional remedy available to Wellington above and beyond any other state, county, and/or local provisions for same.

### **Sec. 11-3: Definitions**

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning. Where the context will permit and no definitions are provided herein, the definitions provided in the Florida Building Code shall apply.

**Abandoned Structure:** A primary or accessory building or other property improvement that is not occupied or used for its intended purpose and is not being maintained in conformance with the requirements of this Code. A property that contains one (1) or more abandoned structures or improvements may be considered to be an abandoned property.

**Default:** Mortgagee declares a default on the mortgage. A mortgage shall be considered in default at such time as the mortgagee declares said mortgage to be in default, by recording a Lis Pendens or any legal action to foreclose the lien of its mortgage.

**Foreclosure:** The judicial process by which a property, placed as security for a mortgage loan, after a judicial process, is to be sold at an auction or other sales method, or is otherwise deeded or conveyed to the mortgagee to satisfy a debt upon which the borrower has defaulted.

**Local Property Manager:** An individual property manager, property management company, property maintenance company, or similar entity located within Palm Beach County, designated by the owner or mortgagee as responsible for the maintenance of vacant and/or abandoned real property.

**Mortgagee:** Any party holding a mortgage interest regardless of their priority.

**Vacant:** Any building or structure that is not lawfully occupied or inhabited by human beings.

### **Sec. 11-4: Penalties**

Unless exempted by 12 U.S.C. § 4617(a)(7), any person who violates the provisions of this chapter shall, upon conviction, be punished as provided in Chapter 1 of this Code, as applicable. In addition, any violation of this chapter may be enforced by Wellington's Special Magistrate as provided in Chapter 2 of this Code.

## **Sec. 11-5: Registration of Real Property Mortgagee Holding Mortgages in Default**

- A. Any mortgagee who holds a mortgage on real property located within Wellington shall register the property with Wellington, within 10 days of recording a Lis Pendens.
- B. Registration pursuant to this section shall contain at a minimum the name, mailing address, e-mail address, and telephone number of the mortgagee and the name of the local property manager and said person's address, e-mail address, and telephone number. The local property manager shall be responsible to inspect, secure, and maintain the property. The property manager named in the registration shall be located within Palm Beach County and available to be contacted by Wellington, Monday through Friday between 9:00 a.m. and 5:00 p.m., holidays and lunch hours accepted.
- C. The Wellington Council shall establish, by resolution, fees for the registration and re-registration requirements required by this chapter. Except as provided by 12 U.S.C. § 4617(a)(7), said fees shall be based on the reasonable estimated cost of administering the provisions of this chapter and shall be due and payable at the time of registration or re-registration. The fee schedule may be based on the size and type of property being registered. The registration shall be renewed 12 months from the initial registration date annually. Wellington may assign and delegate the collection of such fee to an independent contractor, as noted on the registration form.
- D. Any person or other legal entity that has registered a property under this chapter must report any change of information contained in the registration within 10 days of the change.
- E. Inspections and obligations of properties subject to this chapter shall remain in place so long as the mortgagee is involved in a foreclosure action. At such time that a foreclosure action is completed, the mortgagee shall notify Wellington or its designee of the new owner's name and mailing address.
- F. Failure of the mortgagee and/or property owner of record to properly register or to revise the registration to reflect a change of circumstances as required by this chapter is a violation of this Code.

## **Sec. 11-6: Maintenance Requirements**

Any mortgagee who holds a mortgage on real property located within Wellington and subject to this chapter shall take all reasonable actions including obtain permission from the courts, if necessary, to secure and maintain properties as outlined in this chapter.

- A. Properties subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, and notices, except those required by federal, state, or local law, discarded personal items including, but not limited to, furniture, clothing, large and small appliances, or any other items that give the appearance that the property is abandoned or not being properly maintained. Weeds, overgrown brush, or dead vegetation over the height limitations imposed by this Code or Wellington's Land Development Regulations (LDR) are prohibited.
- B. The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure. Yards shall be landscaped and maintained pursuant to the standards set forth in this Code and the LDR. Landscaping shall include, but not be limited to, grass, ground cover, bushes, shrubs, hedges or similar plantings, decorative rock, bark, or artificial turf/sod designed specifically for residential,

commercial, or industrial installation, as applicable. Landscaping shall not include weeds, gravel, broken concrete, asphalt, or similar material.

- C. Maintenance shall include, but not be limited to, watering, irrigation, cutting, and mowing of required landscape and removal of all trimmings and weeds.
- D. Pools and spas shall be kept in working order so that pool and spa water remains free and clear of pollutants and debris. Pools and spas shall comply with the enclosure requirements of this Code, the LDR, and the Florida Building Code.
- E. Failure of the mortgagee and/or property owner of record to properly maintain the property is a violation of this Code.

#### **Sec. 11-7: Security Requirements**

- A. Properties subject to this chapter shall be maintained in a secure manner so as not to be accessible to unauthorized persons.
- B. A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates, and other openings of such size that may allow a child or adult to access the interior of the property and/or structure. Broken windows shall be secured by re-glazing or boarding.
- C. If a mortgage on the property is in default and the property has become vacant or abandoned, a local property manager shall be designated by the mortgagee to perform the work necessary to bring the property into compliance with Wellington's regulations.
- D. When the property becomes vacant or abandoned, it shall be posted with the name and 24 hour contact telephone number of the local property manager. The posting shall be no less than 18 inches x 24 inches, and shall be of a font that is legible from a distance of 45 feet. The posting shall contain the following language:

**THIS PROPERTY IS MANAGED BY [Name of Local Property Manager]. TO REPORT PROBLEMS OR CONCERNS CALL [Telephone Number of Local Property Manager].**

- E. The posting shall be placed on the interior of a window facing the street to the front of the property so that it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the property so that it is visible from the street or if no such area exists, on a stake of sufficient size to support the posting in a location that is at all times visual from the street to the front of the property but not readily accessible to vandals. Exterior posting shall be constructed of and printed with weather-resistant materials.
- F. The local property manager shall inspect the property on a bi-weekly basis to ensure that the property is in compliance with this chapter, and any other applicable Wellington regulations. Upon the request of Wellington, or its authorized representative, the local property manager shall provide a copy of the inspection reports to the Code Compliance Division.
- G. Failure of the mortgagee and/or property owner of record to properly inspect and secure the property and post and maintain the signage noted in this section, is a violation of this Code.

#### **Sec. 11-8: Additional Authority**

Wellington's Code Compliance Manager, designee, or Wellington's authorized representative shall have authority to require the mortgagee and/or owner of record of any property affected by this chapter, to



implement additional maintenance and/or security measures including, but not limited to, securing any and all doors, windows, or other openings, employment of an on-site security guard, or other measures as may be reasonably required to help prevent further decline of the property.

**Sec. 11-9: Adoption of rules; Expenditure of Funds; Declaration of Municipal Purpose**

The Village Manager, consistent with his/her assigned duties and authorities under the Charter, including those duties and authorities relating to emergency situations, is authorized and empowered to adopt rules and regulations and expend Wellington funds as may be reasonably necessary and available to carry out the terms of this chapter, the expenditure of such funds being declared a proper municipal purpose.

**Sec. 11-10: Supplemental Provisions**

Nothing contained in this chapter shall prohibit Wellington from enforcing this Code by any other means, including, but not limited to, injunction, abatement or as otherwise provided by law.

## **CHAPTER 12 - NEWS RACKS**

### **Sec. 12-1: Purpose, Findings, and Scope**

- A. *Purpose:* The purpose of this chapter is to establish content-neutral, reasonable time, place, and manner restrictions to regulate the placement and appearance of news racks on both public and private property in order to further Wellington's objectives of promoting the public health, safety, and welfare, to ensure safety during hurricane conditions, and to preserve the aesthetic appearance of Wellington.
- B. *Findings:* Wellington finds that the unregulated placement and maintenance of news racks in Wellington roadways and rights-of-way create a danger to the safety and welfare of persons using such roadways and rights-of-way, including pedestrians, persons entering or exiting vehicles and buildings, and persons performing essential utility, traffic control, and emergency services. Wellington further finds that news racks located so as to cause a danger to persons using Wellington roadways and rights-of-way, and unsightly news racks located therein, such as news racks that are poorly maintained or that have been defaced with graffiti, constitute a public nuisance. Further, the Florida Constitution, Wellington's Charter, Comprehensive Plan, and various code provisions requires Wellington to maintain the character and aesthetics of the community through its codes, and Wellington finds that reasonable regulations governing the placement and appearance of such news racks are necessary to promote the public health, safety, and welfare of persons using Wellington roadways and rights-of-way, and to protect the aesthetic appearance of the community.
- C. *Scope:* The provisions of this chapter shall govern news racks on both public rights-of-way and private property within Wellington.

### **Sec. 12-2: Definitions**

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section:

**Abandoned News Rack:** any news rack that is severely damaged, does not display the required owner contact information, or has been empty for 30 days or more.

**News Rack:** any self-servicing or coin-operated box, container, storage unit, or other dispenser installed, used, or maintained for the display, sale, or distribution of newspapers, periodicals, magazines, or other publications.

**Private News Rack Site:** any location within Wellington not on public property on which one or more news rack(s) is located.

**Public News Rack Site:** a location approved by Wellington on public property where news racks may be located, either within a street right-of-way or on other Wellington property.

**Public Property:** any real property owned by Wellington.

**Responsible Person:** the person designated by the publisher of the newspaper, periodical, magazine or other publication as the person responsible for receiving notices of violation from Wellington. Where no such person is designated, the publisher shall be considered the responsible person.

**Rights-of-Way:** lands dedicated or deeded to Wellington or Acme Improvement District for street, highway, alley, pedestrian walkway, storm drainage, bicycle path or other public purposes.

**Roadway:** that portion of a street improved, designed, or ordinarily used for vehicular travel.

### **Sec. 12-3: Public Property**

- A. **Location and Placement of News Racks on Public Roadways:** News racks may be installed on public roadways and rights-of-way only in the areas designated as approved public news rack sites listed below, and on such additional public properties as may be designated pursuant to the provisions of this chapter:
1. Site 1—Wellington Trace, in front of the water plant;
  2. Site 2—Big Blue Trace, north of Paddock Drive; and
  3. Site 3—West side of Stribling Road, south of Forest Hill Boulevard.
- B. Additional news rack sites may be established by approval of the Wellington Council. Requests for additional sites must demonstrate that there is a public benefit to be realized that cannot be met by existing news rack locations on public or private properties, and that the proposed location can be installed and operated without projecting into the roadway travel surfaces or interfering with the safe use of roadway intersections, rights-of-way, sidewalks, driveways, parking lots, or fire hydrants. A map of approved news rack sites shall be maintained in the office of the Wellington Clerk.

### **Sec. 12-4: Standards for Maintenance, Appearance, and Installation**

- A. News racks shall not exceed 48 inches in height.
- B. News racks shall be designed and installed to withstand a 110-mile per hour wind load or in the alternative, publishers shall post with Wellington a surety bond in a form acceptable to Wellington in the amount of \$500.00 per publication to ensure removal of such news racks when determined necessary by Wellington.
- C. Each news rack shall be maintained in a neat, clean condition and in good repair. This shall include but not be limited to:
1. Free of graffiti;
  2. Reasonably free of dirt, grease, and rust;
  3. Free of chipped, faded, cracked, or peeling paint;
  4. Display windows shall be unbroken; and
  5. All mechanical mechanisms shall be maintained in sound working order.
- D. The exterior of news racks shall be maintained free of advertisements except for the name of the publication.
- E. The name, address, and telephone number of the person responsible for receiving all notifications pertaining to the use of a news rack site shall be permanently displayed on a label

on the exterior of each news rack. Failure to post this information shall be deemed abandonment of the news rack.

- F. Coin-operated news racks shall be equipped with a coin return, which shall be maintained in good working order.
- G. All coin-operated news racks shall also post the name, address, and telephone number of the person responsible for reimbursement in the event of failure of the coin mechanism.

#### **Sec. 12-5: News Rack Location Approval on Public Property**

- A. The placement of additional news racks on public roadways, rights-of-way, and all other public property requires Wellington Council approval.
- B. News racks placed on public roadways, rights-of-way, and all other public property without Wellington Council approval will be removed by Wellington following reasonable notice to the publisher or responsible person.

#### **Sec.12-6: Indemnification**

Every publisher who places a news rack on public property shall execute an indemnification in a form approved by Wellington's Attorney, holding Wellington, its officers, employees, and agents harmless and indemnifying them from any claim, demand, or judgment in favor of any person or entity arising out of or resulting from the placement of their news rack(s) in or over a public roadway, rights-of-way or other public property.

#### **Sec. 12-7: News Racks on Private Property**

News racks located on private property shall conform to the following criteria:

- A. News racks may be allowed on properties designated for commercial, flex, or multiple family land uses.
- B. News racks shall not be located along or adjacent to any entrance or exit drive within 100 feet of a public right-of-way.
- C. News racks shall be not be located within any required landscape buffer strip or required parking stall.
- D. News racks shall be screened from view from adjacent properties and rights-of-way by a visual barrier such as a building, wall, fence, hedge, berm, or some combination thereof.
- E. News racks shall be located in a manner so that safe-sight distance is maintained and traffic circulation is not unduly impacted.
- F. Private news rack sites shall be maintained in a neat and orderly manner free of debris, inoperable, or abandoned news racks.
- G. News racks shall be maintained according to the standards contained in this chapter (standards for maintenance, appearance, and installation).

## **Sec. 12-8: Enforcement**

### **A. Public Property:**

1. Upon determination by a code compliance officer that a news rack on public property has been installed or used in violation of this chapter, a written notice to correct the violation shall be issued to the responsible person.
2. Failure to correct such violation within the time specified shall constitute a violation and shall be enforced as provided in Chapter 2, Article IV of this Code.
3. Wellington may remove news racks on public roadways, rights-of-way, and all other public property that violate the provisions of this chapter.
4. Wellington shall store news racks that are removed by Wellington for a period of 30 days. Thereafter, Wellington may dispose of the news rack. Wellington may adopt by resolution a fee for the removal and storage of news racks.

### **B. Private Property:**

1. Upon determination by a code compliance officer that a news rack on private property has been installed or used in violation of this chapter a written notice to correct the violation shall be issued to the responsible person and to the property owner.
2. Failure to correct such violation within the time specified shall constitute a violation and shall be enforced as provided in Chapter 2, Article IV of this Code.

- C. No person, other than the publisher or responsible party, shall tamper with or remove any news rack from public or private property, or remove any identifying label from any news rack.

## **CHAPTER 13 - OFFENSES AND MISCELLANEOUS PROVISIONS**

### **ARTICLE I - PROPERTY MAINTENANCE**

#### **Sec. 13-1: Definitions**

The following words and terms, when used in this article, have the meanings specified herein:

**Bulk Trash:** as defined in Chapter 17 of this Code.

**Container:** as defined in Chapter 17 of this Code.

**Developed Property:** any real property upon which alteration to support a specific land use other than farming has occurred; or a structure, paving or other improvement has been erected or installed. Overhead, underground and other public or franchised utility installations shall not be considered improvements for the purposes of this definition.

**Driveway Apron:** that portion of the driveway or parking area starting at the curb and progressing to the edge of the right-of-way.

**Landscaped Areas:** outdoor area, required to consist of or consisting of any of the following or combination thereof, grass, ground covers, shrubs, vines, hedges, trees or palms; and non-living durable material commonly used in landscaping, such as rocks, pebbles, sand, walls or fences but excluding paving.

**Litter:** rubbish and all other solid waste material which, if accumulated, thrown or deposited as herein prohibited, creates a danger to public health, safety and welfare, creates a nesting, breeding or feeding ground for vermin, creates blight, or is detrimental to the aesthetic appearance of Wellington.

**Native Vegetation:** any plant species with a geographic distribution indigenous to all or part of Wellington.

**Recycling Container:** as defined in Chapter 17 of this Code.

**Rubbish:** solid wastes consisting of both combustible and noncombustible wastes, including but not limited to paper, plastics, wrappings, cigarettes, cardboard and tin cans.

**Sidewalk:** as defined is Chapter 20 of this Code.

**Solid Waste:** as defined in Chapter 17 of this Code.

**Swale:** as defined in Chapter 20 of this Code.

**Trash:** as defined in Chapter 17 of this Code.

**Vegetative Waste:** as defined is Chapter 17 of this Code.

**Yard:** a space open and unobstructed from the ground to the sky, except by permitted encroachments on the same lot with a structure or use.

**Yard, Front:** an area extending across the full width of the lot between the front lot line and the nearest line of any building on the lot.

**Yard, Rear:** an area extending across the full width of the lot between the rear lot line and nearest line of the main building.

**Yard, Side:** an area extending from the front lot line to the rear lot line, between the side lot line and the nearest line of any building on the lot.

### **Sec. 13-2: Property Maintenance Standards (General)**

A. **Applicability:** These regulations shall apply to all property within Wellington. The owner, tenant, or other responsible party of all real properties, unless otherwise stated, shall maintain the exterior portions of the property in such a manner so as to conform to all Wellington codes and ordinances.

B. **General Regulations:**

1. All principal and accessory buildings and structures and their appurtenances shall be maintained free of litter, debris, stains, mold, discoloration, or deterioration.
2. All driveways, sidewalks, parking areas, private roadways or access ways, and curbing, together with their associated medians and circles, shall be maintained free of debris, stains, mold, discoloration, or deterioration. All related landscaping shall be maintained in a healthy and manicured condition.
3. The coloring or coating of sidewalks and/or driveway aprons within public rights-of-way with any type of paint, stain, sealant, or similar material is prohibited. The painting, staining, or sealing of driveways and/or walkways on private property may be permitted as regulated by the Land Development Regulations.
4. The property owner shall maintain all public easements, swales, and sodded portions of rights-of-way on or adjacent to their developed property in a clean, orderly, and healthy condition including, but not limited to, mowing and replacing sod when necessary, repairing bare areas, clearing weeds, and removing litter. On double frontage lots, property owners are only required to maintain to the property line on the rear lot line.
5. Flags and flagpoles shall be maintained free of debris, stains, mold, discoloration, and deterioration.
6. All dumpsters shall be screened and located in a manner approved by Wellington. The dumpster and the area surrounding it shall be maintained free of litter, debris, stains, mold, discoloration, and deterioration.

C. **Fence and Wall Maintenance:**

1. Fences and walls shall be maintained in good order and repair and shall be subject to the standards enumerated within this section.
2. Painted surfaces shall not be faded and shall be free of discoloration, staining, or peeling. Other surfaces shall not be faded, discolored, stained, peeling, chipped, or broken.
3. Surfaces shall be cleaned or repainted when any surface is more than 10% stained or discolored or if the paint is peeling over more than 5% of any surface.
4. Broken or missing boards, posts, slats, or fittings shall be replaced immediately.
5. Fences shall be maintained in a vertical configuration and shall not be allowed to lean.

6. Rails and posts shall be structurally sound and not bent.
7. Fabric, rails, posts, fitting, and gates that become more than 10% discolored shall be cleaned or replaced.
8. Chipped or broken walls shall be repaired immediately.
9. Landscaping and barrier hedges shall be trimmed and maintained in a healthy and neat condition and shall not extend onto or over public properties, rights-of-way, or easements.

### **Sec. 13-3: Additional Property Maintenance Standards**

A. Applicability: These regulations shall apply to all property within the municipal boundaries of Wellington.

B. Solid Waste:

1. All solid waste shall be stored in garbage cans or dumpsters, which shall be maintained in a sanitary manner. Except as provided below, all garbage cans and recycling containers shall be kept indoors or in a portion of the rear or side yard that is screened from view by walls, fences, or hedges. All dumpsters shall be screened and located in a manner approved by Wellington.
2. Garbage cans and other trash or recycling containers may be placed at the curb no earlier than 6:00 p.m. on the day prior to scheduled pick-up and shall be removed from the curb no later than 11:00 p.m. on the day of pick-up.
3. No owner or tenant shall permit the accumulation of litter, yard debris, or trash on any real property or the adjoining public rights-of-way.
4. Vegetative waste and bulk trash may be placed at the curb no earlier than 24 hours prior to scheduled pick-up.
5. Garbage, vegetation, recycling containers, vegetative waste, and/or bulk trash shall be placed at the curb for collection only within the boundaries of the originating property, and shall not be placed upon any roadway surface or rights-of-way area in a way that impedes pedestrian or vehicular traffic flow or safety.

C. Prohibited Acts:

1. Outdoor drying of clothes and outdoor clotheslines shall be prohibited in any yard or any portion of a yard that is visible from the street or from neighboring properties. Any rear or side yard utilized for this purpose must be screened by buildings, walls, fences, or hedges.
2. Household items, maintenance equipment or supplies, or other articles not designed and intended as outdoor amenities shall be prohibited in any yard or any portion of a yard that is visible from the street.
3. Portable basketball backboards and hoops are permitted in front yards provided that they are located no closer than 15 feet to the front property line and three (3) feet from the side property line and provided they shall not exceed 14 feet in height measured from the grade level at the point on the front property line nearest to the pole, or provided they are removed and stored indoors when not in use.



#### D. Solid Waste Generation and Collection During Storm Events

1. All pre-storm season vegetation trimming shall be completed each year prior to April 30<sup>th</sup>. Wellington finds that pre-storm season trimming reduces storm debris and damage and protects the health, safety and welfare of residents and property owners within Wellington.
2. Once any portion of Wellington has been placed under a hurricane or tropical storm watch or warning by the National Hurricane Center of the National Oceanic and Atmospheric Association (NOAA) the following solid waste regulations shall be enforced:
  - a. Trash containers, vegetation containers, recycling containers vegetative waste and/or bulk trash shall not be placed at the curb on a non-collection day or allowed to accumulate on any property.
  - b. Upon cessation of solid waste collection by Wellington and/or its franchised collection service provider due to an impending storm event:
    - i. It shall be the property owner's responsibility to remove or secure trash, vegetation and recycling containers from outdoor areas so as not to impose a potential hazard to the surrounding area during the storm event.
    - ii. It shall be the property owner's responsibility to remove or secure any remaining bulk or other waste material remaining on the property in a manner as not to impose a hazard to the surrounding area.

## **ARTICLE II - NOISE STANDARDS**

### **Sec. 13-4: Purpose and Intent**

The purpose and intent of this article is to eliminate and regulate sources and occurrences of noise that interfere with the peaceful enjoyment of land or that are contrary to the public health, safety, or welfare, or that constitute a nuisance to the public at-large.

### **Sec. 13-5: Applicability**

This article shall apply to all property within Wellington unless specifically exempted herein.

### **Sec. 13-6: Exemptions**

The following shall be exempted from the standards of this section:

- A. Sound emitted from the operation of motor vehicles legally operating on any public rights-of-way, which are regulated by F.S. Ch. 316, the Uniform Traffic Control Law.
- B. Any noise generated by activities to the extent such activities are preempted from municipal regulation by applicable state or federal laws or regulations.
- C. Any noise generated as a result of emergency work, as a danger-warning device, or for the purpose of alerting persons to the existence of any emergency.
- D. Any noise generated by any government authorized activity conducted on public land.

- E. Any noise generated within any public rights-of-way, including parades, when appropriately authorized by the governing body.
- F. Non-amplified crowd noises at sporting events.
- G. Sound emitted from the operation of equipment associated with maintenance of public or private golf courses when the equipment is utilized in the normal operation and operating hours of a golf course, provided the equipment is used only between the hours of 6:00 a.m. and 7:00 p.m. daily. All construction activities, including machinery and equipment, such as chain saws, are not included within the exemption provided herein.

### **Sec. 13-7: Specific Prohibitions**

The following activities are prohibited:

- A. *Horns, Signaling Devices:* The sounding of any horn or audible signal device of any motor vehicle, boat, engine, machine or stationary boiler of any kind except as required by law or as a warning. The sounding of any warning device for an unnecessary or unreasonable period of time is also prohibited.
- B. *Public Streets and Parks:* The operating or playing of any radio, television, phonograph, musical instrument or similar device on the public rights-of-way or in public parks in a manner as to be plainly audible at a distance of 100 feet from the sound source at any time, except as may be exempted by this chapter.
- C. *Loud Speakers and Sound Amplifiers:* The using or operating of any loud speaker, loud speaker system, sound amplifier, radio, television, phonograph, musical instrument or other similar device within or adjacent to inhabited residential land such that the sound therefrom is plainly audible across the property line of the inhabited residential land at any time. This section shall not apply to any special events, such as parades, festivals or sporting events, but shall apply to lounges, restaurants, and nightclubs.
- D. *Street Sales Advertising:* The use or operation of any loudspeaker, sound amplifier or musical instrument that produces or reproduces sound that is cast or emitted upon the public streets and sidewalks for the purpose of commercial advertising or for attracting the attention of the public to any particular building, structure or place when such sound that is emitted is plainly audible across the land line of any inhabited residential land.
- E. *Machinery and Construction Work:* The operation of any machinery, demolition equipment, construction equipment, excavating equipment, power tools, equipment of semi-mechanical devices or undertaking construction work that emits sound across the land line of an inhabited residential land between the hours of 10:00 p.m. and 7:00 a.m., Monday through Saturday. All major construction work, including grading and site preparation, assembly, erection, substantial repair, alteration or demolition of a building or structure is prohibited anytime on Sunday. This shall not prohibit individuals from performing home repair or maintenance, between the hours of 9:00 a.m. and 6:00 p.m. on Sunday nor shall it prohibit the use of pumps or machinery that, because of its very nature and purpose, is required to be operated 24 hours a day.
- F. *Lawn Equipment:* The operation of lawn and garden equipment that emits sound across a property line to inhabited residential land except between the hours of 7:00 a.m. and 10:00 p.m. Monday through Saturday and between the hours of 9:00 a.m. and 6:00 p.m. on Sundays.

### **Sec. 13-8: General Prohibitions**

No person shall operate, or cause to be operated, any source of sound from any location in such a manner as to create a sound level that exceeds the limits set forth in Table A for inhabited residential and commercial land by more than 10% of any measurement period, where the period shall not be less than 10 minutes when measured at or within the boundary of the complaining landowner. For the purpose of this section, inhabited shall mean regularly occupied by the complainant and occupied at the time of complaint. Sound level measurement shall be made with a Type 2, or equivalent, sound level meter using the A-weighting scale in accordance with the standards of the American National Standards Institute (ANSI). All measurements shall be made with a sound meter at or within the boundary of the complaining landowner.

**Table A**  
**Prohibited Sound Levels**

<b><u>Receiving Land</u></b>	<b><u>Noise Source</u></b>	<b><u>Time of Day</u></b>	<b><u>Sound Level Limit</u></b>
<b><u>Residential</u></b>	<u>Fixed mechanical equipment</u>	<u>Any time</u>	<u>60 dBA</u> <u>60 dBA</u>
<b><u>Residential</u></b>	<u>All other sources</u>	<u>8:00 p.m. to 11:00 p.m.</u> <u>11:00 p.m. to 7:00 a.m.</u>	<u>55 dBA</u> <u>50 dBA</u>
<b><u>Commercial</u></b>	<u>All sources</u>	<u>Any time</u>	<u>70 dBA</u>

## **ARTICLE III - SEXUAL OFFENDERS AND SEXUAL PREDATORS**

### **Sec.13-9: 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:

**Child Care Facility:** has the same meaning as provided in F.S. § 402.302.

**Convicted:** a determination of guilt that is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

**Park:** all public and private property specifically designated as being used for recreational purposes and where children regularly congregate.

**Permanent Residence:** a place where the person abides, lodges, or resides for 14 or more consecutive days.

**Playground:** a designated independent area in the community or neighborhood that is designated solely for children and has one (1) or more play structures.

**School:** has the same meaning as provided in F.S. Sec. 1003.01 and includes a private school as defined in F.S. Sec. 1002.01, a voluntary prekindergarten educational program as described in F.S. Sec.1002.53(3), and a public school as defined in F.S. Sec.402.3025(1) but does not include facilities dedicated exclusively to the education of adults.

**Sexual Offender:** has the same meaning as provided in F.S. § 943.0435.

**Sexual Predator:** has the same meaning as provided in F.S. § 775.21.

**Temporary Shelter:** any public or private building or facility that is offered to individuals and families who are homeless or who evacuate their homes or a hotel, motel, or other place of temporary residence offered as a result of any storm, flood, hurricane, tornado, explosion, fire, or other incident of any nature as a place to reside, rest, sleep, or eat.

**Temporary Residence:** a place where a person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address or a place where the person routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

**Within 2,500 feet:** a distance that shall be measured in a straight line from the outer boundary of the real property upon which the residential dwelling unit of the restricted sexual offender or sexual predator is located. The distance may not be measured by a pedestrian route or automobile route, but instead shall be measured as the shortest straight line between the two (2) points without regard to any intervening structures or objects. Without otherwise limiting the foregoing measurement instructions, under those circumstances in which the residential dwelling unit of the restricted sexual offender or sexual predator is within a cooperative, condominium, or apartment building, the parcel of real property described in this paragraph shall consist of the parcel or parcels of real property upon which the cooperative, condominium, or apartment building that contains the residential dwelling unit of the restricted sexual offender or sexual predator is located.

### **Sec. 13-10: Sexual Offender and Sexual Predator Residence Prohibition, Enforcement, and Exceptions**

- A. It is a violation of this Code for any person who is required by Florida law to register as a sexual predator or sexual offender, to establish a permanent residence or temporary residence within 2,500 feet of any school, child care facility, park, or playground. This prohibition shall apply to individuals who are required by law within any state of the United States or any foreign nation to register as a sexual predator or sexual offender or who have been convicted of an equivalent offense to F.S. §§ 794.011, 800.04, 827.071, 847.0135(5), or 847.0145.
- B. Enforcement: Wellington may pursue any enforcement action or legal remedy available under controlling state law to include, but not be limited to, a fine not exceeding \$500.00 unless otherwise authorized by state law or by imprisonment for a term not exceeding 60 days unless otherwise authorized by state law, or by both such fine and imprisonment.
- C. Exceptions: A sexual offender or sexual predator residing within 2,500 feet of any school, child care facility, park, or playground does not commit a violation of this section if any of the following apply:

1. The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Florida Law, prior to February 14, 2006.
2. The person was a minor when they committed the offense and was not adjudicated as an adult.
3. The person is a minor; or
4. The school, childcare facility, park, or playground within 2,500 feet of the person's permanent or temporary residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Florida Law.

#### **Sec. 13-11: Property Owners Prohibited From Renting Real Property to Certain Sexual Offenders and Sexual Predators; Enforcement; Defenses**

- A. It is a violation of this Code for an owner of residential property in Wellington to let or rent a residence to any person prohibited from establishing such residence pursuant to this article.
- B. Enforcement: An owner's failure to comply with provisions of this section shall subject the property owner to the code enforcement provisions and procedures as provided in chapter 2, article IV of this Code.
- C. Defenses: An owner shall not be liable under the provisions of this section if they can demonstrate they made a good faith effort to ascertain whether the proposed tenant or other persons who will reside with the tenant are prohibited from establishing such residence pursuant to section 13-11. An owner may demonstrate such good faith by:
  1. Obtaining an affidavit from the prospective tenant stating that the tenant and all people who will reside with them are not prohibited from establishing such residence pursuant to this article; and
  2. Executing an affidavit stating that the owner has conducted a nationwide search on the United States Department of Justice National Sex Offender Public Website to confirm that the prospective tenant and all persons who will reside with them are not a registered sexual offender or sexual predator.

#### **Sec. 13-12: Application of Ordinance/Existing Contracts**

The provisions of this article shall not be applied to persons residing at a prohibited location prior to February 14, 2006. It is not the intent of this article to impair valid, existing and bona fide contract rights; provided, however, that the provisions of this article shall apply upon termination of any leasehold relationship arising from a landlord tenant relationship or the expiration of a lease. When a person who is the subject of this article changes residences, this article shall fully apply to such persons.

### **ARTICLE IV - PROHIBITION OF THE SALE AND USE OF FIREWORKS**

#### **Sec. 13-13: Intent**

The intent of this article is to protect the health and safety of horses and other livestock quartered within the Equestrian Preserve Area (EPA) of Wellington from the adverse effects caused by the recreational use of fireworks.

#### **Sec. 13-14: Prohibited Sale and Use of Fireworks in the Equestrian Preserve Area (EPA)**

Notwithstanding the provisions of F.S. §§ 791.001 and 791.08, the sale and use of fireworks within the EPA of Wellington is prohibited on all days of the year, except as may be authorized through the issuance of a special permit, as provided in House Bill 979 (2021).

### **ARTICLE V - FLAGS AND FLAG POLES**

#### **Sec. 13-15: Definitions**

**Flag:** a piece of material, typically cloth, on which is depicted a government agency, civic or institutional symbol, other symbols, graphics or lettering; not regulated as a sign.

#### **Sec. 13-16: Flags and Flag Poles Prohibited**

Flags and flag poles may not be placed within any public right-of-way or easement.

#### **Sec. 13-17: Flag Regulations**

##### A. Placement and Size

1. Residential. Only one (1) flagpole may be erected at a height not to exceed 15 feet and containing no more than two (2) flags with a total maximum size of 15 square feet. A property owner can substitute the flagpole with up to two (2) flags mounted in stanchions on the face/eaves of the building or up to two (2) flags that are displayed flush to the face of the building. No flags of any commercial nature may be displayed.
  2. Non-residential. Up to two (2) flagpoles may be erected at a height not to exceed 35 feet, but not higher than the roofline of the tallest building on the site, each flagpole containing no more than two (2) flags with a total maximum size of 48 square feet. A property owner can substitute a flagpole with up to two (2) flags mounted in stanchions on the face/eaves of the building or up to two (2) flags that are displayed flush to the face of the building. The location of any flag on a building must be on the first floor of the front façade and may be no higher than the roofline of the first floor. Only one (1) flag of a commercial nature is permitted, which may contain the logo or symbol of the entity located or doing business at that location.
- B. Display and maintenance of flags of the United States of America, the State of Florida, the Wellington, or any other government should be in an approved manner pursuant to federal guidelines in Title 4, United States Code, Chapter 1 (Federal Flag Code).
- C. Flags shall not be faded, tattered, or torn.
- D. Flags shall not be used as signs and are not counted toward the maximum number or size of signs permitted.

#### **Sec. 13-18: Flag Pole Regulations**

- A. A building permit must be obtained prior to constructing a flagpole.

- B. Any flagpole shall be set back from the edge of the pavement of any existing street right-of-way and from any adjoining property a distance that is equal to the height of the pole plus three (3) feet.

**Sec. 13-19: Nonconforming Flags and Flag Poles**

All flags and flagpoles existing on the date of the adoption of this ordinance shall be considered to be valid nonconforming uses and structures.

## **CHAPTER 14 - PARKS AND RECREATION**

### **ARTICLE I - IN GENERAL**

#### **Sec. 14-1: 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:

**Department:** the Wellington Parks and Recreation Department.

**Director:** the Parks and Recreation Director.

**Law Enforcement Officer:** any member of the Palm Beach County Sheriff's Office.

**Park:** any public park, recreation or playground area, or building or facility thereon, within Wellington owned and maintained as a public park, whether or not such areas have been formally dedicated to such purpose.

**Permit:** written permission that must be obtained from the Director, or designee, to use any park facility to the exclusion of others.

**Person:** any person, firm, partnership, association, club, corporation, company, or organization of any kind.

**Vehicle:** any wheeled device of conveyance, whether propelled by motor, animal, or human power. The term shall include any trailer in tow of any kind, size, or description. The term does not include baby carriages, wheelchairs, and vehicles operated by law enforcement personnel.

