



**TOWN OF HIGHLAND BEACH  
ORDINANCE NO 2021-018**

**AN ORDINANCE OF THE TOWN OF HIGHLAND BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 12 “CONSTRUCTION SITES,” CHAPTER 25 “STREETS, SIDEWALKS AND BICYCLE/WALKWAY PATHS,” CHAPTER 28 “XERISCAPE-LANDSCAPE REQUIREMENTS, INSTALLATION, AND MAINTENANCE” AND CHAPTER 30, “ZONING CODE,” TO ALLOW FOR CERTAIN IMPROVEMENTS AND TO PROVIDE PROTECTION OF SWALES LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Highland Beach, Florida, is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, the Town’s Code of Ordinances does not currently provide regulations regarding the use of the public right-of-way including swales, to install, construct or replace any improvement(s) with the exception of telecommunication facilities as provided in Chapter 32 and nuisances as provided in Chapter 17; and

**WHEREAS**, at the December 15, 2020 Town Commission meeting, the Commission agreed to not move forward with stand-alone right-of-way permitting regulations but instead to strengthen existing Town Code provisions in an effort to protect the public right-of-way including swales; and

**WHEREAS**, the Town Commission wishes to amend Chapters 12, 25, 28 and 30 of the Code of Ordinances in an effort to protect the public right-of-way including swales while also allowing certain improvements; and

**WHEREAS**, the Town Commission has determined that the amendments to the Code of Ordinances are in the best interest of the Town of Highland Beach.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF HIGHLAND BEACH, FLORIDA, AS FOLLOWS:**

**Section 1.** The foregoing facts and recitations contained in the preamble to this Ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

**Section 2.** The Town of Highland Beach Code of Ordinances, is hereby amended by amending Chapter 12 “Construction Sites” to read as follows (deleting is stricken through and adding is underlined):

**Sec. 12-12. – Construction in the public right-of-way.**

No person or entity shall construct in the public right-of-way including swales without first obtaining, prior to commencement of any work, a right-of way permit from the Town for such activity if required by section 25-1.

**Section 3.** The Town of Highland Beach Code of Ordinances, is hereby amended by amending Chapter 25 “Streets, Sidewalks and Bicycle/Walkway Paths,” to read as follows (deleting is ~~stricken through~~ and adding is underlined):

**Chapter 25 – STREETS, SIDEWALKS, ~~AND~~ BICYCLE/WALKWAY PATHS, AND RIGHT-OF-WAY**

**Sec. 25-1. - Obstruction of streets, sidewalks, right-of-way—Prohibited.**

It shall be unlawful to obstruct or cause to be obstructed any sidewalk or crossing in any way. It shall be unlawful to erect, build, construct, deposit or place, or to procure or cause to be erected, built, constructed, deposited or placed upon or in any street, or any place where the public has a right of passage, any house, cellar, stable, shed, privy, fence, enclosure, walls, foundations or any other structure, or any obstruction of any kind whatsoever; or for the owner or occupant of any lots or part thereof abutting on a street to permit any obstruction to remain upon the sidewalk in front of such lot or part thereof, or for the owner or occupant of such lot or part thereof to permit any sidewalk in front of such lot or part thereof to remain in such condition as to prevent convenient and safe use thereof by the public. The provisions of this section shall not extend to canvas or wooden awnings placed in front of stores or other buildings, when such awnings are not less than eight (8) feet from the ground or sidewalk at the lowest point. It shall be unlawful to construct improvements or install trees in new locations within the public right-of-way including swales, as defined in Section 25-14, without first obtaining a right-of-way permit (right-of-way permit fee shall be waived) from the building department unless waived or otherwise determined as not required by the town’s public works director (with the exception of telecommunication facilities which are governed by Chapter 32 of this Code). For work performed within the State Road A1A right-of-way, the permit required by this section is in addition to any permit that is required by the Florida Department of Transportation (FDOT), and the Town’s issuance of a right-of-way permit



shall neither impair FDOT's regulatory authority nor otherwise impact any conditions or requirements that may be imposed by FDOT. The following improvements are permitted in the public right-of-way, except as provided in Section 17-2(3), and do not require a right-of-way building department permit:

- (a) Underground sprinkler systems with flush or pop-up heads.
- (b) Mailboxes.
- (c) Ground cover as defined in Section 28-2.
- (d) Replacement of existing landscaping including, but not limited to, trees, shrubs or plants greater than twenty-four inches in height so long as such landscaping is replaced in the same location. Existing landscaping located within a swale shall not be replaced.

**Sec. 25-4. - Storing building materials.**

It shall be unlawful for any person to store, or cause to be stored, on the public streets or swales any building material or materials used in the construction of buildings or additions to buildings, or any other material that affects the free and uninterrupted use of the streets by the public, unless it appears to the satisfaction of the town manager that no available space can be secured on lots adjacent to the proposed building on which to store the building material.

**Sec. 25-5. - Unlawful deposits in streets—Offensive matter; gutter and swale obstructions; excess drainage.**

It shall be unlawful to throw or deposit offal or other offensive matter in any street or to discharge or permit to be discharged from any premises so much water or other liquids as may put any part of the streets in bad order or to obstruct the gutters, swales or sewers with dirt, trash, wood, lumber, brick or other material. It shall also be unlawful for any property owner and/or any other person to disturb the natural ground condition in a manner that could cause additional rain or surface water to drain from the property onto any public street, swale or highway.

**Sec. 25-7. - Disturbing surface of street, swale or bicycle/walking path; restoration.**

It shall be unlawful for any person having the privilege of disturbing the surface of any street, swale or bicycle/walking path to fail to leave such street, swale or bicycle/walking path in the condition which existed before the disturbance, by filling and packing the earth and other materials

including paving so as to produce and leave a level surface at the end of each working day. Each day of omission shall constitute a separate offense.

**Sec. 25-8. - Obstructing or injuring pavement, curbing, gutter, swale, sidewalk or bicycle/walking path.**

It shall be unlawful to obstruct or injure in any way or manner any pavement, gutter, swale, curbing, sidewalk or bicycle/walking path, and these shall be kept free from debris and construction materials and shall be usable at all times.

**Sec. ~~25-1431~~. - 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:

*Advertising circular* means any publication primarily designed for purposes of advertising rather than for the dissemination of news reports.

*Bike path* means that portion of a right-of-way improved, designed or ordinarily used for bicycle traffic.

*Distributor* means the person responsible for placing and maintaining a newsrack, the owner of the newsrack or the publisher of the newspaper vended therein.

*Newspaper* means a paper that is printed and distributed, usually daily or weekly, and contains primarily news, articles of opinion and features for which no fee has been charged for placement therein.

*Newsrack* means any coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display, sale or distribution of newspapers or other news periodicals.

*Right-of-way* means all that area dedicated to public use or otherwise owned by a public agency for public street purposes and shall include roadways, swales, bike paths and sidewalks.

*Roadway* means that portion of a right-of-way improved, designed or ordinarily used for vehicular traffic.



*Sidewalk* means any surface within a right-of-way provided for the exclusive or primary use of pedestrians.

*Swale* means any depressed linear area within a right-of-way which is not either a bike path, sidewalk or roadway that can store and/or convey stormwater drainage from roadways and other adjacent impervious surfaces commonly referred to as bioswales or ditches. The term shall also include any area within a roadway which is not open to vehicular traffic.

**Sec. 25-312. - Placement; location.**

Any newsrack which rests in whole or in part upon, or on any portion of a right-of-way or which projects onto, into or over any part of a right-of-way shall be relocated in accordance with the provisions of this section:

- (1) No newsrack shall be used or maintained which projects onto, into or over any part of any roadway or bike path, or which rests wholly or in part upon or over any portion of any roadway or bike path.

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**Sec. 25-323. - Contents; maintenance; identification of distributor.**

- (a) Newsracks shall be used for the sale and distribution of newspapers. Any other publications, including advertising circulars, will not be permitted.

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**Sec. 25-334. - Addition of newsracks to enclosures erected by town.**

If the town, at its expense, decides to install and maintain a cover or supporting structure for the newsracks, additional newsracks shall not be added to the adjacent area without town commission approval. The expense of enlarging the supporting structure shall be borne by the owner of the newsrack requesting the addition. No advertising or signs shall be affixed to the supporting structure.