#### **Sec. 14-2: Purpose and Intent**

The purpose and intent of this chapter is to establish rules and regulations governing the operation and use of municipal parks and recreation facilities, including any parking areas provided in connection with a parks and recreation facility. Additionally, so that the public may obtain the maximum enjoyment and utilization of said facilities in accordance with the functions and activities intended and so that the facilities may be conserved and protected for the public good.

#### **Sec. 14-3: Enforcement Authority**

- A. It shall be the duty and responsibility of the Department employees to enforce this chapter.
- B. It shall be unlawful for any person to do any act forbidden or fail to perform any act required by this chapter or for any person to fail to comply with any lawful or reasonable order given by Wellington employees.
- C. The Council may adopt reasonable rules and regulations as are necessary to manage, use, preserve, and govern park property and activities.

#### **Sec. 14-4: Penalties**

- A. Any person convicted of violating the provisions of this section shall be punished by a fine not less than \$25.00 but not to exceed \$500.00, or by imprisonment not exceeding 90 days, or both.



- B. Any person found violating any provision of this chapter is subject to ejection and arrest by a law enforcement officer.

#### **Sec. 14-5: Hours**

Parks with sports lighting shall be open to the public every day of the year from 8:00 a.m. until 30 minutes following the conclusion of the last scheduled/permitted activity for that day. All other parks shall be open from dawn to dusk. However, the Director may extend or contract these hours for any park or portion of any park. No person shall enter, be, or remain in any park after park closing hours unless a permit has been obtained.

#### **Sec. 14-6: Closed Areas**

Any section or part of any park may be declared closed to the public by the Director at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise), and either entirely or merely to certain uses, as the Director shall find reasonably necessary.

#### **Sec. 14-7: Fees**

The Wellington Council shall adopt, by resolution, a schedule of fees for the use of parks and recreation facilities, as amended from time to time.

### **ARTICLE II – PERMITS**

#### **Sec. 14-8: Permits Required**

- A. Any person or group of persons, association, or corporation wishing to use any park facility to the exclusion of others shall first obtain a permit and permission as set forth below.
- B. Activities considered a public assembly, as defined in Chapter 20 of this Code, shall adhere to the provisions of Chapter 20.

#### **Sec. 14-9: Application**

- A. A person seeking the issuance of a permit to carry out an activity in a park shall file an application on the appropriate form provided by the Department with the designated representative of the Director and provide such information as shall be required by the Director.
- B. Applications shall be submitted to the Director, on forms provided by the department no later than 30 days before the planned event. The application shall set forth the name of the organization(if any), the nature of the proposed event, the date, time, duration, and location of the proposed event, the anticipated number of participants, and any other information deemed relevant by the Director.

#### **Sec. 14-10: Standards for Issuance**

The Director shall issue a permit unless it is determined:

- A. The proposed activity or use of the park facility will unreasonably interfere with or detract from the general public use and enjoyment of the park;

- B. The proposed activity or use of the park facility will unreasonably interfere with or detract from the public health, safety, or welfare;
- C. The conduct of the proposed activity or use of the park facility is reasonably likely to result in violence to persons or property resulting in serious harm to the public;
- D. The proposed activity or use of the park facility will entail an extraordinary expense or operation by Wellington; or
- E. The facilities desired have been reserved for another activity or use at the day and hours requested in the application.

#### **Sec. 14-11: Decision on Application; Appeals from Denial**

The Director shall issue the permit or deny the application, if appropriate, within 10 business days of receiving the application. Applications for permits shall be considered in the order in which they are received by the Director. In the event that a request for a permit is denied, the applicant may appeal the decision to the Village Manager. The applicant must notify the Village Manager, in writing, of the Director's decision, and the reason why the applicant disputes the decision, within 10 business days of receiving notice of the Director's decision. The Village Manager may uphold the Director's decision, may grant the permit, or may grant the permit with modifications. The decision of the Village Manager shall be final.

#### **Sec. 14-12: Conditions of Permit**

- A. The Director may impose reasonable conditions or restrictions on the granting of a permit, including, but not limited to, any of the following:
  - 1. Restrictions on fires, amplified sound, use of alcoholic beverages, sports, use of animals, equipment, or vehicles, the number of persons to be present, the location of any bandstand or stage, or any other use that appears likely to create a risk of unreasonable harm to the use and enjoyment of the park by others, or of damage to park property.
  - 2. A requirement that the applicant post a reasonable deposit of security for the repair of any damage to park property or the cost of cleanup, or both.
  - 3. A requirement that the applicant pay in advance a reasonable fee to defray the cost of furnishing adequate security forces by the department at the proposed use or activity.
  - 4. A requirement that the permittee furnish additional sanitary and refuse facilities that might be reasonably necessary based on the use or activity for which the permit is being sought.
  - 5. A requirement that the applicant furnish a certificate of insurance in amounts prescribed to provide adequate coverage for the protection of Wellington and park property.
- B. No person in a park shall refuse or fail to produce and exhibit any permit they claim to have upon the request of any law enforcement officer, park security guard, or other authorized park employee who wishes to inspect the permit for the purpose of determining that the provisions of this subsection have been complied with.

### **ARTICLE III - REGULATIONS**

#### **DIVISION 1 - GENERALLY**

#### **Sec. 14-13: Alcoholic Beverages**

- A. No alcoholic beverages whatsoever shall be permitted to be brought into any park area, except as specifically authorized herein.
- B. No alcoholic beverages whatsoever shall be drunk or consumed in any park area of Wellington, except as specifically authorized herein.
- C. Alcoholic beverages may be consumed at family or group picnics or functions provided a permit for such consumption is obtained. The Wellington Council shall by resolution adopt standards for issuance of such permits.

#### **Sec. 14-14: Drunkenness and Disorderly Conduct**

- A. No intoxicated person will be permitted entry to parks or recreational areas, and if discovered therein will be ejected forthwith.
- B. No person shall engage in disorderly conduct in a Wellington park.
- C. No person shall use profane or obscene language within hearing distance of a person less than 18 years of age in a Wellington park.

#### **Sec. 14-15: Proper use of Dressing Facilities, Restrooms**

No person shall dress or undress, except in such bathing houses or structures as may be provided or maintained by the Department for that purpose. Dressing and undressing in any vehicle, toilet, restroom, or in any park area, except as provided above, is prohibited.

#### **Sec. 14-16: Defacing Park Property**

- A. No person shall pluck any flower or fruit, either wild or cultivated, or break, cut down, tramp upon, remove, or in any manner deface, mar, damage, injure, or mutilate any tree, shrub, flower bed, fallen timber, turf, fence, bridge, bench, table, statue, ornament, gate, building, structure, tool implement, vehicle, boat, car, light standard, sign, or any other property located within a Wellington park.
- B. No person shall climb any tree or walk, stand, or sit upon any property within a Wellington park unless designated or customarily used for such purpose.

#### **Sec. 14-17: Vending or Selling in Park Areas**

No person, other than the Department, its licensed concessionaires acting by and under the authority of Wellington, or those holding a valid special event permit will expose or offer for sale, rent, or trade any article or thing, or place any stand, cart, or vehicle for the transport, sale, or display of any food, drink, article, or merchandise, or engage in any commercial activity for compensation, or solicit any business within the limits of any park or recreational area.

#### **Sec. 14-18: Wildlife**

- A. "Wildlife Creature" means any animal, bird, mammal, reptile, amphibian, fish, or invertebrate.

- B. No person shall molest, harm, frighten, kill, net, trap, snare, hunt, chase, shoot or throw or propel missiles, by any means, at any wildlife creature roaming free about a park or in captivity, nor shall any person remove or possess the young of any wildlife creature, or the nest or eggs of any wildlife creature, or collect, remove, possess, give away, sell or offer to sell, buy or offer to buy, or accept as a gift any specimen, dead or alive.
- C. No person shall place, dump, abandon, or leave any wildlife creature on the grounds of any park.
- D. No person shall bring or allow any animal or other household pet in any Wellington park, except that leashed pets are permitted in the neighborhood parks and the dog park, provided the owner ensures proper disposal of pet waste.
- E. The prohibitions of this subsection shall not apply to:
  - 1. Horses or dogs used by a law enforcement officer or park security guard in the performance of their duties.
  - 2. Service animals as defined in F.S. § 413.08(d), as amended from time to time.
  - 3. Animals or fowl kept by the department or under its direction.

## **DIVISION 2 – RECREATION**

### **Sec. 14-19: Bathing, Swimming, Fishing**

- A. Swimming: No person in a park shall:
  - 1. Swim, bathe, or wade in any waterway in or adjacent to any park, except in such water or waterway as the Director may designate for such use, and in accordance with the rules of this section and any other regulations that the Director may promulgate.
  - 2. Enter any water or visit places where swimming, bathing, or wading is permitted, except during those hours that the Director has established for such activities.
  - 3. The Director shall not designate any water or waterway for swimming, bathing, or wading where such use of the water would be dangerous to the public health, safety, or welfare.
- B. Fishing:
  - 1. No person shall engage in fishing for profit in park waters, nor shall any person buy or sell fish caught in park waters or on park property.
  - 2. No person shall fish in any park waters where swimming, bathing, or wading is permitted.
  - 3. No person shall net fish in park waters.
  - 4. Where fishing is allowed, all caught fish shall be released.

### **Sec. 14-20: Dangerous Instruments**

- A. No person, except an authorized Wellington employee, security guard, or law enforcement officer, shall bring onto park property or have in their possession on park property any explosive, dynamite cap, fireworks, air gun, pellet gun, non-explosive spring gun, slingshot, cross bow, bow

and arrow, any device by means of which a projectile can be propelled by the action of a non-explosive, any trapping device, any incendiary bomb or material, any smoke or stink bomb, any tear gas or other disabling chemical or agent, any acid or caustic substance, or any inflammable liquid except fuel contained in the fuel tank of a motor vehicle, vessel, lantern, camp stove or camp heater and not more than one gallon of liquid fuel in a closed metal container.

- B. The prohibition in subsection (a) above is not intended to be and shall not be construed as the regulation of firearms.
- C. No person shall discharge any of the instruments listed above into any park from outside a park.
- D. The Director may designate areas within a park where bows and arrows may be used. In such cases, the Director shall promulgate regulations for the safe use of such instruments, and no person shall fail to abide by such regulations.

#### **Sec. 14-21: Game and Sport Activity**

- A. No person in a park shall take part in the playing of any games involving thrown or otherwise propelled objects such as stones, arrows, golf balls, javelins, rockets, or radio controlled airplanes, except in areas set apart for such forms of recreation. The playing or practicing by organized sponsored athletic teams of such games as football, baseball, and the like, is prohibited except on fields, courts, or areas designated for such use, or as directed by the Director or their authorized representative.
- B. Roller skating, roller blading, bicycling, skateboarding and any other similar activity is prohibited on turf, basketball courts, tennis courts, and parking lots and shall be confined to those areas specifically designated for such activity.

#### **DIVISION 3 - PICNIC AREAS**

##### **Sec. 14-22: Picnics**

- A. The Director shall designate those areas of a park where picnicking is permitted. No person shall picnic in any area other than in a designated area.
- B. Individual grills and tables in picnic areas shall be available on a "first-come, first-served" basis, except that a group of ten or more persons must obtain a permit in advance for the use of picnic pavilions.
- C. It is prohibited to build or use open fires, except in areas specified by the Director. Barbecue grills or like devices are exempt from this provision; however, the department may prohibit the use of such devices it deems to be unsafe or hazardous.
- D. Picnickers shall not leave a picnic area before all trash, including boxes, paper, cans, bottles, garbage, and other refuse, is placed in a disposal receptacle, where provided. If no trash receptacles are available, then refuse and trash must be carried away from the park area by the picnicker to be properly disposed of elsewhere.

#### **DIVISION 4 - CONTROL OF VEHICLES**

##### **Sec. 14-23: Vehicles and Traffic Laws**

All applicable state and local vehicle and traffic laws and ordinances shall be in full force and effect in any park.

#### **Sec. 14-24: Obedience to Traffic Signs**

All persons shall observe carefully all traffic signs indicating speed, direction, caution, stopping, or parking and all other signs posted for proper control of traffic and for the safety of persons and property.

#### **Sec. 14-25: Enforcement of Traffic Regulations**

All persons shall obey all traffic officers and park employees, such persons being hereby authorized and instructed to direct traffic whenever and wherever needed in the parks, highways, streets, or roads immediately adjacent thereto.

#### **Sec. 14-26: Use of Vehicles**

- A. No person shall operate a vehicle in a park except upon designated paved or improved park roads or driveways, or in and upon designated areas or trails set aside for use by such vehicles, unless directed by a law enforcement officer or park employee to do so, or by official signs or markings.
- B. No person, except in emergencies, shall change any parts, repair, wash, wax, or polish, grease, or perform other maintenance on a vehicle on any park roadway, driveway, parking lot, or other park property.
- C. No person shall operate or park a motor vehicle, camper, bus, or trailer within a Wellington park or parking lot except in those areas specifically designated by signs to be used for such driving or parking unless authorized by the Director or the sheriff's department. Any agents or employees of federal, state, county, or municipal governmental bodies operating motor vehicles on official business shall be exempt from the provisions hereof.
- D. No person shall bed down, sleep, or camp overnight in a Wellington park, including any parking area, nor shall camper trucks, buses, trailers, or other vehicles be permitted to remain in a Wellington park unless authorized by the Director.

#### **Sec.14-27: Speed of Vehicles**

No person shall operate or drive a vehicle in any park area at a rate of speed in excess of 15 miles per hour, except upon such road as the Director may designate by posted signs.

#### **Sec. 14-28: Parking Regulations**

- A. No person shall park a vehicle in any area of a Wellington park in excess of 18 consecutive hours or continuously from 10:00 p.m. until 6:00 a.m. Any vehicle parked in violation of this section, unless authorized by the Director or the sheriff's department, may be removed from the parking area to a garage designated or maintained by Wellington or the sheriff's department, or to another place of safety, at the owner's expense.
- B. No person shall park a vehicle on park property other than in areas designated for parking that type of vehicle, unless there is an emergency or unless directed to do otherwise by a law enforcement officer or a park employee. Parking shall conform to officially posted signs or markings unless other instructions are given by a law enforcement officer or a park employee.

## **CHAPTER 15 – PLANNING**

### **ARTICLE I - GENERAL**

#### **Sec. 15-1: Adoption of the Comprehensive Plan by Reference**

Wellington's Comprehensive Plan (Ordinance 2021-14), together with any future amendments that may be approved by the Wellington Council from time to time, is hereby adopted by reference.

#### **Sec. 15-2: Adoption of the Land Development Regulations by Reference.**

Wellington's Land Development Regulations (LDR) (Ordinance 2020-1), the Wellington Zoning Map, together with any future amendments that may be approved by the Wellington Council, from time to time, are hereby adopted by reference.

### **ARTICLE II – DESIGNATION OF LOCAL PLANNING AGENCY**

**Sec. 15-3:** The Planning, Zoning and Adjustment Board is hereby established as the Wellington Local Planning Agency.

## **CHAPTER 16 - RENTAL DWELLING UNIT LICENSES**

### **Sec.16-1: Definitions**

For the purposes of this chapter, the following definitions shall apply:

**Department:** the division of Wellington's municipal government containing the Code Compliance Division, as assigned by the Village Manager.

**Director:** the Director of the Planning, Zoning and Building Department or their designee.

**Dwelling Unit:** the definition provided in Article 3 of Wellington's Land Development Regulations.

**Owner:** any legal owner of record, beneficial owner, person, company, corporation, firm, or similar entity owning one (1) or more rental dwelling units and includes the authorized landlord, agent or representative of an owner.

**Rental Dwelling Unit:** any dwelling unit that is rented for residential purposes.

**Rental Dwelling Unit License:** the license that must be obtained by an owner prior to entering into a written or oral agreement or other similar instrument for the purpose of leasing a rental dwelling unit.

**Sexual Offender:** has the same meaning as provided in section 13-8, of this Code.

**Sexual Predator:** has the same meaning as provided in section 13-8, of this Code.

### **Sec. 16-2: Inclusion of and Requirements for Agents or Authorized Representatives**

- A. Each owner of one (1) or more rental dwelling units must comply with the provisions set forth in this chapter of the Code. An owner may appoint an agent or authorized representative to act on its behalf. Any such agent or authorized representative shall comply with each of the following requirements:
  - 1. The representative or agent shall be at least 18 years of age; and
  - 2. The representative or agent shall be a resident of Palm Beach County, Florida.
- B. If a new or additional representative is appointed by an owner, the owner must provide the person or entity's name, address, and telephone number to the Department within 15 days after the appointment.

### **Sec. 16-3: Exemptions**

The following types of residential or transient dwelling units shall be exempt from the requirements of this chapter:

- A. Any rental dwelling unit, the operation of which is licensed by the state;
- B. Any accessory dwelling as defined in Article 3 of the Wellington Land Development Regulations;



- C. Any room rented for transient lodging purposes when associated with a bed and breakfast, hotel, inn, lodge, motel, or similar facility;
- D. Any quarters or guest quarters for employees or guests of owner;
- E. Any vacation rental as defined in Article 6 of the Wellington Land Development Regulations; and
- F. Any security quarters or similar type of dwelling.

#### **Sec. 16-4: Rental Dwelling Unit License Required**

- A. Any owner of one (1) or more rental dwelling units shall obtain a license from Wellington to lease, rent, or sublet each such unit. The license shall be obtained a minimum of 15 calendar days prior to the rental of each such rental dwelling unit.
- B. Failure to obtain or maintain a Rental Dwelling Unit License shall be subject to penalties as provided in this chapter.

#### **Sec. 16-5: Application and Affidavit**

At least annually, and prior to the rental of any rental dwelling unit, the owner shall complete a Rental Dwelling Unit License application and affidavit acknowledging that the rental dwelling unit and each tenant or occupant living therein shall comply with all applicable codes.

- A. The Department shall determine the form or forms of the Rental Dwelling Unit License application, but at a minimum, the application shall contain the information listed below:
  - 1. The name, telephone number, and address of the operator, representative or agent actively managing the rental dwelling unit;
  - 2. The legal address of the rental dwelling unit;
  - 3. The type of unit and the number of bedrooms within the rental dwelling unit;
  - 4. The name, telephone number, and address of the owner or owners of the rental dwelling unit;
  - 5. The name, telephone number, address, and name of a representative for any homeowners association, property owners association, or condominium association applicable to the rental dwelling unit; and
  - 6. The signature of the owner.
- B. The owner of a rental dwelling unit shall execute an affidavit as part of the application to obtain a Rental Dwelling Unit License. The affidavit shall be in a form approved by the Wellington Attorney. The affidavit shall include the following:
  - 1. A statement that the owner is aware of and agrees to comply with all code requirements applicable to residential properties, including applicable requirements of the Wellington Land Development Regulations, and including but not limited to maintenance and

appearance of residential dwellings, proper disposal of garbage and trash, proper storage of garbage cans, and proper parking of personal and commercial vehicles;

2. A statement that the owner will inform all tenants of the rental dwelling unit of all code requirements applicable to residential properties, including applicable requirements of the Wellington Land Development Regulations, and including but not limited to, maintenance and appearance of residential dwellings, proper disposal of garbage and trash, proper storage of garbage cans, and proper parking of personal and commercial vehicles.
3. An acknowledgment that the requirements of Chapter 13, Article III of this Code relating to sexual offenders and sexual predators applies to all agreements, leases, subleases, or rentals of rental dwelling units in Wellington; and
4. If the rental dwelling unit is located within 2,500 feet of any school, child care facility, park, or playground, as those terms are defined in Chapter 13, Article III of this Code:
  - a. A statement that the owner will obtain an affidavit from each prospective tenant stating that the tenant and all people who will reside with them are not prohibited from establishing such residence pursuant to Chapter 13, Article III of this Code; and
  - b. A statement that the owner will conduct a nationwide search of the United States Department of Justice National Sex Offender Public Website to confirm that each prospective tenant and all persons who will reside with them are not a registered sexual offender or sexual predator.

#### **Sec. 16-6: Rental Dwelling Unit License Fee and License Renewal**

- A. The fee for an initial Rental Dwelling Unit License application filed pursuant to this chapter is \$75.00. Subject to the provisions of this chapter, the owner of more than one (1) rental dwelling unit must apply for and maintain a separate Rental Dwelling Unit License for each unit.
- B. Each Rental Dwelling Unit License must be renewed at least annually. An application for renewal must be filed with the Department at least 60 calendar days prior to October 1 of each year. Wellington will not charge a renewal fee so long as ownership of the rental dwelling unit has not changed and the renewal application is timely received. If a renewal application is not received timely, a late penalty of \$37.50 shall be charged for renewal applications received during the month of October and an additional \$7.50 per month, or any portion thereof, shall be charged for renewal applications received after October 31. This late penalty shall be in addition to any fines assessed as a result of a code enforcement action brought pursuant to Chapter 2, Article IV of this Code.
- C. In the event ownership of the rental dwelling unit changes, the new owner must submit a new application for a Rental Dwelling Unit License in accordance with the requirements of this chapter.

#### **Sec. 16-7: Rental Dwelling Unit Inspection**

- A. Upon receipt of a properly completed Rental Dwelling Unit License application or annual renewal application and all required affidavits and fees, Wellington shall conduct an inspection to determine if the rental dwelling unit is in conformance with all applicable rules and regulations of Wellington and county, state, and federal governments. The inspection shall include, but not be limited to, the following items:

1. Exterior condition and appearance of the rental dwelling unit, yard, accessory buildings, and any other associated structure;
  2. Facilities for the proper disposal of rubbish, garbage and vegetative matter;
  3. Review of and compliance with property maintenance standards, as established in this Code and the Wellington Land Development Regulations; and
  4. Compliance with applicable landscape standards or requirements.
- B. Thereafter, each rental dwelling unit shall be inspected annually, unless otherwise provided herein.
- C. This section shall not be interpreted as authorizing Wellington to conduct an inspection of the interior of any rental dwelling unit without first obtaining either consent to enter for purposes of inspection by a person having lawful possession and control of the premises or obtaining an inspection warrant pursuant to state law.

#### **Sec. 16-8: Maintenance of Structures and Property**

- A. All structures and property containing the rental dwelling unit must be maintained in accordance with all applicable standards and requirements of this Code, the Wellington Land Development Regulations and the Florida Building Code. In addition, each owner must abide by the requirements set forth in subsections B and C below.
- B. Each owner of a rental dwelling unit shall, if required by Wellington, label all garbage cans and recycling bins with the address and unit number, if applicable, to which the cans and bins are assigned. Garbage cans and recycling bins must be labeled within 30 calendar days of written notification by Wellington of this requirement.
- C. The owner of a rental dwelling unit is responsible for any violation of Wellington requirements relating to the rental dwelling unit, including but not limited to:
1. Times and locations when garbage cans, bulk waste, and recycling bins are to be set out for disposal and taken in following pickup; and
  2. The location and screening of garbage cans and recycling bins.

#### **Sec. 16-9: Consent to Inspection**

The submission of a Rental Dwelling Unit License application constitutes consent and authorization from the owner for Wellington to conduct an inspection of the exterior of all buildings or structures containing the rental dwelling unit, the land upon which the rental dwelling unit is located, and accessory uses or structures related to the rental dwelling unit.

#### **Sec. 16-10: Re-inspection Fees**

If a Department inspector or representative notices a violation during the rental dwelling unit inspection, the inspector or representative will issue a notice to the owner in accordance with the procedures set forth in this Code. Upon expiration of the timeframe provided for the owner to correct the violation, the inspector or representative will re-inspect the premises to confirm that the violation(s) have been corrected. If the violation(s) are not corrected within the specified timeframe, the owner will be assessed an additional fee in the amount of \$50.00 for each succeeding re-inspection, until compliance has been

obtained. Such fee shall be in addition to any other fees imposed pursuant to Chapter 162, Florida Statutes or Chapter 2 of this Code.

### **Sec. 16-11: Transfer Prohibited**

A Rental Dwelling Unit License shall not be transferred to another rental dwelling unit owner. Each owner with a rental dwelling unit shall provide written notice to the Department within 24 hours after having transferred or otherwise disposed of the legal control of any licensed rental dwelling unit. The new owner shall apply for a new license within 30 days of such transfer. An inspection of the rental dwelling unit pursuant to this chapter is required following the transfer of ownership. Transfer of ownership shall not eliminate the requirement for the annual inspection of a rental dwelling unit.

### **Sec. 16-12: Suspension, Revocation, and Reinstatement of License**

- A. For purposes of this section, the term "license" refers to a rental dwelling unit license. The Department may suspend or revoke a license or deny an application for a license based upon any of the following:
1. The license was issued in error or the license was issued on the basis of false, incomplete, incorrect or inaccurate information supplied in an application;
  2. The license was issued for a rental dwelling unit that was sold or transferred to a new owner, and the new owner did not apply for a license within the required period of time;
  3. The dwelling unit is in violation of any ordinance, rule or regulation of Wellington, the county, state, or federal government;
  4. The owner has failed or refused to pay fees to Wellington for required applications or inspections;
  5. The owner has failed to comply with any conditions set forth in any permit or development order granted by Wellington; or
  6. The owner has failed to comply with all applicable portions of this Code relating to renting or leasing a residence to sexual offenders or sexual predators.
- B. The owner will be notified of the suspension or revocation of a license by the Department via certified mail return receipt requested.
- C. If requested by the Department and approved by the Director, upon issuance of a notice of suspension or revocation the owner may be required to:
1. Within 15 calendar days of the notice of suspension, submit a management plan to the Department for the rental dwelling unit to achieve full compliance within the timeframe provided by Wellington's regulations, or such other time as the Department finds reasonable. Upon approval by the Department, the management plan shall be instituted by the owner within 30 calendar days; and
  2. Maintain the rental dwelling unit so that it does not violate any additional applicable code provisions during the timeframe of the management plan. The rental dwelling unit may be offered for rent during the timeframe of the management plan.
  3. Upon completion of the management plan and provided the rental dwelling unit is in compliance with the provisions set forth herein and all applicable code provisions, the

owner may submit a written request to the Department for reinstatement of the license. The request shall be accompanied by a fee of \$75.00 per license.

4. Failure to comply with applicable code provisions during the timeframe of the management plan may result in revocation of the Rental Dwelling Unit License.
- D. Upon issuance of a notice of suspension or revocation of license, the rental dwelling unit must be vacated within 30 calendar days from the date of the suspension or revocation unless a management plan is submitted and approved in accordance with this section.
- E. Appeals shall be initiated pursuant to this chapter.

### **Sec. 16-13: Prohibited Rentals**

The rental of real property to any sexual offender or sexual predator as defined in Chapter 13 that does not comply with all requirements of Chapter 13, Article III, of this Code is prohibited.

### **Sec. 16-14: Penalties**

In addition to the penalties set forth in this chapter, any owner, owner's representative, person, or tenant violating any provision of this chapter shall be subject to enforcement as provided in Article IV, Chapter 2, of this Code or applicable law.

### **Sec. 16-15: Registration for Large-scale Rental Property**

- A. As an alternative to the individual licensure and inspection requirements of this chapter, the owner of large-scale rental property may register as the provider of rental dwelling units, subject to the standards of this section. Registration is required on an annual basis. To register under this section, an owner must meet each of the criteria listed below:
  1. The owner owns, manages or operates a rental dwelling unit complex containing at least 50 rental dwelling units;
  2. The rental dwelling unit complex is located on a compact, contiguous property, and is operated as a single entity, with common entries, management, amenities, etc.;
  3. The owner is responsible for ongoing upkeep, maintenance and repair of all structures, dwellings, landscaping, grounds, amenities, and similar common features;
  4. The owner provides proof of management by a bonded management company;
  5. The owner signs an affidavit stating that each unit complies with and is maintained in accordance with all applicable Land Development Regulations and with all applicable building, landscaping, appearance, and property maintenance codes and requirements adopted by Wellington. The affidavit shall allow Wellington to inspect the exterior of the rental dwelling unit complex on an annual basis, and as needed, for compliance with applicable regulations, codes, and requirements;
  6. The owner completes the application form established by the Department, which will include but is not limited to such information as the name, address, and telephone number of the owner, the registered agent or representative, the management company, the onsite manager, and the emergency contact for the complex;

7. The owner pays an annual registration fee of \$1,000.00 or as otherwise established by resolution of the Wellington Council; and
  8. The owner agrees to comply with all applicable portions of Chapter 13, Article III, of this Code regarding renting or leasing a rental dwelling unit to a sexual offender or sexual predator.
- B. An owner who registers a rental dwelling unit complex pursuant to this section is exempt from obtaining an annual license for each rental dwelling unit within the rental dwelling unit complex.
- C. Registration obtained pursuant to this section shall not be transferred to another owner.

#### **Sec. 16-16: Reliance upon License or Inspection**

The license and inspection required by this chapter are not a representation, guarantee or warranty of any kind by Wellington that a rental dwelling unit is fit for residential purposes or that the rental dwelling unit complies with all applicable Wellington, county, state, or federal codes and requirements. There shall be no reliance by any person on the Rental Dwelling Unit License as to the condition of such rental dwelling unit. Each contract for a rental dwelling unit located within Wellington shall contain a statement substantially in the form of this section.

#### **Sec. 16-17: Access to Change of Occupancy Records**

The owner shall make available to the Department any rental record necessary to determine when changes of occupancy of a rental dwelling unit have occurred. The records shall be made available no more than two (2) weeks after a written request by the Director.

#### **Sec. 16-18: Appeals**

Any person aggrieved by the Department's suspension, denial, or revocation of a Rental Dwelling Unit License may appeal the decision to the special magistrate, as established in Chapter 2 of this Code. The decision of the Department shall be provided in writing to the owner within 10 calendar days after the decision has been made. An appeal to the special magistrate shall be filed with Wellington within 30 calendar days following receipt of the Department's decision.

#### **Sec. 16-19: Other Remedies**

Nothing contained herein shall prohibit Wellington from enforcing its codes by any other means, including, but not limited to, injunction, abatement or as otherwise provided by this Code and Florida law.

## **CHAPTER 17 - SOLID WASTE**

### **ARTICLE I - IN GENERAL**

#### **Sec. 17-1: Depositing or Dumping of Solid Waste or Other Deleterious Materials**

No person shall deposit, release, throw, or dump into or on any public property, lakes, canals, water bodies, or any adjacent, attendant, or contiguous right-of-way thereto, or any other public property located within Wellington, any filth, dirt, garbage, trash, refuse, or other deleterious material.

### **ARTICLE II - COLLECTION**

#### **Sec. 17-2: Purpose and Provision for Mandatory Solid Waste Collection**

- A. The purpose of this article is to promote the health, welfare, and safety of the residents of Wellington, by providing for a solid waste management program and a mandatory solid waste collection program through the levy of special assessments and other fees and by providing an adequate solid waste collection program through the regulated services of a contractor, or otherwise, as determined by Wellington.
- B. All solid waste generated or accumulated by assessed units and non-assessed units shall be collected, conveyed, and transported by the designated contractor within the service area in which the assessed units and non-assessed units are located, and the owners of said assessed units and non-assessed units on the established route of the designated contractor for such service area in which the said units are located shall be subject to mandatory collection as provided for in this article.
- C. Roll-off collection service for sites under construction during the period prior to the issuance of a certificate of occupancy shall not be included within the requirements of the mandatory solid waste collection program but shall be regulated by Wellington's solid waste management program as set forth in this article.

#### **Sec. 17-3: Legislative Findings and Declaration of Benefit**

It is hereby ascertained, determined, and declared that:

- A. The management of solid waste through regulation, penalties, and enforcement is a proper and necessary function of local government.
- B. The fact that all improved properties located within Wellington are designed for human occupancy, are capable of human occupancy or human activity, or are used for commercial use, shall be prima facie evidence that solid waste is being produced by or accumulated upon such property.
- C. Properties that are under construction or demolition shall be prima facie evidence that solid waste is being produced by or accumulated upon such property.
- D. All improved properties located within Wellington receive a direct and substantial benefit by the provision of solid waste management and a mandatory solid waste collection program, including but not limited to the services described herein, in an amount equal to or in excess of the cost of providing such solid waste management program and solid waste collection program.

- E. The Florida Legislature encourages local governments to recover the full costs associated with solid waste management within its service area and, pursuant to Chapter 403, F.S., authorizes Wellington to assess residential and nonresidential users of such services using the uniform method for the levy, collection, and enforcement of non-ad valorem assessments set forth Chapter 197, F.S.

#### **Sec. 17-4: Definitions**

For the purposes of this article, the following terms shall be defined as set forth in this section. In the event of a conflict between the definitions set forth in this section and Chapter 403, F.S., the statutory definition shall control:

**Assessed Unit:** any collection unit that is subject to the solid waste collection special assessment.

**Authority:** the Solid Waste Authority of Palm Beach County.

**Biohazardous or Biomedical Waste:** any solid waste or liquid waste that may present a threat of infection to humans. The term includes, but is not limited to, non-liquid human tissue and body parts; laboratory and veterinary waste that contains human-disease-causing agents; discarded disposable sharps; human blood and human blood products and body fluids; and other materials that in the opinion of the Florida Department of Health represent a significant risk of infection to persons outside the generating facility. The term does not include human remains that are disposed of by persons licensed under chapter 497, F.S.

**Bulk Trash:** any non-vegetative item that cannot be containerized, bagged, or bundled; including, but not limited to, inoperative and discarded refrigerators, ranges, toilets, pool heaters, water softeners, pianos, washers, dryers, bath tubs, water heaters, sinks, bicycles, and other similar domestic appliances, household goods, and furniture.

**Collection Unit:** any parcel of improved real property located within Wellington that generates or is capable of generating solid waste and that contains buildings, structures, or other improvements designed or constructed for and capable of use by or used for human habitation, human activity, or commercial enterprises.

**Collection:** the process whereby solid waste, garbage, trash, bulk trash, vegetative waste, recyclable materials, and C&D is removed and transported to a designated facility.

**Commercial Recycling Collection Service:** the collection of recyclable materials by a contractor for entities within the service area that are not serviced by residential recycling collection service.

**Commercial Solid Waste:** includes any garbage, bulk trash, trash, or vegetative waste that is not residential solid waste.

**Commercial Solid Waste Collection Service:** the collection of the commercial solid waste within the service area. Such service includes both containers and compactors, but does not include roll-off collection services.

**Compactor:** any container that has compaction mechanisms, whether stationary or mobile.

**Construction and Demolition Debris (C&D):** discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land



clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of C&D with other types of solid waste will cause the resulting mixture to be classified as other than C&D. The term also includes:

- A. Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;
- B. Except as provided in F.S. § 403.707(9)(j), yard trash and unpainted, non-treated wood scraps and wood pallets from sources other than construction or demolition projects;
- C. Scrap from manufacturing facilities that is the type of material generally used in construction projects and that would meet the definition of construction and demolition debris if it were generated as part of a construction or demolition project. This includes debris from the construction of manufactured homes and scrap shingles, wallboard, siding concrete, and similar materials from industrial or commercial facilities; and
- D. DE Minimis amounts of other nonhazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.

**Container:** includes any encasement designed or intended to be mechanically dumped into a loader packer type truck or recycling vehicle. All containers must be of the specifications designated by the contract administrator, in writing.

**Containerized Residential Recycling Collection Services:** the collection of recyclable materials by the contractor from dwelling units in the service area that requires the use of containers for the collection of recyclable materials and which also receive residential collection services for solid waste, and the delivery of those recyclable materials to a materials recycling facility.

**Containerized Residential Solid Waste Collection Service:** solid waste collection service of all dwelling units whose garbage, trash, bulk trash, or vegetative waste is collected by means of a central or shared container and not by means of a garbage can.

**Contract:** an agreement, executed between Wellington and the contractor for the performance of the specified solid waste and recycling collection work, as amended from time to time.

**Contractor:** the person, firm, corporation, or entity designated by Wellington to perform the specified services in accordance with the terms of the contract.

**Contract Administrator:** the person designated by Wellington to act as its representative in the administration and supervision of the contract and any other agreements relating to the solid waste management and solid waste collection program.

**Curbside Residential Recycling Collection Service:** the collection of recyclable materials by a contractor from all dwelling units in the service area that also receive curbside residential solid waste collection service for solid waste and other dwelling units as are designated by Wellington or the solid waste authority's materials recycling facility or designated solid waste authority transfer station.

**Curbside Residential Solid Waste Collection Service:** residential solid waste and vegetative waste collection service for all dwelling units whose garbage is collected by means of a garbage can at curbside or roadway.

**Disposal costs:** the "tipping fees" or landfill costs charged by others for disposal of the waste collected.

**Designated Facility:** a solid waste authority or Palm Beach County owned disposal, processing, recovery, recycling or transfer facility, or a processing facility permitted by the solid waste authority of Palm Beach County.

**Dwelling Unit:** type of structure or building unit intended for or capable of being utilized for residential living other than a licensed hotel or motel unit.

**Fiscal Year:** the period between October 1 of a given year and September 30 of the following year.

**Garbage:** all putrescible waste, which generally includes but is not limited to, kitchen and table food waste, animal, food, or any organic waste that is attendant with or results from the storage, preparation, cooking or handling of food materials whether attributed to residential or commercial activities. Garbage does not include vegetative waste or any material that falls within the definition of special waste.

**Garbage Receptacle or Can:** any commonly available light gauge steel, plastic, or galvanized receptacle of a nonabsorbent material, closed at one (1) end and open at the other, furnished with a closely fitted top or lid and handles. A garbage can is also defined as a heavy duty, securely tied, plastic bag designed for use as a garbage receptacle. Such container, including materials, shall not exceed 50 gallons in capacity or 50 pounds in weight, unless a contractor implements (with written authorization from the contract administrator or their designee) an automated or semi-automated collection system requiring the use of some other standard receptacle compatible with the contractor's equipment supplied by the contractor and approved by Wellington. A cardboard box may also be used as a garbage can, provided the contents do not contain a level of moisture as to saturate the box and weaken its walls.

**Governmental Agencies:** all state, federal, and local units of government, or any agency or department thereof, who is the owner of any collection unit within Wellington.

**Hazardous Waste:** solid waste, or a combination of solid wastes which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. The term does not include human remains that are disposed of by persons licensed under chapter 497, Florida Statutes.

**Hotel or Motel:** a structure or building unit capable of being utilized for residential living where such unit or a group of such units is regularly rented to transients or held out or advertised to the public as a place regularly rented to transients for periods of seven (7) days or less. To meet this definition, the hotel or motel must be licensed to operate as such. "Transient" has the meaning set forth in F.S. Ch. 509, as amended from time to time.

**Litter:** solid waste or any other waste material that is thrown, cast, scattered, dropped, spilled or deposited on public or private property, including rights-of-way and parking lots, through intent or negligence, which tends to create a danger to public, health, safety, and welfare.

**Materials Recycling Facility:** any facility operated or managed by, for, or on behalf of Wellington for the purpose of receiving, sorting, processing, storing, and/or preparing recyclable materials for sale, as specifically designated by the contract administrator, in writing.

**Non-assessed Unit:** any collection unit or portion thereof that is not an assessed unit.

**Owner:** the person or persons owning an interest in a collection unit, assessed unit, or nonassessed unit.

**Person:** any natural person, or partnership, firm, corporation, or other legal entity.

**Property Appraiser:** the Palm Beach County Property Appraiser.

**Rate Resolution:** resolutions of the Wellington Council relating to rates and fees charged for the operation, maintenance, and administration of the solid waste program and mandatory solid waste collection program.

**Recyclable Materials:** those materials that are capable of being recycled and that would otherwise be processed or disposed of as solid waste.

**Recycling:** any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

**Residential Recycling Collection Service:** includes both curbside residential recycling collection service and containerized residential recycling collection service.

**Residential Solid Waste:** garbage, trash, and bulk trash resulting from the normal housekeeping activities of a dwelling unit, but shall not include vegetative waste. Residential solid waste also includes C&D resulting from minor home repair from the dwelling unit.

**Residential Solid Waste Collection Service:** includes curbside residential solid waste collection service and containerized residential solid waste collection service.

**Roll-off Collection Service:** the collection of C&D only roll-off containers, or the collection of C&D by other mechanical means, within temporary locations in the service area, limited to new construction sites and remodeling or refurbishment sites. Roll-off collection service also includes the collection of horticultural or agricultural wastes at horticultural or agricultural nurseries, but only when the customer chooses to use roll-off containers for horticultural or agricultural waste, and horticultural and agricultural waste does not include any other type of waste, including, but not limited to, special waste, garbage, or recyclable material.

**Roll-off Collection Service Provider:** the persons, firms, corporations, or other legal entities permitted by Wellington to provide temporary roll off or similar C&D collection services within the service area in accordance with terms and conditions established by Wellington.

**Service Area:** the area within the incorporated boundaries of Wellington for which the solid waste management and mandatory solid waste collection program is administered as provided in the contract as it may be amended from time to time.

**Sludge:** includes the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar waste disposal appurtenances.

**Solid Waste:** sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials and post-use polymers as defined in section 403.703, F.S. are not solid waste.

**Solid Waste Collection Program:** the services and means of collecting solid waste from a collection unit through the use of equipment, trucks, containers, personnel, contracted or permitted services, and

all real or personal property owned, leased, operated or used by Wellington for the purpose of providing the solid waste collection services generally described in this article.

**Solid Waste Collection Special Assessment:** the special assessment imposed by Wellington upon an assessed unit for the collection of solid waste for the applicable fiscal year based upon the classification of the use of such assessed unit as set forth in the rate resolution. The solid waste collection special assessment does not include the cost of disposal of such collected solid waste since the cost of disposal of such solid waste has been separately imposed upon such assessed unit by the authority.

**Solid Waste Collection Special Assessment Roll:** the list prepared by and adopted by Wellington each fiscal year containing a summary description of each assessed unit, the name and address of the owner of each such assessed unit as indicated on the records maintained by the property appraiser, and the amount of the solid waste collection special assessment applicable to each assessed unit.

**Solid Waste Management Program:** the program of managing the generation, storage, collection, transporting, processing, and disposal of solid waste within Wellington. The program provides for the regulation, permitting, contracting, and enforcement of all aspects of this program.

**Special Services:** any services requested or required by the customer that are in addition to, or a change in, residential solid waste collection service, residential recycling collection service, commercial recycling collection service, and commercial solid waste collection service as set out or similar to those provided for in the contract.

**Special Waste:** includes automobiles, boats, internal combustion engines, non-automobile tires, sludge, dead animals, septic tank waste, biohazardous or biomedical waste, liquid waste, and hazardous waste. Special waste may also include items determined by the contract administrator to be reasonably unmanageable.

**Tax Collector:** the Palm Beach County Tax Collector.

**Trash:** all refuse, accumulation of paper, rags, wooden or paper boxes and containers, sweepings, broken toys, tools, utensils, and all other accumulations of a similar nature other than garbage, which are usual to housekeeping and to the operation of stores, offices, and other business places, but does not include vegetative waste.

**Uncontrollable Forces:** any event that results in the prevention or delay of performance by a party of its obligations under the contract and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fires, flood, hurricanes, earthquakes, storms, lightening, epidemic, war, riot, civil disturbances, sabotage, and governmental actions.

**Uniform Method:** the "Uniform Method for the Levy, Collection and Enforcement of Non-Ad Valorem Assessments" prescribed by F.S. ch. 197, as amended and supplemented.

**Vegetative Waste:** any vegetative matter resulting from yard and landscaping maintenance by any person and includes materials such as tree and shrub materials, grass clippings, palm fronds, tree branches, and similar other matter usually produced as refuse in the care of lawns, landscaping, and yards. All grass clippings, leaves, pine needles, and similar loose items must be bagged or containerized. Vegetative waste, except palm fronds, must be no more than six (6) feet in length and no single item shall weigh more than 50 pounds, and shall be placed neatly at the curb. Natural Christmas trees will be collected as vegetative waste and any section must not be more than eight (8) feet in length and must be under 50 pounds.

**Waste:** material that is not wanted, the unusable remains or byproducts of something. Waste includes refuse, litter, debris, junk, scrap, dregs, rubbish, and trash.

**Sec.17-5: Utilization of Uniform Method for the Levy, Collection and Enforcement of Solid Waste Collection Special Assessments**

Wellington shall utilize the uniform method for the levy, collection, and enforcement of the solid waste collection special assessments provided by this article. All provisions set forth in the uniform method shall be applicable to the levy, collection, and enforcement of the solid waste collection special assessments, as if fully set forth herein, unless otherwise provided in this article.

**Sec. 17-6: Public Hearing for Adoption of Budget; Determination of Service Area, Collection Units and Assessed Units; Adoption of Non-ad Valorem Special Assessment Rate Resolution**

In addition to the provisions set forth in the uniform method, Wellington shall hold a public hearing on or before September 15 of each fiscal year for the following purposes:

- A. To adopt a budget for the operation, maintenance, and administration of the solid waste collection program for the ensuing fiscal year. Budget items may include but are not limited to monies for the payment of the principal of and interest on bonds and other outstanding or anticipated indebtedness, all reserves necessary for the payment of capital expenditures, funding renovation, improvements, and replacements of existing facilities or equipment, expenditures for daily operations for the solid waste collection program, and for the enforcement and administration of the billing and collection of the solid waste collection special assessment provided for hereunder. The budget may also include necessary reserves for anticipated delinquent or uncollectible solid waste collection special assessment and for the payment of the current operation and maintenance and administration of the solid waste collection program.
- B. To define the service area and determine the collection units and assessed units based upon circumstances affecting the collection of solid waste and the operation of the solid waste collection program including, but not limited to, the cost of operating, maintaining, and administering the solid waste collection program and the benefit to all assessed units in Wellington.
- C. Rate Resolution:
  1. To adopt a rate resolution incorporating a schedule of solid waste collection special assessment to be imposed upon the owners of all assessed units in the service area and to establish the classification of the use of each assessed unit in order to provide revenues that, together with other monies of Wellington lawfully available therefor, shall be sufficient to fund the budget referred to in the aforementioned subsection (1). The rate resolution shall also include the disposal costs of the solid waste collected from the assessed units unless the disposal costs of such solid waste, or any portion thereof, has been separately imposed upon such assessed unit of real property.
  2. The rates established by Wellington in each year under the provisions of the rate resolution shall be sufficient to provide monies for the purposes described in this chapter and Wellington shall not establish rates over and above the rates that are necessary to comply with the provisions of this chapter and the budgetary requirements of any proceedings of Wellington heretofore or hereafter adopted in connection with the issuance of any of its bonds, notes, or other evidences of indebtedness.
  3. The solid waste collection special assessment incorporated in the rate resolution applicable to each assessed unit shall be the solid waste collection special assessment

for each such assessed unit for the collection and disposal, unless otherwise assessed pursuant to this article, of all solid waste generated or capable of being generated as determined by Wellington on each such assessed unit during the ensuing fiscal year.

4. The solid waste collection special assessment shall be imposed against the owners of all assessed units in Wellington if such real property is an assessed unit on or before the first day of January prior to the fiscal year in which the solid waste collection special assessment is imposed. The owner and description of each assessed unit at the time of preparing such assessments shall be that designated on the real property records maintained by the property appraiser.
5. To the extent a budget has not been adopted by the Wellington Council for the operation, maintenance, and administration of the solid waste collection program for the ensuing fiscal year by September 30, then the budget and rate resolution from the preceding fiscal year will constitute the budget and rate resolution.

#### **Sec. 17-7: Adoption and Certification of the Solid Waste Collection Special Assessment Roll**

In accordance with the procedures set forth in the uniform method, the Wellington Council will adopt and certify the solid waste collection special assessment roll.

#### **Sec. 17-8: Solid Waste Collection Special Assessments Shall Constitute a Lien on Improved Real Property**

All solid waste collection special assessments imposed against the owners of assessed units pursuant to this article shall constitute, and are hereby imposed as, liens against such real property as of January 1 of each year or as soon thereafter as the certified roll is received by the tax collector. Until fully paid and discharged or barred by law, the solid waste collection special assessments shall remain liens against the real property involved. If any solid waste collection special assessment liens become delinquent by not being fully paid by April 1 following the year in which they are assessed, or immediately after 60 days have expired from the mailing of the original notice set forth by the uniform method, whichever is later, and remain delinquent, such liens shall be enforced by the tax collector in the same manner as any other special assessment lien of Wellington.

#### **Sec. 17-9: Applicability of Solid Waste Collection Special Assessments to Assessed Units Owned by Governmental Agencies**

- A. Any governmental agency owning any assessed unit within Wellington shall pay the solid waste collection special assessment imposed under the applicable classification specified in the rate resolution.
- B. The discounts for early payment are not applicable to the solid waste collection special assessments imposed against governmental agencies. Such governmental agencies shall pay the full solid waste collection special assessment imposed.
- C. The solid waste collection special assessments imposed against governmental agencies shall become delinquent if not fully paid within 60 days from the date the notice of such solid waste collection special assessments are mailed. All delinquent solid waste collection special assessments shall bear an initial penalty of 4% of the full amount of the solid waste collection special assessment if not paid by the expiration of such 60-day period and an additional penalty

of 1% per month on the delinquent amount plus the initial penalty on the first day of the first month following the expiration of such 60-day period and on the first day of each month thereafter until said solid waste collection special assessments are paid in full.

- D. The provisions of this article regarding liens and enforcement are not applicable to the solid waste collection special assessments imposed against assessed units owned by governmental agencies. However, Wellington shall have the authority to enforce the collection of any delinquent solid waste collection special assessment by the institution of an appropriate action against the governmental agency in a court of competent jurisdiction for a judgment for the amount due for such solid waste collection special assessment, including all penalties, plus costs and a reasonable attorney's fee.

- E. Wellington is exempt from the provisions of this article.

#### **Sec. 17-10: Applicability of Solid Waste Collection Special Assessments to Tax Exempt Assessed Units**

The exemption of property from taxation under F.S. Ch. 196, or any other law or constitutional provision, shall not relieve the owner of any assessed unit in Wellington from the provisions hereof or from the imposition by Wellington of the solid waste collection special assessment.

#### **Sec. 17-11: Procedural Irregularities**

Any informality or irregularity with the proceedings in connection with the levy of the solid waste collection special assessment under the provisions of this article shall not affect the validity of the same after the approval thereof, and any solid waste collection special assessment as finally approved shall be competent and substantial evidence that such solid waste collection special assessment was duly made and adopted and that all other proceedings adequate to such solid waste collection special assessment were duly had, taken, and performed as required by this article and the uniform method. No variance from the directions hereunder shall be held material unless it is clearly shown that the objecting party was materially injured thereby. Notwithstanding the provisions of this section, any party objecting to a solid waste collection special assessment imposed pursuant to this article must file an objection with a court of competent jurisdiction within the time periods prescribed herein.

#### **Sec. 17-12: Correction of Errors and Omissions**

- A. No act of error or omission on the part of the property appraiser, tax collector, clerk, Wellington Council, or their agents or employees shall operate to release or discharge any obligation for the payment of any solid waste collection special assessment imposed by the council under the provisions of this article.
- B. After the solid waste collection special assessment roll has been delivered to the tax collector in accordance with the uniform method, any changes, modifications, or corrections thereto shall be made in accordance with the procedures applicable to errors and insolvencies for ad valorem taxes.

#### **Sec.17-13: Residential Collection Service**

- A. The accessibility of all residential solid waste and the level of service regarding the frequency of pickup will be defined in the contract.

- B. Wellington may impose, change, modify or delete the requirements setting forth the responsibilities of the owner or owners of an assessed unit and the contractor providing collection for such assessed unit regarding the method, scope, and extent of collection, including, but not limited to, frequency of pickups, classes of solid waste pickup, shape, size, and quantity per pickup, types of containers, and placement or location of solid waste for pickup, by articulating such requirements in a separate ordinance.

#### **Sec. 17-14: Responsibilities of the Solid Waste and Recycling Collection Contractor and Roll-off Collection Service Provider**

The contractor and roll-off collection service provider shall comply with all provisions of the contract and the agreements entered into with Wellington and the provisions of this article which, by reference, incorporates all federal, state, county, and local units of government with jurisdiction in Wellington, together with laws, regulations, and ordinances applying to the storage, collection, transport, processing or disposal of solid waste, garbage, trash, bulk trash, vegetative waste, C&D, and recyclable materials.

#### **Sec. 17-15: Non-assessed Residential Units**

- A. All solid waste generated or accumulated by a non-assessed residential unit shall be collected, conveyed, and transported by the contractor within the service area in which the non-assessed unit is located, except for solid waste requiring roll-off collection service. The owners of all non-assessed units on the established route of the contractor for such service area in which the non-assessed unit is located shall use the mandatory solid waste collection program.
- B. Wellington shall establish a fee for mandatory solid waste and recycling collection service for non-assessed residential units that have been issued a certificate of occupancy, either permanent or temporary, for full or fractional use of the premises.
- C. Wellington shall establish the fee for the mandatory solid waste and recycling collection program for non-assessed residential units annually by resolution.
- D. Roll-off collection service for residential sites under construction during the period prior to the issuance of a certificate of occupancy shall not be included within the requirements of the mandatory collection program but shall be regulated as provided in this section.

#### **Sec. 17-16: Non-assessed Non-residential Units**

- A. All solid waste generated or accumulated by a non-assessed nonresidential unit shall be collected, conveyed and transported by the contractor within the service area in which the non-assessed unit is located, except for solid waste requiring roll-off collection service. The owners of all non-assessed units on the established route of the contractor for such service area in which the non-assessed unit is located shall use the mandatory solid waste collection program.
- B. Non-assessed nonresidential units shall comply with the provisions of this article and the contract pertaining to the frequency, conditions and manner of the collection of solid waste.



- C. The fee for the mandatory solid waste and recycling collection program for non-assessed nonresidential units shall be established by Wellington by resolution.
- D. Roll-off collection service for sites, other than residential, under construction during the period prior to the issuance of a certificate of occupancy shall not be included within the requirements of the mandatory collection program but shall be regulated as provided in this section.

#### **Sec. 17-17: Roll-off Collection Service Provider**

- A. Any person wishing to provide roll-off collection service within Wellington shall be required to have a valid permit issued by Wellington to provide said services as set forth herein.
- B. Wellington shall establish a process for issuing permits for roll-off collection service. Said process shall include, but not be limited to, an application requiring specific information and containing terms and conditions for administering the permit, establishment of permit fees, and penalties for violation, including loss of permit.
- C. Permit fees for the right to provide roll-off collection service within Wellington shall be adopted by Wellington Council resolution and shall be used for any lawful purpose within Wellington's solid waste management program.
- D. For purposes of this section, roll-off collection service shall include solid waste specifically excluded from the contract.

#### **Sec. 17-18: Ownership of Solid Waste and Recyclable Material**

Ownership of solid waste and recyclable materials collected pursuant to the contract shall be vested in Wellington.

#### **Sec. 17-19: Frequency of Collection**

All solid waste and recyclable materials shall be collected in accordance with the provisions of the contract, except as may be changed by Wellington due to uncontrollable forces or changes in technology.

#### **Sec.17-20: Equipment**

Equipment used within Wellington for the storage and collection of solid waste, recyclables, and C&D shall, at all times, be in safe operating condition, clean, in good repair, and display the company name and local telephone number in letters and numbers at least five (5) inches high.

#### **Sec. 17-21: Control and Management of Solid Waste at Construction Sites**

- A. All construction sites, which includes demolition for purposes of this article, shall be required to have sufficient number and capacity of open top roll-off containers to adequately handle all waste generated at the site in a manner whereby no container is overfilled.

- B. All contractors are required to secure construction roll-off container service from firms permitted by Wellington to offer said services.
- C. General contractors shall be required to control all litter and waste generated at construction sites, including waste generated by all subcontractors and construction workers. General contractors shall be subject to payment of fines and penalties established by Wellington for failing to control litter and waste associated with their construction projects on the project property.
- D. Exceptions to these requirements include those exceptions set forth in the contract and those that may be provided by Wellington through the contract administrator.

#### **Sec. 17-22: Unauthorized Accumulations Prohibited**

- A. Any unauthorized accumulation of solid waste, trash, bulk trash, vegetative waste, and C&D on any premises is prohibited and may be subject to penalties as established by Wellington.
- B. Back yard composting of household material described by the authority is excluded from subsection A. above, as is stable waste and vegetative waste provided that the activity does not generate noxious odors or attract vermin, and is screened from public view.

#### **Sec. 17-23: Littering**

No person shall deposit solid waste, garbage, trash, bulk trash, vegetative waste, recyclable materials and C&D within Wellington on public or private property except in a receptacle intended for said waste, nor shall any person place such materials in any location other than on the property of Collection Unit that generated such waste.

#### **Sec. 17-24: Enforcement**

It shall be unlawful for any person to fail, neglect, or refuse to comply with and abide by each provision of this article. Violations of this article shall be enforced pursuant to the Supplemental Code Compliance Procedures adopted pursuant to Chapter 162, Part II, Florida Statutes, and set forth in Chapter 2 of this Code. The performance on each day of any prohibited act or practice or the failure to perform on each day of any required act or practice shall constitute a separate offense and shall be punishable as such.

## **CHAPTER 18 - SPECIAL ASSESSMENT**

### **Sec. 18-1: Scope**

- A. The provisions of this chapter shall apply to special assessment public service programs and public works projects, and may be referred to as the "home rule special assessment ordinance." Public service programs ("service(s)") and public works projects ("project(s)") may be made or undertaken in accordance with the home rule special assessment ordinance whenever Wellington determines that such services or projects should be undertaken and completed and the costs collected, in whole or in part, as a special assessment. The authority granted to Wellington pursuant to the home rule special assessment ordinance shall be supplemental to other provisions of law, including F.S. Ch. 170, and shall not be construed as limiting, or being limited by, such other provisions of law. To the extent provisions of this chapter conflict with special assessment procedures and powers related to the Acme Improvement District, the procedures and powers previously in effect by such entity shall control with respect to assessments levied by it.
- B. Special assessments made pursuant to this chapter shall be levied only for the purposes enumerated in this chapter and at a rate of assessment based upon the special benefit accruing to the property assessed from such service or project undertaken by Wellington. The reasonably estimated value of such special benefit must equal or exceed the amount of each assessment. Adoption of the assessment resolution, as hereinafter defined and provided, shall constitute a legislative finding that these standards have been met.

### **Sec. 18-2: Definitions**

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. If a definition is not provided in this chapter, the term shall be understood as having its ordinary, everyday meaning unless the context indicates it bears a technical sense.

**Assessable Area:** the real property that will receive a special benefit from a special assessment service or project.

**Assessable Front Footage:** the length of real property abutting a special assessment service or project that will receive a special benefit from that service or project.

**Assessable Value of Real Property:** the value of real property that will receive a special benefit from a special assessment service or project. For the purposes of this chapter, the value shall be determined by reference to the assessed value according to the latest final assessment roll prepared by the property appraiser for Palm Beach County, including improvements located thereon, but without regard to exemptions.

**Basis for Assessment:** the assessable area; assessable front footage; or assessable value of real property, deriving a special benefit from a special assessment service or project, as determined by Wellington in accordance with the provisions of this chapter. When appropriate, Wellington may use a basis other than assessable area, assessable front footage, or assessable value of real property in allocating the special benefits being derived by a special assessment service or project, including, but not limited to, the amount of any impact or concurrency fees, or other similar governmental charges

levied in connection with the development of the properties, for which the property in the assessable area would be liable and for which the special assessment is levied in lieu thereof.

**Project:** the provision of public improvements that benefit real property or provide amelioration of its condition. For the purposes of this chapter, the term shall include but not be limited to the installation, construction, upgrade, repair, and replacement of improvements, works, and facilities.

**Service:** a public service that provides a special benefit to the real property receiving or benefitting from the service.

**Special Assessment Public Service Program ("Service") or Public Works Project ("Project"):** a public service program or public works project that adds to or extends the capability of a municipal service, function, or activity (including another governmental unit's service pursuant to an interlocal agreement between Wellington and such other governmental unit) and which specially benefits properties within the assessable area in which the special benefits of the service or project may be determined by increasing the use, development, safety, utility, accessibility or value of the real property involved or is in lieu of an impact fee, concurrency fee, or other similar governmental charge levied in connection with the development of the real property being provided such service or project benefit. The terms include, but are not necessarily limited to:

- A. Construction, reconstruction, upgrade, repair, removal, maintenance, paving, repaving, widening, guttering, or draining of streets, alleys, and sidewalks;
- B. Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of permanent pedestrian canopies over public sidewalks and ways;
- C. Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of lighting, landscaping, street furniture, signage, bike paths, horse trails, subdivision or neighborhood boundary walls, trails, and other amenities associated with streets, sidewalks, or public ways;
- D. Construction, reconstruction, repair, replacement, removal, maintenance, renovation, excavation, grading, stabilization, relocation and upgrading of greenbelts, preserves, wetlands, uplands, swales, culverts, sanitary sewers, water lines, storm sewers, pumps, telemetry systems, weirs, outfalls, canals, primary, secondary, and tertiary drains, water bodies, marshlands, and natural areas, separately or as part of a comprehensive stormwater management system, including the necessary appurtenances and structures thereto and including, but not limited to, dams, weirs, and pumps and underdrains, retention and detention ponds;
- E. Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of sanitary sewers, gravity lines, force mains, lift stations, telemetry systems, water mains, water laterals, and other potable and reuse water distribution and storage facilities, including the necessary appurtenances thereto;
- F. Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of bridges and culverts;
- G. Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of parks, pathways, and public recreational works, facilities, and improvements, including appurtenances and facilities thereto and therefor;
- H. Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of public schools and other public educational facilities and improvements, including appurtenances thereto;

- I. Creation, restoration, drainage, or reclamation of wet, low, flooded, or overflowed lands;
- J. Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of off street parking facilities, parking garages, or similar facilities;
- K. Construction, reconstruction, repair, or maintenance of mass transportation facilities;
- L. Provision for commercial projects in an enterprise zone as defined in F.S. § 159.27(19);
- M. Construction, rehabilitation, revitalization, and beautification of Wellington neighborhoods and low, moderate, and affordable housing;
- N. Burial of overhead utility lines, including without limitation acquisition of necessary or convenient licenses, easements, rights-of-way, and property interests;
- O. Provision for landscaping and green spaces;
- P. Provision of all other public improvements and services as designated by Wellington's Council;
- Q. Stabilization and improvement of:
  - 1. Retail business districts;
  - 2. Wholesale business districts;
  - 3. Nationally recognized historic districts;
  - 4. Industrial districts;
  - 5. Educational districts;
  - 6. Commercial districts;
  - 7. Office and newly developing districts; or
  - 8. Such other areas as the Wellington Council may desire from time to time, or any combination of such districts, through promotion, management, marketing, security, maintenance, and other similar services in Wellington.
- R. Provision of public service programs including but not limited to Wellington's fire and emergency medical services program and all costs associated therewith and Wellington's solid waste collection services and all costs associated therein.
- S. Provision of engineering, surveys, designs, documents, plans and specifications, legal services, and all services related to the feasibility or practicability of such public services or projects.

The term includes any service or project of special benefit to the public that the Wellington Council determines to serve a proper public purpose, and may include services or projects conducted jointly with any other public agency or publicly regulated utility.

**Special Benefit:** a logical relationship between a service or project and its benefit to real property.

**Street:** includes but is not limited to a road, highway, boulevard, alley, street, or other public thoroughfare.

**Total Cost for Service or Project:** the sum of all costs appertaining, applicable, or chargeable to a service or project, including all costs incurred from inception to final acceptance, if applicable, including by way of example and not limitation, the following: engineering, field design, and overhead costs; acquisition and construction costs; operating and equipment costs; direct Wellington labor and material costs; general Wellington administrative and overhead costs as a fixed percentage of the other total costs; attorney's fees; and other necessary or incidental expenses. Such costs may include the cost of construction or reconstruction, repair, or maintenance, the cost of all labor and materials, the cost of all lands, property, rights, easements, and franchises acquired, financing charges, interest, creation of initial reserve and debt service funds, costs of issuance, including advertising and printing, discount on the sale of special assessment bonds or anticipation certificates; cost of plans and specifications, surveys, environmental assessments, permitting, governmental compliance, government approvals, remediation or mitigation; surveys of estimates of costs and of revenues, and all other expenses necessary or incident to determining the feasibility or practicability of providing such service or project or the construction or reconstruction, repair, or maintenance of such service or project, administrative expense, and such other expense as may be necessary or incident to the service or project and financing authorized.

**Uniform Assessment Collection Act (Uniform Method):** refers to F.S. § 197.3632 or any successor statute authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

### **Sec. 18-3: Declaration of Intent; Notice**

- A. Whenever Wellington shall decide that a special assessment service, or project needs to be provided or accomplished, Wellington's Council shall, by resolution (the "intent resolution"), declare Wellington's intention to have such work performed or services provided, designating the nature of the work or services; the location of the work or services; the part or portion of the cost to be paid by special assessment; the manner in which special assessments shall be made; when such assessments are to be paid; and what part, if any, shall be apportioned to be paid from other funds of Wellington or another participating governmental unit. Such intent resolution shall also describe the lands on which the special assessment is to be levied and it shall be sufficient to describe such lands as all lots and lands located within the assessable area receiving special benefit from the service or project. Such intent resolution shall also state the estimated costs of the service or project.
- B. At the time of the adoption of the intent resolution there shall be on file with the Wellington Clerk an assessment map showing the area to be assessed, together with preliminary plans and specifications and an estimate of the total or annual cost for the service or project, which assessment map, preliminary plans and specifications, and estimate shall be open to the inspection of the public.
- C. Upon adoption of the intent resolution, Wellington may advertise for bids, provide in-house or provide pursuant to an agreement with a third party or another public agency or a publicly regulated utility agency to provide the service or for the construction of the project. If bid, the bid shall be advertised in a newspaper of general circulation in Wellington and include in such advertisement the intent resolution number, and title. All such bids shall conform to Wellington or other statutorily required bid procedures then in effect.
- D. Promptly after adoption of the intent resolution, the Wellington Clerk shall cause a notice of said intent resolution to be published by title once a week for a period of two (2) consecutive weeks in a newspaper of general circulation in Wellington and the county. The notice of the intent

resolution shall provide that the resolution is available for review and copying at the office of the Wellington Clerk during normal business hours.

- E. Should Wellington choose to adopt an assessment roll on an annual basis, such assessment roll shall be adopted pursuant to applicable law.

#### **Sec. 18-4: Setting Assessments for Special Assessment Improvements or Service Program**

- A. *Determining basis for assessment:* Following adoption of the intent resolution, Wellington shall thereafter determine the assessable area; assessable front footage; or assessable value, for each special assessment service or project and shall prepare a preliminary assessment roll (the "preliminary assessment roll") in accordance with the method of assessment set forth in the intent resolution. Such preliminary assessment roll shall show the tracts, parcels, lots and lands to be assessed and, after taking into consideration the requirements set forth in paragraph (b) of this section, the amount of each tract, parcel, or lot assessment and the combined total annual assessment.
- B. *Determining assessable cost for property located in the assessable area:* The estimated annual cost or total cost, whichever is applicable, for the service or project shall be used to develop a formula to determine the basis for assessment in order to allocate such cost to assessable property located within the assessable area. The allocated assessable cost to all property located in the assessable area shall then be added together to arrive at the total assessment.
- C. *Annual determination of cost for a service:* The estimated cost for provision of a service funded by a special assessment levied pursuant to this chapter shall be set annually according to law by the Wellington Council after notice and public hearing thereon, if the estimated annual service cost for the upcoming year exceeds the current annual service cost. If the estimated annual service cost for the upcoming year does not exceed the current annual service cost, then notice and public hearing shall not be required but the Council shall set the amount of the annual assessment by resolution at a public meeting. Whenever a public hearing is required by this section, the public hearing held by Wellington pursuant to section 18-5 shall satisfy the requirements of this section.

#### **Sec. 18-5: Levying Special Assessment**

- A. Upon completion of the preliminary assessment roll, Wellington shall, by resolution or motion, fix a time and place at which the owners of property to be assessed, or any other persons interested therein, may appear before the Wellington Council and be heard with respect to the propriety and advisability of providing the service or project and funding them with special assessments, the cost of the service or project, and the amount to be assessed against each property to be benefitted. The Wellington Clerk shall provide written notice of such hearing to each of the property owners as shown on the current tax roll whose property is subject to being assessed. Such notice shall be provided by first class U.S. mail, postage prepaid, or through the annual TRIM Notices sent by the county property appraiser, not less than 30 days in advance of the hearing. The notice by mail shall include the following information: the purpose of the assessment; the total amount to be levied against each parcel; the unit of measurement to be applied against each parcel to determine the assessment; the number of such units contained within each parcel; the total revenue the local government will collect by the assessment; a statement that failure to pay the assessment will cause a tax certificate to be issued against the property which may result in a loss of title; the date, time, and place of the hearing; and a statement that all affected property owners have a right to appear at the hearing and to file written objections with Wellington prior to or at the hearing. In addition, notice of the time and place of such hearing shall be given once a week for two (2) consecutive weeks by publication in a newspaper of general circulation in Wellington with the first publication date to be not less

than 20 days in advance of the hearing; provided however, that any mistake in such advertised notice or in any mailed notice shall not void any assessment levied in accordance with the provisions of this chapter. The published notice shall contain at least the following information: the name Wellington; a geographic depiction of the property subject to the assessment; the proposed schedule of the assessment; the fact that the assessment will be collected by the tax collector or Wellington directly; and a statement that all affected property owners have the right to appear at the public hearing and the right to file written objections with Wellington prior to or at the hearing. The resolution or motion shall contain the date, time, and place of the hearing, describe the assessable area, and advise that the description of the properties located within the assessable area and the amount of the assessment can be ascertained at the office of the Wellington Clerk.