**Sec. 25-345. - Abandonment.**

If a newsrack remains empty for thirty (30) continuous days, it shall be deemed abandoned and may be treated in the same manner as provided in section 25-389 for newsracks in violation of this Code.

**Sec. 25-356. - Building permit, fee required.**

A building permit with current applicable fees is required for a newsrack. The police department shall also review the plans with regard to safety. The permit holder shall pay a nonrefundable fee of one thousand dollars (\$1,000.00) per calendar year; provided, however, that if the permit is issued during the calendar year, the fee for the permit shall be prorated for any full calendar month which has expired during the calendar year.

**Sec. 25-367. - Indemnification of town.**

An application for a newsrack permit shall be accompanied by a nonrefundable fee as established by resolution of the town commission, and shall contain a written statement, signed by the applicant, whereby the applicant agrees to indemnify and hold harmless the town, its officers, agents and employees, from any loss, liability or damages, including expenses and costs, for bodily injury and property damage sustained by any person as a result of the location, installation, use, maintenance, removal or storage of the applicant's newsracks within the town.

**Sec. 25-378. - Bond; insurance.**

Any accidents directly attributable to newsrack usage will be the responsibility of the permit holder, distributors and owners of newspapers. The applicant shall file with the town, along with the application for a newsrack permit, a bond issued by an insurance company authorized to do business in the state in the penal sum of one thousand dollars (\$1,000.00), with the town named as obligee, conditioned for the faithful performance of the provisions of this article. The applicant shall file with the application proof of general liability insurance in the amount of three hundred thousand dollars (\$300,000.00) per person, five hundred thousand dollars (\$500,000.00) per occurrence and fifteen thousand dollars (\$15,000.00) in property damage, naming the town as coinsured.



**Sec. 25-389. - Enforcement.**

- (a) Upon determination by the town manager that a newsrack has been installed, used or maintained in violation of the provisions of this article, a citation to correct the offending condition shall be issued to the distributor of the newsrack. Such citation shall be mailed by certified mail, return receipt requested. The citation shall specifically describe the offending condition and suggest actions necessary to correct the condition. The citation shall contain the results and any data collected from any pedestrian and vehicular traffic study that may have been performed to ascertain the offending condition. In addition, where the owner of the offending newsrack is not known or identified, a copy of the citation shall be posted on the offending newsrack.
- (b) Failure to properly correct the offending condition within twenty (20) days after the mailing or posting date of the citation, whichever is later, shall result in the offending newsrack being removed by the town. If the offending newsrack is not properly identified as to the distributor and the distributor is not otherwise known, the citation shall be posted as provided herein and if the offending condition is not corrected within twenty (20) days, it shall be removed by the town. Any newsrack removed by the town hereunder shall be stored at the distributor's expense for a period of ninety (90) days. The newsrack shall be released to the distributor upon a proper showing of ownership and payment of any and all storage charges. If the newsrack is not claimed within the ninety-day period, the newsrack may be sold at public auction and the proceeds applied first to storage charges and then paid into the general fund of the town. At least ten (10) days prior to the public auction, the town clerk shall publish a description of the newsrack, the location from which it was removed and notice of the auction in a newspaper of general circulation in the town and shall provide the distributor identified on the newsrack or if otherwise known, with written notification of the auction by certified mail, return receipt requested.
- (c) If the distributor of the newsrack appeals the citation to correct the offending condition as provided in section 25-3940, removal of the newsrack shall be stayed pending final disposition of the appeal, which final disposition shall include any judicial review. The town shall pay or reimburse to the distributor any storage charges paid pursuant to a citation to correct which is appealed as provided herein and the decision rendered favorable to the distributor.