- B. At such public hearing, the Wellington Council shall consider all objections relating to the assessments and shall make a final decision on whether to levy some or all of the special assessments. Thereafter, if the decision is to levy some or all of the special assessments, the Council shall thereupon proceed to equalize or adjust such assessments where justice and right so dictate, and shall approve, confirm, and levy the assessment roll (the "confirmed assessment roll") by resolution (the "assessment resolution"). When so equalized and approved, the confirmed assessment roll shall be filed in the office of the Wellington Clerk and the assessments shown thereon shall remain legal, valid, and binding first liens upon the property against which such assessments are made until paid. The annual assessment amount for a service if subject to annual adjustment shall be determined by Wellington in accordance with section 18-4(c) and filed in the office of the Wellington Clerk, and such assessments shall remain legal, valid, and binding first liens upon the property against which such assessments are made until paid.
- C. A statement showing the approved assessment amount for a parcel shall be provided to the property owner of such parcel. The property owner shall have such time, if any, as may be set forth in the assessment resolution within which to pay the total assessment applicable to the owner's assessed parcel.
- D. Wellington shall specify in the assessment resolution when the payment of any special assessment levied pursuant to this chapter shall commence, its frequency of assessment, the amount of each scheduled collection of such assessment, and that all such assessments shall vest on January 1 in the same manner as ad valorem taxes.
- E. Upon completion of a project or termination of a service, any excess in the special assessment as originally made, approved, and confirmed over the actual cost of the improvement to be paid by such special assessment, shall be credited proportionately to each special assessment against each parcel in the manner set forth in the assessment resolution, or used for any lawful purpose.
- F. The Wellington Council shall be authorized to revise and correct errors and omissions in the assessment roll if:
  - 1. Any assessment made under this chapter is annulled, vacated, or set aside, in whole or in part, by the judgment of any court. In such a case, the Wellington Council may revise the assessment to comport with the guidelines of any such judgment until such time as a valid assessment is imposed.
  - 2. The Wellington Council is satisfied that any assessment is so defective that it cannot be enforced or collected.



3. The Wellington Council has omitted any property from the assessment roll which should have been assessed for the service or project funded by the assessment.
  4. A material error is determined to have occurred in the calculation or allocation of either the benefits or assessments.
- G. Prior to the delivery of an annual assessment roll to the tax collector, the, Wellington Clerk, to the extent authorized in the assessment resolution, may correct the classification of any property subject to an assessment based upon competent substantial evidence, or correct any error in applying or omitting the assessment upon any particular parcel. Such correction may be made, either on the Wellington Clerk's initiative or by written petition by a property owner received by Wellington prior to delivery of an annual assessment roll to the tax collector and found by the Wellington Clerk to correctly identify an error.
- H. No error or omission by the Wellington Council, mayor, Wellington Clerk, Village Manager or their designees, property appraiser, tax collector, or their deputies or employees, shall operate to release or discharge any obligation for payment of an assessment imposed by the Wellington Council under the provisions of this chapter.

#### **Sec. 18-6: Partial Year Assessments**

A partial year assessment shall be imposed against all real property for which a certificate of occupancy is issued following the adoption of either the assessment resolution or an annual assessment roll for any special assessment levied pursuant to this chapter which, as a result of the issuance of the certificate, requires a reclassification of the real property for assessment purposes or a change to its assessment rate. The amount of the partial year assessment shall be calculated on a monthly rate, which shall be one-twelfth of the annual assessment rate difference between the prior assessment rate and the new assessment rate for such property computed in accordance with the assessment resolution for the calendar year in which the certificate of occupancy is issued. The dollar amount resulting from the application of monthly assessment rate difference to the current assessment amount for the real property shall be imposed for each full calendar month remaining, if any, until the new assessment rate is levied and applied to the real property in an annual assessment roll. No certificate of occupancy shall be issued until full payment of the partial year assessment is received by Wellington. Issuance of the certificate of occupancy by mistake or inadvertence, and without the payment in full of the partial year assessment, shall not relieve the owner of such property of the obligation of full payment of the partial year assessment. For the purpose of this provision, such partial year assessment shall be deemed due and payable on the date the certificate of occupancy is issued and shall constitute a lien against such property as of that date. To the extent permitted by law, including but not limited to F.S. 170.09, 197.363, 197.3631 and 197.3632, such lien shall be perfected upon the issuance of the certificate of occupancy and co-equal with the lien of all state, county, district, municipal taxes and other non-ad valorem assessments which are duly levied, and superior in rank and dignity to all other liens, encumbrances, titles and claims in and to the real property involved until paid.

#### **Sec. 18-7: Collection of Payments; Installment Payments; Certificate of Indebtedness**

- A. Notice of Assessment: After adoption of the assessment resolution, a statement of the confirmed assessment for a parcel of real property shall be provided in a timely fashion to each parcel's owner as shown on the confirmed assessment roll. Special assessments shall bear interest and be payable at the time and in the manner stipulated in the assessment resolution, and to the extent permitted by law, including but not limited to F.S. § 170.09, 197.363, 197.3631 and 197.3632, shall remain liens, co-equal with the lien of all state, county, district, and municipal taxes, and other non-ad valorem assessments which are duly levied, superior in

dignity to all other liens, titles, and claims, until paid. Wellington may elect to collect its own assessments, retain a third party to collect them, use the uniform method provided in F.S. § 197.3632, or use any other legally available mechanism for collection.

- B. *Installment Payments:* The assessment, subject to the interest provided in this section, may be satisfied through weekly, monthly, or annual installments as is authorized in the assessment resolution. To the extent authorized in the assessment resolution, all assessments, together with interest accrued thereon to the date of payment, may be prepaid in full at any time and the property owner shall not incur any penalty for prepayment.
- C. *Certificate Issued for Failure to Pay Assessment:* For assessments not collected pursuant to F.S. § 197.3262 and that are not paid within the time provided in the assessment resolution, a certificate of indebtedness shall be issued. The certificate shall contain a description of the assessed property, the amount of the assessment, a description of the service or project, and shall identify the assessment resolution under which the assessment was made. Such certificate shall be recorded in the public records of the county and, to the extent permitted by law, constitute a lien coequal with the lien of all state, county, district, and other municipal taxes, superior in dignity to all other liens, titles, and claims, until paid, and shall bear interest at a rate to be set forth in the assessment resolution.
- D. *Enforcement of Certificate:* Upon failure of the property owner to pay any assessment installment due, any part thereof, or any interest due thereon, the procedures and remedies of the uniform method of F.S. § 197.3632 shall apply if used by Wellington. If the uniform method is not used, then Wellington, or its agent, may cause the necessary proceedings to be brought to enforce payment of either the assessment or the certificate issued under section 18-7(c), together with all accrued interest. As a part of such proceeding, Wellington shall be entitled to recover all costs and a reasonable attorney's fee. Default in the payment of any installment of the assessment or accrued interest shall result in the entire or annual assessment, if applicable, plus interest becoming immediately due. Such foreclosure proceeding may be instituted and prosecuted under F.S. Ch. 43 and 173, or as otherwise provided by law.
- E. *Validity:* In no event shall the amount or validity of the lien or certificate of indebtedness as provided for by this chapter be questioned in any direct or collateral proceeding instituted more than 30 days after the issuance of such certificate of indebtedness by Wellington, or such shorter time as may result from the filing of bond validation proceedings.

#### **Sec. 18-8: Issuance of Bonds**

- A. Wellington may at any time without an election being held therefore borrow money and issue bonds therefore in anticipation of the collection of unpaid special assessments levied or to be levied for the purpose of paying the cost of a special assessment service or project.
- B. Wellington shall not be required to validate bonded debt or issue certificates of debt that are secured by special assessments.

#### **Sec. 18-9: Prepayment of Special Assessments**

Notwithstanding the provisions of F.S. § 170.09, sections of this chapter, or any other provision of law pertaining to waiver of interest or the prepayment of special assessments, the Wellington Council may, in its discretion, by its intent or assessment resolutions, provide for restrictions, limitations, or prohibitions as to the waiver of interest and the prepayment of special assessments levied by Wellington.

## **CHAPTER 19 - SPECIAL DISTRICTS**

### **ACME IMPROVEMENT DISTRICT**

#### **Sec. 19-1: Special Legislative Acts of District are Wellington Ordinances; Amendment**

- A. Effective March 28, 1996, Acme Improvement District became a dependent district of Wellington and all special legislative acts of the Acme Improvement District became ordinances of Wellington. Further, on June 26, 2003, all prior special acts of the legislature relating to Acme Improvement District were re-codified in chapter 2003-330, Laws of Florida, and all prior special acts of the legislature were repealed. Acme Improvement District shall have all powers and authority set forth in Chapter 2003-330, Laws of Florida, together with all powers set forth in Chapters 298 and 189, Florida Statutes.
- B. All subsequent special legislative acts of Acme Improvement District shall remain in full force and effect.

#### **Sec. 19-2: Adoption by Reference of Policies and Procedures of District**

Wellington hereby adopts and incorporates by reference all the policies and procedures adopted by Acme Improvement District.

#### **Sec. 19-3: Authority of Board of Supervisors and Village Manager**

- A. The Wellington Council shall serve as the supervisors of Acme Improvement District and shall have the powers granted by Chapter 2003-330, Laws of Florida and Chapter 298, Florida Statutes. The Board of Supervisors shall serve without compensation, per diem or otherwise, but shall be entitled to reimbursement for travel expenses as provided by law.
- B. The Village Manager shall serve as the chief administrator of the Acme Improvement District and shall exercise those authorities provided by law, as may be necessary to effectuate the purposes of Acme.

#### **Sec. 19-4: District Authority to Establish Rates and Charges on Utility Services for Consumers Outside of Wellington**

Wellington, which controls and operates Acme Improvement District, a dependent district of Wellington, authorizes Acme Improvement District to establish rates, fees, charges and surcharges on water and sewer utility services to consumers located outside the boundaries of Wellington and the district pursuant to the criteria set forth in F.S. § 180.191.

#### **Sec. 19-5: Unpaid Utility Charges; Lien**

- A. Wellington hereby provides that all unpaid water and sewer utility charges shall constitute a lien on the real property affected 90 days following the date on which the water and sewer utility charges are due and payable. All unpaid water and sewer utility charges shall bear interest at the prevailing market rate of interest but no less than a rate of 5% per annum from the date when the same became due and payable.
- B. If any water and sewer utility charges become delinquent by not being fully paid within 90 days following the date on which the water and sewer utility charges are due and payable, and

remain delinquent, the district shall cause to be prepared a notice of lien containing the amount of the delinquent charges including the amount of the first penalty, a legal description of the unit of real property against which the lien is imposed and the name of the owner of such real property as indicated on the real property records maintained by the property appraiser of the county. Said notice of lien shall be recorded in the public records of the county prior to the completion of the fiscal year for which the charges are levied, or as soon thereafter as the district shall determine. A copy of the notice of lien shall be served on the owner of record as provided in F.S. § 713.18, within 10 days after the notice of lien is recorded.

- C. Until fully paid and discharged or barred by law, such liens shall be prior to all other liens except that such liens shall be on parity with a lien of state, county, and municipal taxes, and any lien for charges for services created pursuant to F.S. § 159.17.
- D. All costs of enforcement of such liens, including reasonable attorney's fees and costs, shall become a lien upon the real property affected and shall bear interest at the prevailing market rate of interest but not less than a rate of 5% per annum from the date when the same became due and payable.
- E. Upon full payment of the delinquent water and sewer utility charges, including the costs of enforcement of any lien, Acme Improvement District shall promptly discharge its recorded lien by recording a release of lien in the public records of Palm Beach County.
- F. Foreclosure of all liens imposed under this section shall be in the manner prescribed by F.S. Ch. 173.
- G. This section shall operate retroactively to apply to liens previously filed by the district for failure to pay delinquent water and sewer utility charges and to all other delinquent utility charges, whether or not a notice of lien has been filed by the district.
- H. Any unpaid water and sewer utility charges incurred by a former tenant of rental property shall not be the basis for any lien against the rental property or action against the present tenant or owner to recover such charges except to the extent that the present tenant or owner has benefitted directly from the service provided to the former occupant.

## **CHAPTER 20 - STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES**

### **ARTICLE I - RIGHTS-OF-WAY AND EASEMENTS**

#### **Sec. 20-1: Scope, Intent, and Authority of Article**

All provisions of this article shall be effective within the boundaries of Wellington and shall set restrictions, constraints and prohibitions to enhance the performance of Wellington's road rights-of-way and provide a measure of uniformity for them.

#### **Sec. 20-2: Purpose of Article**

The purpose of this article is to establish a regulatory framework and guidance document that will help ensure consistent work in Wellington's rights-of-way and easements.

#### **Sec. 20-3: 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:

**Jack and Bore:** piping under the surface for the purpose of installing pipe, culverts, conduits, and/or other material.

**Landscape:** to change the natural features of a plot of ground so as to make it more attractive as by adding grass, lawn, trees, shrubs, hedges, flowers, plants, or like material.

**Open Cut:** physically cutting and removing existing road surface for the purpose of installing pipe, culverts, conduits and/or other material.

**Right-of-Way:** land dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies. The term shall mean both a Wellington right-of-way and private right-of-way, but shall not include property conveyed to or owned by Wellington in fee simple.

**Roadside Marker:** a sign or other device installed by Wellington within a road right-of-way to identify the location of a significant event or occurrence.

**Sidewalk:** that portion of a street between the curb line, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians.

**Swales:** those areas lying between the road surface and the sidewalk or between the road surface and the right-of-way boundary line adjacent to the road surface, over which Wellington holds an easement or over which Wellington has exclusive control as part of its road drainage right-of-way, or which are owned or maintained by Wellington.

#### **Sec. 20-4: Penalties for Violation of Article**

- A. Failure to comply with the requirements of this article shall constitute a violation and shall be punishable as provided by law. If a violation occurs, the property owner and all persons responsible or liable will be given notice to remove and/or repair work or construction performed or located in the right-of-way. If the violation is not timely remedied, appropriate

steps to remedy the violation will be taken by Wellington employees, and the responsible party will be liable for all associated costs and fines.

- B. Any violation of the provisions of this article may also be punishable by a fine not to exceed four (4) times the cost of the permit to be determined by the Wellington staff.
- C. Violations of this article are punishable by civil fine pursuant to F.S. Ch. 162 and shall be referred to the special magistrate pursuant to Chapter 2 of this Code.
- D. All monies collected pursuant to this article shall be deposited in the Wellington general fund.

#### **Sec. 20-5: Work, Activities, and Construction; Requirements and Permitted Activities**

- A. *Review and Permit Required:* All work, activities, or construction proposed to be performed in a Wellington right-of-way or easement and all structures proposed to be erected, located, or maintained in a Wellington right-of-way or easement must be reviewed and permitted by the Public Works Department and/or the Engineering Department unless expressly exempted by Florida law or this Code.
- B. *Display of Permit:* If applicable, a lawfully obtained permit must be displayed at all work sites during all phases of work from start to finish.
- C. *Planting of Trees:* Certain trees, with the approval of the Public Works Department, may be planted in a right-of-way or easement. Single trunk palms are preferred.
- D. *Landscaping:* Landscaping shall be limited to sod and trees, subject to the approval of the Public Works Department. No shrubs, hedges, or other material shall be planted in the right-of-way without being properly permitted.
- E. *Open Cut; Jack and Bore:* Open cut and jack and bore are allowed, subject to the approval of the Public Works Department and the obtaining of all necessary permits.
- F. *Walls, Entrances, Signage, and Fencing:* Walls, entrance enhancements, signage, and fencing in a right-of-way must be reviewed and properly permitted by the Public Works Department.
- G. *Swale Markers; Placement and Size:* Swale markers may be placed at the edge of swale areas to protect the edges of lawns from being driven on by passing vehicles, with swale markers to be round button, cement markers with anchor rods attached, not to exceed 12 inches in diameter and four (4) inches in height.
- H. *Swale Requirements:* Swales must conform to their original shape and grades, with the center of the swale adjacent to local streets (60 feet right-of-way) generally being eight (8) inches below the road centerline or the back of sidewalk.
- I. *Roadside Marker:* A maximum of one (1) roadside marker per incident where a fatality has occurred may be installed by Wellington personnel. The application and payment of fees for a roadside marker shall be made to the Wellington Engineer, or their designee. Roadside markers shall have a maximum height of 42 inches and a maximum diameter of 15 inches.

#### **Sec. 20-6: Exemptions**

The following are exempt from the provisions of this article:

- A. Mailboxes: Property owners may place mailboxes in the unpaved public right-of-way when such placement is a necessary prerequisite to mail delivery to their property, subject to the United States Postal Service criteria.
- B. Trash for pickup: Properly packaged trash, waste material, refuse, and other similar articles may be placed on the unpaved public right-of-way no more than 24 hours before the next scheduled pickup. Placement of all such materials must be directly in front of the property that generated the trash.

#### **Sec. 20-7: Fees; Determination**

All fees collected pursuant to this article shall be determined by resolution adopted by Wellington, entitled the "Permit and Inspection Fee Schedule."

### **ARTICLE II - VACATING AND ABANDONMENT**

#### **Sec. 20-8: Definitions**

**Abandon:** any variant thereof, includes the term "vacate."

**Abutting Property:** any parcel of real property whose boundaries, or any part thereof, also serves as the boundary, or portion thereof, of the petition site.

**Affected Property:** any parcel of real property or portion thereof that lies within 300 feet of the boundaries of the petition site.

**Community Association:** any corporation created under Florida law, the membership of which is comprised of all owners of real property over which the community association has jurisdiction by virtue of a declaration of covenants and restrictions, declaration of condominium, or similar instrument. The term shall include the terms "homeowners association," "condominium association," "cooperative association," and property owners association." **Department:** the Wellington Planning, Zoning and Building Department.

**Land Value:** the value of land as established for the tax base by the property appraiser's office prior to any or all exemptions.

**Owner:** the fee simple title holder of real property.

**Petitioner:** the person, governmental entity, or business entity submitting a petition for abandonment pursuant to this article. The term "petitioner" shall include "co-petitioner" where appropriate.

**Petition for Abandonment:** the form prescribed by the department in which a petitioner requests the abandonment of a plat, or portion thereof, right-of-way, or public easement pursuant to this article.

**Petition Site:** any parcel of real property subject to a petition for abandonment pursuant to this article.

**Plat:** any drawing of real property made and recorded pursuant to Chapter 177, Florida Statutes.

**Private Right-of-Way:** any right-of-way dedicated to a community association or the owner of the abutting property, or which is dedicated as a right-of-way and is the perpetual maintenance obligation of any community association or the owner of abutting property.

**Public Easement:** any utility, maintenance, or drainage easement that is dedicated to Wellington by plat in perpetuity for utility or drainage purposes., The term shall not include instruments made to specifically named utility companies, community associations, or other governmental entities.

**Official Records:** the documents recorded in the official records of the Clerk of the Circuit Court & Comptroller in and for Palm Beach County, Florida.

**Right-of-Way:** land dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies. The term shall mean both a Wellington right-of-way and private right-of-way, but shall not include property conveyed to or owned by Wellington in fee simple.

**Utility Company:** any public or franchised entity that provides electrical, gas, or communication services.

**Wellington Right-of-Way:** any right-of-way acquired by Wellington or the public by virtue of a dedication to the public or to Wellington on a plat, by separate instrument of conveyance, or by prescription.

## **Sec. 20-9: Declaration of Jurisdiction and Control of Wellington; Application of Ordinance**

- A. Any dedication or conveyance of real property to Wellington in fee simple for the purpose of streets, rights-of-way, access, ingress, egress, utilities, and drainage that is made on or by a plat, easement, deed, or other instrument of any kind, which instruments are approved by the Wellington Council, or Board of County Commissioners for recording in the official records is hereby deemed to be under the jurisdiction and control of the Wellington Council for the purposes of the vacation or abandonment of plats or portions thereof, rights-of-way, and easements for utility, drainage, or maintenance purposes.
- B. The provisions of this article shall apply to all plats, rights-of-way, and easements under the jurisdiction and control of the Wellington Council.
- C. The provisions of this article are intended to apply to dedications of real property being held by Wellington in trust for the benefit of the public and shall not apply to real property owned by Wellington in fee simple. Properties owned by Wellington in fee simple may be conveyed in accordance with the provisions of Florida law.
- D. The procedures set forth in this article shall also apply to applications made pursuant to section 177.101(1) and (2), Florida Statutes, and to all applications for vacating plats, or any portion thereof, including public easements, pursuant to section 177.101(3), Florida Statutes. Any petition to vacate a plat or portion thereof, which plat or portion thereof contains a private right-of-way or a utility easement shall not require a public hearing; however, a public hearing shall be required if the petition site includes a Wellington right-of-way or public easement for drainage purposes that services a Wellington right-of-way.

## **Sec. 20-10: Petitions Generally**

- A. *Petitions for Abandonment of Plats:* Any person desiring to abandon a plat, or any portion thereof, including public easements, shall be required to make application to Wellington pursuant to section 177.101, Florida Statutes, and the provisions of this article. Such application shall be on the petition form prescribed by the department, and the information contained therein shall be verified by the petitioner under oath. Unless initiated by Wellington, the petition shall be signed by all owners of any portion of the petition site.



- B. Petitions for Abandonment of Rights-of-Way and Easements for Utility, Drainage, or Maintenance Purposes. Any person desiring to abandon the public's interest in and to any right-of-way and easements for utility, drainage, or maintenance purposes shall be required to make application to Wellington pursuant to this article. Such application shall be on the petition form prescribed by the department, and the information contained therein shall be verified by the petitioner under oath. Unless initiated by Wellington, any petition for abandonment of rights-of-way shall be signed by all owners of abutting property.
- C. Signature of Village Manager or Designee: Any petition made on behalf of Wellington shall be signed by the Village Manager or their designee.

## **Sec. 20-11: Application and Privilege Fees**

- A. Petition Fee: Except as provided herein, each petition shall be accompanied by a fee as set by resolution of the Wellington Council to cover the cost of administrative review, site analysis and investigation, publications, and official recording. This fee will be credited to any privilege fee imposed. No refund shall be made. Petitions of Wellington or any other governmental agency shall be exempt from the petition fee.
- B. Privilege Fee: A privilege fee is hereby established, payable by any petitioner requesting the abandonment of the interest of Wellington and the public in and to any right-of-way under the jurisdiction and control of the Wellington Council. The privilege fee is to be used for the purpose of reimbursing Wellington's costs and expenses incurred when acquiring real property for public use.
- C. Final Determination: The Wellington Council shall make the final determination of the application of the privilege fee based upon recommendations submitted by staff at the scheduled public hearing for abandonment of the petition site.
- D. Calculation of Privilege Fee: The privilege fee shall be determined by computing 80% of the total land value of the petition site.
- E. Total Land Value: The total land value of the petition site, per square foot, shall be equal to the averaged square foot land value of the abutting property, as established by the most current county property appraiser records. This calculation shall be based upon the cumulative land value of the abutting properties (cumulative value), determining the average value of the properties on a square footage basis (square footage value), and multiplying the square footage value by the number of square feet of the petition site to ascertain the total land value of the petition site.
- F. Exemptions: The privilege fee shall not apply to petitions submitted by the following:
  - 1. The fee simple owner of the property subject to an easement;
  - 2. The original gratuitous conveyor of all the public rights-of-way to be abandoned;
  - 3. Rights-of-way contained in plats that were approved by Wellington when no conveyance of lots by reference to the plat appear of record; or
  - 4. When the petitioner is a duly organized governmental body.

## **Sec. 20-12: Access to Water**

No right-of-way, road, street, or public means of ingress or egress leading to any publicly accessible waters in Wellington shall be closed, vacated, or abandoned except in those instances where the petitioner offers to trade or give to Wellington comparable land or lands for a right-of-way, road, street, or public means of ingress or egress to give access to the same body of water. Such access is to be of such condition so as to not work a hardship to the users thereof, the reasonableness of the distance and comparable land being left to the discretion of the Wellington Council.

## **Sec. 20-13: Petition Application Procedures**

In addition to any other information required by the department, the petition shall contain the following:

- A. Legal Description of Petition Site: A complete and accurate legal description of the petition site.
- B. Type of Petition: A statement identifying the type of petition as being for abandonment of:
  - 1. A plat;
  - 2. A portion of a plat;
  - 3. A Wellington right-of-way;
  - 4. The public's interest in a private right-of-way; or
  - 5. A public easement.

The statement shall identify the source of Wellington's or the public's interest, together with a reference to the recording information for same, in and to the petition site. A complete and accurate copy of the source of Wellington's or the public's interest shall be attached as an exhibit to the petition. If the source is a recorded instrument, a copy of the source shall be certified by the clerk of court of the county.

- C. Survey: A certified land survey measuring no less than eight (8) and one-half (1/2) inches by 14 inches and not larger than 11 inches by 17 inches shall be prepared by a state registered land surveyor in accordance with the minimum technical standards adopted by the Board of Professional Surveyors and Mappers pursuant to section 472.027, Florida Statutes and Chapter 21HH-6, Florida Administrative Code, and shall be attached as an exhibit to the petition. The survey shall also contain or depict the following information:
  - 1. An accurate drawing of the petition site;
  - 2. The boundaries of abutting properties;
  - 3. The square footage of the petition site; and
  - 4. Existing structures, utilities, easements, encroachments, and other improvements, including but not limited to the location of overhead, underground, or surface utility lines and equipment, ditches, fences, buildings, pathways, and drainage structures contained on the petition site.

- D. Location Map: A drawing measuring not less than eight (8) and one-half (1/2) inches by 11 inches and no larger than 11 inches by 17 inches that clearly and legibly identifies the location of the petition site in relation to the nearest public right-of-way, excluding the petition site, and all affected properties. The location map may be located on the survey in a separate block.
- E. List of Owners of Abutting Property and Affected Property: For the purpose of providing notice to abutting and affected property owners, a complete list of all owners of abutting property and affected property within 300 feet (this 300 foot mailing procedure is required if the petition is subject to a public hearing, section 20-16), their mailing addresses, and a legal description of the property owned. For private right-of-way abandonment requests, a complete list of all owners of abutting property, their mailing addresses, and a legal description of the property owned shall be required. The petition shall state the source of the information used to compile the list and shall contain an affidavit of the preparer that to the best of their knowledge, the list is complete and accurate. If the abutting property or affected property is under the jurisdiction of a community association, this requirement of notice may be fulfilled by mailing such notice to the community association; however, all abutting property owners must also be separately notified. The list shall be accompanied by a number 10 white envelope for each abutting property and affected property owner and each petitioner that comports with the following:
1. The following return address shall be printed or typed thereon:  

Wellington  
Planning, Zoning and Building Department  
12300 Forest Hill Boulevard  
Wellington, Florida 33414
  2. It shall be pre-stamped with sufficient postage for certified, return receipt postage for addresses in the United States and registered mail postage for addresses in foreign countries.
  3. A properly completed certified mail receipt or registered mail receipt, as applicable, shall be clipped to each envelope.
- F. Utility Approvals: The written approval or consent of the utility providing service to or within the petition site shall be attached to the petition.
- G. Access to Abutting Property and Affected Property: The petition shall contain a statement that to the best of the petitioner's knowledge, the granting of the petition would not affect the ownership or right of convenient access of persons owning abutting property, affected property, or other property in the subdivision.
- H. Federal, State, or County Right-of-Way Statement: The petitioner shall certify that the petition site, or any portion thereof, is not a part of any federal, state, or county right-of-way and was not acquired or dedicated for federal, state, or county right-of-way purposes.
- I. Notice of Intent: Proof of publication of the notice of intent shall be attached to the petition.
- J. Evidence of Title: The petition shall state the source of the petitioner's ownership or interest in and to the petition site, and a reference to the recording information for same. A copy of the source instrument shall be certified by the clerk of court of the county and attached as an exhibit to the petition.

- K. Evidence of Taxes and Special Assessments Paid: The petition shall state that all state, municipal, county, and other taxes and special assessments on the petition site have been paid. The certificate of the county tax collector's office showing payment of same, as payment is defined in section 177.101(4), Florida Statutes, shall be attached as an exhibit to the petition. If the petition site, or any portion thereof, is tax-exempt, the petition shall so state and a copy of the tax roll from the tax collector's office showing such exemption shall be attached as an exhibit to the petition.
- L. Fees: The petition shall state whether the petition site is subject to the privilege fee, the amount of the fee, and that the petition fee is submitted therewith. The petition shall include the appropriate documentation supporting the petition's calculation of the privilege fee.
- M. Justification: The petition shall detail the relevant reasons in support of the request and granting of the petition.

#### **Sec. 20-14: Review of Petition**

- A. Each petition shall be reviewed by the department, the Wellington Utilities and Public Works departments, and any governmental agency the department deems affected by the petition. Upon receipt, the department shall distribute the petition to the reviewing departments and agencies. Within 20 days of receipt of the petition, the reviewing departments and agencies shall submit a written report containing their findings and recommendations to the designated staff of the department. Upon receipt of all written reports, the department shall review the petition and reports and shall notify the petitioner in writing of any reasonable conditions to be performed prior to forwarding the petition and reports pursuant to this subsection.
- B. After expiration of the 20-day period or sooner, if conditions are not imposed, or if imposed conditions are responded to by the petitioner, the department shall forward the petition together with its findings and recommendations of same to the Wellington Council for review.
- C. The department shall not be responsible for:
  - 1. Searching the official records or any other records in and for the county; or
  - 2. Any other investigation to determine the truth or accuracy of the statements and information contained in the petition and any attachments thereto.

#### **Sec. 20-15: Notice of Intent**

Prior to filing the petition for abandonment with the department, the petitioner shall give notice of their intention to file the petition by publishing legal notice in a newspaper of general circulation in the county, in not less than two (2) weekly issues of said paper.

#### **Sec. 20-16: Public Hearing of Petitions for Abandonment of Wellington Rights-of-Way and Public Easements for Drainage of Wellington Rights-of-Way**

- A. Public Hearing Required if Wellington Rights-of-Way or Public Easement Affected: A public hearing shall be held for any petition for abandonment that affects a Wellington right-of-way or public easement for drainage that services a Wellington right-of-way. If a petition does not affect a Wellington right-of-way or public easement for drainage that services a Wellington right-of-way, a public hearing is not required, and upon its review and sole discretion, the Wellington Council shall adopt a resolution either approving or denying the petition.

- B. Time and Place of Hearing: The Wellington Council hereby directs the Village Manager or their designee to establish a definite time and place to hold the public hearing required by this article, and to publish the notice of said hearing.
- C. Publication and Notice of Public Hearing: Notice of such public hearing shall be published two (2) times in a newspaper of general circulation in the county, with the first publication being at least two (2) weeks prior to the date stated therein for such hearing.
- D. Posting of Notice of Public Hearing: The department shall notify the petitioner of the date and time of the public hearing and shall direct the petitioner to post the property with a notice of petition to vacate. The petitioner shall post the notice in a conspicuous and easily visible location on the subject property, abutting a public thoroughfare when possible, at least 10 days prior to the public hearing.
- E. Mailing of Notice of Public Hearing: The department shall mail a copy of the notice of public hearing to each addressee in the envelopes provided by petitioner pursuant to the provisions of this article, at least 10 days prior to the public hearing.
- F. Testimony: At the public hearing, all interested persons shall be entitled to testify under oath regarding the petition; however, the Wellington Council may decline to hear testimony that is repetitious, irrelevant, or immaterial. If the Council approves the petition, it may vacate all or any portion of the subject public interest and may require such conditions as the Council deems to be in the public interest.
- G. Adoption of Resolution: If the Council approves the petition, it shall do so by resolution.

#### **Sec. 20-17: Effect of Resolution**

The Wellington Council's determination of whether to approve the petition, being a legislative determination, is final and binding.

#### **Sec. 20-18: Publication of Notice of Adoption of Resolution and Recordation of Resolution**

Notice of the adoption of a resolution approving a petition for abandonment pursuant to this article shall be published one (1) time, within 30 days following the date of adoption in a newspaper of general circulation in the county. The proof of publication of the notice of public hearing, the resolution as adopted, and the proof of publication of the notice of the adoption of such resolution shall be recorded in the official records.

#### **Sec. 20-19: Effect of Recording Resolution of Abandonment**

- A. For Wellington rights-of-way, upon the recordation of the proof of publication of the notice of public hearing, the resolution as adopted, and the proof of publication of the notice of adoption of the resolution, all interest of Wellington and the public in the rights-of-way abandoned or vacated shall be abrogated and such interest shall be vested in the abutting landowners to the extent and in the same manner as in the case of termination of an easement for road purposes.
- B. For plats or portions thereof, recordation in the public records of resolutions approving abandonment of a plat or a portion thereof shall have the effect of vacating all streets and alleys in accordance with F.S. § 177.101(5), and shall either return the vacated property to the

status of unplatted acreage or shall vacate the first plat in accordance with F.S. § 177.101(1) or (2), as applicable.

**Sec. 20-20: Acme Improvement District Authorized to Utilize the Abandonment Procedures Contained Herein to the Extent Not Otherwise Prohibited by Law**

Acme Improvement District, a dependent district of Wellington is hereby authorized to utilize the procedures contained in this article to the extent not otherwise prohibited by law.

**ARTICLE III - TRUCK TRAFFIC CONTROL**

**Sec. 20-21: Vehicles over Six (6) Wheels Prohibited (Generally)**

- A. It is unlawful to operate or permit to be operated any vehicle, or combination of vehicles and trailers, driving on over six (6) wheels upon any Wellington road whenever said road is posted with signs prohibiting said operation, except as hereinafter provided.
- B. The notice of restriction shall be posted at conspicuous places at the terminal points of the section of road to which the restriction applies, and at appropriate crossroads of and junctions with the section of road to which the restriction applies in such a way as to provide reasonable notice of the restriction.

**Sec. 20-22: Exceptions**

- A. The prohibition of vehicles over six (6) wheels provided in this article shall not apply to:
  - 1. Garbage trucks engaged in collection;
  - 2. Vehicles owned by any governmental entity, volunteer fire and/or ambulance company, or public utility, the unhampered operation of which is necessary to the public safety;
  - 3. Vehicles making deliveries of goods or services within the area served by the posted road;
  - 4. Recreational vehicles as defined in Article 3 of the LDR.
  - 5. A vehicle not over six (6) wheels when towing:
    - a. A boat trailer; or
    - b. A cargo trailer with not more than four (4) wheels having a cargo containment area of not more than 20 feet.
- B. This article shall not be enforced so as to interfere with or interrupt traffic over state or county roads, including officially established detours for such roads.

**Sec. 20-23: Enforcement**

- A. This article shall be enforced by the Palm Beach County Sheriff's Office.
- B. A violation of this article shall constitute a violation under F.S. Ch. 316, and shall be enforced in accordance with the provisions of F.S. Ch. 318.

## **Sec. 20-24: Designated Restricted Roads**

The Public Works Department shall post signs prohibiting use of the following roads by vehicles driving on over six (6) wheels:

- A. Paddock Drive
- B. 12<sup>th</sup> Fairway
- C. Birkdale Drive
- D. 50<sup>th</sup> Street South
- E. Pierson Road
- F. Big Blue Trace
- G. Forest Hill Boulevard
- H. Binks Forest Drive
- I. Flying Cow Road
- J. Greenview Shores Boulevard

To the extent the cooperation of other governmental entities' permission is necessary to effectuate the placement of signs, staff is directed to request such permission and coordinate with them to effect the intent on this article.

## **Sec. 20-25: State Weight, Height, and Length Limitations Applicable**

Notwithstanding any provision of this article to the contrary, it shall be unlawful for any person to operate, or permit the operation of, any vehicle or combination of vehicles on Wellington roads in excess of the weight, height, and length limitations contained in F.S. Ch. 316.

## **ARTICLE IV - PUBLIC ASSEMBLIES**

### **Sec. 20-26: 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:

**Advertise:** the act of publicly announcing or calling public attention to a public assembly, and shall include, but not be limited to, the distribution of literature, the use of outdoor advertising, and announcements by radio, television, newspaper, the internet, e-mail, or any other media now available or hereafter created.

**Applicant:** any person or organization who applies for a public assembly permit.

**Director:** the Wellington Planning, Zoning, and Building Director or their designee.

**Distribution of Literature:** the passing of pamphlets, handbills, flyers, brochures, or any printed materials to persons.

**Fast-Breaking Assembly:** a public assembly that is occasioned by fast-breaking news or affairs coming into public knowledge less than 48 hours prior to such public assembly, which may be held at only those locations designated by Wellington for fast-breaking assemblies.

**Law Enforcement Officer:** any member of the Palm Beach County Sheriff's Office.

**Organization:** any organization, corporation, partnership, trust, or other entity.

**Person:** any person, firm, partnership, association, club, corporation, company, or organization of any kind.

**Policy:** the Public Assemblies Policy adopted by resolution by the Wellington Council.

**Public Assembly:** an event, ceremony, rally, march, walk, show, exhibition, display, procession, race, concert, pageant, picketing, demonstration, or similar activity including, but not limited to, such activities used as a means of protest or as a means of presenting a cause or grievance, located partially or totally on public property, where 20 or more persons are in attendance.

**Public Assembly Permit:** a permit required by this article for a public assembly.

**Public Property:** outdoor property that is owned by or dedicated to Wellington or Acme Improvement District ("Acme") and located within Wellington.

**Permittee:** any person or organization who receives a public assembly permit.

**Picketing:** conduct involving standing or marching back and forth by one (1) or more persons who may be carrying a placard or, potentially, engaging in the distribution of literature incidental thereto, to communicate the picketer's message.

**Rights-of-Way:** land dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, drainage facility (canal), access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies. The term shall mean both a Wellington right-of-way and private right-of-way, but shall not include property conveyed to or owned by Wellington in fee simple.

**Roadway:** that portion of the right-of-way set aside for purposes of vehicular traffic, including any berm, shoulder, median strip, or on-street public parking area.

**Sidewalk:** that portion of a street between the curbline, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians.

## **Sec. 20-27: Purpose and Intent**

- A. Wellington finds that it should facilitate the exercise of the constitutional rights of free speech and peaceful assembly on certain property within Wellington. Wellington also finds that, due to their size, the location, or a combination of size and location, certain public assemblies may cause adverse public conditions requiring regulation and the provision of additional services or facilities to protect the public health, safety, and welfare. These services and facilities include, but are not limited to, law enforcement, emergency medical, traffic control, parking, bathroom, crowd control, and trash collection and disposal. Wellington further finds that it is necessary to assure the preservation of property that is used in connection with these public assemblies, and to assure financial accountability for damage caused thereto by such assemblies while providing waivers for those costs that are so financially burdensome that they prevent the exercise of First Amendment rights.



- B. The purpose of this article is to protect the public health, safety, and welfare by regulating certain public assemblies, and it is the intent of Wellington that this article be construed liberally in favor of protecting the public health, safety, and welfare. This article is intended to be a content-neutral time, place, and manner regulation. This article is not directed solely at communicative activity, but rather at all activity constituting a “public assembly” as defined herein.

#### **Sec. 20-28: Public Assembly Permit; When Required**

No person or organization shall stage, promote, conduct, engage in, participate in, aid, form, advertise, or start any public assembly in or on any public property unless a public assembly permit shall first have been applied for and obtained from Wellington in accordance with this article, if a public assembly permit is required by this article.

#### **Sec. 20-29: Scope**

This article shall not apply to, nor shall a public assembly permit be required for, any of the following activities:

- A. An authorized or official event of Wellington or any department or division thereof.
- B. A public assembly which:
1. Does not require Wellington or Acme services or facilities;
  2. Is attended at any one (1) time, is calculated to be attended at any one (1) time, or is reasonably expected to be attended at any one (1) time, by less than 20 people; and
  3. Is not anticipated to impede or interfere with the use of or travel on rights-of-way or to violate normal traffic regulations or controls.
- C. A fast-breaking assembly, which:
1. Must only be conducted at the location(s) designated for fast-breaking assemblies by Wellington because an assembly at this location(s) is not anticipated to impede or interfere with the use of or travel on rights-of-way or to violate normal traffic regulations or controls;
  2. Must stay within the maximum capacity of its location(s);
  3. Must comply with all applicable laws, and with the general requirements of section 20-30 for public assemblies;
  4. Must not exceed five (5) consecutive days; and
  5. Must not include fireworks, temporary structures, alcoholic beverages, road closures, or other activities requiring permits pursuant to applicable laws without obtaining such permits.

The name, mailing address, and telephone number of the person or representative of an organization planning a fast-breaking assembly shall be submitted to the PZB Director, along with the planned time, duration, date, and exact location, the nature of the activities planned, and a good faith and reasonable estimate of the number of people who are planned to or expected to attend and participate in the fast-breaking assembly.

### **Sec. 20-30: Requirements for Public Assemblies**

- A. Hours: Public assemblies may only be held between 7 AM and 10 PM, or as otherwise stated on the permit, seven (7) days a week. Overnight public assemblies are prohibited.
- B. Sound: If sound will be augmented by electrical means that increase the sound level or volume as part of the public assembly, the resulting sound must not be plainly audible at a distance of 300 feet from the source of the sound. "Plainly audible" means able to be clearly heard by a person of normal sensibilities using only unaided auditory senses, at a volume greater than that of ordinary conversation, and shall exclude barely audible sounds. If the sound is music, the detection of a rhythmic bass reverberating sound shall be deemed to be plainly audible.
- C. Cleanup: Consistent with section 255.045, Florida Statutes, the organizer shall ensure the necessary cleanup, repair, and restoration of any public assembly area to its condition prior to the public assembly, with such cleanup, repair, or restoration to be accomplished within 24 hours after the public assembly is concluded.

### **Sec. 20-31: Application for Public Assembly Permit**

- A. Any person seeking the issuance of a public assembly permit shall file a complete application, pursuant to the requirements of the Policy, with Wellington, at the location designated by and on forms provided by the PZB Director. Applications for public assembly permits shall be processed in order of receipt.
- B. To the extent practicable, an application shall be filed no less than 30 days before the date of the public assembly. Wellington finds and determines that this is the minimum timeframe necessary to identify and coordinate the various Wellington or Acme services, or facilities needed, for addressing the public health, safety, and welfare impacts of a public assembly.
- C. The minimum filing period requirement above may be shortened or waived by the PZB Director, if, after due consideration of the following factors, in an even-handed manner and without regard to any message of or perceived reaction to the public assembly, it is determined that the public assembly will not present an undue hazard to the public safety because of the reduced time available to process the application, based upon:
  - 1. The date, time, place, and nature of the public assembly;
  - 2. The anticipated number of participants; and
  - 3. The necessity for, and the amount of, public services or facilities required in connection with the public assembly.

### **Sec. 20-32: Review Process; Decision on Application; Grounds for Denial**

- A. Review of Application: The review process shall take place as outlined in the Policy.
- B. Decision on Application; Notice: Within three (3) business days after receipt of all of the department, division, or office reports, the director shall either approve, conditionally approve, or deny the public assembly permit application, and shall notify the applicant by hand delivering a copy of the decision to the street address listed on the public assembly permit application or by faxing, e-mailing, or mailing by next day delivery a copy of the decision to the contact information listed on the application. The director shall also promptly notify the relevant Wellington departments and personnel of the final decision on the application. The director's

decision on the application shall be based solely on the reports timely received and the requirements of this article, without regard to the content of any message that may be associated with the public assembly or any perceived reaction to such message. If no decision is timely made regarding the application, it shall be deemed approved.

- C. Conditions Precedent: If the public assembly permit application is conditionally approved, the director shall inform the applicant of any conditions precedent and notify the applicant that final approval of the application shall be subject to the applicant proving, at least three (3) business days before the date of the public assembly, that the applicant has complied with or satisfied all the conditions precedent.
- D. Insurance and Indemnification: In addition, at least three (3) business days before the date of the public assembly, the applicant shall tender the indemnification agreement and certificates of insurance required by the Policy, if required to do so by the Policy. If the applicant fails to tender any required indemnification agreement or certificates of insurance at least three (3) business days before the date of the public assembly, the public assembly permit application shall be deemed denied. However, if the applicant tenders the requisite indemnification agreement and certificates of insurance at least three (3) business days before the date of the public assembly, the application shall be given final approval as of the date the indemnification agreement and certificates of insurance were tendered.
- E. Denial:
1. Notice and Opportunity to Cure: If a public assembly permit application is denied, the director shall provide the applicant with the reasons for the denial and shall afford the applicant an opportunity to cure or resolve the issues that caused the denial. If the applicant cures and resolves the issues at least three (3) business days before the date of the public assembly, the director shall inform the applicant that the application is approved, subject to the applicant also complying in a timely manner with all conditions precedent, including, without limitation, tendering the required indemnification agreement and certificates of insurance, if any.
  2. Conflicts: If an application is or will be denied because the public assembly would take place at the same time and place as a previously scheduled or approved event, the director shall inform the applicant of alternative locations or times where the public assembly could be held.
- F. Criteria for Denial: An application for a public assembly permit may be denied if any of the following is established by clear and convincing evidence, or if evident from the application itself:
1. The applicant did not fully or properly complete and execute the application and any related forms for a public assembly permit (including, without limitation, any required attachments or submissions);
  2. The applicant did not tender the required non-refundable application fee with the application, or did not tender any required indemnification agreement, insurance certificate, or security deposit, and did not receive a waiver of such requirements;
  3. The applicant did not file the application by the minimum time period prescribed by this article, if applicable;
  4. The application contained a material falsehood or misrepresentation;

5. Under Florida law, the applicant is legally incompetent to enter into a contract or to sue and be sued;
  6. The applicant or the person or organization on whose behalf the application was filed has, on prior occasions, damaged Wellington or Acme property and has not paid in full for such damage, or has any other outstanding and unpaid debts to Wellington or Acme, and is not entitled to a waiver for such expenses;
  7. Another fully executed application for a public assembly permit for the same time and place has been filed, or a public assembly permit has been or will be granted to a prior applicant authorizing a public assembly for the same time and place, and the time and place would not reasonably permit multiple or shared occupancy;
  8. The public assembly would substantially interfere with or would have an un-mitigatable adverse impact upon access and traffic circulation in the area in which it is to be conducted;
  9. The public assembly would substantially interrupt the safe and orderly movement, public transportation, or other vehicular or pedestrian traffic in the area of the public assembly, or would cause an un-mitigatable conflict with construction or development in the particular roadway;
  10. The public assembly as proposed by the applicant would present an unreasonable danger or harm to the health or safety of the applicant, participants, observers, spectators, or other users of the particular roadway, Wellington employees or agents, or the public;
  11. The applicant has not complied, or cannot comply, with licensing or other permitting requirements applicable to the public assembly, including, without limitation, building permits, sign permits, and occupational licenses;
  12. The applicant has not complied, or cannot comply, with all of the conditions, restrictions, or requirements found necessary by the reviewing departments; or
  13. The use or activity proposed by the applicant is prohibited by law, by court order, by this article, or by any other Wellington regulations.
- G. *Not Content Based:* A permit shall not be granted or denied based upon the content or viewpoint of any message or on the anticipated reaction to that message.
- H. *Limited Time and Date:* If Wellington approves a public assembly permit, it shall only be for the day/dates and times shown on the permit. Wellington shall not grant recurring permits; each public assembly requires a separate application and review process.

### **Sec. 20-33: Indemnification**

The applicant for a public assembly permit, and any other person or organization on whose behalf the application for a public assembly permit is made by filing an application, shall agree to jointly and severally to the fullest extent provided in F.S. § 768.28, indemnify and hold harmless Wellington and Acme from any and all claims, damages, losses, and expenses made against or incurred or suffered by Acme, Wellington, or the Palm Beach County Sheriff's Office because of injury or death to persons or damage to property, including, without limitation, court costs and attorneys' fees, and attorneys' fees on appeal, resulting from the intentional or negligent acts or omissions of the applicant or of any person acting on applicant's behalf in connection with the holding of a public assembly or the issuance

of the public assembly permit. Neither the applicant nor the person or organization on whose behalf the application for a public assembly permit is made shall be responsible for the conduct of a third party without a finding that it authorized—either actually or apparently—or ratified unlawful conduct. Further, the applicant shall not be responsible for the acts of government officials.

#### **Sec. 20-34: Additional Duties of Applicant, Permittee, Chairperson, and Vice-Chairperson**

- A. *Display of Permit:* The application for a public assembly permit shall become the actual permit, upon written approval by the director on the face of the permit and shall be in the physical possession of the permittee, chairperson, or vice-chairperson of the public assembly during the conduct of the public assembly. The public assembly permit shall be displayed upon demand to the director or to any law enforcement officer, code compliance officer, or any other Wellington employee charged with the administration of this article. The director shall keep a copy of the public assembly permit and may distribute copies to the reviewing departments and divisions. The permittee, chairperson, or vice-chairperson of the public assembly shall be present at all times during the public assembly.
- B. *Vice-Chairperson:* The duties of the vice-chairperson, if one is designated, shall be the same duties as the chairperson.
- C. *Joint Responsibility:* The permittee, chairperson (and vice-chairperson, if any) shall be jointly and individually responsible for conducting the public assembly in a manner that complies with the public assembly permit, including, without limitation, its directions and conditions, and with the requirements of all applicable laws, regulations, and ordinances, including, without limitation, this article.

#### **Sec. 20-35: Revocation**

The PZB Director has the authority to suspend, or revoke, a public assembly permit issued under this article instantly and without prior notice, upon material violation of the public assembly permit, including, without limitation, its directions and conditions, or material violation of the requirements of all applicable laws, regulations, and ordinances, including, without limitation, this article. In no event shall a permit be suspended or revoked based on the content of any message communicated by the public assembly, or the reaction to that message.

#### **Sec. 20-36: Offenses and Penalties**

- A. It shall be unlawful for any person to stage, present, or conduct any public assembly without first having obtained a public assembly permit therefore as provided herein, unless the public assembly is exempt from the permitting requirements as expressly provided in this article.
- B. It shall be unlawful for any person knowingly to participate in any public assembly for which a public assembly permit has not been granted, unless the public assembly is exempt from the permitting requirements as expressly provided in this article.
- C. It shall be unlawful for any person responsible for the duly permitted public assembly to knowingly fail to comply with the public assembly permit, including, without limitation, its directions and conditions, and with the requirements of all applicable laws, regulations, and ordinances, including, without limitation, this article.
- D. No person shall engage in any activity during the public assembly that places any person in the roadway or blocks the sidewalks within or adjacent to the public assembly or otherwise causes a nuisance.

- E. Violations of this article shall be enforced by the Palm Beach County Sheriff's Office as provided under applicable law.
- F. Wellington may seek legal or equitable relief against any person or organization violating the public assembly permit, including, without limitation, its directions and conditions, and with the requirements of all applicable laws, regulations, and ordinances, including, without limitation, this article.

#### **Sec. 20-37: Public Safety at Outdoor Public Assemblies**

- A. Police: The Palm Beach County Sheriff's Office serves as the law enforcement agency of Wellington and shall be the primary provider of personal safety and property security at a public assembly, as necessary.
- B. Fire: Palm Beach County Fire Rescue shall be the primary provider of fire protection services and emergency medical services at a public assembly, as necessary.
- C. Vehicles: Upon review of a public assembly application in accordance with the Policy, Wellington may, as necessary, prohibit or restrict the parking or driving of vehicles along, across, or in close proximity to the route of a public assembly in order to ensure the safe and efficient flow of vehicular and pedestrian traffic, and may post signs to such effect.

#### **Sec. 20-38: Appeal**

An applicant or permittee, whichever is applicable, wishing to appeal an adverse decision of Wellington on an application for a public assembly permit, on a waiver, or on a revocation/suspension of a public assembly permit, may:

- A. File a written request for reconsideration of the adverse decision with the director, within five (5) business days after receipt of the notice of the adverse decision, specifying the relevant facts or bases for such reconsideration. Such request for reconsideration shall be considered and determined by the PZB Director within 10 days after the director's receipt of the request for reconsideration. A written notice of the director's decision on reconsideration shall be provided to the filer of the request for reconsideration within two (2) business days after the director's decision.
- B. File an appeal to the Village Manager by filing a written notice of appeal with the director, with a copy delivered to the Village Manager, within five (5) business days after receipt of the notice of adverse decision (or notice of denial of reconsideration), specifying the relevant facts or bases for such appeal. Such appeal shall be considered and determined within 12 days after the director's receipt of the notice of appeal. A written notice of the Village Manager's decision shall be provided to the filer of the appeal.

#### **Sec. 20-39: Judicial Review**

In the event an application for a public assembly permit is denied, the granting of a public assembly permit is made subject to conditions, a public assembly permit is suspended or revoked, an appeal or waiver is not granted, or a decision is not rendered in accordance with the time requirements of this article, the applicant or the permittee, whichever is applicable, may file a request for immediate judicial review with a court having jurisdiction thereof upon the filing of an appropriate pleading.

## **CHAPTER 21 - TAXATION**

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### **ARTICLE I - PUBLIC SERVICE TAX**

#### **Sec. 21-1: Definitions**

Terms used herein and not otherwise defined herein have the meanings ascribed thereto in F.S. §§ 166.231, 166.232, 166.233 and 166.234.

#### **Sec. 21-2: Communications Services Tax**

There is hereby levied, on each and every purchase within the incorporated area of Wellington of communication services, as defined by F.S. § 202.11, which originates and terminates in this state, a local communications services tax in the amount set forth in F.S. 202.20, as amended from time to time. The rate of levy and collection of said tax shall be governed by Chapters 202 and 203, Florida Statutes.

#### **Sec. 21-3: Other Public Service Taxes**

- A. There is hereby levied by Wellington on each and every purchase within the incorporated area of Wellington of electricity, a tax at a rate of ten percent of the first \$4,000.00 purchased by a purchaser during a monthly period, a rate of two percent of the next \$2,000.00 purchased by a purchaser during a monthly period, and a rate of one percent of any amount in excess of \$6,000.00 purchased by a purchaser during a monthly period.
- B. There is hereby levied by Wellington on each and every purchase within the incorporated area of Wellington of metered or bottled gas (natural liquefied petroleum gas or manufactured), a tax at a rate of ten percent of the first \$4,000.00 purchased by a purchaser during a monthly period, a rate of two percent of the next \$2,000.00 purchased by a purchaser during a monthly period, and a rate of one percent of any amount in excess of \$6,000.00 purchased by a purchaser during a monthly period.
- C. The monthly period referenced above is the monthly billing cycle of a seller. If a seller bills in any manner other than on a monthly basis, the tax rate for all sales shall be ten percent unless changed by amendment to this article. The tax shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The term "fuel adjustment charge" means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility.

#### **Sec. 21-4: Collection**

- A. The tax levied hereby shall be collected by the seller of the taxable item from the purchaser at the time of payment for such service.
- B. The seller shall remit the taxes collected to Wellington monthly on or before the 20th day of each month.
- C. It shall be unlawful for any seller to collect the price of any purchase of electricity, or metered or bottled gas (natural, liquefied petroleum gas or manufactured), sold within the incorporated area of Wellington, without at the same time collecting such tax hereby levied in respect to such purchase or purchases, unless such seller shall elect to assume and pay such tax without

collecting the same from the purchaser or consumer, provided, however, that the seller shall not be liable for the payment of such tax upon uncollected bills.

- D. Any seller failing to collect such tax at the time of collecting the price of any purchase and sale, as aforesaid, where the seller has not elected to assume and pay such tax shall be liable to Wellington for the amount of such tax in like manner as if the same had actually been paid to the seller, and Wellington shall bring and cause to be brought all such suits and actions and take such proceedings as may be necessary for the recovery of such tax.

#### **Sec. 21-5: Recordkeeping; Inspection of Records**

- A. Each and every seller of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the incorporated area of Wellington, with respect to sales and purchases, on which the tax is hereby levied, shall keep full and complete records showing all purchases and sales of such electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the incorporated area of Wellington, which records shall show the price charged upon each sale and purchase, the date and period of time covered thereby, and the date of payment thereof.
- B. The records referred above shall, upon 60 days written notice, be open for inspection by duly authorized agents of Wellington during regular business hours of the seller at a place designated by the seller at the sole expense of Wellington. The agents of Wellington shall have the right, power, and authority to make such transcripts or copies thereof as they may desire. Records not prepared by the seller in the ordinary course of business may be provided at Wellington's expense and as Wellington and the seller may agree in writing. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to Wellington, shall be reported to the seller. Wellington's right to examine the records of the seller in accordance with this section shall not be conducted by any third party employed by Wellington whose fee for conducting such audit is contingent upon findings of the audit.

#### **Sec. 21-6: Sellers of Services to be Collection Medium and Agency; Certification of Accuracy Required**

- A. The sellers of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the incorporated area of Wellington, shall act as the collection medium and collecting agency for the collection from the purchaser of the herein levied tax for the use of Wellington. Wellington may bring such legal action as in its discretion may appear advisable under the terms of this article.
- B. The sellers of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the incorporated area of Wellington, shall furnish to Wellington a certification duly executed by one of the officials of the company certifying as to the accuracy and correctness of billings and collections required under the terms of this article, which certification shall accompany the remittance of such tax collected or paid for the preceding month.

#### **Sec. 21-7: Failure to Pay Tax; Interest and Penalties**

There are hereby assessed interest and penalties as provided below for failure to pay any tax when due or to file any required return, except that no penalty shall be assessed absent willful neglect, willful negligence, or fraud. Interest shall be assessed at the rate of one percent per month of the delinquent tax from the date the tax was due until paid. A penalty is assessed for the failure to file any return



required to be filed in connection with the tax imposed hereby or for the failure to pay any tax required to be paid, but not both, at the rate of five percent per month of the delinquent tax, not to exceed a total penalty of 25 percent except that the minimum penalty for a failure to file a required return shall be \$15.00. The interest and penalty imposed hereby shall be in addition to any other penalties provided for by law.

### **Sec. 21-8: Additional Exemptions**

In addition to exemptions otherwise provided by law, the following purchases of otherwise taxable items are hereby exempted from the tax imposed:

- A. The first 200 kilowatt hours of electricity purchased per month for residential use. This exemption shall apply to each separate residential unit, regardless of whether such unit is on a separate meter or a central meter, and shall be passed on to each individual tenant.
- B. The purchase of taxable items by any public body, as defined in F.S. § 1.01.
- C. The purchase of any taxable item by any recognized church in the State of Florida for exclusively church purposes.

### **Sec. 21-9: Computation of Tax for Monthly Periods**

In all cases where the seller of the taxable commodity or service collects the price thereof in monthly periods, the tax hereby levied shall be computed on the aggregate amount of sales during each monthly period; provided that the amount of tax to be collected shall be the nearest whole cent to the amount computed. When a seller renders a bill to a purchaser to cover purchases made during the particular period of time to which a bill is applicable, the amount of the public service tax shall be stated separately from other governmental charges and taxes and shall not be levied on such taxes and charges.

## **ARTICLE II - LOCAL BUSINESS TAX RECEIPT**

### **Sec. 21-10: Tax Imposed**

A local business tax is hereby imposed by Wellington upon:

- A. Any person who maintains a permanent business location or branch office within Wellington for the privilege of engaging in or managing any business within Wellington's jurisdiction.
- B. Any person who maintains a permanent business location or branch office within Wellington, for the privilege of engaging in or managing any profession or occupation within its jurisdiction.
- C. Any person who does not qualify under the above, and who transacts any business or engages in any occupation or profession in interstate commerce, if the business tax is not prohibited by Section 8, Article 1 of the United States Constitution.

### **Sec. 21-11: Applicability of Exemptions**

The exemptions from municipal local business taxes provided by law shall be applicable in Wellington.

### **Sec. 21-12: Places of Business; Vehicles**

Vehicles used by any person licensed under this article for the sale and delivery of tangible personal property, at either wholesale or retail, from their place of business on which a tax is paid, shall not be construed to be separate places of business.

### **Sec. 21-13: Additional/Separate Fees**

A local business tax shall grant the privilege of engaging in or managing all businesses, professions, or occupations within Wellington's jurisdiction. It shall not excuse or be in lieu of any fee charged for a license, permit, registration, examination, or inspection that is hereby deemed to be regulatory and in addition to and not in lieu of the local business tax imposed under the provisions of this article.

### **Sec. 21-14: Filing of Application**

It shall be the responsibility of any business operator to file an application for a local business tax receipt with Wellington on the form provided before engaging in or managing any business, profession, or occupation within Wellington's jurisdiction.

### **Sec. 21-15: When Taxes Due; Expiration; Penalty for Delinquency**

All local business tax receipts shall be sold beginning August 1 of each year, shall be due and payable before September 30 of each year, and shall expire on September 30 of the succeeding year. If September 30 falls on a weekend or holiday, the tax is due and payable on or before the first working day following September 30. Those receipts not renewed by October 1 shall be considered delinquent and subject to a delinquency penalty of ten percent for the month of October, plus an additional five percent penalty for each month of delinquency thereafter until paid, provided that the total delinquency penalty shall not exceed 25% of the local business tax for the delinquent establishment.

### **Sec. 21-16: Engaging in Business, Occupation, or Profession without Tax Receipt; Penalties**

Any person engaging in or managing any business, occupation, or profession without obtaining a local business tax receipt required under this article shall be subject to a penalty of 25 percent of the tax determined to be due. Any person who engages in any business, occupation, or profession covered by this article, who does not pay the required local business tax within 150 days after the initial notice of tax due, and who does not obtain the required local business tax receipt, is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to \$250.00. Any person engaging in any trade, business, profession, or occupation under a local business tax receipt issued upon false statements made by such person or on their behalf, shall, upon conviction thereof, be punished as provided by law.

### **Sec. 21-17: Issuance of Receipt**

Upon payment of the taxes required by this article, Wellington shall issue to the person paying the same a receipt, which receipt shall expire at the end of the period for which such receipt is issued as specified in this article.

### **Sec. 21-18: Period of Local Business Tax Receipt; Issuance**

Unless otherwise provided, the amount of the local business tax specified by this article shall be on the basis of one year covering the period from October 1 to September 30 next succeeding, but receipts shall be issued in accordance with the following:

- A. Receipts issued between September 30 and March 30 shall pay the full amount.

- B. Receipts issued between April 1 and September 30 shall pay one-half of the full amount.

**Sec. 21-19: Expiration Date**

No receipt shall be issued for more than one year, and all receipts shall expire on September 30 of each year unless otherwise provided.

**Sec. 21-20: Transfer to New Ownership; Fee**

- A. Change of Owner: All local business tax receipts may be transferred to a new owner when there is a bona fide sale of the business upon payment of a transfer fee of 10% of the annual local business tax, but not less than \$3.00 and not more than \$25.00, and presentation of evidence of the sale, and the original receipt.
- B. Change of Location: Upon written request and presentation of the original receipt, any receipt may be transferred from one location to another location within Wellington upon payment of a transfer fee of ten percent of the annual local business tax, but not less than \$3.00 and not more than \$25.00.

**Sec. 21-21: Issuance of Local Business Tax Receipt to Licensed Professionals**

No local business tax receipt shall be issued to a licensed professional or business office unless the professional possesses a certificate from the state or applicable industry licensing board. Any licensed professional, employed by a local business or an independent contractor, shall provide satisfactory evidence that the certificate or license referred to in this section is in full force and effect.

**Sec. 21-22: Issuance of Local Business Tax Receipt to Contractor**

No local business tax receipt shall be issued to a contractor unless the contractor possesses a certificate from the state construction industry licensing board or a license from the Construction Industry Management Council of Palm Beach County. Before the issuance by Wellington, the applicant must produce satisfactory evidence that the certificate or license referred to in this section is still in force and effect.

**Sec. 21-23: Local Business Tax Receipt Required for Additional Trades, Business, etc.**

Any person engaged in two or more trades, vocations, businesses, or professions for which a local business tax receipt is required shall be required to pay a local business tax for each separate line of trade, business, vocation, or profession.

**Sec. 21-24: Exemptions for Local Business Tax Receipts**

Any individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt. For the purposes of this section, an individual licensed and operating as a broker associate or sales associate is considered an employee. A principal or employer who is required to obtain a local business tax receipt may be required to provide licensing information for individuals exempt under this section in order to obtain a local business tax receipt. An individual acting in the capacity of an independent contractor is not an employee and is required to obtain a local business tax receipt as provided in this article.

### **Sec. 21-25: Display of Local Business Tax Receipt**

Each person holding a local business tax receipt under this article shall keep the receipt posted in a conspicuous place, and the receipt shall be shown to any officer of Wellington requiring to inspect it.

### **Sec. 21-26: Classification and Rate Schedule**

A local business tax classification and rate schedule is hereby adopted by reference and is attached as Exhibit A to Ordinance No. 2012-014.

## **ARTICLE III - ADDITIONAL HOMESTEAD EXEMPTION**

### **Sec. 21-27: Additional Homestead Exemption for Persons 65 Years and Older**

A. *Purpose and Intent:* The purpose of this article is to provide an additional homestead exemption for persons 65 years of age and older in accordance with F.S. § 196.075, as amended from time to time.

B. *Definitions:*

**Household:** a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding or renting a portion of a dwelling.

**Household Income:** the adjusted gross income, as defined in Section 62 of the United States Internal Revenue Code, of all members of the household.

C. *General:*

1. *Wellington taxes only:* Pursuant to and in accordance with F.S. § 196.075, the additional homestead exemption set forth in this section shall apply only to taxes levied by Wellington, including, if any, dependent special districts and municipal service taxing units.

2. *Amount of additional homestead exemption:* Any person(s) who meets the requirements set forth in the subsection below, shall be eligible for an additional \$50,000.00 homestead exemption.

D. *Requirements to obtain additional homestead exemption:* Any person(s) who on January 1 has attained the age of 65 years will be entitled to an additional homestead exemption if all of the following requirements are met:

1. The person has legal or beneficial title in equity to real estate;

2. The person maintains thereon and in good faith makes the same their permanent residence or the permanent residence of another or others legally or naturally dependent upon such person;

3. The person's household income does not exceed \$20,000.00 as adjusted herein below;

4. The taxpayer claiming the exemption submits annually to the Palm Beach County Property Appraiser, not later than March 1, a sworn statement of household income on a form prescribed by the Florida Department of Revenue;

5. In accordance with rules of the Florida Department of Revenue, a statement is filed which is supported by copies of any federal income tax returns for the prior year, any wage and earnings statements (W-2 forms), and any other documents which the Florida Department of Revenue deems necessary, for each member of the household. Such documentation must be submitted by June 1 and the statement shall attest to the accuracy of such copies; and
  6. The property appraiser approves the exemption after provided with all required documentation.
- E. Household Income: For purposes of the subsection above, the \$20,000.00 household income limitation shall be calculated in accordance with F.S. § 196.075(3) and shall have been adjusted annually, since January 2001, and continue to be adjusted annually, on January 1, by the percentage change in the average cost-of-living index within the period January 1 through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is the average of the monthly consumer-price-index figures for the state 12-month period, relative to the United States as a whole, issued by the United States Department of Labor.
- F. If title is held jointly with the right of survivorship, the person residing on the property and otherwise qualifying may receive the entire amount of the additional homestead exemption.

## **CHAPTER 22 - TRAFFIC AND VEHICLES**

### **ARTICLE I – GENERAL**

#### **Sec. 22-1: Territorial Application**

This chapter applies throughout the jurisdictional limits of Wellington.

#### **Sec. 22-2: Florida Uniform Traffic Control Law Adopted**

The Florida Uniform Traffic Control Law, Chapter 316, Florida Statutes, is hereby adopted as part of this Code. Violations of the Florida Uniform Traffic Control Law are therefore violations of this Code. Where any conflict exists between this Code and the Florida Uniform Traffic Control Law, the Florida Uniform Traffic Control Law will prevail.

#### **Sec. 22-3: Definitions**

The definitions in section 316.0003, Florida Statutes, apply to this chapter. In addition, the following definitions apply:

**Boat:** any vessel or craft designed to travel over water, whether motorized or not.

**Bus Stop:** a fixed area in the roadway parallel and adjacent to the curb occupied exclusively by buses for layover in operating schedules or waiting for passengers.

**Clerk of the Court:** the Clerk of the Circuit Court & Comptroller in and for Palm Beach County.

**Commercial Vehicle:** a vehicle that is not used solely for personal nonbusiness activities. The following factors will be considered when determining commercial status: (1) Outside lettering designating a business of any kind; (2) use of vehicle; and (3) size of vehicle. The following types of vehicles shall be considered commercial for the purposes of this section, but shall not be the only types of vehicles considered as commercial: truck cab; semi-trailer; taxi; tow truck; step-van; construction vehicle; bus; trailer or utility trailer; a vehicle outfitted for commercial purposes or a vehicle with three (3) or more axles.

**Curb Loading Zone:** a space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

**Enforcement Officer:** the sheriff, sheriff's deputy, their agents or employees, a police officer, the code enforcement officers and assistants, or any other person designated by law, charter, ordinance, or resolution to enforce the provisions of this chapter.

**Freight Curb Loading Zone:** a space adjacent to a curb for the exclusive use of vehicles during the loading or unloading of freight.

**Government Vehicle:** a vehicle designated and authorized for use by a federal, state, county or municipal agency.

**Golf Cart:** a motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes.

**Inoperative Vehicle:** a motor vehicle that cannot move under its own power due to defective or missing parts or lack of fuel.

**Motor Vehicle:** every self-propelled device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, including, but not limited to, an automobile, a truck, a van, a motorcycle, a motor-driven cycle, a scooter, a moped, or a golf cart.

**Parts:** all component parts of a vehicle that are in a state of disassembly, or are assembled with other vehicle component parts, but which, in their state of assembly, do not constitute a complete vehicle.

**Private Property:** property that is not classified within the definition of public property.

**Public Property:** any public right-of-way, any property owned by the United States or any federal, state, county, or municipal governments, and all roadways, streets, highways, terraces, courts, lanes, or boulevards within Wellington, whether or not they are public highways.

**Recreational Vehicle:** any vehicle designed as a temporary living quarters for recreational, camping, or travel use that is self-powered or is mounted on or drawn by another vehicle.

**Right-of-Way:** land dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies. The term shall mean both a Wellington right-of-way and private right-of-way, but shall not include property conveyed to or owned by Wellington in fee simple.

**Road, Street, Alley, Highway, or Public Easement:** the entire width between the boundary lines of every public right-of-way, including, but not limited to, canal banks and canal easements.

**Skateboard:** a single platform mounted on wheels, mechanism, or other device with which to steer or to control the movement or direction of the platform.

**Sports Vehicle:** includes but is not limited to the following: dune buggy, racing vehicle, all-terrain vehicle, or other type of off-road vehicle designed primarily for off-road use.

**Taxicab:** a licensed public motor vehicle for hire designated and constructed to seat not more than seven (7) persons and operating as a common carrier on call or demand.

**Taxicab Stand:** a fixed area in the roadway parallel and adjacent to the curb set aside for taxicabs to stand or wait for passengers.

**Wellington Road:** a road or street within the jurisdictional boundaries of the Village of Wellington that is open to travel by the public and is not maintained by a private entity.

#### **Sec. 22-4: Copy of Vehicle Registration in Owner's Name Prima Facie Evidence that Vehicle was Unlawfully Parked by Owner**

Evidence that a vehicle bearing a certain license tag was found unlawfully parked and that the records of the department of motor vehicles of the state show that the license tag was issued and the vehicle registered in the name of the owner, shall be prima facie evidence that the vehicle which was unlawfully parked was so parked by the owner.