**Sec. 25-~~39~~40. - Appeals.**

Any person or entity aggrieved by a finding, determination, notice or action taken under the provisions of this article (hereinafter, an appellant) may appeal to the code enforcement board. An appeal must be perfected within the twenty (20) days after the mailing or posting of the notice of any protested decision or action by delivering to the office of the town manager a letter of appeal briefly stating the basis for the appeal. A hearing on the appeal shall be held on a date not more than sixty (60) days after receipt of the letter of appeal. The appellant shall be given at least seven (7) days' written notice of the time and place of the hearing. The board shall give the appellant and any other interested party a reasonable opportunity to be heard, in order to show cause why the determination of the license inspector should not be upheld. At the conclusion of the hearing, the board shall make a final and conclusive determination. The determination shall be reduced to writing and signed by the chairman of the board and filed in the office of the town clerk within twenty (20) days of the hearing and a copy shall be sent to the appellant. The decision of the board shall be effective when rendered. The decision of the board may be appealed as provided for by law.

**Section 4.** The Town of Highland Beach Code of Ordinances, is hereby amended by amending Chapter 28 “Xeriscape-Landscape Requirements, Installation and Maintenance,” to read as follows (deleting is ~~stricken through~~ and adding is underlined):

**Sec. 28-7. - Site design standards.**

- (a) Creative site development concepts for water conservation: Creative site development concepts shall be used in order to promote water conservation. Water requirements may be reduced by providing for:
- (1) The preservation of existing plant communities.
  - (2) The reestablishment of native plant communities.
  - (3) Limited amount of lawn grass areas.
  - (4) The use of site specific plant materials (see definitions).
  - (5) The use of shade trees to reduce transpiration rates of lower story plant materials.
  - (6) Site development that retains stormwater runoff on site. Swales within the right-of-way should not be altered or modified except to remove existing trees, shrubs or plants.
  - (7) The use of pervious paving materials.
  - (8) Site development that addresses the carrying capacity of the land in its present form.
  - (9) Other environmentally sensitive site development concepts.



**Sec. 28-10. - Maintenance standards for cultivated landscape areas.**

- (a) *General:* The owner, and/or lessee of land subject to this chapter shall be responsible for the maintenance of all landscaping located on their property and on adjacent public rights-of-way, which shall be maintained in good condition so as to present a healthy, neat and orderly landscape area which shall include, but not be limited to, weeding, mulching, fertilizing, pruning, mowing, and edging as generally set forth in this section.
- (b) *Use requirements for maintenance of mulch layers:* The required mulch layer shall be maintained on all landscape projects.
- (c) *Maintenance of plants, trees and landscaping; replacement:* All required plants, trees and landscaping shall be maintained in a healthy, pest-free condition. Within six (6) months of a determination by the building official that a plant, tree or other landscaping is dead or severely damaged or diseased, the plant, tree or landscaping shall be replaced by the property owner or owners in accordance with the standards specified in this chapter. If the plant, tree or other landscaping ~~landsepaing~~ is located in the public right-of-way and the plant, tree or landscaping dies or is severely damaged or diseased, the adjacent property owner shall be required to replace the plant, tree or other landscaping. If the plant, tree or other landscaping being replaced is an invasive species, then it shall be replaced with a comparable size non-invasive species. However, if the ~~palm~~ tree, that is dead, diseased or severely damaged, was initially installed by the town or the state, then the adjacent property owner shall not be required to replace the ~~palm~~ tree.

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**Section 5.** The Town of Highland Beach Code of Ordinances, is hereby amended by amending Chapter 30 “Zoning Code,” to read as follows (deleting is ~~stricken through~~ and adding is underlined):

**Sec. 30-23. – Board of adjustment and appeals.**

- (a) *Powers and duties.* The board of adjustment and appeals shall consider all applications as provided in Table 30-1, or as otherwise provided herein.
- (b) *Administrative review.* To hear and decide appeals where it is alleged there is error in any order, interpretation, requirement, decision, or determination made by administrative officials in the administration or enforcement of this chapter or the regulations governing Town rights-of-way.

- (c) *Variances*. Consider granting or make recommendations to the Town Commission on variance requests pursuant to section 30-40 of this chapter and article VI of chapter 20.