#### **Sec. 22-5: Authority to Install Traffic Control Devices and Signals**

The Wellington Engineer is authorized to install, remove, or modify traffic control devices and signals to regulate vehicular, bicycle, and pedestrian traffic on the streets and public ways in Wellington when determined to be necessary or desirable for safe traffic control. All installations of traffic control devices

and signals by Wellington, pursuant to the authority of this chapter, shall comply with the manual and specifications of the state department of transportation.

#### **Sec. 22-6: Authorization of No Parking Restrictions**

The Wellington Engineer is authorized and directed to erect signs giving notice of the no parking restrictions at such places within Wellington as in their opinion are necessary or advisable to inform the public of this prohibition.

#### **Sec. 22-7: Regulation and Control of Motor Vehicles on Certain Private Property**

Wellington shall have the power to regulate and control the parking and operation of all motor vehicles on private property and to impose and enforce adequate penalties for violation of such regulations.

#### **Sec. 22-8: Enforcement**

Enforcement of this article may be by Wellington code or law enforcement officers.

#### **Sec. 22-9: Parking of Vehicles and Boats in Residential Districts**

A. *Applicability:* Unless otherwise stated, these regulations shall apply as specified herein to all property in residential zoning districts or residential land use categories excepting those properties located within the Equestrian Overlay Zoning District (EOZD) and designated subareas as outlined in Wellington's Land Development Regulations (LDR).

B. *Motor Vehicles:*

1. It shall be prohibited to park a motor vehicle in any portion of a yard or landscaped area clearly visible from the street or adjoining properties, except the paved driveway or approved alternative surface, or as otherwise provided herein.
2. In all residential land use categories including within the EOZD, it shall be prohibited to park or store on any property or in any right-of-way a vehicle that is inoperative, unregistered, or has no current license tag displayed, including golf carts; except that one (1) vehicle that is unregistered or does not display a current license tag may be kept on site provided the vehicle is completely screened from view from adjacent roads and properties.
3. It shall be prohibited to perform mechanical or other repair work outside on a motor vehicle. This prohibition does not extend to minor maintenance such as oil and tire changes or emergency repairs lasting no more than eight (8) hours on a vehicle owned by a resident of the property where the repairs are made.
4. One (1) golf cart may be parked as permitted in this Code. Low speed vehicles may be parked as permitted by this Code.

C. *Commercial Vehicles:*

1. *General Prohibition:*

- a. On-street: No person shall park, store, or keep any commercial vehicle on any public street, thoroughfare, or any right-of-way.



- b. Off-street: No owner or resident of property in any residential district shall park, cause to be parked, or allow to be parked on such property a commercial vehicle as follows:
  - i. For more than one (1) hour between 6:00 a.m. and 8:00 p.m., commencing from the time of first stopping or parking; or
  - ii. For any period of time between 8:00 p.m. and 6:00 a.m.

2. Exceptions:

- a. Commercial vehicles: One (1) commercial vehicle per dwelling unit may be parked on a residential lot, provided the vehicle is operative, registered, and displays a current license tag, and no portion of the vehicle is visible from adjoining properties or the street. One (1) vehicle that is deemed a commercial vehicle due to the display of outside lettering may be parked on a residential lot provided the lettering be completely covered.
- b. Construction vehicles: The general prohibition set out above shall not apply to the temporary off-street parking of construction and commercial vehicles on private property where construction is underway, for which a current and valid building permit has been issued by the Building Official, and the building permit is displayed on the premises.
- c. Delivery and service vehicles: The general prohibition set out above does not apply to routine deliveries by tradesmen or the use of commercial vehicles in making service calls, provided that such time in excess of one (1) hour is actually in the course of business deliveries or servicing and the commercial vehicle does not impede the orderly flow of traffic.
- d. Emergency repairs: The general prohibition set out above shall not apply to a situation where a commercial vehicle becomes disabled and, as a result of such emergency, is required to be parked for more than one (1) hour. The commercial vehicle shall be removed within 24 hours, regardless of the nature of the emergency.
- e. Government vehicles: The general prohibition set out above shall not apply to government vehicles if all of the following conditions are met:
  - i. The government vehicle is designated and authorized by a federal, state, county or municipal agency for use by a member of the household.
  - ii. The government vehicle has a payload capacity of one (1) ton or less.
  - iii. Government vehicles may also be subject to additional restrictions or exemptions as outlined in Chapter 316, F.S.

D. Recreational Vehicles, Sports Vehicles, Boats, and Various Types of Trailers:

1. General prohibition:

- a. On-street: No person shall park, store, or keep any recreational vehicle, sports vehicle, boat, or trailer on any public street or other thoroughfare or any right-of-way.

- b. Off-street. No owner or resident of property in any residential district shall park, cause to be parked, or allow to be parked on such property a recreational vehicle, sports vehicle, boat, or trailer for a period exceeding one (1) hour in any 24-hour period; each such period commencing at the time of first stopping or parking.

2. Exceptions:

- a. Emergency repairs: The general prohibition set out above shall not apply where a recreational vehicle, sports vehicle, boat, or trailer becomes disabled and, as a result of such emergency, is required to be parked for more than one (1) hour. The recreational vehicle, sports vehicle, boat, or trailer shall be removed within 24 hours, regardless of the nature of the emergency.
- b. Outdoor storage: Two (2) of the following items below in any combination may be parked outdoors on a residential lot at any given time: (1) a boat; (2) a boat trailer, with or without a boat mounted on it; (3) a jet ski or other type of personal watercraft; (4) a jet ski or personal watercraft trailer, with up to two (2) crafts mounted on it; (5) a recreational vehicle; (6) a sports vehicle; (7) a non-enclosed sports vehicle trailer, with or without a vehicle mounted on it; or (8) a horse trailer. Outdoor storage of such vehicle is permitted pursuant to this section only if all of the following conditions are met:
  - i. The boat, sports vehicle, recreational vehicle, or trailer is both owned and used by a resident of the property.
  - ii. The boat, recreational vehicle, sports vehicle, or trailer is parked either on the swale and/or paved parking area only for the purpose of loading, unloading, or servicing that vehicle for a maximum period of four (4) hours in any one (1) day and for a maximum of eight (8) hours in any one (1) week period. Any boat, recreational vehicle, sports vehicle, or trailer remaining on the premises for more than two (2) evenings between the hours of 8:00 p.m. and 6:00 a.m. in any twenty-day period shall be considered a violation of the general prohibition in this subsection.
  - iii. The boat, sports vehicle, recreational vehicle, or trailer is located in the side or rear lot, is not clearly visible from the street or abutting properties, and is screened by a masonry wall, ornamental fence, or landscaping at the maximum height limit permitted by Wellington regulations.
  - iv. The recreational vehicle is not being used for living, sleeping, or housekeeping purposes. Recreational vehicles located within the EOZD shall be governed by the LDR.
  - v. The boat, trailer, or recreational vehicle is operative, is currently registered and displays a current license tag as may be required under state or federal law.

The provisions of the LDR shall govern parking of horse trailers in the equestrian preservation areas.

- E. Special Exceptions: Wellington may grant a special exception for any one (1) vehicle that does not meet the requirements of this subsection upon demonstration that the property owner, family member, or tenant has a physical disability requiring a vehicle that cannot meet this subsection.

## **Sec. 22-10: Stopping, Standing, or Parking Prohibited in Specified Places**

- A. Applicability. Unless otherwise stated, these regulations shall apply to all property and land use categories within Wellington, including the EOZD.
- B. No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of an enforcement officer or traffic control device, in any of the following places:
  - 1. On a sidewalk;
  - 2. On a horse trail;
  - 3. On a bicycle path;
  - 4. In front of a public or private driveway, or in a place that obstructs in any way a public or private driveway;
  - 5. Within an intersection;
  - 6. Within 15 feet of a fire hydrant;
  - 7. On a crosswalk;
  - 8. On a horse crossing area;
  - 9. Within 20 feet of a crosswalk at an intersection;
  - 10. Within 100 feet of any flashing beacon, stop sign, or any traffic-control signal located at the side of a roadway;
  - 11. Between a safety zone and the adjacent curb, or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the Wellington Engineer indicates a different length by signs or markings;
  - 12. Within 50 feet of a bridge;
  - 13. Within 20 feet of the driveway entrance to any fire station and on the side of a roadway opposite the entrance of any fire station within 75 feet of said entrance.;
  - 14. Alongside or opposite any street or highway excavation or obstruction when such stopping, standing, or parking would obstruct traffic;
  - 15. On the roadway side of any vehicle stopped or parked at the edge of a street;
  - 16. Upon any street or roadway, unless clearly marked by striping and/or signage to permit parking;
  - 17. Upon any bridge or other elevated structure upon a street;
  - 18. At any place where official signs prohibit stopping, standing, or parking.

- C. No person shall move a vehicle not owned by or in charge of such person into any such prohibited area or away from a curb such a distance as is unlawful.
- D. Where streets are not completely paved or where no curbs are provided, no vehicle shall be parked on the paved or commonly traveled portion of the roadway.
- E. No person shall stop, stand, or park a vehicle for any purpose in a curb loading zone, except for the expeditious loading or unloading of materials, and in no event for a period of more than 30 minutes, unless otherwise posted.
- F. The driver of a vehicle may stop temporarily at a place marked as a freight curb loading zone for the purpose of and while actually engaged in loading or unloading passengers, when such stopping does not interfere with any motor vehicle used for the transportation of materials that is waiting to enter, or about to enter, such zone.
- G. No person shall park a vehicle at any time on any of the following parts of streets, sidewalks, or sidewalk area where signs are erected giving notice thereof:
  - 1. In front of a theater entrance;
  - 2. In front of an entrance or exit to a hotel or motel;
  - 3. In front of any school building for a distance of 100 feet either side of the entrance;
  - 4. In front of the entrance to any building where, in the opinion of the Wellington Engineer, parking should be prohibited for public safety; or
  - 5. In a fire lane.
- H. No person shall at any time park or allow to be parked a vehicle on a public or private swale or easement adjacent to a paved or unpaved road or street, or across a public or private sidewalk. This provision shall not apply during a garage sale, "open house", or other special or social event in areas where temporary parking is permitted by the host or neighbors.

#### **Sec. 22-11: Motor Vehicles for Sale; Exception**

- A. No person shall park or display any motor vehicle that is being held out and marketed for sale in any public right-of-way or on any private property within Wellington.
- B. The following are exempted from the prohibition in this section:
  - 1. Duly authorized and properly licensed commercial establishments that engage in the sale or lease of motor vehicles.
  - 2. Residents of private residential premises seeking to sell only one (1) motor vehicle at any particular time, which motor vehicle is owned by a member of that household, has a payload capacity of one (1) ton or less, and is parked and displayed upon a paved portion of the residential premises.

#### **Sec. 22-12: Parking Prohibited for Certain Purposes**

No person shall park a vehicle within any right-of-way for the principal purpose of:

- A. Displaying such vehicle for sale.

- B. Displaying advertising.
- C. Selling merchandise from such vehicle, except in a duly established marketplace or when so authorized by this Code.
- D. Storage, or as junk or dead storage for more than 24 hours.

### **Sec. 22-13: Hitchhiking or Solicitation from Roadway Prohibited**

No person shall stand in or within proximity to a roadway for the purpose of soliciting a ride from, or selling merchandise to, the driver of or a passenger in any vehicle.

### **Sec. 22-14: Parking Time Limited on Certain Streets**

When signs are erected giving notice of the limitation of time for parking, no person shall stop, park, or stand a vehicle for longer than the time specified by such signs.

### **Sec. 22-15: Taxicabs and Buses to Use Stands and Stops**

The operator of a bus or taxicab shall not stop, stand, or park upon any street at any place other than at a bus stop or taxicab stand, respectively, except that this provision shall not prevent the operator of any such vehicle from temporarily stopping in accordance with other stopping, standing, or parking regulations at any place for the purpose of and while engaged in the expeditious unloading or loading of passengers.

### **Sec. 22-16: Unauthorized Use of Taxicab Stands and Bus Stops**

No person shall stop, stand, or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand, when such stop or stand has been officially designated and marked, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in the expeditious loading or unloading of passengers, when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone.

### **Sec. 22-17: Parking and Operation of Vehicles on Public or Private Property**

- A. It shall be unlawful to park, operate, use, or maintain any motor vehicle on any publicly owned property or any undeveloped property within Wellington other than on roadways improved for vehicular traffic or in areas designated for parking. "Publicly-owned property" shall mean any real property owned or leased by Wellington, the county, or any other governmental authority. "Undeveloped property" shall have the same definition as provided in Chapter 9 of this Code.
- B. This section shall not apply to vehicles performing maintenance, construction, enforcement activities, or other related activities. This section shall not apply to any farming operation within Wellington.

### **Sec. 22-18: Operation of Off-Road Vehicles Restricted**

- A. For the purposes of this section, the term "off-road, all-terrain vehicles" shall mean and include vehicles commonly known as dune buggies, ATVs, swamp buggies, amphibious vehicles, dirt bikes, and motorcycles.
- B. All off-road, all-terrain vehicles are prohibited from operating in Wellington unless:

1. The property owner where such vehicles are being operated has agreed in writing to such operation, and the operator in question has such written permission in their possession during such operation; and
2. Said operator is not creating a nuisance to adjacent property owners, creating a disturbance of the public peace and welfare, and the sound emitted from the operation of such vehicle is not detrimental to life or health.

#### **Sec. 22-19: Neighborhood Parking Plans as Exception to Prohibited Parking**

- A. Neighborhood parking plans. In communities with private roads, community associations may apply to the Wellington Council for implementation of a neighborhood parking plan that provides for parking exceptions to section 22-10. Public safety shall be the paramount concern when reviewing proposed neighborhood parking plans.
- B. In order for a neighborhood parking plan to become effective and for the exceptions to apply, all of the following conditions must be met:
  1. The community association, on behalf of its members, must apply for the neighborhood parking plan;
  2. The community requesting the plan must have restricted or gated access that limits use of roads to residents or guests and other invited individuals;
  3. The Wellington Council must adopt the plan by resolution following its review and approval by the Wellington Engineer, the Planning, Zoning and Building Director, and the Director of Public Works;
  4. The community association shall provide proof of an affirmative vote by the majority of its members approving the plan or in the alternative shall provide written documentation from the attorney for the association that such plan is legal and in accordance with the governing documents of the community association;
  5. The community association must assume responsibility for enforcement of the plan;
  6. The community association is responsible for all application fees; and
  7. The proposed plan is prepared by Wellington in conjunction with the affected community association.

#### **ARTICLE II - PARKING FOR DISABLED PERSONS**

#### **Sec. 22-20: Unlawful Parking in Space Designated for Use by Disabled Persons; Responsibility of Owner to comply with State Law**

- A. It is unlawful for any person to stop, stand, or park a vehicle within any marked parking space specially designated for use by disabled persons provided in accordance with state law or Wellington ordinance, unless such vehicle displays a disabled person parking permit or license plate issued pursuant to state law, and such vehicle is transporting the person to whom the permit or plate is issued. Whenever an enforcement officer finds a vehicle stopped, standing, or parked in violation of this section, that officer shall:
  1. Have the vehicle in violation removed to any lawful parking space or facility or require the operator or other person in charge of the vehicle to immediately remove the vehicle from the parking space. Whenever any vehicle is removed by an enforcement officer to a lawful

parking space or facility, the cost of such removal and parking shall be a lien against the vehicle; and

2. Charge the operator or other person in charge of the vehicle with a violation of this section, punishable with a minimum mandatory fine of \$250.00.
- B. Any person who is chauffeuring a disabled person shall be allowed, without need for a disabled person parking permit or license plate, momentary parking in any such parking space for the purpose of loading or unloading the disabled person. No penalty shall be imposed upon the driver for such momentary parking.
- C. The mandatory minimum penalty of \$250.00 may be waived upon payment of \$5.00 when a disabled person produces proof or a satisfactory explanation that they were the driver of the vehicle (or were being transported in such vehicle) cited and that they had a valid disabled person parking permit or license plate, when the citation was issued. All persons wishing to request a waiver of the penalty shall make such requests in person to the Wellington Clerk within 10 calendar days of receiving the parking ticket. All of the following are required in order to process a waiver of the mandatory minimum penalty:
  1. Copy of disabled person parking permit or license plate;
  2. Copy of the parking placard registration and matching personal identification;
  3. The issued parking ticket; and
  4. Required fee.

A "Disabled Parking Penalty Waiver Affidavit" shall be completed and signed by the Wellington Clerk after it has been established that the party appealing the penalty has complied with the requirements of this section and the costs have been received.

- D. Responsibility of Owner to Comply with State Requirements for Disabled Parking: The markings, paint color, signage, and space design requirements for disabled parking shall meet the requirements of state law.

### **ARTICLE III - ABANDONED VEHICLES**

#### **Sec. 22-21: Abandoned Vehicles on Public and Private Property**

- A. Abandoned Vehicles on Public Property; Authority to Impound. Any enforcement officer is hereby authorized to remove a vehicle from a street to the nearest garage or other place of safety, or a garage designated or maintained by the sheriff's department or by Wellington under the circumstances hereinafter enumerated and subject to the procedures set forth in this article:
  1. When a vehicle is left unattended upon any street where such vehicle constitutes an obstruction to traffic;
  2. When a vehicle upon a street constitutes an obstruction to traffic or the person or persons in charge of the vehicle are by physical injury incapacitated to such an extent as to be unable to provide for its custody and removal;
  3. When a vehicle is found being operated on the streets and is not in proper condition;
  4. When a vehicle is left unattended upon a street continuously for more than 48 hours and may be presumed to be abandoned;
  5. When the driver of a vehicle is taken into custody by the police and such vehicle would thereby be left unattended upon a street; or

6. When removal of a vehicle is necessary in the interest of public safety because of fire, flood, storm, or other emergency reason.
- B. Abandoned Vehicles on Private Property: An abandoned vehicle on private property constitutes a public nuisance and may be abated in accordance with Chapter 9 of this Code.

## **Sec. 22-22: Abandoned Vehicle; Procedure for Removal and Destruction**

- A. The rights, powers, and procedures set forth in this section shall be supplemental to and cumulative to the rights, powers, and procedures set forth elsewhere in this article and Code.
- B. Whenever an enforcement officer ascertains that an abandoned vehicle is present on public property contrary to section 22-21 of this Code, they shall cause a notice to be placed upon such abandoned vehicle in substantially the following form:

### **NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED VEHICLE**

**THIS VEHICLE, TO WIT: (Setting forth brief description) LOCATED AT (Setting forth a brief description) IS UNLAWFULLY UPON PROPERTY LOCATED AT (Setting forth brief description of location) AND MUST BE REMOVED WITHIN FIVE (5) DAYS FROM THE DATE OF THIS NOTICE; OTHERWISE IT SHALL BE PRESUMED TO BE AN ABANDONED VEHICLE AND WILL BE REMOVED AND DISPOSED OF PURSUANT TO FLORIDA LAW.**

You are notified that you may show cause why the above vehicle should not be removed as an abandoned vehicle by written request for a pre-taking hearing to be held before the Village Manager of Wellington, or his designee, at 12300 Forest Hill Boulevard, Wellington, Florida 33414. You must make such a request for a pre-taking hearing by delivering a written request for a hearing to the Wellington Clerk within five (5) days of the posting of this notice, or by 5:00 p.m. on \_\_\_\_\_.

Failure to request a hearing or failure to remove this vehicle if so ordered by the Village Manager or his designee within 48 hours of said hearing will result in removal by Wellington.

DATED this \_\_\_\_\_ (setting forth the date of posting of notice).  
Signed (setting forth name, title, address, and telephone number of enforcement officer).

Such notice shall be not less than eight (8) inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the elements.

- C. The enforcement officer shall also make a reasonable effort to ascertain the name and address of the owner of the abandoned vehicle, and if such address is reasonably available to the enforcement officer, they shall mail a copy of such notice to the owner on or before the date of posting.
- D. If, at the end of five (5) days after the posting of such notice, or 48 hours after the pre-taking hearing, whichever occurs later, the owner or any person interested in the abandoned vehicle described in such notice has not removed the abandoned vehicle from public property, or shown reasonable cause for failure to do so, then the enforcement officer may cause the abandoned vehicle to be removed and either stored, destroyed, used by Wellington for its own purposes, traded to another unit of local government or state agency, donated to a charitable organization,



or sold. The salvage value, if any, of such abandoned vehicle that is destroyed shall be retained by Wellington to be applied against the cost of removal and destruction thereof, unless the costs of removal and destruction are paid by the owner as provided in subsection (e), in which case the salvage value may be deposited in Wellington's general funds.

- E. The owner of any abandoned vehicle, who, after notice as provided in this section, does not remove the vehicle within the specified period, shall be liable to Wellington for all costs of removal and destruction of such vehicle, less any salvage value received by Wellington. Upon such removal and destruction, Wellington shall notify the owner of the amount owed and of the penalty provision of this subsection. Any person who neglects or refuses to pay such amount shall be subject to a fine of \$250.00.

### **Sec. 22-23: Reacquisition by Owner; Procedure**

If the enforcement officer determines that the abandoned vehicle has sufficient value to justify its storage, the owner of the vehicle may regain possession of the stored vehicle by making application therefore within two (2) months after its receipt of notification by Wellington that the vehicle is in storage and paying Wellington all costs of removal, plus storage charges, plus all fines imposed upon the owner for violation of this chapter. If the enforcement officer determines that the abandoned vehicle should be destroyed, used by Wellington for its own purposes, traded to another unit of local government or state agency, donated to a charitable organization, or sold, the owner will be notified by certified mail, and the vehicle may be destroyed, traded, or otherwise disposed of 30 days after expiration of the owner's two (2) month opportunity to reacquire the vehicle. If Wellington sells the vehicle, monies received must be used to pay towing, storage, and any of the costs Wellington incurs related to the vehicle. Any and all surplus monies remaining after payment of expenses shall be paid into the general fund.

## **ARTICLE IV – PENALTIES; MISCELLANEOUS PROVISIONS**

### **Sec. 22-24: Penalties**

- A. Wellington adopts the provision of F.S. § 318.18 as amended, related to the noncriminal disposition of offenses other than those specifically set forth below.
- B. The following civil penalties shall be imposed for violations of referenced sections of this chapter.

<b><u>Violation</u></b>	<b><u>Civil Penalty</u></b>
<u>Violations of Article I, except section 22-9</u>	<u>\$35.00 for each violation</u>
<u>Violations of Article I, section 22-9</u>	<u>\$35.00 for each violation or such penalties as may be imposed by order of the special magistrate pursuant to the provisions of section 2-39 Code of Ordinances</u>
<u>Violations of Article II</u>	<u>\$250.00 for each violation</u>

- C. Any person owing moneys for parking tickets issued within Wellington shall remit payment at the place designated on the ticket within 30 days of the date of issuance of such ticket.

### **Sec. 22-25: Late Fee**

For a parking violation citation issued by a Wellington Code Compliance Officer, a late fee of \$12.00 is established and must be paid in connection with the payment of any parking violation fine paid more than 30 days after the date of issuance of the citation, excluding the date of issuance.

## **Sec. 22-26: Administrative Appeal of Parking Violation Citation**

### **A. Request for administrative hearing:**

1. Any person wishing to contest a parking violation citation issued by a Wellington Code Compliance Officer may appeal and contest such citation by making a written request for an administrative hearing to the Wellington Clerk within 30 days of the date the citation was issued. Failure to contest such violation by way of the above procedure shall constitute an admission by the violator that the infraction was committed and will operate as a waiver of the right to a hearing on the issue.
2. Upon receipt of the request for an administrative hearing for a parking citation issued by a Wellington Code Compliance Officer, the Wellington Clerk shall notify the Clerk of the Court. The alleged violator and Wellington shall be given notice of the date and time of the hearing before the traffic hearing officer.
3. Any person wishing to contest a parking violation issued by the Palm Beach County Sheriff's Office and processed by the Palm Beach County Clerk of Court shall contact the Clerk of Court within 30 days of the date the citation was issued. Failure to contest such violation by way of the above procedure shall constitute an admission by the violator that the infraction was committed and will operate as a waiver of the right to a hearing on the issue.

- B. The hearing shall be conducted in accordance with F.S. § 318.14 and the Florida Rules of Traffic Court, as amended from time to time. The Florida Rules of Traffic Court are available at: [floridabar.org/rules/ctproc/](http://floridabar.org/rules/ctproc/).

## **Sec. 22-27 - Supplying Parking Violation Information to the State**

Wellington shall supply the Florida Department of Safety and Motor Vehicles, or any successor department performing substantially the same duties, with a list of persons who have three (3) or more outstanding parking violations, or one (1) or more outstanding parking violation(s) of F.S. § 316.1955, F.S. § 316.1957 or any Wellington ordinances that regulate parking in spaces for persons with disabilities. The information may be supplied to the Florida Department of Highway Safety and Motor Vehicles in any communication format approved by it or by state statute.

## **Sec. 22-28: Safety Helmet Required for Riding Horses and Other Equine Animals**

- A. It is the intent of Wellington by enacting this section to protect the health, safety and welfare of young equine animal riders in Wellington.
- B. An equine animal rider who is under 16 years of age must wear a helmet that meets the American Society of Testing and Materials (ASTM) standards and is properly fitted and fastened securely upon the rider's head by a strap, when riding in a public area. This requirement applies regardless of whether a rider is controlling the equine animal. As used within this section, the term "equine animal" means a horse, pony, mule, or donkey. The term "public area" as used within this section means:
1. All areas within Wellington where Wellington enjoys original jurisdiction to regulate traffic pursuant to the State Uniform Traffic Control Laws;
  2. All public parks or premises, public school sites, public equestrian trails, public recreational trails, or publicly owned or controlled property.

- C. No parent or guardian of any person under the age of 16 years may authorize or knowingly permit any such minor person to violate any of the provisions of this section.
- D. No person may knowingly rent or lease any equine animal to be ridden by a person who is under the age of 16 years unless the prospective rider possesses a helmet meeting the requirements of subsection (b) above or the lessor provides a helmet meeting such requirements for the prospective rider to wear.
- E. Any person who violates this section may be issued a citation and fine of \$25.00 by an enforcement officer.
- F. This section does not apply to a person riding an equine animal when such rider is:
  - 1. Practicing for or competing or performing in shows or events, including, but not limited to, rodeos and parades, where helmets are not historically a part of the show or event;
  - 2. Riding on privately owned land even if the land is occasionally separated by a public road or right-of-way that must be crossed; or
  - 3. Engaged in any agricultural practice or pursuit.

## **ARTICLE V - GOLF CART OPERATION ON DESIGNATED WELLINGTON ROADS AND DESIGNATED MULTI-MODAL PATHWAYS**

### **Sec. 22-29: Legislative Intent**

The purpose of this article is to authorize and regulate the operation of golf carts on property owned by Wellington or dedicated for use by the public in a manner that is consistent with state and federal law and that promotes the general health, safety, and welfare of the community. This article does not regulate the operation of low-speed vehicles within Wellington. Golf cart operation on property that is owned by Wellington or dedicated for use by the public in a manner that is not expressly authorized by this article is prohibited.

### **Sec. 22-30: Definitions**

In addition to the definitions in section 22-3, the following definitions apply to this article:

**Authorized Golf Cart Crossing:** a crosswalk at a signalized intersection, a stop-controlled intersection, a mid-block crossing, or a side street crossing that is marked by Wellington with signs/pavement markings indicating that it is an authorized golf cart crossing. Crossings will be evaluated for approval of use by golf carts by the Wellington Engineer and must conform to the Wellington Engineering Standards Manual, Latest Edition.

**Canal Right-of-Way:** a strip of land adjacent to a canal within the jurisdictional boundaries of Wellington that is dedicated or deeded to the perpetual use of the public.

**Designated Multi-modal Pathway:** (1) a sidewalk or portion of a sidewalk, or (2) a canal right-of-way or portion of a canal right-of-way, that is within the jurisdictional boundaries of Wellington and approved for use by pedestrians, bicycles, and golf carts. A designated multi-modal pathway meets all of the following criteria: 1) it is a minimum of eight (8) feet wide; 2) it is paved; 3) it is located adjacent to one (1) of the collector roads listed on Table A.1 or in one (1) of the canal rights-of-way listed on Table A.2

of this article; and 4) it is marked by Wellington with signs/pavement markings indicating that it is a designated multi-modal pathway. In cases where a road listed on Table A.1 has a sidewalk on either side of the road and only one (1) side meets the requirements of this section, golf carts are permitted only on the side that is marked by Wellington with signs/pavement markings indicating that it is a designated multi-modal pathway.

**Designated Wellington Road:** a Wellington road or portion of a Wellington road upon which golf carts are allowed to operate consistent with this article. A designated Wellington road meets all of the following criteria: 1) it has a posted speed limit of 25 miles per hour or less; 2) it is listed on Table B of this article; and 3) it is marked with signs/pavement markings indicating that it is a designated Wellington road.

**Golf Cart:** a motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes.

**Low-Speed Vehicle:** any four (4) wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 and s. 316.2122, F.S.

**Nighttime Safety Equipment:** headlights, brake lights, turn signals, and a windshield.

**Sidewalk:** that portion of a street between the curb line, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians.

**Wellington Road:** a road or street within the jurisdictional boundaries of Wellington that is open to travel by the public and is not maintained by a private entity.

## **Sec. 22-31: Golf Cart Operation and Equipment**

- A. **Designated Wellington Roads and Authorized Golf Cart Crossings:** The operation of a golf cart is permitted only on designated Wellington roads or at authorized golf cart crossings. The operation of a golf cart on a Wellington road is otherwise prohibited.
- B. **Designated Multi-modal Pathways:** The operation of a golf cart is permitted only on designated multi-modal pathways. The operation of a golf cart on a sidewalk or in a canal right-of-way is otherwise prohibited.
- C. **Age:** A golf cart may be operated on a designated Wellington road by a person who is at least 14 years old, pursuant to s. 316.212, F.S. A golf cart may only be operated on a designated multi-modal pathway by a person with a valid driver license or learner's driver license.
- D. **Hours of Operation:** A golf cart may only be operated on a designated Wellington road or a designated multi-modal pathway during the hours between sunrise and sunset, unless the golf cart is equipped with nighttime safety equipment.
- E. **Equipment:** A golf cart operating on a designated Wellington road or a designated multi-modal pathway must be equipped with efficient brakes, reliable steering apparatus, safe tires, a rearview mirror, and red reflectorized warning devices in both the front and rear. Additionally, a golf cart operating on a designated multi-modal pathway must be equipped with a horn or other warning device required by s. 316.271, F.S. A golf cart operating on a designated Wellington road or a designated multi-modal pathway between the hours of sunset and sunrise must also have nighttime safety equipment.
- F. **Speed:** The operation of a golf cart upon a designated Wellington road is restricted to the posted

speed limit. The operation of a golf cart upon a designated multi-modal pathway is restricted to a maximum speed of 15 miles per hour.

- G. Yield: Any person operating a golf cart upon a designated multi-modal pathway must yield the right-of-way, slowing down, stopping, or pulling off the pathway if need be, to pedestrians, bicyclists, and horses at all times. Golf carts must yield to other traffic at all intersections and driveways.
- H. Traffic Regulations: A golf cart operating upon a designated Wellington road or upon a designated multi-modal pathway must operate along the right side/shoulder of the road or multi-modal pathway in either direction. The golf cart operator must abide by all other applicable state, county, and Wellington traffic regulations.
- I. Occupancy: The number of occupants of a golf cart must not exceed the number of seats in the golf cart, as specified by the manufacturer, except that a child under the age of seven (7) years may ride on the lap of an adult passenger who is not operating the golf cart. A child may not ride on the lap of the person operating the golf cart. Each occupant of the golf cart must remain seated at all times while the golf cart is in motion.
- J. Insurance: The owner of the golf cart operated pursuant to this article must maintain golf cart liability insurance insuring against bodily injury and damage to property with minimum limits of \$25,000 per person and \$50,000 per accident, plus \$10,000 for property damage. Such insurance must be in full force and effect at all times when the golf cart is operated on designated Wellington roads and designated multi-modal pathways.

#### **Sec. 22-32: Gated Communities and Private Property**

The provisions of this article do not apply to the operation of golf carts within gated communities or on private or semi-private property, including retail parking lots and private roads, within Wellington. The operation of golf carts in these areas is governed by the applicable association or property owner.

#### **Sec. 22-33: Wellington Golf Cart Use**

Wellington may operate golf carts in accordance with the provisions of this article, and of s. 316.2126, F.S., as amended from time to time.

#### **Sec. 22-34: Enforcement; Penalties**

- A. Violations of this article may be enforced by the Palm Beach County Sheriff's Office. A violation of this article is a civil infraction punishable by civil penalty in the amounts set forth below:

<u>First Violation:</u>	<u>Warning</u>
<u>Second Violation:</u>	<u>\$50</u>
<u>Third Violation (and every violation thereafter):</u>	<u>\$100</u>

With the exception of the penalties set forth above, a citation issued pursuant to this section shall comply with the Supplemental Code Compliance Procedures set forth in Chapter 2, Article IV of this Code and may be contested in the county court as set forth therein.

- B. When applicable, violations of this article may be enforced by the Palm Beach County Sheriff's Office through the issuance of a Uniform Traffic Citation pursuant to Florida law.
- C. The enforcement provisions of this section are supplemental in nature and are not intended to prohibit the Wellington from seeking any other remedy available at law or in equity.

## **Sec. 22-35: Licensed Use and Revocation**

The operation of a golf cart on designated Wellington roads and designated multi-modal pathways pursuant to this article shall be deemed to be a licensed use of those roads and pathways. The license granted pursuant to this article shall not limit or otherwise preclude the Wellington Council from amending this article, revoking or repealing this article, or contracting or expanding the designated Wellington roads or designated multi-modal pathways on which golf carts may be operated pursuant to this article.