**Sec. 30-40. Variances and interpretations.**

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- (p) *Interpretations, decisions, and appeals*:

- (1) Appeals of a decision, order, requirement, determination, or interpretation of the building official or other town official regarding the provisions of this chapter, or a determination of the public works director regarding the regulations governing town rights-of-way, shall be filed with the board of adjustment and appeals.
- (2) Appeals shall be filed on an application established by the building official.
- (3) The appeal shall be considered by the board of adjustment and appeals not more than thirty (30) days following receipt of a complete application by the building official.
- (4) The vote of at least four (4) members of the board of adjustment and appeals is necessary to grant an appeal or to reverse the decision, order, requirement, determination, or interpretation of the building official or other town official.
- (5) An aggrieved person may appeal a final decision of the board of adjustment and appeals regarding a decision, order, requirement, determination or interpretation, as set forth in subsection (p)(1) within thirty (30) days of a decision or order, by seeking judicial review of the final decision with the Fifteenth Circuit Court in and for Palm Beach County. Aggrieved persons may include the applicant, an affected party, or the city manager.

**Sec. 30-131. – Definitions of terms.**

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*Improvement* means any structural addition, alteration, expansion or other construction affecting a parcel or existing structure which requires the issuance of a building permit, or any construction activity or installation of trees in new locations affecting a public right-of-way which requires the issuance of a right-of-way permit.

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**Section 6. Severability**. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences,



clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 7. Repeal of Laws in Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 8. Codification.** Sections 2, 3 4 and 5 of the Ordinance shall be made a part of the Town Code of Ordinances and may be re-numbered or re-lettered to accomplish such, and the word “ordinance” may be changed to “section,” “division,” or any other appropriate word.

**Section 9. Effective Date.** This Ordinance shall be effective immediately upon adoption at second reading and shall only apply prospectively.

The foregoing Ordinance was moved by Commissioner Shoemaker seconded by Mayor Hillman and upon being put to the vote, the vote was as follows:

<b>VOTES:</b>	<b>YES</b>	<b>NO</b>
Mayor Douglas Hillman	X	
Vice Mayor Natasha Moore	X	
Commissioner Peggy Gossett-Seidman	X	
Commissioner Evalyn David	X	
Commissioner John Shoemaker	X	

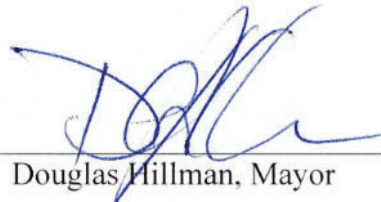
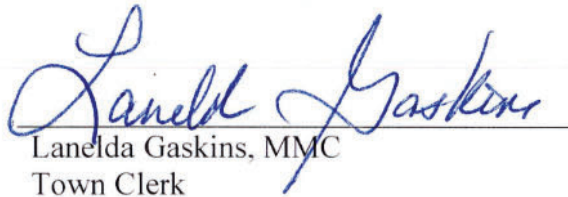
PASSED on first reading at the Regular Commission meeting held on this 9<sup>th</sup> day of November 2021.

The foregoing Ordinance was moved by Commissioner David, seconded by Vice Mayor Moore and upon being put to the vote, the vote was as follows:

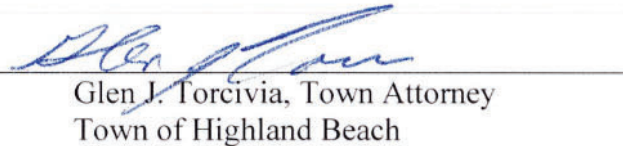
<b>VOTES:</b>	<b>YES</b>	<b>NO</b>
Mayor Douglas Hillman	X	
Vice Mayor Natasha Moore	X	
Commissioner Peggy Gossett-Seidman	X	
Commissioner Evalyn David	X	
Commissioner John Shoemaker	X	

PASSED AND ADOPTED on second and final reading at the Regular Commission meeting held on this 7<sup>th</sup> day of December 2021.

**ATTEST:**

  
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Douglas Hillman, Mayor  
\_\_\_\_\_  
Lanelda Gaskins, MMC  
Town Clerk

**REVIEWED FOR LEGAL SUFFICIENCY**

  
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Glen J. Torcivia, Town Attorney  
Town of Highland Beach