**Table A.1: Multi-modal Pathways Adjacent to Collector Roads**

<u>Table A.1: Multi-modal Pathways Adjacent to Collector Roads</u>	
<u>1.</u>	<u>120th Ave. South</u>
<u>2.</u>	<u>Aero Club Drive</u>
<u>3.</u>	<u>Bent Creek Road</u>
<u>4.</u>	<u>Big Blue Trace</u>
<u>5.</u>	<u>Binks Forest Drive</u>
<u>6.</u>	<u>Birkdale Drive</u>
<u>7.</u>	<u>Flying Cow Ranch Road</u>
<u>8.</u>	<u>Forest Hill Blvd. (north of Wellington Trace)</u>
<u>9.</u>	<u>Greenbriar Blvd.</u>
<u>10.</u>	<u>Greenview Shores Blvd.</u>
<u>11.</u>	<u>Lake Worth Road</u>
<u>12.</u>	<u>Lyons Road</u>
<u>13.</u>	<u>Ousley Farms Road</u>
<u>14.</u>	<u>Paddock Drive</u>
<u>15.</u>	<u>South Shore Blvd.</u>
<u>16.</u>	<u>Stribling Way</u>
<u>17.</u>	<u>Wellington Trace</u>

**Table A.2: Multi-modal Pathways in Canal Rights-of-Way**

<u>Table A.2: Multi-modal Pathways in Canal Rights-of-Way</u>	
<u>1.</u>	<u>C-23 Canal Right-of-Way</u>

**Table B: Streets within Residential Neighborhoods**

<u>Table B: Streets within Residential Neighborhoods</u>		
<u>120th Ave S</u>	<u>Areaca Dr</u>	<u>Block Island Rd</u>
<u>125th Ave S</u>	<u>Aster Ave</u>	<u>Bluebell Ct</u>
<u>128th Ter S</u>	<u>Autumn Ave</u>	<u>Blueberry Dr</u>
<u>130th Ave S</u>	<u>Azure Ave</u>	<u>Boeing Ct</u>
<u>140th Ave S</u>	<u>Azure Ct</u>	<u>Bolton Ct</u>
<u>160th Trl S</u>	<u>Baltrusol Pl</u>	<u>Bottlebrush Ct</u>
<u>40th St S</u>	<u>Barberry Ct</u>	<u>Boundary Tree Ln</u>
<u>50th St S</u>	<u>Barberry Dr</u>	<u>Brae Burn Pl</u>

<u>Table B: Streets within Residential Neighborhoods</u>		
<u>52nd Pl S</u>	<u>Barefoot Lake Dr</u>	<u>Brampton Cv</u>
<u>55th St S</u>	<u>Barnstaple Cir</u>	<u>Branding Iron Ct</u>
<u>57th Pl S</u>	<u>Barnstormer Ct</u>	<u>Brier Patch Ct</u>
<u>60th St S</u>	<u>Barrington Woods Dr</u>	<u>Brier Patch Trl</u>
<u>Acme Rd</u>	<u>Basswood Pl</u>	<u>Brightstone St</u>
<u>Adonider Ln</u>	<u>Bedford Mews Dr</u>	<u>Brightwood Way</u>
<u>Alder Ln</u>	<u>Bellanca Ln</u>	<u>Britten Ln</u>
<u>Aldsworth Ct</u>	<u>Belmont Trce</u>	<u>Brixham St</u>
<u>Amaryllis Ct</u>	<u>Belmore Ct</u>	<u>Broadleaf Ct</u>
<u>Amesbury Cir</u>	<u>Belmore Ter</u>	<u>Buckland Ct</u>
<u>Amesbury Ct</u>	<u>Bent Creek Rd</u>	<u>Buckland Ct E</u>
<u>Angelica Ct</u>	<u>Big Cone Ct</u>	<u>Buckland St</u>
<u>Anhinga Dr</u>	<u>Birkdale Dr</u>	<u>Callington Dr</u>
<u>Appaloosa Trl</u>	<u>Black Willow Ln</u>	<u>Canter Way</u>
<u>Arcadia Dr</u>	<u>Blackberry Dr</u>	<u>Caraway Ct</u>
<u>Carlton St</u>	<u>Elgin Ct</u>	<u>Guilford Way</u>
<u>Carnation Ct</u>	<u>Emmelman Rd</u>	<u>Halter Rd</u>
<u>Carriage Ln</u>	<u>Enstrom Rd</u>	<u>Hawker Ln</u>
<u>Cedar Bluff Pl</u>	<u>Equestrian Way</u>	<u>Haworth St</u>
<u>Cessna Way</u>	<u>Essex Dr</u>	<u>Hawthorne Pl</u>
<u>Chancellor Dr</u>	<u>Etna Dr</u>	<u>Haymarket Ct</u>
<u>Chandelle Pl</u>	<u>Exeter Ln</u>	<u>Heartwood Pl</u>
<u>Chappard Ct</u>	<u>Exotica Ln</u>	<u>Hempstead St</u>
<u>Chapparel Way</u>	<u>Fairdale Way</u>	<u>Hickory Trl</u>
<u>Chatsworth Village Dr</u>	<u>Fairfield Ct</u>	<u>Hiller St</u>
<u>Chelmsford St</u>	<u>Fairlane Farms Rd</u>	<u>Hollyhock Rd</u>
<u>Cherry Ln</u>	<u>Fallview Way</u>	<u>Horseshoe Trce</u>
<u>Cindy Circle Ln</u>	<u>Farmington Ave</u>	<u>Hull Ct</u>
<u>Cindy Dr</u>	<u>Farmington Cir</u>	<u>Huntington Dr</u>
<u>Citrus Pl</u>	<u>Farmington Ct</u>	<u>Huntley Way</u>
<u>Clydesdale Ave</u>	<u>Farrier Pl</u>	<u>Hyacinth Ct</u>
<u>Cold Springs Ct</u>	<u>Fawnwood Pl</u>	<u>Hyacinth Pl</u>
<u>Columbine Ave</u>	<u>Firethorn Dr</u>	<u>Indian Mound Rd</u>
<u>Corallita Ct</u>	<u>Firewood Ct</u>	<u>Indigo Ave</u>
<u>Coralwood Ct</u>	<u>Flora Ln</u>	<u>Inverness Cir</u>
<u>Cornflower Ct</u>	<u>Folkestone Cir</u>	<u>Ishnala Cir</u>
<u>Cosmos Ct</u>	<u>Folkestone Ct</u>	<u>Ishnala Ct</u>
<u>Country Wood Ct</u>	<u>Forester Ct</u>	<u>Isles View Dr</u>
<u>Cranberry Ct</u>	<u>Foresteria Ave</u>	<u>Ivy Dr</u>
<u>Crassula Ct</u>	<u>Fortune Cir</u>	<u>Jackpine St</u>
<u>Crimson Ln</u>	<u>Fortune Way</u>	<u>Jamboree Ct</u>
<u>Crocus Ct</u>	<u>Galloway Trl</u>	<u>Jonquil Ct</u>
<u>Cromer Ct</u>	<u>Garwood Ct</u>	<u>Jonquil Pl</u>
<u>Crowberry Ct</u>	<u>Geranium Pl</u>	<u>Juniper Pl</u>
<u>Daffodil Dr</u>	<u>Gingerwood Ln</u>	<u>Ken Adams Way</u>
<u>De Havilland Ct</u>	<u>Gloucester Ct</u>	<u>King Ter</u>
<u>Deerwood Ct</u>	<u>Gold Piece Trl</u>	<u>Kinglet Ter</u>
<u>Dollarspot Ct</u>	<u>Goldenrod Rd</u>	<u>Kingsbury Ct</u>
<u>Donlin Dr</u>	<u>Goodwood Ter</u>	<u>Kingsbury Dr</u>

Table B: Streets within Residential Neighborhoods

<u>Dorchester Pl</u>	<u>Gracida St</u>	<u>Kingsbury Ter</u>
<u>Doubletree Cir</u>	<u>Grantham Ct</u>	<u>Kingsway Rd</u>
<u>Doubletree Trl</u>	<u>Grantham Dr</u>	<u>Knotty Wood Ln</u>
<u>Dovedale Ct</u>	<u>Gray Mare Way</u>	<u>La Mirada Cir</u>
<u>Dracena Dr</u>	<u>Greenbriar Cir</u>	<u>Lacewood Ln</u>
<u>Draft Horse Ln</u>	<u>Greenleaf Ln</u>	<u>Lantern Tree Ln</u>
<u>Dunster Ct</u>	<u>Greentree Dr</u>	<u>Larch Way</u>
<u>E Rambling Dr</u>	<u>Greentree Trl</u>	<u>Larkspur Ln</u>
<u>Earhart Pl</u>	<u>Grumman Ct</u>	<u>Laurel Trl</u>
<u>Easthampton Cir</u>	<u>Guava Ct</u>	<u>Laurel Valley Cir</u>
<u>Edgefield Rd</u>	<u>Guildford St</u>	<u>Lavender Ln</u>
<u>Elder Ct</u>	<u>Guilford Cir</u>	<u>Leeds Ct</u>
<u>Lemongrass Ln</u>	<u>Peconic Ct</u>	<u>Santa Clara Trl</u>
<u>Lewes St</u>	<u>Peel Ct</u>	<u>Sawgrass Ct</u>
<u>Lilac Pl</u>	<u>Pelham Rd</u>	<u>Scarborough Ter</u>
<u>Lily Ct</u>	<u>Penhale Ct</u>	<u>Schweizer Ct</u>
<u>Lindbergh Ln</u>	<u>Peppertree Ct</u>	<u>Sea Lavender Ter</u>
<u>Lindsey Ct</u>	<u>Periwinkle Pl</u>	<u>Seaford Dr</u>
<u>Little Ranches Trl</u>	<u>Petrel Rd</u>	<u>Shawmut Ct</u>
<u>Lockheed Ter</u>	<u>Pine Valley Dr</u>	<u>Sheffield Ct</u>
<u>Longlea Ter</u>	<u>Pineacre Ct</u>	<u>Sheffield St</u>
<u>Lotus Ln</u>	<u>Pineacre Ln</u>	<u>Sheffield Woods Dr</u>
<u>Lynton Cir</u>	<u>Pinetta Cir</u>	<u>Shower Tree Way</u>
<u>Marble Canyon Dr</u>	<u>Pintail Dr</u>	<u>Silverbell Ln</u>
<u>Margate Pl</u>	<u>Pinto Cir</u>	<u>Skipton Ave</u>
<u>Marigold Dr</u>	<u>Piper Way</u>	<u>Snapdragon Dr</u>
<u>Mayview Way</u>	<u>Pipit Ct</u>	<u>Snowberry Dr</u>
<u>Meadow Ave</u>	<u>Portland Ave</u>	<u>Softwood Ct</u>
<u>Meadow Wood Dr</u>	<u>Portland Ct</u>	<u>South Shore Blvd</u>
<u>Merion Ct</u>	<u>Primrose Ln</u>	<u>Southport Ct</u>
<u>Midpines Ter</u>	<u>Quercus Ct</u>	<u>Spanish Oak Way</u>
<u>Milford Ct</u>	<u>Quercus Ln</u>	<u>Springhill Ct</u>
<u>Montauk Dr</u>	<u>Raintree Ln</u>	<u>Springwood Pl</u>
<u>Moonflower Cir</u>	<u>Rambling Drive Cir</u>	<u>Spur Close</u>
<u>Morgan Close</u>	<u>Ranchwood Ct</u>	<u>Squire Dr</u>
<u>Morning Glory Dr</u>	<u>Randi Dr</u>	<u>St Davids Ct</u>
<u>Mulberry Pl</u>	<u>Reading Ter</u>	<u>St Davids Way</u>
<u>Mystic Ct</u>	<u>Red Pine Trl</u>	<u>Staghorn Ct</u>
<u>Mystic Way</u>	<u>Redondo Way</u>	<u>Staghorn St</u>
<u>Newhaven Ave</u>	<u>Riverside Cir</u>	<u>Staimford Cir</u>
<u>Newton Pl</u>	<u>Roan Ct</u>	<u>Staimford Ct</u>
<u>Niantic Ter</u>	<u>Rolling Meadows Cir</u>	<u>Staimford Dr</u>
<u>Northampton Ter</u>	<u>Rolling Rock Pl</u>	<u>Stapleton Way</u>
<u>Northumberland Cir</u>	<u>Rose Ct</u>	<u>Stirrup Ln</u>
<u>Northumberland Ct</u>	<u>Rosewood Ln</u>	<u>Stone Pine Way</u>
<u>Norwick St</u>	<u>Rowayton Cir</u>	<u>Stratford St</u>
<u>Oatland Ct</u>	<u>Royal Fern Dr</u>	<u>Suellen Cir</u>
<u>Old Country Rd N</u>	<u>Rudder Cv</u>	<u>Sugar Pine Trl</u>
<u>Old Country Rd S</u>	<u>Rye Ter</u>	<u>Sulky Way</u>



<u>Table B: Streets within Residential Neighborhoods</u>		
<u>Old Cypress Trl</u>	<u>S Crown Way</u>	<u>Summerwood Cir</u>
<u>Oleaster Ave</u>	<u>S Rambling Dr</u>	<u>Sunflower Ct</u>
<u>Oneida Ter</u>	<u>Sachem Head Ter</u>	<u>Sunward St</u>
<u>Orchid Ct</u>	<u>Sage Ave</u>	<u>Sycamore Ln</u>
<u>Ousley Farms Rd</u>	<u>Sailboat Cir</u>	<u>Take Off Pl</u>
<u>Pacer Cir</u>	<u>Samoset Ct</u>	<u>Tamarack Way</u>
<u>Paddock Dr</u>	<u>Sanderling Dr</u>	<u>Tanbark Trl</u>
<u>Palm Beach Point Blvd</u>	<u>Sandy Pine Ct</u>	<u>Teakwood Ct</u>
<u>Pampas Way</u>	<u>Sannenwood Ln</u>	<u>Tecoma Dr</u>
<u>Tern Ct</u>	<u>Wareham Ct</u>	<u>Windsock Way</u>
<u>The 12th Fairway</u>	<u>Warm Springs Ter</u>	<u>Windtree Way</u>
<u>Timber Pine Trl</u>	<u>Weatherly Rd</u>	<u>Wisteria St</u>
<u>Torchwood Ct</u>	<u>Werwood Ct</u>	<u>Wither Close</u>
<u>Tornelia Ln</u>	<u>Westbury Close</u>	<u>Wood Dale Ter</u>
<u>Torrington Ave</u>	<u>Westhall Pl</u>	<u>Wood Row Way</u>
<u>Trace Way</u>	<u>Westhampton Cir</u>	<u>Woodmar Ct</u>
<u>Treehaven Ct</u>	<u>Westport Cir</u>	<u>Woods Dr</u>
<u>Trotter Ct</u>	<u>Whimbrel Rd</u>	<u>Wranglewood Dr</u>
<u>Tulip Ln</u>	<u>Whitby St</u>	<u>Wrotham Ter</u>
<u>Tumbleweed Ct</u>	<u>White Pine Dr</u>	<u>Wychmere Ter</u>
<u>Turf Ln</u>	<u>Whitemarsh Dr</u>	<u>Wyndcliff Dr</u>
<u>Turnstone Dr</u>	<u>Whitney Way</u>	<u>Yarmouth Ave</u>
<u>Tylerwood Ct</u>	<u>Widgeon Rd</u>	<u>Yarmouth Ct</u>
<u>Velda Way</u>	<u>Wild Pine Rd</u>	<u>Yarmouth Dr</u>
<u>Veronica Ct</u>	<u>Wiltshire Village Dr</u>	<u>York Ct</u>
<u>Voyageurs Pl</u>	<u>Windflower Ct</u>	
<u>W Rambling Dr</u>	<u>Window Rock Dr</u>	

## **CHAPTER 23 – UTILITIES**

### **Sec. 23-1: Definitions**

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated.

**Access:** the act of gaining entry to a physical structure, open controlled space, or information technology system managed or operated by the Utility Department.

**Act or the Act:** the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.* [40 C.F.R. 403.3(b)]

**Backflow:** the reversal of flow of water or mixtures of water and other liquids, gases, or other substances into the Wellington's potable water supply system from any source other than its intended source.

**Backflow Prevention Assembly/Assembly/Backflow Preventer:** an assembly, device, or method used to prevent backflow into a potable water system

**Biochemical Oxygen Demand:** the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees centigrade, usually expressed as a concentration (e.g., mg/l).

**Categorical Industrial User (CIU):** an industrial user subject to categorical pretreatment standards under Rule 62-625.410, F.A.C., including 40 C.F.R. Chapter I, Subchapter N, Parts 405-471. [Rule 62-625.200(3), F.A.C.]

**Categorical Pretreatment Standard or Categorical Standard:** any regulation containing pollutant discharge limits promulgated by the U.S. Environmental Protection Agency in accordance with sections 307(b) and (c) of the Act that apply to a specific category of industrial users and that appear in 40 C.F.R. Chapter I, Subchapter N, Parts 405-471.

**Certified Tester:** certified backflow prevention assembly tester meeting the requirements of the Utility Manual, who has completed all required certification courses.

**Commercial Connection:** includes all utility connections that are not a residential connection and any secondary service connections that are in addition to the service connections that serve a customer's dwelling unit. Also included are connections to government facilities, irrigation system connections, motels, hotels, and hospitals. Residential and non-residential barns and airplane hangars are considered a commercial service connection.

**Commercial Sewage Waste:** non-toxic, non-hazardous wastewater from commercial facilities. Commercial sewage waste includes only domestic sewage and food establishment sludge (i.e. bathroom and kitchen connections only).

**Commercial Users:** connections producing only commercial sewage waste.

**Contamination:** an impairment of the quality of the potable water by any solid, liquid, or gaseous compounds or mixtures to a degree that would create an imminent danger to the public health, or would create an unacceptable taste, odor, or color to the potable water.

**Contractor:** a non-employee who, with Wellington's express or implied permission, works on behalf of

the Utility and is responsible for works or services on any part of the water system.

**Cross Connection:** any connection or potential connection between Wellington's public water supply system and any other water supply system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture, or other device through which backflow may occur either directly or indirectly and includes any temporary or permanent devices through which or because of which backflow may occur such as bypass arrangements, jumper connections, removable sections, swivel or changeable devices.

**Daily Maximum Limit:** the maximum allowable discharge limit of a pollutant during a calendar day. Where daily maximum limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where daily maximum limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

**Discharge:** the introduction of pollutants into the WRF from any nondomestic source regulated under Chapter 403, F.S. [Rule 62-625.200(6), F.A.C.]

**Domestic Sewage:** has the meaning set forth in F.S. § 381.0065(2)(e). Domestic sewage is further categorized as:

1. Blackwater – as defined by F.S. § 381.0065(2)(c).
2. Graywater – as defined by F.S. § 381.0065(2)(f).
3. Domestic sewage waste ranges:
  - a. Carbonaceous Biochemical Oxygen Demand (CBOD5), maximum 300 mg/l,
  - b. Total Suspended Solids (TSS), maximum 200 mg/l,
  - c. pH, 6 – 8; or within 1 pH unit of the water supply pH; and,
  - d. Nitrogen (Total Kjeldahl Nitrogen, TKN) maximum 100 mg/l.

**Dwelling Unit:** a single residential unit designated or intended for one-family occupancy (a household of one (1) or more persons) including, but not limited to, one (1) single-family house, one-half of a duplex, one (1) apartment, or one (1) condominium.

**Environmental Protection Agency:** the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

**Existing Source:** any source of Discharge that is not a new source.

**Fire Line:** a dedicated water line utilized to provide water for fire suppression systems or private fire hydrants.

**Fire Line Connection:** the connection of the dedicated fire line service branch to Wellington's water distribution main.

**Fire Line Point of Delivery:** the upstream connection to the backflow prevention assembly for the fire service.

**Food Establishment Sludge:** oils, fats, greases, food scraps, and other grease interceptor contents

generated by a food operation or institutional food preparation facility using an onsite sewage treatment and disposal system. Wastewater generated by breweries, wineries, distilleries, or other establishments that discharge or have the potential to discharge microorganisms or bacteria is excluded from this definition.

**Grease Trap:** any receptacles or devices that are designed to prohibit the introduction of food establishment sludge into the public wastewater system and constructed based upon the standards set forth by Florida law and the Utility Manual.

**Hazard:** an actual or potential threat of contamination or pollution of a physical or toxic nature to the public potable water system or the consumer's potable water system to such a degree or intensity that there would be an adverse risk of danger to public health and well-being or otherwise create objectionable water quality concerns.

**Industrial Fluids System:** any and all systems used by the consumer for transmission of or to store any fluid, solid, or gaseous substance other than an approved water supply.

**Industrial User (IU):** a user of the wastewater system who discharges waste other than domestic sewage waste and commercial sewage waste into the system. An industrial user as defined under this chapter is limited to classification of wastewater discharge quality produced by the user, and shall be considered separately from land use, zoning, utility customer classification, water service connection type, and similar categories.

**Interference:** a discharge which, alone or in conjunction with a discharge or discharges from other sources, both: [Rule 62-625.200(9), F.A.C.]

1. Inhibits or disrupts the wastewater system, the Utility's processes or operations or its domestic wastewater residuals processes, use, or disposal; and
2. Is a cause of a violation of any requirement of a Wellington permit (including an increase in the magnitude or duration of a violation) or prevents use or disposal of domestic wastewater residuals in compliance with local regulations or rules of the Florida Department of Environmental Protection and Chapter 403, F.S.

**Medical Waste:** means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

**New Source:** [Rule 62-625.200(13), F.A.C.]

1. Any building, structure, facility or installation from which there is or may be a discharge, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
  - a. The building, structure, facility or installation is constructed at a site at which no other source is located;
  - b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - c. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to

which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

2. Construction on a site at which an existing source is located that modifies, alters, replaces, or adds to existing process or production equipment but does not create a new building, structure, facility, or installation meeting the criteria of (1)(b) or (1)(c) above; but otherwise alters, replaces, or adds to existing process or production equipment.

**Noncontact Cooling Water:** water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

**Non-Residential User:** all users that are not single meter residential or master meter residential users. Non-residential users shall include industrial users and commercial users.

**Person:** any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

**pH:** a measure of the acidity or alkalinity of a solution, expressed in standard units.

**Pollutant:** dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural, and industrial wastes.

**Pollution:** the presence of any foreign substance (organic, inorganic, or biological) in the water system that tends to degrade the water system's quality so as to constitute a hazard or impair the usefulness or quality of the water.

**Potable Water:** water for human consumption that meets federal, state and county standards.

**Pretreatment:** the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, discharging or otherwise introducing such pollutants into the WRF. [Rule 62-625.200(17), F.A.C.]

**Pretreatment Standards:** any regulation containing pollutant discharge limits promulgated by the Environmental Protection Agency under sections 307(b) and (c) of the Act or by the FDEP under Chapter 403, F.S., which applies to industrial users. This term includes prohibitive discharge limits established in Rule 62-625.400, F.A.C.

**Reduced Pressure Principle Assembly:** shall have the meaning as defined in the Utility Manual.

**Residential Connection:** Residential connections shall include two (2) classes of residential connections:

1. Single Meter Residential Connections: individually metered connections to dwelling units. Single meter residential includes individually metered single family homes or individually metered apartments, condominiums, townhomes, etc.
2. Master Meter Residential Connection: master metered water service connections to dwelling unit which includes apartment buildings, condominiums, duplexes, triplexes, fourplexes, and any other dwelling units that share one (1) or more common walls, roofs, and/or floors

**Sewage:** human excrement and gray water (household showers, dishwashing operations, etc.).

**Tamper:** to interfere or attempt to interfere with the operation of public utility systems and as further defined in this chapter.

**Third-Party Administrator:** an entity, other than the Utility, that is hired by Wellington to assist with the administration of the grease trap program, the cross connection control program, or other Utility Department program.

**Trespass:** an act of physically entering a facility, utility asset, or open space without permission or where access is restricted due to safety or public health concerns and as further defined in this chapter.

**Utility Asset:** any property, device, item, structure, or water source; owned, operated, controlled, or connected with the water systems, including manhole covers, meters (including hydrant meters), equipment, supervisor control and data acquisition (SCADA) systems, and other system parts that are integral to the operation of the Utility.

**Utility Department:** Wellington's Utility Department.

**Utility Director:** the person designated by Wellington to oversee the Utility Department or their designee.

**Utility Manual:** Wellington Utility Water and Wastewater System Construction Specifications and Standard Details Manual.

**Water Service:** a dedicated potable water line between the public water distribution main and water meter providing water intended for human use and consumption.

**Water Service Connection:** the connection of the dedicated water service branch line to Wellington's water distribution main.

**Water Service Point of Delivery:** the downstream end of the meter.

## **ARTICLE 1 - GREASE WASTE**

### **Sec. 23-2: Title**

This article shall be known as the "Wellington Grease Trap Ordinance," and may be so cited.

### **Sec. 23-3: Authority**

- A. Article VIII of the State Constitution and Chapter 166, Florida Statutes, provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law. Wellington's Council is therefore authorized to adopt, prescribe, and promulgate rules and regulations to protect Wellington's Utility.
- B. It is in the public interest to ensure adequate and necessary improvements are available or established whenever land is developed or used in a manner that affects Wellington's Utility.
- C. It is in the public interest to establish procedures and standards for Grease Traps within Wellington's Urban Service Boundary and Wellington's Utility Service Area.

### **Sec. 23-4: Purpose, Intent, and Applicability**

This article is necessary to protect the public wastewater system and for the promotion of public health, safety, and general welfare of Wellington's residents and utility customers. The regulations set forth in this article are applicable to the wastewater system within Wellington's Utility Service Area. The specific provisions of this article shall be applied and interpreted in a manner consistent with Wellington's purpose and intent to:

- A. Ensure the existing customers of Wellington's Utility will not have to bear the costs resulting from introduction of grease into the public wastewater system; and
- B. Assure grease trap infrastructure improvements have been constructed in accordance with Florida Administrative Code Rule 62-6 *Standards for Onsite Sewage Treatment and Disposal Systems* and the Utility Manual.

#### **Sec. 23-5: Relationship to Other Agency Requirements**

The requirements of this article are intended to supplement and expand upon rules, regulations, and permit requirements of other federal, state, and local agencies. In no case will the requirements of this article lessen the requirements under federal, state, or local law governing the design or construction of improvements. Developers/individuals seeking approvals under this article are responsible for obtaining all necessary federal, state and local permits that govern intended improvements.

#### **Sec. 23-6: Administration**

The Utility Director or their designee is responsible for the following tasks and has the authority to make the following decisions, as necessary, to protect the public wastewater system, the Water Reclamation Facility, and the public health, safety, and general welfare of Wellington's residents and utility customers:

- A. Implement and enforce the provisions of this article.
- B. Update the Utility Manual as necessary to protect Wellington's residents and utility customers.
- C. The Utility Director has the authority to waive certain general requirements and improvements, or allow alternative designs that exceed the minimum requirements when the intent of the Utility Manual has been met. The applicant shall obtain written approval from the Utility Director for alternative improvement designs.

#### **Sec. 23-7: General Requirements**

In order to prevent wastewater line stoppage or hindrances to wastewater transmission and treatment, all restaurants, food processors, service stations, or other businesses or business activities that use or produce food establishment sludge, except as exempted herein, shall install and maintain one (1) or more grease traps in accordance with the provisions of this article.

- A. Utility Department approved grease traps for food establishment sludge that prevents the introduction of grease waste into the wastewater system shall be provided for establishments engaged in commercial food preparation activities.
- B. Any existing businesses that require a grease trap, but do not have one, will be required to retrofit where possible. If retrofitting will not result in compliance with this section, the business must undertake and complete the installation of an approved grease trap within 120 calendar days after determination that retrofitting would not result in compliance herewith, unless

otherwise agreed upon by the Utility Director. If it is determined through the application of the terms of this article that the continuation of the business without an approved grease trap would adversely impact the wastewater system, the business shall immediately disconnect from the system until compliance is achieved.

#### **Sec. 23-8: Exemptions**

Grease traps shall not be required for any food preparation activities that do not introduce food establishment sludge into the public wastewater system, subject to approval of the Utility Director.

#### **Sec. 23-9: Permits**

- A. Owners shall be required to obtain building permits from the Wellington Building Department for grease trap construction and installation. The permit for installation of grease traps is subject to review and approval by the Utility Department.
- B. Owners shall be required to obtain all permits required by the Florida Department of Environment Protection or its delegated authority in accordance with all applicable rules and regulations.

#### **Sec. 23-10: Design and Construction**

- A. The design of grease traps shall be based on standards prescribed by Florida law and the Utility Manual. The Utility Director shall have the authority to require an increase in the effective capacity if deemed necessary due to the nature of the establishment.
- B. Grease traps shall be installed adjacent to the unit being served, in a location approved by the Utility Department. Grease traps shall be installed and located in an area that will provide ready accessibility for purposes of inspection, service, and maintenance.
- C. Prior to the issuance of a grease trap permit, signed and sealed calculations by a professional engineer will be required to demonstrate that the size, specifications, and regular maintenance requirements of the grease trap can adequately handle the anticipated flow.
- D. Grease traps shall be designed such that pumping is not required more than once every 90 days.

#### **Sec. 23-11: Operation and Maintenance Responsibilities of Grease Traps**

- A. The Owner of each property shall be responsible for all required maintenance and, where required, replacement or expansion of all grease traps.
- B. Proper disposal practices shall be exercised with removed grease. It shall be unlawful to permit removed grease to re-enter the wastewater collection system.
- C. Owners shall keep records of all pumping activities and such records and other information reasonably required shall be provided to the Utility Director or to a designated third-party Administrator, if applicable, upon request. Owners shall pay all associated fees to the third-party administrator.
- D. Grease traps must be cleaned at least every three (3) months, or more frequently if required by the Utility Department. Owners shall be responsible for any discharge of grease into the wastewater system.



- E. Chemical solvents that may cause harm to the wastewater system shall not be used for degreasing or unclogging grease traps.

### **Sec. 23-12: Inspections and Reporting**

- A. The condition of grease traps shall be reviewed by the Utility Department at periodic intervals as determined by the Utility Department. Owners will be notified of the results of inspections that do not meet the requirements outlined in the Utility Manual. Grease traps not receiving a passing result shall require remedial action taken by the Owner, at their own expense, in order to achieve a passing result.
- B. Owners shall provide copies of the pumping manifests to the Utility Department or Wellington's authorized third-party administrator, if applicable, and pay any associated processing fees.
- C. The Utility Department shall have the authority to inspect the food service, food processing, or other establishments that produce food establishment sludge. If, upon inspection, a grease trap is determined to be insufficient or otherwise defective to serve its designed purposes as set forth in this article, the owner of the establishment shall be given written notice to correct the insufficiency or defective condition. Failure to comply with the terms of such notice shall be a violation of this section and each day thereafter shall constitute a separate offense.

### **Sec.23-13: General Prohibitions**

- A. Grease traps may only be provided for the mitigation of food establishment sludge. Floor drains for public storage garages, automotive repair shops, or service centers, car washes, manufacturing, assembly plants, or any place where oil, gasoline, or other volatile liquids are spilled, drained, or otherwise discharged onto the floor or ground may not be connected to the sanitary sewer system.
- B. Provisions for wastewater generated by industrial users or for users that have the potential to discharge microorganisms or bacteria shall be governed by Article 4 Industrial Pretreatment.

### **Sec. 23-14: Fees**

Wellington may adopt fees for the reimbursement of costs of administering the grease trap program. Such fees will be identified on the Utility Rate and Fee Schedule. Owners shall be responsible for all fees to Wellington's third-party administrator, where applicable. Third-party administration fees shall be paid directly to the third-party administrator and are in addition to any fees levied by Wellington.

### **Sec. 23-15: Enforcement and Penalties**

- A. Enforcement: Every law enforcement official having jurisdiction in the area governed by this Code may, in connection with all other duties imposed by law, enforce the provisions of this article by issuance of a citation, summons, or notice to appear in county court, or by filing an action in civil court for injunctive relief. The Village Manager may also delegate enforcement responsibility for this article to other departments of Wellington, in accordance with state and local law.
- B. Penalties: Any user who violates any provision of this article shall also be subject to the remedies authorized by Chapter 2 of this Code, or as otherwise allowed by law.
- C. In addition to the sanctions contained herein, Wellington may take appropriate action, including, but not limited to, administrative action and requests for temporary and permanent injunctions to enforce the provisions of this article.

- D. Each day a violation of any provision of this Article exists shall constitute a separate offense, and each act in violation of the provisions of this Article shall be considered a separate and distinct offense.

## **ARTICLE 2 - CROSS CONNECTION CONTROL**

### **Sec. 23-16: Title**

This article shall be known as the "Wellington's Cross Connection Control Ordinance," and may be so cited.

### **Sec. 23-17: Authority**

- A. Article VIII of the State Constitution and Chapter 166, Florida Statutes, provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law. Wellington's Council is therefore authorized to adopt, prescribe, and promulgate rules and regulations to protect the public health, safety, and welfare.
- B. Florida Administrative Code Rule 62-555.360 requires Wellington to implement a cross connection control program for the purposes of detecting and preventing cross connections that create or have the potential to create an imminent and substantial danger to public health.
- C. It is in the public interest to establish procedures and standards for cross connection control within Wellington's Urban Service Boundary and Wellington's Utility Service Area.

### **Sec. 23-18: Purpose, Intent, and Applicability**

The application of this article is necessary to protect Wellington and its consumers from those water-using establishments that could possibly harm the quality and safety of Wellington's potable water system through backflow and/or cross connections, and for the promotion of public health, safety and general welfare of Wellington's residents and Utility customers. The specific provisions of this article shall be applied and interpreted in a manner consistent with Wellington's purpose and intent to:

- A. Eliminate or control cross connections intended to prevent delivered water or Potable Water that has passed beyond the public water system and into private systems of consumers, from re-entering the public distribution system;
- B. Prevent waterborne diseases and contaminants from entering the potable water distribution system of Wellington;
- C. Provide for the administration of a continuing cross connection control maintenance and testing program designed to systematically and effectively prevent the Contamination of the Wellington's potable water system, including provisions for elimination of any prohibited or inappropriately protected cross connections discovered in the system;
- D. Establish Wellington policy regarding the conditions when backflow prevention devices are required;
- E. Assure new backflow prevention assemblies have been constructed in accordance with the Florida Administrative Code 62-555.360 Cross Connection Control for Public Water Systems and the Utility Manual.

### **Sec. 23-19: Relationship to Other Agency Requirements**

The requirements of this article are intended to supplement and expand upon rules, regulations, and permit requirements of other state, regional, and local agencies. In no case will the requirements of this article lessen the requirements under federal or state law governing the design or construction of improvements.

### **Sec. 23-20: Administration**

The Utility Director or their designee is responsible for the following tasks and has the authority to make the following decisions, as necessary, for the protection of Wellington's potable water distribution system:

- A. Implementing and enforcing the provisions of this article.
- B. Updating the Utility Manual as necessary to protect Wellington, its residents, and Wellington water and sewer service customers.
- C. Administering the cross connection control program, maintaining an inventory of all backflows within its system, and retaining records of customer backflow assembly installation, testing, inspection, and repair, consistent with applicable laws.
- D. The Utility Director has the authority to waive certain general requirements and improvements, or allow alternative designs that exceed the minimum requirements when the requirements of Florida Administrative Code 62-555.360 and the intent of the Utility Manual have been met. The applicant shall obtain written approval from the Utility Director for alternative improvement designs.

### **Sec. 23-21: General Requirements**

In order to provide adequate protection to the public water supply, no water service connection to any premises shall be installed unless the water supply is protected as required by state law and this article.

- A. All backflow prevention assembly devices shall meet the requirements of the USC FCCC- University of Southern California Foundation for Cross Connection Control and Hydraulic Research and the Approved Products List.
- B. All backflow preventer assemblies shall be installed at or near the property line in an accessible location acceptable to the Utility Department and before the first branch line leading off the service line.
- C. Backflow protection must be provided for all new water service connections in the customer categories outlined in Table 62-555.360-2 of the Florida Administrative Code and the requirements below.
  - 1. Commercial Connection: Minimum protection of a reduced pressure principle assembly shall be installed on each water service line to a customer's water system regardless of water service line size. The backflow assembly shall be installed at or near the property line or immediately inside the building being served, on all service lines after the effective date of this ordinance. On a property with a commercial connection, a reduced pressure assembly must be provided on all water service connections on the property, including any residential connections.

2. Residential Master Metered Connections: Minimum protection of a reduced pressure principle assembly shall be installed on each residential master metered water service line to a customer's water system. The backflow assembly shall be installed at or near the property line or immediately inside the building being served, on all service lines installed after the effective date of this ordinance.
  3. Minimum protection of a reduced pressure principle assembly shall be installed on all water service lines with the following conditions in any structure on the property:
    - a. Fire suppression systems;
    - b. Internal cross connections that cannot be permanently corrected or protected against; or
    - c. Intricate plumbing and piping arrangements, or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impractical or impossible to ascertain whether or not dangerous cross connections exist.
  4. Industrial Hazards: Minimum protection of a reduced pressure principle assembly shall be installed for premises on which any industrial fluids systems or any other objectionable substance is handled in such a fashion as to create an actual or potential hazard to the public water system.
  5. There shall be no branches or connections of any kind between the water service connection and the water service point of delivery.
- D. Backflow protection must be provided for all new fire lines in accordance with the requirements below.
1. Fire line connections to the public water system shall be a separate, dedicated connection to the public water distribution system. Fire line connection size must match fire line size.
  2. Minimum protection of a reduced pressure principle assembly shall be installed for all fire lines.
  3. Reduced pressure principle assembly size shall be the same size as the fire line.
  4. There shall be no branches or connections of any kind between the fire line connection and the fire line point of delivery.
- E. Backflow protection must be provided on all existing metered irrigation connections. Minimum protection of a reduced pressure principle assembly shall be installed.

## **Sec. 23-22: Exemptions**

- A. Single meter residential connections with no fire protection systems on the premises do not require backflow prevention devices. A backflow prevention assembly providing no less protection than other service connection types may be required when deemed necessary to protect Wellington's public water system from a perceived health hazard or compromised water quality.

- B. All presently installed backflow prevention devices providing less protection than current regulations, but that were approved devices for the purposes described herein at the time of installation, and that have been properly maintained, shall not be required to upgrade so long as they will satisfactorily protect the public potable water supply system. Whenever the existing device is moved from the present location, or requires more than minimum maintenance, or when the Utilities Director finds that the lower grade device constitutes a hazard to health, the unit shall be replaced with an approved backflow prevention assembly at the owner's expense.

#### **Sec. 23-23: Permits**

An owner shall be required to obtain building permits from Wellington for backflow prevention assembly device construction. The permit for installation of a backflow prevention assembly device shall be obtained from the Building Department and approved by the Utility Department.

#### **Sec. 23-24: Design and Construction**

- A. Any backflow prevention assembly required herein shall be of make, model, and size approved by the Utility Department consistent with the Utility Manual and these regulations.
- B. Prior to the issuance of a permit for a backflow prevention assembly device for a water service, the owner shall submit a written determination by a professional engineer registered in the State of Florida, or a licensed plumber, that the proposed size of a backflow prevention assembly device can adequately handle the anticipated flow and the computation used in arriving at this determination. The Utility Department shall have the authority to require a modification to the size of the assembly if deemed necessary.
- C. Prior to the issuance of a permit for a backflow prevention assembly device for a fire line, the owner shall be responsible for having a professional engineer or certified fire-protection contractor ensure a compatible backflow prevention assembly is selected for the proper hydraulic functioning of the entire fire protection system from the point of service. The Utility Department shall have the authority to increase or decrease the size of the assembly if deemed necessary due to the nature of the establishment.

#### **Sec. 23-25: Operation and Maintenance of Backflow Prevention Assembly Devices**

The owner of each backflow prevention assembly shall be responsible for all required maintenance and replacement of backflow prevention assembly devices. Maintenance is required at least once per year.

#### **Sec. 23-26: Inspections**

- A. The owner of each backflow prevention assembly shall be responsible for maintenance and testing at least once per year and for obtaining a passing result on the required annual certified inspection report. Backflow prevention assemblies not receiving a passing result shall require remedial action taken by the owner, at the owner's expense, in order to achieve a passing result.
  - a. All backflow assembly inspection, testing, and repair shall be performed by a certified tester, as required by the Utility Manual. Tester must be a plumber licensed in the State of Florida.

- b. All fire line backflow preventer assembly inspection testing and repair shall be performed by a certified tester, as required by the Utility Manual.
  - c. Certified tester must provide certification documents to Wellington or Wellington's authorized third-party administrator, if applicable, and shall pay any associated processing fees.
- B. The owner's premises shall be open for inspection at all reasonable times to authorized representatives of Wellington to determine whether cross connections or other structural or sanitary hazards, including violations of this article, exist. When such a condition becomes known, the Utility Director may deny or immediately discontinue service to the premises until the customer has corrected the condition in conformance with state law and these regulations.

### **Sec. 23-27: Fees**

Wellington may adopt fees for the reimbursement of costs of inspection and oversight for the cross connection program. Such fees will be identified on the Utility Rate and Fee Schedule. The owner shall be responsible for all fees to Wellington's third party cross connection control program administrator, where applicable. Third-party administration fees shall be paid directly to the third-party administrator and are in addition to any fees levied by Wellington.

### **Sec. 23-28: Enforcement and Penalties**

- A. Enforcement: Every law enforcement official having jurisdiction in the area governed by this Code may, in connection with all other duties imposed by law, enforce the provisions of this article by issuance of a citation, summons, or notice to appear in county court, or by filing an action in civil court for injunctive relief. The Village Manager may also delegate enforcement responsibility for this article to other departments of Wellington, in accordance with state and local law.
- B. Penalties: Any user who violates any provision of this article shall also be subject to the remedies authorized by Chapter 2 of this Code, or as otherwise allowed by law.
- C. In addition to the sanctions contained herein, Wellington may take appropriate action, including, but not limited to, administrative action and requests for temporary and permanent injunctions to enforce the provisions of this article.
- D. The failure, refusal, or inability of the owner to obtain a passing certified inspection result, shall constitute grounds for discontinuing water service to the premises until such requirements have been satisfactorily met.
- E. When notified by the Utility Department of a violation of this article, the failure, refusal, or inability of the owner to have the defect corrected by the end of a specified time interval, shall constitute grounds for discontinuing water service to the premises until such requirements have been satisfactorily met.
- F. Service of water to any premises may be discontinued by Wellington if a backflow prevention device required by this article is not installed, tested, and maintained, or if it is found that a backflow prevention device has been removed or bypassed, or if an unprotected cross connection exists on the premises. Service will not be restored until such conditions or defects are corrected.

- G. Service to a customer may be discontinued immediately and without written notice if such action is necessary to protect public health or the public water supply. Service will not be restored until all circumstances, conditions, or defects causing discontinuance of service are fully corrected.

### **ARTICLE 3 – WATER UTILITY PROTECTION**

#### **Sec. 23-29: Title**

This article shall be known as the "Tampering Ordinance," and may be so cited.

#### **Sec. 23-30: Authority**

- A. Article VIII of the State Constitution and Chapter 166, Florida Statutes, provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law. Wellington's Council is therefore authorized to adopt, prescribe, and promulgate rules and regulations to protect Wellington's Utility.
- B. It is in the public interest to ensure the public Utility assets are protected.
- C. It is in the public interest to establish procedures and standards for the protection of Utility assets and services within Wellington's Urban Service Boundary and its Utility Service Area.

#### **Sec. 23-31: Purpose, Intent, and Applicability**

The application of this article is necessary to protect the Utility's assets, and for the promotion of public health, safety, and general welfare of Wellington's residents and Utility customers. The regulations set forth in this article are applicable to all property where Utility assets exist. The specific provisions of this article shall be applied and interpreted in a manner consistent with Wellington's purpose and intent to:

- A. Protect Utility assets and services as defined under F.S. § 812.14 *Trespass and Larceny with Relation to Utility Fixtures; Theft of Utility Services*
- B. Facilitate system protections established under F.S. § 403 Part VI and the Utility Manual; and
- C. Enforce procedures for protection of Utility assets as outlined in Chapter 162 of the Florida Statutes and Chapter 2, Article IV of this Code.

#### **Sec. 23-32: Relationship to Other Agency Requirements**

The requirements of this article are intended to supplement and expand upon rules, regulations, and permit requirements of federal, state, and local agencies. In no case will the requirements of this article lessen the requirements under federal or state law.

#### **Sec. 23-33: Administration**

The Utility Director, or their designee, is responsible for the following tasks and has the authority to make the following decisions, as necessary, to protect the public water system and the health, safety, and general welfare of Wellington's residents and Utility customers:

- A. Implement and enforce the provisions of this article.
- B. Update the Utility Manual as necessary to protect Wellington, its residents and utility customers.
- C. The Utility Director have the authority to waive certain general requirements, or allow alternative procedures when the requirements of applicable statutes and the intent of this article have been met. The applicant shall obtain written approval from the Utility Director for alternative procedures.

#### **Sec. 23-34: Trespassing**

For the purposes of public health and safety, unless specified, Utility assets are protected from public access. The following rules apply:

- A. Individuals, including customers, shall not willfully enter or remain on some form of Utility real property or asset without authorization, license, or invitation; or
- B. Returning to or ignore a prior warning to stay off Utility assets; or
- C. Gain access to Utility assets, properties, or systems, without first obtaining authorization from the Utility.

#### **Sec.23-35: Tampering**

For the purposes of public health and safety, unless specified, Utility assets are protected from tampering. The following rules apply:

- A. Individuals, including customers, shall not remove, impact, or tamper with any Utility asset of Wellington located on the premises being served thereby. Nor shall a customer permit anyone to do so on their behalf.
- B. No person, unless authorized by the Utility, shall tamper with, remove, replace, or open any fire hydrant, valve, or corp stops, or tamper with in any way the protected Utility assets.
- C. No unauthorized person or contractor shall uncover, make any connections with or opening into, use, alter, or disturb any public water main or appurtenance thereof without first obtaining a permit from the Utility.
- D. It shall be unlawful for anyone to tamper with or remove locks on any Utility assets.
- E. No person shall tamper with or introduce any material, substance, or chemical to any protected Utility asset.
- F. It is unlawful for any person to threaten, assist others, or facilitate tampering with Utility assets.

#### **Sec. 23-36: Enforcement and Penalties**

- A. Enforcement: Every law enforcement official having jurisdiction in the area governed by this Code may, in connection with all other duties imposed by law, enforce the provisions of this article by issuance of a citation, summons, or notice to appear in county court, or by filing an action in civil court for injunctive relief. The Village Manager may also delegate enforcement responsibility for this article to other departments of Wellington, in accordance with state and



local law.

- B. Penalties: Any user who violates any provision of this article shall also be subject to the remedies authorized by Chapter 2 of this Code, or as otherwise allowed by law.
- C. In addition to the sanctions contained herein, Wellington may take appropriate action, including, but not limited to, administrative action and requests for temporary and permanent injunctions to enforce the provisions of this article.
- D. In addition to the penalties set forth in this section, Wellington may also recover: water lab fees, quality testing fees, repair and replacement costs, labor costs, court costs and attorneys' fees at all trial and appellate levels.
- E. The Utility service account of any person or customer who violates this article may be discontinued until all outstanding fines are paid and all violations are corrected.
- F. Service to a customer may be discontinued immediately and without written notice if such action is necessary to protect public health or the public water supply. Service will not be restored until all circumstances, conditions, or defects causing discontinuance of service are fully corrected.

## **ARTICLE 4 – INDUSTRIAL PRETREATMENT**

### **Sec. 23-37: Title**

This article shall be known as the "Wellington's Industrial Pretreatment Ordinance," and may be so cited.

### **Sec. 23-38: Authority**

- A. It is in the public interest to establish procedures and standards for direct and indirect discharge into the wastewater systems within Wellington's Utility Service Area.
- B. State and federal laws, including the Clean Water Act (33 U.S.C. § 1251 *et seq.*), the general pretreatment regulations (40 C.F.R. § 403), and Chapter 62-625, F.A.C.; and
- C. Article VIII of the State Constitution and Chapter 166, Florida Statutes, provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law. Wellington's Council is therefore authorized to adopt, prescribe, and promulgate rules and regulations to protect Wellington's Utility

### **Sec. 23-39: Purpose, Intent, and Applicability**

This article is necessary to protect the public wastewater system by regulating direct and indirect discharge into the Utility's wastewater collection and transmissions systems from industrial users, and for the promotion of public health, safety, and general welfare of Wellington's residents and Utility customers. The regulations set forth in this article are applicable to all non-residential users. This article provides for monitoring, compliance, and enforcement activities and requires industrial user reporting.

The specific provisions of this article shall be applied and interpreted in a manner consistent with Wellington's purpose and intent to:

- A. Prevent the introduction of pollutants into the WRF or wastewater system that will interfere with the operation of a WRF, including interference with its use or disposal of municipal sludge; [40 C.F.R. § 403.2(a)]
- B. Prevent the introduction of pollutants into the publicly owned wastewater system that will pass through the treatment works or otherwise be incompatible with such works; [40 CFR § 403.2(b)]
- C. Protect both Wellington's personnel, who may be affected by wastewater and sludge in the course of their employment, and the general public;
- D. Improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges; [40 CFR § 403.2(c)];
- E. Enable Wellington to comply with all federal, state, and local laws to which the Utility Department is subject; and
- F. Ensure the existing customers of the Utility will not have to bear the costs resulting from introduction of industrial waste into the public wastewater system or the WRF.

#### **Sec. 23-40: Relationship to Other Agency Requirements**

The requirements of this article are intended to supplement and expand upon rules, regulations, and permit requirements of other federal, state, and local agencies. In no case will the requirements of this article lessen the requirements under federal, state, or local law governing the design or construction of improvements.

#### **Sec. 23-41: Administration**

Except as otherwise provided herein, the Utility Director, or their designee, shall administer, implement, and enforce the provisions of this article.

#### **Sec. 23-42: Abbreviations**

The abbreviations used in this article have the following meanings:

C.F.R. – Code of Federal Regulations

EPA – U.S. Environmental Protection Agency

F.A.C. – Florida Administrative Code

FDEP – Florida Department of Environmental Protection

F.S. – Florida Statutes

U.S.C. – United States Code

WRF – Wellington Water Reclamation Facility

#### **Sec. 23-43: General Requirements**

In order to protect the WRF and public wastewater system, prohibit wastewater line stoppage, and prevent hindrances to wastewater treatment, all non-residential users shall complete a Wastewater Discharge Survey, as set forth in the Utility Manual.

## **Sec. 23-44: General Prohibitions**

- A. No person shall release or cause to be release into the WRF any prohibited discharge as outlined in the Utility Manual.
- B. No person shall connect, or cause to connect to a building wastewater service line or building drain, which in turn is connected directly or indirectly to the WRF, any roof downspout, exterior foundation drain, areaway drain, wash area drain (including horse wash water), other source of surface runoff or groundwater, or any other connection prohibited in the Utility Manual.
- C. An industrial user shall not introduce into a wastewater system any pollutant that causes pass through or interference. [Rule 62-625.400(1)(a), F.A.C.]

## **Sec. 23-45: Specific Prohibitions**

The following pollutants shall not be introduced into the wastewater system: [Rule 62-625.400(2), F.A.C.]

- A. Pollutants that create a fire or explosion hazard in the wastewater system;
- B. Pollutants that will cause corrosive structural damage, and in no case discharges with pH lower than 5.0 unless approved by the Utility;
- C. Solid or viscous pollutants in amounts that will cause obstruction to the flow in the WRF resulting in interference;
- D. Any pollutant, including oxygen demanding pollutants, released in a discharge at a flow rate or pollutant concentration that will cause interference with the wastewater system;
- E. Heat in amounts that will inhibit biological activity in the wastewater system resulting in interference;
- F. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
- G. Pollutants that result in the presence of toxic gases, vapors, or fumes within the wastewater system in a quantity that will cause acute worker health and safety problems;
- H. Any trucked or hauled pollutants, except at the discharge points designated by the Utility Director;
- I. Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, health, or safety, or to prevent entry into the sewers for maintenance or repair;
- J. Wastewater that imparts color that cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently impart color to the treatment plant's effluent;
- K. Wastewater containing any radioactive wastes or isotopes;
- L. Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water,

animal hair, and unpolluted wastewater;

- M. Sludges, screenings, or other residues from the pretreatment of industrial wastes;
- N. Medical wastes;
- O. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;
- P. Detergents, surface-active agents, or other substances that may cause excessive foaming in the wastewater systems;
- Q. Fats, oils, or greases of animal or vegetable origin in concentrations greater than 100 mg/l;
- R. Wastewater causing two (2) readings on an explosion hazard meter at the point of discharge into the WRF, or at any point in the WRF, of more than 5%, or any single reading over 10% of the lower explosive limit of the meter.

#### **Sec. 23-46: Exemptions**

Residential connections are exempt from the provisions of this article.

#### **Sec. 23-47: Pretreatment Standards (Categorical Standards)**

Categorical industrial users must comply with the categorical pretreatment standards found in 40 C.F.R. Chapter I, Subchapter N, Parts 405 through 471. [Rule 62-625.410(1), F.A.C.]

#### **Sec. 23-48: Reporting Requirements**

- A. Reports of Changed Conditions. All industrial users must notify the Utility Director of any significant changes to the industrial users operations or system that might alter the nature, quality, or volume of its wastewater at least 30 days before the change.
- B. Reports of Potential Problems. All industrial users shall notify the Utility Director immediately of all discharges that could potentially harm the wastewater system.
- C. Notification of the Discharge of Hazardous Waste [Rule 62-625.600(15), F.A.C.]
  - 1. Industrial Users shall notify the Utility Director within 24 hours, and FDEP's hazardous waste and pretreatment authorities in writing, of any discharge into the wastewater systems of a substance that, if otherwise disposed of, would be a hazardous waste under Chapter 62-730, F.A.C. Such notification must include the following:
    - a. An identification of the hazardous constituents contained in the wastes,
    - b. An estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month, and
    - c. An estimation of the mass of constituents in the waste stream expected to be discharged during the following 12 months.

#### **Sec. 23-49: Compliance Monitoring**

The Utility Director shall have the right to carry out all inspections, surveillance and monitoring procedures necessary to determine, independent of information supplied by the industrial user, whether

the industrial user is in compliance or noncompliance with applicable pretreatment standards. The Utility Director is authorized to enter any premises of any industrial users in which a discharge source or treatment system is located. Industrial user shall allow the Utility Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

#### **Sec. 23-50: Fees**

Wellington may adopt fees for the reimbursement of costs of administering Wellington's Pretreatment Program. Such fees will be identified on the Utility Rate and Fee Schedule.

#### **Sec. 23-51: Enforcement and Penalties**

- A. Enforcement: Every law enforcement official having jurisdiction in the area governed by this Code may, in connection with all other duties imposed by law, enforce the provisions of this article by issuance of a citation, summons, or notice to appear in county court, or by filing an action in civil court for injunctive relief. The Village Manager may also delegate enforcement responsibility for this article to other departments of Wellington, in accordance with state and local law.
- B. Penalties: Any user who violates any provision of this article shall also be subject to the remedies authorized by Chapter 2 of this Code, or as otherwise allowed by law.
- C. In addition to the sanctions contained herein, Wellington may take appropriate action, including, but not limited to, administrative action and requests for temporary and permanent injunctions to enforce the provisions of this article.
- D. When the Utility Director finds that an industrial user has violated any provision of this article or any other pretreatment standard or requirement, the Utility Director may require the owner to correct the deficiency within a time frame as determined by the Utility Director.
- E. The failure, refusal, or inability on the part of the owner to correct the deficiency, shall constitute grounds for discontinuing water and/or sewer service to the premises until such requirements have been satisfactorily met.
- F. When the Utility Director finds that an industrial user has violated, or continues to violate, any provision of this article or any other pretreatment standard or requirement, the Utility Director may immediately discontinue water and/or sewer service to the property. Water or sewer service to a customer may be discontinued immediately and without written notice if, in the opinion of the Utility Director, such action is necessary to protect public health or the wastewater system.

## **CHAPTER 24 - WATERWAYS**

### **Sec. 24-1: Swimming, Bathing, Wading or Immersing in Public Waters**

It shall be unlawful for any person to swim, bathe, wade, or immerse in any publicly owned water body, canal, or lake located within Wellington boundaries.

### **Sec. 24-2: Operation of Personal Watercraft within Wellington Prohibited; Exceptions**

The operation of any gasoline, diesel, or fuel-powered boats, vessels, jet skis, waverunners, or other personal watercraft is hereby expressly prohibited on or in any publicly owned water body, lake, or canal located in Wellington, except that the use of gasoline, diesel, or fuel-powered boats may be permitted as provided in section 24-3 hereof. This section shall not be construed to prohibit the use of self-propelled, non-motorized, personal watercraft such as canoes, paddleboats, or rowboats, nor those watercraft propelled or powered by electric motors.

### **Sec. 24-3: Exceptions**

The use of gasoline, diesel, or fuel-powered boats may be permitted by the Council in the following instances:

- A. Municipal and other government agencies in the performance of aquatic weed control and other health and safety related programs.
- B. Emergency rescue or recovery vessels associated with a permitted event or activity.
- C. Educational or recreational programs approved as a special use permit by the Wellington Council, following a public hearing. Such permits must specifically provide for the use of fuel powered boats and specify the number, size, and power limitations of same.

### **Sec. 24-4: Access Regulation for Publicly-Owned Waterways**

- A. The definitions set forth in F.S. Ch. 327, as amended from time to time, are hereby incorporated into this chapter by reference.
- B. Definitions: In addition to the definitions set forth in F.S. Ch. 327, the following definitions apply to this chapter:  
  
**Wellington Waterway:** any water, waterway, lake, river, tributary, canal, lagoon, or connecting water within Wellington.
- C. License Required: A vessel shall not be operated in or on Wellington waterways unless properly licensed as required by applicable state and federal laws and regulations.
- D. U.S. Coast Guard Regulations: A vessel shall not be operated in or on Wellington waterways unless it complies with all applicable requirements of the United States Coast Guard.
- E. Speed Limit: The speed limit on all Wellington waterways is established as "Idle Speed, No Wake," (5 Knots).
- F. Maintenance of Docks: Persons controlling or occupying vessels shall at all times keep the docks, seawalls and premises adjacent to such vessels in a neat and orderly manner and free from trash, rubbish, repair parts, machinery, equipment, and debris of all kinds.
- G. Waste Disposal: Dumping of waste, including without limitation solid waste, garbage, paper, bottles, cans, refuse, debris, and sanitary waste on, into, or adjacent to Wellington waterways is prohibited.

- H. Launching of Vessels: Launching of vessels from a publicly or privately owned property without the express authorization of the property owner, whether such property is developed or undeveloped, shall be prohibited.

#### **Sec. 24-5: Boat Ramp Access**

Use and Maximum Hull Length: Wellington boat ramps shall be for the exclusive use of Wellington residents and owners of real property lying within Wellington's boundaries. The maximum boat length permitted to use a Wellington boat ramp shall be 20 feet, except that by special permit the Wellington Engineering Department may approve a longer vessel length where that vessel is owned by a resident whose property abuts Lake Wellington and the vessel is regularly docked or anchored at the residence.

#### **Sec. 24-6: License Required at Wellington-Owned Boat Ramps**

- A. Parking license. Only residents and property owners of Wellington shall be allowed to park vehicles and boat trailers in designated parking areas at Wellington-owned boat ramps. Such vehicles shall be required to obtain a parking license from Wellington, pursuant to the following regulations:
1. The required licenses shall be applied for through the Customer Services Department. Applicants must demonstrate residency by submitting two forms of identification.
  2. The licenses shall be renewed annually.
  3. The annual fee for a license shall be \$25.00. This fee shall pay for administrative costs and is not refundable.
  4. Proof of insurance and a current registration for the vessel for which the license is intended shall be provided to Wellington for a new license and each year to renew a license.
  5. The license shall be prominently displayed on the tongue of the vessel's trailer.
  6. The applicant for a parking license must sign a form indicating that they agree to abide by Wellington regulations restricting gas powered engines on Wellington waterways. This form need only be signed one time.
  7. Wellington, law enforcement, and other public agency vessels shall be exempt from having to display a boat ramp license when parking at such facilities.
  8. Property owners and residents applying for a parking license must present evidence that they are the current owner of the property as is listed on the property appraiser's records or in the alternative, provide a copy of a deed or current lease evidencing their ownership or lease hold of the property. Family members living with the property owners must present an affidavit confirming they live with the property owner.
- B. Enforcement: This section shall be enforced by Wellington's Code Compliance Division and the district office of the Palm Beach Sheriff's Office in the same manner as parking violations pursuant to Chapter 22 of this Code except that violations of this section shall be punishable by a civil penalty of \$30.00 for a first offense and \$250.00 for a second offense.

## **APPENDIX A - FRANCHISES**

### **ARTICLE I - FLORIDA POWER & LIGHT COMPANY**

#### **Division 1 - Generally**

##### **Ordinance No. 98-33**

An ordinance of the Village Council of the Village of Wellington, Florida, granting to Florida Power & Light Company, its successors and assigns, an electric franchise within the incorporated area of the village; imposing provisions and conditions relating to such franchise; providing for acceptance by Florida Power & Light; providing for an effective date; providing for repeal of ordinances in conflict; providing for ratification of prior ordinances in the event franchise not accepted; and for other purposes.

Be it ordained by the Village Council of the Village of Wellington, Florida, that:

##### **Sec. 1: Grant of Franchise; Duration; Scope; Purpose**

There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called "Grantee") for the period of 30 years, commencing June 25, 1996, the nonexclusive right, privilege and franchise (hereinafter called "franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, and rights-of-way, and other public places owned by the Village of Wellington (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the Village of Wellington, Florida, and its successors (hereinafter called "grantor") in accordance with the grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the grantee's electric light and power operations (hereinafter called "facilities"), for the purpose of supplying electricity and other services related to the supply of electricity to the grantor, its successors, and persons within and beyond the boundaries thereof.

##### **Sec. 2: Installation of Local Facilities; Interference with Public Rights-of-Way**

The facilities of the grantee shall be installed, located or relocated so as not to unreasonably interfere with drainage canals in public rights-of-way which existed prior to the installation of grantee's facilities, or with traffic over the public rights-of-way or with reasonable egress from and ingress to abutting property. To avoid conflict with such drainage canals and traffic, the location or relocation of all facilities shall be made as representatives of the grantee may prescribe in accordance with reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations shall not prohibit the grantee's use of said public rights-of-way or unreasonably interfere with the grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers. When any portion of a street is excavated by the grantee in the location or relocation of any of its facilities, the portion of the street so excavated shall within a reasonable time be replaced by the grantee at its expense and in as good condition as it was at the time of such excavation and in compliance with the standards under which the street was originally constructed. Grantor shall not be liable to the grantee for any cost or expense in connection with such location or relocation of grantee's facilities made necessary by the grantor's improvement of any of the present and future public rights-of-way used or occupied by



the grantee hereunder, except, however, the grantee shall be entitled to reimbursement of its costs from funds available from sources other than the grantor as may be provided by law and for costs resulting from improvement of any drainage canal not in existence on the effective date hereof.

### **Sec. 3: Liability of Grantor**

The grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the grantee of its electric facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of the grantee to indemnify the grantor and hold it harmless against any and all liability, loss, cost, damage, or expense which may accrue to the grantor by reason of the existence of grantee's facilities in the public rights-of-way or negligence, default or misconduct of the grantee in the construction, operation, or maintenance of its electric facilities hereunder.

### **Sec. 4: Rates, Rules and Regulations of Grantee**

All rates, rules and regulations established by the grantee from time to time shall at all times be reasonable and the grantee's rates for electricity shall at all times be subject to such regulation as may be provided by law.

### **Sec. 5: Payment for Rights and Privileges by Grantee**

As a consideration for this franchise, the grantee shall pay to the grantor no later than the end of Florida Power & Light Company's first monthly billing period ending after the effective date of this ordinance and no later than the end of each succeeding monthly billing period during the term of franchise, an amount which added to the amount of all licenses, excises, fees, charges, and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the grantor against Florida Power & Light Company's property, business or operations and those of its subsidiaries during Florida Power & Light Company's monthly billing period ending 30 days prior to each such payment will equal five percent of Florida Power & Light Company's billed revenues, less actual writeoffs, from the sale of electrical energy to residential, commercial and industrial customers within the incorporated areas of the grantor for the monthly billing period ending 30 days prior to each such payment, and in no event shall payment for the rights and privileges granted in the franchise exceed five percent of such revenues for any monthly billing period of Florida Power & Light Company.

### **Sec. 6: Considerations of Grantor**

As a further consideration of this franchise, the grantor agrees (a) not to engage in the business of distributing and selling electricity at retail during the term of this franchise or any extension thereof in competition with the grantee and (b) not to itself distribute, or seek to have the grantee transmit and/or distribute, electric power generated by or on behalf of the grantor at one location to the grantor's or any other retail customer's facilities at any other location(s).

### **Sec. 7: Termination of Franchise by Grantee Upon other Grantees Receiving More Favorable Conditions; Notice**

If the grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the grantor in which the grantee may lawfully serve or compete

on terms and conditions that the grantee considers more favorable than the terms and conditions contained herein, the grantee may at any time thereafter terminate this franchise. Such termination shall be effective on the last day of the month in which written notice termination is delivered to the grantor's clerk. Such notice shall, without prejudice to any of the rights reserved for the grantee herein, inform the grantor of such terms and conditions

#### **Sec. 8: Same Upon Competitive Disadvantage; Notice**

If as a direct or indirect consequence of any legislative, regulatory or other action by the United State of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated areas of the grantor to a customer then being served by the grantee, or to any new applicant for electric service within any part of the incorporated areas of the grantor in which the grantee may lawfully serve, and the grantee determines that its obligations hereunder, or otherwise resulting from this franchise in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the grantee may, at any time after the taking of such action, terminate this franchise. Such termination shall be effective on the last day of the month in which written notice of termination is delivered to the grantor's clerk. Such notice shall, without prejudice to any of the rights reserved for the grantee herein, inform the grantor of the circumstances which resulted in the exercise of its right to terminate.

#### **Sec. 9: Failure of Grantee to Comply with Ordinance; Forfeiture; Appeal; Time for Compliance**

Failure on the part of the grantee to comply in any substantial respect with any of the provisions of this ordinance shall be grounds for forfeiture of this grant, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the grantee shall, as soon as practicable and in any event not later than six months after such final determination, make good the default before a forfeiture shall result with the right in the grantor at its discretion to grant such additional time to the grantee for compliance as necessities in the case require.

#### **Sec. 10: Failure of Grantor to Comply; Remedy of Breach; Withholding of Payments**

Failure on the part of the grantor to comply in any substantial respect with any of the provisions of this ordinance, including:

- (a) Denying the grantee use of public rights-of-way for reasons other than unreasonable interference with traffic, drainage system use, operation or maintenance;
- (b) Imposing conditions for use of public rights-of-way contrary to Florida law and contrary to FPL's standard practices; or
- (c) Unreasonable delay in the issuance of a permit, if any, to construct its facilities in public rights-of-way,

shall constitute a breach of this franchise. Grantee shall notify the grantor of any such breach in writing and the grantor shall remedy such breach as soon as practicable and in any event by not

later than 90 days. Should the breach remain unresolved after 90 days, FPL, at its the sole discretion, may withhold all or part of the payments provided for in section 5 hereof until such time as the breach is remedied or a court of competent jurisdiction has reached a final determination in the matter. Grantor recognizes and agrees that nothing in this franchise constitutes or shall be deemed to constitute a waiver of the grantee's delegated sovereign right of condemnation and that the grantee, in its sole discretion, may exercise such right to obtain a greater right than is granted herein.

#### **Sec. 11: Examination of Grantee's Records by Grantor; Audit Requirements**

Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at grantor's expense, examine the records of the grantee relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the grantee's office where such records are maintained. Records not prepared by the grantee in the ordinary course of business may be provided at the grantor's expense and as the grantor and the grantee may agree in writing. Information identifying the grantee's customers by name or their electric consumption shall not be taken from the grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the grantor, shall be reported to the grantee. The grantor's right to examine the records of the grantee in accordance with this section shall not be conducted by any third party employed by the grantor whose fee for conducting such audit is contingent on findings of the audit.

#### **Sec. 12: Interdependent Nature of Ordinance Provisions**

The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect, the entire ordinance shall be null and void and of no further force or effect.

#### **Sec. 13: Person Defined**

As used herein, "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an unincorporated association, a joint venture, a governmental authority, or any other entity of whatever nature.

#### **Sec. 14: Conflicting Ordinances Repealed**

The grantee shall file its acceptance of the franchise with the grantor's clerk within 30 days of adoption hereof. The effective date of this ordinance shall be the date upon which the grantee files such acceptance

#### **Sec. 15: Acceptance Deadline; Effective Date**

Once the grantee files its acceptance of the franchise granted herein, this ordinance shall replace Ordinance No. 96-17, as modified by Ordinance No. 97-07, and all ordinances and parts of ordinances in conflict herewith are hereby repealed. Until grantor files its acceptance of this franchise, the franchise granted by Ordinance No. 96-17, as modified by Ordinance No. 97-07, shall remain in full force and effect and is hereby ratified

#### **Division 2 - Payment to Village Increased**

### **Ordinance No. 97-07**

An ordinance of the Village Council of the Village of Wellington, Florida, exercising the option to adjust the amount to be paid by Florida Power & Light Company to the Village of Wellington pursuant to Ordinance No. 96-17, The Electric Franchise Ordinance; providing for an effective date and for other purposes.

Whereas, the Village of Wellington, Florida, adopted Ordinance No. 96-17 granting an electric franchise to Florida Power & Light Company on June 25, 1996; and

Whereas, Florida Power & Light Company accepted the electric franchise Ordinance No. 96-17 on June 25, 1996; and

Whereas, said franchise ordinance provides that the Village of Wellington shall have the option to adjust the amount to be paid by Florida Power & Light Company to the Village of Wellington beginning with the first monthly payment made after October 1, 1997; and

Whereas, the Village of Wellington desires to exercise its option to adjust the amount to be paid by Florida Power & Light Company.

Now, therefore, be it ordained by the Village Council of the Village of Wellington, Florida, that:

#### **Sec. 1: Increase of Payment Option Exercised**

The Village of Wellington hereby exercises its option pursuant to section 5 of Ordinance No. 96-17 to increase to five percent the amount to be paid to the Village of Wellington by Florida Power & Light Company, beginning with the first monthly payment made after October 1, 1997.

#### **Sec. 2: Due Date of Payment; Limit on Amount**

Florida Power & Light Company shall pay to the Village of Wellington no later than the end of Florida Power & Light Company's first monthly billing period ending after October 1, 1997, and no later than the end of each succeeding monthly billing period during the term of the franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and nonad valorem tax assessments on property) levied or imposed by the Village of Wellington against Florida Power & Light Company's property, business or operations and those of its subsidiaries during Florida Power & Light Company's monthly billing period ending 30 days prior to each such payment will equal five percent of Florida Power & Light Company's billed revenues, less actual writeoffs, from the sale of electrical energy to residential, commercial and industrial customers within the incorporated areas of the Village of Wellington for the monthly billing period ending 30 days prior to each such payment, and in no event shall payment for the rights and privileges granted in the franchise exceed five percent of such revenues for any monthly billing period of Florida Power & Light Company following this exercise of the Village of Wellington's option.

#### **Sec. 3: Notice to Grantee**

The Village of Wellington Clerk is hereby directed to forward a certified copy of this ordinance to Florida Power & Light Company no later than 90 days prior to October 1, 1997.

#### **Sec. 4: Effective Date of Ordinance**

This ordinance shall take effect immediately upon its adoption [April 29, 1997].

### **ARTICLE II - FLORIDA PUBLIC UTILITIES COMPANY**

#### **Sec. 1: Gas Franchise Agreement**

A franchise agreement has been entered into whereunder the village has franchised, licensed, and permitted Florida Public Utilities Company, a Florida for profit company to dispense gas to all residents or occupants of premises within the village as requested. This franchise agreement shall remain in effect to May 24, 2035, at which time it will be subject to an automatic six month Nov. 24, 2035 extension privilege unless either the franchisee or village elects not to so extend. Copies of the franchise agreement are available for review and inspection with the village clerk.